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

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FOR IMMEDIATE RELEASE
November 7, 2024

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WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.,
File No. 2022-24

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

A copy of the Reasons and Decision dated November 6, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.4
Reasons and Decisions

A.4.1 Cormark Securities Inc. et al. – s. 127(1)

Citation: *Cormark Securities Inc (Re)*, 2024 ONCMT 26
Date: 2024-11-06
File No. 2022-24

IN THE MATTER OF
CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.

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

Adjudicators:	M. Cecilia Williams (chair of the panel) Geoffrey D. Creighton Jane Waechter	
Hearing:	In person, March 25, 26, April 11, 12, 15, 16, 30, May 1, 2, 3, 21, 22, 28, 29, June 13, 14, 2024; final written submissions received June 14, 2024	
Appearances:	Anna Huculak Johanna Braden	For the Ontario Securities Commission
	David Di Paolo Graham Splawski Rebecca Flynn Natalia Paunic	For Cormark Securities Inc.
	Melissa MacKewn Dana Carson	For William Jeffrey Kennedy
	Joseph Groia Kevin Richard Yona Gal	For Marc Judah Bistricer
	Derek Ricci Chantelle Cseh Rui Gao	For Saline Investments Ltd.

REASONS AND DECISION

1. OVERVIEW

[1] On March 17, 2017, Canopy Growth Corporation was added to the Toronto Stock Exchange's composite index (the **Index**). Prior to Canopy's inclusion in the Index, Cormark Securities Inc. (a registered investment dealer) approached Canopy about participating with a Cormark client in a series of transactions (the **Transactions**).

[2] The proposed structure would allow Canopy to raise capital by taking advantage of the anticipated increased demand for Canopy shares on March 17. Canopy agreed to participate, and the Transactions were carried out when Canopy was added to the Index.

[3] William Jeffrey Kennedy, Cormark's Head of Equity Capital Markets, developed the structure for the Transactions. The Transactions also involved Cormark's clients Marc Judah Bistricer and his company Saline Investments Ltd. Murray Goldman, a Canopy shareholder and a member of its board of directors, also participated in the Transactions.

[4] The Ontario Securities Commission alleges that:

a. the Transactions resulted in an illegal distribution of Canopy's shares;

b. Canopy was Cormark's and Kennedy's client, and Cormark and Kennedy failed to deal fairly, honestly and in good faith with Canopy;

c. in the alternative, if Canopy was not Cormark's and Kennedy's client, Cormark and Kennedy acted in a manner that engages the Tribunal's public interest jurisdiction;

d. all the respondents engaged in other conduct that engages the Tribunal's public interest jurisdiction; and

e. Kennedy and Bistricer are personally accountable for the failures by Cormark and Saline, respectively, to comply with Ontario securities law.

[5] We conclude that the Commission has failed to prove any of its allegations against any of the respondents.

2. BACKGROUND

[6] Cormark was registered with the Commission as an investment dealer and by 2017 was a leading independent investment dealer. Cormark's services included trading, investment banking, and equity capital markets, an investment banking sub-service that focused on structuring capital markets transactions.

[7] Kennedy was a shareholder, director and officer of Cormark, and held the title of Managing Director – Head of Equity Capital Markets and Operations. He was registered with the Commission as a dealing representative so that he could occasionally assist retail clients (typically employees, directors or officers of institutional clients) who were interested in participating in a transaction Cormark was managing for an institutional client. By 2017, Kennedy had decades of experience structuring capital-raising transactions.

[8] Bistricer was the Chief Executive Officer of Murchinson Ltd., an Ontario portfolio manager. Bistricer was registered with the Commission as Murchinson's ultimate designated person. Bistricer was the sole shareholder, director and officer of Saline, his holding company. Bistricer, Murchinson and Saline had been clients of Cormark since 2015.

[9] Canopy was an Ontario cannabis company. It was a reporting issuer in Ontario and graduated from the TSX Venture Exchange to the Toronto Stock Exchange in 2016. In early February 2017, analysts began predicting that Canopy would join the Index on March 17, 2017.

3. READ-INS FROM COMPELLED INVESTIGATIVE INTERVIEWS

[10] Before turning to the substantive issues, we give reasons for rulings we made during the merits hearing about read-ins from transcripts of the Commission's compelled investigative interviews.

3.1 The respondents were not permitted to file excerpts from the Goldman transcript

[11] The respondents advised that they planned to file excerpts from the transcripts of the Commission's compelled investigative interview of Goldman. The Commission objected and the parties filed written submissions. During the hearing, we decided not to permit those transcript excerpts to be admitted into evidence.

[12] As a threshold matter, the Tribunal may admit relevant hearsay evidence under s. 15 of the *Statutory Powers Procedure Act*.[1]

[13] Goldman was directly involved in the securities loan agreement which was one element of the transactions in issue, and his evidence would meet the relevance test for this hearing. However, neither the Commission nor the respondents called Goldman for oral testimony.

[14] We exercised our discretion not to admit excerpts from the Goldman transcript because we did not receive a satisfactory explanation why Goldman could not give evidence directly. The respondents stressed his advanced age but provided no evidence whatsoever that his age caused a barrier to his testifying. Absent compelling reasons, we should not exercise our discretion to admit hearsay evidence when better evidence is available. Here, the respondents did not demonstrate any compelling reasons.

[15] Also, the Commission told us that Goldman's transcript evidence was expected to contradict, at least in some respects, the testimony of both Kennedy and Bruce Linton, the founder, Chairman and Chief Executive Officer of Canopy. If so, Goldman's evidence should be tested by cross-examination unless there is a compelling reason why he was unable to testify orally, either in person or virtually. In the circumstances of this case, a fair hearing required the ability to challenge

[1] RSO 1990, c S.22

the truth of such controverted evidence by cross-examination and we declined to admit excerpts of Goldman's compelled interview transcripts.

3.2 Bistricer and Saline were not permitted to expand the excerpts from the Bistricer transcript the Commission asked to file

[16] Prior to the Commission closing its case, Bistricer and Saline elected not to testify. The Commission asked to file excerpts from Bistricer's compelled interview transcript as part of its case against those two respondents. Bistricer and Saline did not object to the proposed excerpts. However, they asked to read in additional excerpts to explain, qualify or put into context the Commission's proposed read-ins. Neither Cormark nor Kennedy took a position on the read-ins because the Commission had stipulated that the read-ins would not be used in the Commission's case against them.

[17] We did not permit the additional excerpts to be read into evidence. We concluded that no further explanation or qualification was required for the read-ins the Commission asked to introduce.

[18] Saline and Bistricer submitted that the Tribunal's decision in *Kitmitto (Re)*[2] provided the applicable guiding principles for our decision. In *Kitmitto,* the Tribunal rejected the request from two of the respondents that their entire transcripts be included in evidence. However, the Tribunal recognized that other excerpts, in addition to those proposed by the Commission, could be included in evidence.

[19] The two respondents in *Kitmitto* submitted that without their entire transcripts in the record, there was a risk the record would be incomplete or that there could be an unfair outcome. The Tribunal concluded that those risks were "appropriately addressed through the adverse party's ability to identify other excerpts that explain or qualify those excerpts put forward by" the Commission.[3] The Tribunal stated that had either of the respondents been concerned "about insufficient inclusion of explanatory or qualifying excerpts" they could have raised those concerns with the panel.[4]

[20] Saline and Bistricer submitted that the eight extracts they asked to include all explained, qualified or put into context the read-ins the Commission proposed to rely on.

[21] The Tribunal in *Kitmitto* adopted a test from Rule 31.11(3) of the *Rules of Civil Procedure.*[5] In civil litigation in Ontario, once the pleadings are closed, every party has the right to conduct an examination for discovery of any adverse party. At any subsequent trial, a party who has conducted an examination for discovery may read into evidence any part of that examination. Rule 31.11(3) provides that where only part of the evidence from an examination for discovery is used in evidence, the trial judge may "direct the introduction of any other part of the evidence that qualifies or explains the part first introduced."

[22] The right of adverse parties to require additional read-ins is limited. It does not shift control of the content to the adverse party, the additional read-ins should not mislead the trier of fact, and it is not an opportunity for the adverse party to introduce evidence favourable to its case that should have been presented through a witness.[6]

[23] Where an answer read in is clear and complete, "separate and distinct questions and answers should not be read in under the pretext of providing context."[7]

[24] The issue for us to determine, according to the Commission, was whether the questions and answers it wanted to read in misrepresented the question and how Bistricer answered the question. The Commission submitted that the questions asked, and the answers given, in their proposed read-ins were clear and complete. They required no explanation or qualification.

[25] The read-ins Saline and Bistricer asked to introduce, purportedly to provide context, risked opening the door to requiring the Commission to introduce as part of its case evidence that it would not otherwise adduce. The Commission submitted that it should not be required to introduce evidence to establish Bistricer's case. Nor should the Commission be required to introduce as part of its case evidence that it does not consider credible or accurate. Doing so would put the Commission in the position of having to challenge its own evidence and explain why the panel should not rely on it.

[26] Saline and Bistricer submitted that the Commission had accurately described the law in civil proceedings and the civil cases that had been provided by the Commission to the Tribunal in *Kitmitto*. However, there is no decision by this Tribunal or any other securities tribunal that has adopted the approach used in civil litigation.

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2 2022 ONCMT 12 (***Kitmitto***)
3 *Kitmitto* at para 60
4 *Kitmitto* at para 60
5 RRO 1990, Reg 194
6 *Andersen v. St. Jude Medical Inc.,* 2010 ONSC 1824 (***Andersen***) at para 15
7 *Andersen* at para 20

[27] The standard they asked be applied was as stated in *Kitmitto,* the read-in of additional excerpts that explain or qualify those proposed by the Commission.[8] In addition, in *Kitmitto*, the Tribunal went on to state that including the entire transcripts as requested by the two respondents "would go beyond providing context and clarification to the statements relied on by" the Commission.[9]

[28] The additional read-ins they requested, Saline and Bistricer submitted, are about providing context and qualifying answers given. This context and qualification are to ensure fairness for the respondents: to ensure the panel has an accurate understanding of their evidence on the issues relied on by the Commission, and to ensure that incomplete answers are not taken out of context.

[29] We agreed with the reasoning in *Kitmitto*. A respondent may introduce additional excerpts that explain or qualify those the Commission is asking to include in its evidence. By deciding not to admit the respondents' entire transcripts, the *Kitmitto* panel applied the civil standard. Admitting the entire transcripts would go "beyond providing context and clarification". We read "context" narrowly, consistent with the standard the Tribunal indicated it adopted; *i.e.*, to explain or qualify. Asking for further read-ins to provide context in a broad sense might require a party to adduce evidence it would not otherwise introduce or that it found unreliable or inaccurate. It could extend to requiring a party to present the adverse party's position or be such that the read-ins provide a means for that adverse party to avoid presenting evidence directly.

[30] We reviewed the eight additional read-ins that Saline and Bistricer proposed to include. In each instance we found that the question and answer the Commission asked to introduce was clear and complete and no further explanation or qualification was required. Since the questions and answers were clear and complete, we did not allow additional read-ins to provide explanation or qualification because each proposed addition involved one or more of the following characteristics:

a. different questions relating to the same issue or a related issue;

b. follow-ups to clearly asked and answered questions where the substance of the original answer did not change; or

c. questions about one fact from an earlier answer that launched another line of questions.

4. ISSUES AND ANALYSIS

4.1 Introduction

[31] The issues we must decide are:

a. Did the respondents engage in an illegal distribution?

b. Was Canopy a client of Cormark's or Kennedy's?

c. If so, did Cormark and Kennedy fail to deal honestly, fairly and in good faith with Canopy?

d. In the alternative, if Canopy was not Cormark's or Kennedy's client, does Cormark's and Kennedy's alleged misconduct engage our public interest jurisdiction?

e. Did the respondents otherwise conduct themselves in a way that engages the Tribunal's public interest jurisdiction by undermining the protection provided by hold periods, avoiding disclosure, threatening capital market efficiency, or failing to meet the high standards expected of market participants?

f. If Cormark failed to comply with Ontario securities law, did Kennedy authorize, permit or acquiesce in that non-compliance?

g. If Saline failed to comply with Ontario securities law, did Bistricer authorize, permit or acquiesce in that non-compliance?

4.2 The respondents did not engage in an illegal distribution

[32] The Commission alleges that the Transactions constituted an indirect offering of securities to the public, made without the benefit of a prospectus or an exemption from the prospectus requirement. This allegation is based on the Commission's submission that the series of transactions fall within the "extended" definition of a "distribution".

[8] *Kitmitto* at para 60
[9] *Kitmitto* at para 61

[33] We disagree and conclude that the "extended" definition of distribution does not apply in this case.

[34] We first describe the Transactions before turning to our analysis of the definition.

4.2.1 The Transactions

[35] The parties agree that the Transactions took place on March 17, 2017, the day that Canopy was added to the Index. They disagree about the characterization of certain components of the Transactions and about whether the Transactions, considered together, constituted an illegal distribution.

[36] The Transactions were:

a. Canopy sold 2.5 million common shares to Saline in a private placement, subject to a four-month hold period (the **Restricted Shares**);

b. Saline borrowed 2.5 million freely-trading Canopy common shares (the **Free-Trading Shares**) from Goldman Holdings under a securities loan agreement;

c. Saline provided the Restricted Shares to Goldman Holdings as collateral for the loan of the Free-Trading Shares; and

d. Saline sold short 2.5 million Canopy common shares on the Toronto Stock Exchange through a series of sales on the open market and in the exchange's market-on-close facility, using the Free-Trading Shares to settle the short sales.

[37] The Restricted Shares carried a legend indicating that they were subject to a four-month hold period. The Restricted Shares remained in Goldman Holdings' account at Cormark until the end of the hold period when the legend was removed. The Restricted Shares were ultimately retained by Goldman Holdings in satisfaction of Saline's obligations under the securities loan agreement.

4.2.2 "Extended" definition of "distribution"

4.2.2.a Introduction

[38] The *Securities Act*[10] (the ***Act***) requires that a person or company that wishes to distribute a security must file a prospectus unless an exemption applies.[11] The prospectus requirement is triggered by a "distribution". The definition of "distribution" in s. 1(1) of the *Act* includes two components. The first component is a list of six specific types of trades, part (a) of which is "a trade in securities that have not been previously issued." The second component, often referred to as the "extended" definition, includes "any transaction or series of transactions involving a purchase and sale or a repurchase and resale in the course of or incidental to a distribution".

[39] The Commission submits that the Transactions amounted to a single distribution by virtue of the extended definition of distribution, because:

a. the private placement to Saline of the Restricted Shares was a trade in securities that had not been previously issued, and was therefore a "distribution" under part (a) of the definition; and

b. the securities loan agreement between Goldman Holdings and Saline, and Saline's short sales of Canopy shares, were part of a series of transactions involving purchases and sales during or incidental to that distribution.

[40] We conclude, for the reasons below, that the extended definition of distribution does not apply in these circumstances. Fundamentally, that is because we do not accept the premise, at the heart of the Commission's submissions, that the Transactions effectively converted the Restricted Shares issued under the private placement into the Free-Trading Shares borrowed under the securities loan agreement. That premise is ill-conceived because it is inconsistent with the facts and contrary to the working of the closed system of Ontario's securities law, which is described below.

[41] The Commission submits that the legal analysis is fact-sensitive, taking into consideration the respondents' understanding of the Transactions, including their purpose and effects; the factors listed in Companion Policy 41-101CP *General Prospectus Requirements*; and the anti-avoidance functions of the extended definition. The Commission also asks that we take a purposive approach to this analysis, by considering whether a prospectus is required to protect the investing public.

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10 RSO 1990, c S.5

11 *Act*, s 53(1)

4.2.2.b The respondents' understanding of the Transactions

[42] The Commission submits that the respondents understood that the securities loan and the short sales were "in the course of or incidental to" the private placement because:

a. Cormark and Kennedy told Canopy, in an email summarizing the Transactions, that "The resulting buyers (new shareholders) of this private placement are index funds, but the trade is facilitated by an intermediate institutional buyer of the private placement who arranges to borrow the stock in order to deliver the index funds "free trading" shares."

b. Bistricer sought and obtained compliance clearance for the Transactions together. He sought approval for "Purchase of WEED CN 4 month hold paper. Short sale of ordinary shares, borrowed by agreement. Done in Saline Investment account at Cormark". The approval Bistricer obtained linked the Transactions by virtue of approving the purchase of 2.5 million shares and a 9% discount on the purchase price. The link, the Commission submits, is that the discount to the closing price was achieved by Saline using the Free-Trading Shares to settle the short sales, the bulk of which were settled at the closing price.

[43] The respondents counter that their subjective intent or "understanding" is not relevant to determining whether there is a distribution. The legislature specifically implemented hold periods, as part of the closed system, to establish objective criteria that replace any inquiry into a purchaser's understanding.

[44] We agree with the respondents. The term "distribution" plays a fundamental role in Ontario securities law. The common theme to the wide range of activities captured by the definition of distribution is an attempt "to capture that moment of initial distribution when a security first becomes available to the public, thereby triggering the disclosure obligations designed to protect investors".[12]

[45] The general concept of a distribution of securities was first introduced in *The Securities Act, 1945*, which incorporated the defined term "primary distribution to the public".[13] Confusion about who constituted a member of "the public" and, therefore, when a prospectus was required[14] led to two important amendments to Ontario securities law in 1978. The phrase "to the public" was removed, with the amended statute using the simple term "distribution", and the "closed system" was introduced.

[46] The prospectus requirement is subject to exemptions and there are resale restrictions on the first trades of prospectus-exempt securities. Securities issued pursuant to an exemption from the prospectus requirement are issued and exist within the "closed system". They "are restricted from entering the secondary market", and thus restricted from getting into the hands of the general investing public.[15] Securities inside the closed system may only be traded pursuant to a prospectus or if applicable resale restrictions are satisfied. Hold periods are a form of resale restriction.

[47] The respondents submit that two important facts make it clear that the Restricted Shares were entirely different shares from, and not interchangeable with, the Free-Trading Shares:

a. the Restricted Shares bore the required resale restriction legend,[16] and

b. the Restricted Shares had a different CUSIP number than the Free-Trading Shares (CUSIP numbers being unique identifiers assigned to securities to facilitate their clearance and settlement).

[48] We agree that the Restricted Shares remained within the closed system until the end of the four-month hold period. Saline used the Free-Trading Shares to settle its short sales. The two were distinct sets of securities. The fact that the parties may have understood that the Transactions were designed to work together does not change the reality that the Transactions involved two separate sets of securities.

4.2.2.c Companion Policy 41-101CP *General Prospectus Requirements*

[49] The Commission also submits that the position that the Transactions were one distribution is supported by Companion Policy 41-101CP. While 41-101CP is not part of Ontario securities law, and therefore is not binding on the Tribunal, it sets out a list of considerations relevant to the analysis of whether a distribution under a prospectus is only one transaction in a series of transactions in the course of, or incidental to, the ultimate distribution. Those considerations, and the Commission's submissions about their application in this instance, are:

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12 David Johnston, Kathleen Rockwell and Cristie Ford, *Canadian Securities Regulation*, 5th ed. (Toronto: Lexis/Nexis Canada, 2014) at 5.7

13 Five Year Review Committee, *Final Report – Reviewing the Securities Act (Ontario)* (Toronto: Queen's Printer, 2003) at s 1, p. 22. The phrase "primary distribution to the public" is defined in the *Securities Act, 1945,* SO 1945, c 22 at s 1(j)

14 Five Year Review – Final Report at s 12.1, p 134

15 Five Year Review – Final Report at s 12.1, p 134

16 National Instrument 45-102 – *Resale of Securities*

a. *The number of persons or companies who are likely to purchase securities in each transaction*. Saline buying and then reselling to a larger number of purchasers was akin to an underwriter in a "traditional" public offering rather than an issuer in a "traditional" private placement.

b. *Whether the purchaser's traditional business is that of financing as opposed to investing*. Saline and Bistricer were both in the business of investing, but neither was in the business of investing in Canopy.

c. *Whether a purchaser is likely to acquire more of a specified class of securities of the issuer than it is legally entitled to or practically wishes to, hold*. Saline bought more shares than it wished to hold because it sold the same number of shares short on the market before it acquired the private placement shares.

d. *The type of security distributed and whether the security is convertible into publicly traded securities of the issuer*. The respondents effectively converted the Restricted Shares into Free-Trading Shares.

e. *Whether the purchase price of the securities is set at a substantial discount to their market price*. The discount on the private placement was 9% while the discounts to the closing price on Canopy's previous four bought deals were 6.6%, 11.6%, 8.5% and 4.7% (disregarding, we note, the substantial underwriting fee in each of those prior transactions).

f. *Whether the purchaser is committed to hold the securities it acquires for any specified time period.* Saline demonstrated that it was not committed to holding Canopy's shares for any specified period.

[50] The respondents submit that the scenario contemplated by 41-101CP is one where an "offering" of securities is made to the purchaser, and the purchaser "immediately resell[s]" those securities in the secondary market. 41-101CP is not engaged in this instance because there was no resale of the Restricted Shares in the secondary market.

[51] We are not persuaded by the Commission's submissions, as they would require us to accept that Saline converted the Restricted Shares into Free-Trading Shares. We reject that position. Saline acquired the Restricted Shares and was committed to holding them for four months. There is no impediment to providing shares subject to a trading restriction as collateral for a loan, which Saline did, and those shares remained within the closed system.

[52] We also find that Saline was not acting akin to an underwriter and distributing shares to the public when it sold short the Free-Trading Shares. The Free-Trading Shares were previously issued and outstanding and sold in the secondary market through the Toronto Stock Exchange. In addition, 41-101CP does not state that a purchaser must be in the business of investing in a specific security and the evidence supports the conclusion that Saline and Bistricer engaged in investing generally.

4.2.2.d Anti-avoidance guidance

[53] The Commission directs us to the guidance in Companion Policy 45-106CP *Prospectus Exemptions* and Companion Policy 45-501CP *Ontario Prospectus and Registration Exemptions*, submitting that the guidance makes clear that the extended definition applies to persons and companies acting as underwriters in a distribution. The guidance explains, in s. 1.7 of 45-106CP and s. 3.5 of 45-501CP, that underwriters should not sell securities to the public without providing a prospectus.

[54] The respondents submit that the policy concern addressed in the guidance is the underwriter's ability to resell securities purchased under an exemption to the prospectus requirement in the secondary market without a prospectus. The Commission concedes that the guidance is focused on a situation where an underwriter purchases newly issued securities and then resells those same securities to investors. However, the Commission submits that the anti-avoidance principles in the guidance would apply equally to an underwriter who purchases newly issued securities and resells identical borrowed securities to investors.

[55] The anti-avoidance language in the guidance states that "[i]f a dealer purchases securities through a series of exempt transactions in order to avoid the obligation to deliver a prospectus, the transactions will be viewed as a whole to determine if they constitute a distribution."

[56] We adopt the guidance that underwriters should not sell securities to the public without providing a prospectus but conclude it does not apply in this case because we do not accept that:

a. Saline was acting as an underwriter;

b. the Free-Trading Shares and the Restricted Shares were identical securities; or

c. the Transactions were structured to avoid delivering a prospectus for the distribution of newly issued shares to the public.

[57] Saline purchased shares from Canopy under a prospectus exemption. These shares were subject to a hold period. They were provided as collateral for the securities loan and were not resold to the public. Investors buying Canopy shares through Saline's short sales on the market did not require the protections of a prospectus. They bought free-trading shares that had been issued earlier. Those shares were not, as the Commission submits, "identical" to the shares issued under the private placement. While both the private placement and the short sales involved Canopy common shares, the first transaction was in Restricted Shares and the latter involved Free-Trading Shares. In addition, the mandatory four-month hold period for newly issued treasury shares is designed to ensure that Canopy would make its next quarterly continuous disclosure before the restricted shares became freely tradeable and entered the secondary market.

4.2.2.e Commission's other submissions in support of the extended definition applying in this case

[58] The Commission submits that application of the extended definition to the Transactions is also supported by Crystallex International Corp (Re).[17] We disagree.

[59] In *Crystallex*, the Tribunal found the following series of transactions to be a distribution: Crystallex issued repayment rights to a third-party lender to Crystallex; the lender exercised the repayment rights and received common shares from Crystallex as a result; and then the lender resold those common shares to the public. The Commission submits this is analogous to the Restricted Shares being exchanged for the Free-Trading Shares under the securities loan. We do not accept this view.

[60] In *Crystallex*, the repayment rights that were issued were exercised for the common shares. The repayment rights disappeared once exercised. The situation before us is completely different. The Restricted Shares were not replaced by the Free-Trading Shares. Both continued to exist; the Restricted Shares in Goldman Holdings' account at Cormark and the Free-Trading Shares passing to purchasers of the short sales.

[61] The Commission also cited a US Court of Appeals case[18] relating to a "swap scheme" involving the sale of free-trading shares by a party who had replaced those shares with restricted shares. No such swap occurred in the case before us. Further, while the prospectus regimes in the US and Ontario share some features, there are also important differences, and we must be cautious about applying US principles.[19] The Commission did not provide us with any analysis of the similarities or discrepancies between the concept of "distribution" under Ontario securities law and "offer of sale" under US securities law. Therefore, we do not rely on the US case.

4.2.2.f Other available exemptions or analogous regulatory frameworks

[62] The Commission put to Kennedy that he could have achieved the same outcome for Canopy by structuring either an "equity line" or "at-the-market" offering and then seeking exemptive relief. The Commission asserted that there are previous exemptive relief decisions relating to both types of offerings that would have permitted the distribution of Canopy's treasury shares to secondary market purchasers through the facilities of the Toronto Stock Exchange. Kennedy said that he was not familiar with "equity line" offerings. He also stated that an "at-the-market" offering would not have been viable for an index rebalancing offering because it was his understanding that the exemptive relief decisions typically included a cap of 25% of the daily trading volume, and the total number of shares which would be traded during the Index inclusion day would not be known. Kennedy did not approach the Commission to discuss obtaining exemptive relief without the cap in the circumstance of an index rebalancing.

[63] We give no weight to the fact that Kennedy did not consider, or discuss with the Commission, other available types of exemptive relief. We accept his evidence about his lack of awareness of the one and his understanding of the limits of the other. Moreover, we accept his evidence that, in structuring the Transactions, he considered issues of regulatory compliance and, if the transaction as proposed did not work, he would have tried to figure out something else or walked away.

[64] The Commission also raised the regulatory framework whereby underwriters may over-allocate up to 15% of a distribution, which allows underwriters to hold a short position in the securities following closing. This in turn allows underwriters to engage in market stabilization to compensate for increased liquidity in the market following the distribution. The underwriter may deliver to purchasers either newly issued shares or shares purchased in the market through the over-allocation. Regardless of the origin of the shares a purchaser receives, they are entitled to the protections of the prospectus for the offering. The Commission asserts that short sales made by underwriters to create an over-allocation position in connection with a prospectus offering "are caught by the extended definition of "distribution"".

[65] The respondents submit that there is no authority to support the Commission's submission that the extended definition applies to short sales conducted as part of an over-allocation. In fact, such short sales are subject to a prospectus

17 (1999), 22 OSCB 2595 (***Crystallex***)
18 *Zacharias v SEC* 569 F.3d 458
19 *Tiffin* 2020 ONCA 217

requirement because of a specific provision of Ontario securities law, s.11.1 of NI41-101 *General Prospectus Requirements*.

[66] The existence of a specific regulatory regime to provide prospectus protection to shares other than those issued from treasury is, in our view, irrelevant and does not support the Commission's argument that the extended definition of distribution should apply in the unique circumstances before us.

4.2.3 Conclusion

[67] The 2.5 million Restricted Shares issued by Canopy to Saline in the private placement were shares that had not been previously issued. The private placement by Canopy was a distribution under part (a) of the definition. Those shares were subject to a four-month hold period. They bore a legend reflecting that they were restricted from trading.

[68] The Restricted Shares were posted as collateral for the securities loan. A pledge of shares as collateral for a loan is excluded from the definition of "trade" in s. 1(1) of the *Act*. The Restricted Shares stayed within the closed system until the hold period ended. There were no further transactions involving the Restricted Shares. In the circumstances of this case, we do not consider it appropriate to extend the definition of distribution to include transactions involving different shares.

[69] We therefore conclude that there were no sales or resales that were "in the course of or incidental" to the distribution of the Restricted Shares by way of private placement. In addition, we conclude Saline was not an underwriter. Saline sold (short) Free-Trading Shares to the public. Those sales were not a distribution because they did not involve newly issued treasury shares.

4.3 Did Cormark and Kennedy fail to deal fairly, honestly and in good faith with Canopy as a client?

4.3.1 Introduction

[70] Registered dealers and advisers, and representatives of registered dealers and advisers, have an obligation under s. 2.1 of OSC Rule 31-505 *Conditions of Registration* to deal fairly, honestly and in good faith with their clients. Cormark is registered as an investment dealer in Ontario. Kennedy was employed by Cormark and acted as a representative of Cormark in his dealings with that firm's clients.

[71] The Commission submits that Cormark and Kennedy misled Canopy about the full scope of the Transactions, concealing the short selling, including sales through the market-on-close facility, and the effect the short sales could have on Canopy's net proceeds.

[72] To determine whether there was a breach of Rule 31-505, we must first determine if Canopy was a client of Cormark and Kennedy. For the reasons below, we conclude that Canopy was not their client.

4.3.2 Applicable law

[73] The *Act* provides that without an exemption, no person or company may "engage in or hold himself, herself or itself out as engaging in the business of trading in securities" unless the person or company is registered.[20] The Commission relies on what it describes as the Tribunal's fact-sensitive, multi-factor approach to determining whether there is a client relationship. In particular, the Commission directs us to *Marek (Re).*[21] The Commission submits that many of the Tribunal's comments in that case apply here, even though *Marek* involved an advisor-investor relationship.

[74] We are not persuaded that the advisor-investor relationship in *Marek* is analogous to the investment banking-issuer relationship between Cormark, Kennedy and Canopy. However, *Marek* does provide some helpful guidance. The determination of whether a client relationship exists is highly contextual, depends on the relevant circumstances and is guided by the purposes of the Act.[22] In *Marek*, the Tribunal considered a non-exhaustive list of helpful indicia of a client relationship. Those indicia include conducting registrable activities, receipt of a benefit, formal documentation, and the parties' beliefs. None of the factors is definitive, but their presence may assist us in determining if a client relationship exists. We now look at each of the factors in turn.

4.3.3 Registrable activities

[75] Christopher Shaw was a Managing Director in Cormark's investment banking department in March 2017. Shaw approached Linton on March 6, 2017, to see if Canopy would be interested in participating in the Transactions. This would be Canopy's first private placement transaction.

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20 *Act*, s 25
21 2017 ONSEC 41 (***Marek***)
22 *Marek* at paras 5, 30 and 31

[76] Kennedy explained the proposed Transactions to Linton in a telephone conversation on March 7, 2017. Shaw provided a summary of the structure in an email which Timothy Saunders, Canopy's Executive Vice President and Chief Financial Officer, used as the basis for a memo to the Canopy board. Kennedy had conversations and email exchanges with Deborah Weinstein, a partner in the law firm LaBarge Weinstein LPP, who acted as Canopy's external counsel and Corporate Secretary.

[77] Cormark was only able to identify a portion of the shares needed for the loan portion of the Transactions through its back office. Shaw, therefore, asked Linton if he knew any large shareholders who might be interested in loaning their shares. Linton identified Goldman as a potential lender, contacted Goldman to gauge his interest, and then introduced Goldman to Kennedy. Kennedy met with Goldman to discuss the proposed structure. When Goldman agreed to participate, Kennedy met with him to sign the securities loan agreement and account documentation for Goldman Holdings.

[78] Cormark provided the draft Share Subscription Agreement for the private placement to Canopy and provided comments on the agreement from Saline's perspective. Cormark's client, Bistricer, agreed to buy the private placement shares and later identified one of his companies, Saline, to be the purchaser.

[79] The Commission submits that Cormark's and Kennedy's actions described above made Canopy their client because Canopy was vulnerable to Cormark and Kennedy and because Cormark and Kennedy were engaging in activities requiring registration.

[80] Since this was Canopy's first private placement, the Commission submits Canopy was at an informational disadvantage to Cormark and Kennedy, who were experienced investment bankers. That disadvantage made Canopy vulnerable to Cormark and Kennedy and, the Commission submits, Canopy relied on Cormark and Kennedy.

[81] We do not agree that Canopy was vulnerable to Cormark and Kennedy or relied on them, for the following reasons:

a. Canopy, Linton and Saunders were experienced in raising capital. Linton had extensive experience as an entrepreneur in different sectors and had been involved in a range of securities offerings (for example, private placements, non-brokered deals, and bought deals). Saunders had worked at public and private companies. By March 2017, he had been involved with Canopy's four bought deal offerings.

b. Canopy's lawyer, Weinstein, was an experienced securities counsel. Both Linton and Saunders testified that they relied on her advice regarding the Transactions. Weinstein reviewed copies of the Share Subscription Agreement and Share Loan Agreement. She also had numerous contacts with Kennedy about the Transactions and their constituent parts.

c. Kennedy testified that he explained the Transactions to Linton, Goldman and Weinstein and believed that they understood the Transactions. We accept his testimony, as there was no evidence to the contrary from either Goldman or Weinstein, and Linton's testimony showed that his attention was focused on the details of the Share Subscription Agreement impacting Canopy.

d. Canopy had an experienced board. Linton, Saunders, Weinstein and Goldman all participated in the board meeting where the Transactions were approved (although Goldman did not vote because of his declared conflict).

[82] The Commission further submits that Cormark and Kennedy engaged in the business of trading securities each time they traded in securities and that Cormark's and Kennedy's dealings with Canopy were acts in furtherance of trades in securities. Since the Transactions benefitted Canopy, those trading activities must also have been for Canopy's benefit.

[83] To the extent that Cormark and Kennedy were carrying out registrable activities in relation to the Transactions, we find that they were doing so on behalf of Cormark's clients, Saline and Goldman. Canopy had its own lawyers to advise and support it. That support was primarily directed toward the only part of the Transactions that Canopy was party to – the Share Subscription Agreement. The balance of Cormark and Kennedy's registrable activity was directed toward Saline's and Goldman's parts of the Transactions. Canopy did benefit from the Transactions, but so did Cormark's clients Saline and Goldman. Linton and Saunders both clearly testified that Canopy did not need the capital at the time and that Canopy would only participate on terms that were acceptable to Canopy. The fact that Canopy benefited from Cormark's and Kennedy's activities is not sufficient for us to conclude, as the Commission asks us to, that there is a strong presumption of a client relationship.

4.3.4 Receipt of a benefit

[84] The Commission submits that the benefits Cormark and Kennedy received from Canopy are persuasive evidence of a client relationship. We do not agree. The alleged benefits are indirect, hypothetical and/or insignificant.

[85] The alleged benefits the Commission submits Canopy conveyed are:

a. by agreeing to the private placement, Canopy enabled Cormark to assist an important client, Bistricer/Saline, to make a substantial, virtually risk-free profit;

b. Canopy introduced Goldman to Kennedy and Kennedy hoped to secure future business from Goldman, and some months later did propose another transaction to Goldman;

c. Cormark hoped to be engaged by Canopy at a senior level going forward;

d. Canopy indirectly paid Cormark's fees through the 9% discount from the market closing price on the private placement purchase price; and

e. Kennedy, as a shareholder of Cormark who received compensation based on firm profitability, would benefit from possible future business.

[86] Bistricer was an established client of Cormark at the time of the Transactions. The fact that Saline made a profit is irrelevant. It is not unreasonable for market participants to have an expectation of profit. It is not surprising or indicative of a client relationship that Cormark and Kennedy would hope that contacts with Canopy, an issuer at a significant point in its growth, or Goldman, an established market participant, may result in future business. At the time of the Transactions, any future business was hypothetical at best. Canopy did not pay Cormark. Saline paid Cormark commissions for the trades. The trading commission Cormark received from Saline, $362,500, was minimal in the context of the Transactions. Kennedy's potential to share in revenue from any trading or future business was yet to be determined by Cormark's compensation committee based on Cormark's profitability.

4.3.5 Formal documentation

[87] The Commission submits that a registrant ought not to be able to avoid their obligations by avoiding formally documenting the relationship.[23] This, the Commission submits, is what Cormark and Kennedy did. Kennedy designed the Transactions to be "non-brokered" (i.e. without an underwriting or agency agreement"). Canopy asked three times about an agreement. Cormark did not provide one.

[88] While the existence or lack of documentation is not determinative of the existence of a client relationship, in this instance we find the lack of an agreement is consistent with Cormark's and Kennedy's understanding that Canopy was not their client.

[89] Kennedy and Shaw both stated that Cormark's practice was to sign either an agency or an underwriting agreement with clients. Cormark was not acting as an agent or an underwriter for Canopy with respect to the Transactions. Kennedy stated that entering into an agency agreement would have changed the economics of the private placement, because agency connotes a different relationship with associated obligations and fees.

[90] Saunders asked Shaw about an engagement agreement. Shaw does not appear to have responded. Weinstein asked Kennedy about an agency or underwriting agreement and Kennedy advised her there would not be an agreement. This is consistent with Kennedy's understanding that Canopy was not engaging Cormark as an agent or underwriter. Weinstein also asked for a representation letter from Cormark for comfort about Cormark's "know your client" obligations regarding the purchaser of the private placement. Kennedy indicated the private placement purchaser (Bistricer, at that stage) was an existing client and that the Share Subscription Agreement would have an accredited investor certificate, which it did.

[91] Weinstein was an experienced securities counsel. Linton and Saunders both stated that they relied on her. Linton also stated that it would be "impossible" to put any restrictions on Weinstein's ability to ask any questions. We conclude that it is more likely than not that had Canopy thought an agreement with Cormark was necessary to reflect its relationship with Cormark and/or to protect its interests, there would be evidence of Linton, Saunders or Weinstein requiring an agreement with Cormark before completing the private placement. There was no such evidence.

[92] The Commission also submits that Cormark and Kennedy deliberately structured the Transactions so there would be no written agreement between Cormark and Canopy. This allegation was not made in the Statement of Allegations. We therefore do not consider this submission.

4.3.6 The parties' beliefs

[93] The Commission submits that while it is not determinative of the existence of a client relationship, some weight ought to be given to the parties' beliefs about the nature of the relationship. The relevant evidence the Commission submits demonstrates that Canopy was Cormark's client, includes:

[23] *Marek* at para 51

a. Linton thought Cormark was advising and directing Canopy;

b. Kennedy and Shaw stated in their compelled interviews that Canopy was Cormark's client;

c. Saunders "trusted that this transaction would work the way that Cormark said it would";

d. Linton observed that Canopy had no experience with entering the Index or transactions related to entering the Index and Canopy relied on Cormark to do the transaction and get them the benefit from index funds and "indexers" (traders who attempt to track an index's performance) buying;

e. Kennedy agreed that market participants who deal with Cormark would rely on Cormark's expertise. Kennedy was the one with experience with taking advantage of the increased volume on a company's addition to the Index and he understood that Canopy lacked that knowledge, and Kennedy was adding value by sharing his knowledge with Canopy; and

f. no one at Canopy would have any knowledge of how Saline was trading Canopy shares on March 17; only Cormark had that knowledge.

[94] The respondents submit that Canopy understood it was not Cormark's client. In an email dated March 21, 2017 (four days after the Transactions occurred), Weinstein stated that "Canopy did not retain Cormark, nor is Canopy directly paying their fees". Canopy's counsel at Bennett Jones also confirmed that Canopy was not Cormark's client in a response to a question during the Commission's investigation. They stated: "Cormark acted as the broker for Saline in the transaction. Canopy did not engage, nor pay Cormark's broker fees; these fees were paid by Saline."

[95] In addition:

a. no one at Cormark told anyone at Canopy that Canopy was their client;

b. no one at Canopy told anyone at Cormark that Canopy thought it was Cormark's client;

c. while Linton and Saunders had stated in their compelled interviews that they thought Canopy was Cormark's client, they admitted on cross-examination that Canopy was not Cormark's client;

d. Cormark indicated in multiple emails in March 2017 that Saline was its client; and

e. Cormark, on Saline's behalf, negotiated the terms of the private placement in arm's length negotiations with Canopy.

[96] We are not persuaded that Canopy believed it was Cormark's client or that Cormark believed Canopy was its client. Canopy and Cormark are sophisticated parties. Weinstein, at the time of the Transactions, and Bennett Jones, during the Commission's investigation, confirmed their understanding that Canopy was not Cormark's client. While Linton and Saunders may have thought at the time of their interviews that Canopy was Cormark's client, both agreed on cross-examination that they did not think Canopy was Cormark's client.

[97] Regardless of what any of the parties thought about whether Canopy was Cormark's client, that question is a legal issue and one of the fundamental issues for us to decide based on the evidence proven before us.

4.3.7 Conclusion

[98] We conclude that Canopy was not Cormark's or Kennedy's client. Canopy, with its experienced management, board and counsel, was not akin to a vulnerable individual investor. The relationship between Canopy and Cormark was not akin to an agency or underwriting relationship. There is evidence that Cormark frequently referred to Saline as its client in communications with Canopy. There is no evidence of Cormark indicating to Canopy that it was its client, nor of Canopy referring to itself as Cormark's client. The alleged benefits accruing to Cormark and Kennedy were hypothetical or minimal.

[99] Because we have determined that Canopy was not Cormark's or Kennedy's client, Rule 31-505 is not engaged. We therefore dismiss the Commission's allegation that Cormark and Kennedy breached that Rule.

4.4 The respondents' conduct does not engage the Tribunal's public interest jurisdiction

4.4.1 Introduction

[100] The Commission alleges that our public interest jurisdiction is engaged in two instances:

a. first, as an alternative allegation against Cormark and Kennedy if we find, as we have, that Rule 31-505 does not apply to the conduct alleged to breach that Rule; and

b. second, because of other alleged misconduct by the respondents, which we detail below.

[101] We deal with each category of public interest allegations below and conclude that the Commission has failed to establish the alleged misconduct. We, therefore, dismiss all the Commission's public interest allegations.

[102] We heard submissions from Bistricer with respect to the standard to be applied when exercising the Tribunal's public interest jurisdiction. Because the Commission failed to prove its factual allegations, it is not necessary for us to consider the standard.

4.4.2 Cormark's and Kennedy's conduct does not engage the Tribunal's public interest jurisdiction

[103] As an alternative to its allegation that Cormark and Kennedy breached Rule 31-505, the Commission submits that Cormark's and Kennedy's alleged misleading conduct and concealment of details about the Transactions from Canopy engages our public interest jurisdiction and warrants an order under s. 127(1) of the *Act*.

[104] The respondents submit that this argument was not asserted in the Statement of Allegations. Rather, the Commission framed its allegation as a breach of Rule 31-505.

[105] We disagree with the respondents. In the Statement of Allegations, under the heading "Failure to deal fairly, honestly and in good faith", after laying out the allegations about how Cormark and Kennedy misled Canopy and concealed details of the Transactions from Canopy, the Commission alleges that this conduct was contrary to the public interest.[24] We therefore will consider the Commission's alternate argument.

[106] The Commission submits that Cormark and Kennedy had to disclose fully to Canopy the entire series of Transactions. Only then could Canopy make an informed decision as to whether to participate, including whether the short selling was in the best interest of the company and its shareholders. The Commission submits that instead of making that full disclosure, Cormark and Kennedy:

a. misled Canopy about the ordinary course nature of the Transactions;

b. lied to Canopy about the short selling, telling it that the free-trading shares were required so that they could be delivered to index funds;

c. concealed the risk-reward ratio that Saline faced; and

d. made a misleading comparison between the Transactions and Canopy's December 2016 bought deal with respect to Canopy's cost of capital and, by implication, its net proceeds.

[107] We consider each of the four alleged failures by Cormark and Kennedy and conclude in each instance that the evidence does not support the allegations.

4.4.3 Cormark and Kennedy did not mislead Canopy about the ordinary course nature of the Transactions

[108] The Commission submits that Cormark and Kennedy told Canopy the Transactions were in the ordinary course in connection with joining the Index. This allegation is based on:

a. Saunders' evidence that Linton told him doing a private placement as a low cost means of getting the private placement shares into the hands of Index funds was "apparently a common drill" when a company first joins the Index;

b. Linton understood from Cormark that it had a "mechanism, a machine, a process" when an issuer is added to the Index. Cormark "came forward with this thing. Okay. Cormark is good at this. Great. Terrific. That's their specialty.";

c. Shaw proposed that Linton take a call with Kennedy, Cormark's "ECM guy …who does these trades." [Emphasis added];

d. Shaw wrote in an email to Saunders on March 9 attaching the draft share purchase agreement: "The price would be at a 9% discount, which includes all fees, commissions and our legal costs (we make about 1.5% on these trades.)" [Emphasis added];

[24] Statement of Allegations, *Cormark*, November 9, 2022 at para 26

e. an initial draft of a Cormark PowerPoint presentation contained the statement "Cormark has successfully completed several deals in similar structures";

f. in response to a question from Weinstein, Cormark responded that it had done "this type of transaction" for Centerra Gold, but Centerra Gold did not involve an index inclusion, a sale into the market-on-close facility, short selling or a promise that the private placement shares would end up in the hands of index funds;

g. Kennedy advised Weinstein that a lending arrangement with an individual insider was not a normal transaction for Cormark but failed to advise her that other aspects of the Transactions were also new to him and to Cormark;

h. Shaw believed this was the first time he had ever approached an issuer about a private placement in connection with joining an index;

i. Kennedy:

i. had not executed an index inclusion event for any issuer before March 17, 2017;

ii. had not used this same structure before March 17, 2017;

iii. agreed this was the first time Cormark had engaged in a transaction where short selling was occurring concurrently with a private placement offering; and

iv. agreed that while the various elements of the Transactions were "normal features", he combined them in a way that was not "plain vanilla", "not normal" and "not run-of-the mill".

[109] While Saunders did state that he understood the Cormark proposal was a "common drill", he said this understanding came from Linton. Linton stated that Cormark brought the Transactions to Canopy, and he understood them to have a process that was specialized or that had a normal course in relation to joining an Index. There is no evidence about how Linton came to this understanding or the basis for his "common drill" comment to Saunders.

[110] We found Linton to be a credible witness. However, he did not have a clear memory of the conversations he had with Shaw and Kennedy about the Transactions. These unattributed understandings by Linton are insufficient, in the absence of any direct evidence, to ground a finding that Cormark and Kennedy misled Canopy.

[111] Nor is there any direct evidence of Shaw or Kennedy telling anyone at Canopy that the Transactions were in the ordinary course in connection with an Index inclusion. The two email references by Shaw to "these trades" are too vague and ambiguous to support the conclusion that Cormark and Kennedy misled Canopy. The draft PowerPoint deck that stated that Cormark had successfully completed several of these transactions (which Kennedy stated during cross-examination he didn't believe was true) was never given to Canopy. Nor is there any evidence linking that draft document to any subsequent statement by Shaw about "these trades".

[112] The email exchange between Weinstein and Kennedy about Centerra Gold involved a discussion about an immaterial private placement and did not constitute a representation by Kennedy that the Transactions were ordinary course in relation to an index inclusion. Regarding the email exchange between Weinstein and Kennedy about lending arrangements with insiders, which Kennedy stated was "not the normal type of transaction", there is insufficient basis for us to read into that narrow exchange the need for Kennedy to tell Weinstein that the combined Transactions were unique, particularly when there is no evidence that he had told Weinstein they were ordinary course.

[113] The facts that this was the first time Shaw had approached an issuer about a private placement when the issuer was joining an index, and that Kennedy had not executed an index inclusion transaction before March 2017, are irrelevant given that there is no evidence that either person told Canopy the Transactions were in the ordinary course.

4.4.4 Cormark and Kennedy did not lie about the short selling

[114] For reasons that follow, we conclude that Cormark and Kennedy neither lied about nor concealed the short selling. We also conclude that Linton and Saunders did not focus on or retain information about the mechanics of how Saline was to deliver the Free-Trading Shares to index funds. There was no evidence that Canopy would not have proceeded with the private placement if it had known about the short sales.

[115] Before turning to the analysis of this issue, it is helpful to first lay out the facts and chronology of Canopy's approval of the private placement and the execution of the various aspects of the Transactions on March 17.

Select Chronology

[116] Shaw emailed Linton on March 6 asking for a call to discuss an "idea". They agreed to speak around 13:00 that day. After that meeting, Shaw emailed Linton again (at 13:21) asking Linton to take a call the next day, March 7, with Cormark's "ECM guy" (Kennedy) to "walk through the logistics of how this works and when we can execute it".

[117] In response to a request from Linton for a summary of the proposed Transaction to provide to the Canopy Board, Shaw sent an email on March 10. Saunders copied the email into a presentation to the Board, adding some additional language and an appendix. We discuss the relevant parts of the email and Board presentation further below.

[118] Also, on March 10 Linton told Shaw that Canopy required a "collar" or floor price: if the 9% discount to the market closing price on March 17 fell below a 10% discount to the opening price on March 10, Canopy would not participate in the private placement. Shaw did not immediately pass this information on to Kennedy or anyone else at Cormark.

[119] On March 13, the Canopy Board approved the private placement, as described in the Board presentation. Goldman disclosed to the Board his role in the Transactions as the lender of the Free-Trading Shares to Saline and recused himself from the vote.

[120] On March 17:

a. 10:00 – Kennedy met with Goldman, in Goldman's office, to get Goldman's signature for Goldman Holdings on the securities loan agreement;

b. 10:24 – continuing an exchange that started on March 15, Canopy's counsel Tayyaba Khan, an associate with Weinstein's firm who assisted with the Transactions, advised that March 22 for closing the private placement may be aggressive and that the closing date should be on or before March 24;

c. 11:03 – Kennedy replied to Khan that the "slight problem" was that the delivery of the Free-Trading Shares needed to happen on March 22;

d. 11:03 – Saline began selling Canopy shares short on the Toronto Stock Exchange's open market, selling 450,000 shares between 11:08 and 15:19;

e. 12:07 – Canopy provided Cormark with a signed Share Subscription Agreement, to be held in escrow pending confirmation of the final price for the private placement;

f. 12:50 – Kennedy sent the Share Subscription Agreement to Bistricer for signature on behalf of Saline;

g. 12:55 – Kennedy emailed Khan (copying Shaw, Saunders and Weinstein) stating that "what my client needs to know is that we have a deal now regardless of the price…";

h. 13:03 – Linton emailed Weinstein, Kennedy and Khan (copying Saunders and Shaw) "Chris knows we have a deal only if price stays with [*sic*] 10% of the open the day we had the discussion.";

i. 13:04 – Kennedy emailed Saunders (copying Shaw, Weinstein, Khan and Linton) stating "That can't work my client will be short by that time and have nothing to provide Murray as collateral if Canopy backs away".

j. 13:07 – Linton emailed Kennedy and Saunders (copying Shaw, Weinstein and Khan) stating "lots of Cormark selling today. May want to work on that so we stay in the agreed limit. Chris made that deal – not a new term."

k. 14:30 – Shaw emailed Kennedy, Linton, Saunders, Weinstein and Khan that the minimum net subscription price would be $9.25, a 9% discount to 90% of the March 10 open price of $11.30;

l. 15:27 – Saline placed an order to sell 2,050,000 shares of Canopy at market in the Toronto Stock Exchange's market-on-close facility;

m. 15:33 – Linton emailed that Canopy was good to proceed with the private placement;

n. 15:56 – Cormark confirmed the receipt of Goldman's Free-Trading Shares from Goldman Holdings' account at another registered dealer;

o. 16:00 – trading in the Toronto Stock Exchange's market-on-close facility resulted in a closing price for Canopy shares of $10.66;

p. 16:00 – Saline sold 2,050,000 Canopy shares short in the market-on-close facility at the established closing price, bringing Saline's total short sales that day to 2.5 million; and

q. 17:26 – Canopy advised it was prepared to release its signature on the Share Subscription Agreement for the private placement.

Parties' submissions and our analysis

[121] The Commission submits that Cormark and Kennedy told Canopy that the buyer of the private placement would borrow shares from Goldman Holdings "in order to deliver the index funds 'free trading' shares." In fact, the Free-Trading Shares were used by Saline to close short sales made in the open market on March 17, before the closing price referenced in the private placement was determined. Short selling, the Commission submits, was important to the structure of the Transactions, but Cormark and Kennedy did not explain this to Canopy.

[122] The Commission's position is supported, it submits, by the fact that:

a. neither Linton nor Saunders knew about the short selling;

b. neither Shaw nor Kennedy could recall using "short" or "short selling" in any correspondence or conversations with anyone at Canopy and there is no evidence that they did so;

c. the only mention of "short" was in Kennedy's email at 13:04 on March 17 and no one at Canopy understood it to mean that short sales in the market were happening;

d. Shaw did not understand that the Transactions involved short selling so we cannot conclude that he explained to Canopy that there would be short selling;

e. Shaw's March 10 email describing the Transactions, which Saunders used as the foundation for the Canopy Board presentation, begins with "As discussed…". It is a reasonable assumption that the email therefore lays out all the salient points discussed about the Transactions, and yet there is no reference to short selling;

f. neither the draft nor final press release refers to short selling;

g. neither Linton nor Saunders was aware of the market-on-close facility where, according to Kennedy, the short sales were to take place and not all the short sales happened in that facility; and

h. not all the buyers were index funds as represented to Canopy, which Canopy would have understood had they been told that the Free-Trading Shares would be sold in the blind market-on-close facility.

Linton and Saunders

[123] We found Linton and Saunders to be credible witnesses. We accept their evidence that they do not recall being told about the short selling or about the market-on-close facility. However, this does not mean that Cormark or Kennedy concealed the fact or lied to them about it either. Their lack of recollection is consistent with Linton and Saunders being focused on the aspects of the Transactions that were most relevant to them – selling 2.5 million shares at a 9% discount with downward price protection.

[124] Linton did not have a clear recollection of the March 7 meeting with Kennedy to "walk through the logistics" of the Transactions. Linton confirmed that he did not ask or know how Saline was going to deliver the Free-Trading Shares to the buyers. Saunders also stated that he did not ask or know how Saline or Cormark would deliver the Free-Trading Shares to the buyers.

[125] Linton and Saunders understood market-on-close to mean the price of the security at close of the market. The Board presentation refers to the private placement being priced based on the market-on-close price, which is consistent with Linton's and Saunder's understanding that it was a pricing mechanism. Part of the private placement's structure was pricing at a discount to Canopy's closing price on March 17. We agree that, given that fact, it is logical to read the Board presentation as referring to that aspect of the structure. That does not necessarily lead to the conclusion that Cormark and Kennedy lied about the market-on-close facility.

Kennedy

[126] Kennedy had a clear recollection of his meetings with Linton and Goldman. He testified that he explained the mechanics of the Transactions to Linton at the March 7 meeting. He also explained the logistics of the Transactions to Goldman when he met with Goldman to discuss the securities loan. While Kennedy could not recall using the word "short", he stated that the concept of selling borrowed securities was fundamental to the Transactions and he recalled with certainty discussing that with Linton, Goldman and Weinstein.

[127] We accept Kennedy's evidence. We have nothing to contradict it because Linton does not recall the conversation, and we have no evidence from Goldman or Weinstein.

Shaw

[128] Regarding Shaw, we conclude that he did not have a detailed understanding of the logistics of the trading component of the Transactions. If he had, he would have realized the significance of the floor price to the structure when Linton raised it with him on March 10 and would have told Kennedy about it immediately, which he did not.

[129] Shaw stated that he understood the borrowed shares had to be sold to meet the index inclusion demand but did not necessarily know that is the same thing as saying a short sale. Shaw also stated that he was not involved in the "structural mechanics of the trading aspects" of the Transactions. Had there been any questions from Canopy or its counsel about the trading aspects (though he did not recall there being any such questions), Shaw was confident that he would have referred those questions to Kennedy or some other appropriate person at Cormark.

[130] The fact that Shaw did not completely understand the logistics of the trading part of the Transactions does not mean that he lied about or concealed the short selling. He connected Canopy to Kennedy as the person who "does these trades" to "walk them through the logistics" and Kennedy says that he explained the details to Canopy.

Shaw's March 10 email

[131] We now address Shaw's email of March 10 and the reference to "As discussed" with no following reference to short selling. Kennedy submits that we must assess what Canopy understood based not just on the documentary evidence alone but also on the context of the many conversations that Kennedy had with Linton, Goldman, Weinstein and Khan in connection with the Transactions. The words "As discussed" did not mean that everything that had been discussed was included in the summary and the summary was not a script that would be followed. We agree.

[132] Saunders forwarded Shaw's email to Weinstein. Kennedy had several telephone conversations and email exchanges with Weinstein about the Transactions. During those conversations, Kennedy testified, he discussed with Weinstein that there would be a private placement and a lending agreement, and the loaned shares would be sold on the market using the market-on-close facility. He concluded that at the end of those conversations Weinstein understood the key aspects of the Transactions.

[133] Weinstein was an experienced securities lawyer. Linton and Saunders both stated that they relied on her to advise them about the Transactions. Had Weinstein had concerns about the Transactions it is more likely than not that she would have raised those concerns with Kennedy, Linton and/or the Canopy Board. No party called Weinstein as a witness. The evidence we have is that Kennedy explained the Transactions to Weinstein, he believed she understood them, and Canopy proceeded with the Transactions.

Kennedy's March 17 "my client will be short" email

[134] The parties disagree on the import of Kennedy's March 17 "my client will be short" email. The Commission submits that neither Linton nor Saunders understood the reference to the client being short to mean there was active short selling in the secondary market at that time. The Commission also submits that Kennedy's evidence about the meaning of the email shifted. Initially, Kennedy said it meant that if Canopy stepped away his client would be short the collateral to provide to Goldman. Later, the Commission submits, Kennedy said the email states that his client will have a short position, and without the private placement his client will have no collateral to deliver for the securities loan agreement.

[135] Saunders testified that he understood the email to mean that there was something in Cormark's sequence for the Transactions that would be out of order, not that there would be short sales. He thought Kennedy was applying pressure to get the transaction done. For Saunders, the deal with Canopy was concluded, agreed and finalized at close of business on March 17. He testified that he had no reason to ask about Saline's trading. We find that Saunders was not concerned about Cormark's "sequence" of events.

[136] Similarly, Linton testified that he understood the email to mean that there was a timing issue and some exposure for others. He did not understand it to mean there was short selling happening. However, Linton also said that he understood the "incentives more than the mechanics" and he understood that "[s]omeone wants to do something on the other side" of the securities loan, "which covers their short position with that stock". Linton went on to say, "They do some mechanism that I'm not up on", but that was his high level understanding. We find that Linton was not concerned with aspects of the Transactions that did not directly impact Canopy.

[137] We agree with Kennedy that his March 17 email says at least two things. First, "my client will be short by that time" is a clear statement that Saline will have sold Canopy short by the time the closing price for the day was established. The email goes on to say "…and have nothing to provide Murray as collateral if Canopy backs away." Again, we find this to be an unambiguous statement of fact that if Canopy were to back away from the private placement, Saline would not have Restricted Shares to deliver to Goldman Holdings as collateral for the loan of the Free-Trading Shares. Kennedy's email is inconsistent with an effort to conceal the short selling.

[138] In addition, Weinstein reviewed the securities loan agreement, was aware that the Restricted Shares were collateral for the loan of the Free-Trading Shares and was told by Kennedy that the Free-Trading Shares would be sold. Since selling borrowed shares is short selling, we find that Kennedy conveyed to Canopy's counsel that short selling was happening.

[139] While neither Linton nor Saunders said they understood Kennedy's email to mean that Cormark's client would be short or that active short selling was happening, their comments clearly indicate that they were not focused on issues that would not directly impact Canopy, including the risks to Cormark or Cormark's client. Canopy's deal would be complete at the close of business on March 17, provided the 9% discount remained within 10% of the opening price of Canopy's shares on March 10.

[140] We conclude that Linton and Saunders retained, from what they were told, the information that was most important to them. That did not include the mechanics of how the borrowed Free-Trading Shares made it into the hands of the ultimate purchasers on March 17.

Canopy's press release

[141] With respect to Canopy's press release of the private placement, we disagree that the absence of any mention of short selling is evidence that Cormark and Kennedy concealed the short selling or that Canopy was not aware of it.

[142] On March 16, Weinstein emailed Saunders that she had not yet seen a draft press release for the private placement. She had, however, found a precedent where an insider was involved in a lending agreement. Weinstein provided Saunders with draft language about Goldman's role as a lender and stated that disclosure of his role would "close any loop in investor inquiries" regarding why Goldman was making regulatory filings about his shares.

[143] Later that day, a director in Canopy's public relations department asked Saunders if the "bankers" were doing a first draft of the press release. We conclude that Saunders asked Cormark to provide a draft of the press release because on March 18 Shaw emailed Linton and Saunders (copying Weinstein) attaching a draft press release. Saunders testified that the final press release was reviewed by Canopy's Disclosure Committee. Canopy issued a press release on March 22.

[144] Neither Cormark's draft nor Canopy's published press release referred to short selling.

[145] Canopy was in control of its disclosure. The press release reflects the fact that Canopy sold 2.5 million shares in a private placement at a specified discount and an insider was involved in a loan connected to that issue. Weinstein's March 16 email clearly indicates a focus on the private placement and the role of Goldman, an insider, in the securities loan agreement. We concluded earlier that Canopy and Weinstein were told that there would be short selling in the market on March 17. We have no evidence about the internal discussions at Canopy, including at the Disclosure Committee, about the content of the press release. We cannot conclude that the absence of any mention of short selling in the release indicates that Cormark or Kennedy lied about or concealed the short selling.

The identity of the buyers of the Free-Trading Shares

[146] The Commission alleges that Cormark and Kennedy told Canopy that the purchasers would be index funds when in fact a variety of purchasers bought from Saline's short sales, including 157 retail accounts. The Commission submits that had the market-on-close facility been fully explained to Canopy, Linton and Saunders, they would have understood that the purchasers would not be index funds, as they expected. Because the facility is a blind market, the purchasers could be and were anyone including index funds and indexers.

[147] The Commission submits that if Cormark wanted to make clear that the shares were going to be sold short through the market-on-close facility, it could have said so. A reasonable market participant like Canopy, the Commission suggests, would have understood the language Cormark provided to Canopy for the Board presentation to mean that Cormark had lined up institutional buyers to do a pre-arranged block trade.

[148] There is no evidence that Canopy, Linton or Saunders had any more experience with block trades among institutional market participants than they did with private placements and short selling. Nor is there any evidence to support that Canopy thought Cormark and Kennedy had lined up institutional block trades.

[149] Kennedy's evidence is to the contrary. He explained the index funds did not have trade desks you could call on; their trading was mechanical, algorithmic-driven and by direct market access. Kennedy states that he explained that to get the Free-Trading Shares into the hands of index funds and indexers, one had to meet them where they traded, which was in the market-on-close facility.

[150] We accept Kennedy's uncontradicted evidence that he explained the Transactions to Linton, Goldman and Weinstein, including his statement that he explained the market-on-close facility. We conclude it was among the mechanics that neither Linton nor Saunders was concerned about. The fact that Saline sold shares short in the open market prior to

placing an order to sell the bulk of the shares in the market-on-close facility does not indicate that Cormark or Kennedy lied to Canopy. Kennedy testified that he was not aware of the earlier short sales, a statement we find to be credible since Bistricer had direct access to Cormark's trading desk.

[151] Bistricer, in the excerpts of his compelled evidence read into the record, said that he "guessed" he had placed the earlier order because "we thought we could get a better price", although when pressed, he was unable to remember with whom he had shared that view. Bistricer went on to say that there was nothing obliging him to do the short sales on a specific date or at a specific time. This is clearly inconsistent with Kennedy's view about the Transactions and the importance of the timing of the private placement and the short sales. We conclude that Saline did not feel bound by the parameters of the structure Kennedy had designed and sold shares in the open market as an opportunity to increase its potential return on the Transactions.

[152] Saunders testified that he did not think Canopy would necessarily have participated in the Transactions if the resulting buyers of the Free-Trading Shares were anyone other than index funds. Linton also stated that he did not recall ever having any information other than that the Transactions were being driven by Canopy's inclusion in the Index and that they were facilitating the index funds buying Canopy's shares. However, there is nothing in the documentary evidence to suggest that anyone at Canopy asked about the identity of the ultimate buyers or sought any representation or warranty about their identity. In addition, the Commission's investigator testified that all the Saline shares sold in the market on close went to institutional investors. Linton and Saunders confirmed in their oral evidence that they did not ask Cormark or Kennedy who had bought the Free-Trading Shares.

[153] We find that Canopy would have understood that there would be trades in the Free-Trading Shares on the market on March 17 and it was not concerned with whether all the shares went into the hands of index funds or indexers.

4.4.5 Cormark and Kennedy did not conceal Saline's risk-reward ratio

[154] The Commission submits that because Cormark concealed the short selling from Canopy, Canopy was not aware that the Transactions were structured such that they were virtually risk-free for Saline. We do not accept the Commission's submission on this point. Hedging or managing risk is a normal and accepted part of participating in the capital markets. Merely because a structure might reduce or eliminate risk does not make it contrary to the animating principles of the *Act*.

[155] We also do not agree that the structure was virtually risk-free for Saline. Saline entered into the securities loan agreement prior to signing the Share Subscription Agreement. It agreed to the Share Subscription Agreement after entering short sales in the open market and after learning that Canopy had a floor price. If Canopy's share price dropped below the floor, Canopy could walk away from the private placement. If it did, Saline would have had no collateral to deliver for the securities loan, which would be in default, leaving Saline without Free-Trading Shares to settle the short sales. Saline accepted that risk.

[156] The Commission submits that Shaw's email to Linton on March 9 misrepresented the relationship between the 9% discount and the lending fee. That email stated there would be room for a 'small' discount for Saline, while Saline ended up with substantial profits.

[157] Shaw's email was a response to Linton's question about how much Goldman would be paid as a lending fee, information Linton wanted to have before he approached Goldman about lending his shares. The email states "To achieve a 9% discount, we could pay 6.5% annualized on the borrow, which leaves us enough room for small discount for buyer and us to make 1-1.5% commission (including paying our legal costs)."

[158] Goldman negotiated a loan fee of $875,000. Kennedy testified this was a 10.8% annualized return or 3.6% of the 9% discount. Cormark's commission on Saline's trades was 1.5%. That left 3.9% for Saline, a 0.3% difference from Goldman.

[159] Shaw's email only conveyed what might be paid for a loan. It was based on what Cormark might pay if it borrowed from other dealers through the dealers' back office. In fact, Cormark was not the borrower, and the terms of the loan were negotiated between Goldman and Saline. Linton and Saunders both knew that Goldman would receive a fee for lending his shares to Saline. They both testified that they did not ask what fee Goldman had negotiated. Had either been concerned about what profit, if any, Saline was making on the Transactions, they could have followed up with either Goldman or Cormark. They did not. In addition, Weinstein received a copy of the securities loan agreement from Cormark with the lending fee displayed on the first page. There is no evidence before us to suggest that Weinstein raised any issues about that information.

[160] There is no basis for us to conclude that Saline's risk-reward ratio was even relevant to Canopy's decision to participate in the Transactions. Nor can we conclude that a hypothetical number provided in response to a specific question about a possible lending fee that would be negotiated by other parties amounts to Cormark concealing Saline's risk-reward ratio from Canopy.

4.4.6 Cormark and Kennedy did not fail to disclose the risk to Canopy's net proceeds from the Transactions

[161] The Commission submits that the short sales put Canopy's net proceeds at risk. Canopy was unaware of that risk because Cormark and Kennedy concealed the short sales from them. We concluded earlier that Cormark and Kennedy did not conceal the short sales from Canopy, but rather the details of the Transactions were explained to Canopy, and Linton and Saunders retained what was most relevant to them. However, we deal briefly with the question of whether Canopy's net proceeds were at risk.

[162] The parties agree that net proceeds were an important metric to Canopy. The minutes of Canopy's March 13 board meeting indicate that the Board considered Canopy's net proceeds from the private placement. Saunders stated that the Board was cautious about the Transactions and carefully considered them. Canopy knew that trading in the market on March 17 would affect its net proceeds because the private placement was to be priced at a discount to that day's closing price.

[163] At the time of the Board meeting, Linton also knew that Canopy had downward price protection. He had told Shaw on March 10 that Canopy would only do the private placement if the 9% discount from the March 17 closing price was no lower than 10% below the March 10 opening price. The board presentation included the fact that Canopy had a "no cost" out. Linton said the floor price was important for price certainty, and he could not recommend the deal to the Board without it. Saunders stated that the Board's approval was based on having the floor price. We conclude that Canopy's Board carefully considered the net proceeds from the Transactions. Given the floor price, there was no risk to Canopy's net proceeds beyond the risk it had negotiated to accept.

[164] The Commission also submits that Cormark and Kennedy made a misleading comparison between the Transactions and Canopy's December 16 bought deal with respect to Canopy's cost of capital and, by implication, its net proceeds. The March 7 email addressed to Shaw stated that "The 9% is an all-inclusive discount and compares favourably to your last deal which was ~12% (including underwriting fees and expenses)." The Board package that Saunders prepared included that statement. However, it also included an appendix that Saunders had prepared, that compared the 9% discount with the cost of Canopy's four previous bought deals.

[165] We conclude that Canopy did its own assessment of how the cost of this transaction compared to its previous capital raising activities and was not misled by Cormark or Kennedy. Canopy had the information necessary to do that analysis and factored in the downward price protection provided by the negotiated floor price. There is no evidence that Kennedy made a specific statement to anyone at Canopy comparing Canopy's cost of capital (and therefore its net proceeds) for the Transactions versus Canopy's most recent bought deal. Kennedy denied drafting or providing input to the email and did not agree with the Commission's proposition that Shaw received the statements in the email from Kennedy.

[166] We conclude that the Commission has failed to establish that Cormark and Kennedy engaged in the alleged misconduct. We therefore dismiss this alternate allegation.

4.5 Does the respondents' conduct otherwise engage the Tribunal's public interest jurisdiction?

[167] We now turn to the second category of the Commission's public interest allegations. The Commission submits that in addition to the conduct set out above relating to Cormark and Kennedy, the respondents behaved in a manner that engages our public interest jurisdiction because they:

a. undermined the investor protection provided by hold periods;

b. avoided disclosure by sizing the private placement to be immaterial and by making misleading statements in the draft press release Cormark provided to Canopy;

c. threatened capital markets efficiency and confidence because Saline's short sales were unlikely to contribute to an efficient trading price; and

d. failed to meet the high standards of fitness and business conduct expected of market participants and registrants.

[168] As indicated above, we conclude that the Commission has failed to establish the alleged misconduct. Our public interest jurisdiction is therefore not engaged, and we dismiss these allegations.

4.5.1 The respondents did not undermine the investor protection provided by hold periods

[169] The Commission alleges that the securities loan was not really a loan. Rather, it asserts that the agreement was structured to enable Saline to avoid the hold periods of Ontario securities law. The Commission alleges that:

a. the respondents used the securities loan agreement to "effectively convert the restricted shares into free-trading shares that were distributed to the public"; and

b. having successfully subverted the hold periods, Saline and Goldman Holdings abandoned the agreement and failed to comply with the remainder of its terms.

[170] We agree with the Commission about the importance of hold periods and the role they play in Ontario securities law. However, we cannot conclude that the respondents subverted any hold periods.

[171] We concluded earlier that the Restricted Shares were not converted into the Free-Trading Shares. There is nothing to prevent the Restricted Shares from being used as collateral for the securities loan. The Restricted Shares remained restricted and were held for four months in Goldman Holdings' account at Cormark. The Free-Trading Shares were not subject to any hold period and there was nothing to prevent Goldman Holdings from loaning those shares to Saline and Saline in turn using them to settle its short sales.

[172] We conclude that Saline and Goldman Holdings did not abandon the securities loan agreement when the hold period expired. When the hold period expired the Restricted Shares became free-trading shares. The separate identifying number for the Restricted Shares was changed by the Canadian Depository Service into the identifying number for Canopy's common shares.

[173] We agree with the respondents that there is nothing untoward about Saline and Goldman Holding agreeing to use the now free-trading shares to settle their obligations under the securities loan agreement. The securities loan agreement provided, in s. 10(b) and (d), that Saline's obligation at the end of the term of the agreement was to return "Equivalent Loaned Securities" – shares that are "of an identical type, nominal value, description and amount" to the Free-Trading Shares it borrowed. Once the hold period expired and the restriction on the Restricted Shares was lifted, they became interchangeable with and therefore equivalent to the Free-Trading Shares Saline had borrowed.

[174] The Commission also alleges that investor protection was undermined because the Transactions increased the public float. Goldman Holdings was willing to loan the Free-Trading Shares (willing to swap them, in the Commission's words) because it had no intention of selling them and therefore the Free-Trading shares became part of the public float.

[175] We were not given a clearly applicable definition of public float. However, in our view, one is not necessary for our purposes. Common sense allows us to conclude that no new shares were added into the public market until the hold period expired and the Restricted Shares become free trading. We have no direct evidence of Goldman's intentions regarding his holdings and agree with the respondents that it is irrelevant because, there being no restrictions on those shares, Goldman was free to do whatever he wished with them.

4.5.2 The respondents did not avoid disclosure

[176] The Commission alleges that our public interest jurisdiction is engaged because the respondents avoided disclosure by:

a. breaching the prospectus requirement for full, true and plain disclosure by failing to provide a prospectus for the indirect offering of 2.5 million Canopy shares into the market; and

b. minimizing the timely, accurate and efficient disclosure of information about the Transactions by:

i. sizing the private placement to not be a material change for Canopy;

ii. Cormark and Kennedy discouraging Canopy from making timely disclosure of the Transactions; and

iii. Cormark and Kennedy providing a draft press release to Canopy that was misleading in three respects:

- by stating that the Transactions were "non-brokered", Cormark and Kennedy were trying to hide their role in the Transactions;

- by stating that "no finder's fees were paid as part of" the private placement it might have suggested that Cormark was not receiving any compensation for the Transactions when they received a commission from Saline; and

- by omitting to state that the Restricted Shares were being converted into free-trading shares and used to settle short sales made to the public on March 17.

[177] We have already concluded that the Transactions did not constitute a "distribution" and therefore we will not deal with the Commission's first allegation. We have also previously concluded that the Restricted Shares were not converted into the Free-Trading Shares and therefore, find no fault with disclosure that did not refer to something that did not happen.

With respect to the Commission's remaining allegations under this heading, we conclude that the respondents did nothing wrong.

4.5.2.a Sizing the private placement to not be a material change and discouraging timely disclosure

[178] The Commission alleges that the private placement was deliberately sized so that it was not a material change, and no timely disclosure would be required. Although the Commission alleges that the "respondents" engaged in this alleged conduct there is no evidence that Bistricer or Saline had any role in determining the size of the private placement (other than agreeing to buy 2.5 million shares) or in any discussions with Canopy about whether Canopy should issue a press release or the contents of that release.

[179] We accept Kennedy's evidence that he thought carefully about regulatory compliance when structuring the Transactions, that the private placement had to be immaterial for the Transactions to work, and if that part of the Transactions did not work for Canopy, he would have figured something else out or walked away.

[180] There is nothing about Kennedy's and Cormark's efforts to comply with insider trading rules that is inconsistent with the animating principles underlying those rules. Shaw's and Kennedy's statements to Canopy that the private placement was immaterial are consistent with that. Saline wanting to ensure that its short sales would not be considered insider trading is an attempt to ensure that it was following applicable securities laws.

[181] Cormark and Kennedy had no control over Canopy's disclosure. Had Canopy decided the private placement was material, there would have been consequences for Cormark, Kennedy and Saline. Recognizing that and seeking assurance from Canopy about whether it developed a view that the private placement was material is consistent with wanting to ensure that the Transactions would not have to be restructured or abandoned to comply with all applicable laws.

[182] We find that telling Canopy that the private placement was designed to be immaterial does not amount to Cormark and Kennedy discouraging Canopy from making timely disclosure. The private placement being immaterial was part of the structure. If Canopy had a different view, the structure would have been changed or abandoned.

4.5.2.b Draft press release

[183] Canopy asked Cormark to provide a draft press release. The draft did not refer to Cormark, stated that the private placement was non-brokered and stated that no additional finder's fees were paid. The Commission alleges the draft release was misleading and demonstrated that the respondents did not want their roles disclosed in Canopy's news release. We concluded earlier there was no evidence that Bistricer or Saline had any role in the draft press release.

[184] We heard evidence and received submissions about the meaning of "non-brokered" and "finder's fee" versus "commissions". In our view none of that is relevant to our decision. This was a draft press release. Cormark and Kennedy had no control over what Canopy disclosed. The fact that the press release was reviewed by Canopy's Disclosure Committee and that Canopy made changes to the draft Cormark provided to it is consistent with that conclusion.

[185] There is no evidence that Canopy concluded that Cormark's role in structuring the Transactions, or Saline's involvement in them, were important to Canopy's disclosure.

4.5.3 Saline's short sales did not threaten capital markets efficiency or confidence

[186] The Commission alleges that the Transactions threatened the efficiency of Ontario's capital markets and confidence in them as an efficient pricing mechanism because Saline's short sales were unlikely to contribute to an efficient trading price. They may have prevented Canopy's share price from rising as much as it would have without the short sales or caused that price to decline – all for reasons unrelated to the merits of Canopy shares as an investment. The short sales risked the proceeds that selling Canopy shareholders received in the secondary market and Canopy's offering proceeds.

[187] We note that market participants can and do trade for reasons other than an issuer's merits and that all trading, regardless of the traders' reasons for being in the market, contribute to pricing a security. Short sales are a common element in many trading strategies. Had any party wished to, they might have sought to introduce expert evidence to assist us to conclude whether Saline's short sales had the outcomes or resulted in the risks the Commission alleges they might have had. We conclude that hypothetical outcomes that have not been established to have occurred are insufficient to conclude that the respondents did anything wrong.

4.5.3.a Cormark, Kennedy and Bistricer did not fail to meet the high standards of fitness and business conduct expected of market participants and registrants

[188] One of the primary means for achieving the purposes of the *Act* are the requirements for the maintenance of high standards of fitness and business conduct by market participants.[25] Registrants ought to be held to a higher standard of conduct[26] than non-registrants and their conduct has been found to have engaged the Tribunal's public interest jurisdiction when it violates the high standards applicable to them.[27]

[189] Cormark is a registered investment dealer. Kennedy was a registered dealing representative. Bistricer was an ultimate designated person for Saline. The Commission alleges that they failed to meet the high standards applicable to them by failing to act effectively as gatekeepers for the capital markets. The Commission alleges that Cormark, Kennedy and Bistricer deployed their knowledge and skills to enrich themselves improperly at the expense of the investing public and the capital markets.

[190] We disagree. The Commission's specific allegations are based on the premise that the Restricted Shares were converted into or swapped for the Free-Trading Shares so that investors who bought the Free-Trading shares were receiving newly issued treasury shares from Saline as an underwriter without the benefit of the protections of a prospectus. We concluded earlier that this is factually not what happened and is also contrary to the functioning of the closed system. Investors who bought from Saline's short sales received the Free-Trading Shares Saline had borrowed from Goldman Holdings for that very purpose. Saline was not acting as an underwriter and the investors did not require a prospectus.

[191] We also agree with the respondents that Cormark, Kennedy and Bistricer using their knowledge and skills, and benefitting from their efforts, is what is expected of market participants and registrants. We conclude that their conduct in this case was not improper, and we also conclude that there is no evidence that the investing public in this instance suffered from the Transactions.

[192] Having found that the Commission has not proven any of its numerous allegations of misleading, dishonest or other wrongful conduct, we conclude that these allegations against the respondents were an overreach. The unfortunate consequence is that the respondents have incurred significant costs due to this proceeding, both financial and reputational, which they cannot recover.

4.6 Remaining allegations

[193] Because we concluded that neither Cormark nor Saline breached Ontario securities law we do not need to consider if either Kennedy or Bistricer was liable under s. 129.2 of the *Act*.

5. PRELIMINARY ISSUE

[194] Before concluding, we set out our reasons for our December 21, 2023 order, which:

a. held that the issue of whether the respondents' expert's opinion (the **Mackasey Opinion**) was admissible would be decided at the merits hearing; and

b. varied the timelines for the filing of responding and reply expert reports, if any.

[195] The Respondents subsequently elected not to call Mackasey as a witness.

5.1 OSC motion Regarding Admissibility of Respondents' Expert Report

5.1.1 Background

[196] On November 1, 2023, the Commission filed a notice of motion asking, among other things:

a. that the Tribunal hear a motion to have the Mackasey Opinion excluded prior to the merits hearing; and

b. to amend its order dated June 28, 2023, and permit the Commission to deliver an expert opinion responding to the Mackasey Opinion, if required, after the Tribunal's disposition of the motion.

[197] The respondents filed joint submissions requesting that the Commission's motion be denied. At an attendance on November 15, 2023, a differently constituted panel ordered that the following two preliminary issues would be heard by this hearing panel on December 19, 2023:

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25 *Act*, s 2.1(2)(iii)

26 *Kitmitto* at para 241, affirmed *Kitmitto v Ontario (Securities Commission),* 2024 ONSC 1412, leave to appeal to the Ontario Court of Appeal currently sought by Appellants (***Kitmitto***)

27 *Donald (Re)*, 2012 ONSEC 26 at para 319; *Agueci (Re)*, 2015 ONSEC 2 at para 175; *Kitmitto*

a. Should the question of whether the Mackasey Opinion is admissible be determined prior to or during the merits hearing?; and

b. Should the Commission be granted an extension for filing an expert response report?

5.1.2 Should the question of whether the Mackasey Opinion is admissible be heard prior to or during the merits hearing?

[198] The parties agreed that the test for determining if the issue of admitting the expert report should be decided prior to or at the merits hearing is as set out in *Mega-C Power Corporation (Re)*.[28] They disagreed on the result that comes from applying the *Mega-C* criteria in these circumstances.

[199] In determining whether to decide a principal issue at a preliminary stage, the Tribunal has determined that it is appropriate to ask three questions:

a. Can the issues raised in the motion be resolved without regard to contested facts and the anticipated evidence that will be presented at the hearing on the merits?

b. Is it necessary for a fair hearing for the relief sought in the motion to be granted prior to the proceeding on its merits?

c. Will the resolution of the issues raised in the motion make the process materially more efficient and effective?[29]

[200] If the answer to any of the three questions is "yes", then the motion should be heard in advance of the hearing on the merits, absent strong reasons to the contrary. If the answer to all three questions is no, then the Tribunal should be reluctant to hear the motion before the merits hearing.[30]

[201] The Commission conceded that it is not necessary for its motion to be heard before the merits hearing. We therefore needed to address only the first and third questions. We concluded that the answer to both questions is "no". Therefore, the issue of whether the expert opinion is admissible would be addressed at the merits hearing.

5.1.2.a Could the issues in the motion be resolved without regard to the contested facts and anticipated evidence in the merits hearing?

[202] Opinion evidence is generally inadmissible, subject to narrow exceptions including expert evidence on matters requiring specialized knowledge. The Commission submitted that in determining whether the Mackasey Opinion met the test set by the Supreme Court of Canada in *R v. Mohan*[31] (*Mohan*) for admission of expert evidence there was no need for us to resolve the contested facts in the merits hearing.

[203] To be admissible under the *Mohan* test, the expert opinion must be relevant, necessary, not subject to an exclusionary rule and proffered by a qualified expert.[32] For the purposes of this motion, we were not determining whether the Mackasey Opinion was admissible but rather when that question should be resolved. We considered the parties' submissions on the *Mohan* factors only to the extent necessary to resolve the timing issue.

[204] According to the Commission, what is *relevant* at the merits hearing is determined by the Statement of Allegations and the Commission cannot expand the issues through the evidence led at the merits hearing.

[205] The respondents submitted that resolving the admissibility of the Mackasey Opinion before the merits hearing would require the Tribunal to make findings, without the full evidentiary record, on at least two contested issues (whether the Transactions were ordinary course in connection with Canopy joining the Index, and whether the respondents misled Canopy about the Transactions such that Canopy could not make an informed decision about participating). This would negatively affect the respondents' ability to make full answer and defence to the allegations against them.

[206] We agree with the Commission that we can determine the relevance of the Mackasey Opinion to the allegations against the respondents as set out in the Statement of Allegations, without resolving these or any other contested issues because relevance is determined by the Statement of Allegations.

[207] The Commission submitted that it is not *necessary* for a specialized Tribunal to have the full context of the merits hearing to decide whether the issues are outside of the Tribunal's experience and knowledge and that an expert's opinion is needed.[33] The respondents submitted that if the Commission leads evidence that the Transactions are abusive and

28 2070 ONSEC 4 (***Mega-C***)
29 *Solar Income Fund Inc. (Re) 2021 ONSEC 2* (***Solar Income***) at para 32, citing *Mega-C* at para 44
30 *Solar Income* at para 33, citing *Mega-C* at paras 35-36
31 [1994] 2 SCR 9 (***Mohan***)
32 *Mohan* at para 20
33 *Paramount (Re)*, 2020 ONSEC 12 at para 15 (***Paramount***)

contrary to the public interest, the Mackasey Opinion would be *necessary* to the Tribunal as it would provide evidence on industry practices regarding similar transactions and evidence that compares the Respondent's practices to those prevalent in the industry. Such evidence has been found necessary by the Tribunal in the past.[34]

[208] We disagree that an allegation that conduct engages our public interest jurisdiction necessarily requires expert evidence. The Tribunal can determine whether the issues raised in a Statement of Allegations are outside of the Tribunal's knowledge and expertise.

[209] The Commission submitted that the respondents would have to establish that the Mackasey Opinion was not subject to any other exclusionary rule, including the *"ultimate issue"* rule. That rule generally prohibits opinion evidence that usurps the role of the trier of fact.[35] The Commission submitted that whether all or any of the Mackasey Opinion addresses issues that were for the Tribunal to determine at the merits hearing could be determined prior to the hearing without reference to contested facts or anticipated evidence.

[210] Whether the Mackasey Opinion was subject to some other exclusionary rule, the respondents submitted that the opinion compared Cormark's, Kennedy's and Canopy's understanding of the transactions at issue with what could be reasonably expected of a similarly situated investment bank and issuer. This would provide necessary context to the allegations that Canopy was misled and would not be an opinion on the ultimate issue.

[211] We agree with the Commission that the Tribunal can determine whether the Mackasey Opinion addresses issues that were for us to determine without having reference to the contested facts or anticipated evidence.

[212] In addition, the respondents submitted that *Mega-C* should be considered in a broader context of requiring a balancing of interests – ensuring the fairness of the proceedings and that all procedural rights the parties are entitled to are properly and effectively provided. The manner of achieving that goal will depend on the circumstances of each case, "including the sanctions and outcomes sought and what is ultimately at stake" for the respondents.[36] In this instance, the respondents faced very serious consequences including, for Cormark, revocation of the right to carry on business in the securities industry. The respondents submitted that the Tribunal should, therefore, in exercising our discretion balance in favour of the respondents' ability to make full answer and defence.

[213] While we agree with the Commission that whether the Mackasey Opinion met the *Mohan* test could be determined prior to the merits hearing, we concluded that in balancing the interests of the parties to ensure that the respondents are able in these circumstances to make full answer and defence to the very serious allegations and their attendant consequences, the question of whether the opinion was admissible should be determined in the context of the merits hearing. The answer to the first question was therefore "no".

5.1.2.b Would the resolution of the issues raised by the motion make the process materially more efficient and effective?

[214] We also concluded, for the reasons below, that the answer to the third question was "no".

[215] The Commission submitted that resolving the issue of whether the Mackasey Opinion was admissible before the merits hearing would be materially more efficient and effective regardless of the outcome. If the Commission were successful there would be no need for a responding or reply opinion and no need for Mackasey or any other expert to testify. Regardless of who would be successful there would be greater certainty about how the merits hearing would proceed, because the scope of the relevant issues would have been clarified. Dealing with the question of admissibility mid-hearing might result in delays needed to schedule the experts, hear their evidence, and for the panel to make its decision.

[216] The respondents submitted that no efficiencies would be gained from determining this issue on a preliminary basis. They submitted that given that several of the Commission's allegations could not be tested without factual findings and reference to the anticipated oral evidence, a full hearing would be required. This would duplicate the merits hearing.

[217] In addition, the respondents submitted that *Mega-C* cannot be interpreted to read that a process that is merely more efficient trumps the right of the respondents to make full answer and defence to the serious allegations and their potential consequences for the respondents.

[218] We agreed with the respondents that while there may be some efficiencies from resolving the issue of whether the Mackasey Opinion is admissible on a pre-hearing basis, those efficiencies do not reach a level of materiality suggested by *Mega-C*.

[219] We heard submissions about the few cases in which the Tribunal has considered the admissibility of an expert opinion. In *Solar Income,* the issue was dealt with pre-hearing and the expert report was ruled inadmissible. In that case, the Commission had sought to introduce an expert opinion to presumptively rebut anticipated evidence from the respondents,

34 *Paramount* at para 12
35 *R v Sekhon,* 2014 SCC 15 at para 75 (***Sekhon***)
36 *Mega-C* at para 31

but the respondents undertook not to lead evidence on the issue in question. In *Kraft (Re),*[37] the parties exchanged expert opinions and submissions and chose a day close to the start of the merits hearing on which the issue was addressed. In *Mithaq Canada Inc. (Re),*[38] the Tribunal dealt with whether an expert report was admissible at the outset of the merits hearing. In each instance, the Tribunal's decision is very fact specific.

[220] The efficiencies that might be gained in this instance from addressing this issue before the merits hearing would be minor. In balancing the interests of efficiency against the potential serious consequences faced by the respondents in this matter, we concluded the balance weighed more heavily on the side of ensuring that all the procedural protections were available to the respondents. We concluded that the answer to the third *Mega-C* question was also "no".

[221] We now turn to the reasons for our decision to vary the scheduling order and extend the time for the Commission to file a responding expert opinion, if any.

5.1.3 Should the Commission be granted an extension for filing a responding expert opinion?

[222] The respondents served two expert reports on September 15, 2023. The Commission had until November 3, 2023, to serve any expert reports in response but served none. On November 1, 2023, the Commission brought its motion. We granted the Commission an extension to file any responding expert report by January 15, 2024. The Commission did not file any such report.

[223] The Commission conceded that it would have been ideal if it had served its notice of motion earlier. However, the *Kraft* decision, dealing with a similar issue, was issued on October 20, 2023. Four days later, the parties were advised that the panel was no longer available on five hearing dates. The parties were asked for submissions on whether the dates should be rescheduled or vacated. The number of days required for the merits hearing depended, in the Commission's view, on whether the Mackasey Opinion was admissible. The Commission advised the respondents on October 26, 2023, that it would be challenging the opinion and filed its motion on November 1, 2023.

[224] The Commission submitted that it brought this motion in good faith with the aim of streamlining the proceeding. There was ample time in the hearing schedule, with several breaks built into the schedule, for a responding opinion to be served if one were required. If its motion were denied, the Commission could file a reply expert opinion by January 15, 2024. In its written submissions the Commission had said an expert response report could be filed within two weeks. The amended request to be able to file by January 15, 2024, was because of the pending holidays.

[225] The respondents submitted that the schedule was set in June 2023, and it was inappropriate for the Commission to have waited until November 1, 2023, to bring this motion. The Commission could have filed a responding expert opinion without prejudice by the deadline or filed its motion earlier. The respondents submitted that the Commission was pursuing a de-risking strategy that the Tribunal should not sanction by granting the requested relief. The Commission intended to take the position that the Mackasey Opinion is irrelevant and if unsuccessful then it would serve a responding opinion two months late, hedging the need for it to provide a responding expert opinion. The Commission had made its decision about what evidence it needed to prove its case and should not be given an opportunity to lead additional evidence if that decision proved to have been wrong.

[226] The Commission's proposed approach, the respondents submitted, put the merits hearing schedule at risk and was not efficient. The respondents had incurred the cost of their expert's report and had to attend this motion hearing and, if the Commission were successful, attend an admissibility hearing. If the Commission were unsuccessful at the motion hearing and were allowed to file a late responding expert opinion, the respondents would then have to consider preparing and serving a reply opinion, while having to prepare for the merits hearing itself.

[227] Expert evidence is intended to assist the Tribunal with understanding technical issues that are outside the scope of the Tribunal's expertise. If the Tribunal found the Mackasey Opinion to be admissible and there were no responding expert evidence, the Tribunal may be disadvantaged. The Tribunal would not have the benefit of a fully argued opinion on whatever issues the Tribunal determined it needed assistance with.

[228] We took the Commission at its word that it was not engaged in a de-risking strategy but acting in good faith to make the proceeding more efficient. It would have been better for the Commission to have brought its motion earlier. However, to proceed without a responding opinion in this instance could have led to an unfair result. We therefore granted the Commission an extension to file a responding expert report.

6. CONCLUSION

[229] We conclude that the Commission has failed to establish any of its allegations. We therefore dismiss this proceeding.

[37] 2023 ONCMT 36 (***Kraft***)
[38] 2024 ONCMT9 (CanLII) (***Mithaq***)

Dated at Toronto this 6th day of November, 2024

“M. Cecilia Williams”

“Jane Waechter”

“Geoffrey D. Creighton”

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B. Ontario Securities Commission

B.2
Orders

B.2.1 Nova Cannabis 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).

Citation: *Re Nova Cannabis Inc.*, 2024 ABASC 171

November 6, 2024

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

AND

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

AND

IN THE MATTER OF
NOVA CANNABIS INC.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2024/0610

B.2.2 i3 Energy plc

Headnote

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

Applicable Legislative Provisions

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

Citation: *Re i3 Energy plc*, 2024 ABASC 172

November 8, 2024

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

AND

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

AND

IN THE MATTER OF
i3 ENERGY PLC
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2024/0624

B.2.3 Granite REIT 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).

November 4, 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
GRANITE REIT INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2024/0570

B.2.4 Gold Fields OSK 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).

November 6, 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
GOLD FIELDS OSK INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0614

B.2.5 The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. – ss. 21.2, 144

Headnote

Application under section 144(1) of the Securities Act (Ontario) (Act) – application for order varying the Commission's order recognizing the Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. as a clearing agencies – variation to amend quorum independence requirement and streamline annual conflicts reporting requirements – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21.2, 144(1).

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

AND

IN THE MATTER OF
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED
AND
CDS CLEARING AND DEPOSITORY SERVICES INC.

ORDER
(Sections 21.2 and 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued a varied and restated order dated June 15, 2023 recognizing each of The Canadian Depository for Securities Limited (**CDS Ltd.**) and CDS Clearing and Depository Services Inc. (**CDS Clearing**) as a clearing agency, pursuant to section 21.2 of the Act (**CDS Recognition Order**);

AND WHEREAS the Commission considers the proper operation of a clearing agency as essential to investor protection and maintaining a fair and efficient capital market, and the Commission may recognize a clearing agency, pursuant to section 21.2 of the Act, if it is satisfied that it is in the public interest to do so;

AND WHEREAS the Commission has received an application under section 144 of the Act to vary and restate the CDS Recognition Order to amend the quorum independence requirement of the board of directors of each of CDS Ltd. and CDS Clearing and to reflect the streamlining of certain annual conflicts reporting requirements (**Application**);

AND WHEREAS CDS Ltd. and CDS Clearing have each agreed to the applicable terms and conditions set out in the Schedule to the CDS Recognition Order;

AND WHEREAS based on the Application, the Commission has determined that:

(a) CDS Ltd. and CDS Clearing continue to satisfy the criteria for recognition set out in National Instrument 24-102 *Clearing Agency Requirements*;

(b) it is in the public interest to continue to recognize each of CDS Ltd. and CDS Clearing as a clearing agency pursuant to section 21.2 of the Act, subject to terms and conditions that are set out in Schedule A to this order; and

(c) it is not prejudicial to the public interest to vary and restate the current Recognition Order;

IT IS ORDERED, pursuant to section 144 of the Act, that the Application to vary and restate the CDS Recognition Order is granted.

IT IS ORDERED that:

(a) pursuant to section 21.2 of the Act, CDS Ltd. continues to be recognized as a clearing agency; and

(b) pursuant to section 21.2 of the Act, CDS Clearing continues to be recognized as a clearing agency;

provided CDS Ltd. and CDS Clearing comply with the terms and conditions set out in the Schedule to the CDS Recognition Order, as applicable.

DATED this 11th day of November, 2024

"Aaron Ferguson"
Manager, Trading and Markets Division
Ontario Securities Commission

SCHEDULE A – TERMS AND CONDITIONS

PART I – Definitions

For the purposes of this schedule:

"affiliated entity" has the meaning ascribed to it in subsection 1.2(1) of National Instrument 24-102 *Clearing Agency Requirements*;

"associate" has the meaning ascribed to it in subsection 1(1) of the Act;

"CDS" means each of CDS Ltd. and CDS Clearing;

"CDS Clearing" means CDS Clearing and Depository Services Inc.;

"CDS Ltd." means the Canadian Depository for Securities Limited;

"Critical Services" mean activities, functions or services of such a nature that any interruption in their provision could lead to the collapse of or present a serious impediment to the performance of one or more critical functions of the clearing agency;

"financial risk model" means the mechanisms adopted by CDS to manage the risk of potential loss in the provision of clearing, settlement and depository services for securities and derivatives transactions in the event of the failure of a Participant to fulfill its settlement obligations, and for greater certainty:

(i) includes margin and clearing fund calculation models, stress and backtesting policies and procedures for determining the adequacy of CDS's total financial resources, collateral and treasury management policies and procedures, and other tools to manage CDS's credit and liquidity risk, but

(ii) does not include mechanisms to manage business or operational risk;

"IT Systems" means CDS's information technology systems supporting the services or the business operations of CDS;

"Ontario securities law" has the meaning ascribed to it in subsection 1(1) of the Act;

"PFMIs" means the principles contained in the CPMI-IOSCO *Principles for Financial Market Infrastructures*, as amended from time to time, or any successor principles or recommendations;

"Participant" means a user of the services offered by CDS which are governed by the CDS Participant Rules;

"report" includes electronic data files and similar documents, as the context permits;

"Rule" has the meaning ascribed to it in section 2 of the Rule Protocol at Appendix A to this Schedule; and

"TMX Group" means TMX Group Limited.

PART II – Terms and Conditions Applicable to CDS

1 OWNERSHIP OF CDS LTD.

1.1 CDS must not make any changes to its ownership structure without the prior approval of the Commission.

2 CRITERIA FOR RECOGNITION

2.1 CDS must continue to meet the criteria for recognition under applicable Ontario securities law.

3 PUBLIC INTEREST RESPONSIBILITY

3.1 CDS must conduct its business and operations in a manner that is consistent with the public interest, and the mandate of its board of directors must expressly include CDS's public interest responsibility.

4 GOVERNANCE

4.1 CDS must promote a governance structure that minimizes the potential for any conflict of interest between CDS and its shareholder(s) that could adversely affect the clearing of products cleared by CDS or the effectiveness of CDS' risk management policies, controls and standards.

4.2 CDS's governance arrangements must be designed to fulfill its public interest requirements under paragraph 3.1 and to balance the interests of its shareholders and its Participants and other users of its services.

4.3 CDS must ensure that:

(a) at least 33% of its board of directors are independent as that term is defined in paragraph 4.4;

(b) at least 33% of its board of directors are representatives of Participants, of which

(i) one representative must be nominated by the Canadian Investment Regulatory Organization, and

(ii) the representatives of Participants represent a diversity of Participants;

(c) either

(i) one additional director is independent; or

(ii) one director is a representative of an entity that is unaffiliated with TMX Group and

(A) uses services offered by, or is connected to, CDS, such as a transfer agent or a marketplace; or

(B) is a service provider to Participants, such as a technology service provider or a custodian;

(d) at least 50% of the directors have expertise in clearing and settlement; and

(e) the quorum for the board of directors consists of a majority of the directors, with at least one-third of any quorum being independent directors.

4.4 For the purpose of paragraph 4.3:

(a) a director is independent if the director is not:

(i) an associate, partner, director, officer or employee of a Participant of CDS or such Participant's affiliated entities or an associate of such director, partner, officer or employee;

(ii) an associate, partner, director, officer or employee of a marketplace or such marketplace's affiliated entities or an associate of such partner, director, officer or employee, or

(iii) an officer or employee of CDS or its affiliated entities or an associate of such officer or employee.

(b) Notwithstanding 4.4(a)(i) and (ii), a director of the Canadian Derivatives Clearing Corporation (**CDCC**) is not considered to be non-independent solely on the ground that he or she is a director, or in the case of the chair of the board of directors only, an officer, of CDCC; and

(c) Notwithstanding 4.4(a)(iii), the chair of the board of directors of CDS is not considered non-independent solely on the ground that he or she is an officer of CDS.

4.5 CDS must actively consider any conflict of interest or potential conflict of interest that arises as a result of any CDS/CDCC mirror board structure, and if CDS identifies any conflict of interest or potential conflict of interest that arises as a result of such a CDS/CDCC mirror board structure, CDS will notify the Commission as soon as possible and provide the Commission with:

(a) a written summary of the relevant facts relating to the conflict of interest, or potential conflict of interest;

(b) a detailed description of how the conflict of interest will be resolved; and

(c) timing to resolve the conflict of interest.

4.6 CDS must identify in its notice of publication for any material rule change per the CDS Rule Protocol (attached as Appendix A to this Schedule) the specific impact of the rule change, if any, on CDCC and its activities as a Participant of CDS, and whether CDCC is impacted in a different manner than any other CDS Participant and, if it is, the reason for, and an explanation of, the difference.

4.7 An appeal of any decision of CDS management relating to the suspension of CDCC’s participation in CDS will be directly made to the Commission pursuant to section 21.7 of the Securities Act (Ontario).

4.8 The CDS governance structure must provide for the use of one or more Participant committees and a marketplace committee to provide advice, comments and recommendations to assist the board of directors of CDS, and such committees must meet the following requirements:

(a) membership or application for membership must, in accordance with the mandate of the respective committee, be open to all Participants and marketplaces, as applicable, that connect to or use the services provided by CDS;

(b) the committees may on any matters that they deem appropriate, and must if requested by the Commission, report directly to the Commission without first requiring board approval or notification of such reporting; and

(c) staff representatives of the Commission may attend any meetings of the committees as observers.

4.9 CDS must obtain prior Commission approval before:

(a) making changes to its constating documents;

(b) making changes to the structure of its board of directors or any of its board committees; and

(c) establishing any additional committees whose membership includes persons external to CDS.

4.10 CDS must notify the Commission in writing at least 30 days before:

(a) making changes to the structure of its marketplace committee or of any of its Participant committees; or

(b) making changes to the mandates of its board of directors, board committees, marketplace committee, or Participant committees.

4.11 If Commission staff do not object in writing within 15 days of receiving written notice under paragraph 4.10, the Commission shall be deemed not to object to the changes.

4.12 CDS must establish and maintain a risk and audit committee of its board of directors, whose mandate includes, at a minimum, the following:

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

(b) monitoring the financial performance of CDS and providing financial management oversight and direction to the business and affairs of CDS;

(c) advising the board of directors on the fairness, reasonableness and competitiveness of its pricing and fees in the context of the Canadian capital market and trends relating to comparable services offered by clearing houses worldwide; and

(d) ensuring fair and equitable resources are dedicated to development projects for unaffiliated marketplaces.

4.13 The risk and audit committee's composition will be as follows:

(a) a minimum of five directors;

(b) an independent chair;

(c) at least two industry directors who represent a diversity of Participants, and which may include the nominee of the Canadian Investment Regulatory Organization; and

(d) a majority of directors who are either independent or who represent a diversity of Participants.

4.14 In the event that CDS fails to meet the requirements of this Part, it must immediately advise the Commission and take appropriate measures to promptly remedy such failure.

5 FITNESS

5.1 CDS must take reasonable steps to ensure that each director and officer of CDS is a fit and proper person. CDS must, among other things, consider whether the past conduct of each director or officer affords reasonable grounds for the belief that the director or officer will perform his or her duties with integrity and in a manner that is consistent with the public interest responsibility of CDS.

6 ACCESS

6.1 CDS must accept clearing of trades in securities that are eligible under its rules on a commercially reasonable and nondiscriminatory basis, regardless of the marketplace of execution.

6.2 CDS must complete its review of an application for access and must grant or deny access at the earliest practicable date after receipt of such application, and must promptly notify the Commission of any applications for access that have been approved, delayed or denied and the reasons for any delay or denial.

6.3 CDS must, subject to compliance with CDS's eligibility criteria and its connectivity and other security standards or requirements, allow any person or company, including other third-party post-trade service providers, to interface or connect to any of its services or systems on a commercially reasonable basis, for the purposes of facilitating post-trade processing of securities transactions by Participants.

6.4 CDS must provide its services and products, including any interface or connection to its services or systems, to any person or company, including a third-party service provider, on a non-discriminatory basis and at a service level or performance standard comparable to that which would be provided to its affiliated entities.

7 FEES, FEE MODELS AND INCENTIVES

7.1 CDS's fees must not have the effect of unreasonably creating barriers to access CDS's services or discriminating between users of CDS's services or marketplaces, and must be balanced with the criterion that CDS has sufficient revenues to satisfy its responsibilities.

7.2 CDS must not, through any fee schedule, fee model or any contract with any Participant or other market Participant, provide any discount, rebate, allowance, price concession or similar arrangement on any services or products offered by CDS that is conditional upon the purchase of any other service or product offered by CDS or any affiliated entity.

7.3 The fees must be charged on a per transaction basis and must not provide a discount, rebate, allowance or similar price concession based on a Participant's level of activity.

7.4 CDS's process for setting fees for any of its services must provide for meaningful input from the relevant Participant committees and the risk management and audit committee of its board of directors.

7.5 CDS must operate under the fee setting process and the fee and rebate model described in Appendix B to this schedule.

7.6 CDS must obtain prior Commission approval before implementing any amendments to the fees set out in the fee schedule that was published on CDS's website and became effective November 1, 2011 (**2012 Fee Schedule**).

7.7 CDS must obtain prior Commission approval before implementing any new fees, any other fees for services or products designated by the Commission from time to time, or any change to the fee and rebate model.

7.8 For greater clarification, in paragraphs 7.6 and 7.7 "fees" means all fees whether for core or non-core services as defined by CDS from time to time.

7.9 If the Commission considers that it would be in the public interest, the Commission may require CDS to submit a fee, fee model or incentive that has previously been approved by the Commission for re-approval by the Commission. In such circumstances, if the Commission decides not to re-approve the fee, fee model or incentive, the previous approval for the fee, fee model or incentive will be revoked.

7.10 CDS must submit to the Commission all fees and fee models, and any amendments thereto, referred to in paragraphs 7.5, 7.6, 7.7 or 7.9, for approval in accordance with the procedure for a material rule as set out in the Rule Protocol.

7.11 CDS must annually engage an independent auditor to conduct an audit and prepare a report in accordance with established audit standards regarding its compliance with the approved fee and rebate model. CDS must provide the independent auditor's report to the Commission within 90 days of its fiscal year-end.

8 INTERNAL COST ALLOCATION MODEL AND TRANSFER PRICING

8.1 CDS must maintain an internal cost allocation model and policy or policies with respect to the allocation of costs or transfer of prices between CDS and its affiliated entities.

8.2 CDS must obtain prior Commission approval before making any non-technical amendments to the internal cost allocation model and policy or policies required to be maintained under paragraph 8.1.

8.3 CDS must annually engage an independent auditor to conduct an audit and prepare a report in accordance with established audit standards regarding compliance by CDS and its affiliated entities with the approved internal cost allocation model and transfer pricing policies. CDS must provide the independent auditor's report to its board promptly after the report's completion and then to the Commission within 90 days of its fiscal year-end.

8.4 The fees, costs or expenses borne by CDS, and indirectly by the users of CDS's services, for each of the services provided by CDS, must not reflect any cost or expense incurred by CDS in connection with an activity carried on by CDS that is not related to that service.

9 PFMI COMPLIANCE REPORTS

9.1 CDS must promptly notify the Commission in writing each time it publishes a report on its website regarding its compliance with the PFMIs.

10 RISK CONTROLS

10.1 CDS must have clearly defined and transparent procedures for the management of risk which specify the respective responsibilities of CDS and its Participants.

10.2 CDS must, as required by the Commission, engage an independent qualified party, acceptable to the Commission, to assess CDS's financial risk model and prepare a report on the findings, conclusions and any recommendations. The Commission will have the ability to provide input into the scope of such assessment, and may require that it include an assessment of how CDS's financial risk model balances the need for appropriate risk management and maintenance of fair and open access. CDS must provide the written report to its board of directors promptly after the report's completion and then to the Commission within 30 days of providing it to its board.

10.3 CDS must seek prior Commission approval at least 60 days before making material changes to its risk management framework. CDS must assess the materiality of a proposed change based on the effect of such a change on CDS, CDS Participants, the Canadian financial system, or the control of risk for the IT Systems supporting CDS's Critical Services.

10.4 CDS must notify the Commission in writing at least 20 days prior to implementing (i) a change to its risk management framework that would not have a material effect on any of CDS, CDS Participants, the Canadian financial system, or the control of risk for the IT Systems supporting CDS' Critical Services, or (ii) any technical/housekeeping changes made to its risk management framework.

10.5 If the Commission disagrees with CDS's categorization of the change to its risk management framework under paragraph 10.4, CDS must obtain the Commission's approval for the change under paragraph 10.3.

10.6 CDS must provide the Commission with an updated recovery plan at least annually.

10.7 CDS must provide the Commission with a written description of the scope of its annual internal audit plan in advance of such plan being provided to the audit committee for approval, and must provide the Commission at least 30 days prior written notice before finalizing the scope of the plan.

10.8 CDS must submit quarterly a written report detailing all of its internal audit activities during the quarter (including with respect to shared services). The report must include any corrective measures undertaken by CDS to address the internal audit gaps in the report.

11 OUTSOURCING

11.1 CDS must notify the Commission in writing at least 45 days prior to entering into or materially amending any outsourcing arrangement (including outsourcing to affiliated entities of CDS) related to any of its Critical Services.

11.2 CDS must notify the Commission in writing at least 15 days prior to renewing any outsourcing arrangement (including outsourcing to affiliated entities of CDS) related to any of its Critical Services.

11.3 CDS must promptly notify the Commission in writing of any material issues that arise in connection with its outsourcing arrangements with respect to Critical Services.

12 OPERATIONAL RELIABILITY

12.1 CDS must continue to meet the performance standards currently in effect for CDS, as amended by CDS and approved by the Commission from time to time. The performance standards must be made publicly available on the CDS website.

12.2 CDS must obtain prior Commission approval before changing its performance standards.

13 RULES

13.1 CDS's rules and the process for adopting new rules or amending existing rules must be transparent to Participants and the general public.

13.2 CDS must comply with the Rule Protocol included at Appendix A.

14 ENFORCEMENT OF RULES AND DISCIPLINE

14.1 The rules of CDS must set out appropriate sanctions in the event of non-compliance by Participants.

14.2 CDS must reasonably monitor Participant activities and impose sanctions to ensure compliance by Participants with its rules.

15 CONFIDENTIALITY OF INFORMATION

15.1 CDS must not release Participants' confidential information to a person or company other than CDS's affiliates, the Participant, a regulation services provider, CDS's regulators or another securities regulatory authority unless:

(a) the Participant has consented in writing to the release of the information;

(b) disclosure of the information is permitted by, and made in accordance with, the CDS Participant Rules;

(c) the release of the information is required by Ontario securities law or other applicable law; or

(d) the information has been publicly disclosed by another person or company, and CDS reasonably believes that the disclosure was lawful.

15.2 CDS must implement reasonable safeguards and procedures to protect Participants' information, including limiting access to such Participant information to employees of CDS, or persons or companies retained by CDS to operate the system.

15.3 CDS must implement adequate oversight procedures to ensure that the safeguards and procedures established under paragraph 15.2 are followed.

16 PROVISION OF INFORMATION

16.1 On request by the Commission, CDS must promptly provide the Commission with any and all data, information and analyses in the custody or control of CDS or any of its affiliates, without limitations, restrictions or conditions, including, without limiting the generality of the foregoing:

(a) data, information and analyses relating to all its or their businesses; and

(b) data, information and analyses of third parties in its or their custody and control.

16.2 CDS must provide the Commission with access to copies of all notices, bulletins and similar forms of communication that it sends its Participants in respect of their participation in CDS.

16.3 CDS must share information and otherwise cooperate with recognized self-regulatory organizations, investor protection funds and other appropriate regulatory bodies.

16.4 CDS must, on a commercially reasonable basis and subject to appropriate confidentiality protections being in force, share information and otherwise cooperate with other recognized or exempt clearing agencies, recognized or exempt exchanges, recognized or exempt quotation and trade reporting systems, and registered alternative trading systems.

16.5 CDS must make available to all Participants any reports required under paragraphs 7.11, 8.3, and 21.1 of this Schedule, subject to redaction of any information that CDS reasonably believes is competitively sensitive.

16.6 The disclosure or sharing of information by CDS pursuant to paragraphs 16.1, 16.3 or 16.4 must be subject to any confidentiality provisions contained in agreements entered into with the Bank of Canada pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.

17 COMPLIANCE

17.1 If CDS, or its directors or officers, becomes aware of a breach or a possible breach of any of the terms and conditions applicable to CDS under this order, such person must, within two business days after becoming aware of the breach or

possible breach, notify the risk and audit committee of the breach or possible breach. The director or officer of CDS must provide to the risk and audit committee details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

17.2 The risk and audit committee must, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by paragraph 17.3 below.

17.3 The risk and audit committee must promptly cause an investigation to be conducted of the breach or possible breach reported under paragraph 17.2. Once the risk and audit committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to CDS under this order, the risk and audit committee must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

18 FINANCIAL VIABILITY

18.1 CDS must provide to the Commission its annual budget, accompanied by the underlying assumptions, approved by its board of directors.

19 SYSTEMS CAPACITY, INTEGRITY AND SECURITY

19.1 At least 45 days prior to implementing a material change affecting its IT Systems, CDS must provide the Commission with a written description of the change.

19.2 For any change to its IT Systems other than a change contemplated in paragraph 19.1, CDS must provide the Commission with a written description of the change, within 30 days following the end of the calendar quarter during which the change occurred.

20 REPORTING OBLIGATIONS

20.1 CDS must comply with Appendix C to this Schedule setting out its reporting obligations to the Commission.

PART III – Terms and Conditions Applicable to CDS Ltd.

21 FEES

21.1 On request by the Commission, CDS Ltd. must:

(a) engage a party acceptable to the Commission to conduct a review of its fees and fee models and the fees and fee models of its affiliated entities that are related to clearing, settlement, and depository and other services specified by the Commission that includes, among other things, a benchmarking or other comparison of the fees and fee models against the fees and fee models of similar services in other jurisdictions; and

(b) provide a written report on the outcome of such review to its board of directors promptly after the report's completion and then to the Commission within 30 days of providing it to its board.

22 ALLOCATION OF RESOURCES

22.1 CDS Ltd. must, subject to paragraph 22.2 and for so long as CDS Clearing carries on business as a clearing agency, allocate sufficient financial and other resources to CDS Clearing to ensure that CDS Clearing can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.

22.2 CDS Ltd. must notify the Commission immediately upon becoming aware that it is or will be unable to allocate sufficient financial or other resources to CDS Clearing as required under paragraph 22.1.

23 COMPLIANCE

23.1 CDS Ltd. must do everything within its control to cause CDS Clearing to:

(a) carry out its activities as a clearing agency recognized under section 21.2 of the Act and in accordance with Ontario securities law; and

(b) observe the PFMI Principles.

PART IV – Terms and Conditions Applicable to TMX Group

24 PUBLIC INTEREST RESPONSIBILITY

24.1 TMX Group must conduct, and must ensure that CDS conducts, its business and operations in a manner that is consistent with the public interest.

25 FEES

25.1 TMX Group must ensure that none of its affiliated entities provide, through any fee schedule, fee model or any contract with any marketplace participant or other market participant, any discount, rebate, allowance, price concession or similar arrangement on any services or products offered by the affiliated entity that is conditional upon the purchase of any service or product provided by CDS.

26 ALLOCATION OF RESOURCES

26.1 TMX Group must, for so long as CDS Clearing and CDS Ltd. carry on business as clearing agencies, allocate sufficient financial and other resources to CDS to ensure that it can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.

26.2 TMX Group must notify the Commission immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to CDS, as required under paragraph 26.1.

27 PROVISION OF INFORMATION

27.1 On request by the Commission, TMX Group must, and must cause CDS to, promptly provide the Commission with any and all data, information and analysis in CDS's custody or control, without limitations, restrictions or conditions, including data, information and analysis relating to all of CDS' businesses.

27.2 TMX Group must, and must cause CDS to, share information and otherwise cooperate with other recognized or exempt entities, recognized self-regulatory organizations, investor protection funds and other appropriate regulatory bodies.

27.3 TMX Group must, and must cause CDS to, on a commercially reasonable basis and subject to appropriate confidentiality protections being in force, share information and otherwise cooperate with other recognized or exempt entities.

27.4 The disclosure or sharing of information by TMX Group and CDS pursuant to paragraphs 27.1, 27.2 and 27.3 is subject to any confidentiality provisions contained in agreements entered into with the Bank of Canada pertaining to information received from the Bank of Canada in its roles as registrar, issuing agent, transfer agent or paying agent for the Government of Canada.

28 CONFLICTS OF INTEREST

28.1 TMX Group must establish, maintain, and require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest, perceived or real, arising from its interest in CDS.

28.2 The policies established in accordance with paragraph 28.1 must be made publicly available on TMX Group's website.

28.3 TMX Group must review the effectiveness of the policies and procedures established under paragraph 28.1 on a regular, and at least annual, basis.

28.4 TMX Group must regularly review compliance with the policies and procedures established in accordance with paragraph 28.1, and must document each review and any deficiencies and how those deficiencies were remedied.

28.5 The Chief Compliance Officer of CDS must annually obtain from TMX Group and provide to OSC staff a written confirmation that TMX Group has complied with the requirements set out in paragraphs 28.3 and 28.4.

28.6 Where TMX Group finds any deficiencies under paragraph 28.4, the Chief Compliance Officer of CDS must obtain from TMX Group and provide to OSC staff a report that describes the deficiencies and explains how they were remedied.

29 COMPLIANCE

29.1 TMX Group must promote fair access to CDS and must not unreasonably prohibit, condition or limit access by a person or company to any services provided by CDS.

29.2 TMX Group must promote within CDS a corporate governance structure that minimizes the potential for any conflict of interest between any marketplace owned or operated by TMX Group or TMX Group's affiliated entities and CDS that

could adversely affect the clearance and settlement of trades in securities or the effectiveness of CDS's risk management policies, controls and standards.

29.3 TMX Group must do everything within its control to cause CDS Clearing and CDS Inc. to carry out their activities as clearing agencies recognized under section 21.2 of the Act and in compliance with Ontario securities law, and to observe the PFMI Principles.

29.4 TMX Group must certify in writing to the Commission, in a certificate signed by its chief executive officer and general counsel, annually or at other times required by the Commission, that TMX Group is in compliance with the terms and conditions applicable to it in this order and describe in detail:

(a) the steps taken to require compliance;

(b) the controls in place to verify compliance; and

(c) the names and titles of employees who have oversight of compliance.

29.5 If TMX Group, or its directors or officers, becomes aware of a breach or a possible breach of any of the terms and conditions applicable to TMX Group in this order, such person must, within two business days after becoming aware of the breach or possible breach, notify the governance and regulatory oversight committee of TMX Group of the breach or possible breach. The director or officer of TMX Group must provide to the governance and regulatory oversight committee details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

29.6 The governance and regulatory oversight committee must, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by paragraph 29.7 below.

29.7 The governance and regulatory oversight committee must promptly cause an investigation to be conducted of the breach or possible breach reported under paragraph 29.5. Once the governance and regulatory oversight committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to TMX Group in this order, the governance and regulatory oversight committee must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date and effect (actual or anticipated) of the breach or impending breach, and any actions that will be taken to address it.

APPENDIX A

RULE PROTOCOL REGARDING THE REVIEW AND APPROVAL OF CDS RULES BY THE COMMISSION

1. Purpose of the Protocol

This Protocol sets out the procedures for the submission of a Rule by CDS and the review and approval of a Rule by the Commission. The Commission will, to the extent possible, align and coordinate its process for reviewing and approving a Rule with that of other regulators having jurisdiction over such review and approval.

2. Definitions

In this Protocol:

"Rule" means a proposed new or amendment to or deletion of a Participant rule, operating procedure, manual or similar instrument or document of CDS setting out the respective rights and obligations between CDS and Participants or among Participants.

All other terms have the respective meanings ascribed to them in the Recognition Order and in securities legislation as that term is defined in National Instrument 14-101 *Definitions*.

3. Classification of Rules

CDS must classify a Rule as either "Material" or "Technical/Housekeeping" for the purposes of the approval process set out in this Protocol.

(a) Technical/Housekeeping Rules

For the purpose of this Protocol, a "Technical/Housekeeping" Rule means a Rule that:

(i) relates to non-core clearing services offered by CDS and/or does not have a material impact on Participants of

(ii) CDS, or the Canadian financial markets;

(iii) involves matters of a technical nature in routine operating procedures and administrative practices relating to CDS services;

(iv) makes consequential amendments to implement a Material Rule that has been published for comment pursuant to this Protocol, and does not contain any additional material amendments that have not previously disclosed in the notice accompanying the Material Rule;

(v) makes amendments to ensure consistency or compliance with an existing Rule, securities legislation or other regulatory requirement;

(vi) corrects spelling, punctuation, typographical or grammatical mistakes, inaccurate cross-referencing, or stylistic formatting, including changes to headings or paragraph numbers.

(b) Material Rules

A Rule that is not a Technical/Housekeeping Rule, as defined in subsection 3(a) above, is a "Material" Rule.

4. Procedures for Review and Approval of Material Rules

(a) Prior Notice of a Significant Material Rule

CDS must notify Commission staff in writing at least 20 days prior to submitting a Material Rule that it anticipates will result in a significant change in its policy, will involve amendments to a significant number of Rules or may be the subject of significant public comment. Commission staff will not begin a formal review of the Material Rule until all relevant documents have been submitted.

(b) Documents to be Submitted with a Material Rule

At least 10 business days prior to publishing a Material Rule under subsection 4(e), CDS must submit the following documents to the Commission:

(i) a cover letter that contains the following information:

A. the classification of the Rule by CDS;

B. CDS's rationale for that classification; and

C. a statement that the Rule is not contrary to the public interest.

(ii) the Rule and, where applicable, a blacklined version of the Rule indicating the proposed changes to an existing Rule;

(iii) a notice of publication that contains the following information:

A. a description of the current Rule, including its nature and purpose, and a description of the nature and purpose of the new Rule, including a description of the new Rule's impact on the rights and obligations of CDS Participants;

B. a description and analysis of the possible effects of the Rule on CDS, CDS Participants and other market participants and the securities and financial markets in general, including but not limited to any impact on competition, risks and the costs of compliance, and where applicable, a comparison of the Rule to international standards;

C. a description of the context in which the Rule was developed, the process followed, the issues considered, consultation done, the alternative approaches considered, the reasons for rejecting the alternatives and a review of the implementation plan;

D. where applicable, a description of the Rule's impact on technological systems used by Participants, other market participants or CDS and, where possible, an implementation plan, including a description of how and when the Rule will be implemented;

E. where applicable, a brief description and comparative analysis of any comparable rules planned or implemented by other clearing agencies;

F. a statement that CDS has determined that the Rule is not contrary to the public interest; and

G. an explanation that all comments should be sent to CDS with a copy to the Commission, and that CDS will make available to the public on request all comments received during the comment period.

(c) Confirmation of Receipt

Commission staff will confirm receipt of documents submitted by CDS under subsection 4(b) within 3 business days.

(d) Notice of Publication Date

At least 5 business days prior to publishing a Material Rule under subsection 4(e), CDS must provide the Commission with notice in writing of the date on which the Rule will be published by CDS.

(e) Publication of a Material Rule by CDS

CDS must publish on its website the notice and Rule submitted by CDS under subsection 4(b) for a comment period of at least 30 days (**comment period**), beginning on the date on which the notice first appears on its website. CDS must inform Commission staff in writing that the Rule has been published as soon as practicable following its publication, and must provide Commission staff with a link to the publication. Where requested by Commission staff, CDS must provide a longer public comment period.

(f) Publication of Notice of Material Rule Submission by Commission Staff

As soon as practicable after publication of a Material Rule by CDS, Commission staff will publish a notice that contains the following information:

(i) CDS has submitted a Material Rule for approval by the Commission;

(ii) a brief description of the Rule;

(iii) a link to the Rule on the CDS website; and

(iv) the date on which CDS has indicated the comment period will close.

(g) Review by Commission Staff

Commission staff will use their best efforts to conduct their initial review of the Material Rule and provide comments to CDS during the comment period. However, there will be no restriction on the amount of time necessary to complete the review of the Material Rule.

(h) CDS Responses to Commission Staff's Comments and Public Comments

(i) Within 5 days of the end of the comment period, CDS must confirm to Commission staff in writing whether it received any public comments. If requested by Commission staff, CDS will provide Commission staff with a copy of any public comments it has received.

(ii) Within 60 days of the end of the comment period, CDS must provide Commission staff with a summary of all public comments received and its responses to those comments.

(iii) If CDS fails to respond to comments from Commission staff within 120 days after receipt of their comment letter, it will be deemed to have withdrawn the Material Rule unless Commission staff agree otherwise based on written submissions provided by CDS.

(i) Decision by the Commission and Publication of Approval Notice

Commission staff will use their best efforts to prepare the Material Rule for approval within 30 days of the later of (a) receipt of written responses from CDS to staff's comments or requests for additional information, and (b) receipt of the summary of public comments and CDS's response to the public comments, or confirmation from CDS that there were no comments received. If at any time during the review period, Commission staff determine that they have further comments or require further information from CDS in order to prepare the materials for Commission review, the review period will be extended by an additional period of 30 days commencing on the day that Commission staff receive responses to the comments, or the information requested.

Commission staff will notify CDS of the Commission's decision regarding the Material Rule within 5 business days of the Commission decision. If the Commission approves the Material Rule, Commission staff will prepare and publish a short notice of approval.

(j) Publication by CDS

As soon as practicable after receiving a notice of approval under subsection 4(i), CDS must publish the following information on its website:

(i) a short summary of the Material Rule;

(ii) CDS's summary of the public comments received and CDS's response to the comments, or as applicable a statement that CDS did not receive public comments on the Material Rule;

(iii) if changes were made to the version of the Rule published for public comment, a blacklined copy of the revised Material Rule; and

(iv) the effective date of the Rule, which must be at least 5 business days following the date of publication of the notice under this subsection.

(k) Significant Revisions to a Material Rule

When a Material Rule is revised subsequent to its publication for comment in a way that Commission and CDS staff determine has a material effect on the substance of the Rule or its effect, CDS must publish the revision and an explanatory notice on its website for a second 30 day comment period. Where requested by Commission staff, CDS must provide a longer public comment period. The request for comment must include CDS's summary of and responses to the comments that were submitted in response to the previous request for comments, together with an explanation of the revisions to the Material Rule and the supporting rationale for the amendment. A notice of the revisions may also be published by Commission staff.

(l) Withdrawal of a Material Rule

If CDS withdraws or is deemed to have withdrawn a Rule that was previously submitted, it must provide a notice of withdrawal to the Commission and publish the notice on its website. A notice will also be published by Commission staff.

5. Procedures for Filing a Technical/Housekeeping Rule

(a) Documents to be Submitted

For a Technical/Housekeeping Rule, CDS must submit to the Commission the following documents electronically, or by other means as agreed to by the Commission staff and CDS from time to time:

(i) a cover letter that indicates the classification of the Rule and the rationale for that classification;

(ii) the Rule and, where applicable, a blacklined version of the Rule indicating the proposed changes to an existing Rule; and

(iii) a short notice of publication to be published by CDS on its website that contains the following information:

A. a brief description of the Technical/Housekeeping Rule;

B. the reasons for the Technical/Housekeeping classification; and

C. the effective date of the Technical/Housekeeping Rule, or a statement that the Technical/Housekeeping Rule will be effective on a date subsequently determined by CDS.

(b) Confirmation of Receipt

Commission staff will within 3 business days send to CDS a confirmation of receipt of the documents submitted by CDS under subsection 5(a).

(c) Effective Date of Technical/Housekeeping Rules

The Technical/Housekeeping Rule will be effective upon on a date determined by CDS, and in any event no earlier than 10 days following its publication on the CDS website and 15 business days following its submission to the Commission.

(d) Publication of Notice of Technical/Housekeeping Rule Submission by Commission Staff

As soon as practicable after providing CDS with a confirmation of receipt under subsection 5(b), Commission staff will publish a notice that contains the following information:

(i) CDS has submitted a Technical/Housekeeping Rule to the Commission;

(ii) a brief description of the Rule;

(iii) a link to the Rule on the CDS website; and

(iv) if known, the date on which CDS has indicated that the Rule will come into effect.

(e) Disagreement with Classification

Where CDS has classified a Rule as "Technical/Housekeeping" and Commission staff disagree with the classification:

(i) Commission staff will communicate to CDS, in writing, the reasons for disagreeing with the classification of the Rule within 15 business days after receipt of CDS's submission.

(ii) After receipt of Commission staff's written communication, CDS must promptly publish a notice that the Rule has been reclassified as a Material Rule and that it will follow the procedure for review and approval of a Material Rule.

(iii) CDS must re-classify the Rule as Material and the Commission will review the Rule under the procedures set out in section 4.

(f) Comments received on Technical/Housekeeping Rules

If comments are raised in response to the publication of the notice or the implementation of the Technical/Housekeeping Rule, Commission staff may review the Rule in light of the comments received. Commission staff may determine that the Rule was incorrectly classified and require that the Rule be classified as a Material Rule and reviewed and approved by the Commission in accordance with the procedures set out in section 4 with necessary modifications. If the Commission subsequently disapproves the Material Rule, CDS must immediately withdraw or repeal the Material Rule and inform its Participants of the disapproval.

6. Immediate Implementation of a Material Rule

(a) Criteria for Immediate Implementation

CDS may make a Material Rule effective immediately where CDS determines that there is an urgent need to implement the Material Rule because of a substantial and imminent risk of material harm to CDS, Participants, other market participants, or the Canadian capital markets, or due to a change in operation imposed by a third party supplying services to CDS and its Participants.

(b) Prior Notification to Commission

Where CDS determines that immediate implementation is necessary, CDS must advise Commission staff in writing as soon as possible prior to the implementation of the Rule. Such written notice must include an analysis to support the need for immediate implementation.

(c) Notification to Participants

Prior to implementing the Material Rule, CDS must publish a notice on its website that includes the Rule and a brief description of the Rule.

(d) Disagreement on Need for Immediate Implementation – Prior to Rule Implementation

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement prior to implementation of the Rule will be as follows:

(i) Where feasible, prior to the Rule's implementation Commission staff will notify CDS in writing of the disagreement, or request more time to consider the immediate implementation.

(ii) Commission staff and CDS will discuss and resolve any concerns raised by Commission staff.

(iii) If Commission staff continue to disagree that immediate implementation is necessary, CDS must not proceed with immediate implementation and must follow the procedure set out in section 4 with any necessary modifications as may be agreed to by CDS and Commission staff.

(e) Disagreement on Need for Immediate Implementation – Following Rule Implementation

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement following the implementation of the Rule will be as follows:

(i) Commission staff will notify CDS, in writing, of the disagreement as soon as possible.

(ii) Commission staff and CDS will discuss and resolve any concerns raised by Commission staff.

(iii) If Commission staff conclude that immediate implementation was not necessary, CDS must withdraw the Rule and post a notice of withdrawal on its website.

(iv) If CDS wishes to proceed with the Rule, it must follow the procedure set out section 4 with any necessary modifications as may be agreed to by CDS and Commission staff.

(f) Review of Material Rules Implemented Immediately

A Material Rule that has been implemented immediately must be published, reviewed and approved in accordance with the procedures set out in section 4 with necessary modifications. If the Commission subsequently disapproves the Material Rule, CDS must immediately repeal the Material Rule and inform its Participants of the disapproval.

7. Miscellaneous Provisions

(a) Waiving Provisions of the Protocol

Commission staff may waive any part of this Protocol upon request from CDS. Such a waiver must be granted in writing by Commission staff.

(b) Amendments

This Protocol and any provision hereof may be amended at any time or times with the agreement of the Commission and CDS.

APPENDIX B

FEE AND REBATE MODEL APPROVED BY THE COMMISSION

1. Fees for services and products offered by CDS must be the prices on the 2012 Fee Schedule. CDS must make a copy of the 2012 Fee Schedule, including prices for delivery services, publicly available on its website.

2. CDS must not seek approval for fee increases on clearing and other core CDS services unless there is a significant change from current circumstances.

3. CDS must share 50% of any increase in annual revenue on clearing and other core CDS services as compared to annual revenues in the fiscal year ending on October 31, 2012, with Participants. Sharing of revenue on core services for any fiscal year must be paid through one or more of the following methods as may be determined by CDS: an annual adjustment of the quoted fee at the start of that fiscal year, intra-year discount(s) and a year-end proportionate rebate by core service category to Participants (paid pro rata to Participants in accordance with the fees paid by such Participants for such core service).

4. For the purposes of sections 2 and 3 above, “clearing and other core CDS services” means the services with the highlighted codes in the 2012 Fee Schedule.

5. CDS must rebate an additional amount to Participants each year in respect of clearing services for trades conducted on an exchange or ATS. The aggregate rebate for each 12-month period will be $4 million. This additional rebate for any 12-month period must be paid through one or more of the following methods as may be determined by CDS: an annual adjustment of the quoted fee at the start of that 12-month period, intra-year discount(s) and a proportionate rebate to Participants at the end of the 12-month period (paid pro rata to Participants in accordance with the fees paid by such Participants in respect of clearing services for trades conducted on an exchange or ATS).

APPENDIX C

REPORTING OBLIGATIONS

PART I – REPORTING OBLIGATIONS OF CDS AND CDS LTD.

In addition to complying with the obligations set out in Schedule A to the Recognition Order and the requirements of National Instrument 24-102 *Clearing Agency Requirements*, CDS must also comply with all additional reporting obligations set out below.

1. Prior Notification

1.1 CDS must provide to Commission staff prior notification of a decision to enter into an agreement, memorandum of understanding or other similar arrangement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market.

2. Immediate and Prompt Notification

2.1 CDS must immediately notify the Commission of any event or occurrence that has caused or could reasonably be expected to cause an adverse material effect on:

(a) CDS;

(b) its Participants;

(c) any of its services; or

(d) the Canadian financial markets.

2.2 The events and occurrences referred to in 2.1 include but are not limited to:

(a) a Participant default;

(b) fraudulent activity; and

(c) a significant breach of the CDS rules by its Participant(s).

2.3 CDS must provide to the Commission prompt notice of:

(a) the appointment of any new director or officer, including a description of the individual's employment history; and

(b) the receipt of notice of resignation from, or the resignation of a director or officer or the auditors of CDS, including a statement of the reasons for the resignation.

2.4 CDS must immediately notify the Commission if it:

(a) becomes the subject of any order, directive or other similar action of a governmental or regulatory authority;

(b) becomes aware that it is the subject of a criminal or regulatory investigation; or

(c) becomes aware that it is or will become the subject of a material lawsuit.

2.5 CDS must provide the Commission with prompt access to all notices, bulletins and similar forms of communication that CDS sends its Participants in accordance with paragraph 16.2 of Schedule A, and must immediately notify the Commission of and provide a copy to the Commission of any such communication that CDS deems to be of critical importance to its Participants, including any communications made on an emergency basis.

2.6 CDS must promptly notify the Commission of all reportable incidents in accordance with applicable regulatory incident management protocols.

3. Quarterly Reporting

3.1 CDS must submit quarterly, or at any other frequency determined by the Commission, risk management reports related to Participant positions and the adequacy of CDS' financial resources and liquidity resources, including but not limited to the required levels of margins, default funds and liquidity funds, as well as stress testing and back testing results.

3.2 The reports required to be submitted to the Commission under 3.1 must include but not be limited to the list of reports included as Annex I to this Appendix, as may be modified from time to time with the agreement of Commission staff and CDS.

3.3 CDS must submit quarterly any approved minutes of meetings of board committees, management committees, and Participant committees, as well as approved minutes of all meetings of the board of directors.

3.4 CDS must submit quarterly to the Commission a list of all breaches reported of this Recognition Order, if any, and must include a reference to the paragraphs of the Order that were breached.

3.5 CDS must submit quarterly to the Commission a list of the risk management reports, internal audit reports and any other reports prepared by, or based on reviews conducted by, an independent party that have been issued in the previous quarter, and on request by the Commission must promptly provide copies of those reports to Commission staff.

3.6 CDS must submit quarterly its assessments of the risks facing CDS and its plans for addressing those risks.

3.7 CDS must submit quarterly to the Commission risk-related reports on cybersecurity and a risk events report.

3.8 CDS must provide the Commission with a written report detailing all of its internal audit activities during the quarter in accordance with paragraph 10.8 of Schedule A.

4. Annual Reporting

4.1 CDS must provide to the Commission annually CDS's strategic plan.

4.2 CDS must provide to the Commission an independent auditor's report regarding its compliance with the approved fee and rebate model within 90 days of its fiscal year-end, in accordance with paragraph 7.11 of Schedule A.

4.3 CDS must provide to the Commission an independent auditor's report regarding compliance by CDS and its affiliated entities with the approved internal cost allocation model and transfer pricing policies within 90 days of its fiscal year-end, in accordance with paragraph 8.3 of Schedule A.

4.4 CDS must provide to the Commission at least annually its updated recovery plan in accordance with paragraph 10.6 of Schedule A.

4.5 CDS must provide the Commission annually with a written description of the scope of its annual internal audit plan in accordance with paragraph 10.7 of Schedule A.

4.6 CDS must provide the Commission with its annual budget in accordance with paragraph 18.1 of Schedule A.

PART II – ANNUAL REPORTING OBLIGATIONS OF TMX GROUP

5.1 The Chief Compliance Officer of CDS must annually obtain from TMX Group and provide to OSC staff the written confirmation set out in paragraph 28.5 of Schedule A and, if applicable, the report described in paragraph 28.6 of Schedule A.

5.2 TMX Group must provide to the Commission annually or at other times required by the Commission a written certification of its compliance with the applicable terms of this Recognition Order, as well as the steps taken to require compliance, the controls in place to verify compliance, and the names and titles of employees who have oversight of compliance, in accordance with paragraph 29.4 of Schedule A.

ANNEX I TO APPENDIX C

Reports Required to be Submitted to the Commission by CDS

1. Reports to be Submitted

1.1 All reports submitted by CDS under this Annex I must be submitted in a manner and a form acceptable to Commission staff.

1.2 The list of reports in the table below does not limit the scope of CDS's reporting obligations under the CDS Recognition Order or Ontario securities law, nor does it limit the information to be provided by CDS to the Commission on request under paragraph 16.1 of Schedule A to the Recognition Order.

1.3 This Annex may be amended from time to time with the agreement of Commission staff and CDS, without a formal amendment to the Recognition Order.

2. Table of Reports to be Submitted:

Item	Document Name/Content	Frequency and Timing
1.	CDS Supplementary Regulatory Report ● liquidity exposures, credit exposures and collateral	Weekly ● + adding participant level data, max one-week lag
2.	Collateral Credit Facilities and Resulting Credit Facilities	Weekly max one-week lag
3.	ACV Concentration and Average Haircut Rates by Instrument Type	Weekly (AMF, BoC and OSC) ● max one-week lag
4.	ACV Concentration, Average Haircut Rate and Market Value of Collateral	
5.	CDS Liquidity Risk Report	Weekly ● max one-week lag
6.	CDS Exchange Traded Detailed	Weekly ● lag TBD
7.	Collateral Credit Facilities Breakdown	Weekly ● lag TBD
8.	Distribution of Equity Haircut	Weekly max one-week lag
9.	Liquidity Breakdown	Weekly ● lag TBD
10.	Risk Monitoring and Surveillance Report	Monthly ● max one-month lag

B.2.6 The Canadian Derivatives Clearing Corporation – ss. 21.2, 144

Headnote

Application under section 144(1) of the Securities Act (Ontario) (Act) – application for order varying the Commission's order recognizing the Canadian Derivatives Clearing Corporation as a clearing agency – variation to streamline annual conflicts reporting requirements – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21.2, 144(1).

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

AND

IN THE MATTER OF
THE CANADIAN DERIVATIVES CLEARING CORPORATION

ORDER
(Sections 21.2 and 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) Commission issued a varied and restated order dated June 15, 2023 recognizing the Canadian Derivatives Clearing Corporation (**CDCC**) as a clearing agency pursuant to section 21.2 of the Act (**CDCC Recognition Order**);

AND WHEREAS the Commission considers the proper operation of a clearing agency as essential to investor protection and maintaining a fair and efficient capital market, and the Commission may recognize a clearing agency, pursuant to section 21.2 of the Act, if it is satisfied that it is in the public interest to do so;

AND WHEREAS the Commission has received an application under section 144 of the Act to vary and restate the CDCC Recognition Order to reflect the streamlining of certain annual conflicts reporting requirements (**Application**);

AND WHEREAS CDCC has agreed to the applicable terms and conditions set out in the Schedule to the CDCC Recognition Order;

AND WHEREAS based on the Application, the Commission has determined that:

(a) CDCC continues to satisfy the criteria for recognition set out in National Instrument 24-102 *Clearing Agency Requirements*;

(b) it is in the public interest to continue to recognize CDCC as a clearing agency pursuant to section 21.2 of the

(c) Act, subject to terms and conditions that are set out in Schedule A to this order; and

(d) it is not prejudicial to the public interest to vary and restate the current Recognition Order;

IT IS ORDERED, pursuant to section 144 of the Act, that the Application to vary and restate the CDCC Recognition Order is granted.

IT IS ORDERED, pursuant to section 21.2 of the Act, that CDCC continues to be recognized as a clearing agency, provided that CDCC complies with the terms and conditions set out in the Schedule to the CDCC Recognition Order, as applicable.

DATED this 11th day of November, 2024

"Aaron Ferguson"
Manager, Trading and Markets Division
Ontario Securities Commission

SCHEDULE A – TERMS AND CONDITIONS

Part I – Definitions

For the purposes of this Schedule A:

"affiliated entity" has the meaning ascribed to it in subsection 1.2(1) of National Instrument 24-102 *Clearing Agency Requirements;*

"CDCC" means the Canadian Derivatives Clearing Corporation;

"Clearing Member" means a clearing member that uses the services offered by CDCC which are governed by the CDCC's Rules;

"Critical Services" mean activities, functions or services of such a nature that any interruption in their provision could lead to the collapse of or present a serious impediment to the performance of one or more critical functions of the clearing agency;

"financial risk model" means the mechanisms adopted by CDCC to manage the risk of potential loss in the provision of clearing services for securities and derivatives transactions due to the failure of a Clearing Member to fulfill its obligations, and for greater certainty:

(i) includes margin and clearing fund calculation models, stress and backtesting policies and procedures for determining the adequacy of CDCC's total financial resources, collateral and treasury management policies and procedures, and other tools to manage CDCC's credit and liquidity risk, but

(ii) does not include mechanisms to manage business or operational risk;

"IT Systems" means CDCC's information technology systems supporting the services or the business operations of CDCC;

"Ontario securities law" has the meaning ascribed to it in subsection 1(1) of the Act;

"PFMIs" means the principles contained in the CPMI-IOSCO *Principles for Financial Market Infrastructures*, as amended from time to time, or any successor principles or recommendations;

"report" includes electronic data files and similar documents, as the context permits;

"Rule" has the meaning ascribed to it in section 2 of the Rule Protocol at Appendix A to this Schedule; and

"TMX Group" means TMX Group Limited.

Part II – Terms and Conditions

1 OWNERSHIP OF CDCC

1.1 CDCC must not make any changes to its ownership structure without the prior approval of the Commission.

2 REGULATION OF CDCC

2.1 CDCC must continue to meet the criteria for recognition under applicable Ontario securities law.

3 PUBLIC INTEREST RESPONSIBILITY

3.1 CDCC must conduct its business and operations in a manner that is consistent with the public interest, and the mandate of its board of directors must expressly include CDCC's public interest responsibility.

4 GOVERNANCE

4.1 CDCC must promote within CDCC a governance structure that minimizes the potential for any conflict of interest between CDCC and its shareholder(s) that could adversely affect the clearing of products cleared by CDCC or the effectiveness of CDCC's risk management policies, controls and standards.

4.2 CDCC's governance arrangements must be designed to fulfill its public interest responsibility under s. 3.1 and to balance the interests of its shareholders and its Clearing Members and other users of its services.

4.3 CDCC must actively consider any conflict of interest or potential conflict of interest that arises as a result of any CDS/CDCC mirror board structure, and if CDCC identifies any conflict of interest or potential conflict of interest that arises as a result of such a CDS/CDCC mirror board structure, CDCC will notify the Commission as soon as possible and provide the Commission with:

(a) a written summary of the relevant facts relating to the conflict of interest, or potential conflict of interest;

(b) a detailed description of how the conflict of interest will be resolved; and

(c) timing to resolve the conflict of interest.

4.4 The CDCC governance structure must provide for the use of one or more external advisory committees to provide advice, comments and recommendations to assist the board of directors of CDCC, and such committees must meet the following requirements:

(a) membership and attendance must, in accordance with the mandate of the respective committee, be open to all Clearing Members that connect to or use the services provided by CDCC;

(b) the committees may on any matters that they deem appropriate, and must if requested by the Commission, report directly to the Commission without first requiring board approval or notification of such reporting; and

(c) a staff representative of the Commission may attend any meetings of the committees as an observer.

4.5 CDCC must obtain prior Commission approval before:

(a) making changes to its constating documents;

(b) making changes to the structure of its board of directors or any of its board committees.

4.6 CDCC must notify the Commission in writing at least 30 days before:

(a) making changes to the structure of its marketplace committee or of any of its Clearing Member committees; or

(b) making changes to the mandates of its board of directors, board committees, marketplace committee, or Clearing Member committees.

4.7 If Commission staff do not object in writing within 15 days of receiving written notice under paragraph 4.6, the Commission shall be deemed not to object to the changes.

4.8 CDCC must establish and maintain a risk and audit committee of its board of directors, whose mandate includes, at a minimum, the following:

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

(b) monitoring the financial performance of CDCC and providing financial management oversight and direction to the business and affairs of CDCC; and

(c) advising the board of directors on the fairness, reasonableness and competitiveness of its pricing and fees in the context of the Canadian capital market and trends relating to comparable services offered by clearing houses worldwide.

4.9 The risk and audit committee's composition must be as follows:

(a) a minimum of five directors;

(b) an independent chair; and

(c) at least two industry directors who represent a diversity of Clearing Members

(d) a majority of directors who are either independent or who represent a diversity of Clearing Members.

4.10 In the event that CDCC fails to meet the requirements of this Part, it must immediately advise the Commission and take appropriate measures to promptly remedy such failure.

5 FITNESS

5.1 CDCC must take reasonable steps to ensure that each director and officer of CDCC is a fit and proper person. CDCC must, among other things, consider whether the past conduct of each director or officer affords reasonable grounds for

the belief that the director or officer will perform his or her duties with integrity and in a manner that is consistent with the public interest responsibility of CDCC.

6 ACCESS

6.1 With respect to the Fixed Income CCP Service or any other CCP service for transactions in the cash markets and only for as long as CDCC offers such services:

(a) CDCC must allow any person or company, including other third party post-trade service providers, that meets CDCC's minimum operational requirements, to interface or connect to any of its services or systems on a commercially reasonable basis;

(b) the Rules or any other arrangements between CDCC and its Clearing Members or between CDCC and a cash marketplace must:

(i) be designed to foster cooperation and coordination with persons engaged in the clearance and settlement of securities transactions and to remove impediments to the prompt and accurate clearance and settlement of securities transactions;

(ii) not unreasonably create an impediment to competition including in respect of securities trades that are executed on marketplaces, or processed by third party post-trade service providers, not owned or controlled by TMX Group Limited; and

(iii) without limiting the generality of the foregoing, not unreasonably prohibit, limit or impede, directly or indirectly, the ability of Clearing Members to engage other third party post-trade service providers or use their services.

7 FEES

7.1 CDCC must provide timely notice to its Clearing Members, the public and the Commission of any changes to fees charged by CDCC for its services.

7.2 CDCC must submit concurrently to the Commission all the reports filed with other regulatory authorities regarding the review of the fees and fee models related to clearing or other services of CDCC and any of its affiliates.

7.3 CDCC's process for setting fees for any of its services must provide for meaningful input from the risk and audit committee of its board of directors.

8 PFMI COMPLIANCE REPORTS

8.1 CDCC must promptly notify the Commission in writing each time it publishes a report on its website regarding its compliance with the PFMIs.

9 RISK CONTROLS

9.1 CDCC must have clearly defined and transparent procedures for the management of risk which specify the respective responsibilities of CDCC and its Clearing Members.

9.2 CDCC must, as required by the Commission, engage an independent qualified party, acceptable to the Commission, to conduct an assessment of CDCC's financial risk model and prepare a report on the findings, conclusions and any recommendations. The Commission will have the ability to provide input into the scope of such assessment, and may include an assessment of how CDCC's financial risk model balances the need for appropriate risk management and maintenance of fair and open access. CDCC must provide the written report to its board of directors promptly after the report's completion and then to the Commission within 30 days of providing it to its board.

9.3 CDCC must seek prior Commission approval at least 60 days before making material changes to its risk management framework. CDCC must assess the materiality of a proposed change based on the effect of such a change on CDCC, CDCC Clearing Members, the Canadian financial system or the control of risk for the IT Systems supporting CDCC's Critical Services.

9.4 CDCC must notify the Commission in writing at least 20 days prior to implementing (i) a change to its risk management framework that would not have a material effect on any of CDCC, CDCC Clearing Members, the Canadian financial system or the control of risk for the IT Systems supporting CDCC's Critical Services, or (ii) any technical/housekeeping changes made to its risk management framework.

9.5 If the Commission disagrees with CDCC's categorization of the change to its risk management framework under paragraph 9.4, CDCC must obtain the Commission's approval for the change under 9.3.

9.6 CDCC must provide the Commission with an updated recovery plan at least annually.

9.7 CDCC must provide the Commission with a written description of the scope of its annual internal audit plan in advance of such plan being provided to the audit committee for approval, and must provide the Commission at least 30 days prior written notice before finalizing the scope of the plan.

9.8 CDCC must submit quarterly a written report detailing all of its internal audit activities during the quarter (including with respect to shared services). The report must include any corrective measures undertaken by CDCC to address the internal audit gaps in the report.

10 OUTSOURCING

10.1 CDCC must notify the Commission in writing at least 45 days prior to entering into or materially amending any outsourcing arrangement (including outsourcing to affiliated entities of CDCC) related to any of its Critical Services.

10.2 CDCC must notify the Commission in writing at least 15 days prior to renewing any outsourcing arrangement (including outsourcing to affiliated entities of CDCC) related to any of its Critical Services.

10.3 CDCC must promptly notify the Commission in writing of any material issues that arise in connection with its outsourcing arrangements with respect to Critical Services.

11 RULES

11.1 CDCC's rules and the process for adopting new rules or amending existing rules must be transparent to Clearing Members and the general public.

11.2 CDCC must comply with the Rule Protocol included at Appendix A.

12 ENFORCEMENT OF RULES AND DISCIPLINE

12.1 The rules of CDCC must set out appropriate sanctions in the event of non-compliance by Clearing Members.

12.2 CDCC must reasonably monitor Clearing Member activities and impose sanctions to ensure compliance by Clearing Members with its rules.

13 CONFIDENTIALITY OF INFORMATION

13.1 CDCC must not release Clearing Members' confidential information to a person or company other than CDCC's affiliates, the Clearing Member, a regulation services provider, CDCC's regulators or another securities regulatory authority unless:

(a) the Clearing Member has consented in writing to the release of the information;

(b) disclosure of the information is permitted by, and made in accordance with, the CDCC Rules;

(c) the release of the information is required by Ontario securities law or other applicable law; or

(d) the information has been publicly disclosed by another person or company, and CDCC reasonably believes that the disclosure was lawful.

13.2 CDCC must implement reasonable safeguards and procedures to protect Clearing Members' information, including limiting access to such information to employees of CDCC, or persons or companies retained by CDCC to operate the system.

13.3 CDCC must implement adequate oversight procedures to ensure that the safeguards and procedures established under paragraph 13.2 are followed.

14 PROVISION OF INFORMATION

14.1 On request by the Commission, CDCC must promptly provide the Commission with any and all data, information and analyses in the custody or control of CDCC or any of its affiliates, without limitations, restrictions or conditions, including, without limiting the generality of the foregoing:

(a) data, information and analyses relating to all its or their businesses; and

(b) data, information and analyses of third parties in its or their custody and control.

14.2 CDCC must provide the Commission with access to copies of all notices, bulletins and similar forms of communication that it sends its Clearing Members in respect of their participation in CDCC.

14.3 CDCC must share information and otherwise cooperate with recognized self-regulatory organizations, investor protection funds and other appropriate regulatory bodies.

14.4 CDCC must, on a commercially reasonable basis and subject to appropriate confidentiality protections being in force, share information and otherwise cooperate with other recognized or exempt clearing agencies, recognized or exempt exchanges, recognized or exempt quotation and trade reporting systems, and registered alternative trading systems.

14.5 CDCC must make available to all Clearing Members any reports required under paragraph 9.2 of this Schedule, subject to redaction of any information that CDCC reasonably believes is competitively sensitive.

14.6 The disclosure or sharing of information by CDCC or any of its affiliates pursuant to paragraphs 14.1, 14.3 and 14.4 is subject to any confidentiality provisions contained in agreements entered into between CDCC and the Bank of Canada pertaining to information received from the Bank of Canada.

15 COMPLIANCE

15.1 If CDCC, or its directors or officers, becomes aware of a breach or a possible breach of any of the terms and conditions applicable to CDCC under this order, such person must, within two business days after becoming aware of the breach or possible breach, notify the risk and audit committee of the breach or possible breach. The director or officer of CDCC must provide to the risk and audit committee details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

15.2 The risk and audit committee must, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by paragraph 15.3 below.

15.3 The risk and audit committee must promptly cause an investigation to be conducted of the breach or possible breach reported under paragraph 15.2. Once the risk and audit committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to CDCC under this order, the risk and audit committee must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

16 FINANCIAL VIABILITY

16.1 CDCC must provide the Commission its annual budget, accompanied by the underlying assumptions, approved by its board of directors.

17 SYSTEMS CAPACITY, INTEGRITY AND SECURITY

17.1 At least 45 days prior to implementing a material change affecting its IT Systems, CDCC must provide the Commission with a written description of the change.

17.2 For any change to its IT Systems other than a change contemplated in paragraph 17.1, CDCC must provide the Commission with a written description of the change, within 30 days following the end of the calendar quarter during which the change occurred.

18 REPORTING OBLIGATIONS

18.1 CDCC must comply with Appendix B to this Schedule setting out its reporting obligations to the Commission.

PART III – Terms and Conditions Applicable to TMX Group

19 PUBLIC INTEREST RESPONSIBILITY

19.1 TMX Group must conduct, and must ensure that CDCC conducts, its business and operations in a manner that is consistent with the public interest.

20 FEES

20.1 TMX Group must ensure that none of its affiliated entities provide, through any fee schedule, fee model or any contract with any marketplace participant or other market participant, any discount, rebate, allowance, price concession or similar arrangement on any services or products offered by the affiliated entity that is conditional upon the purchase of any service or product provided by CDCC.

21 ALLOCATION OF RESOURCES

21.1 TMX Group must, for so long as CDCC carries on business as a clearing agency, allocate sufficient financial and other resources to CDCC to ensure that it can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law.

21.2 TMX Group must notify the Commission immediately upon becoming aware that it is or will be unable to allocate sufficient financial and other resources to CDCC, as required under paragraph 21.1.

22 PROVISION OF INFORMATION

22.1 On request by the Commission, TMX Group must, and must cause CDCC to, promptly provide the Commission with any and all data, information and analysis in CDCC's custody or control, without limitations, restrictions or conditions, including data, information and analysis relating to all of CDCC' businesses.

22.2 TMX Group must, and must cause CDCC to share information and otherwise cooperate with recognized self-regulatory organizations, investor protection funds and other appropriate regulatory bodies.

22.3 TMX Group must, and must cause CDCC to, on a commercially reasonable basis and subject to appropriate confidentiality protections being in force, share information and otherwise cooperate with other recognized or exempt entities.

22.4 The disclosure or sharing of information by TMX Group and CDCC pursuant to paragraphs 22.1, 22.2 and 22.3 is subject to any confidentiality provisions contained in agreements entered into with the Bank of Canada.

23 CONFLICTS OF INTEREST

23.1 TMX Group must establish, maintain, and require compliance with policies and procedures that identify and manage any conflicts of interest or potential conflicts of interest, perceived or real, arising from its interest in CDCC.

23.2 The policies established in accordance with paragraph 23.1 must be made publicly available on TMX Group's website.

23.3 TMX Group must review the effectiveness of the policies and procedures established under paragraph 23.1 on a regular, and at least annual, basis.

23.4 TMX Group must regularly review compliance with the policies and procedures established in accordance with paragraph 23.1, and must document each review and any deficiencies and how those deficiencies were remedied.

23.5 The Chief Compliance Officer of CDCC must annually obtain from TMX Group and provide to OSC staff a written confirmation that TMX Group has complied with the requirements set out in paragraphs 23.3 and 23.4.

23.6 Where TMX Group finds any deficiencies under paragraph 23.4, the Chief Compliance Officer of CDCC must obtain from TMX Group and provide to OSC staff a report that describes the deficiencies and explains how they were remedied.

24 COMPLIANCE

24.1 TMX Group must do everything within its control to cause CDCC to carry out its activities as a clearing agency recognized under section 21.2 of the Act and in compliance with Ontario securities law, and to observe the PFMI Principles.

24.2 Beginning with the fiscal year ending on December 31, 2023, TMX Group must certify in writing to the Commission, in a certificate signed by its chief executive officer and general counsel, annually or at other times required by the Commission, that TMX Group is in compliance with the terms and conditions applicable to it in this order and describe in detail:

(a) the steps taken to require compliance;

(b) the controls in place to verify compliance; and

(c) the names and titles of employees who have oversight of compliance.

24.3 If TMX Group, or its directors or officers, becomes aware of a breach or a possible breach of any of the terms and conditions applicable to TMX Group in this order, such person must, within two business days after becoming aware of the breach or possible breach, notify the governance and regulatory oversight committee of TMX Group of the breach or possible breach. The director or officer of TMX Group must provide to the governance and regulatory oversight committee details sufficient to describe the nature, date and effect (actual and anticipated) of the breach or possible breach.

24.4 The governance and regulatory oversight committee must, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by paragraph 24.5 below.

24.5 The governance and regulatory oversight committee must promptly cause an investigation to be conducted of the breach or possible breach reported under paragraph 24.4. Once the governance and regulatory oversight committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to TMX Group in this order, the governance and regulatory oversight committee must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date and effect (actual or anticipated) of the breach or impending breach, and any actions that will be taken to address it.

APPENDIX A

RULE PROTOCOL REGARDING THE REVIEW AND APPROVAL OF CDCC RULES BY THE COMMISSION

1. Purpose of the Protocol

This Protocol sets out the procedures for the submission of a Rule by CDCC and the review and approval of a Rule by the Commission. The Commission will, to the extent possible, align and coordinate its process for reviewing and approving a Rule with that of other regulators having jurisdiction over such review and approval.

2. Definitions

In this Protocol:

"Rule" means a proposed new or amendment to or deletion of a clearing rule, operating procedure, manual or similar instrument or document of CDCC setting out the respective rights and obligations between CDCC and its Clearing Members or among the Clearing Members.

All other terms have the respective meanings ascribed to them in the Recognition Order and in securities legislation as that term is defined in National Instrument 14-101 *Definitions*.

3. Classification of Rules

CDCC must classify a Rule as either "Material" or "Technical/Housekeeping" for the purposes of the approval process set out in this Protocol.

(a) Technical/Housekeeping Rules

For the purpose of this Protocol, a "Technical/Housekeeping" Rule means a Rule that:

(i) relates to non-core clearing services offered by CDCC and/or does not have a material impact on Clearing Members of CDCC, or the Canadian financial markets;

(ii) involves matters of a technical nature in routine operating procedures and administrative practices relating to CDCC services;

(iii) makes consequential amendments to implement a Material Rule that has been published for comment pursuant to this Protocol, and does not contain any additional material amendments that have not previously disclosed in the notice accompanying the Material Rule;

(iv) makes amendments to ensure consistency or compliance with an existing Rule, securities legislation or other regulatory requirement;

(v) corrects spelling, punctuation, typographical or grammatical mistakes, inaccurate cross-referencing, or stylistic formatting, including changes to headings or paragraph numbers; or

(vi) is in respect of a new derivative that does not have novel features and is not connected to a new asset class or a new category of products.

(b) Material Rules

A Rule that is not a Technical/Housekeeping Rule, as defined in subsection 3(a) above, is a "Material" Rule.

4. Procedures for Review and Approval of Material Rules

(a) Prior Notice of a Significant Material Rule

CDCC must notify Commission staff in writing at least 20 days prior to submitting a Material Rule that it anticipates will result in a significant change in its policy, will involve amendments to a significant number of Rules or may be the subject of significant public comment. Commission staff will not begin a formal review of the Material Rule until all relevant documents have been submitted.

(b) Documents to be Submitted with a Material Rule

At least 10 business days prior to publishing a Material Rule under subsection 4(e), CDCC must submit the following documents to the Commission:

(i) a cover letter that contains the following information:

A. the classification of the Rule by CDCC;

B. CDCC's rationale for that classification; and

C. a statement that the Rule is not contrary to the public interest.

(ii) the Rule and, where applicable, a blacklined version of the Rule indicating the proposed changes to an existing Rule;

(iii) a notice of publication that contains the following information:

A. a description of the current Rule, including its nature and purpose, and a description of the nature and purpose of the new Rule, including a description of the new Rule's impact on the rights and obligations of CDCC Clearing Members;

B. a description and analysis of the possible effects of the Rule on CDCC, CDCC Clearing Members and other market participants and the securities and financial markets in general, including but not limited to any impact on competition, risks and the costs of compliance, and where applicable, a comparison of the Rule to international standards;

C. a description of the context in which the Rule was developed, the process followed, the issues considered, consultation done, the alternative approaches considered, the reasons for rejecting the alternatives and a review of the implementation plan;

D. where applicable, a description of the Rule's impact on technological systems used by Clearing Members, other market participants or CDCC and, where possible, an implementation plan, including a description of how and when the Rule will be implemented;

E. where applicable, a brief description and comparative analysis of any comparable rules planned or implemented by other clearing agencies;

F. a statement that CDCC has determined that the Rule is not contrary to the public interest; and

G. an explanation that all comments should be sent to CDCC with a copy to the Commission, and that CDCC will make available to the public on request all comments received during the comment period.

(c) Confirmation of Receipt

Commission staff will confirm receipt of documents submitted by CDCC under subsection 4(b) within 3 business days.

(d) Notice of Publication Date

At least 5 business days prior to publishing a Material Rule under subsection 4(e), CDCC must provide the Commission with notice in writing of the date on which the Rule will be published by CDCC.

(e) Publication of a Material Rule by CDCC

CDCC must publish on its website the notice and Rule submitted by CDCC under subsection 4(b) for a comment period of at least 30 days (**comment period**), beginning on the date on which the notice first appears on its website. CDCC must inform Commission staff in writing that the Rule has been published as soon as practicable following its publication, and must provide Commission staff with a link to the publication. Where requested by Commission staff, CDCC must provide a longer public comment period.

(f) Publication of Notice of Material Rule Submission by Commission Staff

As soon as practicable after publication of a Material Rule by CDCC, Commission staff will publish a notice that contains the following information:

(i) CDCC has submitted a Material Rule for approval by the Commission;

(ii) a brief description of the Rule;

(iii) a link to the Rule on the CDCC website; and

(iv) the date on which CDCC has indicated the comment period will close.

(g) Review by Commission Staff

Commission staff will use their best efforts to conduct their initial review of the Material Rule and provide comments to CDCC during the comment period. However, there will be no restriction on the amount of time necessary to complete the review of the Material Rule.

(h) CDCC Responses to Commission Staff's Comments and Public Comments

(i) Within 5 days of the end of the comment period, CDCC must confirm to Commission staff in writing whether it received any public comments. If requested by Commission staff, CDCC will provide Commission staff with a copy of any public comments it has received.

(ii) Within 60 days of the end of the comment period, CDCC must provide Commission staff with a summary of all public comments received and its responses to those comments.

(iii) If CDCC fails to respond to comments from Commission staff within 120 days after receipt of their comment letter, it will be deemed to have withdrawn the Material Rule unless Commission staff agree otherwise based on written submissions provided by CDCC.

(i) Decision by the Commission and Publication of Approval Notice

Commission staff will use their best efforts to prepare the Material Rule for approval within 30 days of the later of (a) receipt of written responses from CDCC to staff's comments or requests for additional information, and (b) receipt of the summary of public comments and CDCC's response to the public comments, or confirmation from CDCC that there were no comments received. If at any time during the review period, Commission staff determine that they have further comments or require further information from CDCC in order to prepare the materials for Commission review, the review period will be extended by an additional period of 30 days commencing on the day that Commission staff receive responses to the comments, or the information requested.

Commission staff will notify CDCC of the Commission's decision regarding the Material Rule within 5 business days of the Commission's decision. If the Commission approves the Material Rule, Commission staff will prepare and publish a short notice of approval.

(j) Publication by CDCC

As soon as practicable after receiving a notice of approval under subsection 4(i), CDCC must publish the following information on its website:

(i) a short summary of the Material Rule;

(ii) CDCC's summary of the public comments received and CDCC's response to the comments, or as applicable a statement that CDCC did not receive public comments on the Material Rule;

(iii) if changes were made to the version of the Rule published for public comment, a blacklined copy of the revised Material Rule; and

(v) the effective date of the Rule, which must be at least 5 business days following the date of publication of the notice under this subsection.

(k) Significant Revisions to a Material Rule

When a Material Rule is revised subsequent to its publication for comment in a way that Commission and CDCC staff determine has a material effect on the substance of the Rule or its effect, CDCC must publish the revision and an explanatory notice on its website for a second 30 day comment period. Where requested by Commission staff, CDCC must provide a longer public comment period. The request for comment must include CDCC's summary of and responses to the comments that were submitted in response to the previous request for comments, together with an explanation of the revisions to the Material Rule and the supporting rationale for the amendment. A notice of the revisions may also be published by Commission staff.

(l) Withdrawal of a Material Rule

If CDCC withdraws or is deemed to have withdrawn a Rule that was previously submitted, it must provide a notice of withdrawal to the Commission and publish the notice on its website. A notice will also be published by Commission staff.

5. Procedures for Review and Approval of a Technical/Housekeeping Rule

(a) Documents to be Submitted

For a Technical/Housekeeping Rule, CDCC must submit to the Commission the following documents electronically, or by other means as agreed to by the Commission staff and CDCC from time to time:

(i) a cover letter that indicates the classification of the Rule and the rationale for that classification;

(ii) the Rule and, where applicable, a blacklined version of the Rule indicating the proposed changes to an existing Rule; and

(iii) a short notice of publication to be published by CDCC on its website that contains the following information:

A. a brief description of the Technical/Housekeeping Rule,

B. the reasons for the Technical/Housekeeping classification, and

C. the effective date of the Technical/Housekeeping Rule, or a statement that the Technical/Housekeeping Rule will be effective on a date subsequently determined by CDCC.

(b) Confirmation of Receipt

Commission staff will within 3 business days send to CDCC a confirmation of receipt of the documents submitted by CDCC under subsection 5(a).

(c) Effective Date of Technical/Housekeeping Rules

The Technical/Housekeeping Rule will be effective upon a date determined by CDCC, and in any event no earlier than 10 days following its publication on the CDCC website and 15 business days following its submission to the Commission.

(d) Publication of Notice of Technical/Housekeeping Rule Submission by Commission Staff

As soon as practicable after providing CDCC with a confirmation of receipt under subsection 5(b), Commission staff will publish a notice that contains the following information:

(i) CDCC has submitted a Technical/Housekeeping Rule to the Commission;

(ii) a brief description of the Rule;

(iii) a link to the Rule on the CDCC website; and

(iv) if known, the date on which CDCC has indicated that the Rule will come into effect.

(e) Disagreement with Classification

Where CDCC has classified a Rule as "Technical/Housekeeping" and Commission staff disagree with the classification:

(i) Commission staff will communicate to CDCC, in writing, the reasons for disagreeing with the classification of the Rule within 15 business days after receipt of CDCC's submission.

(ii) After receipt of Commission staff's written communication, CDCC must promptly publish a notice that the Rule has been reclassified as a Material Rule and that it will follow the procedure for review and approval of a Material Rule.

(iii) CDCC must re-classify the Rule as Material and the Commission will review the Rule under the procedures set out in section 4.

(f) Comments received on Technical/Housekeeping Rules

If comments are raised in response to the publication of the notice or the implementation of the Technical/Housekeeping Rule, Commission staff may review the Rule in light of the comments received. Commission staff may determine that the Rule was incorrectly classified and require that the Rule be classified as a Material Rule and reviewed and approved by the Commission in accordance with the procedures set out in section 4 with necessary modifications. If the Commission subsequently disapproves the Material Rule, CDCC must immediately withdraw or repeal the Material Rule and inform its Clearing Members of the disapproval.

6. Immediate Implementation of a Material Rule

(a) Criteria for Immediate Implementation

CDCC may make a Material Rule effective immediately where CDCC determines that there is an urgent need to implement the Material Rule because of a substantial and imminent risk of material harm to CDCC, Clearing Members, other market participants, or the Canadian capital markets, or due to a change in operation imposed by a third party supplying services to CDCC and its Clearing Members.

(b) Prior Notification to Commission

Where CDCC determines that immediate implementation is necessary, CDCC must advise Commission staff in writing as soon as possible prior to the implementation of the Rule. Such written notice must include an analysis to support the need for immediate implementation.

(c) Notification to Clearing Members

Prior to implementing the Material Rule, CDCC must publish a notice on its website that includes the Rule and a brief description of the Rule.

(d) Disagreement on Need for Immediate Implementation – Prior to Rule Implementation

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement prior to implementation of the Rule will be as follows:

(i) Where feasible, prior to the Rule's implementation Commission staff will notify CDCC, in writing, of the disagreement, or request more time to consider the immediate implementation.

(ii) Commission staff and CDCC will discuss and resolve any concerns raised by Commission staff.

(iii) If Commission staff continue to disagree that immediate implementation is necessary, CDCC must not proceed with immediate implementation and must follow the procedure set out in section 4 with any necessary modifications as may be agreed to by CDCC and Commission staff.

(e) Disagreement on Need for Immediate Implementation – Following Rule Implementation

If Commission staff do not agree that immediate implementation is necessary, the process for resolving the disagreement following the implementation of the Rule will be as follows:

(i) Commission staff will notify CDCC, in writing, of the disagreement as soon as possible.

(ii) Commission staff and CDCC will discuss and resolve any concerns raised by Commission staff.

(iii) If Commission staff conclude that immediate implementation was not necessary, CDCC must withdraw the Rule and post a notice of withdrawal on its website.

(iv) If CDCC wishes to proceed with the Rule, it must follow the procedure set out section 4 with any necessary modifications as may be agreed to by CDCC and Commission staff.

(f) Review of Material Rules Implemented Immediately

A Material Rule that has been implemented immediately must be published, reviewed and approved in accordance with the procedures set out in section 4 with necessary modifications. If the Commission subsequently disapproves the Material Rule, CDCC must immediately repeal the Material Rule and inform its Clearing Members of the disapproval.

7. Miscellaneous Provisions

(a) Waiving Provisions of the Protocol

Commission staff may waive any part of this Protocol upon request from CDCC. Such a waiver must be granted in writing by Commission staff.

(b) Amendments

This Protocol and any provision hereof may be amended at any time or times with the agreement of the Commission and CDCC.

APPENDIX B

REPORTING OBLIGATIONS

In addition to complying with the obligations set out in Schedule A to the Recognition Order and the requirements of National Instrument 24-102 *Clearing Agency Requirements*, CDCC must also comply with the reporting obligations set out below.

1. Prior Notification

1.1 CDCC must provide to Commission staff prior notification of a decision to enter into an agreement, memorandum of understanding or other similar arrangement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market.

2. Immediate and Prompt Notification

2.1 CDCC must inform the Commission immediately upon becoming aware of any event or occurrence that has caused or could reasonably be expected to cause an adverse material effect on:

(a) CDCC;

(b) its Clearing Members;

(c) any of its services; or

(d) the Canadian financial markets.

2.2 The events or occurrences triggering the notification requirement in 2.1 include but are not limited to:

(a) a Clearing Member being declared a “non-conforming Member” or otherwise being considered in default;

(b) fraudulent activity; or

(c) a significant breach of CDCC’s rules by one or more Clearing Members.

2.3 CDCC must provide to the Commission prompt notice of:

(a) the appointment of any new director or officer, including a description of the individual's employment history; and

(b) the receipt of notice of resignation from, or the resignation of a director or officer or the auditors of CDCC, including a statement of the reasons for the resignation.

2.4 CDCC must immediately notify the Commission if it:

(a) becomes the subject of any order, directive or other similar action of a governmental or regulatory authority;

(b) becomes aware that it is the subject of a criminal or regulatory investigation; or

(c) becomes aware that it is or will become the subject of a material lawsuit.

2.5 CDCC must provide the Commission with prompt access to all notices, bulletins and similar forms of communication that CDCC sends its Clearing Members in accordance with paragraph 14.2 of Schedule A, and must immediately notify the Commission of and provide a copy to the Commission of any such communication that CDCC deems to be of critical importance to its Clearing Members, including any communications made on an emergency basis.

2.6 CDCC must promptly notify the Commission of all reportable incidents in accordance with applicable regulatory incident management protocols.

3. Quarterly Reporting

3.1 CDCC must submit quarterly, or at any other frequency determined by the Commission, risk management reports related to Clearing Member positions and the adequacy of CDCC’s financial resources and liquidity resources, including but not limited to the required levels of margins, default funds and liquidity funds, as well as stress testing and back testing results.

3.2 The reports required to be submitted to the Commission under 3.1 include but are not limited to the data and information described in Annex I to this Appendix and the list of reports included as Annex II to this Appendix, as may be modified from time to time with the agreement of Commission staff and CDCC.

3.3 CDCC must submit quarterly any approved minutes of meetings of board committees, management committees, and user groups, as well as approved minutes of all meetings of the board of directors.

3.4 CDCC must submit quarterly to the Commission a list of all breaches reported of this Recognition Order, if any, and must include a reference to the paragraphs of the Order that were breached.

3.5 CDCC must submit quarterly to the Commission a list of the risk management reports, internal audit reports and any other reports prepared by, or based on reviews conducted by, an independent party that have been issued in the previous quarter, and on request by the Commission must promptly provide copies of those reports to Commission staff.

3.6 CDCC must submit quarterly to the Commission an assessment of the risks it faces and its plans for addressing those risks.

3.7 CDCC must submit quarterly to the Commission risk-related reports on cybersecurity and a risk events report.

3.8 CDCC must provide the Commission with a written report detailing all of its internal audit activities during the quarter in accordance with paragraph 9.8 of Schedule A.

4. Annual Reporting

4.1 CDCC must provide to the Commission annually CDCC's strategic plan.

4.2 CDCC must provide to the Commission at least annually its updated recovery plan as set out in paragraph 9.6 of Schedule A.

4.3 CDCC must provide the Commission annually with a written description of the scope of its annual internal audit plan in accordance with paragraph 9.7 of Schedule A.

4.6 CDCC must provide the Commission with its annual budget in accordance with paragraph 16.1 of Schedule A.

5. Annual Reporting Obligations of TMX Group

5.1 The Chief Compliance Officer of CDCC must annually obtain from TMX Group and provide to OSC staff the written confirmation set out in paragraph 23.5 of Schedule A and, if applicable, the report described in paragraph 23.6 of Schedule A.

5.2 TMX Group must provide to the Commission annually or at other times required by the Commission a written certification of its compliance with the applicable terms of this Recognition Order, as well as the steps taken to require compliance, the controls in place to verify compliance, and the names and titles of employees who have oversight of compliance, in accordance with paragraph 24.2 of Schedule A.

ANNEX I TO APPENDIX B

Data and other information to be submitted to the Commission by CDCC

1. Definitions

1.1 In this Annex I to Appendix B of the Recognition Order,

(a) "new OTC derivatives" means derivatives, within the meaning of the Act, that are not currently cleared by CDCC on the effective date of this Recognition Order; and

(b) "Ontario-based Member" means a Clearing Member that has a head office or principal place of business in Ontario.

2. Scope and Form of Reporting Obligations

2.1 All data and other information submitted by CDCC under this Annex I must be submitted in a form and a manner acceptable to Commission staff.

2.2 This Annex I may be amended from time to time with the agreement of Commission staff and CDCC, without a formal amendment to the Recognition Order.

3. Quarterly Reporting

3.1 CDCC must submit quarterly:

(a) statistical information in respect of fixed income transactions cleared and settled through the Fixed Income CCP Service;

1) total number of transactions and net settlement value by category (blind, bilateral and cash);

2) total net settlement value of unsettled / failed CCP repo transactions divided by ISIN; and

3) total number and dollar value of all net settlement positions for future dated end leg transactions, separated into the following buckets:

(i) value date being less than or equal to T+1

(ii) value date greater than T+1 and less than or equal to T+7

(iii) value date greater than T+7 and less than or equal to T+29

(iv) value date greater than T+29 and less than or equal to T+90

(v) value date being after T+90

(b) aggregate volume of Bourse-traded products cleared by CDCC by asset class during the quarter for each Ontario-based Member;

(c) aggregate notional values of new OTC derivatives cleared by CDCC by asset class during the quarter, as well as total notional values of new OTC derivatives cleared by CDCC by asset class during the quarter for each Ontario-based Member;

(d) the aggregate total margin amount (initial and variation) and clearing fund contributions required by CDCC ending on the last trading day during the quarter, as well as the total margin amount (initial and variation), and clearing fund contributions for each Ontario-based Member that clears fixed income transactions and / or new OTC derivatives at CDCC;

(e) a list of Ontario-based Members who have received permission or approval by CDCC during the quarter to perform client clearing at CDCC;

(f) the identity, LEI and jurisdiction of incorporation (including the jurisdiction of the ultimate parent) of each Clearing Member that provides client clearing services to Ontario residents, including, where known,

1) the name and LEI of each Ontario resident receiving such services; and

2) the notional value and aggregate volume of all products cleared by asset class for and on behalf of each Ontario resident during the quarter;

(g) a summary of risk management analysis related to the adequacy of required margin (initial and variation) and the level of the clearing funds, including but not limited to stress testing and back testing results;

(h) the name, jurisdiction of incorporation and LEI of each Clearing Member; and

(i) any other information in relation to products cleared by CDCC for Clearing Members as may be required by the Commission from time to time.

ANNEX II TO APPENDIX B

Reports Required to be Submitted to the Commission by CDCC

1. Scope and Form of Reporting Obligations

1.1 All reports submitted by CDCC under this Annex II must be submitted in a form and a manner acceptable to Commission staff.

1.2 The list of reports in the table below does not limit the scope of CDCC's reporting obligations under the CDCC Recognition Order or Ontario securities law, nor does it limit the information to be provided by CDCC to the Commission on request under paragraph 14.1 of Schedule A to the Recognition Order.

1.3 This Annex II may be amended from time to time with the agreement of Commission staff and CDCC, without a formal amendment to the Recognition Order.

2. Table of Reports to be Submitted:

Item	Document Name/Content	Frequency and Timing
1.	BoC CDCC Data (Positions, Margin, Member file) (.CSV)	Weekly – maximum one-week lag
2.	Cash Settlement (.xlsx)	Weekly – maximum one-week lag
3.	Collateral file (.xlsx)	Weekly – maximum one-week lag
4.	Liquidity exposure information (.xlsx) Liquidity Data Liquidity Report	Weekly – maximum one-week lag
5.	Sufficiency (.xlsx)	Weekly – maximum one-week lag
6.	CDCC Liquidity Risk Report (Word)	Weekly – maximum one-week lag
7.	Backtesting (Word)	Weekly – maximum one-week lag

B.2.7 Gold Fields OSK Inc., formerly Osisko Mining 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).

Statutes Cited

Business Corporations Act (Ontario), 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
GOLD FIELDS OSK INC.,
FORMERLY OSISKO MINING 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 66 Wellington Street West, Suite 5300, Toronto, Ontario M5K 1E6;

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

4. On November 6, 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 by the Commission pursuant to subsection 1(6) of the OBCA, that the Applicant is deemed to have ceased to be offering its securities to the public.

DATED at Toronto this 12th day of November, 2024.

"David Surat"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0616

B.3
Reasons and Decisions

B.3.1 GRIID Infrastructure 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).

November 11, 2024

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

AND

IN THE MATTER OF
GRIID INFRASTRUCTURE INC.
(the Applicant)

DECISION

Background

The Applicant has applied to the Ontario Securities Commission for an order under subclause 1(10)(a)(ii) of the Act that the Applicant is not a reporting issuer.

In this order, "securityholder" means, for a security, the beneficial owner of the security.

Representations

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

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 Director is satisfied that it would not be prejudicial to the public interest to grant the requested relief and orders that the Applicant is not a reporting issuer.

"David Surat"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0634

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B.4
Cease Trading Orders

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

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
THERE IS NOTHING TO REPORT THIS WEEK.		

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

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	
Perk Labs Inc.	April 4, 2024	
Organto Foods Inc.	May 8, 2024	
AION THERAPEUTIC INC.	August 30, 2024	
Cloud3 Ventures Inc.	October 29, 2024	
Falcon Gold Corp.	October 29, 2024	

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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:
BMO Private Strategic Rate Fund I
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Nov 6, 2024
NP 11-202 Preliminary Receipt dated Nov 6, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06200337

Issuer Name:
SavvyLong Geared Crude Oil ETF
SavvyLong Geared Natural Gas ETF
SavvyShort Geared Crude Oil ETF
SavvyShort Geared Natural Gas ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Nov 5, 2024
NP 11-202 Preliminary Receipt dated Nov 5, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06199694

Issuer Name:
Global Dividend Growth Split Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Nov 6, 2024
NP 11-202 Preliminary Receipt dated Nov 7, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06200448

Issuer Name:
Ninepoint Gold and Precious Minerals Fund
Ninepoint Resource Fund
Ninepoint Resource Fund Class
Principal Regulator – Ontario
Type and Date:
Amendment No. 3 to Final Simplified Prospectus dated November 4, 2024
NP 11-202 Final Receipt dated Nov 8, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06110525

Issuer Name:
Invesco Balanced-Risk Allocation Pool
Invesco Unconstrained Bond Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated October 31, 2024
NP 11-202 Final Receipt dated Nov 5, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06143587

Issuer Name:
SavvyLong Geared Crude Oil ETF
SavvyLong Geared Natural Gas ETF
SavvyShort Geared Crude Oil ETF
SavvyShort Geared Natural Gas ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Nov 8, 2024
NP 11-202 Final Receipt dated Nov 11, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06199694

NON-INVESTMENT FUNDS

Issuer Name:
Barranco Gold Mining Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated November 8, 2024
NP 11-202 Preliminary Receipt dated November 8, 2024
Offering Price and Description:
No securities are being offered pursuant to this Prospectus
Filing # 06202268

Issuer Name:
SANDSTORM GOLD LTD.
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated November 8, 2024
NP 11-202 Final Receipt dated November 8, 2024
Offering Price and Description:
Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06202127

Issuer Name:
STLLR Gold Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 7, 2024
NP 11-202 Preliminary Receipt dated November 8, 2024
Offering Price and Description:
$25,001,605
11,364,000 Units
3,788,000 FT Units
4,793,000 Premium FT Units
$1.100 per Unit
$1.320 per FT Unit
$1.565 per Premium FT Unit
Filing # 06199469

Issuer Name:
IAMGOLD Corporation
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated November 7, 2024
NP 11-202 Final Receipt dated November 8, 2024
Offering Price and Description:
U.S.$500,000,000 - Common Shares, First Preference Shares, Second Preference Shares, Debt Securities, Warrants, Subscription Receipts
Filing # 06201761

Issuer Name:
Medexus Pharmaceuticals Inc. (formerly Pediapharm Inc.)
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 8, 2024
NP 11-202 Preliminary Receipt dated November 8, 2024
Offering Price and Description:
$100,000,000 - Common Shares, Preferred Shares, Subscription Receipts, Warrants, Debt Securities, Units
Filing # 06202086

Issuer Name:
Mandalay Resources Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 7, 2024
NP 11-202 Preliminary Receipt dated November 8, 2024
Offering Price and Description:
C$300,000,000 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06201563

Issuer Name:
VersaBank
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 7, 2024
NP 11-202 Preliminary Receipt dated November 8, 2024
Offering Price and Description:
US$200,000,000 - Debt Securities (unsubordinated indebtedness), Debt Securities (subordinated indebtedness), Common Shares, Preferred Shares, Subscription Receipts, Warrants
Filing # 06201778

Issuer Name:
Groupe Dynamite Inc.
Principal Regulator – Québec
Type and Date:
Preliminary Long Form Prospectus dated November 7, 2024
NP 11-202 Preliminary Receipt dated November 7, 2024
Offering Price and Description:
$ *
* Subordinate Voting Shares
Price: $ * per Subordinate Voting Share
Filing # 06201182

Issuer Name:
Wesdome Gold Mines Ltd.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated November 6, 2024
NP 11-202 Final Receipt dated November 7, 2024
Offering Price and Description:
Common Shares, Preferred Shares, Subscription Receipts, Warrants, Debt Securities, Units
Filing # 06200809

Issuer Name:
Nexus Industrial REIT
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated November 6, 2024
NP 11-202 Final Receipt dated November 6, 2024
Offering Price and Description:
Trust Units, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06200363

Issuer Name:
Brazil Potash Corp
Principal Regulator – Ontario
Type and Date:
Amendment to Preliminary Long Form Prospectus dated November 5, 2024
NP 11-202 Amendment Receipt dated November 6, 2024
Offering Price and Description:
US$*
4,250,000 Common Shares
Price: US$* per Common Share
Filing # 06188534

Issuer Name:
Plazacorp Willowgrove Residential Real Estate Development Trust
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 5, 2024
NP 11-202 Preliminary Receipt dated November 5, 2024
Offering Price and Description:
Minimum: $60,000,000 of Class A Units and/or Class F Units
Maximum: $75,000,000 of Class A Units and/or Class F Units
Price: $10.00 per Class A Unit
$10.00 per Class F Unit
Filing # 06199751

Issuer Name:
Tuktu Resources Ltd. (formerly, Jasper Mining Corporation)
Principal Regulator – Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 4, 2024
NP 11-202 Preliminary Receipt dated November 4, 2024
Offering Price and Description:
Up to $10,000,000
Up to 111,111,111 Units
$0.09 per Unit
Filing # 06199423

Issuer Name:
NervGen Pharma Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated November 4, 2024
NP 11-202 Preliminary Receipt dated November 4, 2024
Offering Price and Description:
U.S.$100,000,000 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06199239

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	Axia Real Assets LP	Exempt Market Dealer and Portfolio Manager	November 5, 2024
Voluntary Surrender	Edgehill Partners	Investment Fund Manager, Portfolio Manager, Exempt Market Dealer and Commodity Trading Manager	November 5, 2024
Change Registration Category	ST Global Asset Management Inc.	From: Portfolio Manager and Commodity Trading Manager To: Portfolio Manager, Commodity Trading Manager, Investment Fund Manager and Exempt Market Dealer	November 7, 2024

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B.11
CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.3 Clearing Agencies

B.11.3.1 The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. (CDS) – Notice of Variation Order

NOTICE OF VARIATION ORDERS

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED AND CDS CLEARING AND DEPOSITORY SERVICES INC. (CDS)

November 14, 2024

On November 11, 2024, the Commission made an order (**Variation Order**) under section 21.2 and subsection 144(1) of the *Securities Act* (Ontario) varying the Commission's order recognizing the Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. (**CDS**) (**Recognition Order**).

The purpose of the Variation Order is to better align the quorum requirements for the CDS Board of Directors with respect to independent Directors and to reduce regulatory burden for CDS by streamlining the annual conflicts reporting requirements in the Recognition Order.

The Variation Order is published in Chapter B.2.

B.11.3.2 The Canadian Derivatives Clearing Corporation (CDCC) – Notice of Variation Orders

NOTICE OF VARIATION ORDERS

THE CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

November 14, 2024

On November 11, 2024, the Commission made an order (**Variation Order**) under section 21.2 and subsection 144(1) of the *Securities Act* (Ontario) varying the Commission's order recognizing the Canadian Derivatives Clearing Corporation (**CDCC**) (**Recognition Order**).

The purpose of the Variation Order is to reduce regulatory burden for CDCC by streamlining the annual conflicts reporting requirements in the Recognition Order.

The Variation Order is published in Chapter B.2.

B.12
Other Information

B.12.1 Approvals

B.12.1.1 Longpoint Asset Management Inc. and Longpoint ForAll Core & More U.S. Equity Index ETF

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from requirement in subsection 2.3(1.1) of NI 41-101 that a fund file its final prospectus within 90 days of the date of receipt for preliminary prospectus – low risk of stale disclosure as final prospectus will be updated to reflect most current information about the fund – relief for an additional 61 days to file final prospectus.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 2.3(1.1) and 19.1.

VIA EMAIL

October 17, 2024

Fasken Martineau DuMoulin LLP

Attention: Munier Saloojee

Re: Longpoint Asset Management Inc. (the Filer) and Longpoint ForAll Core & More U.S. Equity Index ETF (the Fund)

Preliminary Long Form Prospectus and ETF facts document dated June 6, 2024

Exemptive Relief Application pursuant to Section 19.1 of National Instrument 41-101

***General Prospectus Requirements* (NI 41-101)**

SEDAR Plus Project No. 6190742

By letter dated October 7, 2024 (the **Application**), the Filer, the manager of the Fund, applied to the Director of the Ontario Securities Commission (the **Director**) under section 19.1 of NI 41-101 for relief from the operation of subsection 2.3(1.1) of NI 41-101, which prohibits an issuer from filing a prospectus more than 90 days after the date of the receipt for the preliminary prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director intends to grant the requested exemption to be evidenced by the issuance of a receipt for the Fund's prospectus, subject to the condition that the prospectus be filed no later than **November 8, 2024**.

Yours very truly,

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

Application File #: 2024/0578
SEDAR+ File #: 6190742

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