The Ontario Securities Commission

OSC Bulletin

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

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

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Other Notices

A.2.1 Kallo Inc. et al.

FOR IMMEDIATE RELEASE
October 30, 2024

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

TORONTO – The previously scheduled day of October 31, 2024 will not be used for the merits hearing in the above-named matter. The merits hearing will commence on November 28, 2024 and continue on November 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.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.2 Xiao Hua (Edward) Gong

FOR IMMEDIATE RELEASE
October 30, 2024

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

TORONTO – Following a hearing held today, the Tribunal issued an Order in the above-named matter approving the Settlement Agreement reached between the Ontario Securities Commission and Xiao Hua (Edward) Gong.

Take notice the hearing dates scheduled for December 12 and 13, 2024 are vacated.

A copy of the Order dated October 30, 2024, Settlement Agreement dated October 29, 2024 and Oral Reasons for Approval of a Settlement dated October 30, 2024 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
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A.2.3 Nvest Canada Inc. et al.

FOR IMMEDIATE RELEASE
November 4, 2024

NVEST CANADA INC.,
GX TECHNOLOGY GROUP INC.,
SHORUPAN PIRAKASPATHY AND
WARREN CARSON,
File No. 2023-1

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

A copy of the Reasons and Decision and Order both dated November 1, 2024 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.3
Orders

A.3.1 Xiao Hua (Edward) Gong – s. 127(1)

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

File No. 2022-14

Adjudicator: Tim Moseley

October 30, 2024

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

WHEREAS on October 30, 2024, the Capital Markets Tribunal held a hearing by videoconference, to consider the Joint Request for a Settlement Hearing filed by Xiao Hua (Edward) Gong and the Ontario Securities Commission for approval of a settlement agreement dated October 24**,** 2024, and amended on October 29, 2024 (the **Settlement Agreement**);

ON READING the Statement of Allegations dated June 13, 2022, the Settlement Agreement, and the materials filed by the Commission and by Gong, and on hearing the submissions of representatives of the Commission and Gong;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

2. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the *Securities Act* (the **Act**):

    a. Gong is permanently prohibited from trading in any securities or derivatives, or acquiring any securities, except that he may trade securities or derivatives, and acquire securities, in a Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan, or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*, RSC, 1985, c 1 (5th Supp)), of which only he, his spouse or his children are the sole or joint legal and beneficial owners, through a registered dealer in Canada to whom he has given a copy of this order;

3. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Gong, permanently;

4. pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, Gong shall resign from any positions that he holds as a director or officer of issuers or registrants operating in Canada, save and except for his position as a director and officer of Youth Party of Canada, Gong Party Ltd., 2838445 Ontario Limited, 2869109 Ontario Limited and Wenture Tech Inc., provided that (1) those corporations do not raise capital other than from banks listed in Schedule I to the *Bank Act*, SC 1991, c 46; (2) the shareholders of 2838445 Ontario Limited, 2869109 Ontario Limited and Wenture Tech Inc. are limited to Gong, his spouse, his mother, his mother-in-law, father-in-law, brother-in-law or sister-in-law, his children and his grandchildren; and (3) the activities of the corporations listed above are limited to those set out in paragraph 6 below;

5. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the Act, Gong is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant operating in Canada, with the exception of Youth Party of Canada, Gong Party Ltd., 2838445 Ontario Limited, 2869109 Ontario Limited and Wenture Tech Inc., provided that (1) those corporations do not raise capital other than from banks listed in Schedule I to the *Bank Act*; (2) the shareholders of 2838445 Ontario Limited, 2869109 Ontario Limited and Wenture Tech Inc. are limited to Gong, his spouse, his mother, his mother-in-law, father-in-law, brother-in-law or sister-in-law, his children and his grandchildren; and (3) the activities of the corporations listed above are limited to those set out in paragraph 6 below;

6. the permitted activities of the corporations listed in paragraphs 4 and 5 above are:

    a. Youth Party of Canada and Gong Party Ltd. - to support Gong's political activities;

b. 2838445 Ontario Limited - operation of a tree farm and the associated equipment at 6394 Bethesda Road, Stouffville, ON, L4A 3A7;

c. 2869109 Ontario Limited - to act as owner and landlord of the property located at 518-1315 Lawrence Avenue East, North York, Ontario, M3A 3R3;

d. Wenture Tech Inc. - the provision of labour and administrative services to other corporations listed in paragraphs 4 and 5 above; and

7. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Gong is prohibited permanently from becoming or acting as a registrant or as a promoter.

“Tim Moseley”

File No.: 2022-14

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

PART I – INTRODUCTION

1. An Ontario resident who was the directing mind of a corporation, which corporation was solely convicted of serious securities-related criminal offence poses significant risks to our capital markets. Such individuals must be subject to measures to effectively limit their participation in our capital markets.

2. The Respondent Xiao Hua (Edward) Gong was the directing mind of a corporation that operated a pyramid scheme involving over 40,000 investors and hundreds of millions of dollars. The scheme resulted in the criminal conviction of Edward Enterprise International Group Inc. (the **Edward Group**) for the use of forged documents and for operating a pyramid scheme. The Crown withdrew charges against Gong in his personal capacity as part of a negotiated resolution. Despite the outcome as against Gong personally, the Commission's mandate to protect investors going forward requires that he be subject to conduct and trading bans to restrict his participation in our capital markets.

PART II – JOINT SETTLEMENT RECOMMENDATION

3. Gong agrees to the making of an order in substantially the form attached as **Schedule "A"** (the **Order**) to this Settlement Agreement, based on the facts set out in this agreement and in the Agreed Statement of Facts dated February 9, 2021 (the **ASF**) from the Edward Group's guilty plea attached as **Schedule "B"**.

4. For the purposes of the proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, Gong agrees with the facts set out in Part III and the conclusions set out in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

Background

5. The Respondent, Xiao Hua (Edward) Gong, is a 59-year-old resident of Ontario. Gong's first language is not English. Neither the Respondent nor his company, the Edward Group were registered with the Ontario Securities Commission (the **Commission**) to trade in securities and no exemption from the requirement to be registered applies.

6. Gong is the sole shareholder, officer and director of the Edward Group. The Edward Group was incorporated on November 4, 2005, in Ontario.

7. Gong and the Edward Group were each charged with criminal offences on December 20, 2017 and January 15, 2021, respectively. On February 10, 2021, Gong entered a guilty plea on behalf of the Edward Group as its directing and controlling mind (the **Edward Group Guilty Plea**) and signed the ASF in relation to the guilty plea.

8. Charges against Gong personally were withdrawn on consent as part of the negotiated resolution. The Edward Group was convicted of using forged documents and operating a pyramid scheme, contrary to ss. 368(1)(b) and 209(1)(e) of the *Criminal Code*, RSC 1985, c C-46.

9. Gong admits to all of the facts contained in the ASF for the purpose of this Settlement Agreement.

Agreed Statement of Facts dated February 9, 2021

10. Gong, personally and by directing representatives of his companies, ran an operation that promoted the products and shares of O24 Pharma PLC (**O24)** under the Edward Group umbrella. The organization actively recruited members (this term is used interchangeably with "investors"), who obtained rewards by recruiting other members. The Edward Group primarily ran the enterprise in Canada and recruited members in China.

11. Members relied on the Edward Group's representations to invest up to ¥5,000 RMB or the equivalent of up to approximately $1,000 CAD to receive a package that consisted of health supplements and O24 shares. The company later provided Canada National Television (**CNTV**) shares once the O24 shares ran out. Members were promised large returns on their investment once O24 went public and the shares were traded on the stock market. However, the shares could not convey their purported interest because this version of O24 had been dissolved years prior, in 2010.

12. The Edward Group's selling mechanism included a pyramid or multi-level marketing structure. Members were told that they could make money by recruiting other investors. Members, by purchasing health supplements in the Edward Group operation, were entitled to receive larger sums of money than what they had paid, by reason of the fact that new recruits became members and purchased supplements. Between January 2012 and December 2017, approximately 40,000

people became members in the company, which brought hundreds of millions of dollars into the Edward Group and its related companies.

13. Pursuant to s. 22.2(b) of the *Criminal Code*, RSC 1985, c C-46, Gong had the mental state required, to wit recklessness and wilful blindness, to be a party to the offences and always acted within the scope of his authority in his actions on behalf of these companies, or in directing the work of the companies' employees and representatives. Gong was, again, not personally convicted.

Abuse of Process Motion

14. Gong agrees to withdraw the Abuse of Process/Stay motion, brought on December 1, 2022.

PART IV – CONDUCT CONTRARY TO ONTARIO SECURITIES LAW

15. The Respondent acknowledges and admits that by engaging in the conduct described above, he contravened subsection 25(1) and subsection 126.1(1)(b) of the *Securities Act*, RSO 1990, c S.5 (the **Act**) and that his conduct was contrary to the public interest.

PART V – THE RESPONDENT'S POSITION

16. The Respondent requests and the Commission does not object that the Settlement Hearing panel consider the following mitigating circumstances:

    a. Other than this proceeding, there are no prior or current administrative proceedings commenced against Gong before a "securities regulatory authority of another province or territory in Canada" as defined in subsection 127(10) of the Act.

    b. Gong has recently displayed co-operative behaviour by obtaining counsel, meeting deadlines imposed by the Tribunal and engaging in settlement discussions, during this proceeding under subsection 127(1) of the Act.

    c. By entering into this Settlement Agreement, Gong is conserving Commission and Tribunal resources.

    d. Gong is not and never has been registered with the Commission.

17. The Respondent also intends to rely on the following as mitigating circumstances but acknowledges that the Commission does not agree that they constitute mitigating circumstances:

    a. To the best of the Commission's knowledge, the investors resided outside Ontario.

    b. In July 2016, Gong retained a consultant with respect to O24 shares and paid the consultant approximately US$950,000 for these services.

PART VI – TERMS OF SETTLEMENT

18. The Respondent agrees to the terms of settlement set forth below.

19. The Respondent and the Commission consent to the Order substantially in the form attached as Schedule "A" pursuant to which it is ordered that:

    a. This Settlement is approved;

    b. Pursuant to paragraph 2 and 2.1 of subsection 127(1) of the Act, the Respondent is permanently prohibited from trading in any securities or derivatives, or acquiring any securities, except that he may trade securities or derivatives, and acquire securities in a Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan, or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*, RSC, 1985, c 1 (5th Supp)), of which only he, his spouse or his children are the sole or joint legal and beneficial owners, through a registered dealer in Canada to whom he has given a copy of the Capital Markets Tribunal's order;

    c. Pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to the Respondent permanently;

    d. Pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act, the Respondent shall resign any position that he holds as a director or officer of issuers or registrants operating in Canada, save and except for his position as a director and officer of the following companies:

i. Gong Party Ltd., Corporation # 1517919-0, which is incorporated under the *Canada Not-for-profit Corporations Act*, SC 2009, c 23, with its registered or head office located at Unit 518, 1315 Lawrence Ave. East, North York Ontario, M3A 3R4 (the **Gong Party**) which activities are limited to supporting Gong's political activities;

ii. Youth Party of Canada, Corporation # 1517655-7, which is incorporated under the *Canada Not-for-profit Corporations Act*, SC 2009, c 23, with its registered or head office located at Unit 518, 1315 Lawrence Ave. East, North York, Ontario, M3A 3R3 (the **Youth Party**) which activities are limited to supporting Gong's political activities;

iii. 2838445 Ontario Limited, which is incorporated under the *Business Corporations Act*, RSO 1990, c B.16, with its registered or head office located at 6394 Bethesda Road, Stouffville, Ontario, L4A 3A7 (**283 Ltd**) which activities are limited to the operation of a tree farm property and the associated equipment at 6394 Bethesda Road;

iv. 2869109 Ontario Limited, which is incorporated under the *Business Corporations Act*, RSO 1990, c B.16, with its registered or head office located at 518-1315 Lawrence Ave. East, North York, Ontario, M3A 3R3 (**286 Ltd**) which activities are limited to acting as owner and landlord of the property located at 518-1315 Lawrence Ave. East, North York, Ontario, M3A 3R3; and

v. Wenture Tech Inc., Corporation # 1057621-2, which is incorporated under the *Canada Business Corporations Act*, RSC 1985, c C-44 (**Wenture**) an active business with employees, which activities are limited to the provision of labour and administrative services to the Gong Party, the Youth Party, 283 Ltd and 286 Ltd.;

provided that: (1) the corporations listed above in this subparagraph do not raise capital other than from banks listed in Schedule I to the *Bank Act*, SC 1991, c 46; (2) the shareholders of 283 Ltd, 286 Ltd and Wenture are limited to Edward Gong, his spouse, his mother, his mother-in-law, father-in-law, brother-in-law or sister-in-law, his children and his grandchildren; and (3) the activities of the corporations listed above in this subparagraph are limited to the activities described above;

e. Pursuant to paragraph 8 and 8.2 of subsection 127(1) of the Act, the Respondent shall be permanently prohibited from becoming or acting as a director or officer of any issuer or registrant operating in Canada, with the exceptions of the corporations listed above in subparagraph 19(d), provided that: (1) those corporations do not raise capital other than from banks listed in Schedule I to the *Bank Act*, SC 1991, c 46; (2) the shareholders of 283 Ltd, 286 Ltd and Wenture are limited to Edward Gong, his spouse, his mother, his mother-in-law, father-in-law, brother-in-law or sister-in-law, his children and his grandchildren; and (3) the business activities of the corporations are limited to the indicated business activities described in subparagraph 19(d); and

f. Pursuant to paragraph 8.5 of subsection 127(1) of the Act, the Respondent shall be prohibited from becoming or acting as a registrant or promoter permanently.

20. The Respondent consents to regulatory orders made by any securities regulatory authority of another province or territory in Canada containing any or all of the prohibitions set out in paragraph 19 above. These prohibitions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

21. The Respondent acknowledges that this Settlement Agreement and the Order may form a basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondent. The Respondent should contact the securities regulator of any other jurisdiction in which the Respondent intends to engage in any securities- or derivatives-related activities prior to undertaking such activities.

PART VII – FURTHER PROCEEDINGS

22. If the Capital Markets Tribunal (the **Tribunal**) approves this Settlement Agreement, the Staff of the Ontario Securities Commission (the **Enforcement Division**) will not commence or continue any proceeding against the Respondent under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Respondent fails to comply with any term in this Settlement Agreement, in which case the Enforcement Division may bring proceedings under Ontario securities law against the Respondent that may be based on, among other things, the facts set out in Part III of the Settlement Agreement as well as the breach of the Settlement Agreement.

23. The Respondent waives any defences to a proceeding referenced in paragraph 22 based on the limitation period in the Act, provided that no such proceeding be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

24. The parties will seek approval of the Settlement Agreement at the Settlement Hearing before the Tribunal, which shall be held on a date determined by the Registrar in accordance with this Settlement Agreement and the Tribunal's *Rules of Procedure.*

25. The Respondent will attend the Settlement Hearing.

26. The parties confirm that the Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

27. If the Tribunal approves the Settlement Agreement:

    a. The Respondent irrevocably waives all rights to a full hearing, judicial review or appeal of this matter under the Act; and

    b. The parties will not make any public statement or advance a position in any other legal proceeding that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing. Gong will not make any public statement or advance a position in any other legal proceeding that the Commission acted in bad faith in relation to him or the Edward Group, except in Gong's civil actions filed against the Commission currently before the Ontario Superior Court of Justice (Court File Nos. CV-23-00694277-0000, CV-23-00694285-0000 and CV-23-00697770-0000).

28. Whether or not the Tribunal approves the Settlement Agreement, the Respondent will not use, in any proceeding, the Settlement Agreement or the negotiation or process of approval of the Settlement Agreement as the basis for any attack on the Tribunal's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

29. If the Tribunal does not make the Order:

    a. The Settlement Agreement and all discussions and negotiations between the parties before the Settlement Hearing will be without prejudice to the parties; and

    b. The parties will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing. Any such proceedings, remedies and challenges will not be affected by the Settlement Agreement, or by any discussions or negotiations relating to the Settlement Agreement.

30. The parties will keep the terms of the Settlement Agreement confidential until the Settlement Hearing, unless they agree in writing not to do so or unless otherwise required by law. If, for whatever reason, the Tribunal does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless the parties otherwise agree in writing or if required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

31. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

32. A facsimile or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this 29th day of October, 2024.

"Rikin Morzaria"

Witness: (print name): Rikin Morzaria

"Edward Gong"

Edward Gong

DATED at Toronto, Ontario this 29th day of October, 2024

THE ONTARIO SECURITIES COMMISSION

"Bonnie Lysyk"

Executive Vice President, Enforcement
Ontario Securities Commission

Schedule "A"

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

File No. 2022-14

Adjudicators: [ ]

[Date Order made]

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

WHEREAS on **[date]**, 2024, the Capital Markets Tribunal held a hearing at the offices of the Ontario Securities Commission (the **Commission**), located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider the Joint Request for a Settlement Hearing filed by Xiao Hua (Edward) Gong (the **Respondent**) and the Commission for approval of a settlement agreement dated April **[date]**, 2024 (the **Settlement Agreement)**;

ON READING the Statement of Allegations dated June 13, 2022 and the Settlement Agreement, and the materials filed by the Commissions and by Edward Gong, and on hearing the submissions of representatives of the Commission and Edward Gong;

IT IS ORDERED THAT:

1. Pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), the Respondent is permanently prohibited from trading in any securities or derivatives, or acquiring any securities, except that he may trade securities or derivatives, and acquire securities in a Registered Retirement Savings Plan, Registered Retirement Income Fund, Registered Education Savings Plan, Registered Disability Savings Plan, or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*, RSC, 1985, c 1 (5th Supp)), of which only he, his spouse or his children are the sole or joint legal and beneficial owners, through a registered dealer in Canada to whom he has given a copy of our order;

2. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law shall not apply to the Respondent, permanently;

3. pursuant to paragraph 7 and 8.1 of subsection 127(1) of the Act, the Respondent shall resign from any positions that he holds as a director or officer of issuers or registrants operating in Canada, save and except for his position as a director and officer of Youth Party of Canada, Gong Party Ltd., 2838445 Ontario Limited, 2869109 Ontario Limited and Wenture Tech Inc., provided that (1) those corporations do not raise capital other than from banks listed in Schedule I to the *Bank Act*, SC 1991, c 46; (2) the shareholders of 2838445 Ontario Limited, 2869109 Ontario Limited and Wenture Tech Inc. are limited to Edward Gong, his spouse, his mother, his mother-in-law, father-in-law, brother-in-law or sister-in-law, his children and his grandchildren; and (3) the activities of the corporations listed above are limited to those set out in paragraph 5;

4. pursuant to paragraph 8 and 8.2 of subsection 127(1) of the Act, the Respondent is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant operating in Canada, with the exception of Youth Party of Canada, Gong Party Ltd., 2838445 Ontario Limited, 2869109 Ontario Limited and Wenture Tech Inc., provided that (1) those corporations do not raise capital other than from banks listed in Schedule I to the *Bank Act*, SC 1991, c 46; (2) the shareholders of 2838445 Ontario Limited, 2869109 Ontario Limited and Wenture Tech Inc. are limited to Edward Gong, his spouse, his mother, his mother-in-law, father-in-law, brother-in-law or sister-in-law, his children and his grandchildren; and (3) the activities of the corporations listed above are limited to those set out in paragraph 5;

5. The permitted activities of the corporations listed in paragraphs 3 and 4 are:

   a) Youth Party of Canada and Gong Party Ltd. - to support Gong's political activities;

   b) 2838445 Ontario Limited - operation of a tree farm and the associated equipment at 6394 Bethesda Road, Stouffville, ON, L4A 3A7;

   c) 2869109 Ontario Limited - to act as owner and landlord of the property located at 518-1315 Lawrence Ave. East, North York, Ontario, M3A 3R3; and

   d) Wenture Tech Inc. - the provision of labour and administrative services to other corporations listed in paragraphs 3 and 4.

6. pursuant to paragraph 8.5 of subsection 127(1) of the Act, the Respondent is prohibited permanently from becoming or acting as a registrant or as a promoter.

Schedule "B"

***R v Edward Enterprise International Group Inc.* – Agreed Statement of Facts**
(Plea to Pyramid Scheme Selling & Using Forged Documents)

A.3.2 Nvest Canada Inc. et al. – ss. 127(1), 127.1

IN THE MATTER OF
NVEST CANADA INC.,
GX TECHNOLOGY GROUP INC.,
SHORUPAN PIRAKASPATHY AND
WARREN CARSON

File No. 2023-1

Adjudicators: James Douglas (chair of the panel)
Andrea Burke
William J. Furlong

November 1, 2024

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

WHEREAS on October 25, 26, 27, November 6, December 11, 2023 and April 18, 2024, the Capital Markets Tribunal held a combined merits and sanctions and costs hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario;

AND WHEREAS the Tribunal made findings against Nvest Canada Inc., GX Technology Group Inc., Shorupan Pirakaspathy and Warren Carson (the **Respondents**) in its Reasons and Decision issued on November 1, 2024;

ON READING the materials filed by the Ontario Securities Commission and on hearing the submissions of the representative for the Commission, and no one appearing for the Respondents;

IT IS ORDERED THAT:

1. with respect to the Respondents:

   a. they shall cease trading in any securities or derivatives for a period of 10 years, pursuant to paragraph 2 of s. 127(1) of the *Securities Act* (***Act***);

   b. they shall be prohibited from acquiring any securities for a period of 10 years, pursuant to paragraph 2.1 of s. 127(1) of the *Act*;

   c. any exemptions contained in Ontario securities law do not apply to them for a period of 10 years, pursuant to paragraph 3 of s. 127(1) of the *Act*;

   d. they are prohibited from becoming or acting as a registrant or promoter for a period of 10 years, pursuant to paragraph 8.5 of s. 127(1) of the *Act*;

   e. they shall each pay a separate administrative penalty of $200,000 to the Commission pursuant to paragraph 9 of s. 127(1) of the *Act*;

   f. they shall, on a joint and several basis, disgorge $293,493.19 to the Commission, pursuant to paragraph 10 of s. 127(1) of the *Act*;

   g. they shall, on a joint and several basis, pay to the Commission $162,390.10 for the costs of the investigation and hearing; and

2. With respect to Pirakaspathy and Carson:

   a. they shall resign from any position that they may hold as a director or officer of any issuer or registrant, pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act*; and

   b. they shall be prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of 10 years, pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act*.

“James Douglas”

“Andrea Burke”

“William J. Furlong”

A.4
Reasons and Decisions

A.4.1 Xiao Hua (Edward) Gong

Citation: *Gong (Re)*, 2024 ONCMT 24
Date: 2024-10-30
File No. 2022-14

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

Adjudicator:	Timothy Moseley	
Hearing:	By videoconference, October 30, 2024	
Appearances:	Mark Bailey Sean Grouhi	For the Ontario Securities Commission
	Shahzad Siddiqui Rikin Morzaria	For Xiao Hua (Edward) Gong

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

[1] The respondent Edward Gong is the sole director, officer and shareholder of Edward Enterprise International Group Inc., also known as the Edward Group. In 2021, the Edward Group pled guilty in the Ontario Court of Justice to charges of using forged documents and operating a pyramid scheme.

[2] In this proceeding before the Capital Markets Tribunal, the Ontario Securities Commission alleges that Mr. Gong violated Ontario securities law by engaging in and directing the activity, through his company, that led to the guilty plea and conviction.

[3] The Commission and Mr. Gong have agreed to resolve those allegations, and they now seek approval of their settlement agreement. I have decided that it is in the public interest to approve that agreement and to order the sanctions to which the Commission and Mr. Gong have agreed.

[4] The factual background is set out in detail in the settlement agreement, but I will summarize it here.

[5] Mr. Gong ran an operation that promoted products sold by O24 Pharma PLC, as well as shares of that company. Through the Edward Group, Mr. Gong and others recruited investors, who would in turn benefit by recruiting other investors. The Edward Group promised large returns once O24 Pharma went public, but that was essentially an empty promise, since O24 Pharma had been dissolved years earlier.

[6] Between 2012 and 2017, about 40,000 people invested hundreds of millions of dollars.

[7] The sentence that the Ontario Court of Justice imposed included a fine of approximately $1 million (including the victim fine surcharge) and the forfeiture of a number of properties in Canada and the United States, as well as cash and other assets.

[8] For the purposes of this proceeding, Mr. Gong admits that his conduct contravened two cornerstone provisions of the *Securities Act*:

a. s. 25(1), which requires anyone who engages in the business of trading in securities to be registered in accordance with Ontario securities law, unless an exemption applies; and

b. s. 126.1(1)(b), which prohibits anyone from engaging in a course of conduct relating to securities that they knew or ought to have known perpetrated a fraud.

[9] The Commission and Mr. Gong have agreed to settle this proceeding on the following terms:

a. Mr. Gong is to be permanently prohibited from trading in any securities or derivatives, and from acquiring any securities, except in specified registered accounts of which only he, his spouse or his children are the owners, as more particularly set out in the settlement agreement;

b. the exemptions contained in Ontario securities law shall not apply to Mr. Gong permanently;

c. Mr. Gong shall resign any position he holds as a director or officer of issuers or registrants operating in Canada, and he is permanently prohibited from becoming a director or officer of an issuer or registrant in Canada, subject to five exceptions specified in the settlement agreement, all of which exceptions are small private companies in which Mr. Gong is involved; and

d. Mr. Gong is to be permanently prohibited from being a registrant or promoter.

[10] These terms effectively deny Mr. Gong the privilege of participating in the capital markets. Unlike many respondents who are found to have contravened the fraud-related prohibition in the *Securities Act*, Mr. Gong will have the benefit of some exceptions to a total ban, as the parties have agreed. I accept the Commission's submission that the exceptions in this case do not pose any risk to investors or the capital markets, given the limited scope of the business activities allowed, and the strict constraints on capital raising.

[11] In addition, Mr. Gong will not pay any financial sanctions in this proceeding. As the Commission has correctly noted, the Court has already sentenced the Edward Group to pay a substantial fine and to forfeit significant assets.

[12] I conducted several confidential conferences in this proceeding, working with the parties as they reached this settlement. I am presiding over this settlement approval hearing with their consent, as required by the Tribunal's rules. My role at this hearing is to decide whether the negotiated settlement falls within a range of reasonable outcomes. In deciding whether to approve settlements, this Tribunal respects the negotiation process and accords significant deference to the resolution that the parties reach. I do the same today.

[13] My decision to approve this settlement takes into account some mitigating factors, including that Mr. Gong has not been the subject of any other proceedings before securities regulatory authorities in Canada, that Mr. Gong has co-operated with the Commission during this proceeding, and that by entering into this settlement, Mr. Gong has accepted responsibility and is conserving Commission and Tribunal resources.

[14] Mr. Gong wishes to rely on two additional circumstances that he submits are mitigating factors. I will comment on them briefly.

[15] First, Mr. Gong submits that the affected investors resided outside Ontario. I agree with the Commission that this is not a mitigating factor. Effective securities regulation requires global co-operation among regulatory authorities, and confidence in Ontario's capital markets would be undermined by a failure of the Commission or of this Tribunal to respond properly to securities-related misconduct that occurs in Ontario, no matter where the victims may be.

[16] Second, Mr. Gong submits that he retained a consultant with respect to the shares of O24 Pharma and that he paid the consultant almost US$1 million. Again, I agree with the Commission that this is not a mitigating factor in this case. Soliciting investments from the public brings with it significant obligations, and those who engage in that activity must be accountable for those obligations. In limited instances, reliance on professional advisors can be a mitigating factor, *e.g.*, where someone follows, in good faith, specific advice given by a properly qualified and instructed lawyer. Mr. Gong's assertion about the consultant in this case does not approach that standard, and I do not find the amount of fees paid to the consultant to be persuasive.

[17] Even though I do not give Mr. Gong credit for these two factors, I do find that the proposed settlement is reasonable and is in the public interest. It reflects the seriousness, scope and recurrent nature of Mr. Gong's misconduct, it effectively removes Mr. Gong from the capital markets permanently, and it operates as a significant deterrent for him and for others to engage in similar misconduct.

[18] I will therefore make an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 30th day of October, 2024

"Timothy Moseley"

A.4.2 Nvest Canada Inc. et al. – ss. 127(1), 127.1

Citation: *Nvest Canada Inc (Re)*, 2024 ONCMT 25
Date: 2024-11-01
File No. 2023-1

IN THE MATTER OF
NVEST CANADA INC.,
GX TECHNOLOGY GROUP INC.,
SHORUPAN PIRAKASPATHY AND
WARREN CARSON

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

Hearing:	October 25, 26, 27, November 6, December 11, 2023, and April 18, 2024; final written submission received on July 5, 2024	
Decision:	November 1, 2024	
Panel:	James Douglas	Chair of the Panel
	Andrea Burke	Adjudicator
	William Furlong	Adjudicator
Appearances:	Brian Weingarten	For the Ontario Securities Commission

REASONS AND DECISION

1. OVERVIEW

[1] This enforcement case is about the sale and promotion of "GXTokens" which were touted as crypto investments, as well as corporate shares by unregistered parties, without a prospectus or relevant exemptions.

[2] The Ontario Securities Commission alleges that between January 2018 and May 2020 (the **Material Time**) the respondents created a crypto asset called GXToken, and sold these tokens globally, including to Ontario investors. The Commission alleges that the GXTokens are securities, something that must be established in order for there to be any related breaches under the *Securities Act*[1] (the ***Act***). The Commission also alleges that the respondents sold shares in Nvest Canada Inc. and GX Technology Group Inc.

[3] The Commission alleges, as a consequence, that:

a. Shorupan Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading of GXTokens and shares in Nvest Canada and GX Technology, contrary to s. 25(1) of the *Act*;

b. Pirakaspathy, Warren Carson, Nvest Canada and GX Technology illegally distributed securities in the form of GXTokens, and shares in Nvest Canada and GX Technology, contrary to s. 53(1) of the *Act*; and

c. Pirakaspathy and Carson authorized, permitted or acquiesced in Nvest Canada's and GX Technology's contraventions of s. 25(1) and s. 53(1) of the *Act* and are therefore deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act*.

[4] In light of this alleged misconduct the Commission seeks significant sanctions in the form of administrative monetary penalties, permanent prohibitions, disgorgement and an order for costs.

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

a. Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading of GXToken Securities, contrary to s. 25(1) of the *Act*;

b. Pirakaspathy, Carson, Nvest Canada and GX Technology illegally distributed securities in the form of GXToken Securities, and shares in Nvest, contrary to s. 53(1) of the *Act*; and

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

c. Carson authorized, permitted or acquiesced in Nvest Canada's and GX Technology's contraventions of s. 25(1) of the *Act* and is therefore deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act*.

[6] Also, for the reasons below, we have ordered sanctions for the respondents' misconduct that:

a. ban the respondents from participating in the Ontario capital markets for a period of 10 years;

b. ban Pirakaspathy and Carson from being or becoming directors or officers of any issuers or registrants for a period of 10 years;

c. require each respondent to pay an administrative penalty of $200,000;

d. require the respondents, on a joint and several basis, to disgorge $293,493.19 to the Commission; and

e. require the respondents, on a joint and several basis, to pay costs to the Commission in the amount of $162,390.10.

[7] Before outlining the background facts, we first address our decision to proceed with the combined merits and sanctions hearing in the absence of the respondents.

2. PRELIMINARY MATTERS

2.1 Proceeding in the absence of the respondents

[8] None of the respondents attended or otherwise participated in the combined merits and sanctions hearing or in any other aspect of this proceeding.

[9] The Notice of Hearing and the Statement of Allegations were properly served on all respondents other than Carson. The Tribunal was satisfied that the requirement for "reasonable notice" had been met for Carson and ordered[2] that the requirement for service of the Notice of Hearing and Statement of Allegations on Carson be waived. At the same time, the Tribunal ordered that the requirement for service on the respondents of all future processes in this proceeding also be waived. The Tribunal also ordered[3] that the merits and sanctions stages of the proceeding be heard together.

[10] Where notice of a hearing has been given to a party to a proceeding and the party does not attend the hearing, the Tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.[4] While rule 21(3) of the Rules (the Rules that were in place at the time of this hearing) expressly refers to the notice of a hearing being "served" on a party, s. 6(1) of the *Statutory Powers Procedures Act* (**SPPA**) simply provides that the parties to a proceeding shall be given "reasonable notice" of the hearing.

[11] Accordingly, we were satisfied that we could proceed with this hearing in the absence of the respondents.

3. BACKGROUND

3.1 The respondents

[12] Nvest Canada was incorporated federally in December 2017 and was dissolved in November 2022. Nvest Canada's registered office address was at all times in Ontario.

[13] Pirakaspathy and Carson were the first directors of Nvest Canada and they continued as the only directors throughout the Material Time. Throughout the Material Time, Nvest Canada's corporate filings identified Ontario addresses for each of Pirakaspathy and Carson. While no share registers for Nvest Canada were introduced in evidence, an organization chart shared with a crypto exchange identifies Pirakaspathy and Carson as the 80% and 20% shareholders of Nvest Canada, respectively.

[14] The Commission also established that various versions of the name "Nvest" were used to refer to Nvest Canada when engaged in its business activities, including "Nvest", "NvestBank" and "Nvest Global Enterprises Inc."

[15] Pirakaspathy's Facebook and Instagram accounts show that he represented himself as the CEO of "Nvest". In various documents Carson also represented himself to be the Chief Executive Officer of Nvest Canada. In a YouTube video of a live launch event for the GXToken, Pirakaspathy and Carson were identified as co-founders of Nvest Canada and Carson was identified as the Chief Operating Officer.

2 (2023) 46 OSCB 2689
3 (2023) 46 OSCB 3617
4 *Statutory Powers Procedure Act* (**SPPA**), RSO 1990, c S.22, s 7(1); *Capital Markets Tribunal Rules of Procedure* (**Rules**), r 24(3) (formerly, r 21(3))

[16] GX Technology (formerly named Global Xchange Co. Inc.) was incorporated federally in March 2018 and dissolved in April 2023. GX Technology's registered office address was at all times in Ontario, at the same address as Nvest Canada.

[17] Pirakaspathy and Carson were the first directors of GX Technology and they continued as the only directors throughout the Material Time. Throughout the Material Time, GX Technology's corporate filings also identified Ontario addresses for each of Pirakaspathy and Carson. While no share registers for GX Technology were introduced in evidence, the organization chart referred to above identifies Pirakaspathy and Carson as the 78.5% and 20% shareholders of GX Technology, respectively.

[18] The Commission established that the names "Global X Change" and "Global X Change Inc." were used interchangeably to refer to GX Technology when engaged in business activities, including in connection with GXTokens. Corporate searches for "Global X Change Inc." returned no matches, and we are satisfied that Global X Change Inc. was not a Canadian corporation, but simply an unregistered corporate or business name that was used to refer to GX Technology.

[19] Carson's Facebook account shows that Carson represented himself as the CEO of "Global X Change".

[20] Pirakaspathy also appears as a signing officer for GX Technology on the GX Broker Dealer Agreement discussed below. In a YouTube video of a live launch event for the GXToken, Pirakaspathy was also introduced as the co-founder of "Global X Change".

[21] Pirakaspathy represented that "Nvest" was the parent company behind "Global X Change". A document sent by Pirakaspathy to an investor represented that Nvest Canada beneficially owned the shares of "Global X Change Inc." Multiple investor witnesses understood Nvest Canada to be the parent company of "Global X Change". Whether Nvest Canada actually owned the shares of GX Technology was not established, and this would be inconsistent with the organization chart referred to above that indicated that Pirakaspathy and Carson owned both the Nvest Canada shares and the majority of the GX Technology shares. However, the Commission did establish that Nvest Canada was represented to be the parent company of GX Technology and also that Nvest Canada and GX Technology were affiliated companies owned and controlled by Pirakaspathy and Carson.

4. MERITS ISSUES AND ANALYSIS

[22] The issues relevant to the merits of the case are as follows:

a. Are the GXTokens securities?

b. Did Pirakaspathy, Nvest Canada and GX Technology engage in the business of trading securities without registration contrary to s. 25(1) of the *Act*?

c. Did Pirakaspathy, Carson, Nvest Canada and GX Technology illegally distribute securities contrary to s. 53(1) of the *Act*?

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

[23] Our analysis and conclusions on each of these issues are set out below.

4.1 Are the GXTokens securities?

[24] The Commission's allegations of breaches of the *Act* relating to the GXTokens are based on the Commission first establishing that the alleged breaches related to securities.

[25] The Commission submits that the GXTokens themselves are securities as they are "investment contracts" under the *Act*.[5] In the alternative, the Commission submits that, similar to the finding of this Tribunal in *Hogg (Re)* [6], the transaction or scheme for the offer and sale of the GXTokens, including all of the surrounding circumstances and the representations made to investors about the GXTokens, is an "investment contract" and therefore a security.

[26] We find that the GXTokens considered alone are not "investment contracts". However, we accept the Commission's alternative submission. We find that the direct initial sale transactions of the GXTokens to purchasers that are the subject of this case, considering all the surrounding circumstances of those sales and the related representations to prospective purchasers, are "investment contracts" and therefore securities under the *Act* (the **GXToken Securities** or **GXToken Security**).

[5] *Act*, s. 1(1) "security" paragraph (n)
[6] 2024 ONCMT 15 (***Hogg***)

[27] Before setting out our reasons for this finding, we first set out some of the relevant facts about the GXTokens and the context in which they were sold to investors.

4.1.1 The context in which the GXTokens were promoted and sold

[28] The Commission submits that the respondents developed and sold a crypto asset called the GXToken. Although it is evident that GXTokens were represented to be crypto assets, we are not satisfied on the evidence adduced by the Commission that the GXTokens were, in fact, crypto assets developed using blockchain technology. Nevertheless, we are satisfied that "notional digital assets" called GXTokens and represented to be crypto assets were sold to investors. Witnesses testified that they could log in to an online account or platform or digital "Nvest wallet" to see a representation of the number of GXTokens that they had purchased and their purported value. One investor witness confirmed that there was never a way to actually exchange or sell or obtain a refund for the GXTokens once purchased and this evidence was corroborated in a number of the investor questionnaires that were collected by the Commission.

4.1.1.a Global X Change and the GXBroker program

[29] GXTokens were promoted and sold alongside two other related concepts:

a. "Global X Change"; and

b. the "GXBroker program".

[30] "Global X Change" was described as an "exchange operating system" that was a "one-stop-shop" for a user to get access to all the crypto currency exchanges. The Global X Change environment or platform was described as offering various free features that would allow users to buy, store, sell, send and receive crypto assets. It is not clear whether the Global X Change was ever actually built or functioned as represented.

[31] The "GXBroker program" was a multi-level marketing program. The GXBroker program was represented as a way for GXToken investors to run their own digital cryptocurrency brokerage business using the Global X Change operating system for their business. Investors could join the GXBroker program by acquiring GXTokens and "staking" the specified number required for participation in the program (described as a method for "proving" ownership of the GXTokens).

[32] The requirement to stake GXTokens was described as a means of demonstrating one's commitment to the GXBroker program and also as an alternative to charging a monthly fee for access to the GXBroker program. The act of staking the required number of GXTokens would change an individual investor's account from that of a user to that of a GXBroker. Investors could also join an enhanced level of the GXBroker program called the "GXBroker-Dealer" program, if they staked a US $100,000 investment in GXTokens.

[33] GXBrokers and GXBroker-Dealers were told that they would be paid commissions for driving sales of additional GXTokens in the Global X Change platform as well as for GXToken sales by GXBrokers and GXBroker-Dealers they were responsible for recruiting. These commissions were in US dollars, but if a GXBroker opted to convert commissions to GXTokens, they would receive a 15 percent bonus. The Commission called as a witness one investor who earned commission as a GXBroker, Investor LJ. Investor LJ's evidence was that her commissions were in GXTokens that were never exchangeable into dollars.

[34] Global X Change Inc. (that is, GX Technology) was represented as being responsible for developing GXTokens and the "GX Platform" as well as being responsible for the "Token Generation Event", or "Initial Coin Offering" for the GXTokens. A maximum of 350,000,000 GXTokens would be or were created, with a maximum of 300,000,000 available for purchase, the balance reserved for other purposes, including for founders and advisors. Investors were told that the GXTokens would be released for sale to the public in three different phases, with the purchase price to increase with each phase of the sale.

4.1.1.b GXToken document disclosure

[35] It was represented that once all the GXTokens were sold, the Global X Change platform would be opened up to trade in other crypto assets, and GXBrokers and GXBroker-Dealers would also be able to earn commissions on the sale of other crypto assets on the platform.

[36] The Commission adduced evidence of various documents provided to some GXToken investors.

[37] Investor PW received the following documents from Pirakaspathy sent from an "Nvestbank" email address in connection with his investment in GXTokens:

a. GXToken Generation Event Disclosure Document (**Disclosure Document**);

b. GXToken Sale Agreement; and

c. GXBroker Dealer Agreement.

[38] The Disclosure Document was issued on behalf of "Global X Change Inc.", which we accept to be GX Technology. The Disclosure Document states that a copy in electronic form is available through the company website. Whether that was actually the case was not established. The Disclosure Document sets out the terms upon which GXTokens were offered for purchase and states: "(t)he only right the Tokens bring is the right to hold the Tokens and potentially use the Tokens to participate in the GX Platform if offered in the future. Tokens carry no other rights, whether express or implied, and do not represent or grant any ownership right, share or security (or equivalent or analogous right) in the Company…".[7]

[39] The Disclosure Document contains a section on "Application of Funds" and states that the "Whitepaper" posted on the company website (which was not put into evidence or referred to by any witness) sets out the intended business model of the company in promoting the adoption of GXTokens. The Disclosure Document further provides that funds raised from the sale of GXTokens will be applied:

a. to the costs of operating the Token Generation Event, including legal, marketing and technical costs;

b. as set out in the Whitepaper; and

c. to ongoing working capital of the company.

[40] The Disclosure Document identifies numerous risks associated with the GXToken investment, including:

a. the development and deployment of a functioning "GX Platform" could be delayed or not occur, and this could directly impact the potential for adoption and use of the GXToken, which are intended to be used to access the "GX Platform"; and

b. although the company will seek to have the GXTokens listed on third party exchanges that might facilitate the trading of GXTokens, the company has no control over the actions of such third party exchanges.

[41] The GXToken Sale Agreement indicates that Global X Change (that is, GX Technology) is developing GXTokens and the GX Platform and that GXTokens may be used to access the GX Platform. Among other things, the Agreement sets out various terms and conditions related to the purchase of GXTokens, and requires confirmation that the purchaser has read and understood the Whitepaper and the Disclosure Document and acknowledges the risks set out in those documents.

[42] Some investor witnesses testified that they did not receive any such documents. Some investor questionnaires obtained by the Commission similarly indicated that the investor had not received any documentation, but had purchased GXTokens online. The Commission did not establish what documentation, if any, was provided to or acknowledged by online purchasers of GXTokens.

4.1.1.c The promotion of GXTokens

[43] The Commission also established that GXTokens were promoted in various ways, including through in-person meetings, live promotional events, and 210 widely disseminated and publicly available videos that were posted on two YouTube channels during the Material Time.

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

[44] In deciding whether an investment is a security, we must give the term a broad and purposive meaning, given that the *Act* is remedial legislation intended to protect the investing public. The *Act* must be "read in the context of the economic realities to which it is addressed" and "substance, not form, is the governing factor".[8] Investor protection is the "overarching lens" through which we should view the attributes of an alleged security.[9]

[45] The term "investment contract" is not defined in the *Act*, but the test for the existence of an investment contract is well-established and includes the "Common Enterprise Approach" adopted by the Supreme Court of Canada in *Pacific Coast Coin*. An investment contract is comprised of four elements:

a. an investment of money;

b. with a view to a profit;

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7 Exhibit 2, GXToken Generation Event Disclosure Document, Exhibit A to the Affidavit of Sherry Brown, affirmed on October 18, 2023

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

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

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

d. the efforts made by those others significantly affect the success or failure of the enterprise.[10]

[46] Below we find that the facts of this case satisfy the Common Enterprise Approach. Before we turn to that analysis, we address a few preliminary issues.

[47] First, we adopt here the reasoning of the Tribunal in *Hogg (Re)*[11] on the question of whether there must be a technically valid and enforceable written or oral common law contract in relation to each of the sale transactions for the GXTokens for us to find that there is an "investment contract". We are satisfied that this is not necessary, given that an investment contract may be a "contract, transaction or scheme".[12] In this case, the fact that the Commission did not establish the existence of a common law contract in relation to each of the sale transactions for the GXTokens and also the fact that not every purchaser of GXTokens may have received the same documents or heard the same or all representations in relation to GXTokens, does not preclude a finding of an "investment contract".

[48] Second, also adopting the reasoning of this Tribunal in *Hogg*,[13] we find that an investment contract can exist when some or all of the relevant facts are either untrue when they are represented to investors or the promises to investors do not materialize.

[49] Third, we have considered the fact that GXTokens could be staked by an investor in order to access the GXBroker program, and therefore potentially had a utility function in the sense of having a consumptive value or meaningful utility. We have done so because arguably tokens that possess only utility functions might not meet either the view to a profit or common enterprise elements of the investment contract test. However, we accept the Commission's submission that, on the facts of this case, any utility function that the GXTokens may have had does not preclude a finding of an "investment contract". The inclusion of utility functions in a token does not preclude the finding of an "investment contract" if, on the relevant facts, the "investment contract" test is otherwise satisfied, as we find below.

[50] We note that the Commission established that many investors bought GXTokens without any intention of using them to access the GXBroker program, including by purchasing more GXTokens than were required for staking. The one investor witness who did acquire GXTokens in order to access the GXBroker program, Investor LJ, testified that she also acquired GXTokens with the expectation of profit. At least one YouTube promotional video explained that it was available to a GXBroker to "unstake" GXTokens and sell them (impliedly at a profit).

[51] Fourth, we have considered the question of what is the "investment contract" in this case, a question that is a fact specific inquiry. As noted above, the Commission's principal submission is that the GXTokens themselves are the "investment contract" and therefore the security. The Commission submits that the GXTokens had both digital and non-digital characteristics, and the non-digital characteristics were "shaped by the representations of the respondents". We understand the Commission's submission to be that the representations and promises made to investors in relation to the GXTokens are somehow embodied in and a part of the GXTokens themselves.

[52] We are not satisfied that the GXTokens can themselves be an investment contract. The GXTokens, considered alone, do not incorporate or reflect what purchasers of the GXTokens might reasonably expect from their investments, including the promises and representations that were made to purchasers. Instead, we accept the Commission's alternative submission and find that, similar to the approach taken by this Tribunal in *Hogg*,[14] the purchasers' reasonable expectations, based upon the representations that were made to them, are an essential element of what we find to be the investment contract. The investment contract (and therefore the security) here is the transaction or scheme for the offer and sale of the GXTokens, including the economic reality of all of the surrounding circumstances and, in particular, the representations made to investors.

[53] Below we set out our consideration of the elements of the Common Enterprise Approach and our reasons for finding that there is an investment contract in this case.

4.1.2.a Investment of money

[54] This first element of the test (an investment of money) can be satisfied if there was a payment.[15]

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10 *Pacific Coast Coin*
11 *Hogg* at paras 93-94
12 See *Re Pacific Coast Coin Exchange of Canada Ltd et al v Ontario Securities Commission*, 1975 CanLII 686 (ONSC), citing *SEC v W.J. Howey Co.* (1946), 328 U.S. 293 at 298-299; *Hogg* at paras 93-94
13 *Hogg* at para 95
14 *Hogg* at paras 104-107
15 *Hogg* at para 111

[55] The Commission established that the sale of GXTokens involved the payment of currency by investors through credit card transactions, direct wires from bank accounts, cheques or other electronic processing methods.

[56] The Commission established that during the Material Time:

a. 18 Ontario investors purchased GXTokens for a total of $61,121.69. These funds were paid to a number of accounts, including accounts in the following names: Nvest Canada, Global Xchange Co Inc., Carson, GXOTC Incorporated, Generation Z International Inc., and Virtual Sales Agency Inc. (**VSA**);

b. one Ontario investor, GL, paid a total purchase price of $99,985 ($100,000 less fees) for what he believed to be a purchase of shares in Nvest Canada and an "add-on bonus" of GXTokens, with purchase funds paid to an account in the name of Nvest Canada;

c. another Ontario investor, PW, acquired GXTokens and shares in GX Technology for a total payment of $129,736.50. A part of the purchase funds ($39,736.50) was paid to an account in the name of Global Xchange Co. Inc. (which we accept is GX Technology), with the balance of the purchase funds coming from the rolling over of previous funds (totalling $90,000) that Investor PW had provided to Pirakaspathy (by way of a draft and cheque made out to Acid Marketing Solutions Inc. and Nvest Canada) to invest generally in the crypto space on his behalf; and

d. three non-Ontario investors (based in Australia, British Columbia and Saskatchewan) purchased GXTokens for $2,605 in total, with purchase funds paid to accounts in the name of GXOTC, VSA and Nvest Canada.

[57] Of the foregoing amounts totalling $293,493.19, the Commission established that:

a. $173,471.26 went to an Nvest Canada account and both Pirakaspathy and Carson had signing authority over this account;

b. $46,021.50 went to a Global Xchange Co Inc. account (which we take to be a GX Technology account) and Carson had signing authority over this account;

c. $7,500 went to a Generation Z account associated with Pirakaspathy and Pirakaspathy was identified as the CEO and a director of Generation Z;

d. $17,407.90 went to two VSA accounts over which Carson had signing authority;

e. $40,000 went to an Acid Marketing account over which Carson had signing authority and where the account forms listed Carson as a director and Pirakaspathy was associated with the account; and

f. $4,060.53 went to two GXOTC accounts associated with Carson.

[58] The Commission also submits that we should find that there was a much broader scope of global sales of GXTokens, beyond the sales summarized above. In making this submission, the Commission relies on:

a. a single extract from a single promotional YouTube "Crypto Broker Academy" video posted on December 11, 2019, with a background image titled "GXBroker Network" and an image of Pirakaspathy under the heading "Nvest CEO Explains". This single extract represents that as at the time of the video there were 997 GXBrokers worldwide, and a total $1.077 million value of GXTokens sales; and

b. banking and financial evidence which the Commission submits demonstrates that "significantly more" GXTokens were sold. This banking and financial evidence is in the form of transaction records from Stripe, a payment processor, with memo details indicating "Buy GXT". The Commission's investigator testified, and we accept, that entries with this memo detail correspond to funds received for sales of GXTokens additional to those identified above. Although neither the Commission nor the Commission's investigator tallied the amounts of these additional GXToken transactions, based on our review of the evidence, the total amount of additional GXToken transactions evidenced by these records is approximately US $76,000.

[59] The Commission did not adduce any evidence that corroborates the quantum of GXToken sales referred to in the December 11, 2019, YouTube video. Given the obvious promotional nature of the video, and the lack of corroborating evidence, we do not accept that it establishes the true extent of GXToken sales. We are, however, satisfied that the transaction records from Stripe do establish on a balance of probabilities that there were additional GXToken sales, albeit much more limited in amount.

[60] This element of the test is satisfied. The Commission's case is restricted to the initial sales of GXTokens by or on behalf of GX Technology and we find that the economic reality is that, regardless of which bank account the sales proceeds

were deposited into by the respondents and consistent with the representations in the Disclosure Document, the sale proceeds would have been understood by investors to be available for use by the enterprise offering the GXTokens.

4.1.2.b View to a profit

[61] It is appropriate to take a broad approach in deciding whether an investment of money is made "with a view to a profit". A profit includes "all types of economic return, financial benefit or gain."[16] We adopt the approach of this Tribunal in *Hogg*[17] and conclude that the Commission need not establish that each individual purchaser of the GXTokens had an expectation of profit, but need only establish that given all of the circumstances, investors would have reasonably had the expectation.

[62] We are satisfied, based on the evidence of the four investor witnesses who testified, that they each purchased GXTokens with an expectation of profit.

[63] We are also satisfied that the investment potential and expected profitability of the GXTokens was widely promoted. This promotion included numerous statements about the investment potential of GXTokens and representations that they would appreciate in value made in multiple YouTube promotional videos. These included numerous "Global X Change" branded videos in which Pirakaspathy appeared and was identified as the CEO of Nvest which was described as "the parent company of GX Technology". In these videos, Pirakaspathy told investors that given the finite number of GXTokens, they could expect "incredible dividends" and prices to "skyrocket" as "speculators" and "whales" came along, GXTokens became tradeable on exchanges, and the value of becoming a GXBroker became clear. The projected future increase in the price or value of GXTokens was also similarly promoted through "Crypto Broker Academy" YouTube videos hosted by Sal Khan, an individual represented to be Global X Change's President of Client Operations.

[64] Given the scope of publication of the representations about the anticipated profitability of the GXTokens, we conclude that investors would have reasonably had an expectation of a profit from their investments. The investor witnesses were in fact shown to have such expectation. The Commission has satisfied its burden that the investment of money was made with a view to a profit.

4.1.2.c "Common enterprise" and "efforts of others"

[65] We consider the third and fourth elements of the test together, as they are interwoven.[18]

[66] A common enterprise "exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter)."[19] The third and fourth elements are satisfied if there is a common enterprise where the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties.[20]

[67] We conclude that these elements of the test are met in this case. The investors' role was limited to advancing money in return for the GXTokens. Based on the various representations that were made widely to investors, we find that investors would reasonably have expected that the profitability of their investment depended upon the efforts of others to increase the value of the GXTokens.

[68] Each of the investor witnesses confirmed that they understood the profitability of their investment depended on the efforts of others to increase the value of GXTokens.

[69] Representations were made in the Disclosure Document and in various widely available promotional YouTube videos that the following efforts would lead to an increase in the demand for and price of the GXTokens:

a. the successful development and deployment of the "GX Platform" that would be important to the use and adoption of GXTokens;

b. the successful development of the Global X Change operating system or platform, that would support and increase demand for participation in the GXBroker program;

c. the provision of training and technical support to GXBrokers in order to grow the GXBroker network; and

d. arrangements to have the GXTokens listed on multiple third party exchanges.

16 *Edward Furtak et al.*, 2016 ONSEC 35 at para 82, aff'd 2018 ONSC 6616 (Div Ct)
17 *Hogg* at paras 116-118
18 *Pacific Coast Coin* at 128-129; *Hogg* at para 119
19 *Pacific Coast Coin* at 129
20 *Pacific Coast Coin* at 128-129

[70] Having found that GXToken Securities are "investment contracts" and therefore securities, we turn now to consider the breaches of the *Act* that have been alleged by the Commission.

4.2 Unregistered trading in breach of s. 25(1)

[71] The Commission alleges that Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading in relation to the sale of GXToken Securities and also in relation to the sale of shares of Nvest Canada and GX Technology, contrary to s. 25(1) of the *Act*.

[72] Subsection 25(1) of the *Act* provides, in part, as follows:

> Unless a person or company is exempt under Ontario securities law from the requirement to comply with this subsection, the person or company shall not engage in or hold himself, herself or itself out as engaging in the business of trading in securities unless the person or company,
>
> a) is registered in accordance with Ontario securities law as a dealer; or
>
> b) …

[73] The *Act* further defines "trade" or "trading" to include, among other things:[21]

> (a) any sale or disposition of a security for valuable consideration, …,
>
> […]
>
> (e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[74] The Tribunal determines whether a person or company has engaged in the business of trading in securities by looking at the evidence as a whole, including the surrounding circumstances and the impact on investors or potential investors. As to the scope of "acts in furtherance of a trade", it may include things such as promotional activities, organizational activities, administrative activities or the processing of payments relating to the trading at issue. In other words, the registration requirement extends beyond those engaged directly in acts of solicitation and sale.[22].

[75] The Tribunal has consistently looked to the criteria set out in Companion Policy 31-101 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to inform its determination of whether a person or company is engaged in the business of trading for the purposes of s. 25(1) of the *Act* (i.e., the "business trigger" test). The criteria include factors such as:

a. directly or indirectly carrying on the securities trading activity with repetition, regularity or continuity;

b. receiving or expecting to receive compensation for the securities trading activity; and

c. directly or indirectly soliciting securities transactions.

4.2.1 Unregistered trading of GXToken Securities

[76] Having found the GXToken Securities to be a security, we have no difficulty in concluding that the sales activities of Pirakaspathy, Nvest Canada and GX Technology in relation to GXToken Securities required them to be registered, unless they were otherwise exempt from registration. The Commission established that none of Pirakaspathy, Nvest Canada or GX Technology was registered to trade in securities during the Material Time. The onus then shifted to these respondents to demonstrate their entitlement to rely upon an available exemption from registration, an onus which they did not meet.

[77] The evidence clearly established that not only did Pirakaspathy, Nvest Canada and GX Technology engage in trading in GXToken Securities with repetition, regularity and continuity over the Material Time, they also directly or indirectly solicited investors to purchase GXToken Securities. In regard to the criteria of directly or indirectly trading and directly or indirectly soliciting referenced above, the Commission established that:

a. Pirakaspathy directly solicited investments by Investors PW, LJ and GL in GXTokens;

b. Pirakaspathy engaged in numerous acts in furtherance of trades in GXTokens, including by acting as a central figure in the YouTube video promotional campaign, soliciting investors at a live Global X Change kickoff event in Toronto, and meeting with potential investors including Investors PW, LJ and GL;

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21 *Act*, s 1(1)
22 *Hogg* at para 190

c. the YouTube video promotional campaign in which Pirakaspathy regularly was featured was branded with the Global X Change business name (used by GX Technology) and also tied directly to Nvest Canada, as Pirakaspathy was frequently identified as appearing as the co-founder of Nvest Canada "the parent company of Global X Change";

d. GX Technology was the company responsible for the GXToken Generation Event and behind a website promoting the investment in GXTokens; and

e. Piraskapathy distributed documentation related to an investment in GXTokens to Investor PW.

[78] Despite representations and promises made in promotional videos and directly to one or more of the investor witnesses who testified at the hearing regarding the development of other services, including the creation of the Global X Change operating system, there was almost no evidence of any progress on any of these items. Indeed, the only activity that Pirakaspathy, Nvest Canada and GX Technology seemed to engage in over the Material Time, other than the direct promotion and sale of GXToken Securities, was the promotion of the GXBroker program, which was a multi-level marketing scheme intended to enhance, directly or indirectly, the solicitation of sales of GXToken Securities.

[79] As to remuneration flowing directly or indirectly to Pirakaspathy, Nvest Canada and GX Technology from the sale of GXTokens, Pirakaspathy candidly admitted in one of the promotional YouTube videos that "[w]here we make our money is by signing up brokers" or, in other words, by selling GXTokens to investors which, in turn, could be staked to qualify them to be a GXBroker. The Commission correctly points out that there is no evidence of any other revenue or profit-generating aspect of the respondents' business during the Material Time. This was a business solely devoted to selling GXTokens for the purpose of generating revenue/profit from those sales. Proceeds of GXToken sales were received into bank accounts in the names of Nvest Canada, Global Xchange Co. Inc. (i.e., GX Technology) and other accounts over which Pirakaspathy had control.

[80] The Commission's argument for liability for unregistered trading against Nvest Canada and GX Technology was based on the principle, familiar to the criminal law, that Pirakaspathy and/or Carson were the "directing minds" or "alter egos" of the corporate entities such that their breaches of the *Act* should be regarded as the breaches of the corporations. We did not consider it necessary to rely on the alter ego principle in finding that Nvest Canada and GX Technology engaged in unregistered trading in relation to GXToken Securities, given that there was extensive evidence, as referenced above, that the corporate entities themselves engaged in trades or acts in furtherance of trades in relation to GXToken Securities.

4.2.2 Alleged unregistered trading in the shares of Nvest Canada and GX Technology

[81] While the Commission also alleges in its Statement of Allegations that Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading in relation to the shares of Nvest Canada and GX Technology, it did not pursue this allegation in closing submissions. Accordingly, we see no need to address this issue and decline to do so.

4.3 Illegal distributions in breach of s. 53(1)

[82] The Commission alleges that the respondents illegally distributed securities, specifically, GXToken Securities, shares in GX Technology, and shares in Nvest Canada contrary to s. 53(1) of the *Act*.

[83] Subsection 53(1) provides that:

> no person or company shall trade in a security on his, her or its own account or on behalf of any other person or company if the trade would be a distribution of the security, unless a preliminary prospectus and a prospectus have been filed and receipts have been issued for them by the Director.

[84] "Distribution" is defined in s. 1(1) of the *Act* to mean, amongst other things not relevant for present purposes, "a trade in securities of an issuer that have **not been previously issued**" or "a trade in previously issued securities of an issuer **from the holdings of any control person**" (emphasis added). "Control person" is defined in s. 1(1) of the *Act* to mean, amongst other things, a person or company or combination of persons or companies acting in concert who hold sufficient voting rights attached to all outstanding voting shares of an issuer to affect material control of the issuer, with 20 percent of such voting rights being deemed, in the absence of evidence to the contrary, to satisfy the requirements of the definition.

4.3.1 Distribution of the GXToken Securities contrary to s. 53(1) of the *Act*

[85] In order to establish a breach of s. 53(1) of the *Act* the Commission must establish that a respondent: a) traded in a security; b) the trade in the security was a "distribution"; and c) no preliminary prospectus or prospectus was filed with the Commission.

[86] The evidence established that all of the respondents, including Carson, actively engaged in trading or acts in furtherance of trading in relation to GXToken Securities. All of the respondents were actively engaged in promoting the GXToken Securities and soliciting investors to purchase them. The promotional and sales activities of Pirakaspathy, Nvest Canada and GX Technology are detailed above.

[87] As to Carson, without purporting to provide an exhaustive list of his promotional and sales activities, the evidence established that:

a. he participated in one or more of the live promotional events relating to the sale of GXTokens;

b. he participated in the sale of GXTokens to the investor witness, KM;

c. he met with Investors PW, GL and LJ in connection with their acquisition of GXTokens;

d. he assisted Investor PW in setting up his Nvest wallet to hold his GXTokens; and

e. some GXTokens sales proceeds were received in an account in Carson's name and other accounts over which Carson had control.

[88] The Commission established that the GXToken Securities sold to the 23 identified investors were securities that had not been previously issued. There was no evidence of any secondary market trades in GXTokens. Accordingly, the trades in GXToken Securities were a distribution within the meaning of the *Act*.

[89] The Commission also established that GX Technology did not file a preliminary prospectus or prospectus for the GXToken Securities with the Commission as required by s. 53(1) of the *Act*. If an exemption was available to GX Technology, the onus was on it to establish eligibility. GX Technology did not meet this onus.

[90] Accordingly, we are satisfied that the Commission established that each of the respondents breached s. 53(1) of the *Act* in relation to GXTokens.

4.3.2 Alleged distributions of shares in GX Technology and Nvest Canada contrary to s. 53(1) of the *Act*

[91] The Commission further alleges that all of the respondents engaged in illegal distributions of the shares of GX Technology and Nvest Canada. The Commission led evidence of:

a. a single trade of either 10,000 or 100,000 shares of GX Technology in June 2019 to Investor PW; and

b. a trade or acts in furtherance of a trade (which trade may ultimately never have taken place) in an indeterminate number of shares of Nvest Canada to Investor GL, in or about the spring or summer of 2019.

[92] The Commission established that neither GX Technology nor Nvest Canada filed a preliminary prospectus or prospectus with the Commission in connection with any distribution of company shares. If an exemption was available to either of GX Technology or Nvest Canada in respect of these obligations, the onus was on them to establish eligibility, an onus which neither company met. Accordingly, if the trade to Investor PW of GX Technology shares and the trade or acts in furtherance of a trade to Investor GL of Nvest Canada shares were distributions of the company shares in question, the respondents who participated in those distributions contravened s. 53(1) of the *Act*.

[93] Investor PW testified that he wanted to acquire GXTokens, not equity in either of the respondent companies. Beginning in 2017, he dealt primarily with Pirakaspathy, but also on occasion with Carson. Investor PW made three payments totalling $129,736.50 over the period January 2018 to February 2019: $40,000 on January 10, 2018, to Acid Marketing; $50,000 on July 6, 2018, to Nvest Canada; and $39,736.50 on February 18, 2019, to GX Technology. Investor PW provided the initial $90,000 for Pirakaspathy to invest on his behalf in the "crypto space". When Investor PW decided to purchase GXTokens, the understanding was that his initial $90,000 would be rolled into the purchase along with the additional $39,736.50.

[94] Despite his professed interest in acquiring only GXTokens, Investor PW received a share certificate dated June 1, 2019, for 100,000 shares of GX Technology. The cover email from Pirakaspathy dated June 24, 2019, indicates that, in exchange for his investment, Investor PW had become a "GX Founder", which entitled him to become a "GXBroker Dealer", receive 1,603,572 GXTokens for the purchase price of $132,507.50 (i.e., the total sum of Investor PW's investment according to Pirakaspathy), and receive 10,000 Class A Shares in GX Technology. The discrepancy between the $132,507.50 amount in this cover email and the other evidence indicating that Investor PW's total payment was $129,736.50 was not explained.

[95] The discrepancies in the documentary evidence relative to any shares in GX Technology received by Investor PW are manifest. The Commission offered no explanation of the difference in the number and class of shares referenced in the share certificate versus the covering email. No minute book, share register or directors' resolution of GX Technology was

tendered into evidence to establish that any shares received by Investor PW were issued from treasury by GX Technology. Moreover, the Commission's position in its closing submissions was that GX Technology was a wholly owned subsidiary of Nvest Canada (arguably inconsistent with an issuance from treasury), but offered no evidence that the shares purportedly received by Investor PW came from Nvest Canada.

[96] Accordingly, the Commission did not satisfy us on a balance of probabilities that any GX Technology shares received by Investor PW were either shares that had not been previously distributed or shares from the holdings of a "control person"[23] (someone holding at least 20% of the voting shares), thereby meeting the other potentially applicable definition of a "distribution" [24] under the *Act*. More fundamentally, the June 24, 2019, cover email from Pirakaspathy calls into question whether any shares received by Investor PW were a sale or disposition "for valuable consideration" and therefore a "trade" [25] within the meaning of the *Act*. We find that Investor PW's intention to buy GXTokens, considered together with the language of the June 24, 2019, cover email, is more consistent with Investor PW's total investment being attributed to the purchase of GXTokens.

[97] In contrast to Investor PW, Investor GL testified that he was only interested in investing in Nvest Canada. Over the period March 2019 to July 2019, he engaged in a number of exchanges with Pirakaspathy and Carson on WhatsApp where they discussed, among other things, the purchase of shares. Unfortunately, there is no identification in the exchange of the issuer of the shares. However, Investor GL was unwavering in his evidence that his intention was to purchase shares of Nvest Canada from Nvest Canada.

[98] The documentary evidence produced by Investor GL included a wire transfer of $100,000 to Nvest Canada on June 25, 2019. Investor GL testified that this was "my commitment to investment (*sic*) in this company for an exchange of some equities".[26] Despite receiving a confirmation on August 17, 2019, that his funds had been applied towards the purchase of 68,359 GXTokens, Investor GL's response to a question from the Chair seeking clarification of this apparent inconsistency was that the GXTokens he received were an "add-on bonus" to his purchase of Nvest Canada shares.

[99] Investor GL never received a share certificate for the unspecified number of shares of Nvest Canada he claims to have purchased. The Commission did not produce a minute book, directors' resolution or share register of Nvest Canada confirming the purchase. Nevertheless, Investor GL was a forthright witness whose credibility went unchallenged. His oral evidence, coupled with the WhatsApp exchange referred to above, were sufficient evidence of a trade or acts in furtherance of a trade in Nvest Canada shares on the part of Pirakaspathy, Carson and Nvest Canada to give rise to an adverse inference in the absence of any response from the respondents. Accordingly, we conclude that Pirakaspathy, Carson and Nvest Canada breached s. 53(1) of the *Act* with respect to Investor GL's intended purchase of Nvest Canada shares.

4.4 Deemed liability pursuant to s. 129.2 of the *Act*

[100] The Commission seeks an order that each of Pirakaspathy and Carson is deemed liable under s. 129.2 of the *Act* for the breaches of s. 25(1) and s. 53(1) of the *Act* by each of Nvest Canada and GX Technology.

[101] Section 129.2 of the *Act* provides that a director or officer is deemed to be liable for a breach of securities law by the issuer where the director or officer authorized, permitted, or acquiesced in the issuer's non-compliance with the *Act*.[27]

[102] The Commission submits that the threshold for liability under s. 129.2 is low.[28] The Commission submits that liability has been met in this case because:

a. both Pirakaspathy and Carson acted as the directing minds of Nvest Canada and GX Technology since their inception;

b. they were both actively involved in the daily operations of the companies; and

c. they were both actively involved in Nvest Canada's and GX Technology's sales of the GXTokens as well as the sale of company shares, including through the activities that are identified above in our reasons as evidence of Pirakaspathy's direct breach of s. 25(1) of the *Act* in connection with GXTokens and Pirakaspathy's and Carson's direct breach of s. 53(1) of the *Act* in connection with both GXTokens and Nvest Canada shares.

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23 *Act*, s 1(1)
24 *Act*, s 1(1)
25 *Act*, s 1(1)
26 Hearing Transcript, October 27, 2023 at p 61, lines 15-16
27 *Act*, s 129.2
28 *Momentas Corporation (Re)*, 2006 ONSEC 15, (2006) 29 OSCB 7408 at para 118

[103] The Commission clarified that it was only asserting that:

a. Pirakaspathy and Carson should be deemed liable under s. 129.2 of the *Act* for both corporations' breaches *in the alternative* to a finding that they each directly breached s. 25(1) and s. 53(1); and

b. because the Commission has not alleged that Carson is directly liable under s. 25(1) of the *Act*, he should be deemed liable under s. 129.2 of the *Act* for Nvest Canada's and GX Technology's breaches of s. 25(1) of the *Act* in respect of GXTokens.

[104] Given the Commission's clarification, and our findings above of direct breaches related to ss. 25(1) and 53(1) by Pirakaspathy and of s. 53(1) by Carson, we have only considered whether Carson should be deemed liable pursuant to s. 129.2 for Nvest Canada's and GX Technology's breaches of s. 25(1). We accept the Commission's submissions and conclude that he should. We otherwise dismiss the other allegations in the alternative of deemed liability under s. 129.2.

4.5 Conduct contrary to the public interest

[105] The Commission alleges in the Statement of Allegations that each of the respondents also engaged in conduct that is contrary to the public interest. The Commission clarified that this is an allegation in the alternative, in the event that we do not conclude that the Commission has established the pleaded breaches of the *Act*.

[106] Although we have not found any breaches of s. 53 of the *Act* in connection with the transfer of GX Technology shares to Investor PW, we decline to find that any of the respondents' conduct in relation to that transfer engages our public interest jurisdiction. The Commission made no submissions on the point and the Statement of Allegations includes only a non-particularized allegation of conduct contrary to the public interest.

4.6 Summary of findings on the merits

[107] In summary, we have found:

a. Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading of GXToken Securities, contrary to s. 25(1) of the *Act*;

b. Pirakaspathy, Carson, Nvest Canada and GX Technology illegally distributed securities in the form of GXToken Securities, and shares in Nvest Canada, contrary to s. 53(1) of the *Act*; and

c. Carson authorized, permitted or acquiesced in Nvest Canada's and GX Technology's contraventions of s. 25(1) of the *Act* and is therefore deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act*.

[108] We now turn to consider the appropriate sanctions and costs.

5. Sanctions and Costs

5.1 Overview

[109] On April 21, 2023, the Tribunal ordered[29] that the merits hearing and the sanctions and costs hearing in this proceeding be heard together. Accordingly, what follows are our reasons and decision on the applicable sanctions and costs.

[110] The Commission sought:

a. permanent market participation bans against all of the respondents;

b. permanent bans against Pirakaspathy and Carson from being or becoming directors or officers of any issuers or registrants;

c. administrative penalties of $500,000 against each respondent;

d. an order for disgorgement in the amount of $293,493.19 against the respondents on a joint and several basis; and

e. costs in the amount of $306,487.60 payable by the respondents on a joint and several basis.

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

a. the respondents are banned from participating in the Ontario capital markets for a period of 10 years;

[29] (2023) 46 OSCB 3617

b. Pirakaspathy and Carson are banned from being or becoming directors or officers of any issuers or registrants for a period of 10 years;

c. each respondent pay an administrative penalty of $200,000;

d. the respondents, on a joint and several basis, disgorge $293,493.19 to the Commission; and

e. the respondents, on a joint and several basis, pay costs in the amount of $162,390.10.

5.2 Legal framework for sanctions

[112] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds that it would be in the public interest to do so. The Tribunal must exercise this jurisdiction in a manner consistent with the *Act*'s purposes, which include the protection of investors from unfair, improper and fraudulent practices, and the fostering of fair and efficient capital markets.[30]

[113] The sanctions listed in s. 127(1) of the *Act* are protective and preventative, as opposed to punitive, and are intended to be exercised to prevent future harm to Ontario's capital markets.[31]

[114] Sanctions must be proportionate to a respondent's conduct in the circumstances of the case.[32] Determining the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular case.

[115] In multiple previous decisions, the Tribunal has identified a non-exhaustive list of factors applicable to the determination of appropriate sanctions.[33]

[116] The Commission submits that the appropriate sanction factors to be considered in this case are:

a. the seriousness of the misconduct;

b. any aggravating factors; and

c. specific deterrence and general deterrence.

[117] We have considered whether there are any other factors that might be relevant (for example, potentially mitigating factors) and have concluded that we do not have any evidence relevant to any other factors. We therefore have limited our consideration, for the purposes of these reasons, to the factors the Commission has relied upon.

[118] Before applying these factors to the facts of this case, we will briefly address the Commission's submissions regarding the ability of the Tribunal to order sanctions against dissolved corporations as Nvest Canada was dissolved in November 2022 and GX Technology was dissolved in April 2023.

5.3 Sanctions against dissolved corporations

[119] We agree with the Commission's submission that the Tribunal has the power to order sanctions against dissolved corporations. In *Cook (Re)*,[34] the Tribunal reciprocated a British Columbia Securities Commission's order against a dissolved corporation. In doing so, the Tribunal held that this was appropriate because the dissolved corporation could be revived in the future and it would serve a general deterrence purpose.[35] We find that the same considerations apply in this proceeding and we will consider appropriate sanctions against Nvest Canada and GX Technology despite their dissolution.

5.4 Relevant factors

5.4.1 Seriousness of the misconduct

[120] The Commission correctly submits that the respondents' misconduct is serious. The registration and prospectus requirements of the *Act* are cornerstones of the securities regulatory regime in Ontario.[36]

[121] Compliance with the registration requirements of the *Act* "ensures that those who engage in the business of trading in securities meet the applicable proficiency, integrity and financial solvency requirements of the *Act*."[37] The registration

30 *Act*, s 1.1
31 *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43
32 *Bradon Technologies Ltd (Re)*, 2016 ONSEC 19 at paras 28, 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 60
33 *Norshield Asset Management (Canada) Ltd. (Re)*, 2010 ONSEC 16, (2010) 33 OSCB 7171 at paras 77, 92
34 2018 ONSEC 6 (***Cook***)
35 *Cook* at paras 22-24
36 *Polo Digital Assets Ltd (Re)*, 2022 ONCMT 32 (***Polo Digital***) at paras 71, 84
37 *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18 at para 100

requirements of the *Act* are, as the Commission submits, key investor protection provisions of Ontario securities law, whose breach will always lead to increased risk to investors.

[122] The respondents' misconduct was repeated and extended throughout 2019 and 2020, adding to its seriousness.

[123] The Commission further submits that registration is of "paramount" importance in the evolving crypto asset sector because investors are faced with "various and complex products, high volatility, and high risk", suggesting that compliance with the registration requirements of the *Act* is somehow more important in this case than perhaps in others involving similar investor impact, market scope and temporal duration. Leaving aside the issue of whether this was a case that actually involved the crypto asset sector, we do not subscribe to the view that the importance of registration is necessarily a function of the type of product involved.

[124] The Commission correctly submits that the prospectus requirements of the *Act* are intended to ensure that prospective investors are provided with the requisite information to make informed investment decisions and that the risks associated with potential investment opportunities are fully disclosed to the investing public. In a disclosure-based securities regulatory regime such as Ontario's, compliance with the prospectus requirements is critical to achieving both the investor protection and the broader market integrity purposes of the *Act*. While again the Commission submits that the prospectus requirements are of particular importance in relation to crypto assets, we do not subscribe to this view for the same reason as we declined to adopt the Commission's similar submission in relation to an enhanced importance of the registration requirements in the crypto context.

5.4.2 Aggravating factors

[125] The Commission submits that there are a number of aggravating factors present in this case that justify the sanctions sought, including:

a. one or more letters sent by the Commission to Pirakaspathy in August 2018 and July 2019 warning him to consider the applicability of Ontario securities law to Nvest Canada's business were ignored;

b. the respondents aggressively promoted the GXToken and the GXBroker program over YouTube, thereby affording a global audience for the sale of securities in contravention of the *Act*;

c. the respondents made use of a multi-level-marketing scheme (i.e., the GXBroker program) to enhance sales of GXTokens;

d. in a video posted on YouTube, the respondents advised that GXBrokers did not require a "license" in order to sell GXTokens, thereby putting investors who became GXBrokers at risk of breaching Ontario securities law by not being registered;

e. the respondents operated out of a physical location previously occupied by a branch of a Canadian chartered bank that they called "NvestBank" and referred to it in at least one YouTube video as such in order to lend the appearance of legitimacy to their business activities;

f. the respondents cited a non-existent Canadian corporation "Global X Change Inc." as being responsible for the Token Generation Event, which was misleading;

g. Investor GL was solicited to purchase equity shares in Nvest Canada but instead was sold GXTokens and was later listed on an organization chart provided to a crypto exchange as a shareholder of GX Technology; and

h. the organizational chart sent to the crypto exchange also listed both Investors PW and GL as directors of GX Technology, which was false.

[126] For the reasons set out below we have found that only two of these factors are aggravating factors to be taken into account: a) ignoring the Commission's warning letters, to which we ascribe some weight, and b) representing to GXBrokers that licensing was not required.

[127] The warning letters sent by the Commission to Pirakaspathy focussed on various products identified on Nvest Canada's website and referenced prospectus and registration requirements in relation to such products. The letters did not specifically reference GXTokens. However, in addition to their warning about the identified products they did include a generic reminder that Nvest Canada is required to consider the applicability of the *Act* "to any current and proposed business activities, including those related to creating, managing and offering securities in Ontario". In the circumstances, we consider the sale of GXToken Securities in the face of the letters to be a somewhat aggravating factor, but not as significant an aggravating factor as had the letters specifically warned about the sale of GXTokens.

[128] We find the fact that the respondents told GXBrokers that they did not require a license to sell GXTokens was established and should also be taken into account by us as an aggravating factor in our assessment of the appropriate sanctions to be ordered against the respondents.

[129] We reject the suggestion that the use of YouTube should be regarded as an aggravating factor in this case. The Commission led no probative evidence to establish that the use of YouTube had any significant impact on the volume or geographic scope of GXToken sales.

[130] Similarly, the suggestion that the GXBroker program was an aggravating factor in this case was not made out on the evidence. The Commission did not establish how many investors were induced to buy GXTokens by GXBrokers. One investor testified that, while she regarded the role of GXBroker as an employment opportunity, the opportunity never amounted to anything or led to any real income stream. Conversely, other witnesses stated they had no interest in becoming a GXBroker, presumably because they perceived little or no value in it.

[131] The balance of the factors that the Commission submits are aggravating factors for the purposes of assessing appropriate sanctions in this case all contain elements of what could be characterized as misrepresentation or fraud. However, the Commission did not allege misrepresentation or fraud in respect of these or any other acts of the respondents in its Statement of Allegations. The respondents therefore had no notice prior to the hearing that their good character or the propriety of their conduct would be raised as issues in this proceeding in this manner, as prescribed in s. 8 of the SPPA. Accordingly, we have declined to make any findings in respect of these further alleged aggravating factors or to give them any weight for the purposes of determining appropriate sanctions against the respondents in this case.

5.4.3 Specific and General Deterrence

[132] We agree with the submissions of the Commission that both general and specific deterrence are important for us to consider when imposing sanctions in this case.

[133] General deterrence aims to dissuade other like-minded individuals or companies from carrying on similar activities by showing that a respondent's misconduct is unacceptable and will not be tolerated by the Tribunal.[38] We have previously made clear in these reasons our views regarding the importance of compliance by all market participants with the registration and prospectus requirements of the *Act*. It must be clear to others who might be inclined to engage in similar misconduct that doing so will attract significant sanctions.

[134] The purpose of specific deterrence is to discourage the respondents from repeating their misconduct and engaging in further future misconduct.[39] The respondents offered no explanation or acknowledgement of what led to their misconduct and have not admitted the seriousness of their breaches of Ontario securities laws. They have ignored this proceeding and have not offered any explanation for apparently ignoring the Commission's warning letters. In all these circumstances, specific deterrence is a relevant and important factor in fashioning sanctions in response to the respondents' breaches, both for the purpose of investor protection and for the maintenance of public confidence in Ontario's capital markets.

[135] The Commission submits that the growing popularity of crypto investments and the accessibility of social media platforms, such as YouTube, as vehicles to promote these investments, presents a significant risk to investors and enhances the need for deterrence in this case. While we do not foreclose the possibility that the facts in another case might warrant such a finding, we do not think that the evidentiary record in this case supports this submission.

5.5 Market Participation Bans

[136] The Commission requests comprehensive and permanent bans to remove the respondents from participating in Ontario's capital markets, including permanent trading and acquisition bans, the removal of all trading exemptions and registration bans.

[137] We agree with the Commission that market participation bans against all respondents are warranted. However, for the reasons that follow, we do not agree that permanent bans are appropriate given the nature of the breaches found and taking into account all of the sanctioning factors and evidence relating thereto as described above. Accordingly, we find that each of the respondents should be banned from participating in the Ontario capital markets for a period of 10 years.

[138] We agree with the Commission's submission that participation in the capital markets is a privilege, not a right.[40] Under s. 127(1) of the *Act*, the Tribunal has the power to order that this privilege be limited, permanently or for such period of time as the Tribunal considers appropriate in the circumstances. There is no precise algorithm for determining the length of

[38] *Bradon Technologies* at para 46
[39] *Bradon Technologies* at para 46
[40] *Polo Digital* at para 135

the appropriate market ban in any given set of circumstances. As indicated above, the exercise is contextual and each case will turn on its own facts.

[139] The Commission submits that permanent market participation bans are necessary in this case as against the corporate respondents for reasons of deterrence and in light of what it characterizes as the "extensive aggravating factors in this case". In support of its submissions respecting the corporate respondents, the Commission cites both *Mek Global Limited (Re)*[41] and *TCM Investments Ltd (Re)*.[42]

[140] With respect to the individual respondents, the Commission refers particularly to the following alleged aggravating factors:

a. their disregard of the Commission's warning letter;

b. the use of non-existent corporations in documentation concerning the GXToken;

c. the sale of GXTokens to Investor GL in place of Nvest Canada shares; and

d. the misrepresentation to an exchange that Investor GL was a shareholder of GX Technology.

[142] The Commission also points to the fact that through their conduct the respondents obtained $293,403.19 from 23 identified investors and the fact that the scope of the GXToken sales globally is "much greater". In support of its submissions respecting the individual respondents, the Commission cites *Xi Fuels Inc. (Re)*.[43]

[143] We have already expressed our views with respect to the Commission's list of aggravating factors, indicating those which we accept as applicable. With respect to the number of identified investors and the amount raised from them, they are neither insignificant nor titanic. As to the Commission's reliance upon other alleged "much greater" global sales, as explained above there was evidence of only approximately US $76,000 raised through these additional GXToken sales.

[144] We found the authorities relied upon by the Commission helpful but distinguishable. While all three cases found breaches of s. 25(1) and s. 53(1) of the *Act*, the facts and aggravating factors are different than those in our case. For example, the magnitude of the respondents' misconduct in *Mek Global*[44] was exponentially greater and was aggravated by the fact that they persisted in the misconduct despite warnings and the commencement of the proceedings and by making misleading statements to investors. In *TCM Investments*[45] the Tribunal found evidence of high pressure sales tactics and trading on behalf of investors, while in *Xi Biofuels*[46] the Tribunal made findings of misleading statements to investors, previous sanctions for similar misconduct against one individual respondent, and a sophisticated multi-jurisdictional scheme structured to avoid regulatory oversight.

[145] We find that permanent market participation bans are not appropriate. Instead, considering all of the circumstances, including collectively all of the sanctions ordered against the respondents, we find 10 years to be the appropriate period for market participation bans against each of the respondents. This is consistent with the market participation bans ordered in other decisions of this Tribunal involving breaches of both s. 25(1) and s. 53(1) of the *Act* that the Commission cited in connection with its submissions regarding the appropriate administrative penalties in this case.[47]

5.6 Director and Officer Bans

[146] The Commission also requests permanent director and officer bans, both as to issuers and registrants, against each of Pirakaspathy and Carson.

[147] In support of its request for director and officer bans against Pirakaspathy and Carson, the Commission simply relied upon the submissions it made in support of its request for market participation bans against all respondents. While we do not necessarily subscribe to the view that the factors that the Tribunal should take into account when considering market participation bans against individuals will always be identical or coextensive with those that the Tribunal should take into account when considering the propriety of director and officer bans against those same individuals, we do agree with the Commission that director and officer bans against both Pirakaspathy and Carson are warranted.

[148] It was demonstrably clear that neither Pirakaspathy nor Carson possessed the knowledge, skills or experience required to properly discharge the duties of a director or officer of an issuer or registrant. They were either oblivious to or willfully flouted their duties and responsibilities as directors and officers of market participants. However, for the reasons we articulated in relation to the Commission's request for permanent market participation bans, we do not agree that

41 *Mek Global Limited (Re)*, 2022 ONCMT 15 (***Mek Global***) at para 111
42 *TCM Investments Ltd. (Re)*, 2017 ONSEC 43 (***TCM Investments***) at para 6
43 *Xi Biofuels Inc. (Re)*, 2010 ONSEC 29 (***Xi Biofuels***)
44 *Mek Global* at paras 104, 106, 108, 109
45 *TCM Investments* at paras 6, 12
46 *Xi Biofuels* at para 57
47 *MBS Group (Canada) Ltd. (Re),* 2013 ONSEC 15 at para 50; *MRS Sciences Inc. (Re)*, 2014 ONSEC 14 at paras 96, 98, 100; *Cartu (Re),* 2022 ONCMT 21 (***Cartu***) at paras 4, 26

permanent bans against either of Pirakaspathy or Carson are warranted. In so determining we considered the nature of the breaches, the relevant sanctioning factors and the totality of the evidence. We find that each of Pirakaspathy and Carson should be required to forthwith resign any positions they hold as a director or officer of any issuers or registrants and that they should each be prohibited from becoming or acting as a director or officer of any issuers or registrants for a period of 10 years.

5.7 Monetary Sanctions

5.7.1 Administrative Penalties

[149] The Commission requests that we impose an administrative penalty of $500,000 against each of the respondents. The Commission submits that this amount is justified by the unique aggravating circumstances in this case, the multiple breaches of the *Act*, as well as the lack of any mitigating factors.

[150] We agree that it is appropriate to order administrative penalties against all respondents. However, we do not agree that the amounts sought by the Commission are warranted in view of the sanctioning principles outlined above and the breaches found, taking into account our views as to the relevant aggravating factors as set out above and also taking into the account the other sanctions we have ordered against the respondents. Instead, for the reasons set out below, we order that each of the respondents pay an administrative penalty of $200,000.

[151] Paragraph 9 of s. 127(1) of the *Act* provides that if a person or company has not complied with Ontario securities law, the Tribunal may require the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.[48] The Commission correctly submits that determining the appropriate administrative penalty in any given case is not a precise science. Rather, the penalty in each case must be determined based on the context and circumstances of that case. Prior decisions of the Tribunal may offer guidance as to quantum and assist in assessing proportionality, but will rarely be determinative of the result. The amount ordered in any particular case depends on a variety of factors, including a consideration of all sanctions imposed on each respondent individually, the goals of specific and general deterrence, the need for the penalty to be more than just a ”cost of doing business”, the scope and seriousness of the misconduct and the amount of money raised from investors.[49]

[152] The Commission cites a number of prior sanctions decisions of the Tribunal involving breaches of ss. 25(1) and 53(1) of the *Act*. Of those cases, none are on all fours with this case but, in our view, the decisions in *MBS Group (Canada) Ltd. (Re)* and *MRS Sciences Inc. (Re)* are the most helpful.

[153] As in the present case, the breaches found in *MBS* and *MRS* related solely to registration and illegal distribution violations. The administrative penalty ordered against the individual respondent in *MBS* was $100,000, although the Tribunal in that case found some mitigating factors, unlike the case before us. *MBS* also involved a larger number of investors and significantly higher aggregate investor losses (approximately $1.5 million). The individual respondents in *MRS* were all directors or *de facto* directors of the corporate respondent and were ordered to pay administrative penalties ranging from $30,000 to $200,000.

[154] The Commission submits that the quantum of administrative penalties ordered in *MBS* and *MRS* are not sufficient to satisfy deterrence goals in this case. The Commission seeks to distinguish the decisions in *MBS* and *MRS* by arguing that the decisions are not of recent vintage and did not involve crypto assets. While we do not foreclose the possibility that the passage of time may be appropriate to take into account when setting administrative penalties in some instances, we are satisfied that it is not warranted to achieve deterrence goals in this case. As to the Commission's suggestion that the crypto asset and social media elements of this case warrant higher administrative penalties, we have already expressed our views on the relevance of those factors to this case and do so without suggesting that they may not be relevant factors when assessing administrative penalties in other cases.

[155] The Commission submits that it would be more appropriate for us to look to the Tribunal’s decisions in *Cartu (Re)*[50] and *Ava Trade Ltd. (Re)*[51] for guidance in setting the administrative penalties in this case. Both of those cases involved findings of breaches of s. 25(1) and s. 53(1) of the *Act*. The administrative penalties in those cases ranged from $500,000 to $1,000,000. However, it is significant that each of those cases involved a much greater number of investors and much larger aggregate amounts invested—*Cartu* involved more than $1.4 million raised from over 700 investors and *Ava* involved revenues of approximately $3.7 million from 1,400 accounts. Moreover, in *Cartu* there were findings of aggravating factors such as misleading and deceptive conduct which were not made out in our case. Lastly, the administrative penalty in *Ava Trade* was part of an approved settlement agreement which, in our view, limits its precedential value.

48 *First Global Data Ltd. (Re),* 2024 ONCMT 25 (***First Global***) at para 150
49 *First Global* at paras 151-152
50 *Cartu* at paras 10-21, 31-11
51 *Ava Trade Ltd. (Re)*, 2019 ONSEC 27, (2019) 42 OSCB 6520 at paras 3, 5, 12

[156] The Commission also referred us to the Tribunal's decisions in *Polo Digital*[52] and *Mek Global*[53] as justification for an escalation of administrative penalties in the crypto asset context. In both of those cases, the Tribunal found the respondents to have breached s. 25(1) and s. 53(1) of the *Act*. In *Polo Digital* the Tribunal imposed an administrative penalty of $1.5 million and in *Mek Global* the Tribunal imposed an administrative penalty of $2 million. However, both cases involved active global crypto asset trading platforms. In each case, the scope and magnitude of the breaches significantly exceeded the proven scope and magnitude of the breaches in this case. *Polo Digital* involved revenues in excess of US $1.8 million and daily trading volumes of more than US $500 million. *Mek Global* involved many billions of dollars of daily trading volume, misconduct that was continuing, and a finding that a significant administrative penalty was also warranted to ensure that the respondents did not reap a windfall as a result of the Tribunal's inability to make a disgorgement order due to the respondents' failure to cooperate with the Commission.[54] We do not take these cases to stand for the proposition that breaches of securities laws warrant higher administrative penalties simply by virtue of the fact that that they occur in the crypto asset context. Each case must be considered on its own facts.

5.7.2 Disgorgement

[157] The Commission seeks an order that the respondents disgorge $293,493.19 to the Commission on a joint and several basis, which it submits is the amount obtained by the respondents as a result of their non-compliance with Ontario securities law. For the following reasons, we make the order for disgorgement requested by the Commission.

[158] Pursuant to paragraph 10 of s. 127(1) of the *Act*,[55] the Tribunal has the power to order disgorgement of "any amounts obtained as a result of the non-compliance" with Ontario securities law. Such an order is not limited to amounts received directly by a respondent but also includes amounts obtained from non-compliance carried out through a corporation by its directing minds[56], amounts raised by respondents even where the funds raised are received by entities not named as respondents[57], and amounts raised through one or more corporations that are part of "one fundraising and project execution enterprise."[58]

[159] The purpose of a disgorgement order is to ensure that respondents do not benefit from their breaches of the *Act*, to deter them and others from similar misconduct, and to restore confidence in the capital markets.[59]

[160] When considering whether a disgorgement order is appropriate and, if so, in what amount, the Tribunal has established the following non-exhaustive list of factors to consider:[60]

a. whether an amount was obtained by a respondent as a result of non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;

c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and on other market participants.

[161] We are satisfied that the aggregate sum of $293,493.19 is ascertainable as having been obtained by the respondents as a result of the breaches of Ontario securities law found to have been committed by them.

[162] With respect to the sales of GXTokens, Nvest Canada and GX Technology were treated as if they were one fundraising and project execution enterprise. Promotional videos, various documents, and email communications relating to the promotion and sale of GXTokens referred to both entities.

[163] With respect to the trade or acts in furtherance of a trade in Nvest Canada shares to Investor GL, we also find that Nvest Canada and GX Technology were treated as if they were one fundraising and project execution enterprise, given that the interactions with Investor GL in relation to Nvest Canada shares ultimately resulted in Investor GL being provided GXTokens in return for his funds.

[164] Pirakaspathy and Carson also "obtained" the proceeds resulting from the breaches of Ontario securities law given their significant roles (as co-founders, sole directors, and shareholders) in Nvest Canada and GX Technology as well as their

52 *Polo Digital* at para 134
53 *Mek Global* at para 125
54 *Mek Global* at para 106
55 *Act*, s. 127(1)
56 *Quadrexx Hedge Capital Management Ltd. (Re)*, 2018 ONSEC 3 at para 46
57 *Phillips v Ontario (Securities Commission),* 2016 ONSC 7901 at para 77
58 *First Global* at paras 114-115
59 *Paramount Equity Financial Corporation (Re),* 2023 ONCMT 20 (***Paramount***) at para 71; *Polo Digital* at para 114.
60 *First Global* at para 86; *Paramount* at para 72

control over all of the various accounts that received the sale proceeds (including accounts in the names of entities that are not named as respondents but that were controlled by Pirakaspathy and Carson).

[165] We agree with the Commission's submission that once it has established the amount obtained as a result of a respondent's non-compliance with Ontario securities law, the onus shifts to the respondent to either disprove the reasonableness of the amount[61] or establish that those investors who suffered losses are likely to obtain redress[62]. Having failed to take part in any of the proceedings in this case, the respondents did not satisfy either of those onuses.

[166] In the circumstances, given the seriousness of the misconduct, we are satisfied that the requested disgorgement order is required for purposes of both specific and general deterrence. In this case, we find that a joint and several order for disgorgement as against all of the respondents is appropriate, given our finding that Nvest Canada and GX Technology were treated as if they were one fundraising enterprise and given Pirakaspathy's and Carson's significant roles.

5.8 Costs

[167] We turn now to the Commission's request that the respondents pay a portion of the costs incurred by it in this proceeding and in the investigation of this matter.

[168] The Commission seeks costs of $306,487.60 (comprised of $294,097.50 for fees and $12,390.10 for disbursements) against the respondents on a joint and several basis.

[169] For the reasons below, we conclude that it is appropriate to order that the respondents pay costs on a joint and several basis of $162,390.10, comprised of $150,000 for fees and $12,390.10 for disbursements.

[170] The Commission filed two affidavits of Yolanda Leung, a law clerk employed by the Commission, which set out in detail the fees sought and disbursements incurred by the Commission in relation to the investigation and proceeding in this matter. The Leung affidavit regarding fees (**First Leung Affidavit**) lists members of the Commission who participated in each phase of the investigation and proceeding, the hourly rates for their positions (which have been previously accepted by the Tribunal), and the time spent by them. The aggregate product of the time recorded multiplied by the respective hourly rates assigned to the personnel involved was $397,478.75.

[171] The First Leung Affidavit explains that the sum of $397,478.75 was calculated excluding:

a. time spent by members of the Enforcement Branch's Case Assessment team;

b. time spent by members of the File Team that resulted in a duplication of effort;

c. time spent by members of the File Team who recorded 35 or fewer hours on this matter; and

d. time spent by Case Leads and Assistant Investigators of the Enforcement Branch.

[172] Lastly, the First Leung Affidavit explains that the fees sought of $294,097.50 were arrived at by applying a further reduction of $103,381.25, by removing from the fees claimed the fees corresponding to a number of Commission personnel who spent time working on the matter.

[173] The Leung affidavit which details the disbursements incurred by the Commission (**Second Leung Affidavit**) simply provides an explanation and supporting evidence as to how the sum of $12,390.10 in disbursements is calculated.

[174] Section 127.1 of the *Act* authorizes the Tribunal to order a respondent to pay the costs of an investigation and of the proceeding that follows it, if the respondent has been found to have contravened Ontario securities law. A costs order is discretionary and is designed to reduce the burden on market participants to pay for investigations and enforcement proceedings.[63] The Commission's budget, including its enforcement budget, is paid by fees charged to registrants, issuers and other market participants. As a consequence, costs orders help to foster fairness and efficiency in our capital markets, along with confidence therein.

[175] As is the case with an administrative penalty, determining the amount of a costs award is not a science.[64]. Respondents who contravene Ontario securities law should expect to contribute to the costs of the investigation and proceeding.

[176] However, while costs awards may reflect the Tribunal's approval or disapproval of procedural conduct or misconduct by one or more parties to a proceeding, they should not be an additional punitive response to the substantive breaches

61 *Polo Digital* at para 118
62 *First Global* at para 122
63 *First Global* at para 231
64 *First Global* at para 236

found.[65] Nor should a costs award act as a deterrent to a respondent's willingness, and ability, to pursue a full defence.[66] Adopting the language used by the Tribunal in *First Global,* costs awards should be "fair and proportionate".[67] When determining costs, the Tribunal should apply a balanced approach, taking into account various factors which assist in its assessment of the fairness and proportionality of the costs sought. A non-exhaustive list of these factors includes: (a) the seriousness of the respondent's misconduct; (b) the complexity of the issues; (c) the amount of investor harm at issue; (d) the number of investors harmed; (e) the length of the hearing and whether any of the parties engaged in any conduct that either unnecessarily lengthened the hearing or contributed to meaningfully to shortening it; and (f) the Commission's success in establishing its allegations.

[177] The Commission submits that the complexity of the issues in this case warranted the level of reimbursement of fees sought. In support, it cites the numerous bank accounts that were reviewed, the numerous variations of the corporate respondents' names, and the hundreds of YouTube videos posted by the respondents. It also points to the fact that it called four investor witnesses as part of its case.

[178] In our view, this was a case of modest complexity involving unregistered trading and the illegal distribution of investment contracts and corporate shares. The banking evidence and YouTube videos, while voluminous, were not unduly complicated, nor did the corporate respondents' use of multiple variations of their legal names make the proceeding especially complex. The evidentiary portion of the merits hearing was less than four full hearing days.

[179] We have previously expressed our views as to the seriousness of the respondents' breaches of Ontario securities law and the relative size of the investor funds at issue in this case. With respect to the latter, it is relevant when considering proportionality in the context of a costs award to highlight that this case involved only 23 identified investors, and more than 75 percent of the investor funds were raised from only two of those investors, PW and GL. We also take into account the fact that the Commission dropped its allegations of breaches of s. 25 of the *Act* in relation to the corporate shares and was not successful in establishing a breach of s. 53 of the *Act* in relation to the GX Technology shares. In our view, an award of the full amount of the costs sought by the Commission in this case would not be fair and proportionate in the circumstances.

[180] In view of our findings regarding the factors relevant to fairness and proportionality in this case, we further reduced the fees recoverable by the Commission as costs for the proceeding and investigation in this matter to $150,000. Lastly, we found the total disbursements sought to be fair and reasonable and made no reduction in the amount recoverable as costs in respect thereof.

6. CONCLUSION

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

a. Pirakaspathy, Nvest Canada and GX Technology engaged in unregistered trading of GXToken Securities, contrary to s. 25(1) of the *Act*;

b. Pirakaspathy, Carson, Nvest Canada and GX Technology illegally distributed securities in the form of GXToken Securities, and shares in Nvest Canada, contrary to s. 53(1) of the *Act*; and

c. Carson authorized, permitted or acquiesced in Nvest Canada's and GX Technology's contraventions of s. 25(1) of the *Act* and is therefore deemed to have contravened Ontario securities law pursuant to s. 129.2 of the *Act*.

[182] For the above reasons, we order that:

a. the respondents shall cease trading in any securities or derivatives for a period of 10 years, pursuant to paragraph 2 of s. 127(1) of the *Act*;

b. the respondents shall be prohibited from acquiring any securities for a period of 10 years, pursuant to paragraph 2.1 of s. 127(1) of the *Act*;

c. any exemptions contained in Ontario securities law do not apply to the respondents for a period of 10 years, pursuant to paragraph 3 of s. 127(1) of the *Act*;

d. the respondents are prohibited from becoming or acting as a registrant or promoter for a period of 10 years, pursuant to paragraph 8.5 of s. 127(1) of the *Act*;

[65] *First Global* at para 236(a)
[66] *First Global* at para 236(a)
[67] *First Global* at para 252

e. Pirakaspathy and Carson shall resign from any position that they may hold as a director or officer of any issuer or registrant, pursuant to paragraphs 7 and 8.1 of s. 127(1) of the *Act*;

f. Pirakaspathy and Carson shall be prohibited from becoming or acting as a director or officer of any issuer or registrant for a period of 10 years, pursuant to paragraphs 8 and 8.2 of s. 127(1) of the *Act*;

g. the respondents shall each pay an administrative penalty of $200,000 pursuant to paragraph 9 of s. 127(1) of the *Act*;

h. the respondents shall, on a joint and several basis, disgorge $293,493.19 to the Commission, pursuant to paragraph 10 of s. 127(1) of the *Act*; and

i. the respondents shall, on a joint and several basis, pay to the Commission $162,390.10 for the costs of the investigation and hearing.

Dated at Toronto this 1st day of November, 2024.

“James Douglas”

“Andrea Burke”

“William J. Furlong”

B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Staff Notice 51-365 Continuous Disclosure Review Program Activities for the Fiscal Years Ended March 31, 2024 and March 31, 2023

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA STAFF NOTICE 51-365
CONTINUOUS DISCLOSURE REVIEW PROGRAM ACTIVITIES FOR THE FISCAL YEARS ENDED MARCH 31, 2024 AND MARCH 31, 2023

November 7, 2024

I. INTRODUCTION

Staff (**staff** or **we**) of the Canadian Securities Administrators (**CSA**) have prepared this Staff Notice (**Notice**) to report on the results of the CSA's Continuous Disclosure Review Program (**CD Review Program**). The goal of the CD Review Program is to improve the completeness, quality and timeliness of Continuous Disclosure (**CD**) provided by reporting issuers[1] (**issuers**) in Canada. It assesses the compliance of issuers' CD documents with securities legislation, and helps issuers understand and comply with their obligations under the CD requirements so that investors receive high quality disclosure to assist them in making informed investment decisions.

The CD Review Program primarily focuses on issuers' disclosure requirements, including those under National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**). We also assess compliance with the recognition, measurement, presentation, classification and disclosure requirements in International Financial Reporting Standards (**IFRS**). For further details on the CD Review Program, see CSA Staff Notice 51-312 (revised) *Harmonized Continuous Disclosure Review Program*.

In general, issuers selected for a CD review (full review or issue-oriented review (**IOR**)) are identified by considering both qualitative and quantitative factors that increase the risk of an issuer failing to provide complete, accurate and timely disclosure about its business and affairs. We also consider the potential harm to Canadian capital markets if an issuer fails to comply, and we consider issues and concerns affecting specific industries. Selection criteria can reflect local or national concerns about particular accounting issues or disclosure practices and may change over time. As public markets evolve over time, we see different industries and/or issues gain public prominence and attract significant amounts of investor capital. For example, in recent years, we've seen the rise in prominence of the marijuana, psilocybin and cryptocurrency industries, and also a rise in companies providing COVID solutions. Our selection criteria consider these developments, which impacts file selection accordingly.

IORs are focused on a specific accounting, legal or regulatory issue, an emerging issue or industry, implementation of recent rules or areas where we believe there may be a heightened risk of potential investor harm and those that are at higher risk of non-compliance. A review may also stem from general monitoring of issuers through news releases, media articles, public complaints and other sources. The nature of an IOR will impact the time spent and outcome obtained from the review.

In this Notice, we summarize the key findings and outcomes of the CD Review Program for the fiscal year ended March 31, 2024 (**fiscal 2024**) and the fiscal year ended March 31, 2023 (**fiscal 2023**). The Notice describes common deficiencies and includes some illustrative examples to help issuers address these deficiencies and understand our expectations.

Financial Reporting and Disclosure during Economic Uncertainty and Technological Advancements

Issuers are preparing disclosure in evolving and uncertain times, resulting in increased estimation uncertainty as the assumptions used to prepare the financial statements may materially change in the near term. Issuers should carefully evaluate and explain how economic uncertainty and changes in assumptions affect their operations and the figures reported in their financial statements. Issuers must also consider how economic uncertainty impacts the application of management's discussion and analysis (**MD&A**) and other disclosure requirements. Some areas that may be impacted by the economic environment include known trends, events

[1] In this Notice "issuers" means those reporting issuers contemplated in National Instrument 51-102 *Continuous Disclosure Obligations*.

and uncertainties, liquidity and capital resources, debt covenants, risk factor disclosure, impairment of non-financial assets, going concern, events after the reporting period, significant judgement and measurement uncertainties, expected credit losses, financial instrument risk disclosure, non-GAAP and other financial measures, and material change reporting.

Issuers adopting new technology will need to consider whether disclosures regarding the use of and variety of evolving risks associated with new technology is necessary. For example, if an issuer began using artificial intelligence (**AI**) systems in its product or service offerings, the issuer should only disclose the use of AI systems with a reasonable basis for doing so, otherwise such disclosure would be overly promotional (also see "General Disclosure Deficiencies" section). An issuer should disclose how it defines AI in its product or service offerings to allow an investor to understand what the issuer means when referring to AI. An AI system is a machine-based system that, for explicit or implicit objectives, infers, from the input it receives, how to generate outputs such as predictions, content, recommendations, or decisions that can influence physical or virtual environments. Different AI systems vary in their levels of autonomy and adaptiveness after deployment.[2] Issuers should consider their disclosure obligations regarding an issuer's reliance on AI and the potential exposure to material risks on an entity-specific basis. We expect investors would generally consider the following information material: the source and providers of the data that each AI system uses in order to perform its functions, whether the AI system used by the issuer is being developed by the issuer or supplied by a third party, the impact that the use, development or dependency on AI systems is likely to have on the issuer's business, results of operations and financial condition, whether there have been any incidents where AI system use has raised any regulatory, ethical or legal issues, and any other concerns that arose with the adoption of AI systems. Balanced disclosure that includes a discussion of the benefits and risks to using AI systems should be provided. Issuers are also reminded that they should establish clear governance structures, including those related to accountability, risk management, and oversight in respect of AI use in their business. The preceding guidance is based on existing securities regulatory requirements and does not create any new legal requirements or modify existing ones.

II. RESULTS[3] FOR FISCAL 2024 AND FISCAL 2023

During fiscal 2024, a total of 425 CD reviews (fiscal 2023 – 466 CD reviews) were conducted, with IORs consisting of 70% of the total (fiscal 2023 - 70%). The number of reviews completed annually fluctuates depending on CSA staff resources and prioritized non-CD work. For example, time sensitive prospectus filing reviews are not included in this report but also involve review of issuer financial statements, MD&A, and other CD documents.

We classify review outcomes into four categories: referred to enforcement/ cease-traded/ default list, refiling, prospective changes and no action required[4]. In fiscal 2024, 58% (fiscal 2023 – 50%) of our review outcomes resulted in substantive comments requiring improved and/or amended disclosure, requiring refiling of documents, or requiring that missing documents be filed. Eight percent of the review outcomes in fiscal 2024 (fiscal 2023 – 6%) resulted in the issuer being referred to enforcement, cease-traded or placed on the default list.

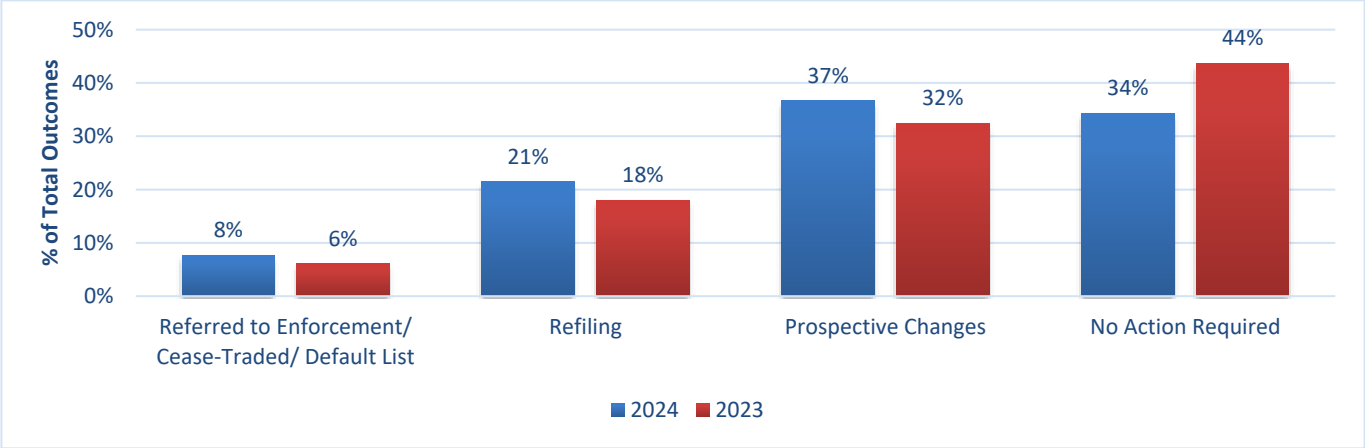
2 https://oecd.ai/en/ai-principles

3 Some local jurisdictions publish staff notices and reports communicating results and findings of their CD reviews. Refer to the individual regulator's website for copies of these notices and reports.

4 The categories of outcomes are as follows:

1. **Referred to Enforcement/Cease-Traded/Default List:** If an issuer has substantive CD deficiencies, we may do one or more of the following: add the issuer to our default list, issue a cease-trade order and/or refer the issuer to enforcement.
2. **Refiling:** The issuer must amend and refile certain CD documents or must file a previously unfiled document.
3. **Prospective Changes**: The issuer is informed that certain changes or enhancements are required in its next filing due to deficiencies identified. Prospective changes also include education awareness where the issuer receives a proactive letter alerting it to certain disclosure enhancements that should be considered in its next filing or when staff of local jurisdictions publish staff notices and reports on a variety of CD subject matters reflecting best practices and expectations.
4. **No Action Required:** The issuer does not need to make any changes or additional filings. The issuer could have been selected to monitor overall quality of disclosure for a specific topic, observe trends or conduct research.

Figure 1: CD Review Program Outcomes for Fiscal 2024 and Fiscal 2023

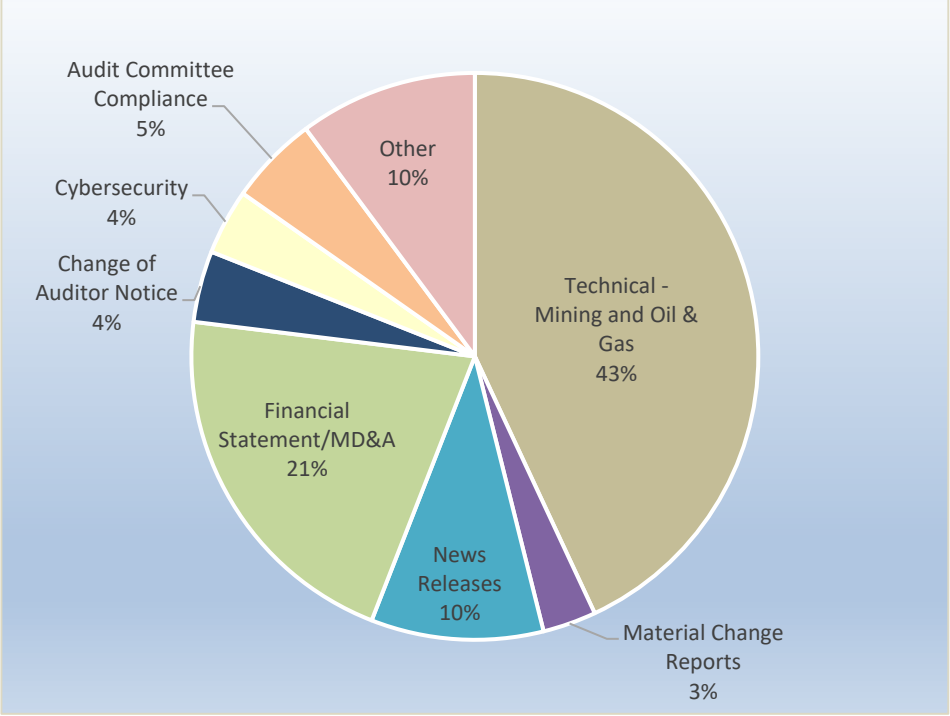


Some reviews trigger multiple outcomes. For example, we may require an issuer to refile certain documents and also commit to making disclosure enhancements on a prospective basis.

Selection criteria, regulatory priorities and the issues and issuers reviewed all vary annually. Similarly, outcomes vary, so year-to-year changes should not be interpreted as trends.

The following charts outline the topics of the IORs conducted:

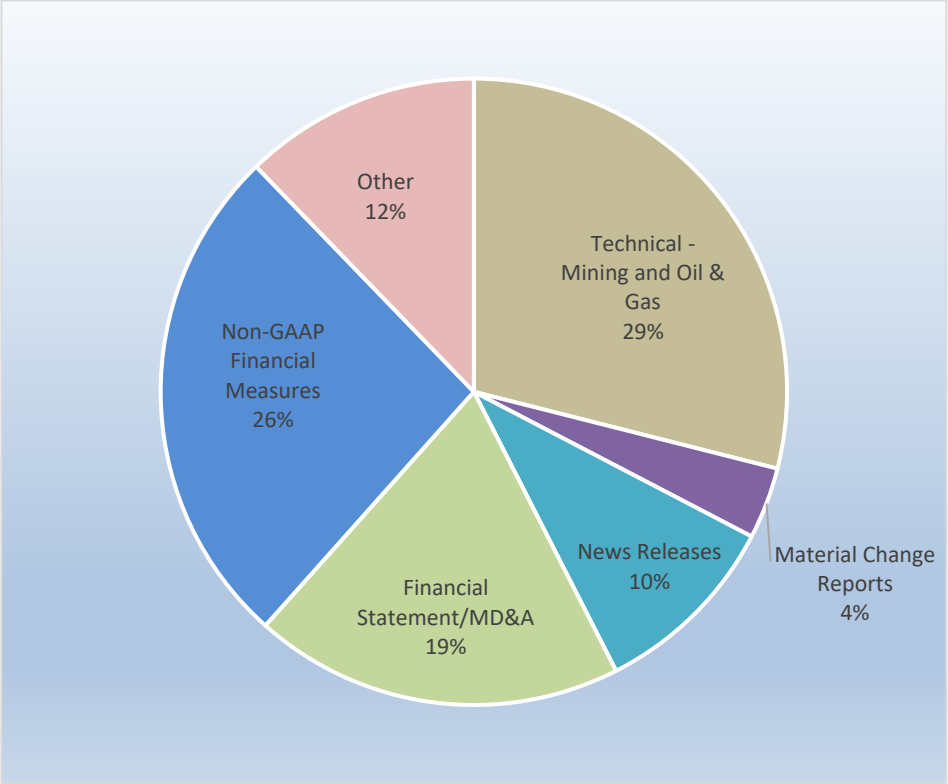
Figure 2: Topics of Issue-Oriented Reviews Conducted in Fiscal 2024



The "Other" category includes, but is not limited to, reviews of

- public complaints
- corporate governance
- circular/proxy

Figure 3: Topics of Issue-Oriented Reviews Conducted in Fiscal 2023



The "Other" category includes, but is not limited to, reviews of

- public complaints
- corporate governance
- executive compensation

Common Deficiencies

Issuers are responsible for ensuring that their CD record complies with all relevant securities legislation.

Common deficiencies observed during our CD reviews in fiscal 2024 and fiscal 2023 include:

- **Financial Statements**: compliance with the recognition, measurement, presentation, classification and disclosure requirements in IFRS including those pertaining to impairment of assets, business combinations, expected credit losses and disaggregation of revenue.
- **MD&A**: compliance with MD&A disclosure requirements including forward-looking information, discussion of operations relating to liquidity and capital resources and discussion of operations relating to business performance.
- **Other Regulatory Requirements**: compliance with other regulatory matters including material contracts and material change reports.
- **General Disclosure:** compliance with general disclosure requirements regarding overly promotional disclosure pertaining to AI and environmental, social and governance (**ESG**) matters.
- **Mineral Project Disclosure:** compliance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**).

The sections below describe in more detail the common fiscal 2024 and fiscal 2023 CD review observations and include examples of deficient disclosure, our guidance for issuers and references to relevant regulatory requirements. Issuers are also reminded that quantity does not equal quality, and that disclosure should be clear and in plain language.

This is not an exhaustive list of deficiencies and does not represent all the requirements that could apply to a particular issuer's situation.

1. COMMON FINANCIAL STATEMENTS AND MD&A DEFICIENCIES

TOPIC	OBSERVATIONS	CSA COMMENTS
Impairment of Assets; Assumptions and Cash-Generating Unit (CGU)	❖ Some issuers use boilerplate disclosure and do not sufficiently disclose, as required by International Accounting Standards (**IAS**), the basis for the key assumptions used by management in calculating the recoverable amount of its asset(s) or CGU(s).	*Financial Statement Considerations* ❖ Issuers shall provide a description of management's approach to determining the value(s) assigned to each key assumption, whether those value(s) reflect past experience or, if appropriate, are consistent with external sources of information, and, if not, how and why they differ from past experience or external sources of information.[5] ❖ In measuring value in use, an issuer shall base cash flow projections on reasonable and supportable assumptions that represent management's best estimate of the range of economic conditions that will exist over the remaining useful life of the asset. Greater weight shall be given to external evidence.[6] ❖ An issuer shall disclose information about the assumptions it makes about the future, and other major sources of estimation uncertainty at the end of the reporting period, that have a significant risk of resulting in a material adjustment to the carrying amounts of assets and liabilities within the next financial year. In respect of those assets and liabilities, the notes shall include details of: ○ their nature, and ○ their carrying amount as at the end of the reporting period.[7]
	❖ Some issuers do not clearly describe the CGU for the purpose of impairment testing to enable a reader to understand what specific group of assets is impacted by an impairment loss/reversal. Instead, some issuers refer to the CGU in general terms as "the CGU" or "group of CGUs" in the note disclosure.	*Financial Statement Considerations* ❖ Issuers shall provide a description of the CGU (such as whether it is a product line, a plant, a business operation, a geographical area, or a reportable segment as defined in IFRS 8 *Operating Segments*).[8] A CGU is the smallest identifiable group of assets that generates cash inflows that are largely independent of the cash inflows from other assets or groups of assets.[9] If an active market exists for the output produced by an asset or group of assets, that asset or group of assets shall be identified as a CGU, even if some or all of the output is used internally.[10] The description of the CGU should be issuer-specific. ❖ CGUs shall be identified consistently from period to period for the same asset or types of assets, unless a change is justified.[11]

5 IAS 36 *Impairment of Assets*, paragraphs 134(d)(ii) and 134(e)(ii)
6 IAS 36 *Impairment of Assets*, paragraph 33
7 IAS 1 *Presentation of Financial Statements*, paragraph 125
8 IAS 36 *Impairment of Assets*, paragraph 130(d)(i)
9 IAS 36 *Impairment of Assets*, paragraph 6
10 IAS 36 *Impairment of Assets*, paragraph 70
11 IAS 36 *Impairment of Assets*, paragraph 72

TOPIC	OBSERVATIONS	CSA COMMENTS
Impairment of Assets; Assumptions and Cash-Generating Unit (CGU) (continued)	❖ Some issuers do not describe the instances where a reasonably possible change to key assumption(s) would cause the CGU's (group of units') carrying amount to exceed its recoverable amount.	❖ Each CGU or group of units to which goodwill is allocated shall: ○ represent the lowest level within the entity at which the goodwill is monitored for internal management purposes, and ○ not be larger than an operating segment as defined by paragraph 5 of IFRS 8 *Operating Segments* before aggregation.[12] ❖ Separate disclosures are required for *each* CGU (group of units) for which the carrying value of goodwill or intangibles with indefinite useful lives allocated to that unit (group of units) is significant in comparison with the issuer's total carrying amount of goodwill or intangible assets with indefinite useful lives.[13] *MD&A Considerations* ❖ Any material impairment loss/reversal is required to be included in the issuer's discussion of overall performance to enable a reader to understand the effect to the continuing operations of the issuer.[14] *Financial Statement Considerations* ❖ When the goodwill or indefinite useful life intangibles amount allocated to a CGU (group of units) is significant in comparison to the issuer's total carrying amount of goodwill or intangible assets with indefinite useful lives, issuers shall disclose a sensitivity analysis for each key assumption if a reasonably possible change in a key assumption on which management has based its determination of the unit's (group of units') recoverable amount would cause the unit's (group of units') carrying amount to exceed its recoverable amount.[15] Issuers are required to include this disclosure for each key assumption, where a reasonably possible change to it may cause the carrying amount to exceed the recoverable amount, and not just the discount rate and growth rate. Key assumptions are those to which the unit's (or group of units') recoverable amount is most sensitive. ❖ An issuer shall provide disclosures to enable a reader to understand the judgements that management makes about the future and about other sources of estimation uncertainty. The nature and extent of the information provided vary according to the nature of the assumption and other circumstances. An example of the type of disclosure an issuer makes is the sensitivity of carrying amounts to the methods, assumptions and

12 IAS 36 *Impairment of Assets*, paragraph 80
13 IAS 36 *Impairment of Assets*, paragraph 134
14 Form 51-102F1 *Management's Discussion & Analysis*, paragraph 1.2
15 IAS 36 *Impairment of Assets*, paragraph 134(f)

TOPIC	OBSERVATIONS	CSA COMMENTS
Impairment of Assets; Assumptions and Cash-Generating Unit (CGU) (continued)	❖ Some issuers do not sufficiently explain the events and circumstances that led to an impairment, and in some cases simply refer to the existence of "impairment indicators" or only describe general macroeconomic factors or trends.	estimates underlying their calculation, including the reasons for the sensitivity.[16] *Financial Statement Considerations* ❖ Issuers shall disclose the events and circumstances that led to the recognition or reversal of an impairment loss.[17] The disclosure should include issuer-specific factors and relevant details on the main drivers that resulted in the impairment. ❖ An issuer shall assess at the end of each reporting period whether there is any indication that an asset may be impaired. If any such indication exists, the issuer shall estimate the recoverable amount of the asset.[18] Internal and external indicators of impairment shall be considered.[19] ❖ Irrespective of whether there is any indication of impairment, an issuer shall also test an intangible asset with an indefinite useful life or an intangible asset not yet available for use or goodwill acquired in a business combination for impairment annually.[20] *MD&A Considerations* ❖ In an issuer's discussion of overall performance, include an analysis to explain how continuing operations contributed to the recoverable amount being lower than the carrying amount.[21]
Business Combinations; Asset Acquisitions[22,23]	❖ We observed the following: ○ Some issuers exchange significant equity for (1) minimal assets and/or operations and (2) significant goodwill or intangible assets without sufficiently explaining what the excess of the consideration over the net identifiable assets acquired represents and why management is willing to pay that excess. ○ Some issuers do not sufficiently explain the nature and financial effect of a business combination. ○ Some issuers disclose that the intangible asset acquired is in a very early stage of development	*Financial Statement Considerations* ❖ Issuers shall provide all the disclosure for the business combination in accordance with IFRS 3 *Business Combinations*, paragraphs 59, B64 to B67. For goodwill recognized, issuers shall disclose a qualitative description of the factors that make up the goodwill[24]. ❖ Issuers shall provide all the disclosure for intangible assets in accordance with IAS 38 *Intangible Assets*, paragraphs 118 to 128. ❖ Issuers shall recognize an intangible asset only if the item meets the definition of, and the recognition criteria for, an intangible asset in accordance with IAS 38 *Intangible Assets*.[25] In an asset acquisition, the expenditure incurred to acquire the asset is recognized as an expense if the recognition criteria are not met.

16 IAS 1 *Presentation of Financial Statements*, paragraph 129(b)
17 IAS 36 *Impairment of Assets*, paragraph 130(a)
18 IAS 36 *Impairment of Assets*, paragraph 9
19 IAS 36 *Impairment of Assets*, paragraph 12
20 IAS 36 *Impairment of Assets*, paragraph 10
21 Form 51-102F1 *Management's Discussion and Analysis*, item 1.2
22 IFRS 3 *Business Combinations*, IAS 38 *Intangible Assets*, IAS 36 *Impairment of Assets*
23 Form 51-102F1 *Management's Discussion and Analysis*
24 IFRS 3 *Business Combinations*, paragraph B64(e)
25 IAS 38 *Intangible Assets*, paragraph 18

TOPIC	OBSERVATIONS	CSA COMMENTS
Business Combinations; Asset Acquisitions (continued)	and record consideration paid as intangible assets without meeting the recognition criteria. ○ Some issuers impair the goodwill or intangible assets in the same reporting period or within the same fiscal year of the business combination or asset acquisition. The financial statements show the issuance of a significant number of securities and a large impairment loss in a short period of time. In some cases, the MD&A does not contain a sufficient discussion of the nature of the goodwill or intangible assets, and the impairment loss.	❖ When recording a significant impairment loss for goodwill or intangible assets, issuers shall provide disclosure in accordance with IAS 36 *Impairment of Assets*, paragraphs 126 to 137. The assessment of impairment for goodwill or intangible assets shall be based on reasonable and supportable assumptions[26]. *MD&A Considerations* ❖ Expect regulatory scrutiny when the difference between the fair value of the consideration paid and the fair value of the net assets acquired appears unreasonable. An issuer recording significant transactional goodwill or intangible assets is expected to explain in the MD&A[27] why management has decided to pay a significant amount over the fair value of the net identifiable assets acquired. In such cases similar to those described in the observations column, for intangible assets recognized, issuers are expected to discuss the specifics of the intangible assets (for example, whether and when the vendor acquired the intangible asset, cost of the intangible asset to the vendor, including acquisition costs and the estimated development costs incurred by the vendor subsequent to the acquisition, and for an intangible asset developed by the vendor, the date when the development of the intangible asset commenced, the estimated development expenditures and the material components, stage of development, information on any patents, permits or licenses associated with the intangible asset). A venture issuer without significant revenue must also disclose a breakdown of material components of the intangible assets[28]. ❖ An issuer recording a significant impairment of goodwill or intangibles in the same reporting period or in the same fiscal year as the transaction must include in the MD&A an analysis of the impairment loss [29], for example, circumstances leading to the impairment of goodwill or intangible assets and changes from the methodologies, key inputs or assumptions utilized in the purchase price allocation or impairment analysis at the acquisition date.
Expected credit losses (ECLs)	❖ Some issuers do not correctly apply the impairment requirements for the recognition and measurement of a loss allowance for ECLs on certain financial assets in their financial statements.	*Financial Statement Considerations* ❖ An issuer shall recognize a loss allowance for ECLs on certain financial assets[30]. ❖ Subject to specific requirements for certain financial assets, at each reporting date, an issuer shall

[26] IAS 38 *Intangible Assets*, paragraph 22, IAS 36 *Impairment of Assets,* paragraph 33
[27] Form 51-102F1 *Management's Discussion and Analysis*, Part 1(d), items 1.2, 1.3(2) and 1.4(j)
[28] National Instrument 51-102 *Continuous Disclosure Obligations*, section 5.3
[29] Form 51-102F1 *Management's Discussion and Analysis*, items 1.2, 1.3(2) and 1.4(j)
[30] IFRS 9 *Financial Instruments*, paragraph 5.5.1

TOPIC	OBSERVATIONS	CSA COMMENTS
Expected credit losses (ECLs) (continued)		measure the loss allowance of a financial asset at an amount equal to the lifetime ECL if the credit risk has increased significantly since initial recognition. Otherwise, an issuer shall measure the loss allowance at an amount equal to 12-months of ECLs.[31] ❖ An issuer shall measure ECLs of a financial asset in a way that reflects: ○ an unbiased and probability-weighted amount that is determined by evaluating a range of possible outcomes, ○ the time value of money, and ○ reasonable and supportable information that is available without undue cost or effort at the reporting date about past events, current conditions and forecasts of future economic conditions[32]. ❖ When measuring ECLs, the estimate of expected cash shortfalls shall reflect the cash flows expected from collateral and other credit enhancements that are part of the contractual terms and are not recognised separately by the issuer. The estimate of expected cash shortfalls on a collateralised financial asset reflects the amount and timing of cash flows that are expected from foreclosure on the collateral less the costs of obtaining and selling the collateral, irrespective of whether foreclosure is probable. Consequently, any cash flows that are expected from the realisation of the collateral beyond the contractual maturity of the contract should be included in this analysis.[33]
	❖ Some issuers do not disclose enough information to enable readers to evaluate the nature and extent of the credit risks arising from its financial assets to which the impairment requirements are applied (i.e. recognition and measurement of ECLs), which is a material factor in assessing the liquidity and operations of the issuer's underlying business.	*Financial Statement Considerations* ❖ An issuer shall disclose an explanation of the inputs, assumptions and estimation techniques used to measure ECLs, including[34]: ○ the basis of inputs and assumptions and the estimation techniques used to measure ECLs, ○ how it has incorporated forward-looking information (including macroeconomic information) into the determination of ECLs, and ○ changes in the estimation techniques or significant assumptions made and the reasons for those changes. ❖ An issuer shall disclose the effects of collateral and other credit enhancements on the amounts arising from ECLs by disclosing:

31 IFRS 9 *Financial Instruments,* paragraphs 5.5.3 and 5.5.5
32 IFRS 9 *Financial Instruments*, paragraph 5.5.17
33 IFRS 9 *Financial Instruments*, paragraph B5.5.55
34 IFRS 7 *Financial Instruments: Disclosures*, paragraph 35G

TOPIC	OBSERVATIONS	CSA COMMENTS
Expected credit losses (ECLs) (continued)		○ the amount that best represents its maximum exposure to credit risk without taking into account any collateral held or other credit enhancements; ○ a narrative description of the collateral held as security and other credit enhancements (including the nature and quality of the collateral held); ○ information about financial assets for which an issuer has not recognized a loss allowance because of the collateral; and ○ quantitative information about the collateral held as security and other credit enhancements for financial assets that are credit-impaired[35]. ❖ An issuer shall disclose the nature and extent of risks arising from financial instruments and how it manages those risks.[36] It will need to use judgement to determine the specific disclosures that are both relevant to its business and necessary to meet these disclosure objectives. An issuer shall disclose information about an issuer's credit risk management practices and how they relate to the recognition and measurement of ECLs (including the methods, assumptions and information used to measure ECLs), and quantitative and qualitative information that enables evaluation of the amounts arising from ECLs (which includes a reconciliation from the opening balance to the closing balance of the loss allowance).[37] *MD&A Considerations* ❖ Issuers are required to discuss any information they believe would enhance an understanding of their financial position and financial performance.[38] This would include any information regarding how an issuer arrives at its estimate of ECLs. ❖ We often observe that when material information about the fair value of collateral provides relevant information to investors, disclosure in a tabular format separately identifying the maximum exposure to credit risk, fair value of collateral (by category, such as securities, property etc.) and the resulting net exposure, provides a structured informational summary. This is particularly important in situations where there are risks or uncertainties relating to the estimate of ECLs. In those circumstances, issuers are required to discuss the risks and uncertainties that the issuer reasonably believes will materially affect the issuer's future performance.[39]

35 IFRS 7 *Financial Instruments: Disclosures,* paragraph 35K
36 IFRS 7 *Financial Instruments: Disclosures,* paragraph 33
37 IFRS 7 *Financial Instruments: Disclosures,* paragraphs 35B, 35F and 35H
38 Form 51-102F1 *Management's Discussion & Analysis*, item 1.3(2)
39 Form 51-102F1 *Management's Discussion & Analysis*, item 1.4(g)

TOPIC	OBSERVATIONS	CSA COMMENTS
Expected credit losses (ECLs) (continued)		❖ An issuer should also consider whether an investor's understanding of the impacts of collateral on the measurement of ECLs is needed. For example, if the estimated cash flows are primarily supported by the expected sale of the underlying collateral, then additional information on the fair value of the collateral may be needed (i.e. a description of how fair value was determined, including key inputs and assumptions). In some circumstances, these additional disclosures may be required within the notes of an issuer's financial statements[40]. ❖ When issuers prepare disclosure in changing and uncertain times, there is an increased level of uncertainty about the accounting estimates, as the assumptions used to prepare the estimates may change considerably in the near term. Issuers are reminded to carefully consider the impact of the economic environment on the factors used to measure ECLs so that they reflect the effects of the conditions that are relevant to future contractual cash flows. If there are liquidity risks associated with their financial assets, issuers must discuss these risks as part of its liquidity analysis.[41]
Revenue from Contracts with Customers; Disaggregation of revenue	❖ We continue to see issuers failing to disclose disaggregation of revenue into categories.	*Financial Statement Considerations* ❖ Issuers shall disaggregate revenue into categories to enable investors to understand how the nature, amount, timing and uncertainty of revenue and cash flows are affected by economic factors.[42] In order to comply with this requirement, issuers must consider, among other things, how the issuer's revenue has been presented for other purposes, including disclosures presented outside the financial statements, including MD&As, news releases and investor presentations. It can also be information regularly reviewed by the chief operating decision maker, or other information that is similar, that is used by the issuer or investors to evaluate the issuer's financial performance or make resource allocation decisions.[43] ❖ Some issuers may need to use more than one type of category to meet the disclosure objective.[44] The reportable segments disclosure[45] might not be sufficient to provide clear and meaningful information to investors. The standard provides examples of categories that might be appropriate, including: o type of good or service (e.g., major product lines),

40 IAS 1 *Presentation of Financial Statements*, paragraphs 17(c) and 31
41 Form 51-102F1 *Management's Discussion & Analysis*, item 1.6(d)
42 IFRS 15 *Revenue from Contracts with Customers*, paragraphs 114-115
43 IFRS 15 *Revenue from Contracts with Customers*, Appendix B, paragraph B88
44 IFRS 15 *Revenue from Contracts with Customers*, Appendix B, paragraph B87
45 IFRS 8 *Operating Segments*

TOPIC	OBSERVATIONS	CSA COMMENTS
Revenue from Contracts with Customers; Disaggregation of revenue (continued)		○ geographical region (e.g., country or region), ○ market or type of customer (e.g., government and non-government customers), ○ contract duration (short-term and long-term contracts), ○ timing of transfer of goods or services (revenue transferred to customers at a point in time and transferred over time), and ○ sales channels (e.g., goods sold directly to consumers or through intermediaries).[46] ❖ Issuers are reminded that aggregation criteria for operating segments[47], which could lead to one reportable segment, does not exempt them from the required revenue disaggregation disclosure. ❖ IFRS 15 does not contain an exemption from prescribed disclosure because a particular disclosure is considered by the issuer as "commercially sensitive". *MD&A Considerations* ❖ Analysis of the disaggregation of revenue can enhance the issuer's discussion of operations, in particular changes in total revenue[48].
Forward-looking information (FLI); Future-oriented Financial Information (FOFI) & Financial Outlooks	❖ Some issuers provide FLI that is unsupported by reasonable factors or assumptions. ❖ Some issuers provide FLI without disclosing relevant and material risk factors that may cause results to differ.	*MD&A Considerations* ❖ Issuers providing FLI must have a reasonable basis for the FLI being disclosed.[49] ❖ Issuers must disclose all of the material factors or assumptions that are used to develop FLI[50]. Reasonable assumptions consider the issuer's current financial condition, operational status, capacity, and other relevant factors. This may include consideration of whether plans have been approved by the board of directors, whether the issuer has the financial and human resources to execute those plans and whether the timing of the plans is achievable. *MD&A Considerations* ❖ Issuers are required to accompany FLI with disclosure that identifies material risk factors that could cause material variation[51]. ❖ We expect the risk factors to be specific to the issuer and must be disclosed in the MD&A if

46 IFRS 15 *Revenue from Contracts with Customers*, Appendix B, paragraphs B87-B89
47 IFRS 8 *Operating Segments*, paragraph 12
48 Form 51-102F1 *Management's Discussion & Analysis*, item 1.4(a) and (b)
49 National Instrument 51-102 *Continuous Disclosure Obligations*, paragraph 4A.2
50 National Instrument 51-102 *Continuous Disclosure Obligations*, paragraph 4A.3(c)
51 National Instrument 51-102 *Continuous Disclosure Obligations*, paragraph 4A.3(b)

TOPIC	OBSERVATIONS	CSA COMMENTS
FLI; FOFI & Financial Outlooks (continued)	❖ Some issuers disclose FOFI or financial outlook which provide financial projections over an unreasonably long time period.	determined as material and reasonably foreseeable factors. *MD&A Considerations* ❖ Issuers must limit the period covered by the FOFI or financial outlook to a period for which the information in the FOFI or financial outlook can be reasonably estimated[52]. Due to uncertainties and factors outside of the issuer's control, the time period for which FOFI can be reasonably estimated does not, in many cases, go beyond the end of the issuer's next fiscal year[53].
	❖ Some issuers do not provide updates in their MD&A to disclose actual results against previously disclosed FLI.	*MD&A Considerations* ❖ Issuers are required to disclose and discuss in their MD&A events and circumstances that occurred during the period that are reasonably likely to cause actual results to differ materially from the FLI that was previously disclosed.[54] This disclosure may be via a news release issued and filed by the issuer before the filing of the MD&A and includes disclosure in the MD&A that identifies the news release, states the date of the news release and states that the news release is available on SEDAR+.[55] ❖ The discussion must clearly disclose the material differences between the actual results for the annual or interim period and previously disclosed FOFI or financial outlook[56]. ❖ If an issuer decides to withdraw previously disclosed FLI, the issuer must disclose in its MD&A the decision and discuss the events and circumstances that led the issuer to that decision, including a discussion of the assumptions underlying the FLI that are no longer valid[57].
Discussion of operations	❖ We continue to see issuers failing to meaningfully discuss their operations. The analyses are often incomplete or include boilerplate disclosure.	*MD&A Considerations* ❖ Issuers are required to disclose sufficient information to enable investors to understand the company's operations for the most recently completed financial year or interim periods, including discussion of: o risks and uncertainties that may materially affect an issuer's future operations and financial performance, o revenue and significant factors that caused variations,

52 National Instrument 51-102 *Continuous Disclosure Obligations*, paragraph 4B.2(2)(a)
53 Companion Policy 51-102CP *Continuous Disclosure Obligations*, section 4A.8
54 National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.8(2)
55 National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.8(3)
56 National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.8(4)
57 National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 5.8(5)

TOPIC	OBSERVATIONS	CSA COMMENTS
Discussion of operations (continued)		○ cost of sales or gross profit, ○ factors that caused a change in the relationship between costs and revenue, including costs of labour or effect of inflation and interest rates, and ○ significant projects that have not yet generated revenue.[58]

MD&A DISCLOSURE EXAMPLE

Liquidity and Capital Resources

We continue to see issuers not providing issuer-specific details or sufficient contextual information to enable investors to understand an issuer's liquidity and capital resources. Issuers are required to address in sufficient detail, how the company will respond to the current economic environment to satisfy both short-term and long-term liquidity demands and capital expenditure commitments, whether it is through operations, taking out additional debt facilities, deferring planned projects and capital expenditures, or reducing discretionary operating expenditures such as employee wages and bonuses.

In addition, items 1.6 and 1.7 of Form 51-102F1 *Management's Discussion & Analysis* require issuers to discuss any defaults or arrears, or significant risk thereof, on the issuer's ability to fulfill payments towards its contractual debt obligations and its ability to satisfy its financial and non-financial covenants associated with its credit facilities and debt obligations. This discussion must include how the issuer intends to cure or address potential default(s) or arrears, which may include a discussion of the implication of any cross-defaults in the current economic environment.

Example of deficient disclosure:

At year end, the Company had a working capital deficiency of $900,000. At year end the Company had $240,000 cash on hand. Total cash provided by operating activities was $40,000, total cash used in investing activities was $500,000, and total cash provided from financing activities was $600,000. Due to the current economic environment, there are various risks and uncertainties affecting the Company's operations. The Company is reviewing alternatives to return the Company to profitability by taking proactive steps to reduce costs and securing additional sources of funding.

In the above example, the issuer discloses the quantitative information for the working capital deficiency and other information from the financial statements. However, the disclosure does not explain how the issuer will remedy the working capital deficiency or how it will meet obligations as they come due. The disclosure also does not discuss the issuer's ability to meet short-term and long-term liquidity and capital expenditure commitments.

Improved disclosure:

As at December 31, 20x4, the Company had a working capital deficiency of $900,000. Commodity price increases over the last year have resulted in higher input costs for our products and negatively impacted our operations.

On October 1, 20x4, the Company entered into an unsecured revolving credit facility of $500,000 which matures on December 31, 20x8 and is subject to certain financial debt covenants. The Company is in compliance with all financial debt covenants at year end. As at December 31, 20x4, the Company has drawn $100,000 on the credit facility. In addition, the Company entered into a promissory note with XYZ Co on November 1, 20x4, a company owned by John Smith, a director of the Company, for a principal amount of $200,000. The note is unsecured, due on demand and bears interest at a rate of 2% interest payable annually.

To reduce costs, the Company reduced headcount by 10%, froze all salaries and added new hiring and discretionary spending controls. The Company also deferred a planned warehouse expansion. One-time severance costs, recognized in fiscal 20x4, were $150,000. We project savings of $400,000 for fiscal 20x5.

The Company's new cost saving measures and new financing will enable the Company to fund the working capital deficiency and financial obligations over the next 12 months.

[58] Form 51-102F1 *Management's Discussion & Analysis*, item 1.4

The discussion above provides issuer-specific information on how management plans to remedy the working capital deficiency and fund ongoing operations for the next 12 months.

2. OTHER REGULATORY DISCLOSURE DEFICIENCIES

TOPIC	OBSERVATIONS	CSA COMMENTS
Material contracts	❖ We often identify contracts that appear to be material that have not been filed.	❖ If entering into a material contract constitutes a material change for the issuer, the material contract must be filed no later than the time the issuer files a MCR (defined below). If a material contract is made or adopted before the date of an issuer's annual information form, the contract must be filed no later than the date the annual information form is filed. If an issuer is not required to file an annual information form, then the issuer is required to file any material contracts that are made or adopted prior to the end of its most recently completed financial year within 120 days after the end of the financial year.[59] ❖ To provide timely information to investors, we encourage issuers to file material contracts as soon as they have been determined to be material.
	❖ Some issuers do not file amendments to the material contract.	❖ A material contract includes any amendments to the material contract.[60] The filing deadline for a material amendment is based on the date of the amendment.
	❖ Some issuers file material contracts with inappropriate redactions.	❖ An issuer may omit or redact a provision of a material contract that is required to be filed if an executive officer of the issuer reasonably believes that disclosure of the omitted or redacted provision would be seriously prejudicial to the interests of the reporting issuer or would violate a confidentiality provision.[61] ❖ If a provision is omitted or redacted, the issuer must include a description of the type of information that has been omitted or redacted next to the redaction in the material contract.[62] ❖ When negotiating material contracts with third parties, issuers should consider their disclosure obligations under securities legislation.
Material change report (MCR)	❖ Some issuers fail to identify and report material events or information as a material change.	❖ Assessing whether a change in the business, operations or capital constitutes a material change, as defined in NI 51-102, requires an issuer to exercise careful judgement. ❖ Section 4.3 of National Policy 51-201 *Disclosure Standards* provides examples of types of events and information that may be material.
	❖ Some issuers do not file MCRs on a timely basis.	❖ When a material change occurs, issuers are required to immediately issue and file a news

59 National Instrument 51-102 *Continuous Disclosure Obligations*, section 12.3
60 Companion Policy 51-102CP *Continuous Disclosure Obligations*, subsection 12.3(1)
61 National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 12.2(3)
62 National Instrument 51-102 *Continuous Disclosure Obligations*, subsection 12.2(5)

TOPIC	OBSERVATIONS	CSA COMMENTS
Material change report (MCR) (continued)		release disclosing the material change in their business.[63] ❖ The issuer must then file Form 51-102F3 *Material Change Report*, with respect to the material change as soon as practicable, and in any event within 10 days of the date on which the change occurs.[64]
	❖ Some issuers do not disclose enough information in the MCR.	❖ The MCR should describe the significant facts relating to the material change, information about the time and resources required for the change in business as well as the barriers and obligations involved in realizing the change.[65] To comply with the form requirements, it may not be sufficient to simply reproduce what has been included in the news release. ❖ Unfavourable news must be disclosed just as promptly and completely as favourable news.

3. GENERAL DISCLOSURE DEFICIENCIES

DISCLOSURE EXAMPLES

Overly Promotional Disclosure

Over the past few years, we have seen promotional activities by certain issuers leading to disclosure that is either untrue or unbalanced, so it may mislead investors. This includes disclosure and promotional campaigns that provide unbalanced or unsubstantiated material claims about the issuer's business and the corresponding opportunity for profit by investing in the issuer, which appear to be undertaken for the specific purpose of artificially promoting interest in the issuer's securities.[66] Recently, such promotional activities have included AI washing and greenwashing.

AI Washing Example

AI washing is when an issuer makes false, misleading or exaggerated claims about its use of AI systems in its products or services, to capitalize on the growing use of and investor interest in AI systems. We have identified AI washing in CD documents and in prospectus filings. When describing current and proposed products, services or activities, issuers must not make false, misleading and exaggerated claims about their use of AI systems. It is important to ensure that all public disclosures, whether voluntary or required are factual and balanced.

Example of deficient disclosure – AI washing disclosure

Included in the issuer's CD record:

- The company utilizes the most advanced AI technology.
- The company's warehouse houses the most sophisticated AI robotics.
- The company uses AI to solve world issues.
- The company's use of AI modernizes the company's business processes and will disrupt the industry in which it operates.
- The company's business operates in a leading global artificial intelligence domain.
- The company in its public filings only discussed its acquisition and development of AI technology and it appears to be the only business of the issuer.

[63] National Instrument 51-102 *Continuous Disclosure Obligations*, paragraph 7.1(1)(a)
[64] National Instrument 51-102 *Continuous Disclosure Obligations*, paragraph 7.1(1)(b)
[65] Form 51-102F3 *Material Change Report*, item 5.1
[66] For a discussion of relevant requirements and past guidance, see CSA Staff Notice 51-356 *Problematic promotional activities by issuers*. Please also see the guidance in National Policy 51-201 *Disclosure Standards*.

First, in the above example, the issuer made unsubstantiated claims regarding the capabilities of its technologies. When statements are not supported by facts and corporate activities, they are misleading and promotional, thus inappropriate.

Second, the issuer described itself as being a global leader and disruptor despite having generated only nominal revenue from its operating activities. Making broad statements without supportable financial statement performance measures and additional detail regarding the particular aspects of its business or how the capabilities of the business will be measured and evaluated is misleading and promotional.

Third, the company's CD record focuses entirely on AI technology; however, on review, substantially all of the company's revenue came from the sale of general appliances. Without operating segment disclosure and relevant MD&A discussions, this is misleading because an investor reading the company's CD record would reasonably assume all of the company's revenue is from its AI activity.

Greenwashing Example

Disclosure pertaining to an issuer's ESG and/or sustainability impact in CD documents, news releases, website disclosure and voluntary documents such as sustainability or ESG reports has grown rapidly in recent years.

We have observed an increase in issuers making potentially misleading, unsubstantiated or otherwise incomplete claims about business operations or the sustainability of a product or service being offered, conveying a false impression commonly referred to as "greenwashing".

Examples of "greenwashing" may include:

- disclosure about a target to transition to net zero which can be misleading if the issuer does not indicate what is included in its net zero target and if the issuer has no credible plan to achieve such a target;
- disclosure claiming a material product or service is ESG "friendly" or "compliant" with industry standards which can be misleading without accompanying disclosure identifying the industry standards, the particular factors considered and how they are measured and evaluated.

When describing current and proposed ESG related activities, issuers should consider the following:

- In order to avoid misleading promotional language issuers should ensure that all ESG disclosures, whether voluntary or required, are factual and balanced.
- ESG disclosure should be specific and supported by facts and corporate activities, as applicable.
- ESG related disclosures may also constitute FLI[67], for example, disclosure about future plans to improve operational performance in the context of ESG standards, or to reduce greenhouse gas emissions or to obtain a carbon neutral position. Issuers must have a reasonable basis for FLI.[68] In addition, issuers must identify the material risk factors that could cause actual results to differ materially, state the material factors or assumptions used to develop the FLI and describe its policies for updating the information.[69]

In the context of ESG disclosure, issuers are expected to have a reasonable basis for statements respecting future targets or plans and must disclose the material factors or assumptions underpinning those targets or plans and the material risks to achieving those targets or plans.

Terms such as "ESG", "sustainability", "responsible investing", "ethical" and "green" can encompass a broad range of environmental and ecological matters such as relating to climate change, greenhouse gas emissions and bio-diversity.

Issuers should exercise caution in using broad terms and if they do use them, in order to avoid misleading investors, we would generally expect details respecting what is meant by the term, which factors are included and how these factors are weighted and prioritized. For example, investors may confuse an issuer's claims respecting sustainability-related goals with those related to climate-change and net-zero ambitions. Sustainability-related goals may be broader in scope or, for example, prioritize only certain social objectives. Likewise, climate-related goals can include climate-change adaption activities that may not have corresponding reduction in emissions output. As these goals may have distinct objectives with different scopes and outcomes, issuers should ensure that they clearly define the parameters of these goals to mitigate any potential confusion between them.

67 National Instrument 51-102 *Continuous Disclosure Obligations*, Part 4A
68 National Instrument 51-102 *Continuous Disclosure Obligations*, section 4A.2
69 National Instrument 51-102 *Continuous Disclosure Obligations*, section 4A.3

Issuers should exercise caution in using a rating to demonstrate its ESG impact. We would generally expect the following to be disclosed:

- the actual rating;
- a description of the specific set of criteria on which the rating is based;
- a description of the methodology used and whether it is based on quantitative or qualitative data and the degree of subjectivity involved;
- the identity of the third party certifying the rating; and
- the date of the rating.

In our view it is not sufficient, for example, to say that an issuer obtained "a high score" on "a national corporate governance survey", without disclosing the actual score, the parameters on which the survey was based, the name of the third party conducting the survey and the date of the survey.

4. MINERAL PROJECT DISCLOSURE

NI 43-101 governs public disclosure of scientific and technical information about an issuer's mining and mineral exploration projects including written documents, websites, and oral statements. Issuers must base their scientific and technical disclosure on information prepared by or under the supervision of a qualified person (**QP**) or approved by a QP, as defined in NI 43-101. NI 43-101 also requires issuers to file a "technical report", in a prescribed format, Form 43-101F1 *Technical Report* (**Technical Report** or **Form 43-101F1**), for significant corporate or mineral project milestones.[70] The purpose of the Technical Report is to support disclosure of the issuer's exploration, development, and production activities with additional information to assist investors in making investment decisions. In some circumstances, QPs authoring the Technical Report must be independent of the issuer and the mineral property.[71]

In fiscal 2024 and fiscal 2023, CD reviews resulted in 115 or 8% of all Technical Reports either being refiled due to material non-compliance with the disclosure obligations of NI 43-101 or filed for the first time due to failure to file a required Technical Report to support an issuer's technical disclosure. Common deficiencies and examples of material non-compliance with disclosure requirements in Form 43-101F1 and NI 43-101 are outlined below in descending order of frequency of occurrence.

TECHNICAL REPORT: COMMON DEFICIENCIES

Form 43-101F1 Items:

- Item 3: Reliance on Other Experts - Reliance on technical information prepared by others beyond the limited reliance allowed for legal, political, environmental, or tax matters,
- Item 12: Data Verification - Lack of data verification performed by the QP, or missing statements about the QP's opinion on adequacy of the data used in the Technical Report,
- Item 11: Sample Preparation, Analyses, and Security - Missing information about quality control and quality assurance, sample preparation, assay and analytical procedures, name of laboratory, and the QP's opinion on the adequacy of the sample preparation, security, and analytical procedures,
- Item 10: Drilling - Missing information about the location, azimuth, and dip of drill holes, true widths, and higher grade intervals,
- Items 16 to 22 on advanced properties - Missing material information related to production activities on mineral projects in operation, and
- Item 23: Adjacent Properties - Lack of required cautionary language and including properties controlled by the issuer.

NI 43-101 Requirements:

- Subsection 8.1(2): Certificates of QPs - Lack of information including a summary of the QP's relevant experience,
- Subsection 5.3(1): Independent QP - Technical Report authors that are not independent in circumstances requiring independence, and
- Subsections 4.1(1) and 4.2(1): Property material to the issuer - Failure to file a Technical Report on a material mineral property in certain required situations.

[70] National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, subsections 4.1 and 4.2
[71] National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, section 1.1, definition of "qualified person"

Questions

Please refer your questions to any of the following:

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B.1.2 OSC Staff Notice 81-736 – Summary Report for Investment Fund and Structured Product Issuers

OSC Staff Notice 81-736 – Summary Report for Investment Fund and Structured Product Issuers is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

ONTARIO SECURITIES COMMISSION

OSC Staff Notice 81-736

Summary Report for Investment Fund and Structured Product Issuers

November 5, 2024

Ontario

Contents

Senior Vice President's Message

I am pleased to share this annual Summary Report (**Report**) which provides an overview of the activities of the Investment Management Division (**IM Division**), known formerly as the Investment Funds and Structured Products Branch, of the Ontario Securities Commission (**OSC**) for the fiscal year ended March 31, 2024 (**Fiscal 2024**).

The OSC implemented changes to its organizational structure effective April 1, 2024, as part of a new vision and strategy that will enable us to be responsive to current market trends while continuing to provide balanced, flexible and responsive regulation. With this restructuring, the IM Division has also undergone some changes, which have broadened the scope of our work to include regulatory matters related to portfolio advisers. This Report, however, will focus on the activities of Fiscal 2024 prior to the change in our structure which is described later in more detail.

The investment management industry is a critical and growing part of Ontario's capital markets. Close to five million households in Canada own mutual funds[1] which are a significant component of the asset portfolios of retail investors. Exchange traded funds (**ETF**s) are gaining popularity with both retail and institutional investors in recent years, as the industry continues to innovate and build on their strength. The actively managed ETF sector is unique and vibrant in Canada. Actively managed ETFs allow traditional mutual fund firms to offer their investment strategies through ETFs. In addition, we continue to see investment fund offerings relating to sustainable finance, and new asset classes being offered to retail investors.

We continue to streamline our regulatory activities to be more efficient and effective. We understand that certain routine activities should continue to trend downwards, as this demonstrates less burden to market participants. The overall trend for routine exemptive applications is moving in the right direction, as we have codified more routine relief.

Our annual Investment Fund Survey (**IFS**) has enabled us to have better insight about risks and emerging issues, allowing us to respond quickly and proactively to perform risk-based oversight reviews. The IFS has been a very effective tool to identify and illustrate industry macro trends, which is critical from a systemic risk perspective.

We continue to advance several policy projects. In addition to the required public comment period, we have taken the time and resources to listen actively from our advisory committees and stakeholders to ensure that future rule amendments are reflective of today's capital markets environment, while ensuring adequate investor protection. Together, the Canadian Securities Administrators (**CSA**) have published new or revised guidance in key areas such as crypto asset investment funds,

[1] IFIC *The evolution of mutual funds*

environmental, social and governance (**ESG**) funds and independent review committees.

We hope you find this Report informative and that it provides insight into our work over the past year. As always, if you have a question, comment, or would like to discuss regulatory matters, please reach out to us. Our Staff Contact Information has been included for your convenience.

Raymond Chan
Senior Vice President, Investment Management
Ontario Securities Commission

Introduction

This Report provides an overview of the key operational and policy initiatives of the IM Division that impact investment fund and structured product issuers during Fiscal 2024. The Report can be used as a resource for investment fund managers (**IFMs**), entities who perform services on their behalf and other stakeholders, including investors.

The Report is organized into four key areas:

Part A - Operational Highlights

- Summarizes our key activities, including
  - prospectus reviews
  - applications for exemptive relief, and
  - continuous disclosure reviews.

Part B - Regulatory Policy Initiatives

- Identifies ongoing policy initiatives affecting investment funds with detail on their status.

Part C - Emerging Issues and Initiatives

- Summarizes recent or upcoming changes in the industry that affect investment funds.

Part D - Stakeholder Outreach and Resources

- Provides detail on our outreach initiatives and resources for issuers of investment funds and other stakeholders.

Responsibilities of the IM Division

The OSC's mandate is to protect investors from unfair, improper or fraudulent practices, to foster fair, efficient and competitive capital markets and confidence in the capital markets, to foster capital formation, and to contribute to the stability of the financial system and the reduction of systemic risk.

In support of the OSC's mandate, the IM Division is responsible for administering the regulatory framework for investment funds and portfolio management services that are offered to Ontario investors. Effective April 1, 2024, oversight of structured products is overseen by the Corporate Finance Division.

Publicly offered investment fund assets in Canada are comprised broadly of mutual funds, non-redeemable investment funds and specialized funds:

Types of Publicly Offered Investment Funds

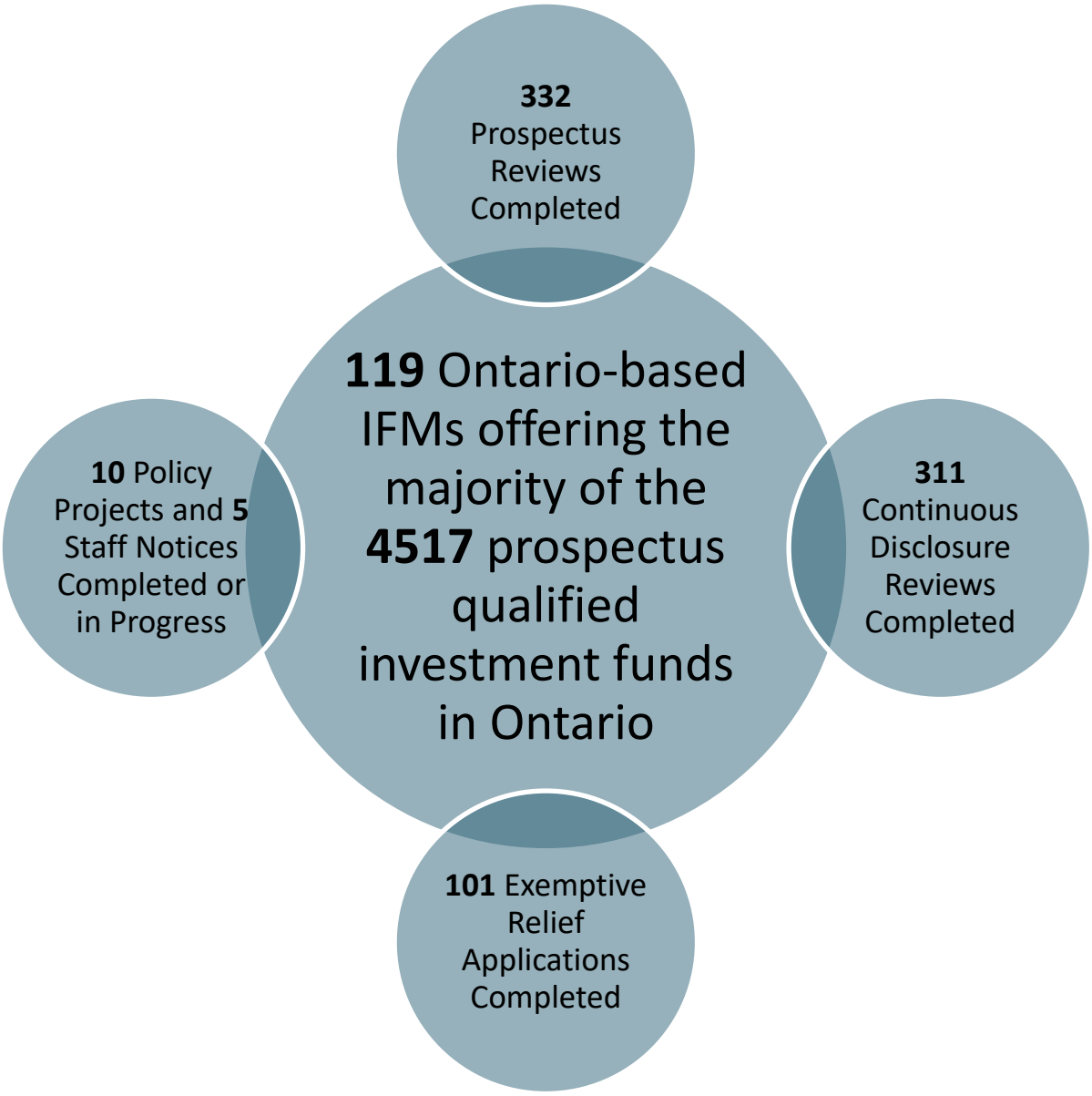
Mutual Funds	Non-Redeemable Investment Funds	Specialized Funds
• conventional mutual funds • exchange traded funds • alternative mutual funds • split share corporations	• closed-end funds • flow-through limited partnerships	• scholarship plans • linked notes • labour sponsored investment funds

During Fiscal 2024, the IM Division was organized into three dedicated teams: Product Offerings, Regulatory Policy and Risk and Analytics. Our key functions include:

- ✓ reviewing and assessing disclosure for all types of publicly offered investment funds,
- ✓ assessing applications for discretionary relief from securities legislation,
- ✓ policy making to adapt to changes in the capital market,
- ✓ engagement with stakeholders, including on advisory committees, and through regulatory updates in eNews articles,
- ✓ issuing guidance to stakeholders through staff notices to communicate our expectations on process or policy matters,
- ✓ monitoring and responding to emerging capital market and investor protection risks more effectively, using tools such as our continuous disclosure review sweeps, the IFS, and other information and analytical resources, and
- ✓ monitoring and participating in investment fund regulatory developments globally, primarily through our work with the International Organization of Securities Commissions (**IOSCO**), and other financial regulators.

Effective April 1, 2024, a new Portfolio Advisers team has been added to the IM Division. The team will be responsible for policy matters, including applications for exemptive relief, relating to portfolio management services offered by individuals and firms. The team will liaise with the Registration, Inspection and Examination Division (**RIE**) on novel and complex registration issues related to portfolio management and advice. As needed, RIE may conduct targeted examinations for certain data requests on behalf of the IM Division.

At a Glance - Fiscal 2024 Landscape and IM Division Activities



Investment Funds Market Landscape

Canada's public investment funds have shown a slight growth since the prior year based on assets under management (**AUM**)[2]:

[2] AUM of mutual funds and ETFs obtained from IFIC Monthly Investment Fund Statistics and closed end fund AUM from TSX

Investment Fund Product	AUM as of March 31, 2023	AUM as of March 31, 2024	% of Investment Fund AUM as at March 31, 2024
Conventional Mutual Funds	$1.9 trillion	$2.1 trillion	82%
ETFs	$337.1 billion	$417.1 billion	16%
Closed End Funds	$36.2 billion	$41.6 billion	2%
TOTAL	$2.3 trillion	$2.6 trillion	

Structured notes outstanding as of March 31, 2024, were approximately $34.2 billion[3].

ETFs experienced the highest rate of growth in AUM (23%) as compared to conventional mutual funds (11%) and closed end funds (15%). Market share for each remained relatively stable with only a 1% shift moving from mutual funds to ETFs as compared to the prior year.

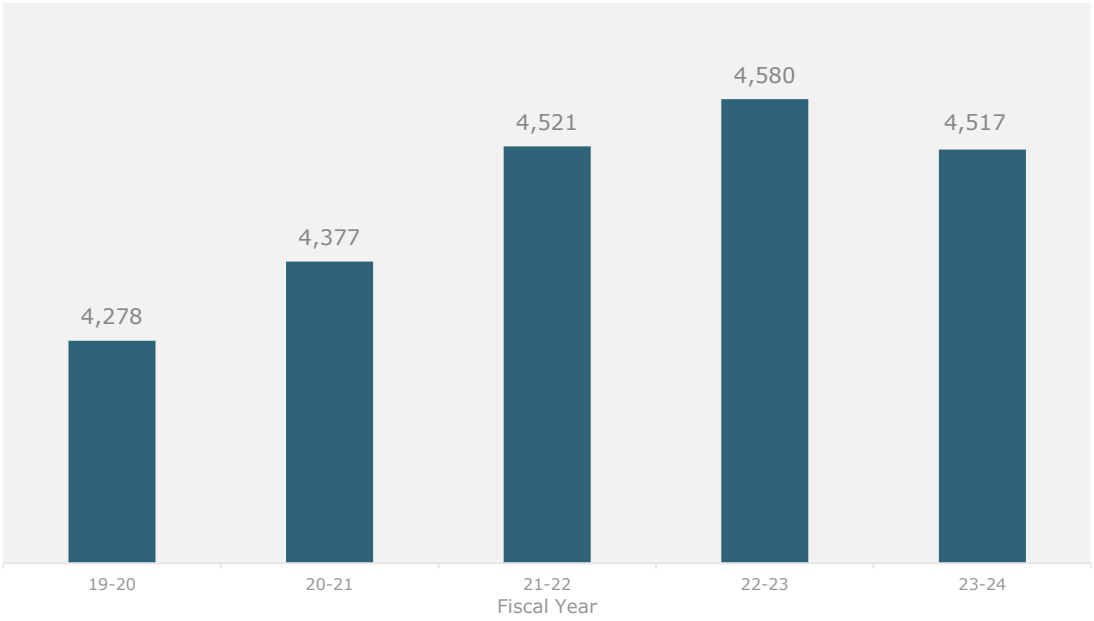
During the fiscal year, IOSCO also released its 2023 Investment Funds Statistics Report which collects data from 28 IOSCO member jurisdictions on open-ended and closed end mutual funds, as well as hedge funds. IOSCO estimates that its data captures approximately 80% of the aggregate net asset value (**NAV**) of the global investment funds industry. Based on this IOSCO report, the Canadian investment funds industry is quite significant when measured globally. For open-ended funds, Canada is ranked 5th based on aggregate NAV and 6th based on the total number of funds. For closed end funds, Canada is ranked 7th for aggregate NAV and 12th for the total number of funds.

Investment Fund Population

As of March 31, 2024, there were 119 Ontario-based IFMs offering the majority of the over 4,500 publicly offered investment funds, as compared to 126 IFMs in the prior year.[4] Fiscal 2024 saw a decline in the total investment funds population after a period of gradual growth in the prior four periods. There was a decline of approximately 63 funds in Fiscal 2024 as compared to growth of 59 funds in the previous fiscal year. In addition to the fewer number of IFMs based in Ontario, part of this decline is attributable to IFMs streamlining their product offerings, resulting in fund mergers or terminations.

[3] Information provided by filers through OSC Linked Note e-Form.
[4] Source – Internal reporting issuer database.

TOTAL INVESTMENT FUND POPULATION

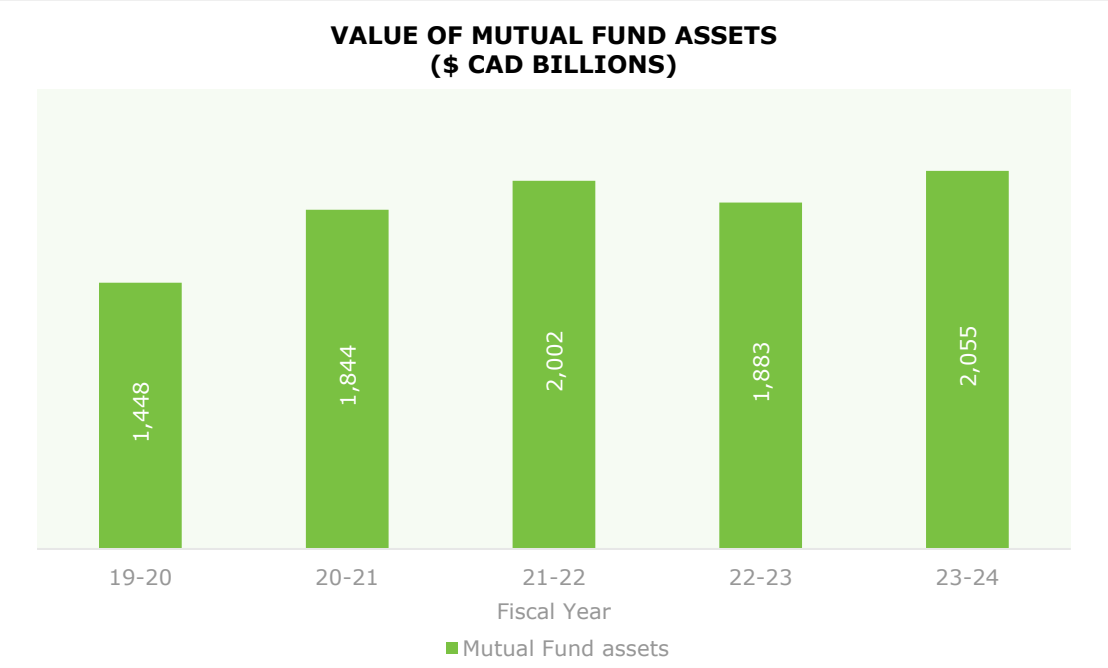


Source: Internal reporting issuer database showing investment funds active in Ontario

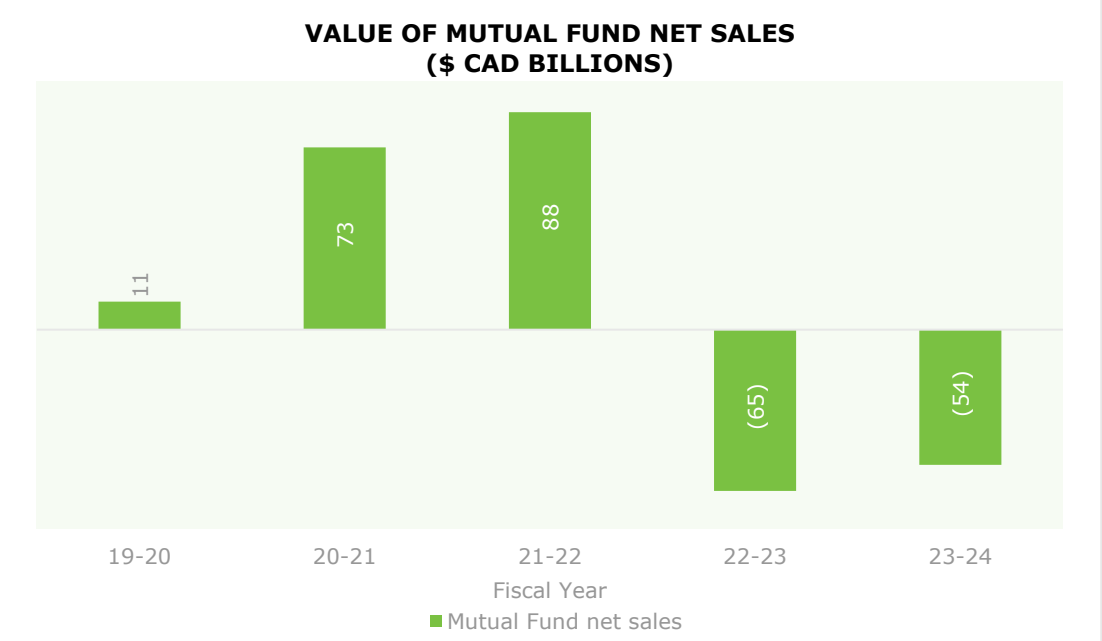
Conventional Mutual Fund Assets and Net Redemptions

Even though mutual funds experienced overall net redemptions during Fiscal 2024, the total AUM for conventional mutual funds rose slightly from $1.9 trillion in the previous fiscal year to $2.1 trillion at the end of Fiscal 2024, reversing the prior year's decline. Mutual fund AUM has appeared to recover from the low point experienced at the beginning of the pandemic. The largest area of growth was in the money market asset category[5], due in part to the high interest rate environment. Similar to the previous year, net redemptions were primarily in the balanced asset class category.

[5] As per IFIC's Investment Funds Report for 2023, money market mutual fund assets grew by 48%



Source: IFIC Industry Statistics

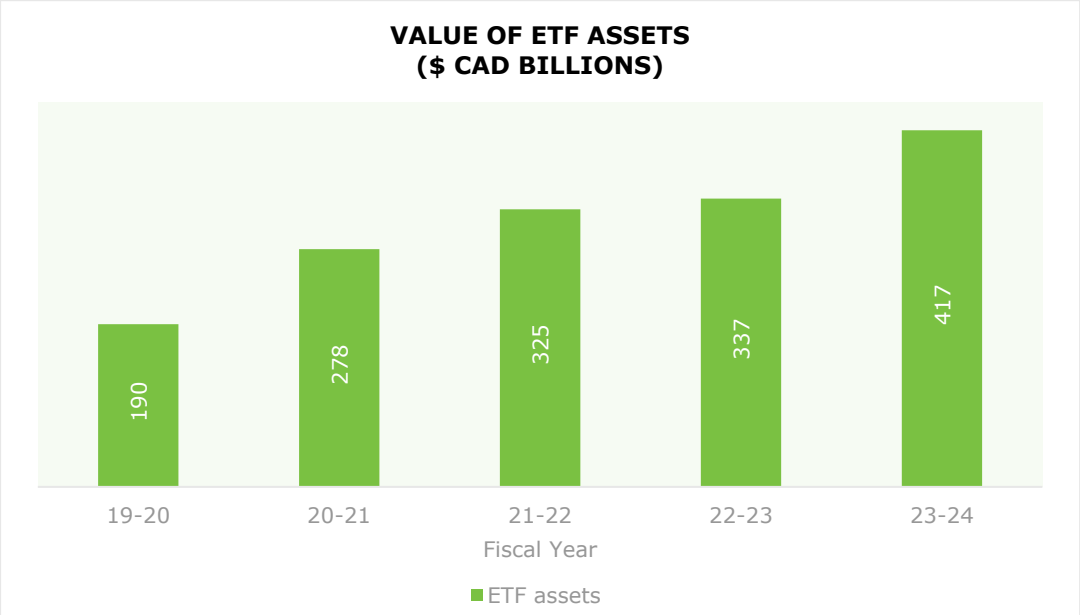


Source: IFIC Industry Statistics

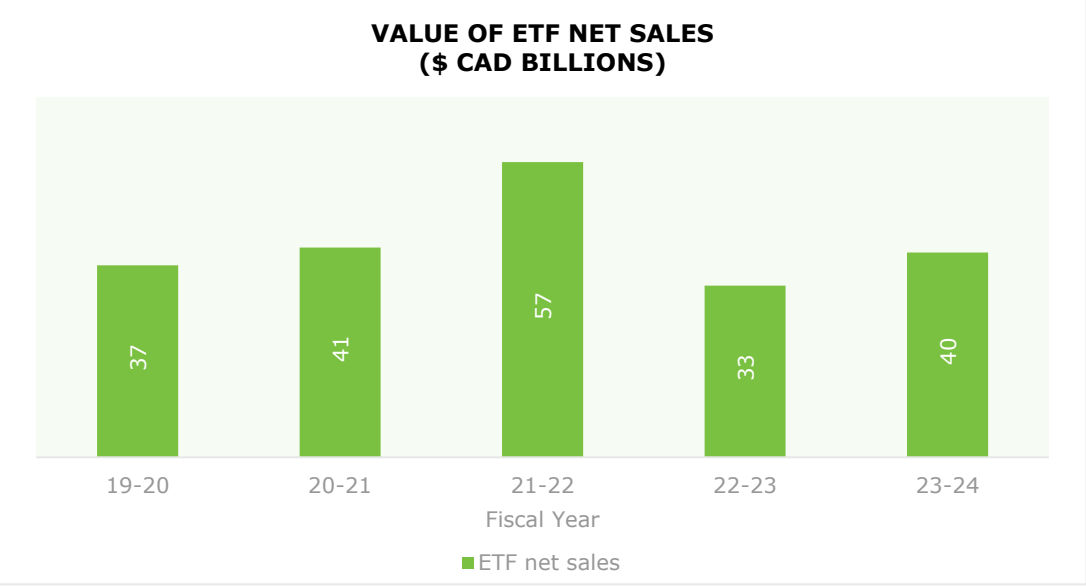
ETF Assets and Net Sales

The AUM of ETFs has continued its positive upward trend, with $417 billion total AUM in Fiscal 2024 as compared to $337 billion in the prior year. This increase is partly attributable to $40 billion of positive net sales, with equity, bond and money market ETFs each experiencing comparable net inflows. Similar to conventional

mutual funds, the money market ETF asset category grew substantially, primarily in high interest saving account funds (**HISAs**) which benefited from the high interest rate environment through much of Fiscal 2024. A change in interest rate expectations at the start of the year, as well as stricter liquidity rules announced by the Office of the Superintendent of Financial Institutions (**OSFI**) which took effect January 31, 2024, contributed to a decline in their popularity in the last quarter of Fiscal 2024.



Source: IFIC Industry Statistics



Source: IFIC Industry Statistics

Part A: Operational Highlights

The OSC has set service standards and timelines which stakeholders can rely on when interacting with OSC staff. The Service Commitment document can be found on our website and includes timelines for prospectus filings and amendments, and the review of exemptive relief applications, which comprise some of our key operational functions. The IM Division is committed to ensuring that services are delivered efficiently and effectively, and in accordance with those standards.

Sections I to III below will highlight each of our main operational functions in more detail. Overall, issuer activity around prospectus filings and applications for exemptive relief were stable as compared to the prior year. For the second year in a row, the number of continuous disclosure reviews increased.

I. Prospectus Filings

One of our key operational functions is the review of preliminary and pro forma prospectuses in connection with the distribution of publicly offered investment funds. Under Canadian securities law, an issuer must file and obtain a receipt for a prospectus to "distribute" securities to the public or rely upon a prospectus exemption.

There are two main types of prospectuses for investment funds: the simplified prospectus pursuant to National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), and the long form prospectus pursuant to National Instrument 41-101 *General Prospectus Requirements*. The type of prospectus that is required to be filed depends on the type of investment fund that is offering securities. A mutual fund that is not an ETF must file a simplified prospectus. This includes alternative mutual funds that are not structured as ETFs. All other investment funds (including ETFs) must file a long form prospectus. Depending on the type of investment fund and prospectus, certain other disclosure documents may also be required to be filed along with the prospectus.

A preliminary prospectus is filed for an initial offering of investment funds which have never previously been distributed. A *pro forma* prospectus is used for renewals, once an investment fund has already been in continuous distribution.

Prospectus filings are categorized by the IM Division into one of three review types: standard, issue-oriented or full review. Most prospectus filings are subject to standard review, as these generally relate to investment funds that are already in distribution and have been previously reviewed. An issue-oriented review targets specific issues with the filing while a full review is undertaken when the prospectus is for a new manager, new fund or product that has features or characteristics that could raise novel issues. These filings are sometimes also accompanied by a related application for exemptive relief.

In the case of prospectus filings for which Ontario is the principal regulator, we ensure that the information provided in SEDAR+ is complete and accurate when filings are received, and before we issue the final receipt. If there are any discrepancies, we inform the filer to make the necessary update. This process includes ensuring that:

- ✓ the filing (the prospectus and all other required documents that must be filed in order to obtain a prospectus receipt) was made within 3 days of the date of the prospectus and of the certificate,
- ✓ the filer used the correct Submission Type and Document Type on SEDAR+,
- ✓ the dates entered in SEDAR+ are consistent with the dates in the prospectus, and
- ✓ the class and series information for each fund in SEDAR+ is consistent with the class and series indicated in the prospectus.

Staff also ensure that the renewal filings are made within the prescribed timeline and that the wording and signatures in the prospectus certificates comply with the requirements in section 58 of the *Securities Act* (Ontario) and Form 81-101F1 *Contents of Simplified Prospectus* or Form 41-101F2 *Information Required in an Investment Fund Prospectus*.

Pre-File Process

For unique or novel products, we recommend that filers use the confidential pre-file process for prospectus and exemptive relief applications. Many filers who wish to launch a novel type of product in the market have used this process as it maintains the confidentiality of the product offering as the regulatory issues are resolved. For more information on the pre-file process click here.

Review Process for Substantive Changes

Staff remind IFMs that substantive changes to prospectus disclosure made after a preliminary or *pro forma* prospectus has been filed or cleared for final may cause delays in receiving a receipt for the final prospectus. Delays may occur as staff need to conduct a new review of those changes, and depending on the outcome of that review, may need to reverse the "clear for final" status and issue additional comments. Situations like this may potentially cause lapse date-related issues.

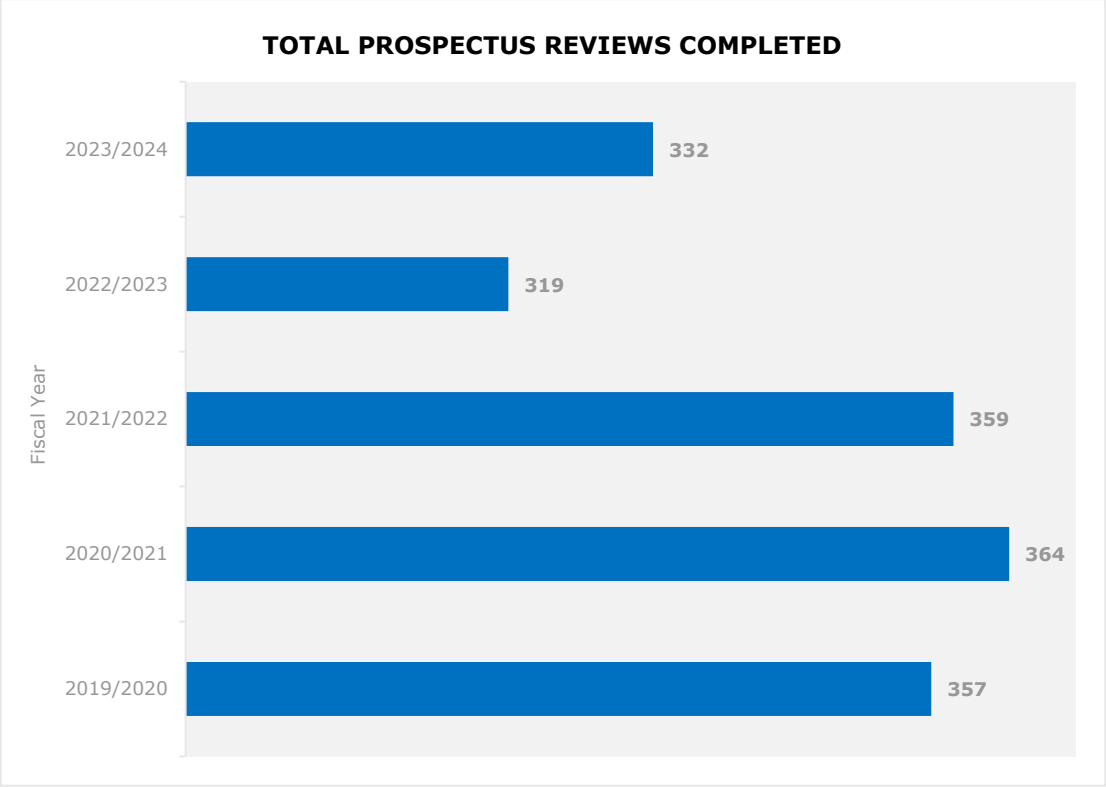
For preliminary prospectuses, consideration will also be given to whether an amended and restated preliminary prospectus will need to be filed. Staff note that such substantive changes to prospectus disclosure will be subject to the same level of review as the disclosure included in the filed preliminary or *pro forma* prospectus. For example, during the fiscal year, staff observed a number of prospectuses in which material ESG related disclosure was added after a preliminary or *pro forma* prospectus was filed or cleared for final. In each case, the additional disclosure was not prompted by comments raised by staff and required additional review time since the additions/revisions were substantive.

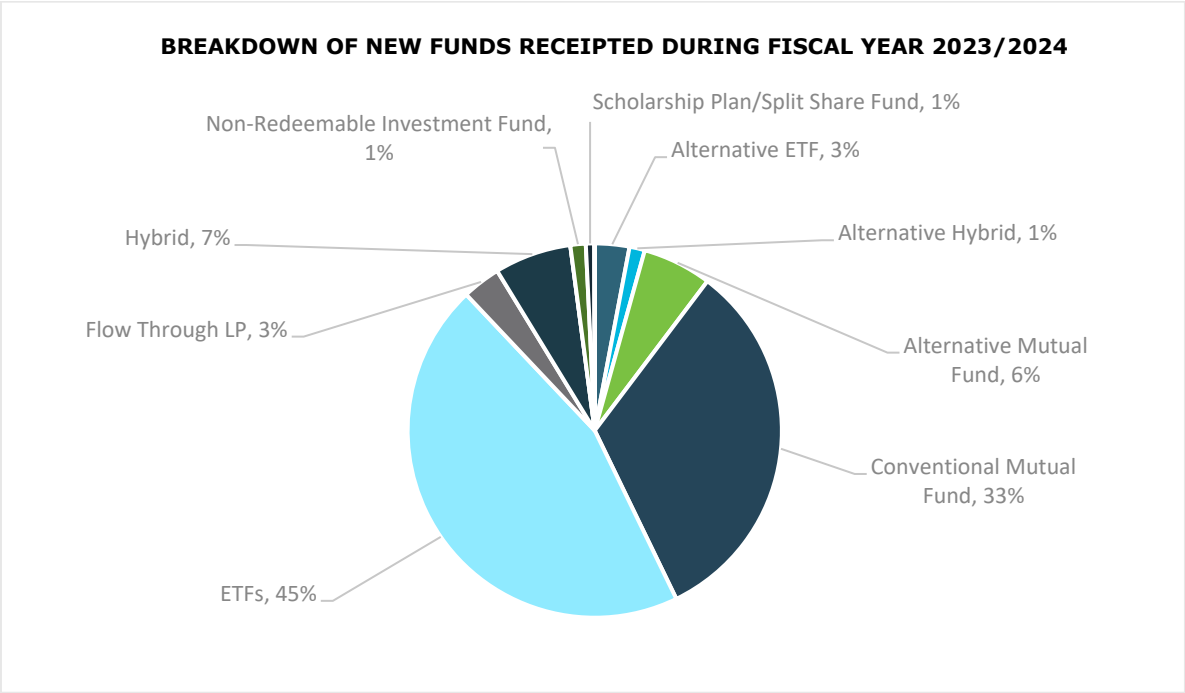
Staff encourage IFMs to file their prospectus amendments and preliminary and *pro forma* prospectuses as early as possible and, if applicable, in advance of their filing deadlines, in order to avoid delays in the prospectus review process.

Data on Prospectus Reviews

The total volume of prospectus filings received this fiscal year compared to the prior year is not significantly different, with a slight increase of 4%. However, for

the first time in history, ETFs exceeded conventional mutual funds in new fund creations at 48% vs 39%, respectively, compared to 26% and 64% in the prior year. Hybrid fund creations were comparable year over year and represent simplified prospectus qualified mutual funds with mutual fund series together with ETF series. The majority of the filings (80%) were in the category of standard review for conventional mutual fund and ETF offerings.





Prospectus Reviews of ESG-Related Funds

During the past fiscal year, staff continued to review the prospectuses and related documents of funds with investment objectives that reference ESG factors and other funds that use ESG strategies (**ESG-Related Funds**). The reviews were performed in accordance with the guidance provided in CSA Staff Notice 81-334 *ESG-Related Investment Fund Disclosure* (the **2022 ESG Staff Notice**), which was published on January 19, 2022 to assist IFMs in improving the disclosure of ESG-Related Funds.

These prospectus reviews generally focused on, but were not limited to, the fund's:

- investment objectives and name
- investment strategies
- proxy voting policies and procedures
- risk disclosure
- suitability disclosure

Most of the issues raised by staff during these reviews related to investment strategies disclosure. In particular, most comments sought to clarify:

- which types of ESG strategies were being used;
- which specific ESG factors were relevant to the portfolio manager's analysis; and
- how such factors were being evaluated and monitored by the portfolio manager.

Staff also encountered issues relating to the investment strategies disclosure of funds that do not have ESG-related investment objectives but that consider ESG

factors in a more limited way in the investment process. Often, IFMs included disclosure relating to these funds without being clear about the limited role that the consideration of ESG factors and/or the use of ESG strategies plays in the investment process of such funds. In these cases, staff raised comments aimed at ensuring that this disclosure clearly explains the limited role that the consideration of ESG factors and/or use of ESG strategies plays in the fund's investment process, including the specific parts of the investment process during which ESG factors are considered, the weight given to ESG factors, the impact that ESG factors will generally have on the portfolio selection process, and whether this approach is specific to the fund in question or whether it is part of the IFM's general process that is applied across all or a segment of its funds.

Staff also raised and resolved issues relating to fund names, investment objectives, ESG risk disclosure, and ESG-related disclosure in the summary of proxy voting policies and procedures.

As part of these reviews, staff also requested and reviewed copies of recent sales communications relating to the funds. A discussion of staff's ESG-focused sales communication reviews is included later in this document under the "Reviews of Continuous Disclosure, Sales Communications, and Portfolio Holdings of ESG-Related Funds" heading.

The findings from staff's prospectus reviews of ESG-Related Funds helped to inform the updated guidance published on March 7, 2024 in CSA Staff Notice 81-334 (Revised) *ESG-Related Investment Fund Disclosure* (the **Updated ESG Staff Notice**). Staff will continue to monitor the prospectus disclosure of ESG-Related Funds in accordance with the guidance in the Updated ESG Staff Notice.

Noteworthy Prospectus Filings

Some of the noteworthy prospectus filings that were receipted during the fiscal period are summarized below, along with details on any related exemptive relief.

Ether Funds Adopt Staking

During the period, an IFM was granted a receipt for a prospectus amendment to announce that its Ether closed-end fund and its Ether ETF were going to commence "staking" of Ether held by the funds. Staking is the activity under which transactions on the Ethereum blockchain are validated and those validating the transactions are rewarded with newly created ether. This announcement came after several months of discussion with IM Division staff and with the CSA to ensure that staking activity would be conducted within the scope of National Instrument 81-102 *Investment Funds* (**NI 81-102**) and managed in such a way that minimizes the risk of loss to the funds.

Target Date Bond ETFs

We noted a resurgence in the launch of Target Date Bond ETFs. These types of funds, which first appeared a decade ago, generally aim to provide regular income and preserve capital by investing in a portfolio of bonds with similar maturity dates. The maturity dates of the bonds align with the investment fund's pre-determined

lifespan, which is sometimes as short as two years. The funds terminate once the bonds in the portfolio reach maturity and the final net assets of the fund are distributed *pro rata* among the unitholders based on the NAV per unit. The lifespan of the fund is reflected in the fund name (which sets out the year in which the fund will terminate) and is also specified in the fund's investment objectives. These funds essentially aim to be a bond in 'fund' form which provides investors with some of the benefits of bond ownership, but with liquidity to sell at any time. The resurgence of these funds at this time is likely an attempt by IFMs to compete with the recent popularity of GICs to which investors have gravitated in the current elevated interest rate environment.

Artificial Intelligence Fund

During the year, we receipted a prospectus for a new actively managed fund that seeks to provide exposure to securities of publicly traded issuers that are expected to benefit from increased adoption of artificial intelligence. To achieve this investment objective, the portfolio manager of the fund will primarily consult and use a proprietary large language model (the **LLM**). The LLM has the ability to search and read through financial documents (such as news articles, public company filings, earnings reports and market analyses), analyze vast datasets and learn from new data, meaning that its ability to identify relevant issuers may evolve over time. The LLM is expected to identify public issuers from developed markets that are expected to be positively impacted by increasing global adoption of AI through increased direct product sales and/or improved cost efficiency. Initially, the fund was proposed to be an index fund that would passively track an AI index where investment decisions are made by AI. However, staff raised concerns with this approach and insisted on the portfolio manager taking ownership of, and having full discretion over, the investment decisions for the fund to ensure "human oversight" of the investment decisions. This resulted in the IFM restructuring the fund as an actively managed fund and the final prospectus discloses that the database generated by the LLM will be utilized by the portfolio manager as "a data source", rather than be the only data considered by the portfolio manager in constructing the fund's portfolio.

II. Exemptive Relief Applications

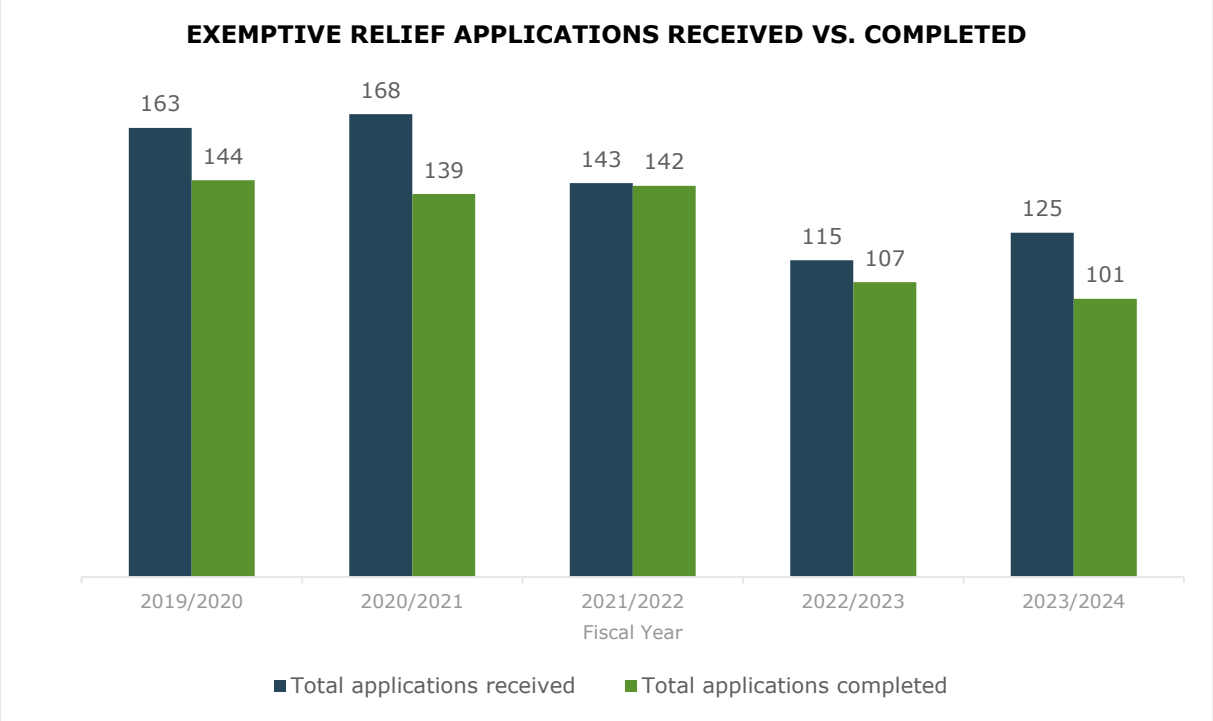
The IM Division reviews applications for exemptive relief to determine whether granting the requested relief would not be prejudicial to the public interest and makes a recommendation on that basis. We receive exemptive relief filings that are considered either routine or novel in nature. Routine applications generally mirror a prior decision and contain similar representations and conditions in the decision document as a previous decision. In some cases, routine applications contain changes that would be considered substantive new elements, and these are considered based on the fact patterns of the application to determine whether the same or modified conditions of the relief would be appropriate.

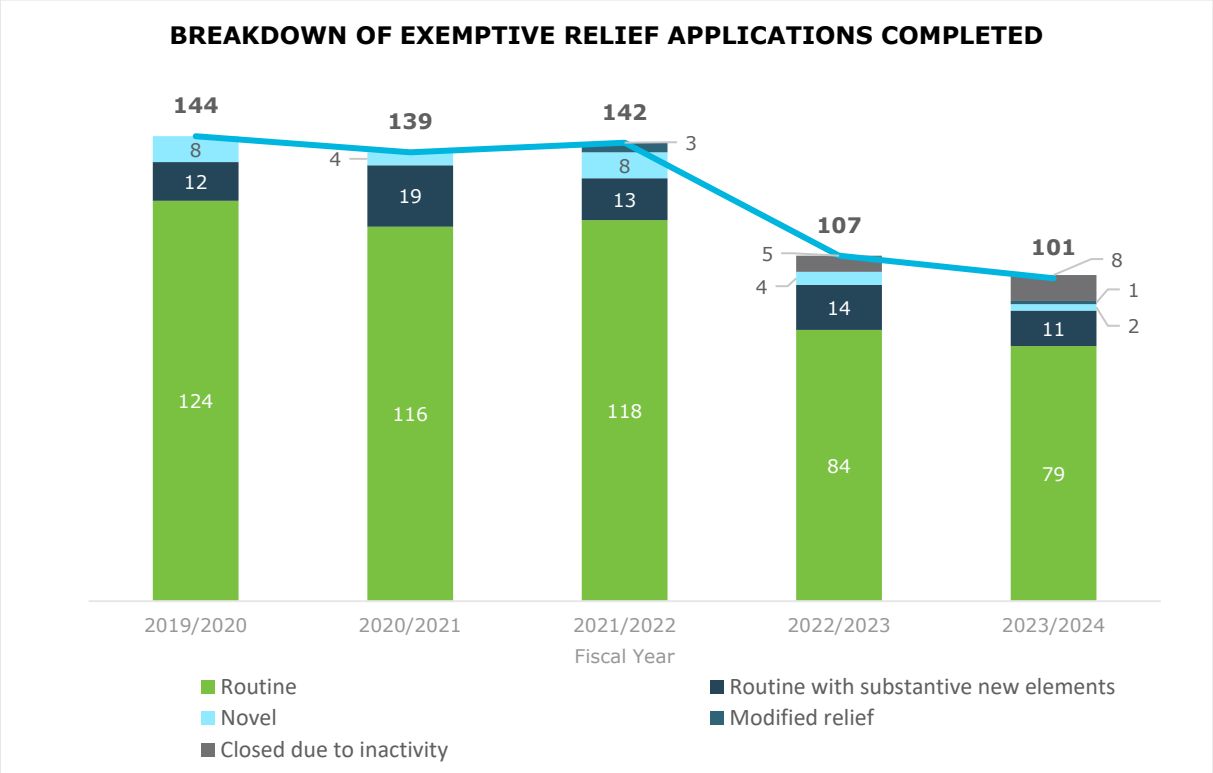
Novel applications generally consist of requests for relief that have not previously

been granted or that deviate substantially from the fact patterns underlying any prior decisions. These applications generally take longer to review because of their nature and complexity, and we consult with the CSA on all novel applications.

The difference in the total volume of exemptive relief applications received and completed is insignificant over the past two periods. Exemptive relief applications received in Fiscal 2024 increased slightly by 9% while those completed dropped by 6% compared to the previous fiscal year. The sustained decline in applications is because of amendments that came into force in January 2022 as part of our efforts to reduce regulatory burden for investment funds. These amendments included codifying frequently granted exemptions from certain requirements such that IFMs no longer must apply for exemptive relief in these cases. Consistent with prior years, most of the exemptive relief applications completed were routine in nature, while novel relief applications made up 2% of the applications completed in Fiscal 2024, as compared to 4% in the prior year.

Data on Exemptive Relief Applications





Noteworthy Exemptive Relief Applications

Financial Statement Filing

During the period, a mutual fund that is not a reporting issuer and only distributes its units to accredited investors was granted 30-day extensions of the annual financial statement filing and delivery deadlines and the interim financial statement filing and delivery deadlines under National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**). NI 81-106 requires investment funds to file and deliver annual financial statements within 90 days of its most recently completed financial year end and to file and deliver interim financial statements within 60 days of its most recently completed interim period. The relief was necessary for the fund given its December 31st year-end as it was primarily invested in a diversified portfolio of underlying funds, the majority of which have December 31st year-ends and are domiciled in Canada, and accordingly, as the underlying funds have the same deadline for delivery of their annual financial statements, the fund would not be able to receive such financial statements in time for its auditors to review them before the annual financial statement filing deadline.

Normally, extensions of the financial statement filing deadlines are only granted to top funds that are not reporting issuers and which invest in underlying funds that are domiciled in foreign jurisdictions that have financial statement delivery deadlines exceeding 90 days. In addition to being notified of this change in financial statement delivery timelines, investors were offered the right, within 2 business days, to redeem their units of the fund at the greater of the current NAV or the original purchase price of their units, with the filer to reimburse the fund in any

case where an investor redeems their units and the original purchase price exceeds the current NAV.

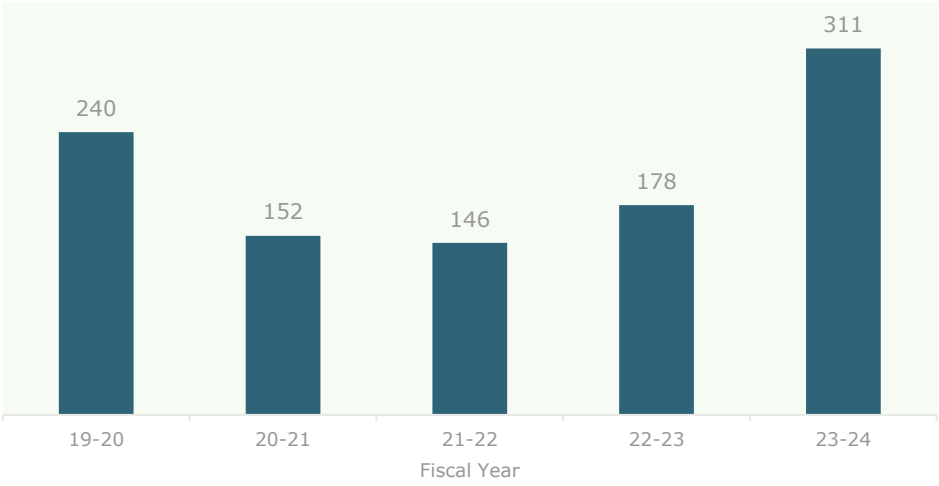
Staff is of the view that financial statement filing extensions will be considered on a case-by-case basis. Exempt market issuers who request financial statement filing extensions will be granted relief for existing top funds and relief will not be eligible for future oriented funds.

III. Continuous Disclosure Reviews

The IM Division regularly conducts reviews of the prospectus and continuous disclosure filings of Ontario-based investment funds. Risk-based criteria are used to select investment funds for reviews of their disclosure documents. We may also choose to conduct targeted reviews of a particular segment, on a particular issue or based on complaints received.

The IM Division analyzes data sources to identify investment fund outliers in key risk areas to conduct focused reviews. A major contributor to this information is the data gathered as part of the annual IFS discussed in Part C of this Report.

CONTINUOUS DISCLOSURE REVIEWS COMPLETED FOR INVESTMENT FUNDS



For the second consecutive year, there was an increase in the number of continuous disclosure reviews completed, with a significant jump of 75% from the prior year. Most of this increase is represented by standard continuous disclosure reviews as dedicated staff resources for these reviews have been stable as compared to prior years where there was a decline due to staffing changes. In addition, as the volume of exemptive relief applications and prospectus reviews have remained stable, resources have shifted to performing continuous disclosure reviews of emerging issues and compliance with regulatory guidance, such as the 2022 ESG Staff Notice.

Summary of Completed Reviews

Outlined below are the major reviews completed by the IM Division during the fiscal period:

Reviews of Continuous Disclosure, Sales Communications, and Portfolio Holdings of ESG-Related Funds

During the past fiscal year, in addition to the prospectus reviews described under the "Prospectus Reviews of ESG-Related Funds" heading of this document, staff also continued to conduct reviews of the continuous disclosure, sales communications, and portfolio holdings of ESG-Related Funds in accordance with the guidance in the 2022 ESG Staff Notice. These reviews focused on:

- assessing the quality of ESG-related periodic reporting in the funds' management reports of fund performance (**MRFPs**) and on their websites, particularly with regard to changes in the composition of the fund's portfolio in relation to its ESG-related investment objectives and/or use of ESG strategies, the fund's progress or status with regard to meeting its ESG-related investment objectives, and the outcomes of the fund's ESG-related proxy voting and shareholder engagement activities;
- identifying whether the funds were holding, or had held, investments that should have been excluded from their portfolios due to the negative screening criteria set out in their investment strategies disclosure or that may be considered by investors to be inconsistent with the ESG focus of the fund (e.g. a green fund that has exposure to fossil fuel companies);
- identifying whether the IFM of the funds had policies and procedures in relation to: (a) assessing, measuring and monitoring the ESG-related performance and outcomes of the funds that they manage; and (b) addressing portfolio holdings that are inconsistent with the ESG-related investment objectives and/or ESG strategies of the fund;
- identifying whether the funds have voted against ESG-related shareholder proposals, and if so, whether such votes were consistent with the proxy voting guidelines of the funds; and
- reviewing sales communications of the funds, including websites, to ensure that the sales communications did not include statements that conflicted with information contained in the fund's regulatory offering documents or that were untrue or misleading.

During the course of these reviews, issues were raised and addressed in relation to all of the above-noted areas.

Where issues were identified in relation to website disclosure or other sales communications that were misleading or in conflict with the regulatory offering documents of a fund: (i) the sales communication was removed or revised as needed; and/or (ii) the prospectus disclosure was updated to resolve the conflicting information in the sales communication. In certain cases where corrections to an IFM's website were made at the request of staff in the course of these reviews, staff applied the process set out in OSC Staff Notice (Revised) 51-*711 Refilings and*

Corrections of Errors. In particular, staff requested the issuance of a news release by the IFM in relation to such corrections and added the applicable investment fund issuers to the OSC's Refilings and Errors List.

The findings from these reviews helped to inform the guidance published in the Updated ESG Staff Notice on March 7, 2024. Staff will continue to monitor the continuous disclosure, sales communications, and portfolio holdings of ESG-Related Funds in accordance with the guidance in the Updated ESG Staff Notice.

Liquidity Risk Management Review

There has been increasing global regulatory scrutiny of liquidity risk management (**LRM**) practices at open-ended investment funds given the integral part that effective LRM plays in reducing systemic risk in global markets. As a result, staff completed a continuous disclosure review of IFMs of various size to better understand LRM assumptions, and policies and procedures at IFMs for managing their liquidity under stressed conditions, for example, how stress testing is applied and used to address liquidity risks and how LRM tools are used to address such risks. Generally, all IFMs had LRM processes and procedures, however, these practices varied greatly between firms, and IFMs noted that they have been able to adequately manage their fund liquidity during normal and stressed market conditions based on existing tools available within the current regulatory framework. The results of this review will be used to inform any future rule-making initiatives relating to LRM.

Marketing Review of Decumulation Fund

In recent years, several investment funds have been introduced which are designed for investors who are at, or approaching, retirement. These products aim to help investors find ways to live off their savings and have sufficient income in the later years of their life. We performed a review of a sample of marketing materials to ensure that they are careful in their comparison of the decumulation fund to pension plans so that investors are not confused as to the nature of the product. We also ensured that the fund clearly discloses the risks and features of the fund to investors. Based on our review, several enhancements were made to the marketing materials to provide a more neutral and cautious approach by the fund when drawing comparisons to defined benefit pension plans.

Yield Disclosure

On November 28, 2023, IM Division staff published eNews article outlining staff's concerns around high yield figures (including yield figures as high as 15%) being prominently displayed and emphasized over all other aspects of a fund's sales communication and marketing materials. Staff reminded IFMs that even where factually accurate, the inclusion of attention-grabbing high yield information in a sales communication without complying with the performance data requirements outlined in NI 81-102 may be misleading. Accordingly, staff have begun conducting issue-oriented CD reviews focused on sales communications that include attention-grabbing high yield figures and/or distribution rates. During these issue-oriented CD reviews, staff have been asking IFMs to remove misleading statements from their

sales communications, including websites and other marketing materials. Staff have also conducted issue-oriented reviews of prospectuses for funds that include disclosure about targeted yields or targeted distribution rates. During these reviews, staff have been asking IFMs to remove such disclosure where it constitutes hypothetical performance data or performance data for a period of less than one year.

High Interest Savings Account ETFs

On October 31, 2023, OSFI announced that it was raising liquidity requirements for deposit taking institutions HISA ETFs as these are considered unsecured wholesale funding and require a 100% run-off, compared to the previous rate of 40%. Banks that hold deposits for HISA funds will have to hold sufficient high-quality liquid assets, such as government bonds, to support all HISA ETF balances that can be withdrawn within 30 days. With the new stricter rules effective January 31, 2024, yields are expected to drop by 0.5% and HISA ETFs have begun to diversify portfolio investments beyond HISA deposits where permitted in the investment strategies.

Staff commenced a review of HISA ETFs to monitor their activities as part of the OSFI announcement, and to ensure the policy impact is managed.

Fund Risk Rating

Since September 1, 2017, the CSA has mandated the use of the CSA risk classification methodology by IFMs to determine the investment risk level of conventional mutual funds and exchange-traded mutual funds for use in the Fund Facts document and in the ETF Facts document, respectively. Under the CSA methodology, a mutual fund must calculate its standard deviation for the most recent 10 years to determine its investment risk level on the 5-category risk scale in the Fund Facts or ETF Facts, as applicable. The CSA Methodology allows the use of discretion by an IFM to classify a mutual fund at a higher investment risk level than that indicated by the standard deviation calculation if it is reasonable to do so in the circumstances.

In a report to the Joint Regulators Committee, the Ombudsman for Banking Services and Investments (**OBSI**) identified the potential systemic under-representation of risk in some mutual fund risk ratings in recent years. OBSI reported that they observed many funds reducing risk ratings on the basis of the ten-year standard deviation and relatively few IFMs increasing or maintaining risk ratings by using upward discretion. Further to OBSI's report, the OSC undertook a review of mutual fund risk ratings and did not have the same observations as OBSI. OBSI also reported seeing an increasing number of exempt market issuers using standard deviation as the sole approach in risk rating their exempt market funds. However, the CSA risk classification methodology was not developed with exempt products in mind and exempt market issuers are not required to use the CSA methodology. For exempt market products that use leverage or have access to asset classes that are not permitted under the regulatory framework in place for publicly offered mutual funds, the distribution of returns might involve more tail

events and it would not be appropriate to use the CSA methodology to provide risk ratings.

The IM Division has launched a CD review of IFMs' use of discretion in determining mutual fund risk ratings. A sample number of IFMs have been asked about policies and procedures in place to determine the circumstances under which it would be reasonable to increase the risk rating of a mutual fund, and how discretion has been or has not been exercised in recent risk ratings. The CD review is expected to be completed in the next fiscal year.

Emerge Canada Inc.

A failure-to-file cease trade order (**FFCTO**) was issued on April 6, 2023, against the 11 ETFs managed by Emerge Canada Inc. (**Emerge**). The ETFs failed to file their audited financial statements and management report of fund performance by the filing deadline of March 31st. Under the FFCTO, secondary market trading of ETF units was halted, and the ETFs were required to stop creating and redeeming units.

A decision in respect of Emerge's capital deficiency was issued on May 10, 2023. The Director of the Compliance and Registrant Regulation concluded that Emerge was capital deficient, and required that Emerge wind-up its business, permitting Emerge to decide whether to transfer the management of the ETFs to another fund manager or whether the ETFs should be wound-up. Emerge decided to wind-up the ETFs and a monitor was appointed to oversee this process and provided regular reporting to CRR staff on the wind-up. The ETFs were subsequently terminated at the end of December 2023 and are no longer reporting issuers.

Monitoring of Crypto Asset Funds

In addition to the continuous disclosure reviews described above, the IM Division also reviews crypto asset fund activity each quarter. In Ontario, crypto asset funds are offered by six IFMs and the crypto asset figures and activity for Fiscal 2024 as compared to the prior fiscal years are shown below:

Year	# of Public Crypto Asset Funds in Ontario	AUM of Crypto Asset Funds	# Crypto Asset Funds Receipted	# Crypto Asset Funds Terminated or Fund Changed Investment Objective
Fiscal 2024	21	$7.45 billion	0	3
Fiscal 2023	24	$2.85 billion	2	1
Fiscal 2022	23	$6.89 billion	17	0

While there were significant fund inflows in November 2023, the increase in AUM is primarily driven by the higher value of cryptocurrencies which has more than doubled since the previous fiscal year. Net sales totaled $599 million in Fiscal 2024 compared to net redemptions of $866 million in fiscal 2023.

The launch of crypto asset ETFs tied to spot Bitcoin in the U.S. at the beginning of 2024 had a negative impact on the Canadian Bitcoin spot ETFs, resulting in almost $450 million in net redemptions. Of the five Canadian Bitcoin ETFs, four experienced net outflows in January 2024 which ranged from 11% to 25% of their respective NAVs, compared to December 2023 figures. As the price of Bitcoin generally traded higher in January 2024 than in December 2023 the decline in NAV for the Canadian ETFs during this period can be attributed primarily to these outflows. The only Canadian ETF to have net inflows during the period reduced its fees from 0.95% to 0.39% which may have been a partial driver of the inflows.

Standard Continuous Disclosure Reviews

IM Division staff conduct standard continuous disclosure reviews of a sample of filings including annual and interim financial statements, annual reports and annual and interim MRFPs filed on SEDAR+. The objective of these reviews is to determine whether issuers are complying with their disclosure obligations under NI 81-106 and that the filings are made in a timely manner. The samples are randomly selected based on risk areas which are comprised of material changes, change of auditor, new reporting issuers and issuers with a previous continuous disclosure review issue. During Fiscal 2024, 247 funds across 72 IFMs were selected for review and there were no significant findings.

Part B: Regulatory Policy

In addition to ongoing policy initiatives that focused on modernization of the investment funds' regulatory regime and burden reduction, the IM Division's policy initiatives are evolving along with the OSC's new strategic plan which will include right-size regulation for investment funds which is informed by changing needs, risks and practices in Ontario and globally. As always, feedback from stakeholders, including investors, is a critical part of rule making. Unless an exception to the notice requirement applies, the OSC is required to publish proposed rules for public comment which is generally a 90-day period.

This section details the major policy initiatives that were completed or were ongoing during Fiscal 2024:

Access Based Model for Investment Fund Reporting Issuers

On September 27, 2022 the CSA published for comment CSA Notice and Request for Comment - *Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers*. The proposed amendments will modernize existing delivery practices for investment fund continuous disclosure documents by increasing online availability and accessibility, which recognizes increased investor preference for accessing information electronically. This means investors will have access to information in a timely and environmentally friendly manner while also retaining the option to request documents in the form, paper or electronic, to best suit their needs. Investment funds will benefit from reduced long-term costs and regulatory burden without impacting investor protection. The proposed amendments only apply to investment funds that are reporting issuers and will result in amendments to NI 81-106 and NI 81-101 to replace the current delivery requirements for investment fund financial statements and management reports of fund performance with an "access-based model".

Comments on the proposed amendments were due December 26, 2022. We received 23 comments which are still being considered by the CSA, in conjunction with further industry input.

Investment Fund Settlement Cycle

On December 15, 2022, the CSA published CSA Staff Notice 81-335 *Investment Fund Settlement Cycles*. This notice advises that the CSA is not proposing amendments to sections 9.4 and 10.4 of NI 81-102 to mandate a shorter settlement cycle one day after the date of the trade (**T+1**) for mutual funds. This allows investment funds to have flexibility to determine whether a shorter settlement cycle is appropriate for the fund.

Concurrently, the CSA published for comment proposed amendments to National Instrument 24-101 *Institutional Trade Matching and Settlements* (**NI 24-101**). Among other things, these amendments focus on facilitating the shortening of the standard settlement cycle for equity and long-term debt market trades in Canada

from two days after the date of a trade to T+1. Where practicable, mutual funds should settle primary distributions and redemptions of their securities on T+1 voluntarily. In March 2023, in connection with the publication for comment of NI 24-101, we received public comments about the guidance in the CSA Staff Notice 81-335 *Investment Fund Settlement Cycles*. We are in the process of considering those comments.

On October 19, 2023, the CSA published for comment amendments to NI 81-102 that would help mutual funds that voluntarily shorten their trade settlement cycle to T+1. The proposals are intended to complement the anticipated shift to T+1 in Canada by accommodating a range of settlement cycles for mutual funds, including those that make this change. The amendments clarify payment dates for transactions and the timeframe for forced redemption of securities for non-payment. In particular, for funds moving to T+1, the timeframe for forced redemption of securities for non-payment has changed from three days to two days after the pricing date. The 90-day comment period closed on January 17, 2024 and two comment letters were received. The final amendments were published on May 23, 2024 and came into effect on August 31, 2024.

OSC Rule 81-509 Extension to Ontario Instrument 81-508

On August 31, 2023, the OSC published the Notice of Board Approval of OSC Rule 81-509 *Extension to Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers* (**OSC Rule 81-509**). OSC Rule 81-509 extends the blanket relief issued on March 18, 2022, by Ontario Instrument 81-508 *Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers* (**Ontario Instrument 81-508**) by 18 months. Under the Order Execution Only (**OEO**) trailer ban, IFMs are prohibited from paying trailing commissions where the dealer is not required to make a suitability determination in connection with a client's purchase and ongoing ownership of prospectus qualified mutual fund securities, and dealers are prohibited from soliciting or accepting trailing commissions from an IFM, in connection with securities of the mutual fund held in an account of a client of the dealer if the dealer is not required to make a suitability determination, including, among others, OEO dealers. Ontario Instrument 81-508 provides temporary exemptions from the OEO trailer ban for OEO dealers and IFMs to facilitate dealer rebates of trailing commissions to clients holding mutual funds in OEO dealer accounts and process client transfers. Ontario Instrument 81-508 came into effect on June 1, 2022 and ceased to be effective on November 30, 2023. OSC Rule 81-509 extends relief provided in the Ontario Instrument 81-508 to for an additional 18-month period from December 1, 2023 to May 31, 2025. We continue to have discussions with stakeholders to find a long-term solution to address the small number of accounts which may continue to require relief.

Repeal of National Instrument 81-104 *Alternative Mutual Funds*

On August 31, 2023, the CSA, except for the AMF, published Multilateral CSA Notice – Repeal of National Instrument 81-104 *Alternative Mutual Funds*. As a result of prior rule amendments that migrated most operational aspects of National

Instrument 81-104 *Alternative Mutual Funds* (**NI 81-104**) to NI 81-102*,* the only remaining operational aspect of NI 81-104 was Part 4, which was focused on proficiency requirements for mutual fund restricted individuals for the distribution of alternative mutual funds (the **Proficiency Requirements**). As the course options prescribed by the Proficiency Requirements pre-dated the introduction of the alternative mutual funds regime and did not address the differences between conventional mutual funds and alternative mutual funds, CSA members issued harmonized blanket orders to provide additional proficiency course options on January 28, 2021. The MFDA, now known as CIRO, later codified these blanket orders with Policy No. 11 *Proficiency Standards for the Sale of Alternative Mutual Funds* (**Policy No. 11**), which took effect on July 21, 2022. As of January 1, 2023, Policy No. 11 is now known as *Interim Mutual Fund Dealer Rule 1000 Proficiency Standards for the Sale of Alternative Mutual Funds* (**Rule 1000**) of CIRO. Given the overlap between Rule 1000 and the Proficiency Requirements, NI 81-104 was no longer necessary. The repeal of NI 81-104 came into force on January 29, 2024 in all CSA jurisdictions except Québec. At this time, the AMF is not proposing to repeal NI 81-104 and will continue to rely on its local blanket order. The AMF will consider repealing NI 81-104 and revoking its local blanket order after mutual fund dealers registered in Québec are transitioned to the equivalent requirements under CIRO rules.

Proposed Modernization of the Prospectus Filing Model for Investment Funds

On January 27, 2022, the CSA published for comment a proposal to modernize the prospectus filing model for investment funds for a 90 day comment period. The proposed amendments will allow investment funds in continuous distribution to file a new prospectus every two years instead of on an annual basis as they currently do. The requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus for all investment funds would also be repealed.

The Fund Facts and ETF Facts will continue to be filed annually and will trigger an activity fee under OSC Rule 13-502 *Fees.* The fee trigger for ETF Facts replaces that of the long form prospectus, while the Fund Facts activity fee will replace the activity fee for the simplified prospectus. In Ontario, the fee trigger change will also harmonize the fees between conventional mutual funds and ETFs. However, certain jurisdictions will maintain the prospectus as the fee trigger in certain scenarios.

This policy project is ongoing and is expected to be finalized in the next fiscal period with the publication of final rule amendments and SEDAR+ changes to support the implementation of these amendments.

Modernization of Continuous Disclosure Documents

The CSA is currently reviewing investment fund continuous disclosure requirements for opportunities to modernize key elements of the regime, such that they are more effective for investors to review and less burdensome for investment funds to produce. A significant focus area is the MRFP. The CSA contracted with a

behavioural insight consulting firm to incorporate best practices for investor comprehension of financial disclosures into a proposed redesign of the MRFP, a key investor communication document.

Other areas of focus for the CSA are simplifying conflict of interest reporting requirements, and simplifying certain financial statement disclosure elements that are not required under International Financial Reporting Standards. The Project Working Group is currently preparing proposed amendments and proposed changes for publication.

Review of Principal Distributor Practices

The CSA is reviewing the practices of mutual funds that have principal distributor relationships with registrants to distribute their securities. The CSA's review included surveying IFMs and principal distributors about the scope of their arrangements. The findings of the review will provide a better understanding of mutual fund sales practices and distribution structures. The CSA will assess whether regulatory amendments to National Instrument 81-105 *Mutual Fund Sales Practices* or other instruments are needed in light of the CSA's recent work in developing its client focused reforms.

Review of Use of Chargeback Model

On June 1, 2023, the CSA announced the launch of a review of the use of chargebacks in the mutual fund industry due to concerns about potential conflicts of interest associated with this practice. Chargebacks involve a compensation practice where a dealer or dealing representative is paid upfront commissions and/or fees when their client purchases securities. Chargebacks occur when investors redeem their securities before a fixed schedule as determined by the dealer firm, and the dealing representative is required to pay back all or part of the upfront commission/fees.

On September 8, 2022, the Canadian Council of Insurance Regulators (**CCIR**) and the Canadian Insurance Services Regulatory Organizations (**CISRO**) released for public consultation a discussion paper on upfront compensation paid for the sale and servicing of segregated funds and individual variable insurance contracts, which identified chargebacks as possible conflicts of interest. On May 15, 2023, the CCIR and CISRO published a news release indicating that there is a risk of customer harm with the use of chargebacks and that they will develop guidance on the controls that need to be in place. While the use of chargebacks is not as common for the distribution of mutual funds relative to the distribution of segregated funds, chargebacks raise the same conflict of interest concerns for mutual fund distribution.

Investment Funds Investing in Crypto Assets

On January 18, 2024, the CSA proposed amendments to NI 81-102 to provide greater regulatory clarity on certain key operational matters relating to public investment funds investing in crypto assets. This represents a continuation of the CSA's efforts to enhance the regulatory framework for public crypto asset funds, following the publication of CSA Staff Notice 81-336 *Guidance on Crypto Asset*

Investment Funds that are Reporting Issuers (**SN 81-336**) that was published July 6, 2023.

The proposed amendments tailor requirements for public investment funds investing in crypto assets to better protect investors and reduce risk. Requirements include crypto asset investment restrictions and custodial obligations. The CSA reminds Canadians that investing in crypto assets, even through public investment funds, is higher risk and may not be suitable for most retail investors. Generally speaking, investing in crypto assets is a speculative activity, and the value and liquidity of crypto assets are highly volatile. While regulatory oversight of public investment funds plays an important role in investor protection, these measures cannot eliminate all risks associated with investing in crypto assets.

The proposed amendments are the second phase of a project to implement a Canadian regulatory framework for public investment funds holding crypto assets. In the project's third phase, the CSA will consult publicly on a broader framework.

The 90-day comment period ended April 17, 2024.

Review of ETFs

In August 2023, the CSA commenced a review of ETFs. The review assesses whether the current regulations applicable to ETFs remain appropriate, focusing on the unique features of ETFs, i.e., secondary market trading, creation and redemption of ETF units by authorized dealers, and the arbitrage mechanism that acts to keep the market price of an ETF close to the underlying value of its portfolio. The review: (a) analyzes the ETF market, including assessing secondary market activity and factors that may affect their liquidity and trading; and (b) considers whether the Good Practices Relating to the Implementation of the IOSCO Principles for Exchange Traded Funds published by IOSCO in 2023 are appropriate for the Canadian market. We expect to complete our review by Fall 2024. This research will be used to inform our analysis of potential gaps and enhancements to the regulatory regime for ETFs. We expect to publish a consultation paper in 2025 to consult stakeholders on potential issues and provide them with the opportunity to comment on our review and any preliminary policy proposals before rule changes are proposed.

Part C: Emerging Issues and Initiatives

There were several initiatives ongoing during the year which will affect investment funds on a go forward basis, as described below.

Transition to SEDAR+

SEDAR+ went live on July 25, 2023. The CSA adopted National Instrument 13-103 *System for Electronic Data Analysis and Retrieval* + which requires that filers transmit electronically through SEDAR+ each document required or permitted to be filed with or delivered to a securities regulatory authority under securities legislation. Accordingly, SEDAR+ will be used by all market participants to file, disclose and search for public issuer information in Canada's capital markets.

SEDAR+ brings changes for IFMs who are now required to have a profile in SEDAR+, against which investment fund documents are filed. Each investment fund also has its own independent profile on SEDAR+. The process is ongoing as we continue to make enhancements to SEDAR+ and we would like to thank reporting issuers and other users of SEDAR+ for their patience during this transition period.

Additional Information:

SEDAR+ Landing Page: https://www.sedarplus.ca/landingpage/

FAQs about continuous disclosure filings: https://www.sedarplus.ca/onlinehelp/filings/continuous-disclosure-filings/

Cessation of Canadian Dollar Offered Rate

The publication of the Canadian Dollar Offered Rate (**CDOR**) ceased following a final publication on June 28, 2024. The CSA has been encouraging market participants to prepare for the cessation of CDOR and published CSA Staff Notice 25-309 *Matters Relating to the Cessation of CDOR and Expected Cessation of Bankers' Acceptances* on February 28, 2023 to assist with transition issues and encourage market participants, including money market funds, to prepare for the changes that the cessation of CDOR will cause, specifically that the lending model responsible for creating the short-term promissory notes known as Bankers' Acceptances (**BAs**) is discontinued.

Investors in short-term money market assets typically invested in BAs due to their relatively attractive yield over other short-term assets, while still being liquid and well-rated. They were the second largest money market instrument after Government of Canada treasury bills and accounted for most of the product availability in the one-month maturity bucket[6].

[6] Source – CARR's review of CDOR: Analysis and Recommendations (white paper) dated December 16, 2021.

The importance of BAs as a short-term money market asset was echoed in the white paper published on January 16, 2023, by the Canadian Fixed Income Forum (**CFIF**)[7], a senior-level industry committee established by the Bank of Canada. CFIF is of the view that no single instrument will emerge to replace BAs in the short-term debt market. Rather, CFIF believes that a basket of alternatives is needed to fill the significant gap in the short-term money market space in Canada created by the discontinuation of BAs.

In May 2024, the Government of Canada introduced a 1-month treasury bill as a new tenor for the domestic debt program to support the Canadian money market's transition from BAs following the cessation of CDOR in June 2024. This is considered a temporary funding tool to support the Canadian money market during the transition.

Also, the Canadian Derivatives Clearing Corporation launched the Secured General Collateral (**SGC**) program on May 17, 2024. The program is intended to offer an investment alternative to BAs in light of the cessation of CDOR and the related cessation of the issuance of BAs. SGC Notes are short-term debt instruments secured by a basket of securities which meet eligibility criteria, concentration limits and haircut rules. The SGC Notes are sold pursuant to an offering memorandum and will only be offered to persons (other than individuals) that are both:

- accredited investors pursuant to the prospectus exemption for "accredited investors" in section 2.3 of National Instrument 45-106 *Prospectus Exemptions* and subsection 73.3(2) of the *Securities Act* (Ontario), and
- "permitted clients" under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

We have been in discussions with stakeholders to support the transition process.

Investment Fund Survey

The Investment Fund Survey (**IFS**) was initially launched on April 26, 2021, to seek key information about investment funds with at least $10 million in net assets managed by IFMs registered in Ontario. The objective of the IFS is to collect comprehensive fund-level data that will enable us to generate new insights into the Canadian investment fund industry. The data gathered is also shared, at a consolidated level, with both domestic and international regulatory partners.

During Fiscal 2023, the OSC initially published survey results from previous IFSs which collected data for the years ended 2020, 2021 and 2022. In September 2023, the OSC began sharing the historic survey results of the IFS via a Tableau public dashboard which can be found on the OSC Investment Fund Survey data landing page. The IFS results will be updated annually as new data is collected from IFMs. In publishing the data in this manner, our intent is to promote greater transparency in a way that protects IFM confidentiality and greater usability of the

[7] BAs comprised 20% of overall money market, or approximately $80-90 billion as per the CFIF white paper

aggregated data by stakeholders, while delivering on the OSC's mandate of contributing to financial stability.

On January 17, 2024, the OSC launched the 2024 IFS, which like prior years, seeks data points including, but not limited to, type of holdings (by geography and asset class), leverage, ownership, liquidity profiles and asset class exposure of investment funds. The IFS applies to all IFMs, regardless of fund size. The deadline to submit this information was April 30, 2024, and the OSC received data on approximately 5,700 prospectus-qualified and exempt investment funds managed by more than 400 IFMs as part of this exercise For the first time, the January 2024 version was launched on the OSC's Electronic Filing Portal (**OSC1**), which now supports authentication with sign-in functionality for market participants. Going forward, IFMs registered in Ontario will submit their annual IFS through OSC1, rather than using Microsoft Forms and email as done in prior years.

Staff is consistently looking to streamline the IFS with other regulatory filings, such as the Risk Assessment Questionnaire, to reduce regulatory burden while maintaining comprehensive oversight of the Canadian investment fund industry and to perform key regulatory functions within the OSC's mandate.

Accordingly, for the 2024 version of the IFS, staff amended the IFS as follows:

- IFMs registered in Ontario will be required to complete the IFS for all investment funds for which they act as the IFM, including labour-sponsored investment funds and scholarship plans as well as those funds with net assets under $10 million;

- require that IFMs report the following for each investment fund:
    - the annual net performance returns;
    - the management expense ratio;
    - the fund Risk Rating.

Part D: Stakeholder Outreach and Resources

The IM Division supports and encourages regular engagement and communication with our stakeholders to provide education and make improvements on our regulatory processes. The following are key IM Division outreach initiatives for our stakeholders:

Landing Page on OSC Website

The IM Division landing page of the OSC website contains information relevant for investment fund issuers and their respective IFMs. This is a good resource to obtain information on the following areas:

- Types of investment funds
- Prospectus offerings for investment funds in Ontario
- Operating an investment fund in Ontario
- Ongoing disclosure requirements for investment funds in Ontario
- Marketing and sales of investment funds
- eNews publications
- Applying for discretionary relief
- Investment fund survey
- Investment fund survey data
- Refiling and Errors List
- Latest policy developments affecting investment funds
- Latest orders, rulings and decisions involving investment funds

eNews

The eNews is a web-based publication which aims to provide timely information about regulatory news and issues to investment fund and structured product issuers and their advisors in the form of articles published on a timely, as-needed basis. The IM Division eNews articles are posted on a dedicated page on the OSC website, while IM Division email list subscribers also receive each eNews article via an e-mail blast. Registration for email subscription can be done here.

During the fiscal year, we published several eNews articles:

April 14, 2023: ESG-related disclosure for funds that consider ESG to a limited extent

August 31, 2023: Repeal of National Instrument 81-104 *Alternative Mutual Funds*

September 6, 2023: Updates to the Investment Fund Survey for 2024 and launch of IFS Data Dashboard

November 28, 2023: Inclusion of yield or distribution rates in sales communications

Publication of Staff Notices

Previous Years' Summary Reports

The information contained in previous years' branch summary reports include many topics that remain relevant to investment funds. The most recently published ones are attached below:

2022 Report: OSC Staff Notice 81-733 *Summary Report for Investment Fund and Structured Product Issuers*

2023 Report: OSC Staff Notice 81-734 *Summary Report for Investment Fund and Structured Product Issuers*

CSA Crypto Staff Notice

On July 6, 2023, we published CSA Staff Notice 81-336 *Guidance on Crypto Asset Investment Funds that are Reporting Issuers*. The purpose of SN 81-336 is to provide information and guidance to stakeholders concerning public investment funds that invest in crypto assets. It provides a market overview of funds that invest in crypto assets, along with key findings from reviews of these funds conducted by staff. It also outlines staff expectations concerning public crypto asset funds fulfilling their obligations under NI 81-102, in areas such as liquidity, custody, certain yield generating activities such as staking, as well as reminders concerning know-your-client, know-your-product and suitability obligations for dealers acting in this fund space.

CSA Staff Notice 81-334 (Revised) ESG-Related Investment Fund Disclosure

On March 7, 2024 the CSA published CSA Staff Notice 81-334 (Revised) *ESG-Related Investment Fund Disclosure* which provides updated guidance on the disclosure and sales communication practices of investment funds as they relate to ESG matters.

The revised notice does not change the guidance that was published in the 2022 ESG Staff Notice. It addresses matters that were not covered in the original notice and reflects developments and issues that have arisen since. The update also includes guidance addressing different levels of disclosure expectations for funds whose investment objectives do not reference ESG factors but that use ESG strategies. Generally, the guidance sets out different levels of disclosure expectations depending on the extent to which ESG factors are considered in a fund's investment process.

The guidance remains based on existing regulatory requirements and addresses various areas of disclosure, including investment objectives, fund names, investment strategies, risk disclosure, continuous disclosure and sales communications. The guidance also covers the types of investment funds that may market themselves as focusing on ESG or as considering ESG factors as part of their investment process. The revised notice also summarizes the results from the ESG-focused reviews of prospectuses, sales communications, and continuous

disclosure that have been conducted by CSA staff since the 2022 ESG Staff Notice was published.

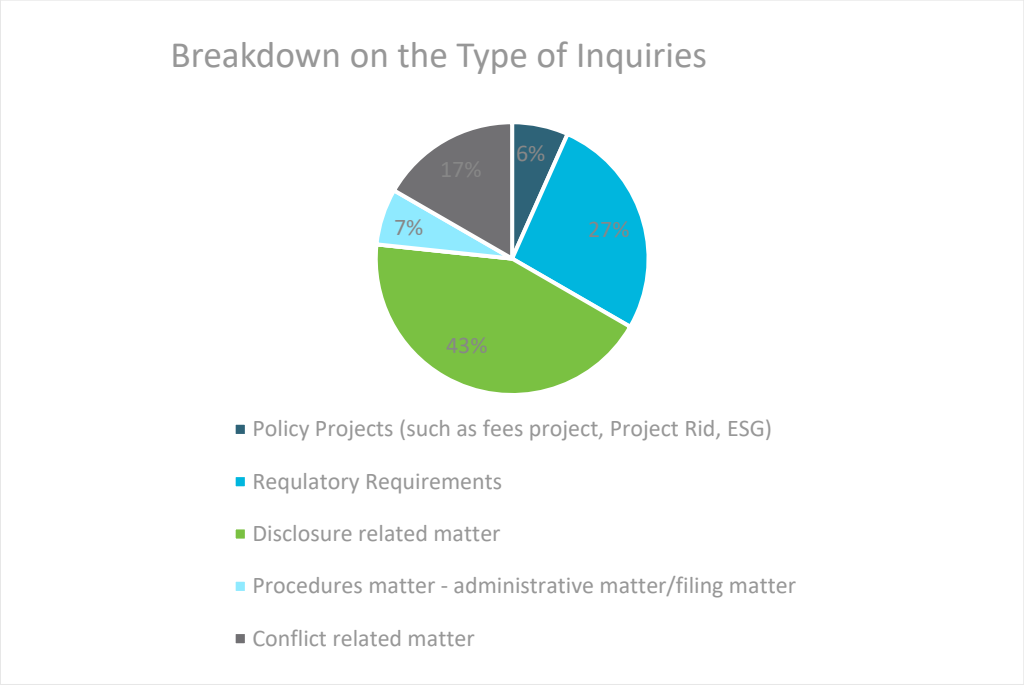
Guidance for Independent Review Committees

On March 21, 2024, the CSA published CSA Multilateral Staff Notice 81-337 *Targeted Continuous Disclosure Review and Guidance for Independent Review Committees for Investment Funds* which provides guidance to IFMs and Independent Review Committees (**IRCs**) to enhance and support their roles under National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**). In the previous fiscal year, IM Division staff performed a targeted continuous disclosure review focused on NI 81-107 and the AMF also conducted a similar review which together, covered investment funds managed by 24 IFMs. The review included conventional mutual funds, ETFs, scholarship plans and alternative funds to reflect a fair representation of fund types and sizes. Staff reviewed fund prospectuses, Annual Information Forms where available, IRC Reports to Securityholders and the website of the IFM or funds as applicable. The review addressed several themes including, the scope of IRC oversight, term limits of IRC members, IRC diversity, inclusion and size, skills and competencies of IRC members and compensation of IRC members.

The review noted that several IRCs have members with terms longer than six years. IRCs are encouraged to strive for ongoing turnover and fresh perspectives on conflicts of interest by limiting IRC terms to a maximum of six years, except in limited circumstances. IFMs are encouraged to take a broad view of what constitutes a 'conflict of interest matter' and to err on the side of caution to refer an actual or perceived conflict of interest to the IRC. Diversity in IRC membership beyond 'skill-set' may lead to better decision making and good governance. These and other findings from the review are outlined in the staff notice.

Dealing with Inquiries and Complaints

Inquiries and complaints related to investment fund products are directed to the IM Division for follow up and resolution.



The majority of the inquiries were on disclosure related matters such as performance ratings and yield in sales communications, portfolio turnover and MER in the MRFP, performance data, NAV and proxy voting. Additional themes that were noted related to reporting requirements under NI 81-106 and inquiries on whether an issuer is an investment fund. Guidance on the latter was provided in the 2023 Report. Conflict related matters include those associated with inter-fund trading and the use of a related broker. Staff did not identify any areas of concern based on the inquiries or the complaints received.

Investment Funds Technical Advisory Committee

The Investment Funds Technical Advisory Committee (**IFTAC**) provides an opportunity for stakeholders to engage with the OSC to further effective regulation in the investment funds and structured products space. The IFTAC advises OSC staff on technical compliance challenges in the investment funds product regulatory regime and highlights opportunities for improving alignment between investor, industry, and regulatory goals.

IFTAC meets four times a year with members participating for two-year terms.

Topics discussed by IFTAC over the past year included:

- Impact of CDOR cessation and transition from bankers' acceptances on investment funds
- Liquidity Risk Management
- ETFs
- Access-Based Model for Investment Fund Reporting Issuers
- Investment Fund Continuous Disclosure Modernization

Staff Contact Information

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Contact Information

Ontario Securities Commission

Inquiries and Contact Centre

1-877-785-1555 (Toll-free)

416-593-8314 (Local)

inquiries@osc.gov.on.ca

The OSC Inquiries & Contact Centre operates from 8:30 a.m. to 5:00 p.m. Eastern Time, Monday to Friday, and can also be reached on the Contact Us page on the OSC website.

You may also refer to the OSC Phone Directory on the OSC website to contact staff members from other branches and offices at the OSC.

If you have questions or comments about this Report, please contact:

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B.1.3 Notice of Correction – Miata Holdings Inc.

The Order for *Miata Holdings Inc.* published October 31, 2024 in (2024), 47 OSCB 8430 contained a typographical error. The lettered list following the second paragraph should be numbered as follows:

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

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

The corrected version is published in Chapter B.2 of this Bulletin.

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B.2
Orders

B.2.1 Sleep Country Canada 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 25, 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
SLEEP COUNTRY CANADA 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):

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

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

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.

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0574

B.2.2 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):

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

b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia 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.2.3 Miata Holdings Inc. – 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
MIATA HOLDINGS INC.
(the Applicant)

ORDER
(Subsection 1(6) of the OBCA)

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

AND UPON the Applicant representing to the Commission that:

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

2. the Applicant's registered and head office is located at 20 Holly Street, Toronto, Ontario, M4S 3B1, Canada;

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

4. On October 29, 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 the simplified procedure set out in section 19 of 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 on this 4th day of November, 2024.

"Leslie Milroy"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0613

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B.3
Reasons and Decisions

B.3.1 1832 Asset Management L.P.

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from NI 41-101 to funds offering exchange-traded and conventional mutual fund series under a single simplified prospectus – subject to conditions – Technical relief granted from Parts 9, 10 and 14 of NI 81-102 to permit each fund to treat its exchange-traded and conventional mutual fund series as if each such series was a separate fund for the purpose of compliance with Parts 9, 10 and 14 of NI 81-102 – subject to conditions.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 3.1(2) and 19.1.
National Instrument 81-102 Investment Funds, Parts 9, 10, and 14 and s. 19.1.

October 1, 2024

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

AND

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

AND

IN THE MATTER OF
1832 ASSET MANAGEMENT L.P.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of Dynamic Global Fixed Income Fund, Dynamic Short Term Credit PLUS Fund and Dynamic Credit Opportunities Fund (the **Existing Funds**) and such other mutual funds as are managed or may be managed by the Filer now or in the future that offer ETF Securities (as defined below) and Mutual Fund Securities (as defined below) (collectively, the **Future Funds** and together with the Existing Funds, the **Funds**, and each, a **Fund**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that:

a) exempts the Filer and each Fund from the requirement to prepare and file a long form prospectus for the ETF Securities in the form prescribed by Form 41-101F2 *Information Required in an Investment Fund Prospectus* (the **Form 41-101F2**) provided that the Filer files (i) a prospectus for the ETF Securities in accordance with the provisions of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**), other than the requirements pertaining to the filing of a fund facts document; and (ii) an ETF Facts (as defined below) in accordance with Part 3B of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) (the **ETF Prospectus Form Relief**); and

b) to permit the Filer and each Fund to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds in connection with their compliance with the provisions (the **Sales and Redemptions Requirements**) of Parts 9, 10 and 14 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Sales and Redemptions Relief**),

(collectively, the ETF Prospectus Form Relief and the Sales and Redemptions Relief, the **Exemption Sought**).

Under National Policy 11-203 *Process for Exemptive Relief Applications* in Multiple Jurisdictions (for a passport application):

a) the Ontario Securities Commission is the principal regulator; and

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

Interpretation

Capitalized terms used herein have the meaning ascribed thereto below (or in National Instrument 14-101 *Definitions*, MI 11-102 and NI 81-102, as applicable) unless otherwise defined in this Decision.

Affiliate Dealer means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that

participates in the re-sale of Creation Units (as defined below) from time to time.

Authorized Dealer means a registered dealer that has entered, or intends to enter, into an agreement with the manager of a Fund authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more Funds on a continuous basis from time to time.

Basket of Securities means, in relation to the ETF Securities of a Fund, a group of some or all of the constituent securities of the Fund, a group of securities or assets representing the constituents of the Fund, or a group of securities selected by the portfolio manager or sub-advisor, as applicable, from time to time.

CBOE Canada means CBOE Canada Inc.

Designated Broker means a registered dealer that has entered, or intends to enter, into an agreement with the Filer or an affiliate of the Filer on behalf of a Fund to perform certain duties in relation to the ETF Securities of the Fund, including the posting of a liquid two-way market for the trading of the Fund's ETF Securities on the TSX, CBOE Canada or another Marketplace.

ETF Facts means an ETF facts document prepared, filed and delivered in accordance with Part 3B of NI 41-101.

ETF Securities means securities of an exchange-traded series of a Fund that are listed or will be listed on the TSX, CBOE Canada or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

Form 81-101F1 means Form 81-101F1 *Contents of Simplified Prospectus*.

Form 81-101F3 means Form 81-101F3 *Contents of Fund Facts Document*.

Fund Facts means a prescribed summary disclosure document required pursuant to NI 81-101 in the form prescribed by Form 81-101F3, in respect of one or more series of Mutual Fund Securities being distributed under a simplified prospectus.

Marketplace means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* that is located in Canada.

Mutual Fund Securities means securities of a non-exchange-traded series of a Fund that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

Prescribed Number of ETF Securities means, in relation to a Fund, the number of ETF Securities of the Fund determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Prospectus Delivery Requirement means the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement of the Legislation applies, send or deliver to the purchaser or its agent, unless the dealer has previously done so, the latest prospectus and any amendment either before entering into an agreement of purchase and sale resulting from the order or subscription, or not later than midnight on the second business day after entering into that agreement.

Securityholders means beneficial or registered holders of ETF Securities or Mutual Fund Securities of a Fund, as applicable.

TSX means the Toronto Stock Exchange.

Representations

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

The Filer

1. The Filer is a limited partnership formed and organized under the laws of the province of Ontario. The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly owned by the Bank of Nova Scotia, with its head office located in Toronto, Ontario.

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

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

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

The Funds

5. Each Fund is, or will be, a mutual fund established under the laws of a Jurisdiction. Each Fund is, or will be, a reporting issuer in the Jurisdictions in which its securities are distributed. Each Fund that relies on the Exemption Sought will offer ETF Securities and Mutual Fund Securities.

6. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.

7. The Existing Funds currently offer multiple series of Mutual Fund Securities under a simplified

prospectus dated September 7, 2023, in respect of Dynamic Credit Opportunities Fund, a simplified prospectus dated October 16, 2023, in respect of Dynamic Short Term Credit PLUS Fund and a simplified prospectus dated December 6, 2023, in respect of Dynamic Global Fixed Income Fund (the **Simplified Prospectuses**).

8. In or around October 2024, amendments to the Simplified Prospectuses in respect of the ETF Securities of the Existing Funds, as well as ETF Facts for each series of ETF Securities of the Existing Funds, will be filed with the securities regulatory authorities in each of the Jurisdictions.

9. The Filer will apply to list any ETF Securities of the Funds on the TSX, CBOE Canada or another Marketplace. The Filer will not file a final or amended simplified prospectus for any of the Funds in respect of the ETF Securities until the TSX, CBOE Canada or other applicable Marketplace has conditionally approved the listing of the ETF Securities.

10. The Existing Funds are not in default of securities legislation in any of the Jurisdictions.

11. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through appropriately registered dealers.

12. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a simplified prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the TSX, CBOE Canada or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the TSX, CBOE Canada or another Marketplace.

13. In addition to subscribing for and reselling their Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market.

14. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of ETF Securities to be issued, a Basket of Securities and/or cash in an amount sufficient so that the value of the Basket of Securities and/or cash delivered is equal to the net asset value of the Prescribed Number of ETF Securities next determined following the receipt of the subscription order. In the discretion of the Filer, the Funds may also accept subscriptions for Creation Units in cash only and in securities other than Baskets of Securities and/or cash, in each case in an amount equal to the net asset value of the Prescribed Number of ETF Securities next determined following the receipt of the subscription order.

15. The Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with the issuance of Creation Units to them. On the issuance of Creation Units, the Filer or the Fund may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units.

16. Each Fund will appoint a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for ETF Securities for the purpose of maintaining liquidity for the ETF Securities.

17. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities generally will not be able to be purchased directly from a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the TSX, CBOE Canada or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.

18. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the TSX, CBOE Canada or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash, securities other than Baskets of Securities and/or cash or cash only, in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the net asset value of the ETF Securities on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security.

ETF Prospectus Form Relief

19. The Filer believes it is more efficient and expedient to include all series of Mutual Fund Securities and ETF Securities of each Fund in one prospectus form instead of two different prospectus forms and that this presentation will assist in providing full, true and plain disclosure of all material facts relating to the securities of the Funds by permitting

disclosure relating to all series of securities to be included in one prospectus.

20. The Filer will file ETF Facts in the form prescribed by Form 41-101F4 *Information Required in an ETF Facts Document* in respect of ETF Securities of the Funds and will file Fund Facts in the form prescribed by Form 81-101F3 in respect of Mutual Fund Securities of the Funds.

21. The Filer will ensure that any additional disclosure included in the simplified prospectus of the Funds relating to the ETF Securities will not interfere with an investor's ability to differentiate between the Mutual Fund Securities and the ETF Securities and their respective attributes.

22. The Funds will comply with the provisions of NI 81-101 when filing any prospectus or amendment thereto.

23. The Funds will comply with Part 3B of NI 41-101 when preparing, filing and delivering ETF Facts for the ETF Securities of the Funds.

Sales and Redemptions Relief

24. Parts 9, 10 and 14 of NI 81-102 do not contemplate both Mutual Fund Securities and ETF Securities being offered in a single fund structure. Accordingly, without the Sales and Redemptions Relief, the Filer and the Funds would not be able to technically comply with those parts of NI 81-102.

25. The Sales and Redemptions Relief will permit the Filer and the Funds to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds in connection with their compliance with Parts 9, 10 and 14 of NI 81-102. The Exemption Sought will enable each of the ETF Securities and Mutual Fund Securities to comply with Parts 9, 10 and 14 of NI 81-102, as appropriate, for the type of security being offered.

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.

1. The decision of the principal regulator is that the ETF Prospectus Form Relief is granted, provided that the Filer will be in compliance with the following conditions:

    a) the Filer files a simplified prospectus in respect of the ETF Securities in accordance with the requirements of NI 81-101 and Form 81-101F1, other than the requirements pertaining to the filing of a fund facts document;

    b) the Filer includes disclosure required pursuant to Form 41-101F2 (that is not contemplated by Form 81-101F1) in respect of the ETF Securities in each Fund's simplified prospectus; and

    c) the Filer includes disclosure regarding this decision under the heading "Additional Information" in each Fund's simplified prospectus.

2. The decision of the principal regulator is that the Sales and Redemptions Relief is granted, provided that the Filer and each Fund will be in compliance with the following conditions:

    a) with respect to its Mutual Fund Securities, each Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and

    b) with respect to its ETF Securities, each Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

The decision of the principal regulator is that the Exemption Sought is granted.

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

Application File #: 2024/0542
SEDAR+ File #: 6183972

B.3.2 RP Investment Advisors LP and The Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted revoking and replacing existing short selling, cash cover and custodial relief to extend existing relief beyond a "government security" as defined in NI 81-102 to also include an evidence of indebtedness issued, or fully and unconditionally guaranteed as to principal and interest, by any of the federal government of the United Kingdom (U.K.) or the federal government of Germany, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.6.1(1)(c)(ii), 2.6.1(1)(c)(v), 2.6.1(2), 2.6.2, 6.1(1) and 19.1.

October 29, 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
RP INVESTMENT ADVISORS LP
(the Filer)

AND

THE FUNDS
(as defined below)

DECISION

1. Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

A. revoking the Current Decisions (as defined below) (the **Revocation**); and

B. replacing the Current Decisions with a decision pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) exempting the following Funds from the following provisions of NI 81-102 as part of facilitating the interest rate risk hedging strategy further described in paragraphs 3(xi) and (xii) below (the **Interest Rate Risk Hedging Strategy**):

   (i) the Conventional Mutual Funds (as defined below) from paragraph 2.6.1(1)(c)(ii) of NI 81-102 to permit these Funds to increase the limit on aggregate short sale exposure to Government Securities (as defined below) of a single issuer from 5% to 20% of the NAV (as defined below) of the applicable Fund (the **Conventional Mutual Fund Short Sale Single Issuer Relief**);

   (ii) the Alternative Mutual Funds (as defined below) from (i) subparagraph 2.6.1(1)(c)(v) of NI 81-102, which restricts an Alternative Mutual Fund from selling a security short if, at the time, the aggregate market value of the securities sold short by the Alternative Mutual Fund exceeds 50% of the Alternative Mutual Fund's NAV; and (ii) section 2.6.2 of NI 81-102, which states that an Alternative Mutual Fund may not borrow cash or sell securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the Alternative Mutual Fund would exceed 50% of the Fund's NAV, in order to permit each Alternative Mutual Fund to short sell Government Securities up to a maximum of 300% of its NAV (the **Alternative Mutual Fund Short Sale Relief**);

(iii) the Conventional Mutual Funds from subsection 2.6.1(2) of NI 81-102 which requires a Conventional Mutual Fund that sells securities short to hold cash cover in an amount that, together with portfolio assets deposited with Borrowing Agents (as defined below) as security in connection with short sales of securities by the mutual fund, is at least 150% of the aggregate market value of the securities sold short by the Conventional Mutual Fund on a daily market-to-market basis in relation to short sales of Government Securities by a Conventional Mutual Fund (the **Cash Cover Relief**); and

(iv) each of the Funds from the requirement set out in subsection 6.1(1) of NI 81-102 which provides that, except as provided in sections 6.8, 6.8.1 and 6.9, all portfolio assets of an investment fund must be held under the custodianship of one custodian that satisfies the requirements of section 6.2 in order to permit a Fund to deposit portfolio assets with a Borrowing Agent that is not the Fund's custodian or sub-custodian as security in connection with a short sale of securities, provided that the aggregate market value of the portfolio assets held by the Borrowing Agent after such deposit, excluding the aggregate market value of the proceeds from outstanding short sales of securities held by the Borrowing Agent, does not:

(i) in the case of each Conventional Mutual Fund, exceed 10% of the NAV of the fund at the time of deposit; and

(ii) in the case of each Alternative Mutual Fund, exceed 25% of the NAV of the fund at the time of deposit.

(the **Custodial Relief**).

(collectively, the **Exemptions Sought**).

C. Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

2. Interpretation

Terms defined in MI 11-102, National Instrument 14-101 – *Definitions*, NI 81-102, NI 81-107 and NI 31-103 have the same meaning if used in this decision, unless otherwise defined.

The following terms have the following meanings:

Alternative Mutual Fund means a Fund that is an alternative mutual fund, as defined in NI 81-102;

Borrowing Agents means has the meaning set out in NI 81-102;

Conventional Mutual Fund means a Fund that is mutual fund, as defined in NI 81-102, other than an Alternative Mutual Fund;

Current Decisions means, collectively, (i) *In the Matter of RP Investment Advisors LP* dated December 9, 2019 – (2019), 42 OSCB 9473; and (ii) *In the Matter of RP Investment Advisors LP and The Funds* dated June 6, 2022 **–** (2022), 45 OSCB 6255;

Existing Funds means the RP Strategic Income Plus Fund, a Conventional Mutual Fund and the RP Alternative Global Bond Fund, an Alternative Mutual Fund, each of which is a reporting issuer subject to NI 81-102 and for which the Filer currently acts as investment fund manager and portfolio adviser;

Funds means the Existing Funds and any Future Funds;

Future Funds means each future mutual fund that is a reporting issuer subject to NI 81-102 established by the Filer for which the Filer acts as investment fund manager and may act as portfolio manager and that may rely on the Exemptions Sought;

Government Security includes and is limited to: (a) a "government security" as defined in NI 81-102; and (b) an evidence of indebtedness issued, or fully and unconditionally guaranteed as to principal and interest, by any of the federal government of the United Kingdom (U.K.) or the federal government of Germany;

NAV means net asset value; and

Prime Broker means an entity that acts as a prime broker to a Fund.

3. Representations

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

The Filer

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

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

(iii) The Filer is the investment fund manager and portfolio manager of the Existing Funds and the Filer will be the investment fund manager of the Future Funds.

(iv) The Filer is not in default of securities legislation in any of the Jurisdictions.

The Funds

(v) Each of the Existing Funds is an open-ended mutual fund trust established under the laws of the Province of Ontario and is a reporting issuer in each of the Jurisdictions. The RP Strategic Income Plus Fund is a Conventional Mutual Fund subject to NI 81-102 and the RP Alternative Global Bond Fund is an Alternative Mutual Fund subject to NI 81-102. The Future Funds will be Conventional Mutual Funds or Alternative Mutual Funds that are reporting issuers in one or more Jurisdictions and will be subject to NI 81-102. Each of the Funds distributes, or will distribute, its securities to the public pursuant to disclosure documents prepared and filed in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure.*

(vi) The investment objective of the RP Strategic Income Plus Fund is to generate stable, risk-adjusted absolute returns consisting of dividend, interest income and capital gains by investing primarily in investment grade corporate debt and debt-like securities, with a focus on capital preservation.

(vii) The investment objective of the RP Alternative Global Bond Fund is to generate attractive risk-adjusted returns with an emphasis on capital preservation by investing primarily in investment grade debt and debt-like securities of corporations and financial institutions.

(viii) The investment objective of the Future Funds will generally be to seek to produce risk-adjusted returns through investments in debt and debt-like securities.

(ix) Neither of the Existing Funds is in default of the securities legislation of any of the Jurisdictions.

The Interest Rate Risk Hedging Strategy

(x) Each of the Funds actively invests, or will actively invest, in fixed income instruments of issuers located in Canada, the U.S., the U.K. and Europe and seeks, or will seek, to hedge its interest rate exposure by using a short-selling hedging strategy. Since the value of fixed income securities is influenced by interest rate changes (i.e., bond prices usually decrease as interest rates increase, while bond prices usually increase as interest rates decrease), interest rate volatility can adversely affect a Fund's performance and impede its ability to achieve stable risk-adjusted returns in a manner that is consistent with its investment objectives.

(xi) In order to hedge against the inherent interest rate risk associated with the corporate fixed income securities invested in by the Funds, the Filer enters into, or will enter into, short selling arrangements relating to Government Securities at the same time that the Fund invests, or will invest, in long positions in the corporate fixed income securities as further described in paragraph (xii) below (the **Interest Rate Risk Hedging Strategy**). Further, the most effective interest rate hedge occurs where the Government Securities selected by the Filer for hedging purposes most closely correlate to the underlying interest rate characteristics of the particular corporate fixed income securities held by a Fund and, as a result, the Filer cannot remain within the 5% single issuer restriction for Conventional Mutual Funds by using the government securities currently permitted under NI 81-102 and still achieve an optimal interest rate hedge.

The Revocation and Exemptions Sought

(xii) Collectively, the Current Decisions granted the same relief as the Exemptions Sought except that the relief granted under the Current Decisions was limited to "government securities" (as defined by NI 81-102). The Filer is of the view that the Funds would benefit from amending the relief granted in the Current Decisions by expanding the definition of government

securities for the purposes of the relief, beyond the definition in NI 81-102 (namely, "an evidence of indebtedness issued, or fully and unconditionally guaranteed as to principal and interest, by any of the government of Canada, the government of a jurisdiction or the government of the United States of America") to include government securities issued by, or fully and unconditionally guaranteed as to principal and interest by, the federal governments of the U.K. and Germany for the following reasons:

(a) The Filer believes that the investment objectives and hedging strategies of the Funds represent an important investment diversification tool for Canadian investors;

(b) In order to provide investors with a high degree of diversification, and in line with their respective investment objectives the Funds invest, or will invest, in a variety of fixed income securities, including corporate debt securities of Canadian, U.S., U.K. and European issuers in their local markets and currencies;

(c) The Filer seeks greater flexibility to implement its interest rate risk hedging strategy on behalf of the Funds by short selling a wider variety of government securities than is permitted under the Current Decisions. The Filer notes that an increased ability to short sell securities issued by, or fully and unconditionally guaranteed as to principal and interest by, the U.K. and/or German governments in particular will enable the Funds to implement and benefit from more effective interest rate risk hedging strategies;

(d) If a Conventional Mutual Fund utilizes its ability to enter into short sale transactions up to 20% of the Fund's NAV as permitted under paragraph 2.6.1(c)(iii) of NI 81-102, it would be required to hold on behalf of the Conventional Mutual Fund cash cover equal to 150% of the aggregate market value of such securities, effectively meaning that up to an additional 30% of the Fund's NAV would need to be held in assets which qualify as cash cover and could not be utilized by the Filer in making investments on behalf of the Fund in furtherance of its investment objectives. The purpose of the cash cover requirements for mutual funds in subsection 2.6.1(2) of NI 81-102 is to mitigate the risk of a mutual fund having to rapidly liquidate large portions of its investment portfolio (at potentially lower prices) in the event that the trading price of the security sold short increases, thereby requiring the mutual fund to repurchase the securities at a higher price in order to satisfy its obligations under the short sale transaction to deliver the securities to the borrowing agent. The Filer believes that exempting the Conventional Mutual Funds from the cash cover requirements in subsection 2.6.1(2) of NI 81-102 in relation to Government Securities would further enhance the ability of the Funds to deploy their assets to: (i) further mitigate risk to the portfolio as a result of greater flexibility to make strategic investments, increase diversification and engage in portfolio rebalancing; and (ii) maximize returns to security holders without materially increasing the risk to the Funds relating to the ability to settle such short sale transactions;

(e) Each of the U.K. and Germany is a G7 member alongside Canada and the U.S. and the debt securities of each of these countries remains highly rated by independent credit rating agencies. Currently, the government debt of all four of these countries is rated AA or higher by Standard & Poor's, with similarly high ratings from other major ratings agencies;

(f) German government securities are highly liquid and stable securities that, in the Filer's experience, can effectively be utilized as part of the short selling interest rate risk hedging strategies utilized by the Funds in relation to Euro denominated fixed income securities issued by corporate entities not just within Germany but also the broader European Union;

(g) The markets for securities issued by the governments of the U.K. and Germany are highly developed and can provide superior liquidity and risk mitigation opportunities compared to the use of Canadian and U.S. government securities when the goal is to minimize the risks associated with investments in U.K. and European fixed income securities;

(h) Unlike the short selling of equity securities, the total possible loss when short selling government issued securities is quantifiable at time of trade. The total exposure to loss on the short sale of a government security is the sum of all future coupon payments on the security, plus the difference between the trade price and par value of the security. As a result, the Funds are not (or will not be) exposed to any greater risk of significant losses by engaging in the short selling of government securities of the U.K. or Germany;

(i) The Filer has experience managing the strategies described herein in the Existing Funds as well as in privately offered investment funds under its management;

(j) While derivatives may be used to manage interest rate risk, the Filer views the use of derivatives in an interest rate risk hedging strategy as more inefficient, complex and potentially riskier than a hedging strategy of managing interest rate risk through the physical short selling of Government Securities which has been demonstrated to be an effective and economically efficient strategy to mitigate the interest rate risk that is inherent in investments in corporate fixed income securities;

(k) The Filer believes that the Funds will not be exposed to any greater risk of significant losses by engaging in the short selling of securities issued by the governments of the U.K. and/or Germany; and

(l) The Filer believes that permitting the Funds to engage increased short selling of securities issued by the governments of the U.K. and/or Germany in accordance with the terms of this decision, which are consistent with the terms of the Current Decisions, will maximize the assets of the Funds which can be deployed in furtherance of the investment objectives of the Funds without increasing the risk to the Funds relating to the settlement of such short sale transactions.

(xiii) in connection with the Current Decisions, the Funds have implemented the following controls when conducting a short sale and will continue to observe same under this decision:

(a) the Fund assumes the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

(b) the Fund receives cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

(c) the Filer monitors (or will monitor) the short positions of the Fund at least as frequently as daily;

(d) the security interest provided by a Fund over any of its assets that is required to enable the Fund to effect a short sale transaction is made in accordance with section 6.8.1 of NI 81-102 and with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

(e) the Fund maintains appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls and proper books and records;

(f) The Filer and the Fund keep proper books and records of short sales and all of its assets are deposited with Borrowing Agents as security; and

(g) Each Alternative Mutual Fund's aggregate exposure to short selling, cash borrowing and specified derivatives transactions used for purposes other than hedging will not exceed 300% of the Alternative Mutual Fund's NAV, in compliance with section 2.9.1 of NI 81-102 (the **Aggregate Exposure Limit**).

(xiv) The Filer wishes to amend the Current Decisions to include the Conventional Mutual Fund Short Sale Single Issuer, the Alternative Mutual Fund Short Sale Relief and the Cash Cover Relief and to maintain the Custodial Relief (further referenced below) by revoking the Current Decisions and replacing them with the relief granted under this decision.

The Custodial Relief

(xv) In connection with, among other things, the short sale of securities that the Funds will or may engage in, each Fund is permitted to grant a security interest in favour of, and deposit pledged portfolio assets with, a Borrowing Agent that is a Prime Broker.

(xvi) If a Conventional Mutual Fund engages as its Prime Broker an entity that is not its custodian or sub-custodian, then it may, under section 6.8.1 of NI 81-102, only deliver to its Prime Broker portfolio assets having a market value, in the aggregate, of not more than 10% of the NAV of the Conventional Mutual Fund at the time of deposit. If an Alternative Mutual Fund engages as its Prime Broker an entity that is not its custodian or sub-custodian, then it may, under section 6.8.1 of NI 81-102, only deliver to its Prime Broker portfolio assets having a market value, in the aggregate, of not more than 25% of the NAV of the Alternative Mutual Fund at the time of deposit

(xvii) A Prime Broker may not wish to act as Borrowing Agent for a Conventional Mutual Fund that wants to sell short securities having an aggregate market value of up to 20% of the Conventional Mutual Fund's NAV if the Prime Broker is only permitted to hold, as security for such transactions, portfolio assets, including the proceeds from the short sale, having an aggregate market value that is not in excess of 10% of the NAV of the Conventional Mutual Fund.

(xviii) The issue is even greater in the context of an Alternative Mutual Fund, as a Prime Broker will not act as Borrowing Agent for an Alternative Mutual Fund that wants to sell short securities having an aggregate market value of up to 50% of the Alternative Mutual Fund's NAV if the Prime Broker is only permitted to hold, as security for such transactions, portfolio assets, including the proceeds from the short sale, having an aggregate market value that is not in excess of 25% of the NAV of the Alternative Mutual Fund.

(xix) The prime brokerage operational and pricing models in the context of short selling are premised on the ability of the Prime Broker to retain, as collateral for the obligations of the applicable Fund, the proceeds from the short sales, whether

such proceeds are cash or are used by the Fund to purchase other portfolio assets. These models are also based on the ability of the Prime Broker to hold additional assets of the Fund as collateral for those obligations.

(xx) Given the collateral requirements that Prime Brokers impose on their customers that engage in the short sale of securities, if the 10% and 25% of NAV limitations set out in section 6.8.1 of NI 81-102 apply, then the Funds will need to retain two, or more, Prime Brokers in order to sell short securities to the extent permitted under section 2.6.1 of NI 81-102. This would result in inefficiencies for the Funds and would increase their costs of operations.

(xxi) The requirement for additional Prime Brokers increases costs for the Fund, which will reduce returns and negatively impact investors.

(xxii) The Filer submits that it would not be prejudicial to the public interest to maintain the Custodial Relief.

4. 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:

A. The Revocation is granted; and

B. The Exemptions Sought are granted provided that:

(a) each short sale will be made consistent with the Fund's investment objectives, Interest Rate Risk Hedging Strategy and other investment strategies;

(b) the Conventional Mutual Fund Short Sale Single Issuer Relief, the Alternative Mutual Fund Short Sale Relief and the Cash Cover Relief will apply (i) only to short sales of Government Securities; and (ii) only as part of the Fund's Interest Rate Risk Hedging Strategy;

(c) In respect of the Conventional Mutual Fund Short Sale Single Issuer Relief and the Cash Cover Relief:

(i) the security interest provided by a Fund over any of its assets that is required to effect a short sale transaction is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

(ii) each short sale made by a Fund will otherwise comply with the mutual fund short sale requirements in section 2.6.1 of NI 81-102;

(iii) the Filer monitors the short positions of the Funds at least as frequently as daily;

(iv) the Funds maintain appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls and proper books and records;

(v) the Filer and the Funds keep proper books and records of short sales and all assets of the Funds deposited with Borrowing Agents as security; and

(vi) the prospectus of the Funds will disclose the material terms and conditions of the Conventional Mutual Fund Short Sale Single Issuer Relief and the Cash Cover Relief including its restricted application to short sales of Government Securities;

(d) In respect of the Alternative Mutual Fund Short Sale Relief:

(i) the only securities which an Alternative Mutual Fund will sell short in an amount that exceeds 50% of the Alternative Mutual Fund's NAV will be Government Securities (as such term is defined above);

(ii) each short sale by an Alternative Mutual Fund will otherwise comply with all of the short sale requirements applicable to alternative mutual funds in sections 2.6.1 and 2.6.2 of NI 81-102;

(iii) an Alternative Mutual Fund's aggregate exposure to short selling, cash borrowing and specified derivatives used for purposes other than hedging will not exceed the Aggregate Exposure Limit; and

(iv) each Alternative Mutual Fund's Prospectus will disclose that the Alternative Mutual Fund is able to short sell "Government Securities" (as defined above) in an amount up to 300% of the Alternative Mutual Fund's NAV, including the material terms of this decision; and

(e) In respect of the Custodial Relief, the Funds otherwise comply with subsections 6.8.1(2) and (3) of NI 81-102.

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

Application File #: 2024/0430
SEDAR+ File #: 6158292

B.3.3 Taiga Motors Corporation and 9526-1624 Québec Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications and National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – application for order that issuer is not a reporting issuer and for full revocation of failure-to-file cease trade order – issuer cease traded due to failure to file interim financial statements, interim management's discussion and analysis and related certifications – issuer has completed reorganization under the Companies' Creditors Arrangement Act – issuer was granted a partial revocation of the failure-to-file cease trade order – issuer has applied for a full revocation of the cease trade order – issuer has applied to cease to be a reporting issuer in each jurisdiction where it is a reporting issuer – full revocation of the failure-to-file cease trade order and cease to be reporting issuer application granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(10)(a)(ii) and 144.
National Policy 11-206 Process for Cease to be a Reporting Issuer Applications.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdiction.

[TRANSLATION]

SEDAR+ Project Nº: 06188497

October 29, 2024

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

AND

IN THE MATTER OF
THE REVOCATION OF CEASE TRADE ORDERS

AND

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

AND

IN THE MATTER OF
TAIGA MOTORS CORPORATION
(the Issuer)

AND

9526-1624 QUÉBEC INC.
(New ParentCo, collectively with the Issuer, the Filers)

DECISION

Background

1. The Issuer is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Autorité des marchés financiers (the **Principal Regulator**) on August 19, 2024.

2. On October 11, 2024, a condition was imposed on New ParentCo in the CTO Partial Revocation Order, as defined below, by the Principal Regulator, which prohibited New ParentCo from conducting any securities transactions except the CCAA Reorganization, as defined below (the **New ParentCo CTO**, collectively with the **FFCTO**, the **CTOs of the Filers**).

3. The Issuer has applied to the Principal Regulator for an order revoking the FFCTO under *Policy Statement 11-207 respecting Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (**Policy Statement 11-207**).

4. New ParentCo has applied to the Principal Regulator for an order revoking the New ParentCo CTO under the securities legislation of the Jurisdictions (the **Legislation**).

5. The Principal Regulator and the Ontario Securities Commission (the **Decision Makers**) also received an application from the Filers for an order under the Legislation to revoke the reporting issuer status of the Filers in all jurisdictions of Canada (the **Cease to be a Reporting Issuer Order**).

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

   a) the Filers have provided notice that subsection 4C.5 of *Regulation 11-102 respecting Passport System,* CQLR, c. V-1.1, r. 1 (**Regulation 11-102**) is intended to be relied upon in all jurisdictions of Canada other than in Québec and Ontario, and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r. 3, in *Regulation 14-501Q on definitions*, CQLR, c. V-1.1, r. 4, Regulation 11-102, Policy Statement 11-207 and *Policy Statement 11-206 Process for Cease to be a Reporting Issuer Applications* have the same meaning if used in this order, unless otherwise defined.

Representations

This decision is based upon the following facts represented by the Filers:

7. The head office of the Filers is located in the Province of Québec.

8. The Filers are reporting issuers in all jurisdictions of Canada.

9. The authorized share capital of the Issuer consists of an unlimited number of Class A Restricted Voting Shares, an unlimited number of Class B Shares, and an unlimited number of common shares (the **Common Shares**) and Proportionate Voting Shares.

10. The Issuer has 31,825,716 issued and outstanding Common Shares and no Class A Restricted Voting Shares, no Class B Shares and no Proportionate Voting Shares outstanding.

11. In addition to the Common Shares, only the following securities were also outstanding, immediately prior to the commencement of the implementation of the CCAA Reorganization (defined hereinafter): (i) warrants to purchase Common Shares (the **Warrants**), (ii) replacement warrants to purchase Common Shares (the **Replacement Warrants**), (iii) options to purchase Common Shares (the **Options**), and (iv) convertible debentures that were convertible into Common Shares (the **Convertible Debentures**).

12. On August 19, 2024, the Common Shares and the Warrants were delisted from the TSX.

13. On August 19, 2024, the Principal Regulator issued the FFCTO in respect of the Issuer following the default of filing its most recent interim unaudited financial statements, its interim management's discussion and analysis with respect thereto and the interim certifications in respect of such filings for the period ended June 30, 2024 (collectively, the **Unfiled Documents**).

14. The FFCTO has been in effect in each jurisdiction of Canada in which a statutory reciprocal order provision applies, subject to the provisions of local securities legislation.

15. The Issuer has not filed continuous disclosure documents required to be filed by applicable Canadian securities legislation since the date of the FFCTO.

The CCAA Proceedings

16. On July 10, 2024, the Issuer and its subsidiaries, Taiga Motors Inc., Taiga Motors America Inc. and CGGZ Finance Corp. (collectively, the Taiga Entities) sought and obtained protection from their creditors under the *Companies' Creditors Arrangement Act* RSC 1985, c C-36 (the **CCAA**), the whole pursuant to the provisions of an order of the Superior Court of Québec (Commercial Division) (the **Court**), as amended, restated and supplemented since July 10, 2024 (the **CCAA Proceedings**).

17. Deloitte Restructuring Inc. was appointed by the Court as the monitor (the **Monitor**) in the CCAA Proceedings. The Monitor has provided, to date, three reports to the Court on the CCAA Proceedings, all of which are available on the website that the Monitor has created for the CCAA proceedings.

18. On July 10, 2024, the Taiga Entities sought and obtained from the Court an order pursuant to the CCAA approving a sale and investment solicitation process (**SISP**) in respect of the Taiga Entities authorizing the solicitation of investment, refinancing or sale offers for some or all of the Taiga Entities' business or assets, the whole in accordance with the SISP.

19. Following the completion of the SISP, Mr. Stewart Wilkinson (the **Purchaser**) was selected as the qualifying bidder by the Issuer with the support and recommendation of the Monitor and, on October 7, 2024, the Purchaser, New ParentCo and the Taiga Entities signed a share purchase agreement (the **Share Purchase Agreement**), which agreement contemplates the acquisition of all of the Common Shares of the Issuer by the Purchaser, subject to the exclusions, terms and conditions set forth therein.

20. Among other things, the Purchaser required that the Share Purchase Agreement shall include a condition precedent to his obligation to proceed with the closing of the transactions contemplated by such agreement that (i) the FFCTO be revoked for the purpose of allowing any trade or distribution required to complete such transaction to proceed, and (ii) the Issuer cease to be a reporting issuer prior to such transactions closing.

21. The Taiga Entities filed an application with the Court to obtain the issuance of an Approval and Vesting Order in the form of a "reverse vesting order" (the **RVO**) approving, among other things, the acquisition by the Purchaser of all of the issued and outstanding shares of the Issuer in a series of steps (the **CCAA Reorganization**) set out in the Share Purchase Agreement, including the granting and issuance by the Court of the RVO.

22. On October 10, 2024, the RVO was granted to the Taiga entities by the Court.

23. The CCAA Reorganization was not made subject to any vote by or approval of either the shareholders or creditors of the Issuer.

The CCAA Reorganization

24. The CCAA Reorganization includes the completion of the following main steps in the order presented hereunder:

    a) all of the Common Shares were exchanged for common shares of New ParentCo (the **New ParentCo Common Shares**), then a wholly-owned subsidiary of the Issuer, such that New ParentCo now holds all of the issued and outstanding Common Shares and holders of the issued and outstanding Common Shares immediately prior thereto hold the equivalent number of New ParentCo Common Shares (the **Share Exchange**). As a result of the Share Exchange, New ParentCo became a reporting issuer in each of the jurisdictions of Canada pursuant to subsection 68(4) of the Act and the corresponding or equivalent statutory provisions of the securities legislation of the other jurisdictions;

    b) simultaneously with the preceding step, all of the shares held by the Issuer in the capital of New ParentCo following its incorporation and all of the Options, the Warrants, the Replacement Warrants and the Convertible Debentures were cancelled for no consideration;

    c) the Taiga Entities transferred certain excluded assets to New ParentCo as set forth in the Share Purchase Agreement in consideration for promissory notes each having a principal amount of $1.00 (the **Promissory Notes**);

    d) the Taiga Entities transferred certain excluded liabilities to New ParentCo as set forth in the Share Purchase Agreement in consideration for the cancellation of the Promissory Notes;

    e) all of the New ParentCo Common Shares issued and outstanding following the Share Exchange were cancelled for no consideration; and

    f) as the final step of the CCAA Reorganization, the Purchaser will acquire all of the issued and outstanding shares of the Issuer from New ParentCo pursuant to the terms of the Share Purchase Agreement.

25. In connection with carrying out the SISP and obtaining the RVO, the Issuer has engaged in certain acts in furtherance of trades in the securities of the Issuer, including its entry into the Share Purchase Agreement (the Acts), which Acts were taken at the direction of, and with the approval of, and under the supervision of, the Court. Accordingly, the Issuer applied for a partial revocation order from the Principal regulator in order to complete the steps of the CCAA Reorganization set out in subparagraphs 24 (a) to (e).

26. On October 11, 2024, the Principal Regulator granted an order partially revoking the FFCTO for the sole purpose of permitting certain trades in securities of the Issuer to complete some of the CCAA Reorganization steps (the **CTO Partial Revocation Order**).

27. The CTO Partial Revocation Order includes a condition to the effect that no trade in respect of the securities of New ParentCo may occur (the **New ParentCo CTO**), other than such trades permitted by the CTO Partial Revocation Order until such time as an order is granted definitively lifting and revoking the New ParentCo CTO. The New ParentCo CTO

took effect in each jurisdiction of Canada that has a statutory reciprocal order provision, subject to the terms of the local securities legislation.

28. On October 17, 2024the steps of the CCAA Reorganization set out in subparagraphs 24 (a) to (e) have been completed.

29. Following the completion of the steps of the CCAA Reorganization set out in subparagraphs 24 (a) to (e):

    g) The issued and outstanding share capital of the Issuer consists solely of Common Shares, all of which are held by a single shareholder, namely the Purchaser.

    h) The authorized share capital of New ParentCo consists solely of New ParentCo Common Shares and no New ParentCo Common Shares are currently issued and outstanding, such that New ParentCo has no shareholders, and New ParentCo has no other issued and outstanding securities.

The Filers

30. The Filers are not OTC reporting issuers under *Regulation 51-105 respecting Issuers Quoted in the U.S. Over-the-Counter Markets*, CQLR, c. V-1.1, r. 24.1.

31. The outstanding securities of the Filers, 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.

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

33. The Filers are applying to cease to be a reporting issuer in all of the jurisdictions of Canada in which they are a reporting issuer.

34. The Filers are not in default of any requirements of the applicable securities legislation of any jurisdiction in Canada or the rules and regulations made pursuant thereto, other than the Issuer pursuant to its obligations to complete and file the Unfiled Documents.

35. The Purchaser or the officers of the Filers currently have no intention to cause the Issuer to seek financing by way of a public offering of its securities in Canada or elsewhere.

36. Information that would have been disclosed in the Unfiled Documents no longer provides meaningful or material information since the Issuer has one shareholder as a result of the completion of the CCAA Reorganization.

37. The Filers acknowledge that, in granting the order sought, the principal regulator is not expressing any opinion or approval as to the terms of the CCAA Reorganization.

Order

The Principal Regulator is satisfied that the order to revoke the CTOs of the Filers 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 CTOs of the Filers are revoked.

The Decision Makers are satisfied that the Cease to be a Reporting Issuer Order meets the test set out in the Legislation for the Decision Makers to make the order.

The decision of the Decision Makers under the Legislation is that the Cease to be a Reporting Issuer Order is granted.

“Marie-Claude Brunet-Ladrie”
Directrice de la surveillance des émetteurs et initiés

OSC File #: 2024/0566
OSC File #: 2024/0567

B.3.4 Brandes Investment Partners & Co.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from paragraphs 2.5(2)(a) and (c) of National Instrument 81-102 Investment Funds to permit investment funds to invest up to 10% of their respective net asset value, in the aggregate, in securities of U.S. investment companies, including ETFs, that are subject to the U.S. Investment Company Act of 1940 – Underlying Funds are not reporting issuers in a Canadian jurisdiction and are not subject to NI 81-102 – Relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a), 2.5(2)(c), and 19.1.

October 31, 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
BRANDES INVESTMENT PARTNERS & CO.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of each Fund (as defined below), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

(a) revoking the Previous Decision (as defined below); and

(b) a decision exempting T. Rowe Price Global Allocation Fund and any other existing and future mutual fund managed by the Filer or an affiliate of the Filer (each a **Fund** and collectively, the **Funds**) that is subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) from the following provisions of NI 81-102 in order to permit each Fund to purchase or hold a security of one or more Underlying Funds, which are not mutual funds subject to NI 81-102 and which are not reporting issuers in a Jurisdiction:

(i) paragraph 2.5(2)(a) to permit each Fund to purchase and/or hold securities of one or more Underlying Funds even though the Underlying Funds are not, or will not be, subject to NI 81-102; and

(ii) paragraph 2.5(2)(c) to permit each Fund to purchase and/or hold securities of one or more Underlying Funds even though the Underlying Funds are not, or will not be, reporting issuers in any Jurisdiction

(collectively, the **Exemption Sought**)

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

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

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

Interpretation

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

Existing Underlying Funds means T. Rowe Price Dynamic Global Bond Fund and T. Rowe Price Multi-Strategy Total Return Fund, each of which is an investment company subject to the Investment Company Act in good standing with the United States Securities and Exchange Commission that is not managed by, or advised by, the Filer or an affiliate of the Filer and is advised by T. Rowe Price.

Future Underlying Funds means any other existing or any future investment company subject to the Investment Company Act in good standing with the United States Securities and Exchange Commission that is not managed by, or advised by, the Filer or an affiliate of the Filer and is advised by T. Rowe Price.

Investment Company Act means the United States *Investment Companies Act of 1940.*

Previous Decision means the decision dated February 23, 2023 granting relief to T. Rowe Price Global Allocation Fund to invest up to 10% of its net asset value in securities of T. Rowe Price Dynamic Global Bond Fund.

T. Rowe Price means T. Rowe Price Associates, Inc. or an affiliate thereof.

T. Rowe Price Canada means T. Rowe Price (Canada), Inc.

Underlying ETFs means any Future Underlying Fund that is, or will be, an exchange-traded fund whose securities (i) are not, or will not be, index participation units and (ii) are, or will be, listed for trading on a recognized exchange in the United States.

Underlying Funds means the Existing Underlying Funds and the Future Underlying Funds (including the Underlying ETFs), and each an **Underlying Fund**.

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 Nova Scotia with its registered head office in Toronto, Ontario. The Filer operates under the retail trade name Bridgehouse Asset Managers.

2. The Filer is registered as: (a) an investment fund manager in Ontario, Québec, and Newfoundland and Labrador; (b) as a portfolio manager in each of the Jurisdictions; (c) as an exempt market dealer in each of the Jurisdictions; and (d) as a commodity trading manager in Ontario.

3. The Filer or an affiliate of the Filer acts or will act as the investment fund manager of a Fund.

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

The Funds

5. Each Fund is, or will be, a “mutual fund” as defined in the *Securities Act* (Ontario).

6. Securities of each Fund are, or will be, qualified for distribution in some or all of the Jurisdictions under a prospectus prepared and filed in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* or National Instrument 41-101 *General Prospectus Requirements*, as applicable.

7. Each Fund is, or will be, a reporting issuer in some or all of the Jurisdictions and is or will be subject to NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

8. The existing Funds are not in default of securities legislation in any Jurisdiction.

9. T. Rowe Price Canada acts as the sub-advisor of T. Rowe Price Global Allocation Fund and acts or will act as the sub-advisor of each other Fund. T. Rowe Price Canada is currently registered as a portfolio manager and exempt market dealer in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador (where it is also registered as an investment fund manager), Nova Scotia, Ontario (where it is also registered as an investment fund manager), Prince Edward Island, Québec (where it is also registered as an investment fund manager) and Saskatchewan.

The Underlying Funds

10. Each Underlying Fund is, or will be, an investment company subject to the Investment Company Act in good standing with the United States Securities and Exchange Commission (the **SEC**).

11. Each Underlying Fund is, or will be, considered to be an "investment fund" and a "mutual fund" within the meaning attributed to those terms in the *Securities Act* (Ontario).

12. Each Underlying Fund offers, or will offer, its securities to the public in the United States pursuant to a prospectus filed with the SEC.

13. The Underlying Funds are, or will be, subject to requirements/ industry standards relating to reporting, fund governance and investment restrictions in the U.S. that are comparable to those in the Canadian regulations that are applicable to conventional mutual funds or alternative mutual funds.

14. The securities of an Underlying ETF do not, or will not, meet the definition of an index participation unit in NI 81-102 because the purpose of the Underlying ETF is not, or will not be, to:

    (a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in that index; or

    (b) invest in a manner that causes the Underlying ETF to replicate the performance of that index.

15. The securities of any Underlying ETF are, or will be, listed on a recognized exchange in the United States and the market for them is, or will be, liquid because it is, or will be, supported by designated brokers. As a result, the Filer expects a Fund to be able to dispose of such securities through market facilities in order to raise cash, including to fund the redemption requests of its securityholders.

The Previous Decision and Exemption Sought

16. The Filer obtained the Previous Decision to permit T. Rowe Price Global Allocation Fund to invest up to 10% of its net asset value, in the aggregate, taken at market value at the time of the purchase, in securities of T. Rowe Price Dynamic Global Bond Fund.

17. The Filer has requested the Exemption Sought in order to permit T. Rowe Price Global Allocation Fund and each other Fund to invest up to 10% of its net asset value, in the aggregate, taken at market value at the time of the purchase, in securities of T. Rowe Price Dynamic Global Bond Fund, T. Rowe Price Multi-Strategy Total Return Fund and/or any other Underlying Fund.

18. T. Rowe Price Global Allocation Fund is based on an existing T. Rowe Price strategy called the "T. Rowe Price Global Allocation" strategy. T. Rowe Price has had experience managing this specific strategy since June 2013 and manages this strategy in a mutual fund format in the United States and a SICAV format in Europe.

19. The T. Rowe Price Global Allocation strategy uses an active asset allocation strategy in conjunction with fundamental research to select individual investments. T. Rowe Price allocates a fund's assets among various asset classes and market sectors based on its assessment of U.S. and global economic and market conditions, interest rate movements, industry and issuer conditions and business cycles, and other relevant factors. Under normal conditions, a fund's portfolio will consist of approximately 60% stocks; 30% bonds, money market securities, and other debt instruments; and 10% alternative investments (each as a percentage of the fund's net assets). The fund may also gain exposure to specific asset classes through the use of certain types of derivatives or by investing in other T. Rowe Price managed investment funds that focus their investments in a given asset class. T. Rowe Price may adjust the fund's portfolio and overall risk profile by making tactical decisions to overweight or underweight particular asset classes or sectors based on its outlook for the global economy and securities markets, as well as by adjusting the fund's overall derivatives exposure and allocations to alternative investments. The fund expects to normally invest approximately half of its equity investments in U.S. stocks and half in international stocks. When deciding upon overall allocations to stocks, T. Rowe Price examines relative values and prospects among growth-and value-oriented stocks, small to large-cap stocks, and stocks of companies involved in activities related to commodities and other real assets, as well as by evaluating economic conditions affecting the U.S. and international developed and emerging markets.

20. In either the U.S. mutual fund format or the SICAV format, T. Rowe Price will invest up to 10% of the relevant fund's assets in T. Rowe Price Dynamic Global Bond Fund (or in the case of the SICAV, the underlying SICAV equivalent to this Underlying Fund) in order to gain exposure to a global fixed income mandate, which requires a large amount of capital to be managed effectively. The Previous Decision was obtained to implement the same approach for T. Rowe Price Global Allocation Fund by investing up to a maximum of 10% of the Fund's total assets in T. Rowe Price Dynamic Global Bond Fund.

21. The T. Rowe Price Global Allocation strategy has shifted its asset mix to include the assets held by T. Rowe Price Multi-Strategy Total Return Fund. Similar to the rationale for the Previous Decision, T. Rowe Price Canada would like to obtain the Exemption Sought to pursue the same strategy for the Canadian fund as it does for the U.S. and SICAV formats in the U.S. and Europe, respectively, which will invest up to 10% of the relevant fund's assets in this Underlying Fund (or in the case of the SICAV, the underlying SICAV equivalent to this Underlying Fund) in order to gain exposure to a multi-strategy mandate, which requires a large amount of capital to be managed effectively.

22. The T. Rowe Price Global Allocation strategy may change in the future, given that it tactically changes asset allocations and sectors, and the most efficient manner to obtain exposure to any new strategy may be by investing in an Underlying Fund. Accordingly, it is desirable for T. Rowe Price to have flexibility to invest in other Underlying Funds in the future.

23. Additionally, if T. Rowe Price becomes the sub-advisor of future Funds managed by the Filer or an affiliate of the Filer, it would like the flexibility to be able to utilize Underlying Funds in those investment strategies for the purposes of obtaining uniform investment exposure for its Canadian funds and efficiency in such fund structures.

24. Each existing Fund is, and each future Fund will be, permitted, in accordance with its investment objectives and investment strategies, to invest in securities of Underlying Funds.

25. An investment by a Fund in securities of one or more Underlying Funds will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund and will be made in accordance with the investment objective of the Fund.

26. In T. Rowe Price Canada's view, there does not exist other investment options for T. Rowe Price Global Allocation Fund that would provide the same or comparable benefits that investing in the Existing Underlying Funds provides while fulfilling the Fund's objective.

27. Additionally, it is expected that in the future, allowing a Fund to obtain exposure to a particular asset class or sector by doing so through one or more Underlying Fund may be the best and most efficient investment option to fulfill the Fund's objective.

28. Absent the Exemption Sought, an investment by a Fund in one or more Underlying Funds would:

    (a) be prohibited by paragraphs 2.5(2)(a) of NI 81-102 because the Underlying Funds are not subject to NI 81-102;

    (b) be prohibited by paragraph 2.5(2)(c) of NI 81-102 because the Underlying Funds are not a reporting issuer in any Jurisdiction; and

    (c) not qualify for the exception in paragraph 2.5(3)(a) of NI 81-102 because the securities of the Underlying Funds are not index participation units.

The Benefits of a Fund Investing in the Underlying Funds

29. The key benefits of a Fund investing in the Underlying Funds are greater choice, improved portfolio diversification and potentially enhanced returns. For example:

    (a) an investment in an Underlying Fund will provide the Fund with access to specialized knowledge, expertise and/or analytical resources of the investment adviser to the Underlying Fund;

    (b) investing through an Underlying Fund provides a potentially better risk profile, diversification and improved liquidity/tradability than direct holdings of asset classes to which the Underlying Funds provides exposure; and

    (c) in the case of the Existing Underlying Funds, the investment strategies of the Underlying Funds offer significantly broader exposure to asset classes, sectors and markets than those available in the existing Canadian market.

30. The Filer submits that having the option to allocate a limited portion of a Fund's assets to one or more Underlying Fund will increase diversification opportunities and may improve the Fund's overall risk/reward profile.

31. An investment in an Underlying Fund by a Fund is an efficient and cost effective alternative to obtaining exposure to securities held by the Underlying Fund rather than purchasing those securities directly in the Fund.

32. An investment in one or more Underlying Funds by a Fund should pose limited investment risk to the Fund because the Underlying Funds are, or will be, subject to the Investment Company Act, subject to any exemption therefrom that may in the future be granted by the applicable securities regulatory authority.

33. An investment in an Underlying Fund by a Fund will otherwise comply with section 2.5 of NI 81-102, including that:

(a) no Underlying Fund will hold more than 10% of its net asset value in securities of another investment fund unless the Underlying Fund (a) is a clone fund, as defined in NI 81-102, or (b) in accordance with NI 81-102, purchases or holds securities (i) of a money market fund, as defined in NI 81-102, or (ii) that are index participation units issued by an investment fund; and

(b) no Fund will pay management or incentive fees which to a reasonable person would duplicate a fee payable by an Underlying Fund for the same service.

Decision

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

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

(a) the investment by a Fund in securities of an Underlying Fund is in accordance with the investment objectives of the Fund;

(b) a Fund does not purchase securities of an Underlying Fund if, immediately after the purchase, more than 10% of the net asset value of such Fund, in aggregate, taken at market value at the time of the purchase, would consist of securities of one or more Underlying Funds or any other underlying fund that is not subject to NI 81-102 and not a reporting issuer in any Jurisdiction;

(c) securities of each Underlying ETF are listed on a recognized exchange in the United States;

(d) the Underlying Fund is, immediately before the purchase by a Fund of securities of the Underlying Fund, an investment company subject to the Investment Company Act in good standing with the SEC; and

(e) the prospectus of each Fund discloses, or will disclose in the next renewal of its prospectus following the date of this decision, in the investment strategy section, the fact that such Fund has obtained the Exemption Sought to permit investments in one or more Underlying Funds on the terms described in this decision.

“Darren McKall”
Manager, Investment Management Division
Ontario Securities Commission

Application File #: 2024/0560
SEDAR+ File #: 6187053

B.3.5 EHP Funds Inc. and EHP Global Multi-Strategy Alternative Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from fund multi-layering restriction in paragraph 2.5(2)(b) of NI 81-102 to permit an investment fund to invest in another investment fund under common management that holds more than 10% of its net assets in securities of other investment funds – Top fund is an exchange-traded alternative mutual fund that seeks to achieve its investment objectives by investing part of its assets in related alternative funds with the same manager – Underlying funds will be related alternative mutual fund that may invest up to 20% related and unrelated funds an efficient and cost-effective alternative to investing directly in the portfolio assets – Relief granted from multi-layering restriction in paragraph 2.5(2)(b) to permit in the underlying funds, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(b) and 19.1.

October 31, 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
EHP FUNDS INC.
(the Filer)

AND

IN THE MATTER OF
EHP GLOBAL MULTI-STRATEGY ALTERNATIVE FUND
(the Top Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the Top Fund for a decision under the securities legislation (**Legislation**) of the Jurisdiction revoking and replacing (the **Revocation and Replacement**) the Current Decision (as defined below), granting an exemption from paragraph 2.5(2)(b) of National Instrument 81-102 - *Investment Funds* (**NI 81-102**) to permit the Top Fund to hold securities of EHP Alpha Strategies Alternative Fund (formerly, EHP Advantage Alternative Fund), EHP Foundation Alternative Fund, and EHP Select Alternative Fund (the **Underlying Funds** and, each, an **Underlying Fund**), each which Underlying Fund in turn will hold more than 10% of its net asset value (**NAV**) in securities of one or more investment funds (the **Third Tier Funds** and, each, a **Third Tier Fund**) (each, a **Three-Tier Structure**) (the **Exemption Sought**). The Third Tier Funds may be comprised of: (i) one or more other mutual funds, each of which is, or will be, subject to NI 81-102 and managed by the Filer or an affiliate thereof (each, an **EHP Third Tier Fund**, and, together with the Top Fund and the Underlying Funds, the **Funds** and, each, a **Fund**); and (ii) one or more other investment funds (the **Other Funds** and, each, an **Other Fund**).

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 each of the other provinces and territories of Canada (together with Ontario, the **Jurisdictions**).

Defined Terms

Unless expressly defined herein, terms in this Application have the respective meanings given to them in NI 81-102, National Instrument 14-101 - *Definitions* or MI 11-102.

Current Decision means *In the Matter of EHP Funds Inc. and In the Matter of EHP Global Multi-Strategy Alternative Fund dated March 14, 2024.*

Representations

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

The Filer

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

2. The Filer is registered as an investment fund manager in Ontario, Québec, and Newfoundland and Labrador and as a portfolio manager in Ontario.

3. The Filer or an affiliate is, or will be, the investment fund manager of the Top Fund, each Underlying Fund, and each EHP Third Tier Fund.

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

The Funds

5. Each Fund is, or will be, an "alternative mutual fund" organized and governed by the laws of a Jurisdiction or the laws of Canada.

6. Each Fund is, or will be, a reporting issuer in one or more Jurisdictions governed by the provisions of NI 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.

7. The securities of the Underlying Funds and the EHP Third Tier Funds may be sold to investors other than the Top Fund and Underlying Funds, respectively.

8. None of the Funds is in default of securities legislation in any of the Jurisdictions.

The Top Fund

9. The investment objective of the Top Fund is to generate superior risk adjusted investment returns over the long-term by utilizing a multi-strategy approach consisting of diversified quantitative and systematic investment strategies.

10. The Top Fund currently seeks to achieve its investment objective by investing in securities of alternative mutual funds managed or advised by the Manager, including the Underlying Funds, which in turn invest in long and short positions in high-yield bonds, investment grade corporate bonds, government bonds, convertible bonds, convertible debentures, preferred shares, options, futures, forward contracts, currencies, volatility instruments, short term debt instruments, distressed debt, cash and cash equivalents, equities, fixed-income exchange-traded funds (ETFs), equity ETFs, special purpose acquisition companies (SPACs), and other alternative mutual funds.

11. The Top Fund wishes to have the ability to purchase securities of the Underlying Funds, each of which will hold more than 10% of its NAV in securities of the Third Tier Funds, as described below.

12. The Top Fund will not sell short securities of any Underlying Fund.

The Underlying Funds

13. The investment objective of EHP Alpha Strategies Alternative Fund is to generate superior risk adjusted investment returns over the long-term by utilizing a multi-strategy approach consisting of diversified quantitative and systematic investment strategies. EHP Alpha Strategies Alternative Fund will use alternative investment strategies, including equity long/short, equity market neutral, and credit long/short, by investing in North American equities, fixed-income ETFs, equity ETFs, and treasury futures derivative contracts as a part of implementing these strategies.

14. The investment objective of EHP Foundation Alternative Fund is to provide a positive total return, regardless of market conditions or general market direction, with low correlation to North American equity markets. EHP Foundation Alternative Fund will use alternative investment strategies, including equity long/short, equity market neutral, and credit long/short, by investing in North American equities, fixed-income ETFs, equity ETFs, and treasury futures derivative contracts as a part of implementing these strategies.

15. The investment objective of EHP Select Alternative Fund is to generate superior risk adjusted investment returns over the long-term by utilizing a multi-strategy approach consisting of diversified quantitative, systematic and discretionary investment strategies. EHP Select Alternative Fund will use alternative investment strategies including equity long/short, equity market neutral and credit long/short, by investing in equities, fixed-income ETFs, equity ETFs, commodity ETFs and futures derivative contracts as a part of implementing these strategies.

16. Each Underlying Fund may invest in securities of Other Funds, including the EHP Third Tier Funds and ETFs, in accordance with its investment objective.

17. EHP Select Alternative Fund currently invests in one or more Other Funds, where, at the time of purchase, such Underlying Fund holds, in aggregate, no more than 10% of its NAV in securities of such Other Funds, which excludes, for greater certainty, index participation units.

18. Each Underlying Fund invests or wishes to invest in one or more EHP Third Tier Funds for tactical purposes, which investments will, when aggregated with securities of Other Funds held by the Underlying Fund (excluding index participation units), immediately after purchase, comprise, in aggregate, up to 30% of the NAV of the Underlying Fund.

19. As a result of market movement, Third Tier Funds may comprise more than 30% of the NAV of an Underlying Fund at any time.

20. No Underlying Fund will sell short securities of a Third Tier Fund, excluding index participation units.

General

21. Subsection 2.5(2)(b) of NI 81-102 prohibits an investment fund from investing in another investment fund if, at the time of purchase, the other investment fund has more than 10% of its net assets invested in securities of other investment funds (the **Multi-Tier Prohibition**).

22. Since an Underlying Fund's investment in securities of the Third Tier Funds may, from time to time, exceed 10% of the NAV of the Underlying Fund, the Multi-Tier Prohibition will prohibit the Top Fund from investing in the Underlying Fund.

23. An investment by the Top Fund in an Underlying Fund would not qualify for the exemptions in paragraph 2.5(4) of NI 81-102 from the Multi-Tier Prohibition because the Underlying Funds do not issue index participation units and are not clone funds or money market funds.

24. An investment in the Underlying Funds by the Top Fund is an efficient and cost-effective alternative to administering one or more investment strategies directly.

25. An investment by the Top Fund in an Underlying Fund or by an Underlying Fund in a Third Tier Fund represents the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Top Fund or the applicable Underlying Fund, as the case may be.

26. The Other Funds are managed by investment fund managers other than the Filer and its affiliates. Neither the Filer nor its affiliates manage any Other Funds.

27. There will be no duplication of management fees or incentive fees between the Top Fund and the Underlying Funds, and between the Underlying Funds and the EHP Third Tier Funds. The prospectus of the Top Fund and the Underlying Funds will disclose that management fees and incentive fees will not be duplicated amongst such Funds as a result of a Three-Tier Structure.

Three-Tier Structure

28. The Filer will foster standards of fairness in the allocation of orders policy, the purpose of which is to seek the fair treatment for investors in all investment funds managed by the Filer that are involved in a fund of fund structure by assessing material costs between funds that pertain to transaction charges. This policy is designed to isolate material and/or excessive transaction costs associated with significant trades, at the Filer's discretion, and to prevent the dilution of a fund's assets when these material transactions occur by taking steps to ensure that the applicable fund or funds bear(s) the appropriate economic impact of such transaction costs.

29. The Filer will implement a liquidity risk management policy, the purpose of which is to monitor underlying liquidity of investment funds managed by the Filer, with each such investment fund potentially considered a large unitholder investment. This policy seeks to ensure that unitholders are not adversely impacted by trading activities of large unitholders.

30. To manage liquidity risk due to cross-ownership of funds within a Three-Tier Structure, the Filer will use a combination of risk management tools to address the significant investor risk, including: (i) Independent Review Committee (or IRC) approved governance policies that have been adopted to protect all investors in the Funds; (ii) internal portfolio manager notification requirements of significant cash flows into the Funds; (iii) ongoing liquidity monitoring of each Fund's portfolio; and (iv) real time cash projection reporting for the Funds. Each Fund in a Three-Tier Structure will be managed as a stand-alone investment for purposes of the application of these risk management tools.

31. The prospectus of the Top Fund discloses or will disclose in the next regularly scheduled renewal, or amendment if earlier, that the Top Fund invests in securities of the Underlying Funds, and that each Underlying Fund may invest more than 10% of its NAV in securities, on an aggregate basis, of other investment funds, including Third Tier Funds.

32. The prospectus of each Fund in a Three-Tier Structure discloses or will disclose in the next regularly scheduled renewal, or amendment if earlier, that the accountability for portfolio management is: (a) at the level of each Underlying Fund with respect to the selection of Third Tier Funds to be purchased by the Underlying Fund and with respect to the purchase and sale of any other portfolio securities or other assets held by the Underlying Fund; and (b) at the level of each EHP Third Tier Fund with respect to the purchase and sale of portfolio securities and other assets held by that EHP Third Tier Fund.

33. Each Fund in a Three-Tier Structure complies with the requirements under National Instrument 81-106 – *Investment Fund Continuous Disclosure* (**NI 81-106**) relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 - *Contents of Fund Facts Document* (**Form 81-101F3**) relating to top 10 position portfolio holdings disclosure in its Fund Facts as if the Fund was investing directly in the Third Tier Funds.

34. None of the Funds relies on any discretionary relief permitting the Fund to exceed the leverage exposure otherwise permitted under NI 81-102 through the use of borrowing, short selling, and specified derivatives.

35. Except for paragraph 2.5(2)(b) of NI 81-102, each investment by the Top Fund in securities of the Underlying Funds will be made in accordance with the provisions of section 2.5 of NI 81-102.

36. It would not be prejudicial to the public interest to grant the Exemption Sought.

37. As of the date of this decision, the Current Decision will be revoked and will no longer by relied upon by the Top Fund.

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 Revocation and Replacement is granted and the Exemption Sought is granted provided that:

(i) the Filer is the registered investment fund manager of the Top Fund, each Underlying Fund, and each EHP Third Tier Fund;

(ii) an investment by the Top Fund in securities of the Underlying Funds is in accordance with the investment objectives and strategies of the Top Fund;

(iii) the prospectus of the Top Fund discloses or will disclose in the next regularly scheduled renewal, or amendment if earlier, that the Top Fund invests in securities of the Underlying Funds, and that each Underlying Fund may invest more than 10% of its NAV in securities, on an aggregate basis, of other investment funds, including Third Tier Funds;

(iv) the Top Fund's investment in securities of each Underlying Fund and each Underlying Fund's investment in each Third Tier Fund in a Three-Tier Structure is otherwise made in compliance with all other requirements of section 2.5 of NI 81-102, except to the extent that discretionary relief has been granted from any such requirement;

(v) there is no duplication of management fees, incentive fees or administrative fees between each tier of the Three-Tier Structure;

(vi) the Three-Tier Structure is implemented in a manner that seeks the fair treatment for investors in all of the investment funds managed by the Filer that are involved in a Three-Tier Structure by assessing material portfolio transaction costs among all of such investment funds;

(vii) the Filer maintains investor protection policies and procedures that address liquidity and redemption risk due to cross-ownership of funds within a Three-Tier Structure, and each Fund in a Three-Tier Structure is managed as a stand-alone investment for purposes of these policies and procedures;

(viii) each Fund in a Three-Tier Structure complies with the requirements under NI 81-106 relating to top 25 positions portfolio holdings disclosure in its management reports of fund performance and the requirements of Form 81-101F3 relating to top 10 position portfolio holdings disclosure in its Fund Facts as if the Fund was investing directly in the Third Tier Funds; and

(ix) none of the Funds relies on any discretionary relief permitting the Fund to exceed the leverage exposure otherwise permitted under NI 81-102 through the use of borrowing, short selling, and specified derivatives.

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

Application File #: 2024/0617
SEDAR+ File #: 6197004

B.3.6 Canada Life Investment Management Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted to existing and future alternative investment funds from the margin deposit limits in subsection 6.8(1) and paragraph 6.8(2)(c) of NI 81-102 to permit each fund to deposit as margin portfolio assets of up to 35% of the fund's NAV with any one dealer in Canada or the United States and up to 70% of each fund's NAV with all dealers in the aggregate, for transactions involving exchange traded specified derivatives – subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 6.8(1), 6.8(2)(c), and 19.1.

November 4, 2024

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

AND

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

AND

IN THE MATTER OF
CANADA LIFE INVESTMENT MANAGEMENT LTD.
(the Filer)

DECISION

BACKGROUND

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of Counsel Enhanced Global Equity and other existing and future alternative mutual funds managed by the Filer, or an affiliate of the Filer, that are subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) (together with Counsel Enhanced Global Equity, each, a **Fund**, and collectively, the **Funds**), for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption, pursuant to section 19.1 of NI 81-102, from:

(a) subsection 6.8(1) of NI 81-102, which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or dealer that is a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund (**CIPF**) for a transaction in Canada involving certain specified derivatives in excess of 10% of the net asset value (**NAV**) of the investment fund at the time of deposit; and

(b) paragraph 6.8(2)(c) of NI 81-102, which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or dealer for a transaction outside of Canada involving certain specified derivatives in excess of 10% of the NAV of the investment fund as at the time of deposit;

to permit each Fund to deposit as margin portfolio assets of up to 35% of the Fund's NAV as at the time of deposit with any one futures commission merchant in Canada or the United States (each a **Dealer**) and up to 70% of each Fund's NAV at the time of deposit with all Dealers in the aggregate, for transactions involving standardized futures, clearing corporation options, options on futures, or cleared specified derivatives, such as cleared swaps, that are traded or cleared on or through a stock exchange or futures exchange, a recognized clearing agency, or a swap execution facility that is exempted from recognition as an exchange under subsection 21(1) of the Securities Act (Ontario) (together, **Exchange Traded Specified Derivatives**) (the **Requested Relief**).

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

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

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

Interpretation

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

Representations

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

The Filer

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

2. The Filer is a subsidiary of the Canada Life Assurance Company.

3. The Filer is registered as a portfolio manager in all Jurisdictions, as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, and as a commodity trading manager in Ontario.

4. The Filer, or an affiliate of the Filer, is or will be, the investment fund manager of each Fund.

5. The Filer or an affiliate may act as portfolio manager of the Funds or may appoint one or more portfolio managers for the Funds or sub-advisers to provide the Filer with investment advice in respect of a Fund's investments.

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

The Funds

7. Each Fund is, or will be, an alternative mutual fund to which NI 81-102 applies, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities.

8. Securities of each Fund were, are or will be offered pursuant to a simplified prospectus prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* or a long form prospectus prepared in accordance with National Instrument 41-101 *General Prospectus Requirements*.

9. Each Fund is or will be a reporting issuer in at least one of the Jurisdictions.

10. No existing Fund is in default of securities legislation in any of the Jurisdictions.

11. The investment objective and investment strategies of each Fund permit or will permit the Fund to invest in Exchange Traded Specified Derivatives.

12. The investment objective of Counsel Enhanced Global Equity is to seek long-term growth of capital by investing in global equity securities. The Fund may obtain this exposure by investing directly in securities, by investing in securities of other investment funds, or by a combination of these means.

13. Except to the extent that the Requested Relief is granted and other exemptive relief is applicable, the investment strategies of the Funds are, or will be, limited to the investment practices permitted by NI 81-102. The Funds may seek to use leverage.

14. The Filer or sub-adviser to the Fund is, or will be, authorized to establish, maintain, change and close brokerage accounts on behalf of the Funds. In order to facilitate transactions on behalf of the Funds, the Filer, or sub-adviser to the Fund, will establish one or more accounts (each an **Account**) with one or more Dealers.

15. Each Dealer in Canada (each a **Canadian Dealer**) is a member of the Canadian Investment Regulatory Organization (the **CIRO**), or successor to CIRO, in Canada and is registered in the applicable Canadian Jurisdictions as a futures commission merchant or equivalent.

16. Each Canadian Dealer is a member of the exchanges, clearing agencies or swap execution facility through which the Exchange Traded Specified Derivatives are primarily traded. Each such exchange, clearing agency and swap execution facility is obliged to apply its surplus funds and the security deposits of its members to reimburse clients of failed members.

17. Each Dealer in the United States (each a **U.S. Dealer**) is regulated by the Commodity Futures Trading Commission (the **CFTC**) and the National Futures Association (the **NFA**), or successor to the CFTC or the NFA, in the United States and is required to segregate the initial margin held on behalf of clients, including the Funds. Each U.S. Dealer is subject to regulatory audit and must have insurance to guard against employee fraud. Each U.S. Dealer has a net worth, determined from its most recent audited financial statements, in excess of the equivalent of C$50 million. Each U.S. Dealer has an exchange assigned to it as its designated self-regulatory organization (the **DSRO**). As a member of a DSRO, each U.S. Dealer must meet capital requirements, comply with the conduct rules of the CFTC, NFA and its DSRO, and participate in an arbitration process with a complainant.

18. Where the U.S. Dealers are not members of an exchange over which they wish to effect a trade on behalf of a Fund, they must engage a carrying broker who is a member of such exchange to effect the trade. Consequently, whether the trades are done directly by the U.S. Dealer or through a carrying broker, the U.S. Dealer is required to segregate the assets of the Funds deposited as Initial Margin from the assets of the U.S. Dealer. Each Fund shall deposit portfolio assets as Initial Margin with a U.S. Dealer only if that dealer is required to segregate those portfolio assets from its own assets.

19. A Dealer will require, for each Account, that portfolio assets of the Fund be deposited with the Dealer as collateral for transactions in Exchange Traded Specified Derivatives (**Initial Margin**). Initial Margin represents the minimum initial amount of portfolio assets that must be deposited with a Dealer to initiate trading in specified derivatives transactions or to maintain the Dealer's open position in standardized futures.

20. Levels of Initial Margin are established at a Dealer's discretion. At no time will more than 70% of the NAV of the Fund be deposited as Initial Margin with all Dealers in the aggregate.

21. The records of each Dealer will show that the applicable Fund is the beneficial owner of the Initial Margin, and evidence that, subject to the satisfaction of the Dealer's applicable margin

requirements, the applicable Fund will have the right to the return of the portfolio assets deposited as Initial Margin with the Dealer, such assets being of the same issue as the deposited margin, including the same class and series, if applicable, and having the same current aggregate market value of the deposited margin at the time of such return.

Reasons for the Requested Relief

22. The use of Initial Margin is an essential element of investing in Exchange Traded Specified Derivatives for the Funds.

23. The Requested Relief would allow the Funds to invest in Exchange Traded Specified Derivatives more extensively with any one Dealer, which would allow the Funds to pursue their investment strategies more efficiently and flexibly.

24. Opening Accounts and transacting with multiple Dealers adds complexity and cost to the management of the Funds. Using fewer Dealers will considerably simplify the Funds' investments and operations and will reduce the cost of implementing each Fund's strategy. Using fewer Dealers also simplifies compliance and risk management, as monitoring the data, controls and policies of a smaller number of Dealers is less complex.

25. On the basis of the foregoing, the Filer submits that it would not be prejudicial to the public interest to grant the Requested Relief.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that:

a) Each Fund will rely on this decision only with respect to investment in derivatives that are Exchange Traded Specified Derivatives;

b) Each Fund shall only use Initial Margin such that the amount of Initial Margin held by any one Dealer on behalf of the Fund does not exceed 35% of the net assets of the Fund, taken at market value as at the time of the deposit; and

c) Each Fund shall only use Initial Margin such that the amount of Initial Margin held by Dealers in aggregate on behalf of each Fund does not exceed 70% of the NAV of each Fund as at the time of the deposit.

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

Application File #: 2024/0596
SEDAR+ File #: 6193105

B.3.7 CI Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted under subsection 62(5) of the Securities Act to permit the extension of prospectus lapse dates by 52 days, 83 days, 99 days, 126 days, 148 days, and 191 days – relief granted under subsection 5.1(4) of NI 81-101 Mutual Fund Prospectus Disclosure to combine the simplified prospectus of conventional mutual funds with the simplified prospectus of alternative mutual funds – relief granted to facilitate the offering of exchange-traded mutual fund securities and conventional mutual fund securities under the same form of prospectus – relief granted from the requirement in NI 41-101 to file a long form prospectus for exchange-traded funds provided that a simplified prospectus is prepared and filed in accordance with NI 81-101 and the filer includes disclosure required pursuant to Form 41-101F2 that is not contemplated by Form 81-101F1 in respect of the exchange-traded funds – Filer will file ETF Facts in the form prescribed by Form 41-101F4 in respect of exchange-traded funds.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).
National Instrument 41-101 General Prospectus Requirements, ss. 3.1(2) and 19.1.
National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.5(7), 5.1(4) and 6.1.

November 4, 2024

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

AND

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

AND

IN THE MATTER OF CI INVESTMENTS INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of each of the Existing Funds (as defined below) and such other mutual funds that are managed or may be managed by the Filer or an affiliate now or in the future (collectively, the **Future Funds**, and each, a **Future Fund**, and together with the Existing Funds, the **Funds**, and each, a **Fund**), for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting exemptive relief that:

(a) extends the time limits for the renewal of each long form prospectus and ETF Facts or simplified prospectus and Fund Facts, as applicable, to those time limits that would apply if the lapse date was as follows:

i. April 19, 2025 for the Enhanced ETFs (as defined below),

ii. July 5, 2025 for the Crypto ETFs (as defined below), the Auspice Alternative Fund (as defined below) and the Current Alternative Funds (as defined below), and

iii. July 24, 2025 for the First Asset Funds (as defined below) and the WisdomTree Funds (as defined below) (the **Lapse Date Relief**);

(b) exempts the Filer, any affiliate of the Filer, each of the Auspice Alternative Fund and Current Alternative Funds (collectively, the **Current Auspice and Alternative Funds**) and each of the Future Funds that are or will be alternative mutual funds (**Future Alternative Funds)** from the requirement in subsection 5.1(4) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) that states that a simplified prospectus for an alternative mutual fund must not be consolidated with a simplified prospectus of another mutual fund if the other mutual fund is not an alternative mutual fund (the **Simplified Prospectus Consolidation Relief**);

(c) exempts the Filer, any affiliate of the Filer, each of the Crypto ETFs and each of the Future Funds that offer ETF Securities, either alone or along with Mutual Fund Securities (the **Future ETFs**), from the requirement in subsection 3.1(2) of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) to prepare and file a long form prospectus for the ETF Securities in the form prescribed by Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**) provided that the Filer files (i) a prospectus for the ETF Securities in accordance with the provisions of NI 81-101, other than the requirements pertaining to the filing of Fund Facts; and (ii) ETF Facts in accordance with Part 3B of NI 41-101 (the **ETF Prospectus Form Relief**); and

(d) permits the Filer, any affiliate of the Filer and each Fund that offers both ETF Securities and Mutual Fund Securities to treat the ETF Securities and Mutual Fund Securities as if such securities were separate funds in connection with their compliance with the provisions of Parts 9, 10 and 14 of National Instrument 81-102 *Investment Funds* (the **Sales and Redemptions Relief** and, together with the Lapse Date Relief, the Simplified Prospectus Consolidation Relief and the ETF Prospectus Form Relief, the **Exemption Sought**).

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

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

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

Interpretation

Capitalized terms used herein have the meaning ascribed thereto below (or in National Instrument 14-101 *Definitions*, MI 11-102 and National Instrument 81-102 *Investment Funds* (**NI 81-102**), as applicable), unless otherwise defined in this decision.

Affiliate Dealer means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units (as defined below) from time to time.

Auspice Alternative Fund means CI Auspice Alternative Diversified Corporate Class.

Authorized Dealer means a registered dealer, which may be an affiliate of the Filer, that has entered, or intends to enter, into an agreement with the manager of a Fund authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more Funds on a continuous basis from time to time.

Crypto ETFs means CI Galaxy Bitcoin ETF, CI Galaxy Ethereum ETF and CI Galaxy Multi-Crypto ETF.

Current Alternative Funds means CI Alternative Diversified Opportunities Fund, CI Alternative Investment Grade Credit Fund, CI Alternative Multi-Strategy Fund, CI Alternative North American Opportunities Fund, CI Auspice Broad Commodity Fund, CI Marret Alternative Absolute Return Bond Fund, CI Marret Alternative Enhanced Yield Fund and CI Munro Alternative Global Growth Fund.

Designated Broker means a registered dealer, which may be an affiliate of the Filer, that has entered, or intends to enter, into an agreement with the Filer or an affiliate of the Filer on behalf of a Fund to perform certain duties in relation to the ETF Securities of the Fund, including the posting of a liquid two-way market for the trading of the Fund's ETF Securities on the Exchange or another Marketplace.

Enhanced ETFs means CI U.S. Enhanced Value Index ETF and CI U.S. Enhanced Momentum Index ETF.

ETF Facts means an ETF facts document prepared, filed and delivered in accordance with Part 3B of NI 41- 101.

ETFs means exchange-traded funds.

ETF Securities means securities of an exchange-traded Fund or of an exchange-traded series of a Fund that are listed or will be listed on the Exchange or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

Exchange means the Toronto Stock Exchange.

Existing Funds means Auspice Alternative Fund, the Enhanced ETFs, the First Asset Funds, the Crypto ETFs, the Current Alternative Funds and the WisdomTree Funds.

First Asset Funds means CI Canadian Convertible Bond Fund and CI Canadian REIT Fund.

Form 81-101F1 means Form 81-101F1 *Contents of Simplified Prospectus.*

Fund Facts means a prescribed summary disclosure document required pursuant to NI 81-101 in respect of one or more classes or series of Mutual Fund Securities being distributed under a prospectus.

Marketplace means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* that is located in Canada.

Mutual Fund Securities means securities of a Fund that are not listed or traded on an exchange and that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81- 101F1.

Prescribed Number of ETF Securities means, in relation to a Fund, the number of ETF Securities of the Fund determined by the Filer or an affiliate from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

Securityholders means beneficial or registered holders of ETF Securities or Mutual Fund Securities of a Fund, as applicable.

WisdomTree Funds means CI Canada Quality Dividend Growth Index Fund, CI U.S. Quality Dividend Growth Index Fund and CI International Quality Dividend Growth Index Hedged Fund.

Representations

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

The Filer

1. The Filer is a corporation amalgamated under the laws of Ontario. The Filer's head office is located in Toronto, Ontario.

2. The Filer is registered as follows:

   (a) under the securities legislation of all of the Jurisdictions as a portfolio manager and an exempt market dealer;

   (b) under the securities legislation of Ontario, Québec, and Newfoundland and Labrador as an investment fund manager; and

   (c) under the *Commodity Futures Act* (Ontario) as a commodity trading counsel and a commodity trading manager.

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

4. Neither the Filer nor any of the Existing Funds are in default of securities legislation in any of the Jurisdictions.

The Funds

5. Each of the Funds is, or will be, an open-ended mutual fund established as either a trust or a class of shares of a corporation under the laws of a Jurisdiction. Each of the Funds is, or will be, a reporting issuer as defined in the Legislation. Each of the Funds that relies on the ETF Prospectus Form Relief will offer ETF Securities either alone or along with Mutual Fund Securities.

6. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.

7. Securities of each of the Enhanced ETFs are currently qualified for distribution in each of the Jurisdictions under a long form prospectus dated December 15, 2023 (the **Enhanced ETFs Prospectus**). The securities of the Enhanced ETFs are listed on the Exchange.

8. Securities of each of the WisdomTree Funds are currently qualified for distribution in each of the Jurisdictions under a simplified prospectus dated January 15, 2024, as amended on May 23, 2024 (the **WisdomTree Funds Prospectus**).

9. Securities of the Auspice Alternative Fund are currently qualified for distribution in each of the Jurisdictions under a simplified prospectus dated February 1, 2024, as amended on April 25, 2024 (the **Auspice Alternative Fund Prospectus**).

10. Securities of each of the Crypto ETFs are currently qualified for distribution in each of the Jurisdictions under a long form prospectus dated March 28, 2024 (the **Crypto ETFs Prospectus**). The securities of the Crypto ETFs are listed on the Exchange.

11. Securities of each of the First Asset Funds are currently qualified for distribution in each of the Jurisdictions under a simplified prospectus dated May 3, 2024 (the **First Asset Funds Prospectus**).

12. Securities of each of the Current Alternative Funds are currently qualified for distribution in each of the Jurisdictions under a simplified prospectus dated May 8, 2024 (the **Current Alternative Funds Prospectus,** and together with the Enhanced ETFs Prospectus, the WisdomTree Funds Prospectus, the Auspice Alternative Fund Prospectus, the Crypto ETFs Prospectus and the First Asset Funds Prospectus, the **Prospectuses**). The ETF Securities of the Current Alternative Funds are listed on the Exchange.

Lapse Date Relief

13. Pursuant to subsection 62(1) of the *Securities Act* (the **Act**), the lapse date of (a) the Enhanced ETFs Prospectus is December 15, 2024 (the **Enhanced ETFs Lapse Date**); (b) the WisdomTree Funds Prospectus is January 15, 2025 (the **WisdomTree Funds Lapse Date**); (c) the Auspice Alternative Fund Prospectus is February 1, 2025 (the **Auspice Alternative Fund Lapse Date**); (d) the Crypto ETFs Prospectus is March 28, 2025 (the **Crypto ETFs Lapse Date**); (e) the First Asset Funds Prospectus is May 3, 2025 (the **First Asset Funds Lapse Date**); and, (f) the Current Alternative Funds Prospectus is May 8, 2025 (the **Current Alternative Funds Lapse Date**, collectively, the **Current Lapse Dates** and each, a **Current Lapse Date**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of each of the Funds would have to cease on the applicable Current Lapse Date unless the Funds: (i) file a *pro forma* long form or simplified prospectus, as applicable, at least 30 days prior to the applicable Current Lapse Date; (ii) file a final long form or simplified prospectus, as applicable, no later than 10 days after the applicable Current Lapse Date; and (iii) obtain a receipt for the final long form or simplified prospectus, as applicable, within 20 days after the applicable Current Lapse Date.

14. The Filer is the investment fund manager of the Existing Funds. The Filer is also the investment fund manager of (a) approximately 47 other ETFs (the **CI ETFs**) that currently distribute their securities to the public under a long form prospectus (the **CI ETFs Prospectus**) with a lapse date of April 19, 2025; (b) approximately two funds (the **Crypto Funds**) that currently distribute their securities to the public under a simplified prospectus (the **Crypto Funds Prospectus**) with a lapse date of July 5, 2025; (c) approximately 15 funds (the **Dual Series Funds**) that currently distribute their securities to the public under a simplified prospectus (the **Dual Series Funds Prospectus**) with a lapse date of June 28, 2025; and, (d) approximately 136 funds (the **CI Funds**, and together with the CI ETFs, the Crypto Funds and the Dual Series Funds, the **Affiliated CI Funds**) that currently distribute their securities to the public under a simplified prospectus (the **CI Funds Prospectus**, and together with the CI ETFs Prospectus, the Crypto Funds Prospectus and the Dual Series Funds Prospectus, the **Affiliated CI Prospectuses**) with a lapse date of July 24, 2025.

15. The Filer wishes to combine (a) the Enhanced ETFs Prospectus with the CI ETFs Prospectus; (b) the Crypto ETFs Prospectus with the Crypto Funds Prospectus (subject to obtaining the ETF Prospectus Form Relief); (c) the Auspice Alternative Fund Prospectus and the Current Alternative Funds Prospectus with the Dual Series Funds Prospectus (subject to obtaining the Simplified Prospectus Consolidation Relief); and, (d) the WisdomTree Funds Prospectus and First Asset Funds Prospectus with the CI Funds Prospectus, in order to reduce renewal, printing and related costs.

16. Offering the Existing Funds under the same long form or simplified prospectus, as applicable, of the Affiliated CI Funds (the **Renewal Documents**) would facilitate the distribution of the Funds in the Jurisdictions under the same prospectuses and enable the Filer to streamline disclosure across the Filer's ETF and mutual fund platforms. Combining the prospectuses allows funds with common operational and administrative features to be consolidated within the same documents, making it easier for investors to compare their features.

17. It would be impractical to alter and modify all of the dedicated systems, procedures and resources required to renew the Prospectuses and unreasonable to incur the costs and expenses associated therewith, so that the renewal of the Prospectuses can be filed earlier than the Renewal Documents on or before their respective lapse dates.

18. The Filer also may make changes to the features of the Affiliated CI Funds as part of the process of renewing the Affiliated CI Funds. The ability to incorporate the Prospectuses with the Affiliated CI Prospectuses will ensure that the Filer can make the operational and administrative features of the Funds and the CI Affiliated Funds consistent with each other, if necessary.

19. If the Lapse Date Relief is not granted, it will be necessary to renew the Prospectuses twice within a short period of time in order to consolidate the Prospectuses with the Affiliated CI Prospectuses and it would be unreasonable for the Filer to incur the costs and expenses associated therewith, given investors would not be prejudiced by the Lapse Date Relief.

20. There have been no material changes in the affairs of the Existing Funds since the date of each Prospectus. Accordingly, the Prospectuses and current Fund Facts or ETF Facts, as applicable, represent current information regarding the Existing Funds.

21. Given the disclosure obligations of the Filer and the Existing Funds, should any material change in the business, operations or affairs of any of the Existing Funds occur, the applicable Prospectus and related Fund Facts or ETF Facts, as applicable, of the impacted Existing Fund(s) will be amended as required under the Legislation.

22. New investors of the Existing Funds will receive delivery of the most recently filed Fund Facts or ETF Facts, as applicable, of the applicable Existing Fund(s). The Prospectuses of the Existing Funds will remain available to investors upon request.

23. The Lapse Date Relief will not affect the accuracy of the information contained in the Prospectuses or Fund Facts or ETF Facts, as applicable, of each of the Existing Funds, and will therefore not be prejudicial to the public interest.

Simplified Prospectus Consolidation Relief

24. The Filer wishes to combine the simplified prospectuses of the Current Auspice and Alternative Funds and Future Alternative Funds with the simplified prospectus of the Dual Series Funds or other conventional mutual funds (the **Conventional Funds**) existing today or created in the future (i) that are reporting issuers to which NI 81-101 and NI 81-102 apply, (ii) that are not alternative mutual funds, and (iii) for which the Filer acts as the investment fund manager, in order to reduce renewal, printing and related costs. Offering the Current Auspice and Alternative Funds and the Future Alternative Funds using the same simplified prospectus as the Dual Series Funds or other Conventional Funds would facilitate the distribution of the Current Auspice and Alternative Funds and Future Alternative Funds in the Jurisdictions under the same prospectus disclosure and enable the Filer to streamline disclosure across the Filer's fund platform.

25. Even though the Current Auspice and Alternative Funds and the Future Alternative Funds are, or will be, alternative mutual funds, they share, or will share, many common operational and administrative features with the Dual Series Funds and other Conventional Funds and combining them in the same simplified prospectus will allow investors to more easily compare the features of the Current Auspice and Alternative Funds and Future Alternative Funds with the Dual Series Funds and/or other Conventional Funds.

26. Investors will continue to receive Fund Facts or ETF Facts, as applicable, when purchasing securities of a Current Auspice and Alternative Fund as required by applicable securities legislation. The form and content of the Fund Facts or ETF Facts, as applicable, of the Current Auspice and Alternative Funds will not change as a result of the Simplified Prospectus Consolidation Relief.

27. The simplified prospectus of the Current Auspice and Alternative Funds will continue to be provided to investors, upon request, as required by applicable securities legislation.

28. NI 41-101 does not contain a provision equivalent to subsection 5.1(4) of NI 81-101. Accordingly, an investment fund manager that manages ETFs is permitted to consolidate a prospectus under NI 41-101 for its ETFs that are alternative mutual funds with a prospectus for its ETFs that are conventional mutual funds. The Filer submits that there is no reason why mutual funds filing a prospectus under NI 81-101 should be treated differently from ETFs filing a prospectus under NI 41-101.

ETF Prospectus Form Relief

29. The Crypto ETFs are distributed pursuant to the Crypto ETFs Prospectus in the form prescribed by Form 41-101F2. The securities of the Crypto ETFs are listed on the Exchange.

30. The Crypto Funds are distributed pursuant to the Crypto Funds Prospectus.

31. If the ETF Prospectus Form Relief is granted, it is expected that when the Crypto ETFs Prospectus is renewed in 2025, the Filer will file a simplified prospectus in the form prescribed by Form 81-101F1, in respect of the Crypto ETFs, pursuant to which it will continue to offer ETF Securities of the Crypto ETFs. ETF Facts in the form prescribed by Form 41-101F4 *Information Required in an ETF Facts Document* (**Form 41-101F4**) for each class or series of ETF Securities of the Crypto ETFs will be filed. Fund Facts in the form prescribed by Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**) for each class or series of Mutual Fund Securities of any Future ETF will also be filed.

32. The Filer or an affiliate has applied, or will apply, to list any ETF Securities of each of the Funds that relies on the ETF Prospectus Form Relief on the Exchange or another Marketplace. In the case of a Future ETF, the Filer or an affiliate will not file a final or amended simplified prospectus for any of the Future ETFs in respect of the ETF Securities until the Exchange or other applicable Marketplace has conditionally approved the listing of the ETF Securities.

33. Mutual Fund Securities may be subscribed for or purchased directly from a Crypto Fund or Future ETF, as applicable, through appropriately registered dealers.

34. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a simplified prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Crypto ETFs and Future ETFs, as applicable (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading

session on the Exchange or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the Exchange or another Marketplace.

35. In addition to subscribing for and reselling their Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market.

36. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, ETF Securities generally will not be able to be purchased directly from a Crypto ETF and Future ETF, as applicable. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the Exchange or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.

37. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the Exchange or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash, securities other than Baskets of Securities and/or cash, or cash only, at the discretion of the Filer or an affiliate. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the net asset value of the ETF Securities on the date of redemption.

38. The Filer believes it is more efficient and expedient to include all classes or series of the Mutual Fund Securities and ETF Securities in one prospectus form instead of two different prospectus forms and that this presentation will assist in providing full, true and plain disclosure of all material facts relating to the securities of such funds by permitting disclosure relating to all classes or series of securities to be included in one prospectus.

39. The Filer or an affiliate will file ETF Facts in the form prescribed by Form 41-101F4 in respect of each class or series of ETF Securities and will file Fund Facts in the form prescribed by Form 81-101F3 in respect of each class or series of Mutual Fund Securities.

40. The Filer or an affiliate will ensure that any additional disclosure included in the simplified prospectus relating to the ETF Securities will not interfere with an investor's ability to differentiate between the Mutual Fund Securities and the ETF Securities and their respective attributes.

41. The Crypto ETFs and the Future ETFs will comply with the provisions of NI 81-101 when filing any prospectus or amendment thereto.

42. The Crypto ETFs and the Future ETFs will comply with Part 3B of NI 41-101 when preparing, filing and delivering ETF Facts for the ETF Securities of the Crypto ETFs and the Future ETFs.

Sales and Redemptions Relief

43. Parts 9, 10 and 14 of NI 81-102 do not contemplate both Mutual Fund Securities and ETF Securities being offered in a single fund structure. Accordingly, without the Sales and Redemptions Relief, the Filer or an affiliate and each Fund that offers both ETF Securities and Mutual Fund Securities would not be able to technically comply with those parts of NI 81-102.

44. The Sales and Redemptions Relief will permit the Filer or an affiliate and each Fund that offers both ETF Securities and Mutual Fund Securities to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds in connection with their compliance with Parts 9, 10 and 14 of NI 81-102. The Sales and Redemptions Relief will enable each of the ETF Securities and Mutual Fund Securities to comply with Parts 9, 10 and 14 of NI 81-102, as appropriate, for the type of security being offered.

Decision

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

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

1. in respect of the ETF Prospectus Form Relief, the Filer or an affiliate complies with the following conditions:

   (a) the Filer or an affiliate files a simplified prospectus in respect of the ETF Securities in accordance with the requirements of NI 81-101 and Form 81-101F1, other than the requirements pertaining to the filing of a Fund Facts;

(b) the Filer or an affiliate includes disclosure required pursuant to Form 41-101F2 (that is not contemplated by Form 81-101F1) in respect of the ETF Securities in the simplified prospectus of each Fund that relies on the ETF Prospectus Form Relief; and

(c) the Filer or an affiliate includes disclosure regarding the ETF Prospectus Form Relief under the heading "*Additional Information*" in the simplified prospectus of each Fund that relies on the ETF Prospectus Form Relief; and

2. in respect of the Sales and Redemptions Relief, the Filer or an affiliate and each Fund comply with the following conditions:

(a) with respect to its Mutual Fund Securities, each Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds; and

(b) with respect to its ETF Securities, each Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

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

Application File #: 2024/0600
SEDAR+ File #: 6193811

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
Monarch Mining Corporation	October 31, 2024	
Organic Potash Corporation	November 1, 2024	
Pangolin Diamonds Corp.	November 1, 2024	
DeepSpatial Inc.	November 1, 2024	
Deveron Corp.	November 1, 2024	
Powertap Hydrogen Capital Corp.	November 1, 2024	
Arctic Fox Lithium Corp.	November 1, 2024	November 4, 2024
Critical Infrastructure Technologies Ltd.	November 1, 2024	
Uriel Gas Holdings Corp.	November 1, 2024	
Enlighta Inc.	November 1, 2024	
FOBI AI Inc.	November 1, 2024	

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

Company Name	Date of Order	Date of Lapse
Cloud3 Ventures Inc.	October 29, 2024	
Falcon Gold Corp.	October 29, 2024	
Hybrid Power Solutions Inc.	October 2, 2024	October 30, 2024

B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	
Perk Labs Inc.	April 4, 2024	
Organto Foods Inc.	May 8, 2024	
AION THERAPEUTIC INC.	August 30, 2024	
Hybrid Power Solutions Inc.	October 2, 2024	October 30, 2024
Cloud3 Ventures Inc.	October 29, 2024	
Falcon Gold Corp.	October 29, 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:
Desjardins Fundamental Global Equity Fund
Desjardins Global Opportunities Fund
Desjardins Target 2025 Investment Grade Bond Fund
Desjardins Target 2026 Investment Grade Bond Fund
Desjardins Target 2027 Investment Grade Bond Fund
Principal Regulator – Quebec
Type and Date:
Final Simplified Prospectus dated Oct 28, 2024
NP 11-202 Final Receipt dated Oct 31, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06180691

Issuer Name:
Global X Artificial Intelligence Infrastructure Index ETF
Global X Equal Weight Canadian Groceries & Staples Index ETF
Global X Equal Weight Canadian Insurance Index ETF
Global X Equal Weight Canadian Oil & Gas Index ETF
Global X Equal Weight Canadian Telecommunications Index ETF
Global X Gold Producers Index ETF
Global X Long-Term Government Bond Premium Yield ETF
Global X Mid-Term Government Bond Premium Yield ETF
Global X Russell 2000 Covered Call ETF
Global X Russell 2000 Index ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Oct 30, 2024
NP 11-202 Final Receipt dated Oct 31, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06193382

Issuer Name:
Tangerine Balanced ETF Portfolio
Tangerine Balanced Growth ETF Portfolio
Tangerine Balanced Growth Portfolio
Tangerine Balanced Growth SRI Portfolio
Tangerine Balanced Income ETF Portfolio
Tangerine Balanced Income Portfolio
Tangerine Balanced Income SRI Portfolio
Tangerine Balanced Portfolio
Tangerine Balanced SRI Portfolio
Tangerine Dividend Portfolio
Tangerine Equity Growth ETF Portfolio
Tangerine Equity Growth Portfolio
Tangerine Equity Growth SRI Portfolio
Tangerine Money Market Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 30, 2024
NP 11-202 Final Receipt dated Oct 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06183924

Issuer Name:
IA Clarington Agile Global Total Return Income Fund
Principal Regulator – Quebec
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated Oct 28, 2024
NP 11-202 Final Receipt dated Nov 1, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06181494

Issuer Name:
Fidelity Dividend Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 8 to Final Simplified Prospectus dated Oct 29, 2024
NP 11-202 Final Receipt dated Oct 31, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06030324

Issuer Name:
Dynamic Global Fixed Income Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 5 to Final Simplified Prospectus dated Oct 23, 2024
NP 11-202 Final Receipt dated Oct 29, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06038402

Issuer Name:
Fidelity True North Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 8 to Final Simplified Prospectus dated Oct 29, 2024
NP 11-202 Final Receipt dated Oct 31, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06030529

Issuer Name:
Picton Mahoney Fortified Investment Grade Alternative Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 31, 2024
NP 11-202 Final Receipt dated Nov 1, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06187694

Issuer Name:
Manulife Global Equity Class
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated Oct 28, 2024
NP 11-202 Final Receipt dated Oct 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06144987

Issuer Name:
Mulvihill U.S. Health Care Enhanced Yield ETF (formerly, Mulvihill Premium Yield Plus ETF)
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Long Form Prospectus dated Nov 1, 2024
NP 11-202 Final Receipt dated Nov 4, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06072020

Issuer Name:
Counsel Enhanced Global Equity
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Oct 31, 2024
NP 11-202 Final Receipt dated Nov 1, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06187221

Issuer Name:
Mackenzie FuturePath Canadian Fixed Income Portfolio
Mackenzie FuturePath Global Equity Balanced Portfolio
Mackenzie FuturePath Global Fixed Income Balanced Portfolio
Mackenzie FuturePath Global Neutral Balanced Portfolio
Mackenzie FuturePath Monthly Income Conservative Portfolio
Mackenzie FuturePath Monthly Income Growth Portfolio
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated Oct 25, 2024
NP 11-202 Final Receipt dated Oct 29, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06125599

Issuer Name:
TD Active Global Income ETF
TD Active Global Real Estate Equity ETF
TD Active U.S. High Yield Bond ETF
TD Canadian Long Term Federal Bond ETF
TD Cash Management ETF
TD Global Technology Innovators Index ETF
TD Q Canadian Dividend ETF
TD Q Global Dividend ETF
TD Q Global Multifactor ETF
TD Q U.S. Small-Mid-Cap Equity ETF
TD Target 2028 Investment Grade Bond ETF
TD Target 2029 Investment Grade Bond ETF
TD Target 2030 Investment Grade Bond ETF
TD U.S. Cash Management ETF
TD U.S. Long Term Treasury Bond ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Oct 29, 2024
NP 11-202 Final Receipt dated Oct 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06185202

Issuer Name:
Dynamic Credit Opportunities Fund
Dynamic Short Term Credit PLUS Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated Oct 23, 2024
NP 11-202 Final Receipt dated Oct 29, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06178047

Issuer Name:
Fidelity Canadian Growth Company Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 8 to Final Simplified Prospectus dated Oct 29, 2024
NP 11-202 Final Receipt dated Oct 31, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06030233

Issuer Name:
Fidelity American High Yield Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 8 to Final Simplified Prospectus dated October 29, 2024
NP 11-202 Final Receipt dated Oct 31, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06030240

NON-INVESTMENT FUNDS

Issuer Name:
Parkland Corporation
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated November 1, 2024
NP 11-202 Final Receipt dated November 1, 2024
Offering Price and Description:
Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Convertible Securities, Warrants, Units
Filing # 06198821

Issuer Name:
Alaska Energy Metals Corporation
Principal Regulator – British Columbia
Type and Date:
Amendment to Final Shelf Prospectus dated November 1, 2024
NP 11-202 Amendment Receipt dated November 1, 2024
Offering Price and Description:
$50,000,000 - Common Shares, Warrants, Subscription Receipts, Debt Securities, Units
Filing # 06109772

Issuer Name:
Platinum Group Metals Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated October 31, 2024
NP 11-202 Preliminary Receipt dated October 31, 2024
Offering Price and Description:
US$250,000,000 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06198353

Issuer Name:
Mojave Brands Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated October 29, 2024
NP 11-202 Preliminary Receipt dated October 30, 2024
Offering Price and Description:
Minimum Offering: $10,000,000 or 18,181,818 Units
Maximum Offering: $15,000,000 or 27,272,727 Units
Price: $0.55 per Unit
Filing # 06197312

Issuer Name:
HM Exploration Corp.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated October 28, 2024
NP 11-202 Final Receipt dated October 29, 2024
Offering Price and Description:
626,227 Common Shares and 626,227 Warrants on Exercise of 626,227 Outstanding Special Warrants
Filing # 06166934

Issuer Name:
Silver47 Exploration Corp.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated October 25, 2024
NP 11-202 Final Receipt dated October 29, 2024
Offering Price and Description:
6,297,393 Units on automatic exercise of 6,297,393 Special Warrants
Filing # 06175164

Issuer Name:
Great Northern Energy Metals Inc.
Principal Regulator – British Columbia
Type and Date:
Amendment to Preliminary Long Form Prospectus dated October 28, 2024
NP 11-202 Amendment Receipt dated October 29, 2024
Offering Price and Description:
8,000,000 Shares for Gross Proceeds of $800,000
Price: $0.10 per Share
Filing # 06158639

Issuer Name:
Integral Metals Corp.
Principal Regulator – Alberta
Type and Date:
Final Long Form Prospectus dated October 25, 2024
NP 11-202 Final Receipt dated October 28, 2024
Offering Price and Description:
53,000 Common Shares on conversion of Subscription Receipts
Filing # 06154133

Issuer Name:
Silver Mountain Resources Inc.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated October 28, 2024
NP 11-202 Final Receipt dated October 28, 2024
Offering Price and Description:
$25,000,000 - Common Shares, Warrants, Units, Subscription Receipts, Debt Securities
Filing # 06160557

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Categories	Tricert Investment Counsel Inc.	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager	October 29, 2024
Consent to Suspension (Pending Surrender)	Altavia Capital Corp.	Exempt Market Dealer	October 29, 2024
New Registration	Markette Ventures Inc.	Exempt Market Dealer	October 31, 2024
Voluntary Surrender	iGan Partners Inc.	Exempt Market Dealer	October 31, 2024
New Registration	IGAN FINANCIAL INC.	Exempt Market Dealer	November 1, 2024
New Registration	LUCIDA CAPITAL INC.	Exempt Market Dealer, Portfolio Manager, Investment Fund Manager	November 1, 2024
New Registration	BANQUE NATIONALE EPARGNE ET PLACEMENTS INC.\NATIONAL BANK SAVINGS AND INVESTMENTS INC.	Investment Fund Manager	November 1, 2024
Name Change	From: Grant Thornton Corporate Finance Inc. To: Doane Grant Thornton Corporate Finance Inc.	Exempt Market Dealer	October 1, 2024

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