The Ontario Securities Commission

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

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December 19, 2024

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File No. 2023-22

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

A copy of the Reasons and Decision dated December 18, 2024 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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FOR IMMEDIATE RELEASE
December 20, 2024

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

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

A copy of the Reasons and Decision and Order both dated December 19, 2024 are available at capitalmarketstribunal.ca.

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FOR IMMEDIATE RELEASE
December 24, 2024

TEKNOSCAN SYSTEMS INC.,
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File No. 2022-19

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

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

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A.3
Orders

A.3.1 Troy Richard James Hogg et al. – ss. 127(1), 127.1

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

File No. 2022-20

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

December 19, 2024

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

WHEREAS on September 30, 2024, the Capital Markets Tribunal held a hearing at 20 Queen Street West, Toronto, Ontario to consider the sanctions and costs that the Tribunal should impose on Troy Richard James Hogg, Cryptobontix Inc., Arbitrade Exchange Inc., Arbitrade Ltd. (**Arbitrade Bermuda**), T.J.L. Property Management Inc. and Gables Holding Inc. as a result of the findings in the Reasons and Decision on the merits, issued on June 14, 2024;

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

IT IS ORDERED that:

1. pursuant to paragraph 2 of subsection 127(1) of the *Securities Act* (the ***Act***), trading in any securities or derivatives by the respondents shall cease permanently;

2. pursuant to paragraph 2.1 of subsection 127(1) of the *Act,* the acquisition of any securities by the respondents is prohibited permanently;

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

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

5. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the *Act,* Hogg is prohibited from becoming or acting as a director or officer of any issuer or registrant permanently;

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

7. pursuant to paragraph 9 of subsection 127(1) of the *Act*:

    a. Arbitrade Bermuda shall pay an administrative penalty in the amount of $2,000,000 to the Commission;

    b. Hogg and Cryptobontix shall jointly and severally pay an administrative penalty in the amount of $1,000,000 to the Commission;

    c. Hogg and Arbitrade Exchange shall jointly and severally pay an administrative penalty in the amount of $500,000 to the Commission;

d. Hogg and Gables shall jointly and severally pay an administrative penalty in the amount of $500,000 to the Commission; and

e. Hogg and TJL shall jointly and severally pay an administrative penalty in the amount of $500,000 to the Commission;

8. pursuant to paragraph 10 of subsection 127(1) of the *Act*:

a. Arbitrade Bermuda shall disgorge to the Commission the amount of US$41,622,965.27, of which amount Hogg and Cryptobontix shall be jointly and severally liable to disgorge US$7,822,296.72; and

b. Hogg shall disgorge to the Commission an additional amount of US$10,109,038, of which amount:

i. TJL shall be jointly and severally liable to disgorge US$5,637,259.39; and

ii. Gables shall be jointly and severally liable to disgorge US$4,345,737.14; and

9. pursuant to section 127.1 of the *Act*:

a. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda shall pay costs to the Commission in the amount of $534,084.22, for which they shall be jointly and severally liable; and

b. Hogg, TJL and Gables shall pay costs to the Commission in the amount of $133,521.05, for which they shall be jointly and severally liable.

“Andrea Burke”

“Sandra Blake”

“M. Cecilia Williams”

A.4
Reasons and Decisions

A.4.1 Phemex Limited and Phemex Technology Pte. Ltd. – s. 127(1)

Citation: *Phemex Limited (Re)*, 2024 ONCMT 30
Date: 2024-12-18
File No. 2023-22

IN THE MATTER OF
PHEMEX LIMITED AND
PHEMEX TECHNOLOGY PTE. LTD.

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

Adjudicators:	Cathy Singer (chair of the panel) Russell Juriansz Jane Waechter	
Hearing:	October 7 and December 5, 2024	
Appearances:	Alvin Qian	For the Ontario Securities Commission
	Ran He	For Phemex Limited
	No one appearing for Phemex Technology Pte. Ltd.	

REASONS AND DECISION

1. INTRODUCTION

[1] These are our reasons for finding that Phemex Limited (**Phemex**) and Phemex Technology Pte. Ltd. breached ss. 25(1) and 53(1) of the *Securities Act*[1] (the ***Act***) by engaging in the business of unregistered trading in securities and by distributing securities without a prospectus.

[2] Phemex, a company incorporated in the British Virgin Islands, and Phemex Technology, a Singapore company, operated an online crypto asset trading platform that sold securities to Ontario investors.

[3] Phemex commenced voluntary liquidation on August 24, 2023, and remains an active corporation. Phemex Technology has dissolved and was struck off the Register of Companies in Singapore effective September 4, 2023. Phemex Technology was a wholly-owned subsidiary of Phemex.

[4] At the merits hearing on October 7, 2024, Phemex and the Commission filed a Statement of Agreed Facts dated September 26, 2024. The Commission filed the affidavit of its primary investigator in this matter and called him as a witness. Neither respondent called a defence. Phemex conceded the statutory breaches in its opening statement.

[5] Oral argument took place on December 5, 2024. The Commission filed written submissions. Phemex declined to file written submissions and did not appear for oral argument. Phemex Technology did not participate in the hearing.

2. FACTS

[6] The Statement of Agreed Facts and the uncontradicted affidavit of the investigator establish that Phemex and Phemex Technology operated an online crypto trading platform and related mobile apps under the tradename “Phemex”. The trading platform was accessible on the web and through mobile apps available from the Google and Apple stores.

[7] The Phemex platform operated in Ontario from November 25, 2019, to January 6, 2023. At least 117 Ontario investors used the platform to deposit and trade in crypto asset products with a total trading volume of over 74 million USDT (equivalent in value to over USD$74 million). The respondents earned 39,712.43 USDT in fees.

[1] RSO 1990, c S.5

[8] Investors created accounts by entering into contracts enabling them to access the Phemex platform by an online application process which sought but did not require Know Your Client information such as name, phone number and address. By contract with Phemex, investors were able to use the Phemex platform for crypto asset "spot" trading, which allowed them to buy and sell crypto assets for potential profit (**Crypto Contracts**). The crypto assets available on the Phemex platform included Bitcoin and Ethereum.

[9] Investors on the Phemex platform were also contractually able to trade in "perpetual contracts", which allowed them to buy and sell futures contracts whose values were determined by the platform with reference to the spot value of the underlying crypto assets (**Crypto Futures**). Investors were also able to engage in leveraged trading in Crypto Futures, including at a 100:1 ratio on Bitcoin and Ethereum margined Crypto Futures. The Phemex platform charged investors trading fees both for spot trading and for trading Crypto Futures.

[10] A member of the Commission's investigation team opened an account on the Phemex platform by providing only an email address. The investigator:

a. opened the account while physically located in Ontario;

b. used an Ontario IP address;

c. used that IP address to deposit Bitcoins and Ether into the OSC account; and

d. traded Crypto Contracts.

[11] During the material time, the respondents maintained custody of the crypto assets deposited and traded on the Phemex platform and maintained custody of crypto wallets they controlled. Investors did not have possession or control of the crypto assets they deposited into their accounts and traded on the Phemex platform. Investors saw a crypto balance displayed in their account on the Phemex platform.

[12] To take possession of crypto assets reflected in their account balance, investors had to request a withdrawal and were dependent on the respondents to satisfy their withdrawal requests by delivering crypto assets to an investor-controlled wallet.

[13] On or about January 7, 2023, after being contacted by the Commission regarding their activities in Ontario, the respondents implemented a restriction based on IP addresses to prevent Ontario residents from accessing the Phemex platform.

[14] The respondents have never been registered with the Commission in any capacity nor have they obtained an exemption from the registration requirement. The respondents have also never filed a prospectus with the Commission nor obtained an exemption from the prospectus requirement.

3. ISSUES AND ANALYSIS

[15] The issues we need to decide are:

a. Does the Tribunal have jurisdiction to adjudicate the allegations against Phemex Technology, a dissolved corporate entity?

b. Are Crypto Contracts and Crypto Futures "securities" within the meaning of the *Act*?

c. Did the respondents engage in unregistered trading, contrary to s. 25(1) of the *Act*?

d. Did the respondents engage in illegal distributions of securities, contrary to s. 53(1) of the *Act*?

e. Did the respondents engage in other conduct that would justify an order under s. 127(1) of the *Act*?

3.1 Jurisdiction

[16] As a preliminary issue, we must determine whether this Tribunal has the jurisdiction to make findings against Phemex Technology, a dissolved corporation. The corporation was dissolved on September 4, 2024, shortly before the Statement of Allegations in this proceeding was issued.

[17] We agree with the Commission that this Tribunal has the jurisdiction to determine whether the actions of Phemex Technology in Ontario breached the *Act* while it was a functioning corporation, and its dissolution does not distract from our ability to exercise our jurisdiction to make findings against it.

3.2 Are Crypto Contracts and Crypto Futures "securities"?

[18] We consider it well-established in the Tribunal's jurisprudence that Crypto Contracts and Crypto Futures, such as those traded on the Phemex platform, are investment contracts and therefore "securities" within the meaning of the *Act*. In *Mek Global Limited (Re)*,[2] *Polo Digital Assets, Ltd. (Re)*[3] and *Manticore Labs OÜ (Re),*[4] the Tribunal applied the investment contract analytical framework set out in the Supreme Court of Canada decision *Pacific Coast Coin Exchange v Ontario Securities Commission*[5] and determined that Crypto Contracts and Crypto Futures were investment contracts. We take the same approach.

[19] Specifically, a deposit of fiat currency or crypto assets for the purpose of trading crypto products on the Phemex platform is an investment of money. Such an investment of money is made with the expectation of profit from the trading of the Crypto Contracts or Crypto Futures on the Phemex platform. Finally, investors are engaged in a common enterprise with the crypto trading platform and mobile apps and are dependent on the significant efforts of the respondents for the success or failure of their investments. More particularly, investors are dependent on the actions, custody arrangements, and solvency of the respondents for the success of their investments.

[20] We find that the Crypto Contracts and Crypto Futures on the Phemex platform constitute investment contracts and are securities within the meaning of the *Act*. We need not deal with the Commission's submissions that the Crypto Contracts on the Phemex platform are securities under other parts of the definition of "securities" in the *Act*.

3.3 Did the respondents contravene s. 25(1) of the *Act*?

[21] The registration requirement is a cornerstone of Ontario's securities regulatory regime, designed to ensure that those who engage in the business of trading in securities are proficient and solvent, and that they act with integrity. Unregistered trading defeats these necessary legal protections and undermines investor protection and the integrity of the capital markets.[6]

[22] Section 25(1) of the *Act* requires those engaged in the business of trading in securities to be registered. The Act defines "trade" or "trading" as including: (a) "any sale or disposition of a security for valuable consideration…(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of the foregoing".

[23] We find that Phemex and Phemex Technology engaged in the business of trading in securities without being registered in any capacity and without an exemption from the registration requirement. The central purpose of the Phemex platform was to facilitate the trading in securities.

[24] The Phemex platform was a global crypto trading platform. Phemex made the platform available to the investing public in Ontario through its website and made statements designed to solicit investors to sign onto the platform and use the platform to engage in trading activity. Phemex Technology developed and operated the mobile apps through which investors could engage in all the trading activity available on the Phemex platform. All of this was clearly done for a business purpose. The respondents charged the investors fees for the trading activity that they facilitated on the Phemex platform.

[25] Therefore, we find that the respondents have breached s. 25(1) of the *Act*.

3.4 Did the respondents contravene s. 53(1) of the *Act*?

[26] The prospectus requirement is fundamental to protecting investors by ensuring they have full disclosure of the information necessary to assess the risks of an investment and make an informed decision whether to invest.

[27] Subsection 53(1) of the *Act* prohibits trading in a security without filing a prospectus if the trade would be a distribution of the security. The *Act* defines "distribution" to include "a trade in securities of an issuer that have not been previously issued," and "acts in furtherance of" trading are included in the definition.

[28] The respondents' sale of Crypto Contracts and Crypto Futures were "distributions" because the respondents newly issued or created them. The Crypto Contracts were issued to the investors when they deposited crypto assets on the Phemex platform, when investors engaged in "spot" trades on the platform, when the investors opened new positions in Crypto Futures, and when the investors closed existing positions.

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2 2022 ONCMT 15
3 2022 ONCMT 32
4 2024 ONCMT 19 (***Manticore Labs***)
5 1997 CanLII 37 (SCC) at 114-115
6 *Manticore Labs* at para 18

[29] The respondents made these distributions of securities without filing a prospectus or obtaining an exemption from such filing. Phemex made these distributions by operating the Phemex platform through its website. Phemex Technology made similar distributions by operating the mobile apps to facilitate trading on the Phemex platform.

[30] Therefore, we find that the respondents have breached s. 53(1) of the *Act*.

3.5 Did the respondents engage in additional conduct that would justify an order under s. 127(1) of the *Act*?

[31] As we have found that both respondents have breached substantive provisions of the *Act*, the respondents have engaged in conduct that justifies an order under s. 127(1) of the *Act*. The respondents have acted in a manner contrary to the fundamental purposes and principles of the *Act*. The Commission did not allege additional misconduct to justify any further finding under s. 127(1).

4. CONCLUSION

[32] Given our conclusion that the respondents have breached ss. 25(1) and 53(1) of the *Act*, we direct the parties to contact the Registrar by 4:30 p.m. on January 10, 2025, to arrange for a case management hearing in preparation for a hearing regarding sanctions and costs. The case management hearing is to take place on a date that is mutually convenient, that is fixed by the Registrar, and that is no later than January 24, 2025.

[33] If the parties are unable to present a mutually convenient date for the case management hearing to the Registrar, then each party may submit to the Registrar, for consideration by a panel of the Tribunal, one-page written submissions regarding a date for the case management hearing. Any such submissions shall be submitted by 4:30 p.m. on January 10, 2025.

Dated at Toronto this 18th day of December, 2024

“Cathy Singer”

“Russell Juriansz”

“Jane Waechter”

A.4.2 Troy Richard James Hogg et al. – ss. 127(1), 127.1

Citation: *Hogg (Re)*, 2024 ONCMT 31
Date: 2024-12-19
File No. 2022-20

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

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

Adjudicators:	Andrea Burke (chair of the panel) Sandra Blake M. Cecilia Williams	
Hearing:	September 30, 2024	
Appearances:	Erin Hoult Alvin Qian	For the Ontario Securities Commission
	No one appearing for Troy Richard James Hogg, Cryptobontix Inc., Arbitrade Exchange Inc., Arbitrade Ltd., T.J.L. Property Management Inc. and Gables Holdings Inc.	

REASONS AND DECISION

1. OVERVIEW

[1] In a decision on the merits dated June 14, 2024 (the **Merits Decision**),[1] the Capital Markets Tribunal found that Troy Richard James Hogg, Cryptobontix Inc., Arbitrade Exchange Inc., Arbitrade Ltd. (**Arbitrade Bermuda**), T.J.L Property Management Inc. (**TJL**), and Gables Holdings Inc., breached the *Securities Act* (the ***Act***).[2] The Tribunal found that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda breached the *Act* by fraudulently promoting and selling digital tokens (the **Tokens**) to investors around the world, and falsely representing to investors that the Tokens were backed by gold and that an audit had verified the existence of that gold. The respondents were also found to have misappropriated investor funds which were represented to investors as being used to purchase crypto asset mining equipment to increase the value of the Tokens. In making these findings, the Tribunal found that the transaction or scheme for the offer and sale of the Tokens constituted investment contracts and were therefore securities under the *Act*.

[2] Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda also breached the *Act* through unregistered trading and an illegal distribution of securities. The Tribunal also found that Hogg was deemed under the *Act* to have not complied with Ontario securities law in relation to Arbitrade Bermuda's breaches.

[3] As a result of the findings in the Merits Decision the Commission seeks the following sanctions and costs against the respondents:

a. permanent prohibitions on their ability to participate in Ontario's capital markets;

b. administrative penalties ranging between $750,000 and $2.5 million;

c. disgorgement of US $51,732,003.27 in investor funds received and $2,036,973.61 in profit made using investor funds; and

d. costs of $667,605.27.

[4] The respondents did not participate in the merits hearing. With the exception of Hogg's emails to the Tribunal addressed below, the respondents also did not participate in the sanctions and costs hearing.

[1] *Hogg (Re),* 2024 ONCMT 15
[2] RSO 1990, c S.5 (***Act***)

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

a. permanent prohibitions on the respondents' ability to participate in Ontario's capital markets;

b. administrative penalties on a joint and several basis ranging from $500,000 to $2 million;

c. disgorgement by the respondents in varying amounts totalling US $51,732,003.27 in investor funds received; and

d. costs of $667,605.27.

[6] We decline to order disgorgement of amounts that the Commission characterizes as profit made using investor funds because the Commission did not establish the necessary causal link between these amounts and the contravention of the *Act*.

2. BACKGROUND

[7] The Merits Decision made the following findings of fact that are relevant to our decision on sanctions and costs:

a. Hogg was the sole director, officer, shareholder and directing mind of Cryptobontix, Arbitrade Exchange and TJL and the sole shareholder and a director of Gables during the material time. He was also a directing mind of Arbitrade Bermuda;

b. Hogg and the corporate respondents, with the exception of Arbitrade Bermuda which was incorporated in Bermuda, were Ontario residents and operated from Ontario;

c. Arbitrade Bermuda engaged in Token-related promotional activities through Hogg in Ontario and targeted Ontario residents, such that there was a sufficient nexus to Ontario for the Tribunal to have jurisdiction over Arbitrade Bermuda;

d. Hogg developed the Tokens and arranged to have Cryptobontix issue the Tokens;

e. the Tokens were promoted and sold to investors around the world as representing a store of wealth (purportedly due to being backed by gold bullion) with a growth component (purportedly due to earnings related to cryptocurrency mining activities and growth in the investment in gold bullion);

f. in total Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda raised over US $51 million from the sale of Tokens to investors;

g. there was no gold bullion backing the Tokens; and

h. of the over US $51 million raised from investors, US $36.858 million was misappropriated by the respondents.

3. ANALYSIS

3.1 Introduction

[8] The Tribunal may impose sanctions under s. 127(1) of the *Act* where it finds it to be in the public interest to do so. The Tribunal's exercise of that jurisdiction must be consistent with the purposes of the *Act*, which include protecting investors from unfair, improper and fraudulent practices, and fostering fair and efficient capital markets and confidence in the capital markets.[3]

[9] The sanctions listed in s. 127(1) of the *Act* are protective and preventative and are intended to be exercised to prevent future harm to Ontario's capital markets.[4]

[10] Sanctions must be proportionate to a respondent's conduct in the circumstances of the case.[5] Determining the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the case.[6]

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3 *Act,* s 1.1

4 *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

5 *First Global Data Ltd (Re*), 2023 ONCMT 25 (***First Global***) at para 7

6 *Quadrexx Hedge Capital Management Ltd (Re)*, 2018 ONSEC 3 (***Quadrexx***) at para 20; *Paramount Equity Financial Corporation (Re)*, 2023 ONCMT 20 (***Paramount***) at para 12

[11] In previous decisions, the Tribunal has identified a non-exhaustive list of factors applicable to the determination of appropriate sanctions.[7] We have listed the factors that the Commission submits are applicable to this case, as well as some others as potentially relevant given matters raised by Hogg, which are:

a. the seriousness of the misconduct;

b. the respondents' level of activity in the marketplace, or in other words, the "size" of the contravention;

c. whether the misconduct was isolated or recurrent;

d. the profit made or loss avoided from the misconduct;

e. the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence");

f. whether or not there has been a recognition of the improprieties by, and the remorse of, the respondent; and

g. the financial pain that any sanction would reasonably cause to the respondent.

[12] Before we turn to review the factors applicable to determining appropriate sanctions, we briefly address the weight to be given to two emails submitted to the Tribunal by Hogg for our consideration. The first was submitted one business day prior to the hearing (**First email**), and the second was submitted the day after the hearing (**Second email**).

3.2 Hogg's emails

[13] Hogg asks that the Tribunal consider his First email when making decisions on sanctions and costs. He asserts loss of reputation, remorse and financial difficulties. He alleges there were few Canadian or Ontario investors and that other unidentified individuals were involved who were not made respondents. He requests that we consider his ability to pay and his age in determining sanctions. Hogg cites a number of sanctions cases however, none are analogous to this case either because they do not involve fraud, they are settlement approvals, or they involve sanctions applied in an entirely different context by another body under different laws.

[14] We heard submissions from the Commission and considered *Paramount* and *Stinson (Re),*[8] both of which address the standard to be met for a reduction in sanctions based on a claim of impecuniosity. We agree that Hogg's bald statements about his financial difficulties are insufficient to meet the burden of demonstrating circumstances sufficient to reduce monetary sanctions. The email was scant on detail, uncorroborated, and unsworn. We give no weight to Hogg's submissions in the First email.

[15] Although Hogg expresses remorse by stating that he is "so sorry for anyone hurt by the actions chosen", overall we give no weight to this expressed remorse. This is because we do not interpret his statements as accepting his own responsibility for harm caused. They instead express regret for having listened to and become involved with other unnamed bad actors.

[16] Hogg did not attend the hearing. However, the day after the hearing he sent the Second email to the Tribunal, apparently in reply to the Commission's submissions at the hearing. Although we have read the Second email, we have not given it any weight. We did not invite Hogg to file the Second email, and it was delivered after the hearing and outside the established timetable for the delivery of evidence and submissions. The Second email contains extensive factual assertions that are unsworn and uncorroborated, and the Commission did not have the opportunity to respond to or test any of these factual assertions.

[17] We turn now to the relevant sanctioning factors.

3.3 Sanctioning factors

3.3.1 Seriousness of the misconduct

[18] The Merits Decision found that the respondents violated numerous provisions of the *Act*.

[19] We find the misconduct serious due to the nature and scale of the violations.

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7 *York Rio Resources Inc et al*, 2014 ONSEC 9 (***York Rio***) at para 34; *Kitmitto (Re)*, 2023 ONCMT 4 at para 8

8 2023 ONCMT 50 at paras 66-67

[20] Fraud is one of the most egregious violations of the *Act*, causing direct harm to investors and undermining confidence in the capital markets.[9] The registration and prospectus requirements are cornerstones of Ontario securities law. Unregistered trading and illegal distributions undermine investor protection and the integrity of the capital markets.[10]

[21] The Commission submits that this fraud is particularly egregious because in other frauds there may be an underlying business, while here there is not. As there is no gold backing the Tokens, the Tokens are worthless. The offering is a total sham, therefore having significant market impact.

[22] The Commission further submits that while details of the total number of investors affected by the fraudulent and abusive conduct of the respondents are not available, there is little doubt that investor losses are likely significant.

[23] We find that the exact quantum of investor losses cannot be ascertained as some investors may have sold their Tokens in the secondary market. However, we agree that investors suffered harm by relying on false representations regarding the attributes of the Tokens.

3.3.2 Respondents' level of activity

[24] Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda raised over US $51 million from their promotion and sales of Tokens to investors. Most investor funds, at least US $36.858 million, were misappropriated by the respondents for purposes entirely unrelated to the acquisition or operation of cryptocurrency mining equipment, contrary to representations made to investors.

[25] The Commission alleges that in terms of scale, this is the largest crypto asset fraud the Tribunal has heard to date and among the largest fraud cases the Tribunal has adjudicated.

[26] We agree that the respondents' level of activity was high, resulting in significant amounts of funds raised from investors and a significant misappropriation of investor funds.

3.3.3 Violations were recurrent

[27] We find that the misconduct was recurrent.

[28] The misconduct of the respondents took place over the span of more than two years (May 2017 to June 2019).

[29] During this period, the Tokens were regularly and repeatedly promoted, and investors were solicited. The misrepresentations made to investors were repeated frequently through various channels of communication and advertisements.

[30] The misappropriation of investor funds by the respondents for their own purposes took place over many months through numerous transactions.

3.3.4 Profit

[31] This factor considers whether the respondents made a profit, or avoided a loss, because of their misconduct. A contravention will generally be worthy of greater sanctions when the contravening party benefits from the misconduct.[11]

[32] The Merits Decision found significant amounts of investor funds were used to benefit most of the respondents rather than to purchase cryptocurrency mining equipment, their stated purpose. US $36.858 million of investor funds went to paying operating expenses of Arbitrade Bermuda and fees owed by Arbitrade Bermuda, purchasing real estate, purchasing mining equipment that was transferred by Cryptobontix to Hogg, and personally benefitting Hogg, TJL and Gables.

[33] As a result, we find that Hogg, Arbitrade Bermuda, TJL and Gables directly benefitted from their misconduct.

3.3.5 Specific and general deterrence

[34] The Commission submits that given the size and scope of the fraud, significant sanctions are necessary to deter the respondents and other like-minded people from engaging in similar misconduct. We agree. We find that significant sanctions are warranted in this case.

[35] While Hogg submits that the number of Canadians involved was an extremely small number and even fewer were from Ontario, the misconduct was perpetrated from and had direct ties to Ontario. We find that it is important that the sanctions imposed deter misconduct from originating in Ontario, including where its effects are felt outside Ontario.

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9 *First Global* at para 18
10 *Polo Digital Assets, Ltd (Re)*, 2022 ONCMT 32 at paras 71 and 84
11 *First Global* at para 26

3.3.6 Remorse of the respondent

[36] For the reasons explained above, we give no weight to the remorse expressed by Hogg. This was not a factor in our decision.

3.3.7 Financial consequences of sanctions

[37] For the reasons explained above, we have also given no weight to Hogg's bald assertions about his financial difficulties without any corroborating or sworn evidence.

3.4 Administrative penalties

[38] The Commission is seeking an order that the respondents pay the following amounts in administrative penalties:

a. Hogg: $2.5 million;

b. Arbitrade Bermuda: $2 million;

c. Cryptobontix: $1.5 million;

d. Arbitrade Exchange: $1 million;

e. Gables: $750,000; and

f. TJL: $750,000.

[39] The Commission submits that the penalties requested are proportionate to the gravity of the respondents' misconduct and to sanctions in past cases involving fraudulent conduct.

[40] To support the quantum of penalties being sought, the Commission provides precedents of:

a. significant frauds where the individual respondents received high administrative penalties;[12]

b. other frauds involving less investor funds;[13] and

c. frauds involving misappropriation.[14]

[41] Many of these precedents also involve unregistered trading and illegal distributions, findings which increase the seriousness of the misconduct and thus increase the quantum of administrative penalties.

[42] The general theme of the Commission's submissions is that this is the largest crypto asset fraud the Tribunal has heard, and it ranks among the highest value frauds that the Tribunal has ever adjudicated.

[43] The Commission submits that the corporate respondents are separate legal entities, and it is appropriate that they be sanctioned based on the role they respectively played in the fraud. The Commission therefore seeks separate independent administrative penalties. The Commission submits that if we are inclined to order joint and several liability, the total amount of the penalties should be no less than the total amount of the administrative penalties sought.

[44] We reject the approach suggested by the Commission. In this case, Hogg is not only the directing mind but also the sole shareholder of Arbitrade Exchange, Cryptobontix, Gables and TJL. The administrative penalty as against all of these corporations is effectively also being sought from the same source, Hogg. In this case, we are not prepared to inflate the effective administrative penalty against Hogg simply due to the number of corporate respondents involved. We have considered the relative roles of the various corporate respondents in the multiple contraventions of the *Act.* We therefore find that the respondents should pay the following amounts in administrative penalties:

a. Arbitrade Bermuda: $2 million;

b. Hogg and Cryptobontix: jointly and severally, $1 million;

c. Hogg and Arbitrade Exchange: jointly and severally $500,000;

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12 *Sino-Forest Corporation (Re)*, 2018 ONSEC 37 (***Sino-Forest***); *Paramount*

13 *York Rio*; *Global Energy Group Ltd (Re)*, 2013 ONSEC 44; *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10; *Hibbert (Re)*, 2012 ONSEC 33; *Quadrexx*; *First Global*; *Mughal Asset Management Corporation (Re)*, 2024 ONCMT 14 (***Mughal***); *International Strategic Investments et al*, 2015 ONSEC 8; *International Strategic Investments et al*, 2015 ONSEC 17; *Meharchand (Re)*, 2019 ONSEC 7; *Natural Bee Works Apiaries Inc (Re)*, 2019 ONSEC 31; *Miner Edge Inc (Re)*, 2021 ONSEC 31

14 *Pogachar (Re)*, 2012 ONSEC 23; *Lewis (Re)*, 2012 ONSEC 5; *Feng (Re)*, 2023 ONCMT 43

d. Hogg and Gables: jointly and severally $500,000; and

e. Hogg and TJL: jointly and severally $500,000.

[45] These amounts take a global view of sanctions, reflecting the serious nature of the multiple breaches of the *Act* by Arbitrade Bermuda, Hogg, Cryptobontix and Arbitrade Exchange while addressing Hogg's role with the corporate respondents and also drawing a distinction based on our view of the relative role of each company. These amounts also take into consideration our disgorgement orders and the non-monetary sanctions that we order below.

3.5 Disgorgement

[46] The Commission seeks the following disgorgement orders:

a. Arbitrade Bermuda disgorge US $41,622,965.27, of which amount Hogg and Cryptobontix be jointly and severally liable to disgorge US $7,822,296.72;

b. Hogg disgorge US $10,109,038, of which amount:

i. TJL be jointly and severally liable to disgorge US $5,637,259.39; and

ii. Gables be jointly and severally liable to disgorge US $4,345,737.14; and

c. Hogg disgorge an additional $2,036,973.61 of which amount:

i. TJL be jointly and severally liable to disgorge $64,712.19; and

ii. Gables be jointly and severally liable to disgorge $1,972,261.42.

[47] These disgorgement amounts include US $51,732,003.27 obtained from investors who purchased Tokens plus an additional $2,036,973.61 which the Commission submits represents the profit connected to the purchase and sale of real estate by TJL and Gables.

[48] We first consider the amounts obtained from investors who purchased Tokens.

[49] Subsection 127(1) of the *Act* permits the Tribunal to order disgorgement of any amounts obtained "as a result of the non-compliance" with Ontario securities law. The purpose of a disgorgement order is to restore confidence in the capital markets, ensure wrongdoers do not benefit from violations of Ontario securities law, and deter others from engaging in similar misconduct.[15]

[50] We find that the US $51,732,003.27 obtained from investors who purchased Tokens is an amount obtained as a result of non-compliance with Ontario securities law. Of that amount, Arbitrade Bermuda received US $41,622,965.27. We therefore find that Arbitrade Bermuda must disgorge US $41,622,965.27.

[51] Of the US $41,622,965.27, Hogg and Cryptobontix shall be jointly and severally liable to disgorge US $7,822,296.72. This represents the portion of these investor funds used to purchase cryptocurrency mining equipment owned by Cryptobontix and Hogg. We find that Hogg should be jointly and severally liable for this amount given that he is the sole shareholder, officer and director of Cryptobontix, and because, of this amount, US $4,141,700 worth of the equipment was transferred by Cryptobontix to Hogg.

[52] We also find that US $10,109,038 of the US $51,732,003.27 represents the amount of investor funds transferred to or used for the benefit of Hogg and his companies, TJL and Gables, including investor funds that were used by TJL and Gables to purchase real estate.

[53] We therefore find that Hogg must disgorge US $10,109,038, of which amount:

a. TJL shall be jointly and severally liable to disgorge US $5,637,259.39; and

b. Gables shall be jointly and severally liable to disgorge US $4,345,737.14.

[54] We now consider the profit earned from the purchase and sale of real estate by TJL and Gables.

[55] The Commission submits the term "amounts obtained" should not be limited to the investor funds that were received by the respondents from investors as a result of their contraventions of the *Act,* but may include any amount obtained as a

[15] *North American Financial Group Inc v Ontario Securities Commission*, 2018 ONSC 136 (Div Ct) at para 218; *Al-Tar Energy Corp et al*, 2011 ONSEC 1 at para 71

result of their non-compliance. The Commission cites *Pushka v Ontario Securities Commission*[16] and *Limelight Entertainment Inc et al*[17] in urging us to consider ordering the disgorgement of the "total profit" received by Hogg and his companies, TJL and Gables, on the real estate transactions. The Commission calculates the "total profit" by subtracting the original purchase price of the properties (including acquisition fees) from the sale price, and then subtracting a further $12,500 representing deposits paid toward the purchase price that were not investor funds.

[56] Disgorgement orders issued by the Tribunal typically involve the disgorgement of investor funds that have been received by respondents from investors as a result of their contraventions of the *Act*. However, we agree with the Commission that the Tribunal's ability to order disgorgement is not limited to funds received from investors but may include any amount obtained as a result of non-compliance with the *Act*.

[57] Indeed, *Pushka* is an example where the Tribunal ordered disgorgement of funds that were not funds received from investors, but instead were fees earned on management contracts that were purchased with investor funds in breach of the respondents' fiduciary duties under the *Act*. We read s. 127(1) broadly and purposively, such that "amounts obtained" are not limited to amounts obtained from investors and may, in appropriate circumstances, encompass amounts obtained in other ways so long as the requisite causal link between the "amounts obtained" and the "non-compliance" is established. The analysis of causation to establish that the amounts obtained" are "as a result of" the non-compliance includes consideration of events that interrupt the chain of causation and principles of remoteness.[18]

[58] On the facts before us, we find that the Commission failed to establish a direct causal link between the contraventions of the *Act* and the "total profit" received on the sale of one property acquired by TJL and the sale of three properties acquired by Gables. Although we find that investor funds raised from the sale of Tokens were misappropriated and flowed directly into a lawyer's trust account to purchase real estate, the Commission did not establish that there actually was a gain or profit (*i.e.*, further "amounts obtained") that flowed from this use of investor funds. For example, the difference between the purchase and sale price for the properties may be attributed to improvements made to the properties in the intervening time between the purchase and sale, and the Commission did not rule out that this was the case or otherwise establish the requisite connection between the misuse of investor funds.

[59] We recognize that s. 127(1) authorizes a disgorgement order for gross amounts obtained, without a requirement to net out any related expenses.[19] If the Commission had established a direct causal link, we still need to know the costs related to the sale of the properties (commissions and other fees) as arguably these amounts may reduce the "amounts obtained". We could then exercise our discretion to order disgorgement. Whether the amounts sought to be disgorged are reasonably ascertainable is an important factor.[20]

[60] Therefore, we conclude that it is not appropriate to order disgorgement of the "total profits" realized from the sale of real estate. We also note that although the Commission's Statement of Allegations dated September 30, 2022 seeks disgorgement orders, the Commission did not make any allegations about profits allegedly earned by TJL and Gables through the sale of real estate. Although we have not decided the issue on this basis, and did not ask the Commission for submissions on this point, we do have concerns that the Statement of Allegations may not provide sufficient notice of the Commission's intention to seek disgorgement of real estate profits.

3.6 Market participation and director and officer prohibitions

[61] The Commission seeks permanent trading, acquisition, and exemption bans, and registrant and promoter bans against the respondents. The Commission further seeks against Hogg a permanent director and officer ban with respect to all issuers and registrants.

[62] Participation in the capital markets is a privilege, not a right.[21] The Tribunal has repeatedly found that it is in the public interest to permanently deprive those who commit fraud of the privilege of participating in the capital markets.[22]

[63] We find that there are no mitigating circumstances here, and order permanent market participation bans against the respondents and director and officer bans against Hogg.

16 2016 ONSC 3041 (Div Ct) (***Pushka***)
17 2008 ONSEC 28 (***Limelight***)
18 *Pushka* at para 254
19 *Pushka* at para 253; *Limelight* at paras 49-54
20 *Limelight* at para 52
21 *Glen & Christine Erikson v OSC*, 2003 CanLII 2451 (Div Ct) at paras 55-56
22 *First Global* at paras 213-214

3.7 Costs

3.7.1 Introduction

[64] Section 127.1 of the *Act* authorizes the Tribunal to order a respondent to pay the costs of an investigation or a hearing if the Tribunal is satisfied that the person or company has not complied with Ontario securities law or has not acted in the public interest.

[65] The Commission seeks costs of $667.605.27, apportioned among the respondents as follows:

a. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda: $534,084.22 jointly and severally; and

b. Hogg, TJL and Gables: $133,521.05 jointly and severally.

[66] A smaller amount is attributed to TJL and Gables because they were only involved in the misappropriation fraud which represents one of the four substantive breaches (the others being the gold audit fraud, unregistered trading, and illegal distribution).

3.7.2 The costs sought are reasonable and proportionate in the circumstances

[67] The Commission submits that the costs are reasonable and proportionate in the circumstances. This matter involved the investigation and preparation for a hearing involving a complex multijurisdictional crypto fraud that spanned over two years. There was significant investigation and forensic accounting work done to trace the use of investor funds by the respondents in numerous transactions during the material time involving many real properties, financial institutions, and other intermediaries.

[68] The Commission cites numerous precedents to establish that the costs sought are reasonable and within the range of other cases of serious misconduct including fraud.[23]

[69] We question whether the costs claimed by the Commission actually represent a 38.4% discount, as it submits, to the total costs incurred in connection with the investigation and hearing in this matter. This is because some of the discounted costs incurred are likely not recoverable as they were incurred in connection with obtaining freeze orders in separate court proceedings, as well as acknowledged inefficiencies. However, we find that the costs sought are reasonable and have been proven satisfactorily. The Commission provided an affidavit regarding costs and disbursements, which shows costs of the investigation, pre-hearing activities and the merits hearing. The affidavit lists members of the Commission who participated in each phase, the hourly rates for their positions (which have been previously approved by the Tribunal), and the time spent by them. We also find that the costs sought are in line with precedent cases.

[70] We therefore order the respondents to pay the Commission's costs of the investigation and hearing in the amounts sought.

4. CONCLUSION

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

a. pursuant to paragraph 2 of subsection 127(1) of the *Act*, trading in any securities or derivatives by the respondents shall cease permanently;

b. pursuant to paragraph 2.1 of subsection 127(1) of the *Act*, the acquisition of any securities by the respondents is prohibited permanently;

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

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

e. pursuant to paragraphs 8 and 8.2 of subsection 127(1) of the *Act*, Hogg is prohibited from becoming or acting as a director or officer of any issuer or registrant, permanently;

f. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, the respondents are prohibited from becoming or acting as a registrant or as a promoter, permanently;

[23] *Cartu (Re)*, 2022 ONSEC 4; *Cartu (Re)*, 2022 ONCMT 21 at paras 36-40; *Pro-Financial Asset Management (Re)*, 2018 ONSEC 18 at paras 106-115; *Mughal*, at para 136; *Quadrexx* at paras 117, 120; *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10 at para 83; *Paramount* at para 125; *First Global* at para 256; *Sino-Forest* at paras 8, 205-206

g. pursuant to paragraph 9 of subsection 127(1) of the *Act*, administrative penalties shall be paid as follows:

   i. Arbitrade Bermuda, $2 million;

   ii. Hogg and Cryptobontix, jointly and severally, $1 million;

   iii. Hogg and Arbitrade Exchange, jointly and severally, $500,000;

   iv. Hogg and Gables, jointly and severally, $500,000; and

   v. Hogg and TJL, jointly and severally, $500,000;

h. pursuant to paragraph 10 of subsection 127(1) of the *Act*:

   i. Arbitrade Bermuda shall disgorge to the Commission the amount of US $41,622,965.27, of which amount Hogg and Cryptobontix shall be jointly and severally liable to disgorge US $7,822,296.72; and

   ii. Hogg shall disgorge to the Commission an additional amount of US $10,109,038, of which amount:

   - TJL shall be jointly and severally liable to disgorge US $5,637,259.39; and
   - Gables shall be jointly and severally liable to disgorge US $4,345,737.14; and

i. pursuant to section 127.1 of the *Act*:

   i. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda shall pay costs to the Commission in the amount of $534,084.22, for which they shall be jointly and severally liable; and

   ii. Hogg, TJL and Gables shall pay costs to the Commission in the amount of $133,521.05, for which they shall be jointly and severally liable.

Dated at Toronto this 19th day of December, 2024

“Andrea Burke”

“Sandra Blake”

“M. Cecilia Williams”

A.4.3 TeknoScan Systems Inc. et al. – s. 127(1)

Citation: *TeknoScan Systems Inc (Re)*, 2024 ONCMT 32
Date: 2024-12-23
File No. 2022-19

IN THE MATTER OF
TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM

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

Adjudicators:	Andrea Burke (chair of the panel) James Douglas Cathy Singer	
Hearing:	January 29, 30 and 31, February 20, 21, 22, 23, 26, 27, 28 and 29, April 2, 3, 4, 5, 8, 9, 15 and 19 and May 31, 2024	
Appearances:	Hanchu Chen Amethyst Haighton	For the Ontario Securities Commission
	Susan Kushneryk Sandeep Joshi Oliver Wookey	For TeknoScan Systems Inc., Philip Kai-Hing Kung and Soon Foo (Martin) Tam
	H. Samuel Hyams	On his own behalf

REASONS AND DECISION

1. OVERVIEW

[1] The Commission alleges that the respondents breached the *Securities Act* (the ***Act***)[1] by perpetrating a securities fraud and making misleading statements to investors. The Commission also alleges that two of the respondents made misleading statements to the Commission during its investigation of this misconduct.

[2] TeknoScan Systems Inc. (**TeknoScan**) and three of its officers and directors, H. Samuel Hyams, Phillip Kai-Hing Kung and Soon Foo (Martin) Tam (the **Individual respondents**), are alleged to have perpetrated a fraud against preferred shareholders of TeknoScan by presenting a sham transaction for the purchase of TeknoScan common shares with no reasonable expectation of completion. It is alleged that through dishonesty, deceit and misrepresentation, the respondents exploited preferred shareholders, enticed them to convert their preferred shares to common shares, and caused them to forfeit their rights as preferred shareholders.

[3] For the reasons that follow, we find that:

a. contrary to s. 126.1(1)(b) of the *Act*, the respondents perpetrated a fraud on TeknoScan's preferred shareholders who opted into the transaction by omitting certain information that rendered a communication to shareholders dishonest and misleading;

b. contrary to s. 126.2(1) of the *Act*, TeknoScan made a materially misleading statement to shareholders which would reasonably be expected to have a significant effect on the value of TeknoScan's common shares;

c. Hyams, Kung and Tam authorized, permitted or acquiesced in TeknoScan's breach of s. 126.2(1) of the *Act* and they are deemed liable for that breach under s. 129.2; and

d. the Commission failed to establish that:

   i. the Individual respondents made a materially misleading statement to shareholders; and

   ii. Kung and Hyams made misleading statements to the Commission during its investigation.

[1] RSO 1990, c S.5

2. BACKGROUND

2.1 The respondents

[4] TeknoScan was founded in 2008 with its head office located in Vaughan, Ontario. It is not a reporting issuer under the *Act*. TeknoScan is a trace chemical detection technology company. A number of witnesses confirmed that TeknoScan had developed a unique and proven technology and was actively involved in developing and building a business around that technology.

[5] In 2016 and 2017, TeknoScan's Board of Directors had four directors: the Individual respondents, and Sunil Joseph. They were the directing minds of the company.

[6] Hyams was the Chief Executive Officer of TeknoScan from 2008 until 2022, and President and a director from 2008 until 2023. His duties included managing the legal and financial aspects of the company, such as accounting, approval of financial statements, and some fundraising.

[7] During the material time, Kung was a founder, director, Chief Financial Officer, executive vice-president, and treasurer of TeknoScan. Kung was primarily focused on raising funds for the company.

[8] Tam joined TeknoScan in 2011 as a director. He became the chairman of the Board in 2013. Similar to Kung, Tam's principal role at TeknoScan was to raise funds for the company.

[9] In 2016, Hyams (11%), Kung (32%) and Tam (16%) collectively held 59% of the outstanding common shares of TeknoScan.

2.2 Factual background

2.2.1 TeknoScan's fundraising and capital structure

[10] From its inception, TeknoScan relied on investors to keep it operating. During the material time, TeknoScan did not yet have any significant sales or cash flow and continued to rely on funds raised from investors.

[11] TeknoScan began raising capital in 2008 by issuing preferred and common shares.

[12] TeknoScan sold preferred shares at US $1.00 or less until August 2016. By December 2016, TeknoScan had 108 preferred shareholders who held 39.8 million preferred shares. TeknoScan also had approximately 56 common shareholders holding approximately 59.7 million shares (including the common shares held by the Individual respondents).

[13] All preferred shares had the following rights:

a. the right to a 6% cumulative dividend paid annually; and

b. the right to convert the preferred shares to common shares on a 1:1 basis at any time.

[14] A subset of the preferred shares also had:

a. the right to receive a 5% royalty; and

b. a redemption right entitling the shareholder to require TeknoScan to redeem their preferred shares at US $3 per share after 36 months from the purchase date. Of the approximately 39.8 million preferred shares issued by December 2016, approximately 20 million had redemption rights.

2.2.2 The Share Purchase Transaction

[15] On December 14, 2016, TeknoScan sent to all TeknoScan shareholders a company update email (**Update Email**) attaching a notice (**Notice**). The Update Email advised shareholders that the TeknoScan Board had been in negotiations with a Canadian Strategic Investor to have that investor acquire up to 50% of the common shares held by TeknoScan shareholders at an attractive valuation. The Notice indicated that Dan Paul Davison and Double Helix Management Services Ltd. (**Double Helix**) intended to purchase up to approximately 50% of TeknoScan common shares on a fully diluted basis at US $20 per share (**Share Purchase Transaction**).

[16] The Notice advised preferred shareholders that, if they wished to participate in the Share Purchase Transaction, they could convert all, but not less than all, of their preferred shares to common shares on a 1:1 basis. The conversion of preferred shares was not contingent on the closing of the Share Purchase Transaction.

[17] Each shareholder participating in the Share Purchase Transaction was required to exercise warrants or options to acquire common shares equal to the number of common shares sold by that shareholder under the Transaction. The exercise price for the outstanding warrants and options varied but was in the range of US $0.75 to US $3 per share. Thus, the Share Purchase Transaction was also structured to raise additional funds for TeknoScan.

[18] The Notice attached a package of transaction documents that included:

a. an Acknowledgment and Confirmation of Shareholder (**Acknowledgment and Confirmation**); and

b. the form of Share Purchase Agreement between Davison, in trust for Double Helix as purchaser, the individual TeknoScan shareholders who opt to participate in the Share Purchase Transaction and TeknoScan (**Share Purchase Agreement**).

[19] Shareholders who wished to participate in the Share Purchase Transaction were required to complete and return the Acknowledgement and Confirmation by January 31, 2017, and agree to be bound by the terms of the Share Purchase Agreement.

[20] Following the Update Email and Notice, preferred shareholders signed on to participate in the Share Purchase Transaction and converted 33,730,897 preferred shares (representing 92.3% of the outstanding preferred shares at the time) to common shares.

[21] The Share Purchase Transaction ultimately did not take place. No funds for the purchase of shares under the Share Purchase Transaction were ever advanced by or on behalf of Double Helix. The preferred shareholders who converted their shares to common shares lost the rights associated with their preferred shares.

3. PRELIMINARY AND EVIDENTIARY MATTERS

3.1 Request for confidential conference

[22] A few weeks before the scheduled start of the merits hearing, TeknoScan, Kung and Tam (**TSI respondents**) brought a motion for an order requiring the parties to participate in a confidential conference. The TSI respondents submitted that a confidential conference would assist the parties to narrow the issues, resolve potential evidentiary issues, and potentially develop an agreed statement of facts. Hyams supported the motion while the Commission opposed it.

[23] By order dated January 11, 2024,[2] we granted the motion for reasons to follow. These are our reasons.

[24] Rule 20(1) of the Tribunal's *Rules of Procedure and Forms* (the ***Rules*** that were in place at the time of this motion) provided that a party may request or a panel may direct that the parties participate in a confidential conference to consider:

a. the settlement of any or all of the issues;

b. the simplification of the issues;

c. facts that may be agreed upon; and

d. any other matter that may further a just, expeditious and cost-effective disposition of the proceeding.

[25] The TSI respondents argued that the parties and the Tribunal would benefit from the parties' efforts to make progress in all of the areas identified in rule 20(1). They highlighted the complexity of the allegations, the significant number of merits hearing dates, and the numerous documents exchanged and anticipated witnesses.

[26] The TSI respondents confirmed that they were not looking to adjourn or delay the start of the merits hearing. In sum, the TSI respondents argued that a confidential conference would be the only way to ensure that the merits hearing would be conducted in a just, expeditious and cost-effective manner.

[27] Hyams supported this position and added that, as he expected to be self-represented at the merits hearing, he would benefit from participating in a confidential conference with his Litigation Assistance Program appointed counsel present to address any issues prior to the merits hearing.

[28] The Commission submitted that:

a. a confidential conference might delay the start of the merits hearing;

[2] (2024), 47 OSCB 611

b. a confidential conference would distract from hearing preparation;

c. there were negative implications should the Tribunal order parties to engage in settlement discussions; and

d. the purpose of the proposed confidential conference was not clear and, in the absence of significant admissions by the respondents, a conference would not benefit the parties or the Tribunal.

[29] We found that the potential benefits of having the parties engage in a confidential conference outweighed the potential issues raised by the Commission and ordered that the parties take part in a confidential conference on an agreed date. We clarified that we were not ordering the parties to engage in settlement discussions.

3.2 Objection to evidence from the Commission's investigator witness

[30] The Commission's first witness at the merits hearing was its investigator, Michal Krzepkowski, whose evidence was tendered largely through an affidavit. The affidavit includes a number of exhibits. The TSI respondents objected to the admission into evidence of two exhibits to the affidavit and an additional spreadsheet the Commission intended to introduce into evidence through Krzepkowski.

[31] The documents are:

a. Exhibit A to the Krzepkowski affidavit (**Exhibit A**) – an excel chart that lists and hyperlinks to approximately 1,300 documents gathered during the investigation, not all of which are specifically addressed in the body of the affidavit;

b. Exhibit B to the Krzepkowski affidavit (**Exhibit B**) – a spreadsheet Krzepkowski prepared that attempts to identify the number of preferred shares of TeknoScan with redemption rights attached to them; and

c. a spreadsheet (**Spreadsheet**) Krzepkowski prepared that purports to show, under different scenarios, what TeknoScan shareholders stood to gain (by selling their common shares under the Share Purchase Transaction) or lose (by giving up the redemption rights under their preferred shares) had the Share Purchase Transaction proceeded to a closing.

[32] The TSI respondents submitted that they did not understand what the Commission's intentions were regarding Exhibit A and the accompanying 1,300 hyperlinked documents and, in particular, those hyperlinked documents that are not specifically addressed in the body of the affidavit.

[33] The Commission clarified that its intention was to rely on the content of any or all of these documents, whether or not they are specifically addressed in testimony during the hearing or in the affidavit itself. Following further discussion between the parties, the TSI respondents withdrew their objection to the admissibility of the documents hyperlinked to Exhibit A on the understanding that the TSI respondents:

a. acknowledged their authenticity;

b. did not acknowledge their relevance, and reserved the right to object to their relevance; and

c. did not agree to the truth of their contents.

[34] Accordingly, we admitted Exhibit A and the hyperlinked documents based on their authenticity only, and not for their relevance or for the truth of their contents.

[35] The TSI respondents objected to Exhibit B on the grounds that it is more than just a summary of facts, is based on a number of assumptions, is speculative, and is in the nature of expert or opinion evidence. The Commission submitted that this exhibit is simply a collation or aggregation of evidence collected during the investigation.

[36] The TSI respondents objected to the Spreadsheet on the basis that it is speculative and based on potential permutations of how the Share Purchase Transaction may have closed—none of which occurred. They also objected on the basis that, to the extent that the Spreadsheet purports to calculate potential losses to preferred shareholders under various theoretical scenarios, it is not relevant, is potentially highly prejudicial, and is in the nature of an expert damages calculation.

[37] The Commission submitted that the Spreadsheet is relevant because it shows what shareholders stood to gain or lose by participating in the Share Purchase Transaction, which goes to the materiality of the representations that were made to them and also to the deprivation element under the test for fraud. The Commission further submitted that the assumptions built into the Spreadsheet are assumptions that TeknoScan itself included in its own spreadsheet to calculate disbursement of funds under the Share Purchase Transaction.

[38] After considering the parties' submissions on Exhibit B and the Spreadsheet, we admitted them into evidence. Both documents include calculations based on information gathered during the investigation. Both exhibits also reflect certain assumptions, however, we did not find them to be in the nature of expert or opinion evidence as they largely summarize evidence gathered during the investigation and reflect straightforward arithmetic.

[39] While not ruling on the probative value of the evidence when we admitted these documents, we recognized that there was a potentially justifiable argument for relevance of the information in them. Ultimately, we exercised our discretion to admit these documents, subject to considering their probative value once we had the benefit of all the evidence tendered and submissions made later in the hearing.

3.3 Objection to Commission witness

[40] After the merits hearing had commenced, the Commission sought leave to call a witness not listed on its witness list previously filed with the Tribunal and provided to the respondents. The TSI respondents objected to this witness testifying at the merits hearing. Hyams was in favour of the witness testifying.

[41] The individual, K.D., is a former preferred shareholder who converted his preferred shares to common shares in connection with the Share Purchase Transaction. This investor's name appeared on a number of documents provided to the Commission by Hyams as part of his hearing brief in December 2023.

[42] The Commission maintained that we ought to allow this individual to testify as his testimony would be helpful to the panel, notes from the Commission's calls with the individual outlining his anticipated evidence were provided to the respondents in advance of the hearing, the individual had not observed any of the merits hearing that had already been underway, he would testify fairly late in the hearing, and his testimony would be relatively brief (half a day).

[43] The TSI respondents objected because of timing, procedural fairness, and relevance. They submitted that the Commission has been aware of the individual's involvement with TeknoScan since at least 2022, and he is not someone who has only recently come to the Commission's attention. They also objected to the addition of a witness after the merits hearing was underway.

[44] We granted leave to the Commission to call the witness. In the circumstances, we were satisfied that there would be no unfairness or prejudice to the TSI respondents and that any objections to the relevance of the witness's proposed evidence could be addressed during the witness's testimony.

3.4 Use of compelled transcripts in Tribunal proceedings

3.4.1 Introduction

[45] During the hearing, we heard two motions for leave to tender into evidence all or part of various transcripts of pre-hearing examinations conducted by the Commission, all but one of which were compelled. The TSI respondents brought the first shortly after the hearing commenced. The Commission brought the second prior to closing its case.

[46] We dismissed both motions for reasons to follow.

[47] It was common ground that s. 15 of the *Statutory Powers Procedure Act*[3] gives the Tribunal a general discretion to admit examination transcripts as hearsay evidence. However, in the case of the Commission's motion to admit the transcripts of two respondents, we concluded that the transcripts were inadmissible against them because they had, on their examinations, invoked the protection against self-incrimination contained in s.9 of the Ontario *Evidence Act*[4] and there was otherwise no compelling basis for exercising our discretion to admit the transcripts for any other purpose and thereby dispense with oral testimony.

[48] With respect to the TSI respondents' motion to introduce the examination transcripts of two non-parties, we dismissed the motion because the TSI respondents had made no attempt to call those individuals as witnesses at the hearing before us, nor did they establish that it would be too difficult to have them provide oral testimony.

3.4.2 The Commission's "read-ins" motion

[49] The Commission sought to "read in" excerpts from the transcripts of the compelled examinations that it conducted of Kung and Tam pursuant to summonses issued under Part VI of the *Act*. The Commission tendered the excerpts as admissions against interest by Kung and Tam as individual respondents, and as against TeknoScan, but not as against Hyams. There were also portions that were not admissions against interest that the Commission wanted to tender for

[3] RSO 1990, c S.22 (***SPPA***)
[4] RSO 1990, c E.23 (***Evidence Act***)

context in its case against the TSI respondents. Kung and Tam had been examined in their individual capacities, but there was no evidence to suggest that they were examined as corporate representatives of TeknoScan.

[50] At the time the motion was brought, counsel for Kung and Tam had made clear that their clients would not be testifying at the hearing, but that Joseph, a TeknoScan director, would be called as a witness on behalf of TeknoScan. Hyams, who had been the CEO of TeknoScan during the material time, had indicated that he would be testifying at the hearing on his own behalf.

[51] The parties agreed that we have a general discretion to admit hearsay evidence that might otherwise be inadmissible in a court proceeding, pursuant to s. 15(1) of the *SPPA* which provides, in part:

> …a tribunal may admit as evidence at a hearing, whether or not given or proven under oath or affirmation or admissible as evidence in a court, (a) any oral testimony; and (b) any document or other thing, relevant to the subject-matter of the proceeding and may act on such evidence…

[52] The broad discretion conferred under this section is limited by the language of ss. 15(2) and (3). Section 15(2) provides that nothing is admissible in evidence at a hearing that is rendered inadmissible by statute. Section 15(3) makes clear that the general discretion to admit under s. 15(1) does not override the provisions of any statute that expressly limits the purposes for or the extent to which testimony or documents may be admitted and used in evidence. While the parties agreed that the transcript evidence of Kung and Tam was hearsay, they disagreed on whether we could, and if so whether we should, exercise our discretion to admit any portion of it into evidence.

[53] To the extent that the transcripts contained admissions against interest by Kung and Tam, respectively, as individual respondents, the Commission relied upon both:

a. the language of Part VI of the *Act*, in particular ss. 17 and 18; and

b. the past decisions of the Tribunal in *Sextant Capital Management Inc (Re)*[5] and *Agueci (Re)*[6].

[54] The Commission argued that, unless Kung and Tam undertook to testify at the hearing, the Commission had what amounted to a presumptive right to read in their evidence against them.

[55] Respecting s. 17 of the *Act*, the Commission argued that, while its express language addresses only disclosure or production in proceedings before the Tribunal of transcripts and other evidence obtained under Part VI, the section should be read expansively to permit the unrestricted use of such evidence in Tribunal proceedings. The Commission further argued that this expansive interpretation of s. 17 is supported by the fact that s. 18 of the *Act* contains the only express prohibition against the use of transcript evidence obtained under Part VI against the testifying party, which prohibition extends only to prosecutions under s. 122 of the *Act* or other prosecutions governed by the *Provincial Offences Act*.[7]

[56] In *Sextant* and *Agueci,* the hearing panels exercised their discretion to permit the Commission to read in, as against individual respondents, excerpts of those respondents' transcript evidence secured under Part VI of the *Act*, where the respondents did not undertake to testify at the hearing. The Commission submitted that this practice has become the standard, and it should govern the exercise of our discretion to admit the proffered excerpts of the Kung and Tam transcripts as evidence against them at the hearing. The Commission submitted, again relying on ***Sextant***[8] and ***Agueci***,[9] that any denial of the Commission's ability to read in excerpts of respondents' transcript evidence against them would weaken the enforcement powers of the Commission.

[57] The TSI respondents advanced two principal arguments in response. The first was that each of Kung and Tam had asserted the protection of s. 9 of the *Evidence Act* during their Part VI examinations and therefore their answers given on those examinations could not be used against them in the hearing before us. The second was that there is a general right against self-incrimination in administrative law which is subsumed within the rules of natural justice.

[58] Turning to consider the first argument, we set out s. 9 of the *Evidence Act* in its entirety:

> 9 (1) A witness shall not be excused from answering any question upon the ground that the answer may tend to criminate the witness or may tend to establish his or her liability to a civil proceeding at the instance of the Crown or of any person or to a prosecution under any Act of the Legislature.
>
> 9(2) If, with respect to a question, a witness objects to answer upon any of the grounds mentioned in subsection (1) and if, but for this section or any Act of the Parliament of Canada, he or she would therefore be excused

5 2010 ONSEC 25 (***Sextant***)
6 2013 ONSEC 45 (***Agueci***)
7 RSO 1990, c P.33
8 *Sextant* at para 14
9 *Agueci* at para 123

> from answering such question, then, although the witness is by reason of this section or by reason of any Act of the Parliament of Canada compelled to answer, the answer so given shall not be used or receivable in evidence against him or her in any civil proceeding or in any proceeding under any Act of the Legislature.

[59] The Commission submitted that, when similarly situated respondents made this same argument in *Sextant* and *Agueci*, the panels in those cases ruled that, while the evidence in question was compelled and therefore fell within s. 9(1), s. 9(2) did not apply because the Part VI examinations at issue, and the hearings before those panels, were part of the same proceeding.[10] The panels in *Sextant* and *Agueci* read in "subsequent" and "other", respectively, as qualifying "any civil proceeding" and "any proceeding under any Act of the Legislature" in s. 9(2) of the *Evidence Act.*[11]

[60] The TSI respondents argued that, regardless of whatever merit the rulings in those cases might have had, the reasoning could no longer apply after the creation of the Tribunal under the *Securities Commission Act, 2021*,[12] when the distinction between a Part VI investigation that the Commission initiated and carried out, and an administrative proceeding before the Tribunal under s. 127 of the *Act*, became manifest.

[61] Without ruling on the TSI respondents' argument that the advent of the Tribunal in its current form would be determinative of the applicability of s. 9(2) in the circumstances, we concluded that *Sextant* and *Agueci* were simply wrongly decided on this issue. While the Divisional Court heard and dismissed an appeal from *Agueci* on a separate issue, the Court was not called upon to rule on the applicability of s. 9(2) of the *Evidence Act* to the transcript evidence at issue in that case.[13] Part VI of the *Act* has, at all material times, prescribed a standalone extraordinary power conferred on the Commission to conduct confidential investigations and examinations in furtherance of the Commission's mandate to protect investors and preserve the integrity of the capital markets.[14]

[62] Investigations under Part VI of the *Act* are initiated by order of the Commission pursuant to which one or more persons are appointed to investigate, with power to summons witnesses to testify under oath. Possible outcomes of an investigation include:

a. the initiation of an administrative proceeding under s. 127 of the *Act*;

b. the commencement of an application under s. 128 of the *Act* before the Superior Court of Justice for declaratory and other ancillary relief;

c. the initiation of a prosecution under the *Provincial Offences Act* in respect of one or more alleged breaches of s. 122 of the *Act*; and

d. the delivery of a privileged report to the Chair of the Commission or member of the Commission as provided for in s. 15 of the *Act*.

[63] The *Act* contains no support for the suggestion that an investigation under Part VI either initiates or is part of a subsequent administrative proceeding brought under s. 127. The fact that a person appointed to make an investigation under Part VI may (or in some cases must) disclose as part of a s. 127 proceeding evidence, including transcripts of witnesses, gathered during the investigation does not, in our view, alter this finding. Similarly, that fact does not render a compelled examination transcript tantamount to a discovery transcript in a civil proceeding, where a party is entitled, in certain circumstances, to read it in as part its case. A Part VI investigation is not a s. 127 proceeding, nor is it a part of a s. 127 proceeding even if that proceeding is commenced as a result of the investigation.[15]

[64] Given that the rulings in *Sextant* and *Agueci* were, in our view, predicated on the erroneous premise that a Part VI investigation is part of, or one and the same as, an administrative enforcement proceeding under s. 127 of the *Act*, we decline to follow the rulings in those cases respecting the applicability of s. 9 of the *Evidence Act* when properly invoked by a witness on a compelled examination during a Part VI investigation.

[65] In this case, there was no dispute that Kung and Tam properly invoked s. 9 of the *Evidence Act* on their examinations in respect of those portions of their transcripts that were admissions against interest. As a result, their answers to questions that may tend to criminate them or establish their liability in any civil proceeding or to a prosecution under any Act of the Legislature, cannot be used against them in any proceeding under any Act of the Legislature. Accordingly, we ruled that the admissions could not be tendered against Kung and Tam because:

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10 *Sextant* at paras 8-10; *Agueci* at paras 123-125
11 *Sextant* at para 15; *Agueci* at para 124
12 S.O. 2021, c 8, Sched 9
13 *Fiorillo v Ontario Securities Commission*, 2016 ONSC 6559
14 *British Columbia Securities Commission v Branch*, 1995 CanLII 142 (SCC) at para 35
15 *Sharpe (Re),* 2022 ONSEC 3 at para 81

a. section 9 of the *Evidence Act* applies to this proceeding which is a proceeding under an Act of the Legislature; and

b. section 9(2) of the *Evidence Act* overrides the general grant of discretion in s. 15 of the *SPPA*, through operation of s. 15(2)(b) and arguably also s. 15(3), and prevents us from admitting the evidence.

[66] We do not accept that our conclusion weakens the Commission's enforcement powers. Those powers remain unchanged. Our conclusion simply means that where a respondent has properly invoked the protections of s. 9 of the ***Evidence Act*** and makes the election not to testify in their defence at a s. 127 proceeding, the Commission may have to present its case in a different way. For example, the Commission may consider summonsing the respondent to testify as part of the Commission's case, an option that the Commission acknowledged is available to it under s. 12 of the *SPPA*.

[67] In light of our ruling, we do not need to consider the second argument that the TSI respondents advanced (without supporting authority), namely that there is a general right against self-incrimination in administrative law which is subsumed within the rules of natural justice.

[68] As to the Commission's request that we admit the proposed read-ins as admissions against interest of TeknoScan, it bears repeating that there was no evidence that either Kung or Tam was examined on behalf of TeknoScan. Accordingly, the protection of s. 9(2) of the *Evidence Act* discussed above would not extend to TeknoScan in respect the testimony of Kung or Tam. The general exception to the hearsay rule relating to admissions against interests of a party would also not apply.

[69] The Commission did not offer a compelling basis in support of exercising our discretion to admit the excerpts that were admissions against Kung's and Tam's interests as part of the Commission's case against TeknoScan. Similarly, the Commission did not offer a compelling basis in support of exercising our discretion to admit those portions of Kung's and Tam's transcripts, other than admissions against interest, that the Commission wanted to tender for context.

[70] As noted above, the Commission conceded that, if it required evidence from Kung and Tam to prove its case, it was open to it to summons one or both of them to give oral evidence at the hearing. The Commission's argument in response to the transcript motion brought by the TSI respondents (addressed below) that oral testimony of witnesses at a hearing is generally the "best evidence" applies with equal force to this aspect of its motion. Accordingly, we also dismissed:

a. the Commission's request to read in excerpts of the Kung and Tam transcripts that were admissions against interest as part of the Commission's case against TeknoScan; and

b. the Commission's request to read in excerpts of the Kung and Tam transcripts for context.

3.4.3 The TSI respondents' transcripts motion

[71] The TSI respondents sought leave to file the complete transcripts of pre-hearing examinations conducted by the Commission of Stephen Richardson and Gary Jefferson (of RGI Group Inc.). Both Richardson and Jefferson (and RGI Group) were, on the evidence before us, involved to some degree in efforts to secure third-party funding for the Share Purchase Transaction, but their precise roles were never clearly explained.

[72] Richardson was examined on a voluntary basis. He declined to be sworn or affirmed for the interview. The Commission disclosed the interview transcript to the respondents in the normal course. Richardson's name appeared on the Commission's witness list for the hearing until January 10, 2024, at or about which time the TSI respondents learned that the Commission no longer intended to call him as a witness. Richardson's name appeared contingently on the TSI respondents' July 14, 2023, witness list.

[73] Jefferson's examination took place on a compelled basis pursuant to a summons issued by the US Securities and Exchange Commission (**SEC**) at the request of the Commission. Inadvertently, the Commission did not disclose the examination transcript to the respondents until October 27, 2023. Following some correspondence between counsel for the TSI respondents and counsel for the Commission, the TSI respondents notified the Commission that they intended to add Jefferson to their witness list. They asked the Commission to seek the SEC's assistance to compel Jefferson to attend the merits hearing. The Commission made this request, but the SEC responded that it would be inappropriate for it to lend its assistance. In the meantime, the TSI respondents delivered their notice of motion for leave to file as evidence in the merits hearing the examination transcripts of both Richardson and Jefferson.

[74] From the outset, the Commission opposed any steps that might delay the merits hearing. However, the Commission was prepared to help the TSI respondents, if they asked, to apply under s. 152 of the *Act* to the Superior Court of Justice for letters of request, asking the appropriate foreign courts to compel Richardson's and Jefferson's attendance at the hearing.

[75] At the time of the hearing of the motion before us, the TSI respondents had taken no steps to compel Richardson's or Jefferson's attendance to give evidence at the merits hearing. The TSI respondents left open the possibility that they

might seek to compel Richardson's and Jefferson's attendance if their motion to have the Richardson and Jefferson transcripts admitted was not successful.

[76] The TSI respondents argued that the Richardson and Jefferson transcripts were presumptively admissible hearsay evidence pursuant to s. 15 of the *SPPA* and, moreover, met the common law test for admissibility of hearsay evidence articulated by the Supreme Court of Canada in *R v Khelawon.*[16] In that case, the Court held "necessity" and "reliability" to be the governing requirements of admissibility. The TSI respondents further argued that there was no bar to admissibility of the transcripts under Part VI of the *Act* or, in the case of the Jefferson transcript, as a consequence of the evidence having been obtained on compulsion with the assistance of the SEC. Lastly, the TSI respondents argued that the Commission would suffer no prejudice from admission of the transcripts because the Commission had full opportunity to examine Richardson and Jefferson in the examinations it conducted.

[77] The Commission agreed that we had discretion to admit the Richardson and Jefferson transcripts under s. 15 of the *SPPA.* The Commission also agreed that neither Part VI of the *Act* nor the manner in which the transcripts were obtained presented any bar to admissibility. However, the Commission argued that we should not exercise our discretion to admit the transcripts because the TSI respondents had neither adduced any evidence of necessity respecting the transcript of either witness, nor made any effort to secure either witness's oral testimony (the "best evidence") at the hearing.

[78] Moreover, the Commission argued that it would be prejudiced in being unable to cross-examine Richardson or Jefferson if their transcripts were admitted. The Commission argued that, even though it had interviewed both Richardson and Jefferson, it was not bound to accept their transcript evidence as truthful, nor should it be prohibited from challenging their credibility in oral cross-examination.

[79] We cannot accept the TSI respondents' submission, without authority, that the Richardson and Jefferson transcripts were presumptively admissible under s. 15 of the *SPPA*. Section 15 plainly makes the question of admissibility of hearsay evidence one of discretion. In deciding whether to exercise our discretion in this administrative proceeding, we do not conclude that the proffering party must meet the full rigour of the test in *Khelawon* (a criminal case where the presumption was against admission).That said, we are of the view that necessity and reliability are factors that we may take into account in exercising our discretion under s. 15 of the *SPPA*.

[80] The TSI respondents provided no evidence of necessity regarding the admission of the Richardson or Jefferson transcripts, beyond bald assertions that it would be too onerous, too time consuming and too costly to secure their oral evidence at the hearing, whether in person or by videoconference. Indeed, counsel for the TSI respondents' only communications with Richardson and Jefferson relating to their transcripts indicated that their intention was to simply file the transcripts, unless the witnesses preferred "to testify live at the hearing". The TSI respondents did not ask either witness whether they would be willing to voluntarily give evidence at the merits hearing.

[81] We further agreed with the Commission that it is not bound to accept the truthfulness of the transcript evidence of Richarson and Jefferson merely because it interviewed them. The best evidence would be their oral evidence at the hearing, which would allow the Commission to cross-examine the witnesses, and the panel to better assess their credibility.

[82] In view of our findings, we dismissed the TSI respondents' motion to admit the Richardson and Jefferson transcripts. However, we were sympathetic to the fact that the timing of when they received the Jefferson transcript, and when they learned that the Commission was no longer planning to call Richardson as a witness, potentially prejudiced them on the eve of the hearing. Accordingly, our dismissal of the motion was without prejudice to the TSI respondents' ability to seek an adjournment of the merits hearing in order to initiate appropriate proceedings to compel the attendance at the hearing of one or both of Richardson or Jefferson and, depending on the outcome of those efforts, to renew any aspect of their motion to admit the transcripts at the hearing.

[83] No respondent sought an adjournment. We proceeded without evidence from Richardson or Jefferson.

3.5 The evidentiary portion of the merits hearing

[84] The evidentiary portion of the merits hearing took place over 19 days and involved testimony from 12 individuals. The Commission called 10 witnesses, including Krzepkowski, five investor witnesses, Davison, Davison's son-in-law, a valuator, and a former consultant to TeknoScan. The TSI respondents called one witness, Joseph, and Hyams called himself as his only witness.

[16] 2006 SCC 57 (***Khelawon***) at para 2

3.6 Credibility of witnesses

[85] In assessing the credibility of witnesses, the Tribunal has accepted that "the most satisfactory judicial test of truth lies in its harmony or lack of harmony with the preponderance of probabilities disclosed by the facts and circumstances in the conditions of the particular case".[17]

[86] We may accept some, all or none of a witness' evidence.[18] We may find the evidence of a witness credible in some respects and not in others. Where there are sufficient instances of questionable evidence, we may, with appropriate caution, make an overall assessment of a witness' credibility and reliability.

[87] The TSI respondents urge us to find that 9 out of the 10 witnesses called by the Commission were not credible, for various reasons. They also urge us to discount the evidence of Hyams in certain circumstances.

[88] The Commission submits that little weight should be given to Joseph's testimony where it is self-serving or meant to benefit the TSI respondents, particularly where it was not based on first-hand knowledge but instead on information received from Kung, who did not testify.

[89] Rather than address the credibility of each witness in turn, to the extent that we consider and take into account the various witnesses' evidence in our consideration of the issues and allegations below, we will also address their credibility.

3.7 Adverse inference from failure to call witnesses

[90] The TSI respondents have asked us to draw an adverse inference from the Commission's failure to call Richardson and Jefferson (or another representative of RGI Group) as witnesses at the merits hearing, and because the Commission allegedly "blocked" the TSI respondents' ability to have these witnesses' evidence introduced at the hearing by:

a. inducing the TSI respondents to rely on the Commission's intention to call Richardson as a witness and changing this intention shortly before the hearing;

b. failing to disclose the Jefferson transcript until a few months prior to the merits hearing; and

c. objecting to the TSI respondents' motion to have these witnesses' transcript evidence admitted.

[91] Alternatively, the TSI respondents submit that, even if we are not inclined to draw an adverse inference against the Commission, we should not rely on the absence of evidence from Richardson and Jefferson (or RGI Group) to find that the Share Purchase Transaction was a sham.

[92] The TSI respondents submit that Richardson and RGI Group played key roles in advancing the Share Purchase Transaction. They say that their evidence, relating to efforts to arrange funding for the Share Purchase Transaction, would be directly relevant to a central issue in this case, namely whether the Transaction was "real" and not a sham. They further submit that although Richardson and Jefferson are not under the control of the Commission or the TSI respondents, the Commission is the only party authorized to seek an order from the Ontario Superior Court of Justice under s. 152 of the *Act* seeking the assistance of foreign courts to compel these witnesses to testify at the hearing.

[93] We decline to draw an adverse inference against the Commission in these circumstances. We reject the TSI respondents' submission that the Commission has in any way "blocked" the TSI respondents' ability to have these witnesses' evidence introduced at the hearing. A party has no obligation to call all the witnesses who appear on its witness list. The Commission was entitled to oppose the TSI respondents' motion to have these witnesses' transcript evidence admitted. The Commission also offered to assist the TSI respondents in bringing a s. 152 application to the Court.

[94] Ultimately, as we note above, the TSI respondents elected to proceed with the hearing without the evidence of these witnesses.

4. ANALYSIS

4.1 Introduction

[95] We now turn to our analysis of the substantive allegations in this matter, which center around the Share Purchase Transaction and how it was disclosed and represented to TeknoScan shareholders in the Notice.

[96] The following questions are before us:

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17 *Feng (Re)*, 2023 ONCMT 12 (***Feng***) at para 22, citing *Springer v Aird & Berlis LLP*, 2009 CanLII 15661 (ONSC) at para 14

18 *Feng* at para 23

a. Did the respondents contravene s. 126.1(1)(b) of the *Act* by engaging or participating in acts, practices, or courses of conduct relating to securities that they knew or reasonably ought to have known perpetrated a fraud on persons or companies?

b. Did the respondents contravene s. 126.2 of the *Act* by making statements that were misleading or untrue in light of the circumstances in which they were made and that would reasonably be expected to have a significant effect on the market price or value of a security?

c. Did the Individual respondents, as officers and directors of TeknoScan, breach s. 129.2 of the *Act* by authorizing, permitted or acquiescing in TeknoScan's contraventions of the *Act*?

d. Is a defence of reasonable reliance on legal advice available to the respondents in the circumstances?

e. Did Hyams and Kung breach s. 122(1)(a) of the *Act* by making false and misleading statements to the Commission? and

f. Did the respondents engage in activity that is contrary to the public interest?

4.2 Fraud allegations

4.2.1 Introduction

[97] The Commission alleges that the respondents committed securities-related fraud contrary to s. 126.1(1)(b) of the *Act* by presenting shareholders with a sham transaction with no reasonable expectation of completion, thereby enticing them to convert their preferred shares to common shares and causing them to forfeit their rights as preferred shareholders.

4.2.2 The elements to establish securities-related fraud

[98] Clause 126.1(1)(b) of the *Act* provides, in part:

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

[99] While the Commission alleges that each of the respondents breached s. 126.1(1)(b) of the *Act*, its submissions focussed primarily on establishing that each of the respondents *directly* perpetrated a fraud on TeknoScan preferred shareholders.

[100] The term "fraud" is not defined in the *Act*. Previous Tribunal decisions have repeatedly adopted and applied the framework set out in the Supreme Court of Canada's decision in *R v Théroux*[19] to determine whether a fraud has been perpetrated under s. 126.1(1)(b) of the *Act*. The framework includes the following elements:

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

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

   ii. deprivation caused by that act; and

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

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

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

[101] The parties agree that *Théroux* applies in this case. The parties' submissions focus primarily on the first element of the *Théroux* framework and whether the Commission has established that there was an act of deceit, falsehood or some other fraudulent means.

4.2.3 *Actus reus* – acts of deceit, falsehood or other fraudulent means

[102] An act of deceit or falsehood is established by showing that a person represented a situation as being of a certain character when, in reality, it was not.[20] This includes situations where a person deliberately lies through

[19] 1993 CanLII 134 (SCC) (***Théroux***)
[20] *Meharchand (Re)*, 2018 ONSEC 51 (***Meharchand***) at para 120

misrepresentations.[21] Fraud by "other fraudulent means" includes acts that a reasonable person would consider to be dishonest.[22] Omission or non-disclosure of important or material facts can fall under the category of "other fraudulent means".[23]

[103] The Commission submits that the facts here satisfy both the "act of deceit or falsehood" and the "other fraudulent means" branches of the test. We note that the Commission need only satisfy one of these branches.

[104] Although the parties agree on the applicable law, they disagree in significant respects about what the Commission must actually establish in this case in order to satisfy this element of the framework. We address their differing positions below.

4.2.3.a What is required to establish an act of deceit, falsehood or other fraudulent means?

[105] The Commission alleges that the respondents' representation in the Notice that Davison and Double Helix would purchase up to 50% of the TeknoScan common shares at US $20 per share was objectively misleading and dishonest because it omitted fundamental and essential facts relating to the funding, nature, and merits of the Share Purchase Transaction. The Commission submits that, as a result, the respondents represented the Share Purchase Transaction to be legitimate and unproblematic, when, in truth, it was a sham transaction conjured by them with no reasonable expectation of completion.

[106] The Commission further submits that the only knowledge requirement that must be satisfied at this stage of the framework is that the respondents must have had knowledge of the fundamental and essential facts that allegedly were omitted from the Notice. There is no need to establish that they subjectively knew the omission of such facts to be dishonest. All that is required is that a reasonable person (or reasonable investor) would consider the omissions to be dishonest.[24]

[107] Initially the TSI respondents submitted that this branch of the framework can only be satisfied if the Commission proves the theory of its case on a balance of probabilities — namely, that the Share Purchase Transaction was a "sham", in the sense that it was conjured by the respondents, "contrived", "false" and not a "real" transaction, and the respondents knew this to be the case. We reject this submission.

[108] Although the Statement of Allegations (issued on August 23, 2022, and amended on March 28, 2023) does assert that the Share Purchase Transaction was a "sham" transaction, it does not equate that to a "false", as opposed to "real", transaction, as the TSI respondents suggest. Instead, the Statement of Allegations ties that assertion to the concept of a transaction "with no reasonable expectation of completion" and makes clear that the focus of the Commission's allegations is on misleading investors about the Share Purchase Transaction and the failure to disclose numerous key facts, including that the purchaser had no funding.

[109] The Statement of Allegations makes clear, in our view, that the essence of the Commission's fraud allegation is that the representation to shareholders in the Notice that Davison and Double Helix intended to purchase up to 50% of TeknoScan common shares at US $20 per share was misleading, deceitful and dishonest in the circumstances as it conveyed an expectation about certainty of completion of the Share Purchase Transaction that was inconsistent with the known facts.

[110] Subsequently, the TSI respondents acknowledged that something less than establishing that the Share Purchase Transaction was a "sham" could satisfy the Commission's burden. However, they submit that, at the very least, the Commission is required to establish that the respondents knew at the time of the Notice that funding for the Share Purchase Transaction was not coming or, in other words, that the respondents knew the Transaction would not close. We also reject this submission. This is not what the Commission alleged.

[111] Instead, we accept the Commission's submission that for this element of the analysis its burden is to establish that:

a. the respondents had knowledge of fundamental and essential facts that were omitted from the Notice; and

b. a reasonable person would consider the omission of such fundamental and essential facts to be dishonest.

[112] We turn next to consider whether acts of deceit, falsehood or other fraudulent means are established in this case. This consideration requires us to address the wide-ranging evidence about the Share Purchase Transaction.

[113] For the reasons below, we conclude that the respondents had knowledge of fundamental and essential facts that were omitted from the Notice and that the omission of such facts from the Notice was objectively dishonest.

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21 *Bradon Technologies Ltd (Re)*, 2015 ONSEC 26 (***Bradon Technologies***) at para 157, citing *Théroux* at 26-27

22 *Solar Income Fund (Re)*, 2022 ONSEC 2 (***Solar Income Fund***) at para 85, aff'd by Div Ct, *Kadonoff v OSC,* 2023 ONSC 6027; *Meharchand* at para 120; *Quadrexx Hedge Capital Management (Re)*, 2017 ONSEC 3 (***Quadrexx***) at para 20, aff'd by Div Ct, 2020 ONSC 4392 (***Quadrexx Div Ct)***

23 *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 at para 223, citing *Théroux* at 16; *Meharchand* at para 120; *Quadrexx* at para 20*; Bradon Technologies* at para 159

24 *Théroux* at 16-17; *Solar Income Fund* at para 122

4.2.3.b Alleged omissions (and misrepresentation) in the Notice

[114] The Commission alleges that the following omitted facts (and in one case an alleged related misrepresentation) in the Notice made the communication an "act of deceit" or "other fraudulent means":

a. Davison and Double Helix could not afford the Share Purchase Transaction and did not have the funds to complete it, and the Notice, including the attached Share Purchase Agreement, misrepresented that they did;

b. the third-party funding for the Transaction was implausible, nonsensical, vague and uncertain;

c. there were repeated delays in the third-party funding;

d. any such third-party funding, had it ever materialized, would have been miniscule and fallen far short of the approximately US $2 billion of funding that would be required to purchase "up to approximately 50%" of the shares;

e. the Transaction was not vetted, and the respondents did not conduct adequate due diligence into Davison/Double Helix (the buyer) or the third-party funder;

f. the Transaction was not a negotiated arm's length transaction;

g. the TeknoScan shares were not worth nearly as much as the US $20 per share that Double Helix was supposed to pay for the shares; and

h. the respondents themselves did not believe the Transaction would occur.

[115] We consider these alleged omissions and related misrepresentation below.

4.2.3.c Alleged omissions relating to funding for the Share Purchase Transaction

[116] Because the first four omissions alleged by the Commission relate to funding for the Share Purchase Transaction, we consider these allegations and the evidence about the funding for the Share Purchase Transaction together.

4.2.3.c.i Davison and Double Helix did not have the funds to complete the Share Purchase Transaction

[117] The Commission established that Davison had extremely limited financial means and he and his company, Double Helix, did not have the funds required to complete the Share Purchase Transaction. The Commission also established that the respondents knew this and understood that the Transaction would only proceed if Davison was successful in obtaining third-party funding.

[118] Indeed, the October 22, 2016, Letter of Intent entered into by TeknoScan and Davison regarding the Share Purchase Transaction (**Letter of Intent**) was expressly conditional upon the receipt by Davison of third-party funds. It provided that Davison (or an affiliate corporation to be incorporated for the purposes of the Transaction) was prepared to purchase up to 50% of the capital stock of TeknoScan on a fully diluted basis at a purchase price of US $20 per share through multiple tranches "as soon as funds are available from financing activities facilitated by [Richardson] or his company, associates and relationships" (emphasis added) with the Purchase Price "payable conditional on the financing as stated above" (emphasis added).[25]

[119] In contrast to these facts known to the respondents, the Notice did not advise shareholders that the Share Purchase Transaction was expressly contingent on Davison and Double Helix receiving the funds from a third-party funder. As we find below, this third-party funding was known by the respondents to be uncertain.

[120] We note that we do not accept the Commission's related submission that the boilerplate representation in the Share Purchase Agreement that Double Helix had the capacity to perform its obligations under that Agreement was a representation (or misrepresentation) that Double Helix had the financial capacity to purchase the shares. The plain language of the representation does not support the Commission's submission and, in our experience, such standard capacity representations do not extend to financial capacity, and instead relate to legal capacity.

4.2.3.c.ii The nature and source of the third-party funding

[121] The third-party funding for the Share Purchase Transaction never materialized. The evidence left unanswered questions about the precise nature and source of the funding.

[25] Exhibit A, Letter of Intent titled "Purchase of Shares in the capital stock of TeknoScan Systems Inc. (the "Corporation")" at 1

[122] Kung was TeknoScan's primary contact with Davison and Richardson in connection with the third-party funding. Both Joseph and Hyams testified that their information about the third-party funding was not first-hand and instead came from Kung.

[123] Davison introduced Richardson to TeknoScan in 2010 as his advisor and as someone familiar with banking and financing who might be able to help the company raise funds. According to Hyams (and confirmed in Joseph's testimony) Richardson also introduced TeknoScan to the concept of "high leveraged trading programs" that could raise significant returns in the order of 50 to 100 percent per week, if provided with an asset to leverage. Hyams did not specify what kind of asset.

[124] Kung and Richardson communicated by email (copied to Davison) on June 20-21, 2016 (**June 2016 email**) about an application for financing by Davison. Richardson explained that the financing application would require Davison to show that he could produce funds equalling 0.8% of the total funding applied for. Kung confirmed in reply that he had met with an "investor" who was prepared to lend 500,000 euros "with [Kung's] backing" to Davison, on the condition that Davison can use at least US $50 million in proceeds on this first tranche of financing and buy shares of TeknoScan at US $20 per share.

[125] The TSI respondents submit, and we find, that the "investor" Kung referred to in the June 2016 email was N.B., a TeknoScan investor and long-time friend of Kung. Kung had previously been N.B.'s financial advisor. The Commission called N.B. as a witness.

[126] N.B. testified that:

a. Kung asked him to loan 500,000 euros to Davison that would be provided to RGI Group, a middleman entity in Texas. RGI Group would work to facilitate having a foreign "sovereign fund" provide funding to Davison to allow Davison to buy TeknoScan shares at US $20 per share;

b. Kung explained to him that the sovereign fund liked to fund humanitarian ventures and could not invest directly in TeknoScan. However, because of Davison's humanitarian interests it was content to fund Davison and, in turn, have Davison buy TeknoScan shares with the funds it would advance;

c. after meeting with Davison, he told Kung that the funding arrangement sounded implausible, and he did not believe the transaction was going to happen because he did not understand why anyone would give Davison money;

d. he told Kung he was willing to advance the requested funds but that, if the funding arrangement that Kung described to N.B. as "an experiment" did not result in the purchase of TeknoScan shares at US $20 per share within six months to a year, he wanted to receive half of his money back; and

e. Kung agreed to guarantee and pay back half of the 500,000 euros advanced by N.B. if the funding did not arrive.

[127] N.B. agreed to Kung's proposal. Kung provided wire transfer instructions to N.B. and on July 18, 2016, N.B. wired the US dollar equivalent of 500,000 euros to RGI Group's account in Texas. Kung also provided to N.B. a debenture in favour of N.B. for the same amount (**Debenture**) issued by a company which N.B. understood to be Davison's company.

[128] Joseph testified that he was told by Kung in 2016 that N.B. advanced 500,000 euros to RGI Group as part of "the experiment". Joseph also testified that Kung told the TeknoScan Board in 2016 that Kung had agreed to guarantee half of the funds that were advanced by N.B. Hyams confirmed that he was aware of the Debenture in 2016 and that Kung arranged the loan to Davison from N.B. Hyams also understood the basic facts and purpose behind the advance of 500,000 euros. Text messages between N.B. and Kung as well as the June 2016 email confirm Kung's agreement to guarantee repayment of half of the amount advanced by N.B. to Davison that was forwarded to RGI Group.

[129] The TSI respondents submit that N.B.'s evidence was self-serving and not credible in key instances. They submit that it is not credible that N.B. was prepared to lose 250,000 euros, despite doubts about the use and function of the funds, simply because a friend (Kung) asked him to do something and that he must have believed money would be coming to Davison.

[130] We do not find N.B.'s evidence to be self-serving or not credible. He explained to our satisfaction that despite his doubts, he advanced the money because he trusted Kung. Taking N.B.'s testimony as a whole, it was evident that he was hopeful that the third-party funding would materialize and the Share Purchase Transaction would proceed. His projected gains from a successful Share Purchase Transaction would significantly exceed the money he thought he could potentially lose. Also, as a "sweetener" for making the loan, Kung arranged for TeknoScan to sell N.B. an additional block of TeknoScan shares (for US $3 million) at a better per share price than was available to other investors at the time.

[131] Hyams' understanding of the third-party funding for the Share Purchase Transaction was not particularly detailed. In contrast to N.B. whose evidence was that he understood the source of funding to be a foreign "sovereign fund", Hyams' evidence was that he understood the third-party funding involved "high-leveraged trading programs" that could produce returns of up to 100 percent per week. He understood RGI Group to be a link in the chain to the traders who ran these programs. He said that Kung and Tam mentioned many times that the traders were part of a secret society and only a few senior officers in banking knew who the traders were. In cross-examination, Joseph corroborated Hyams' claims and confirmed that Kung had explained on many occasions that the funding involved an "investment program" that would provide a 50 to 100 percent return per week.

[132] No witness and no party to the proceedings provided any more detailed evidence or clarifying explanation about how the third-party funding was supposed to work.

4.2.3.c.iii The funding was uncertain and this was known to the respondents

[133] The Commission submits that the third-party funding was "implausible and nonsensical" and also "vague and uncertain", and that this should have been disclosed to shareholders. The Commission submits that no witness could offer any credible explanation for why N.B. needed to send funds to a third-party in order for Davison to receive funds for the Share Purchase Transaction, and no one at TeknoScan knew the identity of the third-party funder.

[134] The TSI respondents submit that information about the source of the funding would have been available from RGI Group (Jefferson) or Richardson, but the Commission chose not to call them as witnesses. The TSI respondents further submit that there are any number of reasons why a party would provide funding to Davison to finance an investment in TeknoScan.

[135] For the reasons set out below we do not find that the Commission established that the respondents knew and believed that the third-party funding was "implausible and nonsensical" at the time of the Notice. However, we do find that the respondents knew that the third-party funding was "uncertain" at the time of the Notice.

[136] Neither Kung nor Tam testified, so we do not have their direct evidence about what they knew or believed about the third-party funding.

[137] N.B.'s evidence was that Kung was adamant about his belief in the third-party funding, but that he also characterized it as "an experiment". The fact that Kung conceived of the third-party funding as an "experiment" was corroborated in multiple ways, including in Kung's contemporaneous text messages to N.B. and by Joseph's testimony.

[138] Hyams testified that he thought RGI Group was legitimate. He testified that he and the other TeknoScan Board members all believed in RGI Group's "reasonability of success" in securing funding for the Share Purchase Transaction.

[139] Hyams did have some doubts "because it all sounded too good to be true". However, he relied on Kung and Joseph and, because the financing "looked real", there was no associated financial risk to TeknoScan and there was a "chance" to get some significant financing for the company, he thought it was worth pursuing the Share Purchase Transaction. Indeed, we note that Hyams converted the preferred shares he owned with his spouse in order to participate in the Share Purchase Transaction.

[140] When cross-examined by Hyams about whether he had any concerns about repeated delays in the funding and whether the funding would happen, Joseph testified that whenever Kung gave an update about the funding, Hyams would comment: "God willing, it'll all happen". Hyams did not challenge this evidence from Joseph.

[141] Both Hyams and Joseph confirmed that the source of the funding, as well as the timing of receipt of the funding, was not known.

[142] It was also established that TeknoScan engaged in significant work in preparation for the funding, including preparing spreadsheets, calculating how the funds would be distributed and retaining counsel to handle the receipt of the funds and the distribution of funds to shareholders who wanted to participate in the Share Purchase Transaction.

[143] Based on the foregoing, we conclude that both Kung and Hyams believed in the funding but recognized that whether it would actually materialize was uncertain. Given Hyams' evidence about the TeknoScan Board believing in the "reasonability of success" of RGI Group securing funding and the evidence that Kung informed the entire Board about the funding, we conclude the same to be true for Tam. Further, we conclude there was nothing in the Notice that indicated or suggested that the funding was uncertain.

4.2.3.c.iv Repeated and undisclosed delays with the third-party funding

[144] The Commission established that the receipt of the third-party funding was repeatedly delayed prior to December 14, 2016, when the Notice was sent to shareholders. Hyams testified that he was concerned about these repeated delays.

[145] The Notice said nothing about the prior delays in receipt of funding. The Update Email simply advised that the "investor anticipates that the first tranche of funding for acquisition of shares from the shareholders of the Company will be available by the last week of December." The Commission, citing *Wong (Re),*[26] alleges that the respondents' failure to disclose these repeated delays was an omission that amounted to "other fraudulent means".

[146] The TSI respondents submit that the delays in funding in this case, unlike in *Wong*, were not indicative of further delays and were not material because TeknoScan did not provide any projected timeframe to shareholders for the closing of the Share Purchase Transaction.

[147] We agree with the TSI respondents that, unlike in *Wong*, the delays here did not affect the timing of when investors would see a return. However, we do view the repeated delays as indicative of and materially relevant to the matter of the uncertainty of the funding itself. The repeated delays concerned Hyams, and at the very least served to highlight the uncertainty around the funding materializing.

4.2.3.c.v Amount of third-party funding

[148] The Commission submits that, even if the third-party funding had materialized, the amount (US $50 million to US $63 million) was miniscule and would only have been sufficient to purchase about 1.5% of the TeknoScan common shares on a fully diluted basis (assuming that all preferred shares were converted to common shares) at the US $20 per share purchase price under the Share Purchase Transaction.

[149] The Commission alleges that because the expected amount of the funding fell far short of the US $2 billion that would have been required to purchase the "up to approximately 50%" of shares indicated in the Notice, the omission of this information amounted to the omission of fundamental and essential facts that were objectively dishonest and misleading.

[150] The Commission relies on Hyams' testimony and what it characterizes as an admission in Hyams' cross-examination. It also relies on a drafting comment from Joseph.

[151] The TSI respondents submit that the Commission's allegation is inconsistent with the facts. According to the TSI respondents, the US $50 million to US $63 million amount was only the expected first tranche of funding and it was always understood that additional funds would come on a rolling basis. Hyams agrees with this.

[152] We find that the Commission's position fails to take into account unchallenged evidence adduced by the respondents about additional funding beyond the initial US $50 million to US $63 million tranche, as outlined below:

a. Hyams testified that he understood that the initial expected US $50 million (out of the US $63 million) tranche of funding to purchase shares from shareholders was to be the first of several subsequent tranches that would follow to complete the Share Purchase Transaction;

b. Joseph testified that US $50 million was the "total first tranche" and it was expected that further funds would come in tranches until up to 50 percent of the shares of TeknoScan were acquired;

c. a contemporaneous excel spreadsheet prepared internally at TeknoScan to calculate the amount of funds to be distributed to shareholders participating in the Share Purchase Transaction corroborates Hyams' and Joseph's evidence. The spreadsheet describes the US $50 million as the "Total 1st Tranche"; and

d. in the June 2016 email, Kung refers to Davison having funds left over from the first tranche of funding that would be used to "do another few of these" and obtain additional tranches of funding.

[153] We accept Hyams' and Joseph's evidence that at the time of the Notice there was some expectation that additional tranches of funding would be received after the initial tranche. We do not find that the respondents knew that the maximum amount of potential funding was limited to US $50 million to US $63 million. However, we also conclude that the details of any additional funding beyond the initial tranche were not established, and the expectations were not specific. This adds to our overall finding that at the time of the Notice, the respondents understood that the funding for the Transaction was uncertain.

4.2.3.d Omissions relating to lack of vetting and inadequate due diligence

[154] The Commission alleges that the respondents failed to disclose that the Share Purchase Transaction was not vetted, and there was inadequate due diligence about the buyer, the third-party funder and the funding mechanisms.

[155] The Commission submits that this omission gave shareholders the false impression that TeknoScan considered the buyer and the third-party funder to be credible.

[26] 2016 BCSECCOM 208 (***Wong***) at paras 366-372

[156] The Commission was not able to point to any positive obligation, either under securities law or more generally, on a party to a transaction in TeknoScan's position to vet the transaction or perform due diligence.

[157] The Notice is completely silent about vetting and due diligence, and as we find that there is nothing in the Notice that suggests or implies that vetting or due diligence was undertaken, we conclude that the omission of disclosure on the subject does not render the Notice objectively misleading or dishonest. Accordingly, we make no finding about whether the Share Purchase Transaction was vetted by TeknoScan and whether TeknoScan, or Richardson on TeknoScan's behalf, conducted adequate (or any) due diligence.

4.2.3.e Non-arm's length transaction

[158] The Commission submits that the respondents "concocted" the Share Purchase Transaction and got Davison to participate as a "dupe", and thus it was not an arm's length transaction. The Commission submits that it established the following, all of which are hallmarks of a non-arm's length transaction:

a. Davison was unsophisticated and lacked funds;

b. Kung arranged for N.B. to lend funds to Davison in order to arrange the third-party funding for the Transaction;

c. TeknoScan created and set the terms for the Share Purchase Transaction, including the per share purchase price, with no negotiation;

d. Davison did not understand the Share Purchase Transaction;

e. TeknoScan and its outside counsel drafted the Transaction documents for Davison to sign, and there is no evidence that Davison provided any comments or substantive edits to these documents;

f. Davison did not have a lawyer or any professional advising him on the Transaction;

g. TeknoScan incorporated Double Helix for Davison;

h. there is no evidence that Davison conducted any due diligence on TeknoScan, or ever knew anything about TeknoScan's finances or share structure;

i. the Transaction would not benefit Davison; and

j. Davison's only involvement was to sign the transaction documents that he was provided by TeknoScan.

[159] The Commission submits that omitting to advise shareholders that the Share Purchase Transaction was non-arm's length conveyed the false impression that there was a motivated and self-interested buyer on the other side when, in reality, there was not.

[160] The TSI respondents dispute that they "concocted" the Share Purchase Transaction. They submit that Davison and Richardson independently pursued funding from RGI Group, before they presented the Share Purchase Transaction to TeknoScan. Hyams submits that because he was not personally part of any meetings or conversations related to the Share Purchase Transaction and does not have any first-hand knowledge, he can neither agree nor disagree with the assertion that "TeknoScan was playing both sides of the table".

[161] Below we consider the points on which the Commission relies as allegedly establishing that the Share Purchase Transaction was non-arm's length. We conclude that the Transaction was a non-arm's length transaction and that Kung, who dealt directly with Davison and facilitated the funding for the Transaction, knew this. Although we do not conclude that Hyams and Tam knew that the Share Purchase Transaction was non-arm's length, we do find that they were aware of Kung's involvement in arranging and facilitating the third-party funding and that the third-party funding was therefore contrived and unconventional.

a. ***Davison was a highly unlikely counterparty and lacked funds***

[162] We have already concluded that the respondents were aware that neither Davison nor Double Helix had the funds required for the Share Purchase Transaction.

[163] We do not consider that establishing that Davison was unsophisticated is a necessary precondition to establishing that the Share Purchase Transaction was a non-arm's length transaction. A non-arm's length transaction can certainly exist in circumstances where both parties are sophisticated. Although we decline to draw any specific conclusions about Davison's level of sophistication at the time of the Share Purchase Transaction, as we think that is unnecessary, we do conclude that Davison's circumstances made him a highly unlikely counterparty to a US $2 billion transaction and not a

person who readily fits the description "Canadian Strategic Investor" that was used to refer to him in the Update Email. In reaching this conclusion, we highlight the following evidence:

a. Davison has no post-secondary education. He does not have a background in law or banking and the little securities knowledge that he has came from casual conversations;

b. Davison was 78 when he testified at the merits hearing, placing him at approximately 70 years old in 2016;

c. Davison described himself as a "visionary" and explained that he has designed what he calls a micro-sustainable community. He said his design is still sitting in his files and he has not actually built any sustainable communities;

d. Davison's son-in-law, John Dingwall, is a retired police officer. He finished his policing career in the Professional Standards Unit of Durham Regional Police. Since then, he has been an investigator for the Law Society of Ontario. Since 1998 Dingwall has only known Davison to have one job — as a part-time appliance salesman for a brief period in 2007;

e. Davison did not own any real property. Between 2009 and 2019 Davison lived in Dingwall's cottage. Davison lived on an old age pension and Dingwall covered Davison's expenses for housing, utilities, and car insurance, gave him a vehicle to use and brought him groceries;

f. Dingwall stated that Davison lived in a "fantasy world". Davison's business ideas were wide-ranging but never materialized. They included "grand plans" to install windmills and cell phone towers across North America, establish self-sustaining communities, buy the Peterborough Airport and turn it into his global headquarters, build an international airport in Northern Ontario, and buy a rail line. According to Dingwall, Davison's most consistent theme was building self-sustaining and green communities and "feeding the babies";

g. Dingwall considered Davison to be unsophisticated and vulnerable. Dingwall had sincere concerns for Davison based on his alleged involvement with "Luxor Bonds" as well as funding from trading programs. Dingwall testified that Davison told him that he had been handpicked to receive $440 million in bonds and he had to get an insurance policy to assist him in monetizing them. For years Dingwall heard a myriad of excuses as to why the bonds could not be monetized. Around 2016 Davison told Dingwall that the people he was dealing with had decided to give him a different financial instrument to replace the bonds. The financial instrument would be put into a series of trades, starting with an initial tranche of $100 million that would repeatedly multiply itself; and

h. Hyams testified that when he first met Davison in 2009, he found him to be unsophisticated.

[164] The TSI respondents submit that Dingwall's evidence should be largely disregarded as it served to discredit Davison's evidence by providing evidence of his bad character. They also submit that Dingwall displayed a clear animus against Davison in his testimony.

[165] We found Dingwall to be a very credible witness. He was careful, factual and tactful in giving his evidence. Contrary to the TSI respondents' submissions, he did not provide evidence of Davison's bad character. Instead, he simply reported what Davison told him and his wife at various points in time about Davison's business plans and interests and what he knew about other related matters. Contrary to the TSI respondents' submissions, we find that Dingwall did not display any animus towards Davison or leave us with any reason to not accept his evidence. We are satisfied that Dingwall had no reason to mislead or lie in his testimony.

b. ***The origins of the Share Purchase Transaction and related third-party funding and Kung's involvement***

[166] The evidence about the origins of the Share Purchase Transaction is not entirely clear.

[167] The TSI respondents submit that the Share Purchase Transaction arose out of the ongoing collaboration between Davison and Richardson, who presented it to TeknoScan in mid-2016. They submit that the evidence establishes that Davison and Richardson independently pursued funding for the Share Purchase Transaction before presenting the opportunity to TeknoScan.

[168] The Commission submits that TeknoScan concocted the Share Purchase Transaction and took advantage of Davison by having him participate in it.

[169] No witness provided any clear or convincing evidence that confirmed or explained the precise origins of the Share Purchase Transaction. This includes Davison and Joseph, who respectively did not remember or know how the Transaction arose.

[170] Davison did not testify about his motivation for participating in the Share Purchase Transaction, other than in generalities such as: "I knew that TeknoScan was trying to progress. I also was trying to do the same thing for my micro-communities

and it seemed like, you know, a team of horses side by side and maybe we could do something there",[27] and "I liked these people. I trusted these people. And like anything else, entrepreneurs, what they do, they get together and try and benefit one another, that's all it was…It's just I help people"[28].

[171] The TSI respondents point to the June 2016 email as purported evidence that Davison and Richardson, with RGI Group, pursued funding for the Share Purchase Transaction independently of TeknoScan. No witness with any direct knowledge of this email chain testified about its meaning.

[172] We do not read the June 2016 email as unambiguously confirming that the funding for the Share Purchase Transaction originated independently from Davison and Richardson, as the TSI respondents assert. We read the June 2016 email as continued communications with Kung about efforts by Richardson, with the assistance of Davison, to raise funds for TeknoScan. In particular, we note that Richardson writes to Kung and refers to money that "has been already approved for TeknoScan" as well as additional funding to inject into TeknoScan, all of which will involve Davison arranging to use a corporation "because this has been requested rather than an individual name".

[173] In the same email Richardson requests compensation for his efforts in connection with "project funding" as well as "reasonable expenses, for Dan [Davison] and myself, for activities to date and ongoing to completion requirements". Notably, Richardson's email goes on to suggest to Kung that $10,000 be paid to each of Richardson and Davison "for services rendered", including for Davison to "accomplish his duties and set up", with such amount to be reviewed later if needed or if unanticipated expenses were required.

[174] No witness addressed the meaning of these portions of the June 2016 email or explained why Richardson was suggesting that TeknoScan should be paying Davison for expenses and services. No evidence was adduced that indicated that Davison received any payment from TeknoScan in connection with the Share Purchase Transaction and the Commission made no such allegation.

[175] However, we view the June 2016 email exchange as establishing, on a balance of probabilities, that Davison was engaged in efforts to assist TeknoScan in obtaining access to funding through RGI Group and these efforts were connected with the Share Purchase Transaction.

[176] We have previously found that Kung enlisted N.B. to lend to Davison the 500,000 euros that had to be advanced to RGI Group in order to obtain the expected third-party funding for the Share Purchase Transaction. We also previously found that N.B. required, as a condition to loaning the funds to Davison, that Kung personally guarantee repayment of 250,000 euros of the loan. All the respondents were aware of this. We conclude that Kung's direct and essential involvement in arranging the third-party funding for the Share Purchase Transaction, as well as another TeknoScan investor's (N.B.) involvement in arrangements to obtain funding for the Transaction, is consistent with the Transaction being non-arm's length.

[177] Although Kung's involvement in arranging the third-party funding is not itself conclusive of the Share Purchase Transaction being non-arm's length, we find that it demonstrates that the third-party funding was contrived and unconventional.

c. ***Creation of the terms for the Share Purchase Transaction***

[178] The Commission submits that TeknoScan set the terms of the Share Purchase Transaction, including the per share purchase price and the terms of the transaction documents, without input from Davison. The Commission also submits that Davison did not receive advice regarding the Transaction, did not conduct any due diligence, and knew nothing about TeknoScan's finances and share structure.

[179] The Commission established that TeknoScan prepared three agreements related to the Share Purchase Transaction and third-party funding, namely, the Debenture, the Letter of Intent and the Share Purchase Agreement, and that Davison executed each of these without any substantive changes.

[180] Joseph testified that the US $20 per share price arose in discussions between Kung and Davison, and that Davison had his own set of advisors and they agreed on that price. We do not place much, if any, weight on this testimony, given that Joseph had no relevant direct knowledge and contemporary documentary evidence confirms that Joseph was aware that Davison had no legal representation. Hyams also testified that he understood from Kung that the terms and conditions of the Share Purchase Transaction were not imposed by TeknoScan, but instead resulted from discussions and negotiations. Hyams did not suggest that he had any direct knowledge of this, and indeed his evidence was that these matters were left to Kung and Tam, and thus we place little weight on his testimony.

[27] Hearing Transcript, February 22, 2024 at p 27 lines 25-28
[28] Hearing Transcript, February 22, 2024 at p 65 lines 20-25

[181] The Commission established that Davison did not have a lawyer or anyone assisting him with the Share Purchase Transaction. When asked whether it was his idea to purchase TeknoScan shares at US $20 per share, Davison stated that it was not. Davison did not know who he would be buying shares from. Davison did not recall ever seeing TeknoScan financial statements and saw no reason for them to have been given to him as he was just "friends" with the principals of the company. Davison did not complete any valuation of TeknoScan or any due diligence and was generally unaware of the company's capital structure.

[182] Based on the foregoing, we find that the Commission established on a balance of probabilities that TeknoScan set the price and terms for the Share Purchase Transaction with little or no input from Davison. This, along with Davison's lack of understanding and due diligence, is quite simply inconsistent with what would be expected of a self-interested arm's length purchaser entering into a US $2 billion transaction.

[183] These findings, considered along with our findings that:

a. Davison's circumstances made him a highly unlikely counterparty to such a transaction;

b. Davison was engaged in efforts to assist TeknoScan in obtaining access to funding through RGI Group and the Share Purchase Transaction was connected to these efforts; and

c. Kung had a direct and essential involvement in arranging the third-party funding;

support our overall conclusion that the Share Purchase Transaction was not an arm's length transaction.

4.2.3.f Value of TeknoScan shares

[184] The Commission alleges that the respondents knew that the per share purchase price under the Share Purchase Transaction grossly overstated the value of TeknoScan and was not defensible, and this should have been disclosed to shareholders. The Commission bases this allegation on a valuation that TeknoScan obtained in 2016 from a certified valuator, Raghu Ram of Sageview Valuations & CFO Advisory Services (**Valuation**). The Valuation concluded that as of April 30, 2016, the estimated fair market value of TeknoScan's common shares was between $0.54 and $1.44.

[185] The TSI respondents submit that the Valuation was not an indicator of the fair market value of the company for a proposed share acquisition transaction, and there is evidence to support TeknoScan's valuation of the company at US $4 billion, consistent with the per share purchase price under the Share Purchase Transaction. Hyams also submits that the Valuation did not properly value TeknoScan's technology.

[186] Hyams and Joseph testified that in 2016 TeknoScan had a self-assessed market value of US $4 billion and also testified to it being reasonable in their view. Joseph explained that the valuation was based on anticipated sales of $400 million (including a signed contract for $150 million over 10 years) to which a conservative 10 times multiplier was applied. Hyams explained that the value was arrived at by considering a spreadsheet of opportunities and potential revenues.

[187] The evidence established, and we find, that the Valuation was obtained by TeknoScan for the purpose of facilitating s. 85(1) rollovers for the TeknoScan directors under the *Income Tax Act*[29] and was not to determine the fair market value of the company for a proposed share acquisition transaction.

[188] Ram readily acknowledged that the Valuation had a very limited scope, and because it was for rollover purposes it did not require an extensive assessment of the potential value of the enterprise. The Valuation was based on discounted projected financial results, and he did not undertake an extensive assessment of the potential value of the enterprise.

[189] Ram acknowledged that the Valuation was not based on a comprehensive valuation of TeknoScan's high-end technology, which would have taken substantial effort and was something he was not able to do. Ram also agreed that there is a difference between value and price, that the Valuation was not prepared for an acquisition transaction, and that the Valuation did not account for what a strategic or special interest investor might pay.

[190] Given Ram's evidence, we conclude that the Valuation was not an indicator of the sale price for TeknoScan. We find that the Commission did not establish that the respondents knew that the per share purchase price under the Share Purchase Transaction grossly overstated the value of TeknoScan.

4.2.3.g Belief that the Share Purchase Transaction would occur

[191] The Commission alleges that the respondents themselves did not believe that the Share Purchase Transaction would take place and failed to inform shareholders. As evidence of this, the Commission points to:

[29] RSC 1985, c 1 (5th Supp)

a. the fact that Hyams and Kung sold common shares back to TeknoScan in June 2017 at $3 per share; and

b. in 2016 and 2017, Hyams, Tam and Kung exercised options to acquire TeknoScan common shares priced at $0.00001, but did not exercise millions of options with strike prices between $0.27 and $3.

[192] We find both points relating to behaviour in 2017 after the Notice was sent to shareholders to be irrelevant.

[193] There could be many explanations for the Individual respondents not exercising options around the time of the Share Purchase Transaction, but this was not explored by the Commission with any witness. We decline to draw the conclusion that this is evidence that the Individual respondents did not believe that the Share Purchase Transaction would take place. This does not displace our conclusion that the respondents knew that the receipt of third-party funding was uncertain.

4.2.3.h Was the Notice objectively dishonest and misleading?

[194] We conclude that the Notice omitted the following information that was known by TeknoScan's Board, including each of the Individual respondents:

a. Davison and Double Helix did not have the funds to close the Share Purchase Transaction;

b. the Transaction was expressly contingent on Davison and Double Helix receiving funds from a third-party funder;

c. it was uncertain whether any third-party funds for the Transaction would ever materialize; and

d. the third-party funding arrangements were contrived and unconventional, in that Kung was directly engaged in facilitating the funding for the Transaction, including arranging for a loan to Davison by a TeknoScan investor and giving a personal guarantee for half of the loan, without which loan there could be no chance of third-party funding for the Transaction.

[195] We find that each of these omissions rendered the Notice objectively misleading and dishonest. These were fundamental and essential facts related to the funding for the Share Purchase Transaction, the purchaser's ability to close the Transaction and satisfy its obligations, and the risks of the Transaction not closing. In omitting this information, the Notice conveyed the false impression that shareholders (including preferred shareholders) merely needed to opt in to participate in a transformative and lucrative transaction and that funding for the Transaction was not an issue.

[196] We have also found that the Share Purchase Transaction was a non-arm's length transaction which was known to Kung (the individual who had all of the interactions with Davison regarding the Transaction) and was not disclosed in the Notice. We do not have a sufficient evidentiary basis to conclude that Tam also knew that the Transaction was non-arm's length. Based on Hyams' testimony and the fact that he had no direct involvement with Davison in connection with the Transaction, we are satisfied, on a balance of probabilities, that he did not know that the Transaction was non-arm's length. We make this finding despite his awareness of the N.B. loan to Davison and Kung's guarantee of half of that loan.

[197] The Notice was also objectively misleading and dishonest in omitting that the Transaction was non-arm's length. In omitting this information, the Notice conveyed, amongst other things, the false impression that Davison was a self-interested and independent purchaser, and US $2 billion was an arm's length negotiated price for 50 percent of the company.

[198] Each of the Individual respondents (and, indeed, TeknoScan's entire Board) was involved in drafting, reviewing, commenting on and approving the Notice before it was sent to shareholders. They did so with knowledge of the omitted facts identified above, and Kung did so with the additional knowledge of the omitted fact that the Share Purchase Transaction was non-arm's length.

[199] At this stage, it is not necessary for us to find that the respondents were subjectively aware that the omissions were misleading or dishonest. Our finding that they rendered the Notice objectively misleading and dishonest satisfies this branch of the test.

[200] Hyams' general submission that he was not directly involved in arranging the Share Purchase Transaction, and he relied upon others (including Kung and Joseph) to ensure that it was a "real" transaction, is no defence to the Commission's allegation, given our findings above. Hyams' evidence and submissions that Kung and Tam effectively controlled the Board and made the decisions for TeknoScan are also not a defence to the Commission's allegation, given that Hyams readily acknowledged that he approved the Notice and did not object to TeknoScan proceeding with the Transaction. Hyams' role as President, CEO and a director of TeknoScan were not mere formalities and, in approving the Notice, he assumed responsibility for its omissions that were known to him.

[201] Accordingly, we find that the Individual respondents' conduct *(i.e.*, the omission of fundamental and essential facts from the Notice) amounted to "other fraudulent means".

4.2.4 *Actus Reus* - deprivation caused by the fraudulent acts

[202] The second part of the *actus reus*, or objective part of the fraud framework, requires a finding that the dishonest act caused a deprivation. Deprivation is established by proof of either actual loss, or the risk of or actual prejudice to investors' economic interests.[30]

[203] We conclude that the objectively dishonest and misleading Notice and its promise of the Share Purchase Transaction is what caused 92 percent of preferred shareholders to opt in to the Transaction and convert their preferred shares to common shares. As a consequence, the preferred shareholders forfeited rights associated with their preferred shares, including the right to receive a dividend and, in some cases, redemption rights and the right to receive royalties. We find that this forfeiture of rights attached to their preferred shares amounted to a deprivation in the form of a risk of prejudice to these shareholders' economic interests.

[204] The Commission submits that this forfeiture of rights resulted in actual loss to the converting preferred shareholders. This took the form of the loss of redemption rights which the Commission submits were valued at approximately US $58 million (calculated as the US $3 redemption price multiplied by the number of converted preferred shares with redemption rights, approximately 19.5 million). The Commission also submits that potential future earnings from dividend and royalty rights, which were not quantified or valued by the Commission, were lost.

[205] The Commission did not prove the amount of the actual loss to the preferred shareholders who converted their shares. The Commission did not establish that the redemption right attached to preferred shares was worth US $3 at that time, given TeknoScan's liquidity issues and lack of revenues. The value of the dividend and royalty rights were dependent on potential future earnings, which were also not established.

[206] Notwithstanding our finding that the Commission did not quantify actual loss, given that it did establish deprivation in the form of risk of prejudice, the Commission has proved both parts of the objective element of the fraud analysis as against the Individual respondents.

[207] We now turn to consider the subjective element of the fraud analysis.

4.2.5 *Mens rea*

[208] The *mens rea*, or subjective element of the framework, consists of two branches:

a. subjective knowledge of the act of deceit, falsehood, or some other fraudulent means; and

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

[209] We turn now to consider this element.

4.2.5.a Subjective knowledge of the fraudulent acts

[210] To prove that the respondents were subjectively aware that they were undertaking a prohibited or dishonest act, it is not required to show that the respondents regarded the act as dishonest or knew that it was prohibited. Subjective awareness is proved where the person knowingly undertook the act.[31]

[211] In this case, each of the Individual respondents prepared the Notice and approved it for issuance to shareholders, knowing that it omitted certain facts as outlined above. We conclude that this satisfies the first branch of the subjective element.

4.2.5.b Subjective knowledge of deprivation

[212] The second branch requires that the respondents have subjective awareness that their dishonest conduct will put the property or economic expectations of others at risk.[32] In appropriate cases, the inference of subjective knowledge of the risk may be drawn from the facts as the respondent believed them to be.[33] Subjective awareness of the consequences may also be inferred from the dishonest act itself.[34] Subjective knowledge of deprivation can also include recklessness as to deprivation, which presupposes knowledge as to the likelihood of deprivation.[35] If one is aware that there is a danger

30 *Mughal Asset Management Corporation (Re)*, 2023 ONCMT 39 (***Mughal***) at para 47
31 *Mughal* at para 52; *Théroux* at 19-20
32 *Théroux* at 21
33 *Théroux* at 21
34 *Mughal* at para 56
35 *Théroux* at 20

that their conduct could bring about the prohibited result, but persists despite the risk, that person is reckless and the subjective element is proved.[36]

[213] The Commission submits that each of the respondents had actual knowledge that the omission of important facts from the Notice could result in deprivation to shareholders, as they knew that preferred shareholders who were induced by the Notice to convert to common shares would forfeit their redemption, dividend and royalty rights.

[214] Hyams submits that he did not understand that preferred shareholders who converted their shares to common shares would forfeit their rights as preferred shareholders if the Share Purchase Transaction did not close. He also submits that he was not aware that preferred shareholders would not be able to convert back and regain those rights. He thought that shareholders had rights to reverse the conversion. Although not explicitly framed as such, we take this to be a submission that Hyams did not have subjective awareness of deprivation, given that the Commission's allegation is predicated on each of the respondents knowing that the conversion of shares would permanently forfeit the rights attached to preferred shares.

[215] Hyams' testimony in support of this submission was that there was a "right" to reverse this aspect of the transaction, but he did not provide any evidence for the existence of such right. His evidence referred to the fact that the conversion "did not restrict the preferred shareholder from requesting a reversal of the conversion" and also that there "was nothing in the documentation preventing [the preferred shareholders] from converting back".

[216] The Commission submits, notwithstanding Hyams' testimony, that Hyams was aware that preferred shareholder rights were forfeited and there was no ability to convert from common shares back to preferred shares. The Commission relies on the fact that Hyams prepared and approved the Notice.

[217] The Acknowledgment and Confirmation attached to the Notice expressly stated that upon conversion of a preferred shareholder's shares to common shares, the shareholder:

a. irrevocably releases TeknoScan from all claims to redemption, royalty and dividend rights related to the preferred shares; and

b. disclaims any right to receive dividends and any redemption or royalty rights associated with the preferred shares.

[218] There is nothing in the Acknowledgement and Confirmation that confirms or grants a right to preferred shareholders to reverse their conversion to common shares in the event that the Share Purchase Transaction did not proceed.

[219] Hyams reviewed and approved the Notice as well as the Acknowledgement and Confirmation. We find that he therefore knew that those preferred shareholders who opted in to the Share Purchase Transaction disclaimed their preferred share rights, including their rights to dividends, redemption and royalties. Despite his evidence and submissions to the contrary, we find that Hyams knew there was no right to convert back to preferred shares; at best, he thought that there was nothing preventing a shareholder to ask.

[220] In the circumstances, we find that the Commission has established on a balance of probabilities that Hyams had subjective knowledge of deprivation and therefore has established that Hyams perpetrated a fraud on preferred shareholders who opted into the Share Purchase Transaction.

[221] The TSI respondents place emphasis on the following statement by Justice Sopinka in his concurring reasons in *Théroux* about the consequence of an honest belief that a future event will happen:

> "If the risk of deprivation is dependent on some future event not happening but the accused honestly believes that the future event will happen and there will be no deprivation, a trial judge who accepts this evidence should acquit. The Crown will not have proved *mens rea* with respect to deprivation."[37]

[222] The TSI respondents acknowledge that they knew that the shareholders would lose their preferred share rights if they chose to participate in the Share Purchase Transaction and highlight the fact that in preparing the Notice they ensured that it disclosed the loss of those rights.

[223] However, relying on the above passage from *Théroux*, the TSI respondents submit that because they held a "genuine and reasonable belief" that the Share Purchase Transaction would close, they did not have subjective knowledge of the risk to preferred shareholders. This is because any deprivation to preferred shareholders would only result if the Share Purchase Transaction did not close, as the Transaction (at US $20 per share) would have resulted in a significantly greater benefit to the participating shareholders than what they were giving up, *i.e.,* an exercise of their redemption rights

[36] *First Global Data Ltd (Re)*, 2022 ONCMT 25 (***First Global***) at para 387
[37] *Théroux* at 10 (Sopinka, J., concurring)

(at US $3 per share).The TSI respondents say that they could only be found to have the requisite subjective knowledge of deprivation if they knew, as a fact, that the Share Purchase Transaction would not close.

[224] We reject this submission for two reasons.

[225] First, we accept the Commission's submission that the passage from *Théroux* on which the TSI respondents rely is found in concurring reasons, and not the majority reasons. The majority reasons, which are binding, establish that a mistaken belief that placing a person's economic interests at risk will not result in actual loss, does not rebut a subjective knowledge of a risk of loss.[38]

[226] Second, as a matter of fact, we have not concluded that the respondents held a "genuine and reasonable belief" that the Share Purchase Transaction would close and, as a result, there would be no deprivation to preferred shareholders. Instead, we found above that the respondents believed that the Share Purchase Transaction could close, but this was known to them to be uncertain, because of the uncertainty as to whether the third-party funding would materialize.

[227] Accordingly, we find that the Commission has proved both parts of the subjective element of the fraud analysis against all of the Individual respondents and therefore has also established that all of the Individual respondents perpetrated a fraud on those preferred shareholders who opted into the Share Purchase Transaction.

4.2.6 Did TeknoScan, the corporation, perpetrate a fraud?

[228] A corporation cannot be described as having "knowledge" in the same way that an individual does.[39] Previous decisions of this Tribunal have held that a fraud allegation under s. 126.1(1)(b) of the *Act* against a corporation is established where the corporation's directing minds knew or reasonably ought to have known that the corporation perpetrated a fraud.[40]

[229] In this case we find that TeknoScan's Board (including each of the Individual respondents) were the directing minds of TeknoScan.

[230] We find that the mental elements of the *Théroux* framework have also been established against TeknoScan because:

a. we have found that TeknoScan's Board (including each of the Individual respondents):

   i. had knowledge of omissions that rendered the Notice objectively dishonest and misleading; and

   ii. had subjective knowledge of the fraudulent act; and

b. TeknoScan (along with the other TSI respondents) acknowledged in submissions that it had knowledge that the shareholders would lose their rights as preferred shareholders if they chose to participate in the Share Purchase Transaction (*i.e.*, knowledge of deprivation).

[231] We found above that Kung was also aware of an additional omission in the Notice (*i.e.,* that the Share Purchase Transaction was non-arm's length). No submissions were made by any party about the consequence to our findings about TeknoScan's knowledge in the event that the Individual respondents and directing minds of TeknoScan were found to have different levels of knowledge of the alleged omissions. In the circumstances, we decline to find that TeknoScan had Kung's knowledge of this omission.

4.2.7 Conclusion regarding s. 126.1(1)(b) fraud

[232] In summary, we find that the respondents perpetrated a fraud on TeknoScan's preferred shareholders who opted into the Share Purchase Transaction by omitting fundamental and essential facts from the Notice.

4.3 Misleading statements to shareholders

4.3.1 Introduction

[233] The Commission alleges that the respondents made misleading or untrue statements and omitted several important facts in the Notice, contrary to s. 126.2(1) of the *Act*. In making this allegation, the Commission relies on the very same omissions underpinning the Commission's fraud allegation that we considered in detail above.

[234] Subsection 126.2(1) of the *Act* makes it an offence for a person or company to make a statement that they know or reasonably ought to know,

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38 *Théroux* at 24
39 *First Global* at para 347
40 *First Global* at para 347

a. in a material respect and at the time and in the circumstances under which it is made, is misleading or untrue or omits a fact required to be stated or necessary to make it not misleading; and

b. would reasonably be expected to have a significant effect on the market price or value of a security.

[235] Before we turn to consider whether the omissions in the Notice meet the two prongs of s. 126.2(1), we first consider two preliminary issues:

a. whether the Notice was a statement made by any of the Individual respondents, or was simply a statement of the corporate respondent, TeknoScan; and

b. whether the fact that we have found a contravention of the fraud provision of the *Act* precludes us from finding a breach of s. 126.2(1) that is based upon the same omissions.

4.3.2 Did the Individual respondents make the statements in the Notice?

[236] The Notice was addressed to the shareholders of TeknoScan, from TeknoScan. Hyams signed the Notice on behalf of TeknoScan, and sent the Update Email, in his capacity as President and CEO. As we previously found above, all of the directors of TeknoScan, including the Individual respondents, were involved in preparing and approving the Notice.

[237] The Commission submits that the Individual respondents were communicating with investors through the Notice and, therefore, that they personally made the statements in the Notice, thus engaging s. 126.2(1) of the *Act*. We reject this submission. As a factual matter, the Notice was issued on behalf of TeknoScan, which was a fully functioning corporate entity, and the Notice was not a statement made by each of the Individual respondents. Accordingly, the factual predicate to finding that the Individual respondents contravened s. 126.2(1) of the *Act* (namely, that they "made the statement" in question) has not been established.

4.3.3 Does our finding of s. 126.1(1)(b) fraud preclude a finding of a breach of s. 126.2?

[238] We accept the Commission's submissions that we are not precluded from finding a contravention of s. 126.2 of the *Act* simply because the alleged contravention is based upon the same omissions that we have already found underlie the fraud contravention. Clause 126.1(1)(b) fraud and s. 126.2(1) misrepresentation are different prohibitions and each has different elements that must be established.

[239] We will now turn to consider whether the two elements under s. 126.2(1) have been established with respect to the statements made by TeknoScan in the Notice.

4.3.4 Misleading or untrue statements

[240] We have previously found that TeknoScan knew of omissions in the Notice (as set out in paragraph [194] above) by virtue of the Board's knowledge. These same omissions must now be considered by us under the s. 126.2(1) framework. For the same reason that we declined to attribute Kung's knowledge that the Transaction was non-arm's length to TeknoScan for the purposes of the fraud allegation, we also decline to do that for purposes of our consideration of the misleading statement allegation.

[241] We turn now to consider whether TeknoScan knew or ought to have known that the omissions rendered the Notice misleading "in a material respect".

[242] Tribunal decisions have established that the words "in a material respect" impose a standard of materiality. This is a question of mixed fact and law that requires a contextual determination that takes into account relevant circumstances, including the size and nature of the issuer and its business, the nature of the statement, and the circumstances in which the statement was made.[41]

[243] Materiality at this stage is based on the objective reasonable investor standard.[42] It is established if there is a substantial likelihood that a reasonable investor would consider the statement to be important in making an investment decision. This requires us to determine whether the statement or omission would have assumed actual significance to a reasonable investor.[43]

[244] We find that the omissions in the Notice made the Notice misleading in a material respect. In the circumstances, there is a substantial likelihood that the omissions in the Notice would have assumed actual significance to a reasonable investor, including a preferred shareholder, in deciding whether to opt in to the Share Purchase Transaction. This is because each of these omissions were fundamental and essential facts related to the funding and success of the Transaction, and the

41 *Factorcorp Inc (Re)*, 2013 ONSEC 6 (***Factorcorp***) at para 260, citing *Biovail Corporation (Re)*, 2010 ONSEC 21 (***Biovail***) at paras 63 and 69
42 *Biovail* at para 74
43 *Factorcorp* at para 261, citing *Biovail* at paras 63, 69, 74 and 80

risks of the Transaction not closing. As a result of the omissions, the Notice conveyed the false impression that shareholders could participate in what would be a transformative and lucrative transaction merely by opting in, that funding for the Transaction was not an issue, and that common shares were each worth, or could realize, US $20.

[245] It is not necessary to establish that there was investor reliance on the statement in order to satisfy the first prong of s. 126.2(1) of the *Act*.[44] In this case, each of the investors called by the Commission who opted into the Share Purchase Transaction testified that, in addition to receiving the Notice, they also received information about the Transaction in discussions with Kung, Tam or Joseph. Because of this, the evidence was not clear about the extent to which these investors relied on the Notice itself.

[246] The TSI respondents submit that none of the investors called by the Commission who converted their preferred shares provided any credible evidence that, had the omitted information been included in the Notice, they would have decided differently and not opted into the Transaction. The TSI respondents point to investor N.B.'s behaviour as a significant counterfactual, given that he converted his preferred shares with knowledge that Davison could not self-fund the Transaction and needed to receive third-party funding to complete it.

[247] The TSI respondents cite no authority for the proposition they advance that the reasonable investor test for materiality under s. 126.2(1)(a) of the *Act* is only satisfied if the Commission establishes that disclosure of the omitted fact would have caused the investors to change their behaviour. Indeed, we understand the test, as confirmed by the Divisional Court, to not require such proof.[45] Instead, it requires that there be a substantial likelihood that the disclosure of the omitted fact would have been viewed by the investor as having significantly altered the "total mix" of information made available.[46] We find that the omissions from the Notice would have been viewed by investors in this way.

4.3.5 Impact on market price or value of a security

[248] Clause 126.2(1)(b) of the *Act* requires a determination of the effect of a statement on the market price or value of a security.[47] The relevant securities in this case are either the TeknoScan common shares or the preferred shares.

[249] Clause 126.2(1)(b) requires application of the market impact test, another objective test of materiality, distinct from the reasonable investor test applied under s. 126.2(1)(a).[48] Although a statement that would reasonably be expected to have a significant effect on the market price or value of a security will also be a statement that a reasonable investor would consider to be important in making an investment decision (*i.e.,* that would satisfy the requirements of s. 126.2(1)(a)), the converse does not necessarily follow.[49]

[250] The Commission submits that the misleading statements in the Notice had a clear and significant effect on the value of both TeknoScan's common shares and preferred shares. This is because the Notice resulted in 92% of preferred shareholders converting to common shares. Preferred shareholders did not convert their shares prior to the Notice and only did so because of the expectation that they would receive US $20 per common share through the Share Purchase Transaction.

[251] The TSI respondents submit that the Commission's case is based on speculation. They submit that there was no market for TeknoScan shares and, as a result, the Notice could not have had an effect on the market price. They further submit that, although the Notice could have had an effect on the value of TeknoScan shares, there was no clear, convincing or cogent evidence about any effect on value, or that the Notice would have had a *significant* effect on value. The TSI respondents' submissions do not specify which TSI shares, common or preferred, they refer to.

[252] We find that there is a sufficient factual foundation from which to draw the inference that the Notice would reasonably be expected to have a significant effect on the value of the common shares of TeknoScan.

[253] All of TeknoScan's preferred shareholders had the right, separate from the Share Purchase Transaction, to convert their preferred shares to common shares on a 1:1 basis at any time. There was no evidence of widespread, or any, conversion of preferred shares to common shares prior to the announcement of the Share Purchase Transaction in the Notice. From this we conclude that, prior to the issuance of the Notice, the preferred shares (both those with and without redemption and royalty rights) either had a greater value than the common shares, or at least an equivalent value.

[254] The value of the preferred shares prior to the Notice was not specifically established or quantified, however we would expect the value to reflect the present value of potential future dividends and convertibility to common shares and, where

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44 *Coventree Inc (Re)*, 2011 ONSEC 25 (***Coventree***) at para 396
45 *Cornish v Ontario Securities Commission,* 2013 ONSC 1310 (***Cornish***) at para 63, citing *TSC Industries Inc v Northway Inc*, 426 U.S. 438 (1976) at 449
46 *Cornish* at para 63
47 *Coventree* at para 385
48 *Cornish* at para 60
49 *Biovail* at para 73

applicable, the present value of the US $3 redemption right and any potential future royalties — all subject to the risk of dividends and royalties not materializing and TeknoScan not having sufficient funds to pay the redemption price.

[255] The market price of the preferred shares just prior to the Notice was also not specifically established or quantified. However, it was established that TeknoScan issued and sold preferred shares for US $1.00 or less until August 2016. We would expect that TeknoScan would issue and sell preferred shares for as much as the market can bear. We conclude, therefore, that this is evidence of what investors were willing to pay for preferred shares in the time frame prior to the announcement of the Share Purchase Transaction, taking into account their understanding of the discounted value of the rights and the liquidity risk attached to the preferred shares. Because there was no secondary market for preferred shares, we conclude that the US $1.00 price for newly issued preferred shares was a proximate value (in rough orders of magnitude) of the preferred shares just prior to the announcement of the Share Purchase Transaction in the Notice.

[256] The Notice informed shareholders that the Share Purchase Transaction would be a transformative liquidity event, resulting in the purchase of "up to" 50% of the common shares for US $20 per share. The Update Email indicated that the purchase of common shares would be at "an attractive valuation". Hyams testified to this and said that US $20 "sounded incredible" and he thought at the time that he and the other shareholders would have been "very happy" with US $5. The purchase price put TeknoScan, which was still in a start-up phase without any significant revenues or contracts, at a $4 billion enterprise valuation, making it a "unicorn" (*i.e.*, a company with a valuation of at least $1 billion). This, together with the evidence of the value of the common shares as compared to the value of the preferred shares (something less than or equal to approximately US $1) prior to the announcement of the Transaction, establishes that the Notice would reasonably be expected to have a significant effect on the value of TeknoScan common shares.

[257] The Commission submits that the behaviour of preferred shareholders demonstrates that the misleading statements in the Notice caused the "perceived" value of the common shares to increase significantly. We note that the response of preferred shareholders to the Notice was significant. In response to the Notice, 93 out of the 102 preferred shareholders (who were not Individual respondents or related to the Individual respondents), collectively holding 92% of the preferred shares, converted their shares to common shares in order to participate in the Share Purchase Transaction. While this may tend to confirm that the announcement of the Transaction (without disclosure of any attendant uncertainty or risk around its completion at US $20 per share) led to a significant increase in the value of the common shares, our earlier finding is not based on this evidence. In making our finding, we have been mindful that the language of the *Act* and the relevant jurisprudence make clear that the market impact test is forward looking.

[258] Based on the foregoing, we conclude that TeknoScan breached s. 126.2(1) of the *Act.*

4.4 Responsibility for misconduct – s. 129.2 of the *Act*

[259] The Commission seeks a finding that the Individual respondents be deemed liable for TeknoScan's non-compliance with the *Act* pursuant to s. 129.2 of the *Act*.

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

[261] Some recent Tribunal decisions have concluded that where an individual has been found directly liable for a breach of the *Act* it is not necessary to consider whether the individual is also "deemed liable" under s. 129.2 for the same breach by a company.[50] The Commission urges us to make findings of s. 129.2 liability even where direct liability is found, and to address any potential redundancy in the findings at the sanctions stage of this proceeding.

[262] Having found the Individual respondents directly liable for a breach of s. 126.1(1)(b) of the *Act* based upon the same facts that established TeknoScan's breach of s. 126.1(1)(b), we decline to also deem them liable for TeknoScan's breach. To do so would be redundant. We are not inclined to find multiple breaches of laws based on the same facts and wrongdoing, where the deemed breach would be derivative of the direct breach already found.

[263] However, given their roles in preparing and approving the Notice, and the fact that they were not found directly liable for a breach of s. 126.2(1) of the *Act*, we find that the Individual respondents authorized, permitted or acquiesced in TeknoScan's s. 126.2(1) breach pursuant to s. 129.2 of the *Act*.

4.5 Legal advice defence

[264] The TSI respondents submit that, if one or more of them are found to have breached ss. 126.1(1)(b) or 126.2(1) of the *Act*, they have the defence available to them that they reasonably relied on legal advice. Hyams also submits that he relied on Kung, Tam and Joseph to provide all necessary information to TeknoScan's counsel and expected counsel to

[50] *Mughal* at para 108; *Stinson (Re),* 2023 ONCMT 26 at para 78; *Feng* at paras 72-73

have pointed out any issues or questions regarding the information in the Notice. We take Hyams to also be asserting a defence of reliance on legal advice.

[265] For the reasons set out below, we conclude that the respondents have not met the requirements to establish a defence of reasonable reliance on legal advice.

[266] At the time of the Notice and proposed Share Purchase Transaction, Fogler Rubinoff LLP (**Foglers**) had been regular corporate counsel to TeknoScan for some eight years. Rudy Morrone was Foglers' lead lawyer for Teknoscan during this period, including in connection with the advice and assistance provided on the Share Purchase Transaction. Given that Foglers' client was TeknoScan, and not the Individual respondents, we focus on the advice that Foglers gave to TeknoScan.

[267] Reasonable reliance on legal advice is available as a defence to an allegation under a section of the *Act* that expressly provides a due diligence defence or requires proof of an intentional or willful act, such as fraud under s. 126.1(1)(b) of the *Act*.[51] As a result, the defence of reasonable reliance on legal advice is potentially available as a defence to the fraud finding in this case. Whether it is also available as a defence to the breach of s. 126.2(1) for misleading statements, which entails an objective negligence standard and no express due diligence defence, was not specifically argued. In any event we do not need to decide this point, given our conclusion that the defence has not been made out.

[268] A respondent who asserts the defence of reasonable reliance on legal advice must establish that:

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

b. the lawyer was qualified to give the advice;

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

d. the respondent made sufficient enquiries and relied on the advice.[52]

[269] In order to establish that the lawyer had sufficient knowledge on which to base the advice, as is required by the first criterion, the respondent must show that disclosure was made to the lawyer of all of the facts and circumstances relevant for them to be able to provide the advice.[53]

[270] In order to establish actual reliance on the advice, as is required by the fourth criterion, the respondent must show that the advice was sufficiently clear, specific and connected to the impugned act, by addressing the question raised by that impugned act.[54] A person seeking to rely on the defence must adduce clear evidence of the communications they had with their lawyer so that it can be determined with reasonable certainty the question asked and the answer given.[55]

[271] The TSI respondents submit that they adduced evidence that supports each element required to establish the defence.

[272] The Commission submits that the defence is not available here because:

a. TeknoScan did not provide Morrone with sufficient knowledge of the facts related to the Share Purchase Transaction, including the relevant facts that were omitted from the Notice; and

b. neither Morrone nor anyone else at Foglers provided legal advice regarding the proper disclosures to make to investors relating to the Share Purchase Transaction, or the adequacy of the disclosure.

[273] The respondents submit that they provided Morrone with "all the facts" related to the Share Purchase Transaction, such that he was able to help implement and execute the Transaction and draft documents, including the Notice, in compliance with legal requirements.

[274] We heard evidence from Joseph that communications with Morrone were in-person, by email and by telephone. Joseph also testified that, at the outset of Morrone's retainer in early October 2016, he and the Individual respondents met with Morrone to discuss the transaction in detail and were totally reliant on him to make sure that they were not in the wrong when putting this deal forward to shareholders. Joseph stated that he remembered Kung explaining the entire transaction to Morrone, but he could not recall the specifics of what was said.

[275] The burden of establishing the basis for the defence rests with the persons asserting it. Here, we conclude that the TSI respondents' general and non-specific evidence about what information was provided to Morrone, as well as the written

51 *Solar Income Fund* at para 240; *Pushka v Ontario Securities Commission*, 2016 ONSC 3041 at para 244
52 *Solar Income Fund* at para 241; *Mega-C Power Corporation (Re),* 2010 ONSEC 19 at para 261
53 *Sino-Forest Corporation (Re),* 2017 ONSEC 27 at para 1237
54 *Solar Income Fund* at para 243
55 *First Global* at para 594

record of the communications with Morrone, is insufficient to establish that Morrone had all of the facts he required to advise that the issuance of the Notice would not perpetrate a fraud.

[276] Although we do not accept the Commission's submission that the failure of a respondent to call the lawyer as a witness to establish the foundation for the defence is necessarily fatal, we note that the respondents' choice not to call Morrone to testify in the circumstances of this case makes it difficult for them to establish this defence.

[277] In coming to our conclusion, we have considered whether the respondents have established that Morrone was aware of the information that we found was omitted from the Notice and that rendered the Notice objectively dishonest and misleading. Although there is evidence that Morrone received and reviewed the Letter of Intent after it was signed and was likely aware that the Share Purchase Transaction was contingent on Davison and Double Helix receiving funds from a third-party, it was not established that Morrone knew:

a. about the third-party funding arrangements or that Kung was directly engaged in facilitating this funding;

b. that Davison did not have the funds to close the Transaction;

c. that it was uncertain that the funds would ever materialize and the Transaction would close; and

d. that the Transaction was non-arm's length.

[278] Without knowledge of these omitted facts, it follows that Morrone did not have the required facts on which to base his advice.

[279] The TSI respondents submit that TeknoScan retained Morrone to provide advice and assistance on the Share Purchase Transaction, and the advice was squarely related to and focused on the contents of the Notice. The respondents further submit that the advice was sufficiently clear, specific and connected to TeknoScan's request and the advice was reflected in the contents of the final version of the Notice that Morrone drafted with the assistance and input of the respondents.

[280] The Commission submits that while Morrone advised on the Transaction structure, acted as escrow agent and drafted certain documents, including the Notice, there is no evidence that he advised on what facts needed to be disclosed in the Notice or on the adequacy of that disclosure. The Commission asserts that there was no opinion or memorandum with such advice.

[281] We agree that the respondents must adduce clear evidence of communications they had with their lawyer so that it can be determined with reasonable certainty that the right questions were asked and advice was given. However, we note there is no requirement that the legal advice be in the form of a formal memorandum or legal opinion.

[282] Hyams submits that as he was not directly involved in the Share Purchase Transaction and was not TeknoScan's primary contact with Morrone. He was entirely reliant on Kung, Tam and Joseph to provide the facts to the lawyers and ensure the draft documents and Notice were appropriate. We find that, regardless of the extent of Hyams' direct involvement with counsel, he nevertheless has the burden to show that he reasonably relied on legal advice, which he failed to establish. There was no evidence that he made any specific enquiries to establish the scope of what Morrone was retained to do in relation to the Notice, nor any evidence that he was advised that Morrone had represented or opined that the Notice was compliant with Ontario securities laws.

[283] We find that the respondents did not meet the burden required to establish that, in connection with the Share Purchase Transaction, Morrone was asked to provide advice on what facts needed to be disclosed in the Notice in order to ensure compliance with Ontario securities laws, or that he gave such advice.

4.6 Alleged misleading statements to the Commission

[284] The Commission alleges that Kung and Hyams made misleading statements to the Commission during its investigation.

[285] Clause 122(1)(a) of the *Act* makes it an offence for any person to make a statement to a person appointed to make an investigation under the *Act* that, in a material respect, is misleading or untrue or does not state a fact that is necessary to make the statement not misleading. This clause establishes liability even without proof of a specific mental element.[56] We reject the TSI respondents' submission that we do not have jurisdiction to decide this allegation as it is well-established that a breach of s. 122(1)(a) is subject to administrative sanctions under s. 127 of the *Act*.[57]

[286] The Tribunal and the courts have noted the importance of providing truthful information during an investigation.[58] The Ontario Court of Appeal has stated that it is difficult to imagine anything that could be more important to protecting the

[56] *Black Panther (Re)*, 2017 ONSEC 1 at para 154
[57] *Wilder v Ontario (Securities Commission)*, 2011 CanLII 24071 (ONCA) (***Wilder***) at paras 23-24
[58] *Kitmitto (Re)*, 2022 ONCMT 12 at para 210 aff'd by Div Ct, 2024 ONSC 1412, citing *Wilder* at para 22; *Agueci (Re),* 2015 ONSEC 2 at para 636

integrity of capital markets than ensuring that those involved in those markets, whether as direct participants or as advisors, provide full and accurate information to the Commission.[59]

[287] During the hearing, the Commission requested that we admit into evidence excerpts from the transcripts of the compelled interviews of each of Kung and Hyams for the purpose of establishing the s. 122(1)(a) allegations. Kung and Hyams did not object and the transcript excerpts were admitted for this purpose. Kung did not submit that our subsequent ruling on the Commission's motion to have excerpts from Kung's (and Tam's) compelled examinations transcripts "read in" (see section 0 above) had any implication on our earlier admission of the s. 122(1)(a) excerpts, or that their admissibility should be revisited.

[288] The Commission's allegations of misleading statements center around the valuation of TeknoScan. The Commission submits that both Kung and Hyams knew about the Valuation when they responded to questions in their compelled interviews in 2021 and 2022 relating to valuations of TeknoScan. The Commission asserts that the questions asked of Kung and Hyams relating to the Valuation were clear, and that they gave false and misleading responses, contrary to s. 122(1)(a) of the *Act*.

[289] The Statement of Allegations also alleges that each of Kung and Hyams failed to produce a copy of the Valuation when required by summons to produce copies of "any valuations of TeknoScan", in breach of their respective summonses. In oral closing submissions the Commission confirmed that this allegation was not being pursued as part of its case.

[290] With respect to Kung, the Commission alleges that he made false and misleading statements in two instances during his compelled interview by not referring to the Valuation.

[291] Kung submits that in both instances the Commission selectively and inappropriately excerpted answers from Kung's interview to support its allegation. Kung submits that it is clear from a basic review of the transcript in its proper context that, in the first instance, he was responding to whether a valuation had been done to support the $4 billion valuation used in the Share Purchase Transaction and, in the second instance, he was referring to the valuation mentioned in his preceding answer, and not to whether any valuation of TeknoScan had been done.

[292] Kung submits that there is no evidence that he saw or received a copy of the Valuation. Kung also submits that, even if his answers were misleading, they are not of the nature or quality that warrant a finding that he misled Commission investigators.

[293] With respect to Hyams, the Commission submits that he denied there being an independent valuation of TeknoScan even though the Valuation was relevant to the line of questions he was asked. During his compelled interview, Hyams described the Share Purchase Transaction value as significant, and expressed a view of TeknoScan's valuation based on potential revenues. The Commission asserts that Hyams should have thought of the Valuation when responding to questions given the fact that the Valuation also used potential revenues as a means to value TeknoScan.

[294] Hyams submits that he never considered the Valuation as, in his view, it did not have any relevance to the Commission's line of questions. He asserts that the questions were asked in the context of the $20 per share and $4 billion total valuation related to the Share Purchase Transaction, whereas the Valuation was done for the specific purpose of determining the value of the shares for a tax rollover and did not relate to the Transaction.

[295] We find that neither Kung nor Hyams made misleading statements to Commission investigators.

[296] The Commission may have been seeking specific responses and disclosures related to any valuations of TeknoScan, but its line of questioning and its use of language could reasonably suggest the Commission was inquiring about a narrower category of valuations, being those related to or supporting the value of the Share Purchase Transaction or referenced in the context of the preceding answers given. It is incumbent on the Commission, when alleging that respondents make false or misleading statements to its investigators, to establish that the Commission was clear in its questioning.

[297] For these reasons, the allegation that Kung and Hyams breached s. 122(1)(a) of the *Act* is dismissed.

4.7 Conduct contrary to the public interest

[298] In the Statement of Allegations, the Commission alleges that the respondents engaged in activity that is contrary to the public interest. The Commission did not provide any particulars in the Statement of Allegations or in its submissions to support the allegation.

[299] This allegation was formally abandoned by the Commission in its oral closing submissions, and we decline to make any additional findings against the respondents.

[59] *Wilder* at para 22

5. CONCLUSION

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

a. the respondents perpetrated a fraud on TeknoScan shareholders contrary to s. 126.1(1)(b) of the *Act*;

b. TeknoScan made a materially misleading statement to shareholders contrary to s. 126.2(1) of the *Act*;

c. Hyams, Kung and Tam authorized, permitted or acquiesced in TeknoScan's breach of s. 126.2(1) of the *Act* and are deemed liable for that breach pursuant to s. 129.2 of the *Act*; and

d. the Commission has failed to establish that:

i. the Individual respondents made a materially misleading statement to shareholders contrary to s. 126.2(1) of the *Act*; and

ii. Kung and Hyams made misleading statements to the Commission contrary to s. 122(1)(a) of the *Act*.

[301] We therefore require that the parties contact the Registrar by 4:30 p.m. on January 13, 2025, to arrange an attendance, to schedule a hearing regarding sanctions and costs, and the delivery of materials in advance of that hearing. The scheduling attendance is to take place on a mutually convenient date that is fixed by the Governance & Tribunal Secretariat, and that is no later than January 27, 2025.

[302] If the parties are unable to present a mutually convenient date for the scheduling attendance to the Registrar, each party may submit to the Registrar, for consideration by a panel of the Tribunal, a one-page written submission regarding a date for the attendance. Any such submission shall be submitted by 4:30 p.m. on January 13, 2025.

Dated at Toronto this 23rd day of December, 2024

"Andrea Burke"

"James Douglas"

"Cathy Singer"

B. Ontario Securities Commission

B.1
Notices

B.1.1 OSC Staff Notice 11-742 (Revised) – Securities Advisory Committee

REVISED ONTARIO SECURITIES COMMISSION STAFF NOTICE 11-742
SECURITIES ADVISORY COMMITTEE

In a Notice published in the OSC Bulletin on October 17, 2024, the Commission invited applications for positions on the Securities Advisory Committee ("SAC"). SAC provides advice to the Commission and staff on a variety of matters including legislative and policy initiatives and important capital markets trends and brings various issues to the attention of the Commission and staff.

The Commission was very impressed with the number of highly qualified practitioners who applied for positions on SAC and would like to thank all those who applied.

The Commission is pleased to publish the names of the four new members who will be participating on SAC for the next three years:

- Victoria L. Carrier — TD Wealth
- Andrew Bozzato — Bennett Jones LLP
- Catherine De Giusti — Wealthsimple
- Luana DiCandia — Ontario Teachers' Pension Plan Board

The members of SAC have staggered terms. The continuing members of SAC are:

- David A. Seville — Torys LLP
- Gesta Abols — Fasken
- Howard Rusak — Canada Pension Plan Investment Board
- Matthew Merkley — Blake, Cassels & Graydon LLP
- Rosalind Hunter — Osler, Hoskin & Harcourt LLP
- Robert Seager — Voorheis & Co. LLP
- Sandra Zhao — McMillan LLP
- Steve J. Cutler — Davies Ward Philips and Vineberg LLP
- Selma Thaver — Toronto Stock Exchange

The Commission would like to take this opportunity to thank the four members of SAC, listed below, whose terms have ended and who have served on the Committee with great dedication. Their advice and guidance on a range of issues has been very valuable to the Commission.

- Heidi Reinhart — Norton Rose Fulbright LLP
- Jeff Hershenfield — Stikeman Elliott LLP
- Manoj Pundit — Borden Ladner Gervais LLP
- Nancy Mehrad — Registrant Law Professional Corporation

Reference:

Paloma Ellard
Associate General Counsel and VP Legal
Tel: 416-595-8906
pellard@osc.gov.on.ca

B.1.2 Notice of Correction – RP Investment Advisors LP and The Funds

The Decision for *RP Investment Advisors LP and The Funds* published November 7, 2024 in (2024), 47 OSCB 8573, has since been revised. The revised version is published in Chapter B.3 of this Bulletin.

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B.2
Orders

B.2.1 Hamilton Thorne Ltd. – s. 1(6) of the OBCA

Headnote

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

Statutes Cited

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

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

AND

IN THE MATTER OF
HAMILTON THORNE LTD.
(the Applicant)

ORDER
(Subsection 1(6) of the OBCA)

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

AND UPON the Applicant representing to the Commission that:

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

2. the Applicant's head office is located at 100 Cummings Centre, Suite 465E, Beverly, MA 01915, United States and the Applicant's registered office is located at 77 King Street West, Suite 400, Toronto, Ontario M5K 0A1, Canada;

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

4. on December 13, 2024, the Applicant was granted an order (the **Reporting Issuer Order**) pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or the equivalent in any other jurisdiction of Canada in accordance with the simplified procedure set out in section 19 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*; and

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

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

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

DATED at Toronto on this 17th day of December, 2024.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0691

B.2.2 Hamilton Thorne Ltd.

Headnote

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

Applicable Legislative Provisions

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

December 13, 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
HAMILTON THORNE LTD.
(the Filer)

ORDER

Background

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

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

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

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

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024**/**0675

B.2.3 Primo Water Corporation – s. 1(6) of the OBCA

Headnote

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

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
PRIMO WATER CORPORATION
(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 office is located at 200 Britannia Road East, Mississauga, Ontario, L4W 4T5 and the Applicant's head office is located at 1150 Assembly Drive, Suite 800, Tampa, Florida, 33607;

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

4. On November 25, 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 10 day of December, 2024.

"David Surat"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0651

B.2.4 Altius Renewable Royalties Corp.

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).

December 20, 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
ALTIUS RENEWABLE ROYALTIES CORP.
(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.

"Leslie Milroy"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024**/**0714

B.2.5 Pointe West Golf Club Corp. – s. 74(1)

Headnote

Section 53 and subsection 74(1) of the Act – certain sales, transfers, and issuances of Class A shares of issuer not subject to prospectus requirements of the Act, subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, and 74(1).

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

AND

IN THE MATTER OF
POINTE WEST GOLF CLUB CORP.

ORDER
(Subsection 74(1))

UPON the application (the **Application**) of Pointe West Golf Club Corp. (the **Filer**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 74(1) of the Act that the prospectus requirements of section 53 of the Act shall not apply to certain trades in Class A shares of the Filer (the **Exemption Sought**).

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

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

Background

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

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

3. The Filer is not a "private issuer" within the meaning of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**). The Filer received an order under subsection 1(10)(a)(ii) of the Act, dated July 2, 2024, pursuant to which the Filer ceased to be a reporting issuer in Ontario. The Filer is also not a reporting issuer in any other Canadian jurisdiction.

Share Capital of the Filer

4. The share capital of the Filer consists of an unlimited number of common shares and 600 Class A shares. Currently, 445 common shares and 408 Class A shares of the Filer have been issued. The common shares and the Class A shares of the Filer do not trade on any stock exchange.

5. The common shares of the Filer are classified as equity and each common share is entitled to one vote per meeting of the Filer, and the holder can stand for election to the board of directors of the Filer (the **Board**), including serving on various standing committees, provided they hold a membership at the Filer. The common shares of the Filer are fully transferable, and any capital appreciation in the value of a common share of the Filer accrues only to the shareholder. Currently, there is no initiation fee when someone buys a common share of the Filer, with Board approval. Holding a common share in the Filer does not guarantee membership in the Filer, which must be approved of by the Board. A holder of a common share of the Filer does not have to be a member of the Filer.

6. The Class A shares which can only be issued or cancelled by the Filer, are also classified as equity and have the same attributes as the Filer's common shares, except that they are non-transferrable and cannot be transferred or sold by the member of the Filer holding the Class A share (therefore, there cannot be a first trade of a Class A share of the Filer by a holder of a Class A share of the Filer), require a minimum annual membership and are forfeited if a minimum membership in the Filer is not maintained. There is no initiation fee when someone buys a Class A share from the Filer, with Board approval. Only Class A shares have playing rights and privileges that can only be assigned to co-residing spouses, children under 25 living at home with the Class A shareholder, grandchildren of the Class A shareholder

between the ages of 7 and 12, and for corporate Class A shareholders up to four individuals who are either a director, officer or employee of the business. Proof of position or employment with the corporation is required by way of a company profile supplied by a business lawyer for the corporation. Purchasing a Class A share does not guarantee membership in the Filer, which must be approved of by the Board.

7. The Filer does not intend to issue any additional common shares.

Membership of the Filer

8. Anyone wishing to join the Filer as a member is expected to buy a Class A share from the Filer, subject to Board approval. On occasion someone might buy a common share of the Filer from its current holder, subject to Board approval.

9. The Filer also has 39 non-shareholder members, who do not hold a common share or a Class A share of the Filer, but who may in certain situations use the dining facilities of the Filer.

Issuance and Trading in Class A shares of the Filer

10. The Filer has considered whether, under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and the Act, it could be considered to be engaged in or holding itself out as engaging in the business of trading in securities and therefore required to register as a dealer, rely on another exemption from the dealer registration requirement or seek exemptive relief from the dealer registration requirement. In light of the particular facts and circumstances of the Filer, including the fact that the distribution of Class A shares of the Filer is incidental to the Filer's principal activities, it does not receive any fees or other income from engaging in trades or acts in furtherance of distributions, and its activities do not have the attributes typical of a person or company carrying on the business of a dealer, and having considered the guidance in section 1.3 of the Companion Policy to NI 31-103, the Filer has concluded that it should not be considered to be engaged in registrable activities and therefore does not require relief from the registration requirements of NI 31-103 or the Act.

11. The Filer believes that the Exemption Sought is necessary as:

    (a) the sale of Class A shares of the Filer may not be made to an "accredited investor" (as such term is defined in NI 45-106) in every case, as the Filer is not entitled to rely on the exemption provided in section 2.38 of NI 45-106 (the not-for-profit issuer exemption), and it does not appear that any of the other prospectus exemptions set forth in NI 45-106 will be available to the Filer in respect of trades in the Filer's Class A shares; and

    (b) the ability to issue and sell Class A shares of the Filer to new and existing golf members is essential to the continued existence of the Filer.

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

IT IS ORDERED, pursuant to subsection 74(1) of the Act, that the prospectus requirements of section 53 of the Act shall not apply to:

(a) the issuance of Class A shares by the Filer to new golf-playing members of the Filer;

for so long as,

(b) each purchaser of a Class A share of the Filer is provided with:

    (i) the current articles and by-laws of the Filer, including any amendments thereto;

    (ii) the most recent audited financial statements of the Filer, and any subsequent interim financial statements of the Filer;

    (iii) a copy of this order; and

    (iv) a written statement that certain protections, rights and remedies provided by the Act, including statutory rights of rescission and damages, will be unavailable to that purchaser, and that the Class A shares of the Filer are non-transferrable (therefore, there cannot be a first trade of a Class A share of the Filer by a holder of a Class A share of the Filer);

(c) in respect of an issuance under paragraph (a), the issuance is approved by the Board;

(d) and that,

(i) the articles or by-laws of the Filer require that a new adult golf member, who is not related to an existing Class A shareholder of the Filer as set out above, owns a Class A share of the Filer;

(ii) the articles and by-laws of the Filer are not amended with respect to the transfer of shares of the Filer without notice to, and the consent of, the Director (as defined in the Act); and

(iii) any amendment of the by-laws of the Filer are approved of by the required shareholder vote.

DATED at Toronto this 20th day of December 2024.

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

OSC File #: 2023/0228

B.2.6 ZoomerMedia Limited

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).

December 20, 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
ZOOMERMEDIA LIMITED
(the Filer)

ORDER

Background

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

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

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

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

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 #: 2024/0653

B.2.7 Acreage Holdings, Inc.

Headnote

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

Applicable Legislative Provisions

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

December 23, 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
ACREAGE HOLDINGS, INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Lina Creta"
Manager, Corporate Finance

Ontario Securities Commission

OSC File #: 2024*I*0711

B.2.8 PIMCO Canada Corp. et al.

Headnote

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

Applicable Legislative Provisions

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

December 30, 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
PIMCO CANADA CORP.
(the Filer)

AND

PIMCO TACTICAL INCOME OPPORTUNITIES FUND

PIMCO TACTICAL INCOME FUND

PIMCO MULTI-SECTOR INCOME FUND
(each, a PIMCO Fund, and collectively,
the PIMCO Funds)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the PIMCO Funds, for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that each PIMCO Fund has ceased to be a reporting issuer in all jurisdictions of Canada in which each PIMCO Fund 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 each of the other provinces and territories of Canada.

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. none of the PIMCO Funds are OTC reporting issuers under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of each PIMCO Fund, 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 any of the PIMCO Funds, 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 each PIMCO Fund has ceased to be a reporting issuer in all of the jurisdictions of Canada in which each PIMCO Fund is currently a reporting issuer; and

5. none of the PIMCO Funds are 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.

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

B.2.9 Captiva Verde Wellness Corp. – s. 6.1 of NI 62-104

Headnote

Section 6.1 of NI 62-104 – Issuer bid – relief from requirements applicable to issuer bids in Part 2 of NI 62-104 – issuer proposes to repurchase a specified number of its shares from certain of its shareholders as part of an unwinding transaction for a per share purchase price that is not greater than the market price at the time of the repurchase – none of the selling shareholders is a related party of the issuer – persons who were parties to the initial transaction being unwound but whose shares are not being repurchased have each provided acknowledgements, consents and waivers pursuant to which they have represented that they have no interest in participating in the unwinding transaction, being party to the repurchase transaction or becoming an owner in the asset being transferred by the issuer, and that they are seeking to retain the securities they acquired in the initial transaction – issuer's board has unanimously determined that the repurchase is in the best interests of the issuer and its shareholders (other than the selling shareholders), is on reasonable terms, will not adversely affect the issuer's financial position, and will not cause the market for the issuer's shares to be materially less liquid than the market that existed at the time the repurchase was agreed to – share repurchase is exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that, at the time of the share repurchase, the per share purchase price is not greater than the market price of the issuer's shares, as determined in accordance with NI 62-104.

Statutes Cited

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

IN THE MATTER OF
THE *SECURITIES ACT*,
R.S.O. 1990, c.S.5,
AS AMENDED

AND

IN THE MATTER OF
CAPTIVA VERDE WELLNESS CORP.

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of Captiva Verde Wellness Corp. (the "**Filer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") exempting the Filer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchase by the Filer of an aggregate of 89,000,000 common shares of the Filer (the "**Subject Shares**") from the Selling Shareholders (as defined below) pursuant to an unwinding transaction (the "**Unwinding Transaction**");

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

AND UPON the Filer having represented to the Commission that:

1. The Filer is a corporation existing under the *Business Corporations Act* (British Columbia) and is in good standing with respect to the filing of annual reports with the Registrar of Companies under the *Business Corporations Act* (British Columbia).

2. The Filer's head and registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7.

3. The Filer is a reporting issuer in the provinces of British Columbia, Alberta and Ontario, and is not in default of any requirements of securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized capital of the Filer consists of an unlimited number of common shares of the Filer (the "**Common Shares**"). As of December 30, 2024, there were 358,116,067 Common Shares issued and outstanding.

5. As of December 30, 2024, the Filer also has:

   (a) 117,000,000 Common Share purchase warrants (the "**Warrants**") outstanding, of which 17,000,000 Warrants are exercisable at $0.05 per Common Share through to December 23, 2027, 90,000,000 Warrants are exercisable at $0.05 per Common Share through to August 31, 2028 and 10,000,000 Warrants are exercisable at $0.05 per Common Share through to November 29, 2027; and

(b) 10,000,000 options to purchase Common Shares (the "**Options**") outstanding, which are exercisable at $0.04 per Common Share through to July 13, 2025.

All Warrants and Options are "out of the money" and have no value.

6. The Common Shares are listed for trading on the Canadian Securities Exchange (the "**CSE**") under the symbol "PWR" and are posted for trading on the OTC Pink Market in the United States under the symbol "CPIVF". The Warrants and Options are not listed on any stock exchange.

7. The Filer is a sustainable real estate company that also invests in sports and wellness opportunities.

8. 1435300 B.C. Ltd. ("**Subco**") is a wholly owned subsidiary of the Filer. Subco holds a 100% interest in the Miami Padel Club (the "**Club**") of the Pro Padel League (the "**League**").

9. The Filer acquired Subco from Ronnie Strasser ("**Strasser**"), Joel Goodman ("**Goodman**"), and 997494 Ontario Ltd. ("**997494**") pursuant to a share purchase agreement dated August 31, 2023, for an aggregate of 60,000,000 Common Shares at a deemed price of $0.032 per Common Share and US$1,500,000 in cash (the "**Original Transaction**").

10. In connection with the Original Transaction, the Filer completed a non-brokered private placement of 90,000,000 units of the Filer (the "**Units**", and such private placement, the "**Concurrent Private Placement**") with 14 subscribers. Each Unit was comprised of one (1) Common Share and one (1) Warrant, with each Warrant entitling the holder thereof to acquire an additional Common Share (a "**Warrant Share**") at an exercise price of $0.05 per Warrant Share for a period of 60 months following closing of the Original Transaction.

11. Each of Samantha Moses, Jordan Goodman, Alyssa Markowitz and Janet Nicolson (each, a "**Strasser Subscriber**" and collectively, the "**Strasser Subscribers**") subscribed for Units pursuant to the Concurrent Private Placement. The sole reason that each of the Strasser Subscribers participated in the Concurrent Private Placement was to gain exposure to the Club and their investment in the Filer was premised upon Subco being a part of the Filer's business.

12. The Filer, Subco, Strasser, Goodman and the Strasser Subscribers (the Strasser Subscribers together with Strasser and Goodman, the "**Selling Shareholders**") entered into a share purchase agreement dated August 30, 2024, as amended October 10, 2024 (the "**Repurchase Agreement**") in respect of the repurchase of the Subject Shares and 55,000,000 Warrants (the "**Share Repurchase**"). Pursuant to the Repurchase Agreement and certain ancillary agreements entered into in connection therewith, the Filer will complete the unwinding transaction (the "**Unwinding Transaction**") which consists of:

(a) the transfer of Subco by the Filer to the Selling Shareholders in exchange for the return of the Subject Shares and the 55,000,000 Warrants held by them;

(b) the assumption and settlement of $858,249.09 of indebtedness owed by Subco to Strasser pursuant to the terms of a consulting agreement dated August 31, 2023 between Subco and Strasser (the "**Strasser Indebtedness**") in exchange for the transfer of 1,500,000 common shares of Greenbriar Sustainable Living Inc. (the "**Greenbriar Shares**") held by the Filer to Strasser; and

(c) the release by the Filer of Subco and Strasser, and by Strasser of the Filer and the Filer's Chief Executive Officer Jeffrey J. Ciachurski, in each case of any claims arising out of or reasonably connected with Strasser's business dealings with the Filer or its related parties.

13. Following the completion of the Unwinding Transaction, all business relationships between the Filer and Strasser and his known associates will have been terminated, and all liabilities among them settled. Other than 3,335,000 Warrants held by Strasser, following the completion of the Unwinding Transaction, the Filer understands that the Selling Shareholders will not have any interests in the Filer.

14. Completion of the Unwinding Transaction will relieve the Filer of the financial burdens created by Subco and the Strasser Indebtedness. The board of directors of the Filer (the "**Board**") is of the view that if the Unwinding Transaction is not completed in accordance with its terms, Subco will continue to have a significant negative financial impact on the financial condition of the Filer.

15. The Club has a carrying value of $1,335,000 following an impairment charge of $2,638,703 recorded by the Filer in respect of the Club during the period ended July 31, 2024. Subco has no assets or liabilities other than its interest in the Club and the Strasser Indebtedness.

16. The terms of the Unwinding Transaction (including the Share Repurchase) were agreed to by the Filer and the Selling Shareholders following arm's length negotiations between them.

17. The Board has unanimously determined, acting in good faith, that:

    (a) as of the date of the Repurchase Agreement, Subco has a value of $1,335,000 based on a make-whole valuation methodology. In coming to a determination of the value of Subco, the Board considered, but did not ultimately use, a market approach given the transfer restrictions attached to changes in ownership by the League;

    (b) Subco does not represent all or substantially all of the Filer's assets;

    (c) there is no requirement, corporate or otherwise, to obtain shareholder approval for the Share Repurchase or any aspect of the Unwinding Transaction;

    (d) the Repurchase Agreement, the Share Repurchase and the Unwinding Transaction are in the best interests of the Filer and its shareholders (other than the Selling Shareholders);

    (e) the terms of the Repurchase Agreement, the Share Repurchase and the Unwinding Transaction are reasonable;

    (f) the Share Repurchase will not materially affect control of the Filer;

    (g) the Share Repurchase will not adversely affect the financial position of the Filer and, upon completion, will increase the value of the equity ownership positions of the Filer's other shareholders;

    (h) the Filer will continue to be in compliance with the CSE's continuous listing requirements following the completion of the Share Repurchase;

    (i) it is reasonable to conclude that, following the completion of the Share Repurchase, there will be a market for holders of Common Shares that is not materially less liquid than the market that existed at the time the Repurchase Agreement was entered into; and

    (j) the aggregate value of Subco and the 1,500,000 Greenbriar Shares to be transferred to Strasser in satisfaction of the Strasser Indebtedness is equal to, or less than, the economic value represented by the Subject Shares and the Strasser Indebtedness.

18. Each of the Selling Shareholders is located in, and all of the Subject Shares are held in, the Province of Ontario.

19. None of the Selling Shareholders is: (a) a "related party" of the Filer (as such term is defined in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions*); or (b) in possession of material non-public information in respect of the Filer.

20. The Share Repurchase pursuant to the Unwinding Transaction will constitute an "issuer bid" for the purposes of NI 62-104, to which the Issuer Bid Requirements would apply. The Share Repurchase cannot be made in reliance upon any of the exemptions from the Issuer Bid Requirements contained in Part 4 of NI 62-104.

21. The Share Repurchase is an integral part of the Unwinding Transaction and none of the Selling Shareholders is receiving any cash in exchange for the Subject Shares or as part of the Unwinding Transaction.

22. Each of the Selling Shareholders is a party to an agreement pursuant to which they will subscribe for interests in Subco concurrent with the completion of the Unwinding Transaction.

23. As a result of restrictions on transfer that would apply if the Club was transferred to a third party buyer that did not involve Strasser, and the fact that only the Selling Shareholders have been approved by the League to have interests in Subco following completion of the Unwinding Transaction, it is not possible for the Filer to offer to acquire Common Shares from all holders of Common Shares on the same terms and conditions as those contemplated by the Repurchase Agreement.

24. The purpose of the Share Repurchase is not to give preferential treatment to the Selling Shareholders or to provide a method for the Filer to purchase the Subject Shares, but rather to facilitate the sale of Subco and realize the value of such interest for the benefit of the Filer and its shareholders, and to improve the Filer's financial condition.

25. The Subject Shares are being returned to the Filer for cancellation for consideration of $0.015 (the "**Purchase Price**"), being consideration not greater in any material respect to the market price of the Common Shares on the CSE on the date the Repurchase Agreement was entered into, when the closing price of the Common Shares on the CSE was $0.015 per Common Share.

26. The 55,000,000 Warrants are being cancelled for no consideration.

27. Shareholders of the Filer not offered the opportunity to sell their Common Shares to the Filer as part of the Share Repurchase are otherwise entitled to sell their Common Shares into the market for cash proceeds.

28. The Unwinding Transaction is subject to: (a) the acceptance of the Greenbriar Debt Settlement (as described below) by the TSX Venture Exchange (the "**TSXV**"); (b) receipt of this Order; (c) the consent of the League.

29. The Filer entered into debt assumption and settlement amendment agreements, each dated August 30, 2024, with Greenbriar Sustainable Living Inc. ("**Greenbriar**") and Greenbriar Capital (U.S.) LLC., pursuant to which the parties agreed to settle $1,000,000 of indebtedness owed by Greenbriar to the Filer (the "**Greenbriar Debt Settlement**") in exchange for 2,197,802 Greenbriar Shares. The Greenbriar Debt Settlement was approved by the TSXV on December 30, 2024 and is scheduled to close on December 31, 2024.

30. The Filer understands that the Selling Shareholders have been accepted by the League as owners of the Club following the completion of the Unwinding Transaction.

31. 997494 and the ten (10) subscribers under the Concurrent Private Placement who are not parties to the Share Repurchase or the Unwinding Transaction (collectively, the "**Non-Participants**") have each provided an acknowledgement, consent and waiver (collectively, the "**Acknowledgements, Consents and Waivers**") pursuant to which each of them has represented that they:

    (a) have no interest in participating in the Unwinding Transaction, being a party to the Repurchase Agreement, or otherwise becoming an owner in Subco; and

    (b) are seeking to retain the Common Shares and Warrants they acquired in the Original Transaction or Concurrent Private Placement, as applicable.

32. None of the Non-Participants received, or will receive, directly or indirectly, any payment, beneficial enhancement, or inducement of any kind in connection with agreeing to execute the Acknowledgements, Consents and Waivers.

33. Other than the Subject Shares, the Filer has no plans to repurchase any Common Shares, including from the Selling Shareholders or the Non-Participants.

34. Since the announcement of the Unwinding Transaction on August 30, 2024, the Filer has not received any complaints or expressions of concern about the Share Repurchase or the Unwinding Transaction.

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

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Filer be exempt from the Issuer Bid Requirements in connection with the Share Repurchase, provided that:

(a) the Filer issues and files a press release on SEDAR+ disclosing that the Filer has been granted exemptive relief from the Issuer Bid Requirements in connection with the Share Repurchase prior to, or concurrent with, the closing of the Share Repurchase;

(b) none of the Non-Participants has received, or will receive, directly or indirectly, any payment, beneficial enhancement, or inducement of any kind in connection with agreeing to execute the Acknowledgements, Consents and Waivers;

(c) as at the time of the closing of the Share Repurchase, the Board remains of the view that the Share Repurchase and Unwinding Transaction are in the best interests of the Filer and its shareholders, and that the terms of each of them are reasonable;

(d) as at the time of the closing of the Share Repurchase, the per share Purchase Price is not greater than the market price (determined in accordance with NI 62-104) of the Common Shares;

(e) the Greenbriar Debt Settlement has been completed; and

(f) all approvals and/or consents required in respect of the Unwinding Transaction, including the acceptance of the Selling Shareholders by the League as owners of the Club, have been obtained and not revoked.

DATED at Toronto, Ontario this 31st day of December, 2024.

"Jason Koskela"
Vice President, Corporate Finance Division
Ontario Securities Commission

B.2.10 Brookfield Renewable Holdings Corporation (formerly, Brookfield Renewable Corporation)

Headnote

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

Applicable Legislative Provisions

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

January 3, 2025

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
BROOKFIELD RENEWABLE HOLDINGS
CORPORATION
(formerly, Brookfield Renewable Corporation)
(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*I*0693

B.2.11 Greenbrook TMS 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, 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
GREENBROOK TMS 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) the OBCA;

2. The Applicant's head and registered office is located at 890 Yonge Street, 7th Floor, Toronto, Ontario, M4W 3P4, Canada;

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

4. On December 30, 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 on this 6th day of January, 2025.

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

OSC File #: 2024/0712

B.3
Reasons and Decisions

B.3.1 Arrow Capital Management Inc. and WaveFront All-Weather Alternative Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from seed capital requirements in section 3.1, aggregate leverage requirements in 2.9.1, performance data requirements in sections 15.3, 15.6 and 15.8, and risk rating requirements in section 15.1.1 and Appendix F of NI 81-102, and corresponding requirements in NI 81-101 and NI 81-106 with respect to use of performance data and risk ratings in simplified prospectus, fund facts and management reports on fund performance respectively – reorganization will result in transfer of assets from existing pooled fund to newly established alternative mutual fund to be subject to NI 81-102 – new fund to inherit all of existing fund's assets and maintain investment objectives and strategies which comply with NI 81-102 – relief permits new fund to treat performance data of the terminating pooled fund as its own for the sake of disclosure in sales communications, prospectus and fund facts, and MRFP and in calculating the fund's risk rating. New fund to use VaR in lieu of aggregate leverage exposure, consistent with frameworks used under SEC and UCITS rules.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.9.1, 3.1, 15.3, 15.6, 15.8, 15.1.1 and 19.1 and Appendix F – Risk Classification Methodology.
National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.1, and 6.1.
Form 81-101F1 Contents of Simplified Prospectus, Item 4, Instruction (4), Item 10(b).
Form 81-101F3 Contents of Fund Facts Document, Item 2, Item 3, Item 4.2(a), Item 5 of Part I, and Item 1.3 of Part II.
National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 4.4 and 17.1.
Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, Item 3.1(1), (7), (7.1) and (8), Item 4.1(1) and (2), Item 4.2(1) and (2), Item 4.3(1) and (2) of Part B, Item 3.1 and Item 4 of Part C.

December 10, 2024

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

AND

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

AND

IN THE MATTER OF
ARROW CAPITAL MANAGEMENT INC.
(the Filer)

AND

WAVEFRONT ALL-WEATHER ALTERNATIVE FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund, of which the Filer is the investment fund manager, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) to grant the Fund relief from:

Seed Capital Relief

(1) section 3.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit the filing of a simplified prospectus for the Fund (the **Simplified Prospectus**), notwithstanding that the initial investment required in respect of the Fund (the **Seed Capital Requirements**) will not be provided (the **Seed Capital Relief**);

Aggregate Exposure Limit Relief

(2) the following provisions

(a) section 2.9.1 of NI 81-102, which limits an alternative mutual fund's aggregate exposure to cash borrowing, short selling and specified derivatives transactions to 300% of the Fund's net asset value as calculated under that section; and

(b) Section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) with respect to relief from Item 4 and Instruction (4) of Form 81-101F1 - *Contents of Simplified Prospectus* (**Form 81-101F1**) and Item 3 of Form 81-101F3 - *Contents of Fund Facts Documents* (**Form 81-101F3**, which require an alternative mutual fund to disclose its maximum aggregate exposure to leverage as calculated pursuant to Section 2.9.1 of NI 81-102

(collectively, the **Aggregate Exposure Limit Relief**);

Performance Data Relief

(3) the following provisions:

(a) subsections 15.3(2), 15.6(1)(a)(i), 15.6(1)(b), 15.6(1)(d)(i), 15.8(2)(a), 15.8(3)(a) and 15.9(2) of NI 81-102 to permit the Fund to use the performance data of WaveFront LP in the Fund's sales communications and reports to securityholders (**Sales Communications**);

(b) section 15.1.1 of NI 81-102 and Items 2 and 4 of Appendix F *Investment Risk Classification Methodology* to NI 81-102 (the **Risk Classification Methodology**) to permit the Fund to use Wavefront LP's performance data to calculate the Fund's risk rating;

(c) section 2.1 of NI 81-101 for the purposes of relief from the following items in Form 81-101F1 and Form 81-101F3:

(i) Item 10 of Part B of Form 81-101F1 and Item 4 of Part I of Form 81-101F3 to permit the Fund to use WaveFront LP's performance data to calculate and disclose the fund's investment risk rating in the Simplified Prospectus and the Funds' fund facts documents respectively;

(ii) Item 2 of Part I of Form 81-101F3 to permit the Fund to use Wavefront LP's start date and management expense ratio (**MER**) information in the "Management expense ratio (MER)" and "Date series started" box of the Quick Facts table in the fund facts documents of each series of the Fund (the **Fund Facts**);

(iii) Item 3 of Part I of Form 81-101F3 to permit the Fund to show the Wavefront LP's investment portfolio information in the "Top 10 investments" and "Investment mix" tables in the Funds' initial Fund Facts;

(iv) Item 5 of Part I of Form 81-101F3 to permit the Fund to use the performance data of WaveFront LP in the "Average return", "Year-by-year returns" and "Best and worst 3-month returns" sections in its Fund Facts; and

(v) Item 1.3 of Part II of Form 81-101F3 to permit the Fund to use the MER, trading expense ratio (the **TER**) and fund expenses of WaveFront LP in the "fund expenses" section of its initial Fund Facts;

(d) section 4.4 of National Instrument 81-106 - *Investment Fund Continuous Disclosures* (**NI- 81-106**) with respect to relief the following items in Form 81-106F1 - *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**), to permit the Fund to include in the Fund's annual and interim management reports on fund performance (**MRFP**s) the performance data and information derived from the financial statements and other financial information (collectively, the **Financial Data**) of WaveFront LP as follows:

(i) items 3.1(1), 3.1(7), 3.1(7.1) and 3.1(8) of Part B of Form 81-106F1 to permit the Fund to use the financial highlights of WaveFront LP in its MRFPs

(ii) items 4.1(1), 4.1(2), 4.2(1), 4.2(2), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 to permit the Fund to use the past performance data of WaveFront LP in its MRFPs; and

(iii) items 3(1) and 4 of Part C of Form 81-106F1 to permit the Fund to use the financial highlights and past performance data of WaveFront LP in its MRFPs

(collectively, the **Performance Data Relief**).

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

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

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

Interpretation

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

"Alternative Fund" means an investment fund that is an "alternative mutual fund" under NI 81-102;

"Sub-Advisor" means WaveFront Global Asset Management Corp.

"WaveFront GP" means WaveFront Fund Management Inc.

"WaveFront LP" means WaveFront All-Weather Fund, LP.

Representations

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

The Filer And the Sub-Advisor

1. The Filer is a corporation existing under the laws of Ontario having its registered head office in Toronto, Ontario.

2. The Filer is registered in the following categories in the Canadian Jurisdictions as indicated below:

(a) Ontario: Portfolio Manager (**PM**), Investment Fund Manager (**IFM**); Exempt Market Dealer (**EMD**) and Commodity Trading Manager (**CTM**) under the *Commodity Futures Act* (Ontario);

(b) Alberta: EMD;

(c) British Columbia: EMD;

(d) Quebec: EMD and IFM; and

(e) Newfoundland and Labrador: IFM.

3. The Filer will be the Fund's IFM and PM.

4. The Filer intends to engage the services of the Sub-Advisor as sub-advisor to the Fund.

5. The Sub-Advisor is a corporation existing under the laws of Ontario having its registered head office in Toronto, Ontario.

6. The Sub-Advisor is registered in the following categories in the Canadian Jurisdictions as indicated below:

(a) Ontario: PM, IFM, EMD and CTM;

(b) Alberta: EMD;

(c) British Columbia: EMD; and

(d) Quebec: EMD.

7. The Filer and the Sub-Advisor are not in default of securities legislation in any of the Canadian Jurisdictions.

WaveFront LP and the Fund

8. WaveFront LP is an Ontario limited partnership formed on November 1, 2019. WaveFront GP is the general partner of WaveFront LP. The Sub-Advisor is the IFM and PM of WaveFront LP.

9. WaveFront LP is not a reporting issuer. Since its inception, units of WaveFront LP have only been distributed to investors on a prospectus-exempt basis in accordance with National Instrument 45-106 - *Prospectus Exemptions* (**NI 45-106**) in the Canadian Jurisdictions.

10. The investment objective of WaveFront LP is to provide consistent and superior absolute and risk-adjusted returns in most environments, including equity bear markets, by being invested in a global, tactically balanced portfolio across multiple asset classes.

11. The Fund will be organized as a mutual fund trust established under the laws of the Province of Ontario.

12. The Fund intends distribute its securities in each of the Canadian Jurisdictions pursuant to the Simplified Prospectus and Fund Facts (the **Disclosure Documents**) that will be prepared and filed in accordance with NI 81-101.

13. Accordingly, the Fund, will be a reporting issuer in the Canadian Jurisdictions such that the Fund will be an Alternative Fund.

14. The Filer intends to engage the Sub-Advisor to be the sub-advisor to the Fund.

The Reorganization

15. WaveFront GP has received approval from the limited partners of WaveFront LP to sell all assets of WaveFront LP to the Fund in return for the Fund issuing its Series FD units to WaveFront LP (the **Reorganization**).

16. WaveFront LP offers Class F units. All of the net assets of WaveFront LP are held by limited partners who are Class F unitholders. On the Reorganization, WaveFront LP will be wound up and the Series FD units of the Fund held by Wavefront LP will be distributed to the Class F unitholders of WaveFront LP. The Reorganization is expected to occur on or about January 2, 2025.

17. The Fund is being established for the purpose of succeeding to the operations of WaveFront LP. The Fund will be managed substantially similarly as WaveFront LP, the investment objective will be substantially similar to that of WaveFront LP and the day-to-day administration of the Fund will be substantially similar, other than to comply with the additional regulatory requirements associated with being a reporting issuer (none of which will impact the portfolio management of the Fund).

18. The Reorganization is so that the Fund can be a qualified investment for certain deferred income plans such as RRSPs. Investment funds structured as limited partnerships are considered ineligible investments for those types of plans so Wavefront LP would not simply be able to file the Simplified Prospectus and become a qualified investment for those plans.

19. WaveFront LP and the Fund are not in default of applicable securities legislation in any of the Canadian Jurisdictions.

Seed Capital Relief

20. Since the Fund is being newly established, the Seed Capital Requirements would require the Filer to subscribe for $150,000 of the Fund's units and would prohibit any redemption of the Fund's units until it has received at least $500,000 from investors unaffiliated or unconnected to the Filer.

21. The Fund will be receiving all of Wavefront LPs assets in connection with the Reorganization. Those assets when received, which are approximately $15 million, will be invested in accordance with the Fand's investment objectives and strategies are far in excess of the $150,000 Seed Capital Requirements.

22. On the date of the Reorganization, the former limited partners of Wavefront LP and WaveFront GP will become unitholders of the Fund and will hold units of the Fund in excess of $500,000.

23. The Filer therefore is not proposing to subscribe for $150,000 of the Funds' units as it will be unnecessary.

Aggregate Exposure Limit Relief

24. To meet the investment objective of the Fund, the Sub-Advisor intends to manage its assets in the same manner as WaveFront LP has since inception. WaveFront LP has invested approximately 35% of its net assets into WaveFront Global Diversified Investment Fund (**WGDIF**). WGDIF is an alternative mutual fund governed by NI 81-102 and was

formerly a “commodity pool” as such term was defined by National Instrument 81-104 *Commodity Pools* (**Former 81-04**). The Filer is IFM for WGDIF and the Sub-Advisor is also sub-advisor to WGDIF. In a decision dated June 21, 2019, WGDIF was granted relief to have aggregate exposure to specified derivatives transactions subject to the investment restrictions contained in NI 81-102, except as otherwise permitted by Former 81-104. The Fund wishes to invest in WGDIF in the same manner as WaveFront LP, but in order to do so requires relief from Section 2.9.1 of NI-81-102.

25. The Sub-Advisor’s diversified program for WGDIF (the **Program**) is a rules-based, unconstrained (e.g., the Program is not constrained from participating in opportunities, long and short, in a variety of asset classes), systematic multi-strategy investment program that is designed to deliver superior, uncorrelated returns over time. WaveFront LP has, and the Fund will have, exposure to the Program either directly or indirectly through its investment in WGDIF.

26. The Sub-Advisor uses a combination of long and short positions in specified derivatives in the Program that at times results in WaveFront LP’s, and will result in the Fund’s, aggregate exposure to cash borrowing, short selling and specified derivatives transactions regularly exceeding 300% of its net asset value (NAV) and therefore will not be in accordance with the requirements of section 2.9.1 of NI 81-102.

27. The Filer is instead proposing to use a value-at-risk (**VaR**) approach to reflect the Fund’s leverage risk exposure.

28. The correlations of most alternative investment strategies to equity benchmarks such as the S&P 500 are high. In contrast, most managed futures strategies that are used by commodity trading advisors (each a **CTA**), like the Sub-Advisor, are historically uncorrelated and risk reducing.

29. Furthermore, notional exposures of futures contracts move with price and do not represent risk. Risk, as measured by futures exchanges, is a function of price and volatility, both of which are captured in VaR (as defined in Appendix A), but not notional exposure. As noted below, VaR is a better measure of risk for WaveFront LP and the Fund.

30. For example, the total aggregate exposure of WaveFront LP as calculated pursuant to section 2.9.1 of NI 81-102 has typically been between 200% and 450% and has averaged 270% since inception. Notwithstanding this range, risk is still managed by the Sub-Advisor at a consistent level, and there is no relationship between aggregate notional exposure and the volatility of returns that the Sub-Advisor has delivered since the inception of WaveFront LP. The Sub-Advisor targets and manages to a 10% to 12% annualized standard deviation of monthly returns in WaveFront LP.

31. The Sub-Advisor systematically manages risk across multiple constraints at the sector and the market level in the Program. The Program is characterized by a high level of diversification by virtue of the large number of futures markets it trades representing different currencies, commodities, fixed income and equity markets. This diversification is key to achieving the low correlations with traditional asset classes.

32. The current regulatory framework in Section 2.9.1 of NI 81-102 does not appropriately or adequately address the uniqueness of the investment strategies that CTAs like the Sub-Advisor employ.

33. The key differences between what the Sub-Advisor does versus other typical portfolio managers is that it:

    (a) trade futures on margin, which is different than stocks and bonds (e.g. stock and bonds exchange margin requirements are determined by the value of the securities, whereas for futures, exchange margin requirements are determined by notional exposure and volatility (the primary inputs to VaR models);

    (b) are quantitative and systematic versus being fundamental and discretionary; and

    (c) utilize systematic risk management, capital allocation and drawdown management techniques.

34. The European Union (the **EU**) approved a new regulation of mutual funds in 2010 in the fourth European Directive covering Undertakings for Collective Investment in Transferable Securities (UCITS IV), which introduced a VaR based approach to regulatory risk management for investment funds that extensively use derivatives.

35. This approach allows for two methods of VaR limits, "relative" and "absolute", as defined in Appendix A, and which in general terms can be summarized as follows:

    (a) Relative:

        This approach uses a ratio of up to 200% between the VaR of the portfolio and the VaR of a reference portfolio.

    (b) Absolute:

        This approach is generally used when there is no reference portfolio or benchmark and allows the one-month VaR to be up to 20% of the net asset value of the portfolio.

36. UCITS IV also includes rules for the computation of VaR and requires regular stress- and back-testing to complement the VaR estimation.

37. On October 28, 2020, the U.S. Securities and Exchange Commission adopted new Rule 18f-4 under the *Investment Company Act of 1940* (17 CFR § 270.18f-4), (the **SEC Rule**), which modernized the regulatory framework for derivatives use by registered funds. The SEC Rule is generally the same as the UCITS IV rule as it adopted a 200% limit for funds using a relative VaR approach, and a 20% VaR limit for funds using an absolute VaR approach and uses substantially the same calculation methodology.

38. When dealing with a fund that is managed using a multi-asset approach like the Filer and the Sub-Advisor do, a VaR-based approach is a better means of managing risk because, unlike notional amounts which do not measure risk or volatility, VaR enables risk to be measured in a reasonably comparable and consistent manner.

39. The risk-based approach in the SEC Rule, which relies on VaR, stress testing, and overall risk management, addresses concerns about fund leverage for investment portfolios managed by CTAs like Sub-Advisor, while allowing such portfolios to continue to use derivatives for a variety of purposes.

40. Of the two VaR approaches ("absolute" and "relative") used in the UCITS IV rules and the SEC Rule, the Sub-Advisor has determined that the absolute VaR approach is the approach that is most suitable for the WaveFront LP and the Fund as there typically is no appropriate reference portfolio that can be used in respect of the WaveFront LP and the Fund for the purpose of complying with the relative VaR approach under the UCITS IV rules and the SEC Rule.

41. The Sub-Advisor has employed VaR-based risk management for its funds, including WaveFront LP, for several years that are consistent with both the SEC Rule and the UCITS IV rules. Since the Sub-Advisor's inception, it has been using volatility-based risk measures as its primary risk metric.

42. The Sub-Advisor has maintained a custom VaR model to monitor VaR on a daily basis since 2011 for the Program and has the necessary policies and procedures in place such that the Fund will be managed in accordance with and adhere to the 20% absolute VaR limit and operate in accordance with the conditions set out in Appendix A, which are based on the SEC Rule.

43. WaveFront LP has consistently operated below a 20% absolute VaR limit.

44. The Sub-Advisor will use a historical simulation VaR model with respect to the Fund, consistent with the model used for Wavefront LP. In addition, the Sub-Advisor will upload the Fund's investment portfolio each business day to a risk analytics system that is appropriate for the Fund's applicable VaR methodology, and which is provided by one of the following vendors: Bloomberg, S&P Global or MSCI. The risk analytics system will provide the data to enable daily confirmation that the Fund is in compliance with the applicable VaR limits as set out in Appendix A on each business day.

45. The Sub-Advisor has appointed a "derivatives risk manager" (a **DRM**) and has developed a "Derivatives Risk Management Program" (the **DRMP**) that is consistent with and adheres to the conditions set out in Appendix A, which are based on the SEC Rule. A copy of the DRMP has been provided to the Principal Regulator.

46. The Sub-Advisor's DRMP incorporates the well documented policies and procedures for risk monitoring, risk management, and risk reporting of a fund's VaR methodology to regulators as developed by securities regulators in the U.S. and the EU.

47. Without the Aggregate Exposure Limit Relief, the Fund will not be able to invest in the same manner as WaveFront LP consistent with its investment objectives and strategies.

48. The Aggregate Exposure Limit Relief will provide the Fund with an enhanced ability to pursue and achieve its investment objective through the unique investment strategies employed by the Sub-Advisor, while ensuring the Fund is not exposed to an inappropriate level of risk.

Past Performance Relief

49. The Fund will be a new fund. While the Fund will have the same assets and liabilities as the WaveFront LP following the Reorganization, as a new investment fund, it will not have its own performance data or Financial Data.

50. The Fund is intending to maintain the same investment objectives and strategies as Wavefront LP and the Fund's portfolio will be managed in substantially the same way as Wavefront LPs.

51. The Fund's fees and expenses will be substantially similar to Wavefront LP's. The only differences in the fee structure between the Fund and WaveFront LP will be as follows:

(a) Class F units of WaveFront LP are charged a total management fee of approximately 1.175% per annum. The management fee of the Series FD units of the Fund, which will be issued to Class F unitholders of WaveFront LP, will be 0.95%.

(b) Class F units of WaveFront LP are charged a total performance fee of approximately 13.5% of any gains. The performance fee of the Series FD Units of the Fund, which will be issued to Class F unitholders of WaveFront LP, will be 15% with a hurdle rate of 3%.

(c) The administrative expenses of the Fund will be higher due to the Fund being subject to the additional regulatory requirements applicable to a reporting issuer, but the Manager does not expect the amount to be material.

(d) As per the above, the all-in management fee rate associated with the Class FD units of the Fund will be lower than for WaveFront LP, whereas the all-in performance fee rate for the Class FD units of the Fund will be slightly higher, but with the introduction of a hurdle rate. Based on its calculations, under most market conditions, the Filer believes that the overall change to the fees will be immaterial.

52. Since inception, WaveFront LP has prepared annual and interim financial statements in accordance with NI 81-106.

53. Without the Performance Data Relief, the Fund's Sales Communications, Fund Facts and MRFPs will not be permitted to include Wavefront LP's performance data or Financial Data **[**since it was not a reporting issuer.

54. Without the Performance Data Relief, the Fund's Sales Communications, Fund Facts and MRFPs will not be permitted to include any performance data until the Fund has distributed securities under a simplified prospectus for 12 consecutive months.

55. Without the Performance Data Relief, the Fund will not be able to use Wavefront LP's performance data to calculate the Fund's risk rating under the Risk Classification Methodology.

56. As a reporting issuer, the Fund will be required under NI 81-106 to prepare, file and send MRFPs and under NI 81-101 to prepare and file Fund Facts for each series of units offered.

57. The performance data and Financial Data of WaveFront LP for the time period prior to the Reorganization is significant and meaningful information for existing and prospective investors in making an informed decision on whether to purchase units of the Fund. Without the Performance Data Relief, investors in the Fund will have no information about WaveFront LP's past performance or Financial Data when making an investment decision.

58. The performance data of WaveFront LP for the time period prior to the Reorganization is significant and meaningful in calculating the risk rating for the Fund. Without the Performance Data Relief, the risk rating would have to be calculated based solely on an index rather than using the actual performance data of WaveFront LP.

59. The Filer proposes to:

(a) disclose the series start date for Class F units of WaveFront LP as the series start date of the Series FD units of the Fund:

(a) under the heading "Name, Formation and History of the Funds" of Part B in the Simplified Prospectus;

(b) under the subheading "Date series started" under the heading "Quick Facts" in the Fund Facts;

(b) use the performance data of WaveFront LP to calculate the risk rating of the Fund in:

(a) the Simplified Prospectus; and

(b) the Fund Facts;

(c) use the performance data of the Class F units of WaveFront LP in:

(a) the Fund Communications of the Fund: and

(b) the "Year-by-year returns", "Best and worst 3-month returns" and "Average return" subsections of the Fund Facts of the Series FD units of the Fund;

(d) use the MER, TER and fund expenses of the Class F units of WaveFront LP in the "Quick Facts" and "Fund expenses" section in the initial Fund Facts for the Series FD units of the Fund;

(e) show the investments of WaveFront LP in the "Top 10 investments" and "Investment mix" tables in the initial Fund Facts for the Fund;

(f) prepare annual MRFPs for the Fund commencing with the year ending December 31, 2025, and interim MRFPs for the Fund commencing with the period ending June 30, 2025, using WaveFront LP's past performance; and

(g) prepare comparative annual financial statements for the Fund commencing with the year ending December 31, 2025, and interim financial statements for the Fund commencing with the period ending June 30, 2025, using WaveFront LP's financial highlights and past performance for that portion of the financial reporting period preceding the Reorganization.

60. The Filer is seeking to make the Reorganization as seamless as possible for investors of WaveFront LP who will become unitholders of the Fund. Accordingly, the Filer submits that treating the Fund as fungible with WaveFront LP for disclosure purposes would be beneficial to investors.

61. The Filer submits that it could be potentially misleading to be required to omit the relevant information pertaining to Wavefront LP in the Fund's Disclosure Documents and MRFP.

Decision

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

1. The Seed Capital Relief is granted.

2. The Aggregate Exposure Limit Relief is granted, provided that

(a) the Sub-Advisor has appointed a DRM pursuant to the terms of its sub-advisory agreement with the Sub-Advisor (the **Sub-Advisory Agreement**);

(b) the Filer and the Fund will comply with the absolute VaR test, as defined in Appendix A, and complies with all of the additional leverage conditions for funds set out in Appendix A;

(c) the Filer discloses in the Disclosure Documents the maximum VaR that the Fund is permitted to incur, and the Filer discloses in the annual and interim MRFP of the Fund the maximum amount of VaR incurred by each Fund over the applicable period;

(d) the Filer files a copy of the Sub-Advisor's DRMP with the Principal Regulator, which the Sub-Advisor has agreed to provide to the Filer pursuant to the terms of the Sub-Advisory Agreement;

(e) the Filer notifies the Principal Regulator promptly of any changes to the Sub-Advisor's DRM or DRMP, where the Sub-Advisor has agreed to notify the Filer of such changes pursuant to the terms of the Sub-Advisory Agreement;

(f) pursuant to the terms of the Sub-Advisory Agreement, no later than 30 days after the end of each month, the Sub-Advisor prepares for the Filer a monthly portfolio investment report containing the elements set out in its DRMP, and, no later than 60 days after the end of each fiscal quarter, the Filer files with the Principal Regulator the monthly portfolio investment reports for that quarter;

(g) the Filer and Sub-Advisor do not change the VaR model that is being used with respect to the Fund;

(h) pursuant to the terms of the Sub-Advisory Agreement, the Sub-Advisor uploads the investment portfolio of the Fund each business day to a risk analytics system provided by one of the following vendors, Bloomberg, S&P Global or MSCI, in order to have applicable VaR reports confirm that the Fund is in compliance with the applicable VaR test as set out in Appendix A on each business day;

(i) the Filer provides to the Principal Regulator on a quarterly basis a copy of each daily VaR Report for the last quarter for the Fund;

(j) the Filer notifies the Principal Regulator within one business day of being advised by the Sub-Advisor that the Fund is offside the 20% absolute VaR test for more than five consecutive business days, as required by the Sub-Advisory Agreement;

(k) the Filer promptly (e.g. within 24 hours) provides the Principal Regulator with any other information that the OSC may request regarding the inter-month calculations and risk metrics the Sub-Advisor is using, which the Sub-Advisor has agreed to provide to the Filer pursuant to the terms of the Sub-Advisory Agreement; and

(l) the Filer appropriately documents its risk methodology for the Fund in accordance with the requirements of the Risk Classification Methodology.

3. The Performance Data Relief is granted, provided that:

(a) the Sales Communications contain the performance data of Wave Front LP prepared in accordance with Part 15 of NI 81-102

(b) the Simplified Prospectus:

i) states that the start date for Series FD units of the Fund is the start date of the Class F units of WaveFront LP;

ii) discloses the Reorganization where the start date for Series FD units of the Fund is stated; and

iii) discloses that WaveFront LP was not a reporting issuer;

(c) the Fund's Fund Facts documents for Series FD units:

i) states that the "Date series started" date is the date that the Class F units started of WaveFront LP;

ii) includes the performance data of the WaveFront LP prepared in accordance with Part 15 of NI 81-102;

iii) discloses the Reorganization where the "Date series started" date is stated; and

iv) discloses that WaveFront LP was not a reporting issuer;

(d) the Fund's MRFPs:

i) for Series FD units of the Fund include the Financial Data of WaveFront LP pertaining to the Class F units of WaveFront LP;

ii) discloses the Reorganization for the relevant time periods; and

iii) discloses that WaveFront LP was not a reporting issuer; and

(e) the Filer posts the financial statement of WaveFront LP for the periods ended December 31, 2023, June 30, 2024, and December 31, 2024, on the Fund's website and makes those financial statement available to investors upon request.

4. This decision regarding the Aggregate Exposure Limit Relief expires on December 10, 2028.

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

Application File #: 2024/0029
SEDAR+ File #: 6073661

APPENDIX A

ADDITIONAL LEVERAGE CONDITIONS

In these conditions,

"absolute VaR test" means that the VaR of a fund's portfolio does not exceed 20% of the value of the fund's net assets;

"board", with respect to a fund, means the fund manager's board of directors;

"derivatives risk manager" means an officer or officers of the fund's investment adviser responsible for administering the program and policies and procedures required by condition 1 below, provided that the derivatives risk manager:

(1) may not be a portfolio manager of the fund, or if multiple officers serve as derivatives risk manager, a majority of the derivatives risk managers must not be portfolio managers of the fund; and

(2) must have relevant experience regarding the management of derivatives risk;

"derivatives risks" means the risks associated with a fund's derivatives transactions or its use of derivatives transactions, including leverage, market, counterparty, liquidity, operational, and legal risks and any other risks the derivatives risk manager deems material;

"derivatives transaction" means

(1) any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument, under which a fund is or may be required to make any payment or delivery of cash or other assets during the life of the instrument or at maturity or early termination, whether as margin or settlement payment or otherwise; and

(2) any short sale borrowing.

"independent director" means a director who would be independent within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*;

"value-at-risk" or "VaR" means an estimate of potential losses on an instrument or portfolio, expressed as a percentage of the value of the portfolio's assets (or net assets when computing a fund's VaR), over a specified time horizon and at a given confidence level, provided that any VaR model used by a fund for purposes of determining the fund's compliance with the absolute VaR test must:

(1) take into account and incorporate all significant, identifiable market risk factors associated with a fund's investments, including, as applicable:

(i) equity price risk, interest rate risk, credit spread risk, foreign currency risk and commodity price risk;

(ii) material risks arising from the nonlinear price characteristics of a fund's investments, including options and positions with embedded optionality; and

(iii) the sensitivity of the market value of the fund's investments to changes in volatility;

(2) use a 99% confidence level and a time horizon of 20 trading days; and

(3) be based on at least three years of historical market data.

Conditions

1. ***Derivatives risk management program.*** The fund must adopt and implement a written derivatives risk management program (**program**), which must include policies and procedures that are reasonably designed to manage the fund's derivatives risks and to reasonably segregate the functions associated with the program from the portfolio management of the fund. The program must include the following elements:

(i) ***Risk identification and assessment.*** The program must provide for the identification and assessment of the fund's derivatives risks. This assessment must take into account the fund's derivatives transactions and other investments.

(ii) ***Risk guidelines.*** The program must provide for the establishment, maintenance, and enforcement of investment, risk management, or related guidelines that provide for quantitative or otherwise measurable

criteria, metrics, or thresholds of the fund's derivatives risks. These guidelines must specify levels of the given criterion, metric, or threshold that the fund does not normally expect to exceed, and measures to be taken if they are exceeded.

(iii) ***Stress testing.*** The program must provide for stress testing to evaluate potential losses to the fund's portfolio in response to extreme but plausible market changes or changes in market risk factors that would have a significant adverse effect on the fund's portfolio, taking into account correlations of market risk factors and resulting payments to derivatives counterparties. The frequency with which the stress testing under this paragraph is conducted must take into account the fund's strategy and investments and current market conditions, provided that these stress tests must be conducted no less frequently than weekly.

(iv) **Backtesting.** The program must provide for backtesting to be conducted no less frequently than weekly, of the results of the VaR calculation model used by the fund in connection with the relative VaR test or the absolute VaR test by comparing the fund's gain or loss that occurred on each business day during the backtesting period with the corresponding VaR calculation for that day, estimated over a one-trading day time horizon, and identifying as an exception any instance in which the fund experiences a loss exceeding the corresponding VaR calculation's estimated loss.

(v) ***Internal reporting and escalation*** –

A. ***Internal reporting.*** The program must identify the circumstances under which persons responsible for portfolio management will be informed regarding the operation of the program, including exceedances of the guidelines specified in paragraph 1(ii) of these conditions and the results of the stress tests specified in paragraph 1(iii) of these conditions.

B. ***Escalation of material risks.*** The derivatives risk manager must inform in a timely manner persons responsible for portfolio management of the fund, and also directly inform the board as appropriate, of material risks arising from the fund's derivatives transactions, including risks identified by the fund's exceedance of a criterion, metric, or threshold provided for in the fund's risk guidelines established under paragraph 1(ii) of these conditions or by the stress testing described in paragraph 1(iii) of these conditions.

(vi) ***Periodic review of the program.*** The derivatives risk manager must review the program at least annually to evaluate the program's effectiveness and to reflect changes in risk over time. The periodic review must include a review of the VaR calculation model used by the fund under condition 2 below (including the backtesting required by paragraph 1(iv) of these conditions) and any designated reference portfolio to evaluate whether it remains appropriate.

2. ***Limit on fund leverage risk***.

(i) The fund must comply with the absolute VaR test.

(ii) The fund must determine its compliance with the absolute VaR test at least once each business day. If the fund determines that it is not in compliance with the absolute VaR test, the fund must come back into compliance promptly after such determination, in a manner that is in the best interests of the fund and its securityholders.

(iii) If the fund is not in compliance with the absolute VaR test within five business days,

A The derivatives risk manager must provide a written report to the board and explain how and by when (i.e., number of business days) the derivatives risk manager reasonably expects that the fund will come back into compliance;

B. The derivatives risk manager must analyze the circumstances that caused the fund to be out of compliance for more than five business days and update any program elements as appropriate to address those circumstances; and

C. The derivatives risk manager must provide a written report within thirty calendar days of the exceedance to the board explaining how the fund came back into compliance and the results of the analysis and updates required under paragraph 2(iii)(B) of these conditions. If the fund remains out of compliance with the absolute VaR test at that time, the derivatives risk manager's written report must update the report previously provided under paragraph 2(iii)(A). of these conditions and the derivatives risk manager must update the board on the fund's progress in coming back into compliance at regularly scheduled intervals at a frequency determined by the board.

3. **Board oversight and reporting**

(i) ***Approval of the derivatives risk manager.*** The board, including a majority of independent directors of the fund manager, if any, must approve the designation of the derivatives risk manager.

(ii) ***Reporting on program implementation and effectiveness.*** On or before the implementation of the program, and at least annually thereafter, the derivatives risk manager must provide to the board a written report providing a representation that the program is reasonably designed to manage the fund's derivatives risks and to incorporate the elements provided in paragraphs 1(i) through (vi) of these conditions. The representation may be based on the derivatives risk manager's reasonable belief after due inquiry. The written report must include the basis for the representation along with such information as may be reasonably necessary to evaluate the adequacy of the fund's program and, for reports following the program's initial implementation, the effectiveness of its implementation.

(iii) ***Regular board reporting.*** The derivatives risk manager must provide to the board, annually or at such other frequency determined by the board, a written report regarding the derivatives risk manager's analysis of exceedances described in paragraph 1(ii) of these conditions, the results of the stress testing conducted under paragraph 1(iii) of these conditions, and the results of the backtesting conducted under paragraph 1(iv) of these conditions since the last report to the board. Each report under this paragraph must include such information as may be reasonably necessary for the board to evaluate the fund's response to exceedances and the results of the fund's stress testing.

4. [Not applicable]

5. [Not applicable]

6. ***Recordkeeping*** –

(i) ***Records to be maintained.*** A fund must maintain a written record documenting the following, as applicable:

A. The fund's written policies and procedures required by paragraph 1 of these conditions, along with

i. The results of the fund's stress tests under paragraph 1(iii) of these conditions;

ii. The results of the backtesting conducted under paragraph 1(iv) of these conditions;

iii. Records documenting any internal reporting or escalation of material risks under paragraph 1(v)(B). of these conditions; and

iv. Records documenting the reviews conducted under paragraph 1(vi) of these conditions.

B. Copies of any materials provided to the board in connection with its approval of the designation of the derivatives risk manager, any written reports provided to the board relating to the program, and any written reports provided to the board under paragraphs 2(iii)(A) and C. of these conditions.

C. Any determination and/or action the fund made under paragraphs 2(i) and (ii) of these conditions, including a fund's determination of: The VaR of its portfolio and any updates to any VaR calculation models used by the fund and the basis for any material changes thereto.

(ii) ***Retention periods*****.**

A. A fund must maintain a copy of the written policies and procedures that the fund adopted under condition 1. that are in effect, or at any time within the past seven years were in effect, in an easily accessible place.

B. A fund must maintain all records and materials that paragraphs 6(i)(A)(1) through 4 and 6(i)(B) through (D). of these conditions describe for a period of not less than seven years (the first two years in an easily accessible place) following each determination, action, or review that these paragraphs describe.

B.3.2 Fiddlehead Resources Corp.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the requirements of Paragraph 2.2(d)(ii) of National Instrument 44-101 Short Form Prospectus Distribution requiring an issuer to have current Annual Information Form in order to be eligible to file a short form prospectus.

Applicable Legislative Provisions

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

Citation: *Re Fiddlehead Resources Corp.*, 2024 ABASC 200

December 16, 2024

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

AND

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

AND

IN THE MATTER OF
FIDDLEHEAD RESOURCES CORP.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from paragraph 2.2(d)(ii) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**), which sets out the qualification criteria for short form prospectus eligibility in respect of any prospectus filed by the Filer until the earlier of: (a) April 30, 2025; and (b) the date on which the Filer files its annual information form (**AIF**) for the year ended December 31, 2024 pursuant to National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) (collectively, the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of British Columbia, Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (together with the Jurisdictions, the **Provinces and Territories**); and

(c) this decision is the decision 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*, MI 11-102, National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**), NI 44-101, National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) and NI 51-102 have the same meanings if used in this decision, unless otherwise defined.

Representations

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

The Filer

1. The Filer is a corporation incorporated on June 24, 2011 under the *Business Corporations Act* (British Columbia) which was continued into Alberta under the *Business Corporations Act* (Alberta) on September 12, 2024.

2. The Filer's registered office, all of its material assets, and the office out of which it manages its operations are located in Alberta.

3. On May 28, 2024, the Filer entered into an asset sale agreement (the **Acquisition Agreement**) pursuant to which the Filer acquired (the **Acquisition**) certain oil and gas assets (the **Acquired Assets**) in Alberta from a senior Canadian producer (the **Vendor**).

4. On August 29, 2024, the Filer completed the Acquisition following which the Filer's principal business became the advancement of the Acquired Assets and the production of oil and gas within the Strachan area of southern Alberta.

5. The Filer is a reporting issuer in the Provinces of Alberta and British Columbia and is not in default of securities legislation in any of the provinces or territories.

6. The Filer's common shares (the **Filer's Shares**) currently trade on the facilities of the TSX Venture Exchange (**TSXV**) under the symbol "FHR".

7. The Filer's year end is December 31 and, accordingly, the Filer has not had its first year end since acquiring the Acquired Assets, which make up essentially all of its business.

Filer's Continuous Disclosure

8. In connection with the listing of the Filer's Shares on the TSXV, pursuant to Policy 2.3 *Listing Procedures* of the TSXV Corporate Finance Manual, the Filer filed a listing application with the TSXV dated August 29, 2024, as amended (the **Listing Application**).

9. The Listing Application was filed on SEDAR+ on August 29, 2024, with an amended version filed on August 30, 2024, and contains full, true and plain disclosure of all material facts related to the Filer and the Acquired Assets.

10. In accordance with Form 2B of the TSXV, the Listing Application contains the Filer's financial statements required pursuant to NI 41-101, as set forth in Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**).

11. Pursuant to section 2.2 of NI 44-102, an issuer is qualified to file a preliminary base shelf prospectus if, at the time of filing, the issuer is qualified under section 2.2 of NI 44-101 to file a prospectus in the form of a short form prospectus.

12. The Filer satisfies all of the qualification criteria set forth in section 2.2 of NI 44-101, but for the requirement to have a "current AIF", as such term is defined in NI 44-101.

13. The Filer is not required to file annual financial statements that include the Acquired Assets, which represent essentially all of the Filer's business, or an AIF pursuant to NI 51-102 until April 30, 2025. As a result, the Filer does not yet have a current AIF. Consequently, the Filer does not satisfy paragraph 2.2(d)(ii) of NI 44-101 and is therefore not eligible to file a short form prospectus.

14. Pursuant to paragraph 32.1(1)(b) and section 32.4 of Form 41-101F1, given that the Acquired Assets form the primary business of the Filer, the required financial statement disclosure for the Listing Application was the financial statements for the Acquired Assets for the two years before the date of the Listing Application.

15. The Filer relied on the exemption provided under subsection 32.9(1) of Form 41-101F1 to provide audited operating financial statements for the Acquired Assets in lieu of audited financial statements for the following reasons: (i) the Acquired Assets consist of interests in oil and gas properties in southern Alberta; (ii) the Filer acquired the Acquired Assets from the Vendor directly pursuant to the terms of the Acquisition Agreement and the acquisition of the Acquired Assets did not involve the acquisition by the Filer of the securities of another issuer; (iii) the Vendor was unable to provide financial statements in respect of the Acquired Assets at the time of the Acquisition because the financial statements for the Acquired Assets did not exist and it was impracticable to prepare carve-out financial statements because the Acquired Assets were integrated into other businesses of the Vendor and did not represent a separate reporting or operating segment of the Vendor; and (iv) the acquisition by the Filer of the Acquired Assets did not constitute a reverse takeover using the predecessor value method of accounting.

16. The Filer included the following financial statements in the Listing Application, which would be comparable to the disclosure required pursuant to section 2.2 of NI 44-101:

    (a) the financial statements for the years ended December 31, 2022 and 2023;

    (b) the interim condensed financial statements for the three months ended March 31, 2023 and 2024; and

    (c) the operating financial statements for the Acquired Assets

    (collectively, the **Alternative Financial Statement Disclosure**).

17. The disclosure in the Filer's Listing Application included substantively all of the disclosure that would have been included in a current AIF and included all of the financial statement disclosure required pursuant to NI 51-102 by way of the Alternative Financial Statement Disclosure.

18. The Filer is ineligible for the exemption for new reporting issuers under subsection 2.7(1) of NI 44-101 because it has not filed a long form prospectus.

19. The Filer is ineligible for the exemption for successor issuers under subsection 2.7(2) of NI 44-101 because of the transaction structure in the Acquisition Agreement.

20. The disclosure available to the public on the Filer's SEDAR+ profile consists of, in all material respects and based on the Exemption Sought, the disclosure that would have been included in a long form prospectus prepared in accordance with Form 41-101F1.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that the Filer includes, or incorporates by reference, in any applicable preliminary and final short form prospectus filed prior to the expiry of this decision:

    (a) the Listing Application,

    (b) the information required by section 10.2 of Form 51-102F2 *Annual Information Form*, and

    (c) the Business Acquisition Report filed on November 12, 2024 in respect of the Acquired Assets.

This decision expires on the earlier of:

    (a) the date on which the Filer files its annual financial statements and AIF for the financial year ended December 31, 2024; and

    (b) April 30, 2025.

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

OSC File #: 2024/0585

B.3.3 Hamilton Lane Advisors LLC

Headnote

Application for relief from the investment fund manager registration requirement and the dealer registration requirement in order to allow "senior-level" employees of a the opportunity to voluntarily participate in investment opportunities alongside other partners and employees of Hamilton Lane Advisors LLC globally – the investment funds advised by the filer are or will be established outside of Canada – the filer's head office or principal place of business is in the United States and the filer is appropriately registered in the United States – the filer distributes to no more than 20 "Ontario Eligible Participants" – the filer shall not receive any trade-based compensation – the participation in an investment opportunity by an "Ontario Eligible Participants" is voluntary – the filer is subject to the standard conditions applicable to a non-registered exempt international firm and non-resident investment fund managers.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 25(4) and 74.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 8.16 and 8.18.
Multilateral Instrument 32-102 Registration Exemptions for Non-Resident Investment Fund Managers, ss. 1, 3 and 4.
National Instrument 45-106 Prospectus Exemptions, ss. 1.1 and 2.3.

December 19, 2024

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

AND

IN THE MATTER OF
HAMILTON LANE ADVISORS LLC

DECISION

Background

The Ontario Securities Commission (the **Commission**) has received an application (the **Application**) from Hamilton Lane Advisors LLC (the **Filer**) for a ruling pursuant to section 74(1) of the *Securities Act* (Ontario) (the **Act**) (the **Ruling**) that the Filer be exempted from:

(a) the investment fund manager registration requirement in subsection 25(4) of the Act (the **Investment Fund Manager Relief**); and

(b) the dealer registration requirement in subsection 25(1) of the Act (the **Dealer Relief**);

in connection with the provision by the Filer to Eligible Participants (as defined below) resident in Ontario of the opportunity to invest in securities of HL Funds (as defined below) for which the Filer serves as the investment manager.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) have the same meaning if used in this decision, unless otherwise defined.

The following terms have the following meanings:

Eligible Participant means any senior level employee, executive officer, director or consultant of the Covered Affiliates that is an eligible participant for purposes of a Voluntary Program and, if applicable, their permitted assigns as defined under section 2.22 of 45-106.

HL Fund means any one or more proprietary private investment funds, including special purpose employee and other feeder vehicles, formed principally under the laws of jurisdictions outside of Canada and managed by the Filer;

HL Fund Securities means securities of HL Funds issued as part of the Voluntary Program;

HL Parties means the Filer and a group of affiliated entities that together comprise a global private markets investment manager;

MI 32-102 means Multilateral Instrument 32-102 *Registration Exemptions for Non-Resident Investment Fund Managers*;

NI 31-103 means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

NI 45-106 means National Instrument 45-106 *Prospectus Exemptions*;

Notice of Regulatory Action means Form 32-102F2 *Notice of regulatory Action* which is required to be filed under section 4(4) of MI 32-102;

Permitted Client has the same meaning ascribed to that term in section 1.1 of NI 31-103, as modified by section 1 [*definitions*] of MI 32-102;

Permitted Client IFM Exemption means the exemption from the investment fund manager registration requirement set out in section 4 [*permitted clients*] of MI 32-102;

US or **USA** means the United States of America; and

Voluntary Program means one or more voluntary employee incentive programs or initiatives sponsored by the Filer or its affiliates providing for the acquisition of HL Fund Securities by Eligible Participants.

Representations

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

1. The Ruling is sought in connection with the distribution by the Filer of HL Fund Securities pursuant to the Voluntary Program to a senior level employee, executive officer, director or, as the case may be, consultant of the Filer or its affiliates who (a) is an Eligible Participant, (b) in the case of a senior level employee or executive officer, has the title of Managing Director, Principal and Vice President or is a Senior Associate or Associate that is directly involved in the investment function, or a title of equivalent seniority, (c) has otherwise established to the satisfaction of the Filer that they have sufficient knowledge, sophistication and assets to make a Voluntary Contribution (as defined below), (d) is resident in Ontario, (e) qualifies as an "accredited investor" as defined under section 1.1 [*definitions*] of NI 45-106, and (d) does not qualify as a "permitted client" as defined in section 1.1 of NI 31-103, as modified by section 1 of MI 32-102.

Hamilton Lane Advisors LLC (the Filer)

2. The Filer is a limited liability company formed pursuant to the laws of Pennsylvania, USA, with a head office located at 110 Washington Street, Suite 1300, Conshohocken, Pennsylvania 19428, USA.

3. The Filer is an affiliate of Hamilton Lane (Nasdaq: HLNE) (**Hamilton Lane**), a private markets investment firm, globally providing solutions to institutional and private wealth investors around the world.

4. The Filer is (a) registered with the US Securities and Exchange Commission (the **SEC**) as an investment adviser under the US Investment Advisers Act of 1940, as amended; and (b) is generally exempt from registration with the US Commodity Trading Futures Commission (the **CFTC**) as a commodity pool operator and as a commodity trading advisor.

5. The Filer also serves as the portfolio manager and manager of the HL Funds.

6. The Filer is not registered under the securities legislation of any jurisdiction of Canada.

7. The Filer has determined that it can rely on the Permitted Client IFM Exemption in Ontario and Québec and on the international adviser exemption set out in section 8.26 of NI 31-103 in Ontario, Manitoba and Saskatchewan to offer the Voluntary Program to Ontario Eligible Participants.

8. The Filer is not in default of securities legislation, commodity futures legislation or derivatives legislation in Ontario or any other jurisdiction of Canada, other than in respect of the subject matter to which this Decision relates.

9. The Filer is in compliance in all material respects with the securities laws, commodity futures laws and derivatives laws of the United States.

Hamilton Lane (Canada) LLC (HL Canada)

10. HL Canada is a limited liability company formed pursuant to the laws of Delaware, USA, with a head office located at 110 Washington Street, Suite 1300, Conshohocken, Pennsylvania 19428, USA.

11. HL Canada is registered as an investment fund manager, portfolio manager and exempt market dealer in Ontario and Newfoundland and Labrador, as an investment fund manager and exempt market dealer in Québec, and as an exempt market dealer in the other seven Canadian provinces, the Northwest Territories and Yukon.

Hamilton Lane Securities, LLC (HL Securities)

12. HL Securities is a limited liability company formed pursuant to the laws of Delaware, USA, with a head office located at 110 Washington Street, Suite 1300, Conshohocken, Pennsylvania 19428, USA.

13. HL Securities is not registered under the securities legislation of any jurisdiction of Canada.

14. HL Securities relies on the international dealer exemption set out in section 8.18 of NI 31-103 in all ten provinces, the Northwest Territories and Yukon.

The Voluntary Program

15. Hamilton Lane (Canada) LLC and other HL Parties that may employ Eligible Participants from time to time (**Covered Affiliates**) are related entities of the Filer.

16. The HL Parties provide certain Eligible Participants the opportunity to make voluntary contributions (**Voluntary Contributions**) to acquire HL Fund Securities pursuant to one or more Voluntary Programs.

17. In Ontario, the Voluntary Program is made available to an Eligible Participant of the Covered Affiliates who:

    (i) meets the eligibility criteria under the Voluntary Program and such other criteria as the HL Parties may determine from time to time;

    (ii) in the case of a senior level employee or executive officer, has the title of Managing Director, Principal and Vice or is a Senior Associate or Associate that is directly involved in the investment function, or a title of equivalent seniority;

    (iii) has otherwise established to the satisfaction of the Filer that they have sufficient sophistication and assets to make a Voluntary Contribution; and

    (iv) qualifies as an "accredited investor" as such term is defined under section 1.1 [*definitions*] of NI 45-106 (each an **Ontario Eligible Participant**).

18. The Filer relies on the "accredited investor" prospectus exemption under section 2.3 of NI 45-106 (the **Accredited Investor Exemption**) in connection with a distribution to an Ontario Eligible Participant.

19. HL Fund Securities are generally available only by making a Voluntary Contribution whereby the Eligible Participant will become a securityholder of the relevant HL Fund in accordance with, and subject to, the terms of the Voluntary Program.

20. The determination as to which HL Fund an Eligible Participant will be offered the opportunity to make a Voluntary Contribution is driven by a combination of tax, securities, administrative and internal business considerations.

21. Voluntary Contributions will only be accepted at the discretion of the Filer and may not be available to all Eligible Participants. The minimum and/or maximum Voluntary Contribution that may be made by an Eligible Participant shall be determined in the sole discretion of the HL Parties and may vary among Eligible Participants.

22. In Ontario, the Voluntary Program will be offered solely to an Ontario Eligible Participant who has established to the satisfaction of the Filer that they have sufficient knowledge, sophistication and assets to make a Voluntary Contribution. Ontario Eligible Participants will not receive any advice from the Filer as to whether an investment in the HL Fund Securities is suitable and there may be no restriction on the amount of the subscription an Ontario Eligible Participant may decide to make.

23. The offering of HL Fund Securities is made to Eligible Participants globally, subject to the rules and regulations of the corresponding jurisdictions.

24. Participation in the Voluntary Program by Eligible Participants is voluntary and an Ontario Eligible Participant is not induced to participate in the Voluntary Program by expectation of employment, appointment or engagement or continued employment, appointment or engagement.

25. No trade-based fees or commission are charged to an Ontario Eligible Participant by any HL Party in connection with the Ontario Eligible Participant's acquisition of HL Fund Securities.

26. The Filer does not receive any direct incentive compensation for the issuance of HL Fund Securities to Eligible Participants. However, as an investor in the HL Funds, each Eligible Participant pays its *pro rata* share of expense reimbursements.

27. Before an Ontario Eligible Participant acquires HL Fund Securities, the Ontario Eligible Participant will be provided with a disclosure package (**HL Fund Documentation**) comprising (a) a Confidential Private Placement Memorandum, (b) the organizational documentation of the relevant HL Fund, and (c) a Subscription Agreement or a similar agreement, as applicable.

28. In addition, Eligible Participants may be able to attend information sessions that are generally held in respect of the Voluntary Program at which the terms of the Voluntary Program and certain aspects of the HL Funds are discussed.

Reasons for the Ruling

29. For purposes of section 2.24(1) [employee, executive officer, director and consultant] of NI 45-106, participation in the Voluntary Program by Eligible Participants is voluntary and Ontario Eligible Participants are not induced to make a Voluntary Contribution by expectation of employment, appointment or engagement or continued employment, appointment or engagement. Consequently, the issuance of HL Fund Securities by the relevant HL Funds pursuant to a Voluntary Contribution to Ontario Eligible Participants is exempt from the prospectus requirement.

30. Each HL Fund is managed by the Filer. The Filer is applying for the Ruling because (a) the Filer currently relies on the exemption from the investment fund manager registration requirement under the Permitted Client IFM Exemption, and (b) each Ontario Eligible Participant may not qualify as a Permitted Client, which is a condition of the Permitted Client IFM Exemption.

Why is the relief needed?

31. The Filer has also applied for Dealer Relief in connection with these distributions. There is no exemption from the dealer registration requirement available to the Filer. The "plan administration exemption" set out in section 8.16 of NI 31-103 is not available because, among other things, the securities being issued pursuant to the Voluntary Program are not being issued pursuant to a "plan of the issuer". Furthermore, because the Ontario Eligible Investors do not all qualify as "permitted clients" and the Filer is not registered as a dealer and does not engage in the business of a dealer in its home jurisdiction, the "international dealer" exemption set out in section 8.18 of NI 31-103 is also not available.

32. The Filer submits that there would be minimal regulatory benefit to requiring the Filer to register as an investment fund manager and/or a dealer, as applicable, for the limited purpose of the distribution described above.

Decision

In the opinion of the Commission, it is not prejudicial to the public interest to make this Order.

It is ordered by the Commission pursuant to section 74 of the Act that the Investment Fund Manager Relief is granted to the Filer, provided that:

1. All securities of the HL Funds distributed in Ontario are distributed under the employee exemption under section 2.24 of NI 45-106 to Ontario Eligible Participants who also qualify as "accredited investors" as such term is defined under section 1.1 of NI 45-106.

2. Securities of the HL Funds shall be distributed to no more than 20 Ontario Eligible Participants.

3. The Filer is registered as an "investment adviser" with the SEC and is generally exempt from registration as a commodity pool operator and as a commodity trading advisor with the CFTC.

4. The Filer does not have its head office or principal place of business in any jurisdiction of Canada.

5. The Filer is incorporated, formed or created under the laws of a foreign jurisdiction.

6. None of the HL Funds is a reporting issuer in any jurisdiction of Canada.

7. The Filer has submitted to the Commission a completed Form 32-102F1 *Submission to Jurisdiction and Appointment of Agent for Service for International Investment Fund Manager* and a completed Form 32-102F2 *Notice of Regulatory Action*.

8. Prior to an Ontario Eligible Participant acquiring any HL Fund Securities, the Filer has notified each Ontario Eligible Participant in writing of all of the following

The Filer is not registered in Ontario to act as an investment fund manager;

The foreign jurisdiction in which the head office or principal place of business of the Filer is located;

all or substantially all of the assets of the Filer may be situated outside of Canada;

there may be difficulty enforcing legal rights against the Filer because of the above; and

the name and address of the agent for service of process of the Filer in Ontario.

9. If the Filer has relied on the Investment Fund Manager Relief under this Order to act as an investment fund manager for HL Funds during the 12 month period preceding December 1 of a year, it must notify the Commission, by December 1 of that year, of the following: (a) the fact that it relied upon the Investment Fund Manager Relief; and (b) the total assets under management expressed in Canadian dollars, attributable to securities beneficially owned by residents of Ontario as at the most recently completed month.

10. The Filer has filed with the Commission a completed Notice of Regulatory Action in respect of the last 7 years.

11. The Filer notifies the Commission of any change to the information previously submitted in the Notice of Regulatory Action within 10 days of the change.

12. The Filer complies with the filing and fee payment requirements applicable to an unregistered investment fund manager under OSC Rule 13-502 *Fees*.

It is also ruled by the Commission that the Dealer Relief is granted to the Filer, provided that:

1. The Filer does not receive any trade-based compensation for a distribution of HL Fund Securities made to an Ontario Eligible Participant.

2. Participation in the Voluntary Program by an Ontario Eligible Participant is voluntary, and the Ontario Eligible Participant will not be induced to participate in the Voluntary Program by expectation of employment, appointment or engagement or continued employment, appointment or engagement.

“Elizabeth Topp”
Manager, Investment Management Division
Ontario Securities Commission

OSC File #: 2024/0320

B.3.4 Brookfield Infrastructure Corporation and Brookfield Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the requirements of paragraph 2.2(e) of National Instrument 44-101 Short Form Prospectus Distributions requiring an issuer's equity securities to be listed and posted for trading on short form eligible exchange – relief granted from the prospectus requirements pursuant to the terms of a rights agreement – relief granted from the requirements of paragraph 9.3(1)(b) of National Instrument 44-102 Shelf Distributions requiring the securities distributed under an ATM prospectus be equity securities – relief granted on terms and conditions.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.2(e) and 8.1.
Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74.
National Instrument 44-102 Shelf Distributions, ss. 9.3(1)(b) and 11.1.

December 24, 2024

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

AND

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

AND

IN THE MATTER OF
BROOKFIELD INFRASTRUCTURE CORPORATION
AND
BROOKFIELD CORPORATION

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Infrastructure Corporation (formerly 1505109 B.C. Ltd.) (**New BIPC**) and Brookfield Corporation (**Brookfield**, and together with New BIPC, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

(a) the requirements contained in the Legislation to file a preliminary prospectus and a final prospectus and receive receipts therefor (the **Prospectus Requirement**) shall not apply to specific trades in non-voting limited partnership units of Brookfield Infrastructure Partners L.P. (**BIP**), to be made in connection with the distribution and exchange of class A exchangeable subordinate voting shares of New BIPC (the **New Exchangeable Shares**) by Brookfield pursuant to the terms of the Rights Agreement (each as defined below);

(b) New BIPC be exempt from the requirements contained in paragraph 2.2(e) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) with respect to equity securities (the **Short Form Prospectus Eligibility Requirements**); and

(c) New BIPC be exempt from requirements contained in section 9.3(1)(b) of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) that distributions by way of an at-the-market distribution using the shelf procedures be limited to distributions of equity securities (the **At-the-Market Distribution Eligibility Requirements**);

(collectively, the **Exemption Sought**).

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

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

(b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut, as applicable.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 44-101 and NI 44-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

Relevant Entities

BIP

1. BIP is an exempted limited partnership established, registered and in good standing under the laws of Bermuda. BIP's registered and head office is located at 73 Front Street, 5th Floor, Hamilton HM 12, Bermuda.

2. BIP is a reporting issuer in all of the provinces and territories of Canada and is an SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and satisfies its continuous disclosure obligations by complying with U.S. federal securities laws as permitted under NI 71-102. BIP is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

3. The authorized capital of BIP consists of: (a) an unlimited number of non-voting limited partnership units (the **BIP Units**); (b) an unlimited number of class A preferred limited partnership units; and (c) an unlimited number of general partnership units. As of October 15, 2024, there were 461,754,508 BIP Units (784,078,904 BIP Units assuming the exchange of redeemable partnership units of Brookfield Infrastructure L.P. (the **Redeemable Partnership Units**) and Exchangeable Shares (as defined below)), 43,901,312 class A preferred limited partnership units and one (1) general partnership unit issued and outstanding.

4. The BIP Units are listed on the New York Stock Exchange (**NYSE**) and the Toronto Stock Exchange (**TSX**) under the symbols "BIP" and "BIP.UN", respectively.

5. Brookfield Infrastructure Partners Limited (**BIP GP**), a wholly-owned subsidiary of Brookfield, holds the general partnership unit of BIP.

6. BIP's sole material asset is its managing general partnership interest and preferred limited partnership interest in Brookfield Infrastructure L.P. (**Holding LP**), a Bermuda exempted limited partnership established, registered and in good standing under the laws of Bermuda. The authorized capital of Holding LP is comprised of: (a) special general partner units held by Brookfield Infrastructure Special L.P. (the **Special General Partner**), an indirect subsidiary of Brookfield; (b) class A preferred units held by BIP; (c) managing general partner units held by BIP; and (d) Redeemable Partnership Units held indirectly by Brookfield. The Special General Partner has, pursuant to the limited partnership agreement of Holding LP, delegated to BIP, as managing general partner of the Holding LP, all of the rights, powers and authority granted to it as a general partner under applicable law. Accordingly, all management powers over the activities and affairs of the Holding LP are exclusively vested in BIP.

7. Pursuant to the terms of the limited partnership agreement of Holding LP, the special general partner of Holding LP receives incentive distributions that are calculated by reference to the distributions that are ultimately paid to holders of BIP Units. Accordingly, the special general partner units of Holding LP effectively represent an economic interest in the collective operations of BIP, rather than Holding LP.

8. The Redeemable Partnership Units are, in all material respects, economically equivalent to the BIP Units and effectively represent an economic interest in the collective operations of BIP, rather than Holding LP.

9. As the class A preferred units and managing general partner units of Holding LP are held by BIP, and the special general partner units of Holding LP and Redeemable Partnership Units effectively represent economic interests in the collective operations of BIP rather than Holding LP, (a) Holding LP is, in effect, a wholly-owned subsidiary of BIP, and (b) direct and indirect wholly-owned subsidiaries of Holding LP are, in effect, wholly-owned subsidiaries of BIP.

BIPC

10. Brookfield Infrastructure Holdings Corporation (formerly Brookfield Infrastructure Corporation) (**BIPC**) is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). BIPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. BIPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

11. BIPC is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

12. BIPC was created, in part, to provide investors that would not otherwise invest in BIP with an opportunity to gain access to BIP's portfolio of infrastructure assets, and to provide investors with the flexibility to own, through the ownership of an Exchangeable Share, the economic equivalent of a BIP Unit. The rights, privileges, restrictions and conditions attached to each Exchangeable Share are such that each Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BIP Unit.

13. Prior to completion of the Reorganization (as defined below):

    (a) the authorized share capital of BIPC consisted of: (i) an unlimited number of class A exchangeable subordinate voting shares (the **Exchangeable Shares**); (ii) an unlimited number of class B multiple voting shares (the **Class B Shares**); (iii) an unlimited number of class C non-voting shares (the **Class C Shares**); (iv) an unlimited number of class A senior preferred shares (issuable in series); and (v) an unlimited number of class B junior preferred shares (issuable in series). As of October 15, 2024, there were 132,024,440 Exchangeable Shares, two (2) Class B Shares, 11,117,660 Class C Shares, zero class A senior preferred shares, and zero class B junior preferred shares issued and outstanding;

    (b) the only voting securities of BIPC were the Exchangeable Shares and the Class B Shares. Holders of Exchangeable Shares were entitled to one (1) vote per Exchangeable Share held and holders of Class B Shares were entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Exchangeable Shares. Accordingly, the Exchangeable Shares collectively represented a 25% voting interest in BIPC and the Class B Shares collectively represented a 75% voting interest in BIPC;

    (c) neither the Exchangeable Shares nor the Class B Shares carried a residual right to participate in the assets of BIPC upon liquidation or winding-up of BIPC, and accordingly, were not equity securities under the Legislation. The Class C Shares were the only equity securities of BIPC;

    (d) BIP, indirectly through subsidiary entities, owned 100% of the issued and outstanding Class B Shares and 100% of the Class C Shares. Through its ownership of these securities, BIP (i) had a 75% voting interest in BIPC, thereby controlling BIPC and the appointment and removal of directors of BIPC, and (ii) was entitled to all of the residual value in BIPC after payment in full of the amount due to holders of Exchangeable Shares and Class B Shares, and subject to the prior rights of holders of preferred shares;

    (e) the Class B Shares and the Class C Shares were not transferable except to BIP or persons controlled by BIP; and

    (f) the board of directors of BIPC consisted of each of the directors of BIP GP and one additional director.

14. The Exchangeable Shares are listed on the NYSE and the TSX under the symbol "BIPC".

15. In connection with the Reorganization:

    (a) BIPC applied to cease to be a reporting issuer; and

    (b) the Exchangeable Shares will be delisted from the NYSE and the TSX.

Brookfield

16. Brookfield (formerly Brookfield Asset Management Inc.) is a corporation existing and in good standing under the Business Corporations Act (Ontario). Brookfield's registered and head office is located at Suite 100, Brookfield Place, 181 Bay Street, Toronto, Ontario, M5J 2T3.

17. Brookfield is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

18. The Class A Limited Voting Shares of Brookfield are listed on the NYSE and the TSX under the symbol "BN".

19. Prior to completion of the Reorganization, Brookfield and Brookfield Wealth Solutions Ltd. and their subsidiaries held an approximate 26.6% economic interest in BIP on a fully-exchanged basis through their indirect ownership of BIP Units, Redeemable Partnership Units, and Exchangeable Shares.

20. Following completion of the Reorganization, Brookfield and Brookfield Wealth Solutions Ltd. and their subsidiaries hold an approximate 26.6% economic interest in BIP on a fully-exchanged basis through their indirect ownership of BIP Units, Redeemable Partnership Units, New Exchangeable Shares, and Class A.2 Shares (as defined below).

21. Brookfield indirectly holds a 100% voting interest in BIP through its ownership of the general partnership unit of BIP.

22. BIP, Holding LP, BIPC, New BIPC and certain of their subsidiaries have retained Brookfield and its related entities to provide management, administrative and advisory services under a master services agreement.

New BIPC

23. New BIPC is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). New BIPC was incorporated on October 3, 2024. New BIPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. New BIPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

24. New BIPC is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

25. The authorized share capital of New BIPC consists of: (a) an unlimited number of New Exchangeable Shares; and (b) an unlimited number of class B multiple voting shares (the **New Class B Shares**). Prior to completion of the Reorganization, there were no New Exchangeable Shares and one (1) New Class B Share issued and outstanding, which is held by Brookfield Infrastructure Holdings (Canada) Inc. (**CanHoldco**), a subsidiary entity of BIP.

26. Except as provided below, holders of New Exchangeable Shares are entitled to one (1) vote per New Exchangeable Share held and holders of New Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the New Exchangeable Shares. Accordingly, the New Exchangeable Shares collectively represent a 25% voting interest in New BIPC and the New Class B Shares collectively represent a 75% voting interest in New BIPC.

27. At any time that no New Exchangeable Shares are outstanding or for any vote held only in respect of the New Class B Shares, holders of New Class B Shares are entitled to cast one (1) vote per New Class B Share.

28. The New Exchangeable Shares do not carry a residual right to participate in the assets of New BIPC upon liquidation or winding-up of New BIPC, and accordingly, are not equity securities under the Legislation. The New Class B Shares are the only equity securities of New BIPC.

29. BIP, indirectly through its subsidiary entities, owns 100% of the issued and outstanding New Class B Shares. The New Class B Shares are not transferable except to BIP or persons controlled by BIP. Through its ownership of New Class B Shares, BIP (a) has a 75% voting interest in New BIPC, thereby controlling New BIPC and the appointment and removal of directors of New BIPC, and (b) is entitled to all of the residual value in New BIPC after payment in full of the amount due to holders of New Exchangeable Shares.

<u>The Reorganization</u>

30. BIPC currently qualifies as a "mutual fund corporation" as defined in the *Income Tax Act* (Canada) (the **Tax Act**).

31. The 2024 Canadian federal budget included proposed amendments to the tax rules relating to mutual fund corporations which, if enacted as proposed, were expected to result in additional costs to BIPC.

32. On October 9, 2024, BIP, BIPC, New BIPC and Brookfield entered into an arrangement agreement in respect of a reorganization (the **Reorganization**) designed to preserve the current benefits received by holders of Exchangeable Shares from holding their investments in the business of BIP and its subsidiary entities through a corporation that is intended to qualify as a "mutual fund corporation" (as defined in the Tax Act).

33. On December 3, 2024, the Reorganization was approved at a special meeting of holders of Exchangeable Shares and Class B Shares (the **Meeting**) by: (a) not less than $66^2/_3$% of the votes cast at the Meeting by holders of Exchangeable Shares and holders of Class B Shares, voting together; (b) not less than $66^2/_3$% of the votes cast at the Meeting by holders of Exchangeable Shares, voting separately as a class; and (c) not less than $66^2/_3$% of the votes cast at the Meeting by holders of Class B Shares, voting separately as a class.

34. On December 9, 2024, the Supreme Court of British Columbia approved the Reorganization.

35. As part of the Reorganization:

    (a) BIPC amended its articles to create two (2) new classes of securities: class A.1 exchangeable subordinate voting shares (the **Class A.1 Shares**) and class A.2 non-voting shares (the **Class A.2 Shares**);

    (b) holders of Exchangeable Shares (other than Brookfield and its subsidiaries) received one (1) New Exchangeable Share from New BIPC for each Exchangeable Share held;

    (c) New BIPC transferred the Exchangeable Shares received from holders of Exchangeable Shares (other than Brookfield and its subsidiaries) to BIPC in exchange for Class A.1 Shares on a one-for-one basis, and the Exchangeable Shares were cancelled by BIPC;

    (d) Brookfield and its subsidiaries transferred the Exchangeable Shares held by them to BIPC in exchange for Class A.2 Shares on a one-for-one basis, and the Exchangeable Shares were cancelled by BIPC;

    (e) CanHoldco transferred one (1) Class B Share to New BIPC in exchange for one (1) New Class B Share;

    (f) BIPC amended its articles to, among other things, rename BIPC to “Brookfield Infrastructure Holdings Corporation” and remove the Exchangeable Shares from its authorized share capital;

    (g) BIPC applied to cease to be a reporting issuer;

    (h) the Exchangeable Shares will be delisted from the NYSE and the TSX;

    (i) New BIPC was renamed “Brookfield Infrastructure Corporation” and the New Exchangeable Shares will be listed on the NYSE and the TSX under the symbol “BIPC”;

    (j) New BIPC, BIPC and BIP entered into a pairing agreement pursuant to which the parties have agreed that New BIPC will, at all times, hold such number of Class A.1 Shares equal to the number of New Exchangeable Shares that are outstanding to support the duties and obligations of New BIPC to holders of New Exchangeable Shares (the **Pairing Agreement**); and

    (k) New BIPC entered into an option agreement with CanHoldco that provides New BIPC with the right to acquire any or all of the Class B Shares and/or Class C Shares held by CanHoldco in exchange for newly issued New Class B Shares.

36. Following completion of the Reorganization, New BIPC:

    (a) became a reporting issuer in each of the provinces and territories of Canada;

    (b) qualifies as a “mutual fund corporation” as defined in the Tax Act;

    (c) has taken the place of BIPC and serves as the entity through which investors who do not wish to hold BIP Units directly may hold their interests in BIP through the ownership of a New Exchangeable Share, which is economically equivalent to a BIP Unit; and

    (d) carries on its business through BIPC, whose Class A.1 Shares and one (1) Class B Share are New BIPC’s sole material assets.

37. BIP consolidates New BIPC and BIPC and their businesses in BIP’s financial statements, and the collective operations of BIP and its subsidiaries (including New BIPC, BIPC and their subsidiary entities) are the same as they were prior to the creation of New BIPC and occurrence of the transactions conducted in connection with, and to facilitate, the Reorganization.

38. The board of directors of New BIPC consists of the directors that were on the board of directors of BIPC immediately prior to completion of the Reorganization.

39. New BIPC is not a wholly-owned subsidiary entity of BIP; BIP does not own, directly or indirectly, all of the voting securities of New BIPC because members of the public hold New Exchangeable Shares and Brookfield and its subsidiaries hold Class A.2 Shares, which are exchangeable for New Exchangeable Shares (subject to the Ownership Cap (as defined below)). However, by virtue of the terms of the New Class B Shares, BIP holds a 75% voting interest in New BIPC thereby controlling New BIPC and the appointment and removal of directors of New BIPC. The voting rights attached to the New Exchangeable Shares do not allow holders of New Exchangeable Shares to affect the control of New BIPC. The voting right attached to each New Exchangeable Share is expected to assist with index inclusion.

The New Exchangeable Shares

40. The New Exchangeable Shares have substantially the same terms as the Exchangeable Shares. Each New Exchangeable Share has been structured with the intention of providing an economic return equivalent to a BIP Unit, and the rights, privileges, restrictions and conditions attached to each New Exchangeable Share (the **New Exchangeable Share Provisions**) are such that each New Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BIP Unit. In particular:

    (a) each New Exchangeable Share is exchangeable at the option of a holder for one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of New BIPC) (an **Exchange**);

    (b) the New Exchangeable Shares are redeemable by New BIPC at any time (including following a notice requiring redemption having been given by BIP) for BIP Units (or their cash equivalent, at New BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) (a **Redemption**);

    (c) upon a liquidation, dissolution or winding up of New BIPC, holders of New Exchangeable Shares are entitled to receive BIP Units (or their cash equivalent, at New BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of New BIPC following such payment (a **New BIPC Liquidation**);

    (d) upon a liquidation, dissolution or winding up of BIP (a **BIP Liquidation**), including where substantially concurrent with a New BIPC Liquidation, all of the New Exchangeable Shares will be automatically redeemed for BIP Units (or their cash equivalent, at New BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

    (e) subject to applicable law and in accordance with the New Exchangeable Share Provisions, each New Exchangeable Share entitles the holder to dividends from New BIPC payable at the same time as, and equivalent to, each distribution on a BIP Unit. The New Exchangeable Share Provisions also provide that if a distribution is declared on the BIP Units and an equivalent dividend is not declared and paid concurrently on the New Exchangeable Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

41. Upon being notified by New BIPC that New BIPC has received a request for an Exchange, BIP has an overriding call right to purchase (or have one of its affiliates purchase) all of the New Exchangeable Shares that are the subject of the Exchange notice from the holder of New Exchangeable Shares for BIP Units (or their cash equivalent, at BIP's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

42. Upon being notified by New BIPC that it intends to conduct a Redemption, BIP has an overriding call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding New Exchangeable Shares for BIP Units (or their cash equivalent, at BIP's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

43. Upon the occurrence of a BIP Liquidation or a New BIPC Liquidation, BIP has an overriding liquidation call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding New Exchangeable Shares on the day prior to the effective date of such BIP Liquidation or New BIPC Liquidation for BIP Units on a one-for-one basis (subject to adjustment to reflect certain capital events).

44. In connection with the Reorganization, Brookfield entered into a rights agreement (the **Rights Agreement**) pursuant to which it agreed that, until March 31, 2025, Brookfield will guarantee New BIPC's obligation to deliver BIP Units or their cash equivalent in connection with an Exchange. The Rights Agreement replaced the rights agreement in respect of exchanges of Exchangeable Shares.

45. Investments in New Exchangeable Shares are, as nearly as practicable, functionally and economically, equivalent to an investment in BIP Units. BIP expects that:

    (a) investors of New Exchangeable Shares will purchase New Exchangeable Shares as an alternative way of owning BIP Units rather than a separate and distinct investment; and

    (b) the market price of the New Exchangeable Shares will be significantly impacted by (i) the combined business performance of New BIPC and BIP as a single economic unit, and (ii) the market price of the BIP Units, in a manner that results in the market price of the New Exchangeable Shares closely tracking the market price of the BIP Units.

46. A holder of New Exchangeable Shares will be able to terminate its investment by either (a) selling the New Exchangeable Shares on the NYSE or the TSX, or (b) selling the BIP Units received by operation of the New Exchangeable Share Provisions on the NYSE or the TSX.

Share Capital of BIPC after the Reorganization

47. Following completion of the Reorganization:

    (a) the authorized share capital of BIPC consists of: (i) an unlimited number Class A.1 Shares; (ii) an unlimited number of Class A.2 Shares; (iii) an unlimited number of Class B Shares; (iv) an unlimited number of Class C Shares; (v) an unlimited number of class A senior preferred shares (issuable in series); and (vi) an unlimited number of class B junior preferred shares (issuable in series); and

    (b) there are (based on the issued and outstanding share capital of BIPC as of October 15, 2024):

        (i) 119,011,651 Class A.1 Shares issued and outstanding, all of which are held by New BIPC;

        (ii) 13,012,789 Class A.2 Shares issued and outstanding, all of which are held by Brookfield and its subsidiaries;

        (iii) three (3) Class B Shares issued and outstanding, two (2) of which are held by CanHoldco, and one (1) of which is held by New BIPC;

        (iv) 11,117,660 Class C Shares issued and outstanding, all of which are held by CanHoldco;

        (v) zero class A senior preferred shares issued and outstanding; and

        (vi) zero class B junior preferred shares issued and outstanding.

48. Other than the ability to receive additional dividends at such time as there are no unpaid dividends in respect of the Class A.1 Shares or the Class A.2 Shares, and if, as and when declared by the board of directors of BIPC (the **Additional Dividends**), the Class A.1 Shares have terms that are substantially the same as the New Exchangeable Shares, including with respect to the exchange mechanics, dividend rights, voting rights and rights on liquidation. It is expected that Additional Dividends may be declared from time to time in order to fund expenses of New BIPC.

49. The Class A.1 Shares carry one (1) vote per share, and the holders of the Class A.1 Shares are entitled to an aggregate 25% voting interest in BIPC. Each Class A.1 Share has been structured with the intention of providing an economic return equivalent to a BIP Unit and the rights, privileges, restrictions and conditions attached to each Class A.1 Share (the **A.1 Exchangeable Share Provisions**) are such that each Class A.1 Share is, as nearly as practicable, functionally and economically, equivalent to a New Exchangeable Share and a BIP Unit. In particular:

    (a) each Class A.1 Share is exchangeable at the option of a holder for one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC);

    (b) the Class A.1 Shares are redeemable by BIPC at any time (including following a notice requiring redemption having been given by BIP) for BIP Units (or their cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events);

    (c) upon a liquidation, dissolution or winding up of BIPC (a **BIPC Liquidation**), holders of Class A.1 Shares are entitled to receive BIP Units (or their cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of BIPC following such payment;

(d) upon a BIP Liquidation, including where substantially concurrent with a BIPC Liquidation, all of the Class A.1 Shares will be automatically redeemed for BIP Units (or their cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

(e) subject to applicable law and in accordance with the A.1 Exchangeable Share Provisions, each Class A.1 Share entitles the holder to dividends from BIPC payable at the same time as, and equivalent to, each distribution on a BIP Unit. The A.1 Exchangeable Share Provisions also provide that if a distribution is declared on the BIP Units and an equivalent dividend is not declared and paid concurrently on the Class A.1 Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

50. As required pursuant to the terms of the Pairing Agreement, any and all Class A.1 Shares will be held by New BIPC. New BIPC may use the exchange right pursuant to the A.1 Exchangeable Share Provisions to obtain BIP Units necessary, from time to time, to satisfy exchanges of the New Exchangeable Shares.

51. Each Class A.2 Share is non-voting and structured with the intention of providing an economic return equivalent to a BIP Unit, and the rights, privileges, restrictions and conditions attached to each Class A.2 Share (the **A.2 Exchangeable Share Provisions**) are such that each Class A.2 Share is, as nearly as practicable, functionally and economically, equivalent to a New Exchangeable Share and a BIP Unit. In particular:

(a) each Class A.2 Share is exchangeable at the option of a holder for (i) one (1) New Exchangeable Share (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC), or (ii) one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC), provided that, after giving effect to any such exchange, Brookfield and its subsidiaries are not permitted to receive a number of New Exchangeable Shares that would result in Brookfield and its subsidiaries owning 9.5% or more of the aggregate fair market value of all issued and outstanding shares of New BIPC (the **Ownership Cap**);

(b) the Class A.2 Shares are redeemable by BIPC at any time (including following a notice requiring redemption having been given by BIP) for (i) one (1) New Exchangeable Share (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC), or (ii) one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC);

(c) upon a BIPC Liquidation, holders of Class A.2 Shares are entitled to receive one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC) and not any remaining property or assets of BIPC following such payment;

(d) upon a BIP Liquidation, including where substantially concurrent with a BIPC Liquidation, all of the Class A.2 Shares will be automatically redeemed for BIP Units (or their cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

(e) subject to applicable law and in accordance with the A.2 Exchangeable Share Provisions, each Class A.2 Share entitles the holder to dividends from BIPC payable at the same time as, and equivalent to, each distribution on a BIP Unit. The A.2 Exchangeable Share Provisions also provide that if a distribution is declared on the BIP Units and an equivalent dividend is not declared and paid concurrently on the Class A.2 Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

52. The Ownership Cap is designed to preserve New BIPC's status as a "mutual fund corporation" under the Tax Act.

53. The Class B Shares continue to be structured to provide the holders with control of BIPC. In particular:

(a) holders of Class B Shares are entitled to, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Class A.1 Shares. As a result, holders of Class B Shares have a 75% voting interest in BIPC and holders of Class A.1 Shares have a 25% voting interest in BIPC; and

(b) in the event that a share/stock dividend is declared and paid on the Class A.1 Shares, a share/stock dividend will be paid to holders of Class B Shares in an equal number of Class B Shares as Class A.1 Shares are paid to holders of Class A.1 Shares.

54. The only voting securities of BIPC are the Class A.1 Shares and the Class B Shares.

55. The Class C Shares were unaffected by the Reorganization and continue to be structured to provide the holders thereof with all of the residual value in BIPC. In particular:

    (a) subject to applicable law and in accordance with the terms of the Class C Shares, only holders of Class C Shares are entitled to a residual right to participate, on a BIPC Liquidation, in its assets;

    (b) subject to applicable law and in accordance with the term of the Class C Shares, subject to the prior rights of the holders of the Class A.1 Shares and Class A.2 Shares and of any preferred shares then outstanding, the holders of Class C Shares are entitled to receive dividends if, as, and when declared by the board of directors of BIPC; and

    (c) share/stock dividends, if any, will be paid to holders of Class C Shares in an equal number of Class C Shares as Class A.1 Shares are paid to holders of Class A.1 Shares and Class A.2 Shares are paid to holders of Class A.2 Shares.

56. The Class B Shares and Class C Shares continue to be subject to restrictions on transfer, other than to BIP or persons controlled by BIP.

Issuance of BIP Units Under the Rights Agreement

57. The attributes of the New Exchangeable Shares, as set out in the New Exchangeable Share Provisions, and the trades contemplated by the Rights Agreement involve or may involve:

    (a) the delivery by Brookfield of BIP Units to a holder of New Exchangeable Shares; and

    (b) the first trade of BIP Units received by a holder of New Exchangeable Shares in connection with the Rights Agreement.

58. Under section 2.42 of National Instrument 45-106 *Prospectus Exemptions* and in connection with the conversion, exchange, or exercise of a security, the Prospectus Requirement does not apply to a distribution by an issuer if (a) the issuer distributes a security of its own issue to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer, or (b) subject to certain notification requirements, the issuer distributes a security of a reporting issuer held by it to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer.

59. If New BIPC were to issue New Exchangeable Shares pursuant to a future prospectus offering and Brookfield were required to deliver the BIP Units pursuant to the Rights Agreement with respect to those New Exchangeable Shares, it could not rely on paragraph 2.42(1)(b) of NI 45-106, because Brookfield would be delivering BIP Units to a security holder of New BIPC, not of Brookfield.

60. In absence of an exemption, the delivery by Brookfield of BIP Units to a holder of New Exchangeable Shares, must comply with the Prospectus Requirement under the Legislation in each jurisdiction of Canada where the delivery occurs.

61. The New Exchangeable Shares represent part of the equity value of BIP and are functionally and economically equivalent to the BIP Units. As a result of the New Exchangeable Share Provisions, holders of New Exchangeable Shares have the ability to receive a BIP Unit or its cash equivalent (the form of payment to be determined at the election of New BIPC) and will receive identical distributions to the BIP Units, as and when declared by the board of directors of New BIPC. Moreover, the economic interests that underlie the New Exchangeable Shares are identical to those underlying the BIP Units; namely, the assets and operations held directly or indirectly by BIP.

62. A key factor in ensuring that an investment in New Exchangeable Shares is as nearly as practicable, functionally and economically equivalent to an investment in BIP Units is the ability of holders of New Exchangeable Shares to (a) exchange their New Exchangeable Shares, (b) receive BIP Units on the exchange, and (c) sell the BIP Units on the NYSE or the TSX.

63. Relief from the Prospectus Requirement for the delivery by Brookfield of BIP Units to holders of New Exchangeable Shares issued pursuant to a future prospectus offering is necessary for the operation of the backstop provided by Brookfield to holders of New Exchangeable Shares. As such, the Filers submit that granting relief from the Prospectus Requirement is not contrary to the public interest.

Qualification to File Short Form Prospectus

64. New BIPC wishes to be eligible to file short form prospectuses under NI 44-101. New BIPC's eligibility to file short form and shelf prospectuses is critical to its viability as an issuer of a security offering an alternative way of owning BIP Units. In addition, there are short time frames associated with financings undertaken in current market conditions. As a result, the relief from the Short Form Prospectus Eligibility Requirements is being sought concurrently with the completion of the Reorganization and any possible follow-on distribution of New BIPC securities.

65. The qualification criteria for short form prospectus eligibility are outlined in section 2.2 of NI 44-101. Having become a reporting issuer pursuant to the Reorganization, New BIPC satisfies all of the qualification criteria for short form prospectus eligibility in section 2.2 of NI 44-101 with the exception of subsection 2.2(e) which requires that an issuer's equity securities are listed and posted for trading on a short form eligible exchange and that an issuer is not an issuer whose (a) operations have ceased, or (b) whose principal asset is cash, cash equivalents, or its exchange listing (the **Short Form Prospectus Equity Security Requirement**). The term "equity security" is defined under the Legislation as a security that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, in its assets. The New Exchangeable Shares do not carry a residual right to participate in the assets of New BIPC upon liquidation or winding-up of New BIPC, and accordingly, are not equity securities under the Legislation.

66. In the event that New BIPC undertakes an offering or other distribution of its securities prior to the filing of its audited financial statements for the year ended December 31, 2024, New BIPC intends to rely on the exemption in subsection 2.7(2) of NI 44-101 from the requirements to have (a) current annual financial statements and (b) a current AIF.

67. New BIPC is not eligible for the exemption for alternative qualification criteria for conventional preferred shares under Part 2 of NI 44-101 because the New Exchangeable Shares are not conventional preferred shares.

68. It is appropriate for the New Exchangeable Shares to be treated as equity securities for the purposes of NI 44-101 since the New Exchangeable Shares are, in effect, the economic and voting equivalent of the BIP Units and the BIP Units qualify as equity securities under NI 44-101.

69. Except for not meeting the Short Form Prospectus Equity Security Requirement, New BIPC is otherwise qualified to file a prospectus in the form of a short form prospectus pursuant to, and in accordance with, NI 44-101.

Qualification of At-the-Market Distribution

70. Pursuant to section 9.3(1)(b) of NI 44-102, only equity securities may be distributed by way of an at-the-market distribution using the shelf procedures. As noted above, the New Exchangeable Shares are not equity securities under the Legislation.

71. Based on the rationale provided in paragraphs 45, 65, 68 and 69 above, the Filers submit that it is not prejudicial to the public interest to exempt New BIPC from the At-the-Market Distribution Eligibility Requirements.

Decision

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

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

1. the Prospectus Requirement shall not apply to the delivery by Brookfield of BIP Units to holders of New Exchangeable Shares for the duration of the Rights Agreement, provided that:

   (a) such BIP Units are delivered strictly pursuant to Brookfield's agreement to guarantee New BIPC's obligation to deliver BIP Units in connection with an Exchange under the terms of the Rights Agreement;

   (b) BIP is a reporting issuer, as defined in the Legislation, in a jurisdiction of Canada at the time such relief is relied upon for the delivery of BIP Units;

   (c) the terms of the Rights Agreement are not materially amended; and

   (d) Brookfield has provided prior written notice of the distribution to the principal regulator in accordance with the terms of subsection 2.42(2) of NI 45-106;

2. any first trade in BIP Units acquired by a holder of New Exchangeable Shares in connection with Brookfield satisfying its obligations under the Rights Agreement shall not be a distribution under the Legislation, provided that:

    (a) BIP is and has been a reporting issuer, as defined in the Legislation, in a jurisdiction of Canada for the four months immediately preceding the trade;

    (b) the trade is not in previously issued securities of an issuer from the holdings of any control person, as that term is defined in subsection 1(1) of the *Securities Act* (Ontario);

    (c) no unusual effort is made to prepare the market or to create a demand for the BIP Units;

    (d) no extraordinary commission or consideration is paid to a person or company in respect of the trade;

    (e) if the selling securityholder is an insider or officer of BIP, the selling security holder has no reasonable grounds to believe that BIP is in default of securities legislation; and

    (f) the terms of the Rights Agreement are not materially amended;

3. the decision as it relates to the Prospectus Requirement shall terminate on the day on which the Rights Agreement is terminated;

4. New BIPC does not have to comply with the Short Form Prospectus Eligibility Requirements so long as:

    (a) New BIPC is otherwise qualified to file a preliminary short form prospectus under section 2.2 of NI 44-101;

    (b) the New Exchangeable Shares are listed and posted for trading on a short form eligible exchange (as defined in NI 44-101);

    (c) New BIPC is not an issuer whose operations have ceased;

    (d) New BIPC is not an issuer whose principal asset is cash, cash equivalents, or its exchange listing; and

    (e) the BIP Units qualify as equity securities under NI 44-102;

5. New BIPC does not have to comply with the At-the-Market Distribution Requirements so long as:

    (a) New BIPC otherwise satisfies the conditions set out in section 9.3 of NI 44-102 to distribute securities under an ATM prospectus (as defined in NI 44-102) as part of an at-the-market distribution;

    (b) the security being distributed is a New Exchangeable Share; and

    (c) the BIP Units qualify as equity securities under NI 44-102.

“Erin O’Donovan”
Manager, Corporate Finance Division
Ontario Securities Commission

OSC File #: 2024/0519

B.3.5 Brookfield Renewable Corporation and Brookfield Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the requirements of paragraph 2.2(e) of National Instrument 44-101 Short Form Prospectus Distributions requiring an issuer's equity securities to be listed and posted for trading on short form eligible exchange – relief granted from the prospectus requirements pursuant to the terms of a rights agreement – relief granted from the requirements of paragraph 9.3(1)(b) of National Instrument 44-102 Shelf Distributions requiring the securities distributed under an ATM prospectus be equity securities – relief granted on terms and conditions.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.2(e) and 8.1.
Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74.
National Instrument 44-102 Shelf Distributions, ss. 9.3(1)(b) and 11.1.

December 24, 2024

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

AND

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

AND

IN THE MATTER OF
BROOKFIELD RENEWABLE CORPORATION
AND
BROOKFIELD CORPORATION

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Renewable Corporation (formerly 1505127 B.C. Ltd.) (**New BEPC**) and Brookfield Corporation (**Brookfield**, and together with New BEPC, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

(a) the requirements contained in the Legislation to file a preliminary prospectus and a final prospectus and receive receipts therefor (the **Prospectus Requirement**) shall not apply to specific trades in non-voting limited partnership units of Brookfield Renewable Partners L.P. (**BEP**), to be made in connection with the distribution and exchange of class A exchangeable subordinate voting shares of New BEPC (the **New Exchangeable Shares**) by Brookfield pursuant to the terms of the Rights Agreement (each as defined below);

(b) New BEPC be exempt from the requirements contained in paragraph 2.2(e) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**) with respect to equity securities (the **Short Form Prospectus Eligibility Requirements**); and

(c) New BEPC be exempt from requirements contained in section 9.3(1)(b) of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) that distributions by way of an at-the-market distribution using the shelf procedures be limited to distributions of equity securities (the **At-the-Market Distribution Eligibility Requirements**);

(collectively, the **Exemption Sought**).

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

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

(b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut, as applicable.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 44-101 and NI 44-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

Relevant Entities

BEP

1. BEP is an exempted limited partnership established, registered and in good standing under the laws of Bermuda. BEP's registered and head office is located at 73 Front Street, 5th Floor, Hamilton HM 12, Bermuda.

2. BEP is a reporting issuer in all of the provinces and territories of Canada and is an SEC issuer within the meaning of section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*. BEP is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

3. The authorized capital of BEP consists of: (a) an unlimited number of non-voting limited partnership units (the **BEP Units**); (b) an unlimited number of class A preferred limited partnership units; and (c) an unlimited number of general partnership units. As of October 15, 2024, there were 285,111,229 BEP Units (659,240,359 BEP Units assuming the exchange of redeemable partnership units of Brookfield Renewable Energy L.P. (the **Redeemable Partnership Units**) and Exchangeable Shares (as defined below)), 31,000,000 class A preferred limited partnership units and 3,977,260 general partnership units issued and outstanding.

4. The BEP Units are listed on the New York Stock Exchange (**NYSE**) and the Toronto Stock Exchange (**TSX**) under the symbols "BEP" and "BEP.UN", respectively.

5. Brookfield Renewable Partners Limited (**BEP GP**), a wholly-owned subsidiary of Brookfield, holds the general partnership units of BEP.

6. BEP's sole material asset is its limited partnership interest and preferred limited partner interests in Brookfield Renewable Energy L.P. (**BRELP**), a Bermuda exempted limited partnership established, registered and in good standing under the laws of Bermuda. The authorized capital of BRELP is comprised of: (a) limited partner interests held by BEP; (b) Redeemable Partnership Units held by Brookfield Renewable Power Inc. (**BRPI**), a wholly-owned subsidiary of Brookfield; and (c) general partner units held by BREP Holding L.P. (**BRELP GP LP**), an indirect subsidiary of Brookfield. The general partner of BRELP GP LP is controlled by BEP, through its general partner, pursuant to the terms of a voting agreement between BEP and BRPI (the **Voting Agreement**).

7. Pursuant to the Voting Agreement BRPI agreed that any voting rights with respect to the general partner of BRELP GP LP and BRELP will be voted in accordance with the direction of BEP with respect to (a) the election of directors of the general partner of BRELP GP LP and (b) the approval or rejection of the following matters relating to any such entity, as applicable: (i) any sale of all or substantially all of its assets; (ii) any merger, amalgamation, consolidation, business combination or other material corporate transaction, except in connection with any internal reorganization that does not result in a change of control; (iii) any plan or proposal for a complete or partial liquidation or dissolution, or any reorganization or any case, proceeding or action seeking relief under any existing laws or future laws relating to bankruptcy or insolvency; (iv) any amendment to the limited partnership agreement of BRELP GP LP or BRELP; or (v) any commitment or agreement to do any of the foregoing. As a result, BEP consolidates BRELP and its businesses in its financial statements.

8. Pursuant to the terms of the limited partnership agreement of BRELP, the general partner of BRELP receives incentive distributions that are calculated by reference to the distributions that are ultimately paid to holders of BEP Units. Accordingly, the general partner units of BRELP effectively represent an economic interest in the collective operations of BEP, rather than BRELP.

9. The Redeemable Partnership Units are, in all material respects, economically equivalent to the BEP Units and effectively represent an economic interest in the collective operations of BEP, rather than BRELP.

10. As the limited partnership interests of BRELP are held by BEP, and the general partner units of BRELP and Redeemable Partnership Units effectively represent economic interests in the collective operations of BEP rather than BRELP, (a) BRELP is, in effect, a wholly-owned subsidiary of BEP, and (b) direct and indirect wholly-owned subsidiaries of BRELP are, in effect, wholly-owned subsidiaries of BEP.

BEPC

11. Brookfield Renewable Holdings Corporation (formerly Brookfield Renewable Corporation) (**BEPC**) is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). BEPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. BEPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

12. BEPC is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

13. BEPC was created, in part, to provide investors that would not otherwise invest in BEP with an opportunity to gain access to BEP's portfolio of renewable power assets, and to provide investors with the flexibility to own, through the ownership of an Exchangeable Share, the economic equivalent of a BEP Unit. The rights, privileges, restrictions and conditions attached to each Exchangeable Share are such that each Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BEP Unit.

14. Prior to completion of the Reorganization (as defined below):

    (a) the authorized share capital of BEPC consisted of: (i) an unlimited number of class A exchangeable subordinate voting shares (the **Exchangeable Shares**); (ii) an unlimited number of class B multiple voting shares (the **Class B Shares**); (iii) an unlimited number of class C non-voting shares (the **Class C Shares**); (iv) an unlimited number of class A senior preferred shares (issuable in series); and (v) an unlimited number of class B junior preferred shares (issuable in series). As of October 15, 2024,there were 179,641,191 Exchangeable Shares, 165 Class B Shares, 194,460,874 Class C Shares, zero class A senior preferred shares, and zero class B junior preferred shares issued and outstanding;

    (b) the only voting securities of BEPC were the Exchangeable Shares and the Class B Shares. Holders of Exchangeable Shares were entitled to one (1) vote per Exchangeable Share held and holders of Class B Shares were entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Exchangeable Shares. Accordingly, the Exchangeable Shares collectively represented a 25% voting interest in BEPC and the Class B Shares collectively represented a 75% voting interest in BEPC;

    (c) neither the Exchangeable Shares nor the Class B Shares carried a residual right to participate in the assets of BEPC upon liquidation or winding-up of BEPC, and accordingly, were not equity securities under the Legislation. The Class C Shares were the only equity securities of BEPC;

    (d) BEP, indirectly through subsidiary entities, owned 100% of the issued and outstanding Class B Shares and 100% of the Class C Shares. Through its ownership of these securities, BEP (i) had a 75% voting interest in BEPC, thereby controlling BEPC and the appointment and removal of directors of BEPC, and (ii) was entitled to all of the residual value in BEPC after payment in full of the amount due to holders of Exchangeable Shares and Class B Shares, and subject to the prior rights of holders of preferred shares;

    (e) the Class B Shares and the Class C Shares were not transferable except to BEP or persons controlled by BEP; and

    (f) the board of directors of BEPC consisted of each of the directors of BEP GP and two additional directors.

15. The Exchangeable Shares are listed on the NYSE and the TSX under the symbol "BEPC".

16. In connection with the Reorganization:

    (a) BEPC applied to cease to be a reporting issuer; and

    (b) the Exchangeable Shares will be delisted from the NYSE and the TSX.

Brookfield

17. Brookfield (formerly Brookfield Asset Management Inc.) is a corporation existing and in good standing under the *Business Corporations Act* (Ontario). Brookfield's registered and head office is located at Suite 100, Brookfield Place, 181 Bay Street, Toronto, Ontario, M5J 2T3.

18. Brookfield is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

19. The Class A Limited Voting Shares of Brookfield are listed on the NYSE and the TSX under the symbol "BN".

20. Prior to completion of the Reorganization, Brookfield and Brookfield Wealth Solutions Ltd. and their subsidiaries held an approximate 47% economic interest in BEP on a fully-exchanged basis through their indirect ownership of BEP Units, Redeemable Partnership Units, and Exchangeable Shares.

21. Following completion of the Reorganization, Brookfield and Brookfield Wealth Solutions Ltd. and their subsidiaries hold an approximate 47% economic interest in BEP on a fully-exchanged basis through their indirect ownership of BEP Units, Redeemable Partnership Units, New Exchangeable Shares, and Class A.2 Shares (as defined below).

22. Brookfield indirectly holds a 100% voting interest in BEP through its ownership of the general partnership units of BEP.

23. BEP, BRELP, BEPC, New BEPC and certain of their subsidiaries have retained Brookfield and its related entities to provide management, administrative and advisory services under a master services agreement.

New BEPC

24. New BEPC is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). New BEPC was incorporated on October 3, 2024. New BEPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. New BEPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

25. New BEPC is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

26. The authorized share capital of New BEPC consists of: (a) an unlimited number of New Exchangeable Shares; and (b) an unlimited number of class B multiple voting shares (the **New Class B Shares**). Prior to completion of the Reorganization, there were no New Exchangeable Shares and one (1) New Class B Share issued and outstanding, which is held by Brookfield BRP Holdings (Canada) Inc. (**CanHoldco**), a subsidiary entity of BEP.

27. Except as provided below, holders of New Exchangeable Shares are entitled to one (1) vote per New Exchangeable Share held and holders of New Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the New Exchangeable Shares. Accordingly, the New Exchangeable Shares collectively represent a 25% voting interest in New BEPC and the New Class B Shares collectively represent a 75% voting interest in New BEPC.

28. At any time that no New Exchangeable Shares are outstanding or for any vote held only in respect of the New Class B Shares, holders of New Class B Shares are entitled to cast one (1) vote per New Class B Share.

29. The New Exchangeable Shares do not carry a residual right to participate in the assets of New BEPC upon liquidation or winding-up of New BEPC, and accordingly, are not equity securities under the Legislation. The New Class B Shares are the only equity securities of New BEPC.

30. BEP, indirectly through its subsidiary entities, owns 100% of the issued and outstanding New Class B Shares. The New Class B Shares are not transferable except to BEP or persons controlled by BEP. Through its ownership of New Class B Shares, BEP (a) has a 75% voting interest in New BEPC, thereby controlling New BEPC and the appointment and removal of directors of New BEPC, and (b) is entitled to all of the residual value in New BEPC after payment in full of the amount due to holders of New Exchangeable Shares.

<u>The Reorganization</u>

31. BEPC currently qualifies as a "mutual fund corporation" as defined in the *Income Tax Act* (Canada) (the **Tax Act**).

32. The 2024 Canadian federal budget included proposed amendments to the tax rules relating to mutual fund corporations which, if enacted as proposed, were expected to result in additional costs to BEPC.

33. On October 9, 2024, BEP, BEPC, New BEPC and Brookfield entered into an arrangement agreement in respect of a reorganization (the **Reorganization**) designed to preserve the current benefits received by holders of Exchangeable Shares from holding their investments in the business of BEP and its subsidiary entities through a corporation that is intended to qualify as a "mutual fund corporation" (as defined in the Tax Act).

34. On December 3, 2024, the Reorganization was approved at a special meeting of holders of Exchangeable Shares and Class B Shares (the **Meeting**) by: (a) not less than $66^2/_3$% of the votes cast at the Meeting by holders of Exchangeable Shares and holders of Class B Shares, voting together; (b) not less than $66^2/_3$% of the votes cast at the Meeting by holders of Exchangeable Shares, voting separately as a class; and (c) not less than $66^2/_3$% of the votes cast at the Meeting by holders of Class B Shares, voting separately as a class.

35. On December 9, 2024, the Supreme Court of British Columbia approved the Reorganization.

36. As part of the Reorganization:

    (a) BEPC amended its articles to create two (2) new classes of securities: class A.1 exchangeable subordinate voting shares (the **Class A.1 Shares**) and class A.2 non-voting shares (the **Class A.2 Shares**);

    (b) holders of Exchangeable Shares (other than Brookfield and its subsidiaries) received one (1) New Exchangeable Share from New BEPC for each Exchangeable Share held;

    (c) New BEPC transferred the Exchangeable Shares received from holders of Exchangeable Shares (other than Brookfield and its subsidiaries) to BEPC in exchange for Class A.1 Shares on a one-for-one basis, and the Exchangeable Shares were cancelled by BEPC;

    (d) Brookfield and its subsidiaries transferred the Exchangeable Shares held by them to BEPC in exchange for Class A.2 Shares on a one-for-one basis, and the Exchangeable Shares were cancelled by BEPC;

    (e) CanHoldco transferred 55 Class B Shares to New BEPC in exchange for 55 New Class B Shares;

    (f) BEPC amended its articles to, among other things, rename BEPC to “Brookfield Renewable Holdings Corporation” and remove the Exchangeable Shares from its authorized share capital;

    (g) BEPC applied to cease to be a reporting issuer;

    (h) the Exchangeable Shares will be delisted from the NYSE and the TSX;

    (i) New BEPC was renamed “Brookfield Renewable Corporation” and the New Exchangeable Shares will be listed on the NYSE and the TSX under the symbol “BEPC”;

    (j) New BEPC, BEPC and BEP entered into a pairing agreement pursuant to which the parties have agreed that New BEPC will, at all times, hold such number of Class A.1 Shares equal to the number of New Exchangeable Shares that are outstanding to support the duties and obligations of New BEPC to holders of New Exchangeable Shares (the **Pairing Agreement**); and

    (k) New BEPC entered into option agreements with CanHoldco and Brookfield BRP Canada Corp., a subsidiary entity of BEP, that collectively provide New BEPC with the right to acquire any or all of the Class B Shares and/or Class C Shares held by CanHoldco and Brookfield BRP Canada Corp. in exchange for newly issued New Class B Shares.

37. Following completion of the Reorganization, New BEPC:

    (a) became a reporting issuer in each of the provinces and territories of Canada;

    (b) qualifies as a “mutual fund corporation” as defined in the Tax Act;

    (c) has taken the place of BEPC and serves as the entity through which investors who do not wish to hold BEP Units directly may hold their interests in BEP through the ownership of a New Exchangeable Share, which is economically equivalent to a BEP Unit; and

    (d) carries on its business through BEPC, whose Class A.1 Shares and 55 Class B Shares are New BEPC’s sole material assets.

38. BEP consolidates New BEPC and BEPC and their businesses in BEP’s financial statements, and the collective operations of BEP and its subsidiaries (including New BEPC, BEPC and their subsidiary entities) are the same as they were prior to the creation of New BEPC and occurrence of the transactions conducted in connection with, and to facilitate, the Reorganization.

39. The board of directors of New BEPC consists of the directors that were on the board of directors of BEPC immediately prior to completion of the Reorganization.

40. New BEPC is not a wholly-owned subsidiary entity of BEP; BEP does not own, directly or indirectly, all of the voting securities of New BEPC because members of the public hold New Exchangeable Shares and Brookfield and its subsidiaries hold Class A.2 Shares, which are exchangeable for New Exchangeable Shares (subject to the Ownership Cap (as defined below)). However, by virtue of the terms of the New Class B Shares, BEP holds a 75% voting interest in New BEPC thereby controlling New BEPC and the appointment and removal of directors of New BEPC. The voting rights attached to the New Exchangeable Shares do not allow holders of New Exchangeable Shares to affect the control of New BEPC. The voting right attached to each New Exchangeable Share is expected to assist with index inclusion.

The New Exchangeable Shares

41. The New Exchangeable Shares have substantially the same terms as the Exchangeable Shares. Each New Exchangeable Share has been structured with the intention of providing an economic return equivalent to a BEP Unit, and the rights, privileges, restrictions and conditions attached to each New Exchangeable Share (the **New Exchangeable Share Provisions**) are such that each New Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BEP Unit. In particular:

    (a) each New Exchangeable Share is exchangeable at the option of a holder for one (1) BEP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of New BEPC) (an **Exchange**);

    (b) the New Exchangeable Shares are redeemable by New BEPC at any time (including following a notice requiring redemption having been given by BEP) for BEP Units on a one-for-one basis (subject to adjustment to reflect certain capital events) (a **Redemption**);

    (c) upon a liquidation, dissolution or winding up of New BEPC, holders of New Exchangeable Shares are entitled to receive BEP Units (or their cash equivalent, at New BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of New BEPC following such payment (a **New BEPC Liquidation**);

    (d) upon a liquidation, dissolution or winding up of BEP (a **BEP Liquidation**), including where substantially concurrent with a New BEPC Liquidation, all of the New Exchangeable Shares will be automatically redeemed for BEP Units (or their cash equivalent, at New BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

    (e) subject to applicable law and in accordance with the New Exchangeable Share Provisions, each New Exchangeable Share entitles the holder to dividends from New BEPC payable at the same time as, and equivalent to, each distribution on a BEP Unit. The New Exchangeable Share Provisions also provide that if a distribution is declared on the BEP Units and an equivalent dividend is not declared and paid concurrently on the New Exchangeable Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

42. Upon being notified by New BEPC that New BEPC has received a request for an Exchange, BEP has an overriding call right to purchase (or have one of its affiliates purchase) all of the New Exchangeable Shares that are the subject of the Exchange notice from the holder of New Exchangeable Shares for BEP Units (or their cash equivalent, at BEP's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

43. Upon being notified by New BEPC that it intends to conduct a Redemption, BEP has an overriding call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding New Exchangeable Shares for BEP Units on a one-for-one basis (subject to adjustment to reflect certain capital events).

44. Upon the occurrence of a BEP Liquidation or a New BEPC Liquidation, BEP has an overriding liquidation call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding New Exchangeable Shares on the day prior to the effective date of such BEP Liquidation or New BEPC Liquidation for BEP Units on a one-for-one basis (subject to adjustment to reflect certain capital events).

45. In connection with the Reorganization, Brookfield entered into a rights agreement (the **Rights Agreement**) pursuant to which it agreed that, until July 30, 2027 (and as automatically renewed for successive periods of two years, unless Brookfield provides the rights agent with written notice of termination in accordance with the terms of the Rights Agreement), Brookfield will guarantee New BEPC's obligation to deliver BEP Units or their cash equivalent in connection with an Exchange. The Rights Agreement replaced the rights agreement in respect of exchanges of Exchangeable Shares.

46. Investments in New Exchangeable Shares are, as nearly as practicable, functionally and economically, equivalent to an investment in BEP Units. BEP expects that:

(a) investors of New Exchangeable Shares will purchase New Exchangeable Shares as an alternative way of owning BEP Units rather than a separate and distinct investment; and

(b) the market price of the New Exchangeable Shares will be significantly impacted by (i) the combined business performance of New BEPC and BEP as a single economic unit, and (ii) the market price of the BEP Units, in a manner that results in the market price of the New Exchangeable Shares closely tracking the market price of the BEP Units.

47. A holder of New Exchangeable Shares will be able to terminate its investment by either (a) selling the New Exchangeable Shares on the NYSE or the TSX, or (b) selling the BEP Units received by operation of the New Exchangeable Share Provisions on the NYSE or the TSX.

Share Capital of BEPC after the Reorganization

48. Following completion of the Reorganization:

(a) the authorized share capital of BEPC consists of: (i) an unlimited number Class A.1 Shares; (ii) an unlimited number of Class A.2 Shares; (iii) an unlimited number of Class B Shares; (iv) an unlimited number of Class C Shares; (v) an unlimited number of class A senior preferred shares (issuable in series); and (vi) an unlimited number of class B junior preferred shares (issuable in series); and

(b) there are (based on the issued and outstanding share capital of BEPC as of October 15, 2024):

(i) 134,827,356 Class A.1 Shares issued and outstanding, all of which are held by New BEPC;

(ii) 44,813,835 Class A.2 Shares issued and outstanding, all of which are held by Brookfield and its subsidiaries;

(iii) 165 Class B Shares issued and outstanding, 110 of which are held by CanHoldco, and 55 of which are held by New BEPC;

(iv) 194,460,874 Class C Shares issued and outstanding, all of which are held by Brookfield BRP Canada Corp.;

(v) zero class A senior preferred shares issued and outstanding; and

(vi) zero class B junior preferred shares issued and outstanding.

49. Other than the ability to receive additional dividends at such time as there are no unpaid dividends in respect of the Class A.1 Shares or the Class A.2 Shares, and if, as and when declared by the board of directors of BEPC (the Additional Dividends), the Class A.1 Shares have terms that are substantially the same as the New Exchangeable Shares, including with respect to the exchange mechanics, dividend rights, voting rights and rights on liquidation. It is expected that Additional Dividends may be declared from time to time in order to fund expenses of New BEPC.

50. The Class A.1 Shares carry one (1) vote per share, and the holders of the Class A.1 Shares are entitled to an aggregate 25% voting interest in BEPC. Each Class A.1 Share has been structured with the intention of providing an economic return equivalent to a BEP Unit and the rights, privileges, restrictions and conditions attached to each Class A.1 Share (the **A.1 Exchangeable Share Provisions**) are such that each Class A.1 Share is, as nearly as practicable, functionally and economically, equivalent to a New Exchangeable Share and a BEP Unit. In particular:

(a) each Class A.1 Share is exchangeable at the option of a holder for one (1) BEP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BEPC);

(b) the Class A.1 Shares are redeemable by BEPC at any time (including following a notice requiring redemption having been given by BEP) for BEP Units on a one-for-one basis (subject to adjustment to reflect certain capital events);

(c) upon a liquidation, dissolution or winding up of BEPC (a **BEPC Liquidation**), holders of Class A.1 Shares are entitled to receive BEP Units (or their cash equivalent, at BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of BEPC following such payment;

(d) upon a BEP Liquidation, including where substantially concurrent with a BEPC Liquidation, all of the Class A.1 Shares will be automatically redeemed for BEP Units (or their cash equivalent, at BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

(e) subject to applicable law and in accordance with the A.1 Exchangeable Share Provisions, each Class A.1 Share entitles the holder to dividends from BEPC payable at the same time as, and equivalent to, each distribution on a BEP Unit. The A.1 Exchangeable Share Provisions also provide that if a distribution is declared on the BEP Units and an equivalent dividend is not declared and paid concurrently on the Class A.1 Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

51. As required pursuant to the terms of the Pairing Agreement, any and all Class A.1 Shares will be held by New BEPC. New BEPC may use the exchange right pursuant to the A.1 Exchangeable Share Provisions to obtain BEP Units necessary, from time to time, to satisfy exchanges of the New Exchangeable Shares.

52. Each Class A.2 Share is non-voting and structured with the intention of providing an economic return equivalent to a BEP Unit, and the rights, privileges, restrictions and conditions attached to each Class A.2 Share (the **A.2 Exchangeable Share Provisions**) are such that each Class A.2 Share is, as nearly as practicable, functionally and economically, equivalent to a New Exchangeable Share and a BEP Unit. In particular:

(a) each Class A.2 Share is exchangeable at the option of a holder for (i) one (1) New Exchangeable Share (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BEPC), or (ii) one (1) BEP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BEPC), provided that, after giving effect to any such exchange, Brookfield and its subsidiaries are not permitted to receive a number of New Exchangeable Shares that would result in Brookfield and its subsidiaries owning 9.5% or more of the aggregate fair market value of all issued and outstanding shares of New BEPC (the **Ownership Cap**);

(b) the Class A.2 Shares are redeemable by BEPC at any time (including following a notice requiring redemption having been given by BEP) for (i) one (1) New Exchangeable Share (subject to adjustment to reflect certain capital events), or (ii) one (1) BEP Unit (subject to adjustment to reflect certain capital events) (the form of payment to be determined at the election of BEPC);

(c) upon a BEPC Liquidation, holders of Class A.2 Shares are entitled to receive one (1) BEP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BEPC) and not any remaining property or assets of BEPC following such payment;

(d) upon a BEP Liquidation, including where substantially concurrent with a BEPC Liquidation, all of the Class A.2 Shares will be automatically redeemed for BEP Units (or their cash equivalent, at BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

(e) subject to applicable law and in accordance with the A.2 Exchangeable Share Provisions, each Class A.2 Share entitles the holder to dividends from BEPC payable at the same time as, and equivalent to, each distribution on a BEP Unit. The A.2 Exchangeable Share Provisions also provide that if a distribution is declared on the BEP Units and an equivalent dividend is not declared and paid concurrently on the Class A.2 Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

53. The Ownership Cap is designed to preserve New BEPC's status as a "mutual fund corporation" under the Tax Act.

54. The Class B Shares continue to be structured to provide the holders with control of BEPC. In particular:

(a) holders of Class B Shares are entitled to, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Class A.1 Shares. As a result, holders of Class B Shares have a 75% voting interest in BEPC and holders of Class A.1 Shares have a 25% voting interest in BEPC; and

(b) in the event that a share/stock dividend is declared and paid on the Class A.1 Shares, a share/stock dividend will be paid to holders of Class B Shares in an equal number of Class B Shares as Class A.1 Shares are paid to holders of Class A.1 Shares.

55. The only voting securities of BEPC are the Class A.1 Shares and the Class B Shares.

56. The Class C Shares were unaffected by the Reorganization and continue to be structured to provide the holders thereof with all of the residual value in BEPC. In particular:

(a) subject to applicable law and in accordance with the terms of the Class C Shares, only holders of Class C Shares are entitled to a residual right to participate, on a BEPC Liquidation, in its assets;

(b) subject to applicable law and in accordance with the term of the Class C Shares, subject to the prior rights of the holders of the Class A.1 Shares and Class A.2 Shares and of any preferred shares then outstanding, the holders of Class C Shares are entitled to receive dividends if, as, and when declared by the board of directors of BEPC; and

(c) share/stock dividends, if any, will be paid to holders of Class C Shares in an equal number of Class C Shares as Class A.1 Shares are paid to holders of Class A.1 Shares and Class A.2 Shares are paid to holders of Class A.2 Shares.

57. The Class B Shares and Class C Shares continue to be subject to restrictions on transfer, other than to BEP or persons controlled by BEP.

Issuance of BEP Units Under the Rights Agreement

58. The attributes of the New Exchangeable Shares, as set out in the New Exchangeable Share Provisions, and the trades contemplated by the Rights Agreement involve or may involve:

(a) the delivery by Brookfield of BEP Units to a holder of New Exchangeable Shares; and

(b) the first trade of BEP Units received by a holder of New Exchangeable Shares in connection with the Rights Agreement.

59. Under section 2.42 of National Instrument 45-106 *Prospectus Exemptions* and in connection with the conversion, exchange, or exercise of a security, the Prospectus Requirement does not apply to a distribution by an issuer if (a) the issuer distributes a security of its own issue to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer, or (b) subject to certain notification requirements, the issuer distributes a security of a reporting issuer held by it to a security holder of the issuer in accordance with the terms and conditions of a security previously issued by that issuer.

60. If New BEPC were to issue New Exchangeable Shares pursuant to a future prospectus offering and Brookfield were required to deliver the BEP Units pursuant to the Rights Agreement with respect to those New Exchangeable Shares, it could not rely on paragraph 2.42(1)(b) of NI 45-106, because Brookfield would be delivering BEP Units to a security holder of New BEPC, not of Brookfield.

61. In absence of an exemption, the delivery by Brookfield of BEP Units to a holder of New Exchangeable Shares, must comply with the Prospectus Requirement under the Legislation in each jurisdiction of Canada where the delivery occurs.

62. The New Exchangeable Shares represent part of the equity value of BEP and are functionally and economically equivalent to the BEP Units. As a result of the New Exchangeable Share Provisions, holders of New Exchangeable Shares have the ability to receive a BEP Unit or its cash equivalent (the form of payment to be determined at the election of New BEPC) and will receive identical distributions to the BEP Units, as and when declared by the board of directors of New BEPC. Moreover, the economic interests that underlie the New Exchangeable Shares are identical to those underlying the BEP Units; namely, the assets and operations held directly or indirectly by BEP.

63. A key factor in ensuring that an investment in New Exchangeable Shares is as nearly as practicable, functionally and economically equivalent to an investment in BEP Units is the ability of holders of New Exchangeable Shares to (a) exchange their New Exchangeable Shares, (b) receive BEP Units on the exchange, and (c) sell the BEP Units on the NYSE or the TSX.

64. Relief from the Prospectus Requirement for the delivery by Brookfield of BEP Units to holders of New Exchangeable Shares issued pursuant to a future prospectus offering is necessary for the operation of the backstop provided by Brookfield to holders of New Exchangeable Shares. As such, the Filers submit that granting relief from the Prospectus Requirement is not contrary to the public interest.

Qualification to File Short Form Prospectus

65. New BEPC wishes to be eligible to file short form prospectuses under NI 44-101. New BEPC's eligibility to file short form and shelf prospectuses is critical to its viability as an issuer of a security offering an alternative way of owning BEP Units. In addition, there are short time frames associated with financings undertaken in current market conditions. As a result, the relief from the Short Form Prospectus Eligibility Requirements is being sought concurrently with the completion of the Reorganization and any possible follow-on distribution of New BEPC securities.

66. The qualification criteria for short form prospectus eligibility are outlined in section 2.2 of NI 44-101. Having become a reporting issuer pursuant to the Reorganization, New BEPC satisfies all of the qualification criteria for short form prospectus eligibility in section 2.2 of NI 44-101 with the exception of subsection 2.2(e) which requires that an issuer's equity securities are listed and posted for trading on a short form eligible exchange and that an issuer is not an issuer whose (a) operations have ceased, or (b) whose principal asset is cash, cash equivalents, or its exchange listing (the **Short Form Prospectus Equity Security Requirement**). The term "equity security" is defined under the Legislation as a security that carries a residual right to participate in the earnings of the issuer and, on the liquidation or winding up of the issuer, in its assets. The New Exchangeable Shares do not carry a residual right to participate in the assets of New BEPC upon liquidation or winding-up of New BEPC, and accordingly, are not equity securities under the Legislation.

67. In the event that New BEPC undertakes an offering or other distribution of its securities prior to the filing of its audited financial statements for the year ended December 31, 2024, New BEPC intends to rely on the exemption in subsection 2.7(2) of NI 44-101 from the requirements to have (a) current annual financial statements and (b) a current AIF.

68. New BEPC is not eligible for the exemption for alternative qualification criteria for conventional preferred shares under Part 2 of NI 44-101 because the New Exchangeable Shares are not conventional preferred shares.

69. It is appropriate for the New Exchangeable Shares to be treated as equity securities for the purposes of NI 44-101 since the New Exchangeable Shares are, in effect, the economic and voting equivalent of the BEP Units and the BEP Units qualify as equity securities under NI 44-101.

70. Except for not meeting the Short Form Prospectus Equity Security Requirement, New BEPC is otherwise qualified to file a prospectus in the form of a short form prospectus pursuant to, and in accordance with, NI 44-101.

Qualification of At-the-Market Distribution

71. Pursuant to section 9.3(1)(b) of NI 44-102, only equity securities may be distributed by way of an at-the-market distribution using the shelf procedures. As noted above, the New Exchangeable Shares are not equity securities under the Legislation.

72. Based on the rationale provided in paragraphs 46, 66, 69 and 70 above, the Filers submit that it is not prejudicial to the public interest to exempt New BEPC from the At-the-Market Distribution Eligibility Requirements.

Decision

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

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

1. the Prospectus Requirement shall not apply to the delivery by Brookfield of BEP Units to holders of New Exchangeable Shares for the duration of the Rights Agreement, provided that:

    (a) such BEP Units are delivered strictly pursuant to Brookfield's agreement to guarantee New BEPC's obligation to deliver BEP Units in connection with an Exchange under the terms of the Rights Agreement;

    (b) BEP is a reporting issuer, as defined in the Legislation, in a jurisdiction of Canada at the time such relief is relied upon for the delivery of BEP Units;

    (c) the terms of the Rights Agreement are not materially amended; and

    (d) Brookfield has provided prior written notice of the distribution to the principal regulator in accordance with the terms of subsection 2.42(2) of NI 45-106;

2. any first trade in BEP Units acquired by a holder of New Exchangeable Shares in connection with Brookfield satisfying its obligations under the Rights Agreement shall not be a distribution under the Legislation, provided that:

    (a) BEP is and has been a reporting issuer, as defined in the Legislation, in a jurisdiction of Canada for the four months immediately preceding the trade;

    (b) the trade is not in previously issued securities of an issuer from the holdings of any control person, as that term is defined in subsection 1(1) of the *Securities Act* (Ontario);

    (c) no unusual effort is made to prepare the market or to create a demand for the BEP Units;

(d) no extraordinary commission or consideration is paid to a person or company in respect of the trade;

(e) if the selling securityholder is an insider or officer of BEP, the selling security holder has no reasonable grounds to believe that BEP is in default of securities legislation; and

(f) the terms of the Rights Agreement are not materially amended;

3. the decision as it relates to the Prospectus Requirement shall terminate on the day on which the Rights Agreement is terminated;

4. New BEPC does not have to comply with the Short Form Prospectus Eligibility Requirements so long as:

(a) New BEPC is otherwise qualified to file a preliminary short form prospectus under section 2.2 of NI 44-101;

(b) the New Exchangeable Shares are listed and posted for trading on a short form eligible exchange (as defined in NI 44-101);

(c) New BEPC is not an issuer whose operations have ceased;

(d) New BEPC is not an issuer whose principal asset is cash, cash equivalents, or its exchange listing; and

(e) the BEP Units qualify as equity securities under NI 44-102;

5. New BEPC does not have to comply with the At-the-Market Distribution Requirements so long as:

(a) New BEPC otherwise satisfies the conditions set out in section 9.3 of NI 44-102 to distribute securities under an ATM prospectus (as defined in NI 44-102) as part of an at-the-market distribution;

(b) the security being distributed is a New Exchangeable Share; and

(c) the BEP Units qualify as equity securities under NI 44-102.

“Erin O’Donovan”
Manager, Corporate Finance Division
Ontario Securities Commission

OSC File #: 2024/0520

B.3.6 Questrade, Inc.

Headnote

National Policy 11-203 Process For Exemptive Relief Applications in Multiple Jurisdictions – Application by Filer for relief from prospectus requirement in connection with distribution by Filer of "contracts for difference" and over-the-counter (OTC) foreign exchange contracts (collectively, CFDs) to investors resident in Applicable Jurisdictions, subject to terms and conditions – Filer is registered in Ontario as investment dealer and a member of the Canadian Investment Regulatory Organization (CIRO) – Applicant seeking relief to permit Applicant to offer CFDs to investors in Applicable Jurisdictions, including relief permitting Applicants to distribute CFDs on the basis of clear and plain language risk disclosure document rather than a prospectus – risk disclosure document contains disclosure substantially similar to risk disclosure document required for recognized options in OSC Rule 91-502 Trades in Recognized Options, the regime for OTC derivatives contemplated by former proposed OSC Rule 91-504 OTC Derivatives (which was not adopted) and the Quebec Derivatives Act – Relief consistent with relief contemplated by OSC Staff Notice 91-702 Offerings of contracts for difference and foreign exchange contracts to investors in Ontario (OSC SN 91-702) – Relief replaces relief previously granted to Filer in November 2020 in respect of distribution of CFDs – Relief granted, subject to terms and conditions as described in OSC SN 91-702 including four-year sunset clause.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am.
OSC Rule 91-502 Trades in Recognized Options.
OSC Rule 91-503 Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario.
Proposed OSC Rule 91-504 OTC Derivatives (not adopted).

December 27, 2024

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

AND

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

AND

IN THE MATTER OF
QUESTRADE, INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the Filer and its respective officers, directors and representatives be exempt from the prospectus requirement in respect of the distribution of contracts for difference, over-the-counter (**OTC**) foreign exchange contracts (collectively, **CFDs**) to investors resident in the Applicable Jurisdictions (as defined below) subject to the terms and conditions below (the **Requested Relief**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada, other than the provinces of Québec and Alberta (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**).

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation incorporated under the Ontario *Business Corporations Act*, with its head office in Toronto, Ontario.

2. The Filer is registered as a dealer in the category of investment dealer in each of the provinces and territories of Canada, and is a member of the Canadian Investment Regulatory Organization (**CIRO**) formerly known as Investment Industry Regulatory Organization of Canada (IIROC).

3. Subject to the delay in renewing the Previous Relief (as defined below), the Filer is not in default of any requirements of applicable securities legislation in any province or territory of Canada or CIRO Rules or CIRO Acceptable Practices (as defined below).

4. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.

5. The Filer has previously been granted exemptive relief substantially identical to the Requested Relief by Decision dated November 24, 2020 (the **Previous Relief**). The Filer has been offering CFDs to investors, including retail investors, on the basis of the Previous Relief and in compliance with applicable CIRO Rules and other CIRO Acceptable Practices. The Previous Relief expired on November 24, 2024. The effect of the Requested Relief is to renew the Previous Relief, on substantially the same terms and conditions, for a further interim period of up to four years (as described below). For the time period from the date of the Previous Relief to the date of this Decision, the Filer has been in compliance with the terms and conditions of the Previous Relief.

6. The Filer wishes to continue to offer CFDs to investors in the Applicable Jurisdictions on the terms and conditions described in this Decision. For the Interim Period (as defined below), the Filer is seeking the Requested Relief in connection with this proposed continued offering of CFDs in Ontario and intends to rely on this Decision and the "Passport System" described in MI 11-102 to offer CFDs in the Non-Principal Jurisdictions.

7. In Québec, the Filer is qualified by the Autorité des marches financiers (**AMF**) pursuant to sections 82 and 83 of the *Derivatives Act* (Québec) (the **QDA**) and authorized to market certain forward contracts and CFDs offered to the public, subject to the terms and conditions of its qualification decision and related provisions of the QDA.

8. The Filer understands that staff of the Alberta Securities Commission have public interest concerns with CFD trading by retail clients and, accordingly, the Filer intends to offer CFDs to investors in Alberta in reliance upon National Instrument 45-106 *Prospectus Exemptions*. The Filer undertakes not to give notice that subsection 4.7(1) of MI 11-102 is intended to be relied upon in Alberta.

CIRO Rules and Acceptable Practices

9. As a member of CIRO, the Filer is only permitted to enter into CFDs pursuant to the rules and regulations of CIRO (the **CIRO Rules**).

10. In addition, CIRO has communicated to its members certain additional expectations as to acceptable business practices (**CIRO Acceptable Practices**) as articulated in CIRO's paper "*Regulatory Analysis of Contracts for Differences (CFDs)*" published by CIRO on June 6, 2007, as amended on September 12, 2007 (the **CIRO CFD Paper**), for any CIRO member proposing to offer CFDs to investors. The Filer is in compliance with CIRO Acceptable Practices in offering CFDs. The Filer will continue to offer CFDs in accordance with CIRO Acceptable Practices as may be established from time to time, and will not offer CFDs linked to bitcoin, cryptocurrencies or other novel or emerging asset classes to investors in the Applicable Jurisdictions without the prior written consent of CIRO.

11. The Filer is required by CIRO to maintain a certain level of capital to address the business risks associated with its activities. The capital reporting required by CIRO (as per the calculation in the Form 1 Joint Regulatory Financial Questionnaire and Report (**Form 1**), and in the Monthly Financial Reports to CIRO) is based predominantly on the generation of financial statements and calculations so as to ensure capital adequacy. The Filer, as a CIRO member, is required to have a specified minimum capital which includes having any additional capital required with regards to margin

requirements and other risks. This risk calculation is summarized as a risk adjusted capital calculation which is submitted in the Filer's Form 1 and required to be kept positive at all times.

Online Trading Platform

12. The Filer offers online self-directed trading in CFDs via an online trading platform (the **Platform**), which is a proprietary and fully automated internet-based trading platform.

13. The Filer utilizes the Platform to process CFD transactions under a software license and services agreement with Saxo Bank S/A, a leading global provider of private and white label CFD trading solutions (the **Platform Provider**).

14. The Platform technology has certain client protection mechanisms and risk management tools. It provides transparency of price to clients. The Platform is a key component of a comprehensive risk management strategy, which helps the Filer's clients and the Filer to manage the risks associated with leveraged products. This risk management system has evolved over many years with the objective of meeting the mutual interests of all relevant parties (including, in particular, clients). These attributes and services are described in more detail below:

    (a) *Client reporting.* Clients are provided with a real-time view of their margin balance, including how tick-by-tick price movements affect their margin balances. Clients can view this information throughout the trading day at any time by logging into their trading screen. Clients can also set up alerts that instruct the Platform to automatically send an email, or notice within the Platform notifying them of key identified levels being hit in the market.

    (b) *Automated risk management system.* Clients are instructed that they must maintain the required margin against their position(s). If a client's funds drop below the required margin, margin calls are regularly issued via email and automated platform message, alerting the client to the fact that the client is required to either deposit more funds to maintain the position or close/reduce it voluntarily. Where possible, daily telephone margin calls are provided as a supporting communication for clients. However, if a client fails to deposit more funds, where required, the client's position is liquidated. This liquidation procedure is intended to act as a mechanism to help reduce the risk of losses being greater than the amount deposited. The risk management functionality of the Platform mitigates client losses by ensuring client positions are closed out when the client no longer maintains sufficient margin in their account to support the position, and can prevent clients from losing more than their stated risk capital or cumulative loss limit. This functionality also ensures that the Filer reduces credit risk vis-a-vis its customers in respect of transactions in CFDs.

    (c) *Wide range of order types.* The Platform also provides risk management tools such as stops, limits, and contingent orders, which are available on all CFDs. These tools are designed to reduce the risk of losses being greater than the amount deposited by a client.

15. The Platform is similar to those developed for on-line brokerages in that the client trades without other communication with, or advice from, the dealer.

16. Clients conduct CFD transactions through the Platform. The Platform is not a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* since a marketplace is any facility that brings together multiple buyers and sellers by matching orders in fungible contracts in a nondiscretionary manner. The Platform does not bring together multiple buyers and sellers; rather it offers clients direct access to real time currency rates and price quotes for the CFDs.

17. The CFDs are not transferable or fungible with other contracts or financial instruments.

18. The Filer will be the counterparty to trades by its clients in CFDs (**CFD Transactions**). It will not act as an intermediary, broker or trustee in respect of CFD Transactions. The Filer does not manage any discretionary accounts, nor does it provide any trading advice or recommendations.

19. The Filer manages the risk in its client positions by simultaneously placing the identical CFD Transaction on a back-to-back basis with the Platform Provider, which is an "acceptable institution" (as the term is defined in CIRO Form 1) (the **Acceptable Institution**). The Acceptable Institution, in turn, automatically offsets each position against other client positions on a second-by-second basis, and either "hedges" its net exposure by trading with liquidity providers (banks) or using its equity capital, or both. By virtue of this risk management functionality inherent in the Platform, the Filer eliminates both market risk and counterparty risk. This also means that the Filer does not have an inherent conflict of interest with its clients since it does not profit on either the loss or gain of the client. The Filer does not charge any account opening or maintenance fees however it charges commissions and other fees such as rollover, carrying, and finance costs and is compensated by the spread where applicable. If the Filer makes any changes to this compensation model in the future, including introducing any fees, commissions or other charges in respect of CFDs, the Filer will provide reasonable prior notice to its clients and will ensure that all such changes are in accordance with CIRO Rules and CIRO Acceptable Practices.

20. The ability to lever an investment is one of the principal features of CFDs. Leverage allows clients to magnify investment returns (or losses) by reducing the initial capital outlay required to achieve the same market exposure that would be obtained by investing directly in the underlying currency or instrument.

21. CIRO Rules and CIRO Acceptable Practices set out detailed requirements and expectations relating to leverage and margin for offerings of CFDs. The degree of leverage may be amended in accordance with CIRO Rules and CIRO Acceptable Practices as may be established from time to time.

22. Pursuant to Section 13.12 *Restriction on lending to clients* of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, only those firms that are registered as investment dealers (a condition of which is to be a member of CIRO) may lend money, extend credit or provide margin to a client.

Structure of CFDs

23. A CFD is a derivative product that allows clients to obtain economic exposure to the price movement of an underlying instrument, such as a share, index, market sector, currency pair, treasury or commodity, without the need for ownership and physical settlement of the underlying instrument. Unlike certain other OTC derivatives, such as forward contracts, CFDs do not require or oblige either the client or principal counterparty (being the Filer for purposes of the Requested Relief), nor any agent of the principal counterparty (also being the Filer for the purposes of the Requested Relief) to deliver the underlying instrument.

24. The CFDs offered by the Filer do not confer the right or obligation to acquire or deliver the underlying security or instrument itself, and do not confer any other rights of shareholders of the underlying security or instrument, such as voting rights. Rather, a CFD is a derivative instrument which is represented by an agreement between a client and a counterparty to exchange the difference between the opening price of a CFD position and the price of the CFD at the closing of the position. The value of the CFD is generally reflective of the movement in prices at which the underlying instrument is traded at the time of opening and closing the position in the CFD.

25. CFDs allow clients to take a long or short position on an underlying instrument, but unlike futures contracts they always have another contract available for the following period and there is no obligation for physical delivery of the underlying instrument. Most of the CFDs offered do not have an expiry date with the exception of commodity CFDs. Commodity CFDs will be listed with an expiration date but always have another contract available for the following period.

26. CFDs allow clients to obtain exposure to markets and instruments that may not be available directly, or may not be available in a cost-effective manner.

CFDs Distributed in the Applicable Jurisdictions

27. Certain types of CFDs may be considered to be "securities" under the securities legislation of the Applicable Jurisdictions.

28. Investors wishing to enter into CFD transactions with the Filer must open an account with the Filer.

29. Prior to a client's first CFD Transaction and as part of the account opening process, the Filer will provide the client with a separate risk disclosure document that clearly explains, in plain language, the transaction and the risks associated with the transaction (the **Risk Disclosure Document**). The Risk Disclosure Document includes the required risk disclosure set forth in Schedule A to the Regulations to the QDA and leverage risk disclosure required under CIRO Rules. The Risk Disclosure Document contains disclosure that is substantially similar to the risk disclosure statement required for recognized options in OSC Rule 91-502 *Trades in Recognized Options* (which provides both registration and prospectus exemptions) (**OSC Rule 91-502**) and the regime for OTC derivatives contemplated by OSC SN 91-702 (as defined below) and proposed OSC Rule 91-504 *OTC Derivatives* (which was not adopted) (**Proposed Rule 91-504**). The Filer will ensure that the Principal Regulator will receive a complete copy of the Risk Disclosure Document. Furthermore, prior to a client's first CFD Transaction, a complete copy of the Risk Disclosure Document will be delivered to the client through the online account application.

30. As part of the account opening process and prior to the client's first CFD Transaction, the Filer will obtain a written or electronic acknowledgement from the client confirming that the client has read and understood the Risk Disclosure Document. Such acknowledgment will be separate and prominent from other acknowledgements provided by the client as part of the account opening process.

31. As is customary in the industry, and due to the fact that this information is subject to factors beyond the control of the Filer (such as changes in CIRO Rules), information such as the underlying instrument listing and associated margin rates would not be disclosed in the Risk Disclosure Document but will be part of a client's account opening package and will be available on both the Filer's website and the Platform.

Satisfaction of the Registration Requirement

32. The role of the Filer as it relates to the offering of CFDs is limited to acting as an execution-only dealer. In this role, the Filer will, among other things, be responsible for approving all marketing, for holding of clients funds and for client approval (including the review of know-your-client (**KYC**) due diligence and account opening suitability assessments) pursuant to NI 31-103.

33. CIRO Rules exempt member firms that provide execution-only services, such as discount brokerage, from the obligation to determine whether each trade is suitable for the client. However, CIRO has exercised its discretion to impose additional requirements on CIRO members proposing to trade in CFDs (namely the **CIRO Acceptable Practices** described in paragraph 11) which requires, among other things, that:

    (a) applicable risk disclosure documents and client suitability waivers be provided in a form acceptable to CIRO;

    (b) the firm's policies and procedures, amongst other things, require the Filer to assess whether trading in CFDs is appropriate for a client before an account is approved to be opened. This account opening suitability process includes an assessment of the client's investment knowledge and trading experience, client identification, screening applicants and customers against lists of prohibited/blocked persons, and detecting and reporting suspicious trading and potential terrorist financing and money laundering activities to applicable enforcement authorities;

    (c) the Filer's registered salespeople who assist clients with their KYC and their supervisory trading officer, meet or are exempted from proficiency requirements for futures trading, and are registered with CIRO as Investment Representatives (**IR**) for retail customers in the product categories of Futures Contracts and Futures Contracts Options. The course proficiency requirements for an IR, Futures Contracts and Futures Contract Options include the completion of the Derivatives Fundamental Course and Futures Licensing Course. In addition, the Filer must have a fully qualified Supervisor who has completed the Canadian Commodity Supervisors Examination in addition to Derivatives Fundamentals Course and Futures Licensing Course.

    (d) cumulative loss limits for each client's account be established (this is a measure normally used by CIRO in connection with futures trading accounts).

34. The CFDs offered in Canada are offered in compliance with applicable CIRO Rules and other CIRO Acceptable Practices.

35. CIRO limits the underlying instruments in respect of which a member firm may offer CFDs since only certain securities are eligible for reduced margin rates. For example, underlying equity securities must be listed or quoted on certain "recognized exchanges" (as that term is defined in CIRO Rules) such as the Toronto Stock Exchange or the New York Stock Exchange. The purpose of these limits is to ensure that CFDs offered in Canada will only be available in respect of underlying instruments that are traded in well-regulated markets, in significant enough volumes and with adequate publicly available information, so that clients can form a sufficient understanding of the exposure represented by a given CFD.

36. CIRO Rules prohibit the margining of CFDs where the underlying instrument is a synthetic product (single U.S. sector or "mini-indices"). For example, Sector CFDs (i.e., basket of equities for the financial institutions industry) may be offered to non-Canadian clients; however, this is not permissible under CIRO Rules.

37. CIRO members seeking to trade CFDs are generally precluded, by virtue of the nature of the contracts, from distributing CFDs that confer the right or obligation to acquire or deliver the underlying security or instrument itself (**convertible CFDs**), or that confer any other rights of shareholders of the underlying security or instrument, such as voting rights.

38. The Requested Relief, if granted, would (and the Previous Relief does) substantially harmonize the position of the regulators in the Applicable Jurisdictions on the offering of CFDs to investors in the Applicable Jurisdictions with how those products are offered to investors in Québec under the QDA. The QDA provides a legislative framework to govern derivatives activities within Quebec. Among other things, the QDA requires such products to be offered to investors through a CIRO member and the distribution of a standardized risk disclosure document rather than a prospectus in order to distribute such contracts to investors resident in Québec.

39. The Requested Relief, if granted, would (and the Previous Relief is) be consistent with the guidelines articulated by Staff of the Principal Regulator in OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors* (**OSC SN 91-702**). OSC SN 91-702 provides guidance with regards to the distributions of CFDs, foreign exchange contracts (forex or FX contracts) and similar OTC derivative products to investors in the Jurisdiction.

40. The Principal Regulator has previously recognized that the prospectus requirement may not be well suited for the distribution of certain derivative products to investors in the Jurisdiction, and that alternative requirements, including requirements based on clear and plain language risk disclosure, may be better suited for certain derivatives. In the

Jurisdiction, both OSC Rule 91-502 and OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situated Outside of Ontario* (**OSC Rule 91-503**) provide for a prospectus exemption for the trading of derivative products to clients. The Requested Relief is consistent with the principles and requirements of OSC Rule 91-502, OSC Rule 91-503 and Proposed Rule 91-504.

41. The Filer submits that the Requested Relief, if granted, would (and the Previous Relief does) harmonize the Principal Regulator's position on the offering of CFDs with certain other foreign jurisdictions that have concluded that a clear, plain language risk disclosure document is appropriate for retail clients seeking to trade in foreign exchange contracts.

42. The Filer is of the view that requiring compliance with the prospectus requirement in order to enter into CFDs with retail clients would not be appropriate since the disclosure of a great deal of the information required under a prospectus and under the reporting issuer regime is not material to a client seeking to enter into a CFD Transaction. The information to be given to such a client should principally focus on enhancing the client's appreciation of product risk including counterparty risk. In addition, most CFDs are of short duration (positions are generally opened and closed on the same day and are in any event marked to market and cash settled daily).

43. The Filer is regulated by CIRO, which has a robust compliance regime including specific requirements to address market, capital and operational risks.

44. The Filer submits that the regulatory regimes developed by the AMF and CIRO for CFDs adequately address issues relating to the potential risk to the clients of the Filer acting as counterparty. In view of these regulatory regimes, investors would receive little or no additional benefit from requiring the Filer to also comply with the prospectus requirement.

45. The Requested Relief in respect of each Applicable Jurisdiction is conditional on the Filer being registered as an investment dealer with the Commission in such Applicable Jurisdiction and maintaining its membership with CIRO and that all CFD Transactions be conducted pursuant to CIRO Rules and in accordance with CIRO Acceptable Practices.

Decision

The Principal Regulator is satisfied that the test set out in the Legislation to make the Decision is met.

The Decision of the Principal Regulator is that the Requested Relief is granted provided that:

(a) all CFDs traded with residents in the Applicable Jurisdictions shall be executed through the Filer;

(b) with respect to residents of an Applicable Jurisdiction, the Filer remains registered as a dealer in the category of investment dealer with the Principal Regulator and the Commission in such Applicable Jurisdiction and a member of CIRO;

(c) all transactions in CFDs with clients resident in the Applicable Jurisdictions shall be conducted pursuant to CIRO Rules imposed on members seeking to trade in CFDs and in accordance with CIRO Acceptable Practices, as amended from time to time;

(d) all transactions in CFDs with clients resident in the Applicable Jurisdictions be conducted pursuant to the rules and regulations of the QDA and the AMF, as amended from time to time, unless and to the extent there is a conflict between (i) the rules and regulations of the QDA and the AMF, and (ii) the requirements of the securities laws of the Applicable Jurisdictions, the CIRO Rules and CIRO Acceptable Practices, in which case the latter shall prevail;

(e) prior to a client first entering into a CFD transaction, the Filer has provided to the client the Risk Disclosure Document and has delivered, or has previously delivered, a copy of the Risk Disclosure Document to the Principal Regulator;

(f) prior to a client's first CFD transaction and as part of the account opening process, the Filer has obtained a written or electronic acknowledgement from the client, as described in paragraph 32, confirming that the client has received, read and understood the Risk Disclosure Document;

(g) the Filer has furnished to the Principal Regulator the name and principal occupation of its officers and directors, together with either the personal information form and authorization of indirect collection, use and disclosure of personal information provided for in National Instrument 41-101 *General Prospectus Requirements* or the registration information form for an individual provided for in Form 33-109F4 of National Instrument 33-109 *Registration Information* completed by any officer or director;

(h) the Filer shall promptly inform the Principal Regulator in writing of any material change affecting the Filer, being any change in the business, activities, operations or financial results or condition of the Filer that may reasonably be perceived by a counterparty to a derivative to be material;

(i) the Filer shall promptly inform the Principal Regulator in writing if a self-regulatory organization or any other regulatory authority or organization initiates proceedings or renders a judgment related to disciplinary matters against the Filer concerning the conduct of activities with respect to CFDs;

(j) within 90 days following the end of its financial year, the Filer shall submit to CIRO, and the Principal Regulator upon request, the audited annual financial statements of the Filer; and

(k) the Requested Relief shall immediately expire upon the earliest of

i. four years from the date that this Decision is issued;

ii. in respect of an Applicable Jurisdiction or Quebec, the issuance of an order or decision by a court, the Commission in such Applicable Jurisdiction, the AMF or other similar regulatory body that suspends or terminates the ability of the Filer to offer CFDs to clients in such Applicable Jurisdiction or Québec; and

iii. with respect to an Applicable Jurisdiction, the coming into force of legislation or a rule by its Commission regarding the distribution of CFDs to investors in such Applicable Jurisdiction;

(the **Interim Period**).

“Lina Creta”
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0661

B.3.7 Brookfield Infrastructure Partners L.P. and Brookfield Infrastructure Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer wants to put in place an exchangeable security structure, but is unable to rely on the exemptions for designated exchangeable securities in applicable securities legislation – Relief granted from continuous disclosure requirements, certification requirements, insider reporting requirements, audit committee requirements and corporate governance requirements – Filer unable to rely on exemption for designated exchangeable securities in applicable securities legislation since the exchangeable securities are non-voting and its other outstanding securities are held by a different entity than the issuer of the underlying securities. Relief subject to conditions substantially similar to the conditions contained in section 13.3 of NI 51-102.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, s.121(2)(a)(ii).
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1 and 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 52-110 Audit Committees, s. 8.1.
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), s. 6.1.
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1(2).
National Instrument 58-101 Disclosure of Corporate Governance Practices, ss. 1.3(c) and 3.1.

December 27, 2024

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

AND

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

AND

IN THE MATTER OF
BROOKFIELD INFRASTRUCTURE PARTNERS L.P.
AND
BROOKFIELD INFRASTRUCTURE CORPORATION

DECISION

Background

Previous Decision

In 2021, Brookfield Infrastructure Partners L.P. (**BIP**) and Brookfield Infrastructure Holdings Corporation (formerly Brookfield Infrastructure Corporation) (**BIPC**) made an application to the Ontario Securities Commission (the **Commission**) under the securities legislation of the Jurisdiction of the principal regulator and obtained from the Commission, as the principal regulator, a decision *In the Matter of Brookfield Infrastructure Corporation and Brookfield Infrastructure Partners L.P.,* dated October 26, 2021 (the **Previous Decision**) providing Brookfield Infrastructure Corporation Exchange Limited Partnership (the **Issuer**) with relief from the Continuous Disclosure Requirements, the Certification Requirements, the Insider Reporting Requirements, the Audit Committee Requirements and the Corporate Governance Requirements (each as defined below) to accommodate the issuance by the Issuer of class B exchangeable limited partnership units (the **Exchangeable Units**), which at such time were exchangeable into class A exchangeable subordinate voting shares (**Exchangeable Shares**) of BIPC.

Exemption Sought

This application is submitted by the Filers (as defined below) in connection with a reorganization that took place on December 24, 2024 pursuant to a plan of arrangement (the **Reorganization**). Pursuant to the Reorganization, Brookfield Infrastructure Corporation (**New BIPC**) became the successor to BIPC and the New Exchangeable Shares (as defined below) replaced the Exchangeable Shares for purposes of the Exchangeable Unit Provisions and the Support Agreement (each as defined below).

The principal regulator in the Jurisdiction has received an application from BIP and New BIPC (the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting the Issuer and, in respect of (c), the insiders of the Issuer, from the following requirements:

(a) the requirements of National Instrument 51-102 — *Continuous Disclosure Obligations* (**NI 51-102**) (the **Continuous Disclosure Requirements**);

(b) the requirements of National Instrument 52-109 — *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) (the **Certification Requirements**);

(c) the insider reporting requirement (as defined in National Instrument 14-101 — *Definitions* (**NI 14-101**) (the **Insider Reporting Requirements**);

(d) the requirements of National Instrument 52-110 — *Audit Committees* (**NI 52-110**) (the **Audit Committee Requirements**); and

(e) the requirements of National Instrument 58-101 — *Disclosure of Corporate Governance Practices* (**NI 58-101**) (the **Corporate Governance Requirements**),

in each case to accommodate the issuance by the Issuer of class B exchangeable limited partnership units (the **Exchangeable Units**) and the Reorganization (collectively, the **Exemption Sought**).

The Filers have applied for the Exemption Sought on substantially the same terms and conditions as the Previous Decision, except that the new decision being sought would replace references to BIPC with New BIPC, references to the Exchangeable Shares with the New Exchangeable Shares (as defined below), and update certain representations.

The Filers have applied for a revocation of the Previous Decision effective as of the date of this decision.

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

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 — *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut.

Interpretation

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

Representations

This decision is based on the following facts represented by BIP and New BIPC:

BIP

1. BIP is a Bermuda exempted limited partnership that was established on May 21, 2007.

2. The limited partnership units of BIP (the **BIP Units**) are listed on the New York Stock Exchange (**NYSE**) and the Toronto Stock Exchange (the **TSX**) under the symbols "BIP" and "BIP.UN", respectively. BIP's authorized capital also includes Class A preferred limited partnership units, issuable in series, and general partnership units.

3. Holders of BIP Units do not have voting rights except in limited circumstances.

4. BIP is a reporting issuer in all of the provinces and territories of Canada (collectively, the **Jurisdictions**) and is an SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 — *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and satisfies its continuous disclosure obligations by complying with U.S. federal securities laws as is permitted under NI 71-102.

5. BIP's sole asset is its managing general partnership interest and preferred limited partnership interest in Brookfield Infrastructure L.P. (the **Holding LP**), a Bermuda exempted limited partnership that was established on August 17, 2007.

6. Brookfield Infrastructure Partners Limited, a Bermuda company, holds the general partner interest in BIP and is wholly-owned by Brookfield Corporation (**Brookfield**).

7. BIP, the Holding LP and certain of their subsidiaries have retained Brookfield and its related entities to provide management, administrative and advisory services under a master services agreement.

8. BIP is not in default of any requirement of the Legislation or equivalent legislation in any of the Jurisdictions.

New BIPC

9. New BIPC is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). New BIPC was incorporated on October 3, 2024. New BIPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. New BIPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

10. The class A exchangeable subordinate voting shares of New BIPC (**New Exchangeable Shares**) are listed on the NYSE and the TSX under the symbol "BIPC".

11. New BIPC is a reporting issuer in all of the Jurisdictions.

12. The authorized share capital of New BIPC consists of: (a) an unlimited number of New Exchangeable Shares; and (b) an unlimited number of class B multiple voting shares (the **New Class B Shares**).

13. The holders of the New Class B Shares are entitled to cast three (3) times the number of votes attached to all of the New Exchangeable Shares, for a total of 75% of the votes of New BIPC. BIP, through Brookfield Infrastructure Holdings (Canada) Inc. (**CanHoldco**), currently indirectly owns all the New Class B Shares, which represent the residual right to participate in the assets of New BIPC upon liquidation or winding up of New BIPC.

14. The New Exchangeable Shares were provided with nominal voting rights in order to assist with index inclusion. The voting rights attached to the New Exchangeable Shares do not allow holders of New Exchangeable Shares to affect the control of New BIPC regardless of how many New Exchangeable Shares are outstanding.

15. New BIPC's sole material asset is its class A.1 shares and class B share of BIPC, and New BIPC will consolidate BIPC and its businesses in its financial statements.

16. Each New Exchangeable Share has been structured with the intention of providing an economic return equivalent to a BIP Unit, and the rights, privileges, restrictions and conditions attached to each New Exchangeable Share (the **New Exchangeable Share Provisions**) are such that each New Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BIP Unit. In particular:

    (a) each New Exchangeable Share is exchangeable at the option of a holder for one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of New BIPC);

    (b) the New Exchangeable Shares are redeemable by New BIPC at any time (including following a notice requiring redemption having been given by BIP) for BIP Units (or their cash equivalent, at New BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events);

    (c) upon a liquidation, dissolution or winding up of New BIPC, holders of New Exchangeable Shares are entitled to receive BIP Units (or their cash equivalent, at New BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of New BIPC following such payment (a **New BIPC Liquidation**);

    (d) upon a liquidation, dissolution or winding up of BIP, including where substantially concurrent with a New BIPC Liquidation, all of the New Exchangeable Shares will be automatically redeemed for BIP Units (or their cash equivalent, at New BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

    (e) subject to applicable law and in accordance with the New Exchangeable Share Provisions, each New Exchangeable Share entitles the holder to dividends from New BIPC payable at the same time as, and equivalent to, each distribution on a BIP Unit. The New Exchangeable Share Provisions also provide that if a distribution is declared on the BIP Units and an equivalent dividend is not declared and paid concurrently on the New Exchangeable Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

17. New BIPC is not in default of any requirements of the Legislation or equivalent legislation in any of the Jurisdictions.

18. The relief granted by the OSC to BIP and New BIPC dated December 24, 2024 relating to the requirements of Part 5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* is conditioned on, among other things: BIP owning, directly or indirectly, all of the voting securities of New BIPC (other than the New Exchangeable Shares); BIP having voting control over New BIPC and controlling the appointment and removal of directors of New BIPC; and no material changes being made to the New Exchangeable Share Provisions.

The Issuer and the Acquisition

19. The Issuer was formed under the laws of the Province of Alberta on April 21, 2021 as an indirect subsidiary of BIP. The registered and head office of the Issuer is located at Suite 1210 - 225 6th Ave SW, Calgary, Alberta T2P 1N2.

20. The Issuer was formed in connection with the bid by Bison Acquisition Corp. (the **Purchaser**) to acquire any or all of the common shares (the **IPL Common Shares**) of Inter Pipeline Ltd. (**IPL**) not already owned by BIP or its institutional partners (the **Bid**).

21. The Bid was made pursuant to a takeover bid circular dated February 22, 2021, as amended and extended.

22. The consideration offered to holders of IPL Common Shares in connection with the Bid consisted of: (a) cash; (b) Exchangeable Shares; or (c) Exchangeable Units (only in the case of eligible Canadian holders of IPL Common Shares), at the election of each holder of IPL Common Shares.

23. The Bid expired on September 3, 2021 and 286,254,231 IPL Common Shares were tendered and taken-up under the Bid.

24. An aggregate of approximately 17.9 million Exchangeable Shares and 4 million Exchangeable Units were issued to former holders of IPL Common Shares in connection with the Bid.

25. The Purchaser and IPL entered into an arrangement agreement dated September 3, 2021, as amended, pursuant to which the Purchaser and the Issuer proposed to acquire all of the issued and outstanding IPL Common Shares not otherwise owned by BIP or its institutional partners by way of a plan of arrangement under section 193 of the *Business Corporations Act* (Alberta) (the **Arrangement**). Pursuant to the Arrangement, holders of IPL Common Shares were entitled to elect to receive the same consideration as set forth in the Bid for each IPL Common Share.

26. A special meeting of the holders of IPL Common Shares was held on October 28, 2021 and the Arrangement was completed on October 28, 2021.

27. BIPC is a mutual fund corporation for Canadian tax purposes and is therefore restricted from holding “taxable Canadian property”, including the IPL Common Shares, exceeding a certain percentage of its total assets.

28. As a result of BIPC’s status as a mutual fund corporation for Canadian tax purposes, the Exchangeable Shares issued as consideration in connection with the acquisition of IPL were delivered to holders of IPL Common Shares by the Purchaser and not by BIPC.

29. A rollover for tax purposes involving the Exchangeable Shares could only be obtained by transferring the IPL Common Shares to BIPC directly in exchange for the Exchangeable Shares as consideration.

30. The Exchangeable Units were created in order to offer an exchangeable security that can be delivered to eligible Canadian holders of IPL Common Shares seeking a rollover for tax purposes, which was not available to those who elected to receive Exchangeable Shares.

31. The Exchangeable Units are not and will not be listed on a stock exchange nor are they transferrable.

32. The authorized capital of the Issuer consists of: (a) class A limited partnership units (the **LP Units**); (b) Exchangeable Units; and (c) general partner units (the **GP Units**).

33. BIP indirectly owns all the LP Units and the GP Units, and therefore indirectly controls 100% of the voting securities of the Issuer.

34. The Issuer distributed the Exchangeable Units to the public under the Bid in reliance upon section 2.16 of National Instrument 45-106 — *Prospectus Exemptions* (**NI 45-106**). The distribution of Exchangeable Units under the Arrangement was made in reliance upon section 2.11 of NI 45-106.

35. The Issuer became a reporting issuer in certain of the Jurisdictions in connection with the issuance of Exchangeable Units to the public under the Bid and became a reporting issuer in the remaining Jurisdictions in which IPL was a reporting

issuer upon completion of the Arrangement, and the Issuer, accordingly, is subject to the continuous disclosure and insider reporting requirements of the Legislation applicable to reporting issuers. Accordingly, the Exemption Sought relates to exemptions from the continuous disclosure and insider reporting requirements of the Legislation that will apply to the Issuer.

The Exchangeable Units and the Relationship between BIP, BIPC, New BIPC and the Issuer

36. Pursuant to the Reorganization, among other things, all holders of Exchangeable Shares, other than Brookfield and its subsidiaries, exchanged their Exchangeable Shares for New Exchangeable Shares on a one-for-one basis.

37. The Exchangeable Units were created with the intention to provide eligible Canadian holders of IPL Common Shares a rollover for tax purposes that is not otherwise available in connection with the receipt of the Exchangeable Shares (now New Exchangeable Shares). The rights, privileges, restrictions and conditions attached to each Exchangeable Unit (the **Exchangeable Unit Provisions**) are structured such that, by virtue of its rights, entitlements and otherwise, upon completion of the Reorganization, each Exchangeable Unit provides the holder with economic rights which are, as nearly as possible except for tax implications, equivalent to a New Exchangeable Share. In particular:

    (a) each Exchangeable Unit is exchangeable at the option of a holder for one New Exchangeable Share (subject to adjustment to reflect certain capital events) (an **Exchange**);

    (b) upon a liquidation, dissolution or winding up of the Issuer (a **Liquidation)**, holders of Exchangeable Units shall be entitled to receive from the assets of the Issuer a liquidation payment that will be satisfied by issuance of New Exchangeable Shares on a one-for-one basis (subject to adjustment to reflect certain capital events);

    (c) commencing on the tenth anniversary of the take-up of the IPL Common Shares under the Bid (or earlier upon the occurrence of certain events), BIP has the right to purchase (directly or indirectly) all of the then outstanding Exchangeable Units for New Exchangeable Shares on a one-for-one basis (subject to adjustment to reflect certain capital events) (a **Final Exchange**);

    (d) upon a liquidation, dissolution or winding up of the Issuer, BIP has an overriding right to purchase (directly or indirectly) all but not less than all of the then outstanding Exchangeable Units for New Exchangeable Shares on a one-for-one basis (subject to adjustment to reflect certain capital events);

    (e) upon a liquidation, dissolution or winding up of New BIPC (a **BIPC Liquidation**), all of the Exchangeable Units will be automatically purchased by BIP (directly or indirectly) for New Exchangeable Shares on a one-for-one basis (subject to adjustment to reflect certain capital events); and

    (f) subject to applicable law and in accordance with the Exchangeable Unit Provisions, each Exchangeable Unit will entitle the holder to distributions from New BIPC payable at the same time as, and equivalent to, each dividend on a New Exchangeable Share. The Exchangeable Unit Provisions also provide that if a dividend is declared on the New Exchangeable Shares and an equivalent distribution is not declared and paid concurrently on the Exchangeable Units, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (e) above, if not yet paid.

38. BIP, New BIPC and the Issuer, among others, are party to a support and exchange agreement (the **Support Agreement**), pursuant to which BIP and New BIPC covenanted that, so long as Exchangeable Units not owned by BIP are outstanding, (a) BIP will take all actions reasonably necessary to enable the Issuer to pay the amount payable upon an Exchange, Final Exchange, Liquidation or BIPC Liquidation, and (b) BIP shall ensure that the Issuer has sufficient money or other assets available to enable the due declaration and due and punctual payment of a distribution on the Exchangeable Units equivalent to the distribution on the New Exchangeable Shares.

39. The Exchangeable Units do not have voting rights in respect of New BIPC.

40. BIP controls, directly or indirectly, the Issuer and New BIPC. As a result, BIP will consolidate New BIPC and the Issuer, in its financial statements.

41. The Exchangeable Units are disclosed as a non-controlling interest in the financial statements of BIP.

42. The LP Units of the Issuer are owned by CanHoldco and the GP Unit is held by Brookfield Infrastructure Corporation Exchange GP Inc., an indirect subsidiary of BIP.

43. New BIPC is the “parent issuer” (as defined in Part 13.3 of NI 51-102) in respect of the Exchangeable Units issued by the Issuer and the New Exchangeable Shares are therefore the “underlying security” (as defined in Part 13.3 of NI 51-102).

44. The Issuer is an "exchangeable security issuer" (as defined in Part 13.3 of NI 51-102) in respect of the Exchangeable Units.

45. The Exchangeable Units are a "designated exchangeable security" (as defined in Part 13.3 of NI 51-102) but for the fact that they do not have voting rights in respect of New BIPC.

46. The Issuer satisfies the requirements of section 13.3(2) of NI 51-102 in all respects, other than the fact that (a) BIP, rather than New BIPC (the parent issuer), is the beneficial owner of all the issued and outstanding voting securities of the exchangeable security issuer as required by section 13.3(2)(a) of NI 51-102, and (b) the Exchangeable Units do not have voting rights in respect of New BIPC.

47. The Exemption Sought is required in order for the provisions of sections 13.3(2) and 13.3(3) of NI 51-102 to apply to New BIPC and the Issuer, and the relationship between New BIPC and the Issuer.

Decision

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

The decision of the principal regulator under the Legislation is that the Previous Decision is revoked and the Exemption Sought is granted provided that:

1. in respect of the Continuous Disclosure Requirements, the Issuer and the Filers continue to satisfy the conditions set out in section 13.3(2) of NI 51-102, except as modified as follows:

    (a) notwithstanding that the Exchangeable Units do not provide their holders with voting rights, any reference to designated exchangeable security in section 13.3 of NI 51-102 shall be deemed to include the Exchangeable Units which are, as nearly as possible except for tax implications, equivalent to New Exchangeable Shares, and

    (b) the Filers do not have to comply with the condition in section 13.3(2)(a) if:

        (i) all of the voting securities of the Issuer are owned, directly or indirectly, by BIP; and

        (ii) there are no material changes to the Exchangeable Unit Provisions and the New Exchangeable Share Provisions, as described above,

2. in respect of the Certification Requirements, the Audit Committee Requirements and the Corporate Governance Requirements, the Filers and the Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above,

3. in respect of the Insider Reporting Requirements, an insider of the Issuer (an **Issuer Insider**) can only rely on the Exemption Sought so long as:

    (a) the Issuer Insider complies with the conditions in sections 13.3(3)(a) and (c) of NI 51-102, and

    (b) the Filers and the Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above.

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

OSC File #: 2024/0536

B.3.8 Brookfield Infrastructure Partners L.P.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer wants to put in place a credit support issuer structure, but is unable to rely on the exemptions for credit support issuers in applicable securities legislation – Relief granted from continuous disclosure requirements, certification requirements, insider reporting requirements, audit committee requirements and corporate governance requirements – Relief also granted from short form prospectus requirements, incorporation by reference requirements, earnings coverage requirements and subsidiary credit supporter requirements – Filer unable to rely on exemption for credit support issuers in applicable securities legislation since Filer only owns 70.5% of an intermediate holding entity (a limited partnership) that indirectly owns the voting securities of the Issuers – The characteristics of the partnership units of the holding limited partnership are such that control and direction of the holding limited partnership is held by the Filer – Filer unable to rely on the exemption since the Issuers propose to issue convertible preferred shares that are convertible into other preferred shares of the Issuers – Relief subject to conditions, including conditions as to who may obtain ownership of the voting securities of the holding limited partnership.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, ss. 107 and 121(2)(a)(ii).
National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1 and 13.4.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 52-110 Audit Committees, s. 8.1.
National Instrument 55-102 System for Electronic Disclosure by Insiders (SEDI), s. 6.1.
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1(2).
National Instrument 58-101 Disclosure of Corporate Governance Practices, ss. 1.3(c) and 3.1.

December 27, 2024

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

AND

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

AND

IN THE MATTER OF
BROOKFIELD INFRASTRUCTURE PARTNERS L.P.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Infrastructure Partners L.P. (the **Filer**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting:

(a) the Issuers (as defined below) from the requirements of National Instrument 51-102 - C*ontinuous Disclosure Obligations* (**NI 51-102**) (the **Continuous Disclosure Requirements**);

(b) the Issuers from the requirements of National Instrument 52-109 - *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) (the **Certification Requirements**);

(c) insiders of the Issuers from the insider reporting requirement (as defined in National Instrument 14-101 - *Definitions* (**NI 14-101**)) (the **Insider Reporting Requirements**);

(d) the Issuers from the requirements of National Instrument 52-110 *Audit Committees* (**NI 52-110**) (the **Audit Committee Requirements**);

(e) the Issuers from the requirements of National Instrument 58-101 - *Disclosure of Corporate Governance Practices* (**NI 58-101**) (the **Corporate Governance Requirements**);

(f) the CDN Pref Issuer (as defined below) from the qualification requirements (the **Qualification Requirements**) of Part 2 of National Instrument 44-101 - *Short Form Prospectus Distributions* (**NI 44-101**), such that the CDN Pref Issuer is qualified to file a prospectus in the form of a short form prospectus;

(g) the Issuers from the requirement to incorporate by reference into a short form prospectus the documents under paragraphs 1 to 4 and 6 to 8 of subsection 11.1(1) of Form 44-101F1 - *Short Form Prospectus* (**Form 44-101F1**) (the **Incorporation by Reference Requirements**);

(h) the Issuers from the requirement to include in a short form prospectus the earnings coverage ratios under Item 6 of Form 44-101F1 (the **Earnings Coverage Requirements**); and

(i) the Issuers from the requirement to include in a short form prospectus the disclosure of one or more subsidiary credit supporters required by Item 12 of Form 44-101F1 (the **Subsidiary Credit Supporter Requirements** and together with the Incorporation by Reference Requirements and the Earnings Coverage Requirements, the **Prospectus Disclosure Requirements**),

in each case to accommodate: (a) the issuance by any one of the Debt Issuers (as defined below), or jointly by multiple Debt Issuers, of debt securities guaranteed by the Filer and one or more of the Other Guarantors (as defined below); and (b) the issuance by Brookfield Infrastructure Preferred Equity Inc. (the **CDN Pref Issuer**) of preferred shares guaranteed by the Filer and one or more of the Other Guarantors (collectively, the **Exemption Sought**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 - *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Yukon and Nunavut.

Interpretation

Terms defined in NI 14-101 and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. In this decision, "**Filer's Related Entities**" means, collectively, the Holding LP (as defined below) and subsidiary entities (as this term is defined in Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**)) of the Holding LP.

Representations

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

The Filer

1. The Filer is a Bermuda exempted limited partnership that was established on May 21, 2007.

2. The limited partnership units (the **Units**) of the Filer are listed on the New York Stock Exchange and the Toronto Stock Exchange under the symbols "BIP" and "BIP.UN", respectively. The Filer's authorized capital also includes Class A preferred limited partnership units (the **Class A Preferred Units**), issuable in series, and general partnership units.

3. The Filer is a reporting issuer in all of the provinces and territories of Canada (collectively, the **Jurisdictions**) and is an SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 - *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and satisfies its continuous disclosure obligations by complying with U.S. federal securities laws as is permitted under NI 71-102.

4. The Filer's sole asset is its managing general partnership interest and preferred limited partnership interest in Brookfield Infrastructure L.P. (the **Holding LP**), a Bermuda exempted limited partnership that was established on August 17, 2007.

5. Brookfield Infrastructure Partners Limited (the **BIP General Partner**), a Bermuda company, holds the general partner interest in the Filer and is an indirect subsidiary of Brookfield (as defined below).

6. The Filer, the Holding LP and certain of their subsidiaries have retained Brookfield Corporation (together with its subsidiaries other than the Filer and its subsidiaries, **Brookfield**) and its related entities to provide management, administrative and advisory services under a master services agreement.

7. The Filer is not in default of any requirement of the Legislation or equivalent legislation in any of the Jurisdictions.

8. The Filer applied for and was granted substantially the same exemptive relief as the Exemption Sought pursuant to an October 20, 2021 decision (the **Prior Decision**).

The Issuers and the Holding LP

9. The Debt Issuers (as defined below) have issued and outstanding C$3.9 billion aggregate principal amount of medium term notes (the **Medium Term Notes**) and the CDN Debt Issuer (as defined below) has issued and outstanding US$708 million aggregate principal amount of subordinated notes (the **Subordinated Notes** and collectively with the Medium Term Notes, the **Existing Debt Securities**). The Existing Debt Securities are fully and unconditionally guaranteed by the Filer, the Holding LP, BRM Holdco, Can Holdco, BIPC Holdings (each as defined below) and (a) for the Existing Debt Securities issued prior to July 27, 2023, US Holdco (as defined below), and (b) for the Existing Debt Securities issued on or after July 27, 2023, BI LLC (as defined below). One or more of the Debt Issuers may, subject to market conditions, issue additional debt securities (the **New Debt Securities** and, together with the Existing Debt Securities, **the Debt Securities**), any new series of which will be guaranteed by the Filer and one or more of the Other Guarantors.

10. The CDN Debt Issuer issued the Subordinated Notes to the public in the United States.

11. The Existing Debt Securities were and any New Debt Securities will be issued by any one or more of Brookfield Infrastructure Finance ULC, an Alberta unlimited liability company (the **CDN Debt Issuer**), Brookfield Infrastructure Finance LLC, a Delaware limited liability company (the **US Issuer**), Brookfield Infrastructure Finance Pty Ltd, a proprietary company limited by shares incorporated in Australia (the **AUS Issuer**) and Brookfield Infrastructure Finance Limited, a Bermuda corporation (the **BRM Issuer**, together with the CDN Debt Issuer, the US Issuer and the AUS Issuer, the **Debt Issuers**), each an entity that is in effect an indirect subsidiary of the Filer.

12. Brookfield Infrastructure Preferred Equity Inc. (the **CDN Pref Issuer**, and together with the Debt Issuers, the **Issuers**) will be an issuer of preferred shares (the **Preferred Shares** and together with the Debt Securities, the **Securities**), which will be guaranteed by the Filer and one or more of the Other Guarantors. No Preferred Shares are currently outstanding.

13. The Issuers were formed under the laws of their respective jurisdictions in May 2012 prior to the filing of a preliminary short form prospectus for an offering of Securities and are currently reporting issuers in all of the Jurisdictions and not in default of any requirement of the Legislation or equivalent legislation in any of the Jurisdictions.

14. Brookfield Infrastructure Corporation (**BIPC**) is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia) and is a controlled subsidiary of the Filer. BIPC is a reporting issuer in the Jurisdictions and is not in default of any requirement of securities legislation in the Jurisdictions.

15. BIPC's authorized share capital consists of: (a) an unlimited number of class A exchangeable subordinate voting shares (the **Exchangeable Shares**); and (b) an unlimited number of class B multiple voting shares (the **Class B Shares**). The only voting securities of BIPC are the Exchangeable Shares and the Class B Shares. Holders of Exchangeable Shares are entitled to one (1) vote per Exchangeable Share held and holders of Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Exchangeable Shares. The Exchangeable Shares do not carry a residual right to participate in the assets of BIPC upon liquidation or winding-up of BIPC, and accordingly, are not equity securities under the Legislation. The Class B Shares are the only equity securities of BIPC.

16. The Exchangeable Shares are the economic equivalent of, and exchangeable for, Units.

17. The Filer indirectly owns all of the issued and outstanding Class B Shares, which represent a 75% voting interest in BIPC and entitle the Filer to all of the residual value in BIPC after payment in full of the amount due to holders of Exchangeable Shares. BIPC will therefore continue to be, in effect, a wholly-owned subsidiary of the Filer for so long as the Filer owns all the equity securities of BIPC.

18. BIPC holds 50% of the voting rights in Brookfield Infrastructure Holdings Corporation (**Old BIPC**), with the remainder held by the Filer.

19. Old BIPC is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia) and is a controlled subsidiary of the Filer.

20. Old BIPC's authorized share capital consists of: (a) an unlimited number of class A exchangeable subordinate voting shares; (b) an unlimited number of class A.1 exchangeable subordinate voting shares (the **Class A.1 Shares**); (c) an unlimited number of class A.2 non-voting shares (the **Class A.2 Shares**); (d) an unlimited number of class B multiple voting shares (the **Old BIPC Class B Shares**); (e) an unlimited number of class C non-voting shares (the **Old BIPC Class C Shares**); (f) an unlimited number of class A senior preferred shares (issuable in series); and (g) an unlimited

number of class B junior preferred shares (issuable in series). The only voting securities of Old BIPC are the Class A.1 Shares and the Old BIPC Class B Shares. Holders of Class A.1 Shares are entitled to one (1) vote per Class A.1 Share held and holders of Old BIPC Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Class A.1 Shares. None of the Class A.1 Shares, the Class A.2 Shares or the Old BIPC Class B Shares carry a residual right to participate in the assets of Old BIPC upon liquidation or winding-up of Old BIPC, and accordingly, are not equity securities under the Legislation. The Old BIPC Class C Shares are the only equity securities of BIPC.

21. The Class A.1 Shares are the economic equivalent of, and exchangeable for, Units. The Class A.2 Shares are the economic equivalent of, and exchangeable for, Exchangeable Shares or Units.

22. The Filer indirectly owns all (a) all of the Class A.1 Shares, which represent a 25% voting interest in Old BIPC, (b) all of the issued and outstanding Old BIPC Class B Shares, which represent a 75% voting interest in Old BIPC, and (c) all of the issued and outstanding Old BIPC Class C Shares, which entitle the Filer to all of the residual value in Old BIPC after payment in full of the amount due to holders of Class A.1 Shares and Class A.2 Shares and subject to the prior rights of holders of Old BIPC preferred shares. Old BIPC will therefore continue to be, in effect, a wholly-owned subsidiary of the Filer for so long as the Filer owns all the equity securities of Old BIPC.

23. BIPC Holdings Inc. (**BIPC Holdings**) is a wholly-owned subsidiary of Old BIPC.

24. The CDN Pref Issuer is a wholly-owned subsidiary of Brookfield Infrastructure Holdings (Canada) Inc., a company incorporated under the laws of the Province of Ontario (**Can Holdco**); the US Issuer is a wholly-owned subsidiary of Brookfield Infrastructure LLC (**BI LLC**), a limited liability company incorporated under the laws of the State of Delaware; BI LLC is an indirect wholly-owned subsidiary of Brookfield Infrastructure US Holdings I Corporation, a corporation incorporated under the laws of the State of Delaware (**US Holdco**); and the CDN Debt Issuer, the AUS Issuer and the BRM Issuer are each direct or indirect wholly-owned subsidiaries of BIP Bermuda Holdings I Limited, a company incorporated under the laws of Bermuda (**BRM Holdco**, and together with Can Holdco and US Holdco, the **Holding Entities**).

25. The Holding LP owns, directly or indirectly, all of the issued and outstanding common shares of all the Holding Entities, BI LLC and BIPC Holdings and Brookfield owns all of the issued and outstanding preferred shares of all the Holding Entities (the **Holdco Preferred Shares**). The Holdco Preferred Shares are redeemable for cash at the option of the applicable Holding Entity, subject to certain limitations, and, except for the preferred share of US Holdco (the **US Holdco Preferred Share**), are not entitled to vote, except as required by law. The US Holdco Preferred Share is entitled to one vote because of certain US tax implications. The Holdco Preferred Shares are not equity securities as such term is defined in the Act.

26. All of the outstanding voting securities of each Issuer are held directly or indirectly by the respective Holding Entity that is its parent.

27. The Filer is the managing general partner of the Holding LP and holds an approximate 70.5% managing general partnership interest in the Holding LP. Brookfield holds a 29.1% limited partnership interest in the Holding LP and an additional 0.4% special general partnership interest in the Holding LP.

28. The limited partnership units of the Holding LP owned by Brookfield (the **Redemption-Exchange Units**) are subject to a redemption-exchange mechanism pursuant to which Brookfield has the right to require that the Holding LP redeem all or a portion of its Redemption-Exchange Units for a cash amount equal to the fair market value of one Unit multiplied by the number of Redemption-Exchange Units to be redeemed. In connection with the redemption, the Filer has the right to purchase all the Redemption-Exchange Units to be redeemed in exchange for Units on a one for one basis. The characteristics of the redemption-exchange mechanism associated with Brookfield's Redemption-Exchange Units are such that the economic interest of Brookfield represented by the Redemption-Exchange Units is an economic interest in the Filer rather than the Holding LP.

29. Brookfield Infrastructure Special L.P. (**Infrastructure Special LP**) is the special general partner of the Holding LP. The special general partnership units of the Holding LP that are owned by Infrastructure Special LP (the **Special General Partnership Units**) are not redeemable or exchangeable. The holder of the Special General Partnership Units is entitled to receive distributions in proportion to its 0.4% special general partnership interest, plus additional incentive distributions from the Holding LP. Infrastructure Special LP has delegated to the Filer, as managing general partner of the Holding LP, all of the rights, powers and authority granted to it as a general partner under applicable law. Accordingly, all management powers over the activities and affairs of the Holding LP are exclusively vested in the Filer, except as expressly otherwise provided in the limited partnership agreement of the Holding LP.

30. The Filer, the Holding LP, the Holding Entities and BIPC Holdings are "credit supporters" (as defined in Part 13.4 of NI 51-102).

31. Each Issuer is or will be a "credit support issuer" (as defined in Part 13.4 of NI 51-102).

32. The New Debt Securities may be convertible, in certain circumstances, into non-convertible Class A Preferred Units of the Filer.

33. The Filer does not technically satisfy the definition of "parent credit supporter" (as defined in Part 13.4 of NI 51-102) as a result of the indirect ownership of the Issuers through the Holding LP. Therefore, the Securities are not "designated credit support securities" (as defined in Part 13.4 of NI 51-102). If the Exemption Sought is granted, the Filer and each Issuer will: (a) treat the Filer as a "parent credit supporter" and comply with the conditions in section 13.4(2.1) of NI 51-102 that apply to parent credit supporters; and (b) treat the Debt Securities, the Preferred Shares and the Resulting Preferred Shares (as defined below) as "designated credit support securities" and comply with the conditions in section 13.4(2.1) of NI 51-102 that apply to designated credit support securities, in accordance with the terms and conditions of this decision.

34. The Preferred Shares will be issuable in one or more series having such rights, restrictions and privileges determined by the directors of the CDN Pref Issuer.

35. The Preferred Shares will satisfy the definition of "designated credit support securities" (as defined in Part 13.4 of NI 51-102), but for the fact that: (a) the Filer does not technically satisfy the definition of "parent credit supporter" (as defined in Part 13.4 of NI 51-102); and (b) the Preferred Shares may be convertible, in certain circumstances, at the option of the holder or the CDN Pref Issuer, into Preferred Shares of another series (the **Resulting Preferred Shares**).

36. The Preferred Shares and the Resulting Preferred Shares may also be convertible, in certain circumstances, into: (a) Units; (b) non-convertible Class A Preferred Units; or (c) Class A Preferred Units that are convertible into Class A Preferred Units of another series (the **Convertible Preferred Units**). All of the Units, non-convertible Class A Preferred Units and Convertible Preferred Units are securities of the Filer and the Convertible Preferred Units are only convertible into non-convertible securities of the Filer or convertible securities of the Filer that are in turn only convertible into other securities of the Filer.

37. The CDN Pref Issuer does not directly satisfy the eligibility criteria in Part 2 of NI 44-101 (and thus the shelf qualification requirements in Part 2 of National Instrument 44-102 - *Shelf Distributions* (**NI 44-102**)) in order to be able to file a prospectus in the form of a short form prospectus (and thus a short form base shelf prospectus) for Preferred Shares that are convertible into Resulting Preferred Shares.

38. For Preferred Shares that are convertible into Resulting Preferred Shares or Convertible Preferred Units, the CDN Pref Issuer will not satisfy the requirement in Item 13.3(d) of Form 44-101F1, which requires that Preferred Shares only be convertible into non-convertible securities of the Filer.

39. The Filer does not meet the test set forth in section 13.4(2)(a) of NI 51-102 as it does not technically satisfy the definition of "parent credit supporter" (as defined in Part 13.4 of NI 51-102) and, by virtue of section 13.4(4) of NI 51-102, the Filer is unable to meet the test set forth in section 13.4(2)(b)(ii) of NI 51-102 as it satisfies its continuous disclosure obligations by complying with U.S. federal securities law as is permitted under NI 71-102. Therefore, the Requested Relief is required in order for the provisions of section 13.4 of NI 51-102 to apply to the Issuers, and the relationship between the Issuers and the Filer.

40. The Debt Issuers maintain a short form base shelf prospectus in each of the Jurisdictions, in reliance upon section 2.4 of NI 44-101 and NI 44-102, which qualifies Securities for distribution to the public. Any future prospectus will be prepared pursuant to the short form procedures contained in NI 44-101 and, if applicable, NI 44-102 and will comply with the requirements set out in Form 44-101F1 and, if applicable, NI 44-102, other than the Prospectus Disclosure Requirements.

41. The Medium Term Notes are governed by a trust indenture dated as of October 10, 2012 among the Debt Issuers and Computershare Trust Company of Canada, as trustee, as supplemented (the **Medium Term Note Indenture**). Under the terms of the Medium Term Note Indenture, the Debt Issuers are jointly and severally liable for the Medium Term Notes.

42. The Subordinated Notes are governed by a trust indenture dated as of May 24, 2021 among the CDN Debt Issuer, Computershare Trust Company, N.A. and Computershare Trust Company of Canada, as trustees, as supplemented (the **Subordinated Note Indenture**).

43. New Debt Securities may be issued under the Medium Term Note Indenture, the Subordinated Note Indenture or under one or more other indentures between one or more of the Debt Issuers and one or more financial institutions as trustee.

44. The Filer and one or more of the Other Guarantors (being the Holding LP, BRM Holdco, Can Holdco, BI LLC, BIPC Holdings and/or other subsidiary entities (as defined in MI 61-101) of the Holding LP (collectively with the Filer, the **Guarantors**) will provide full and unconditional joint and several guarantees (collectively, the **Debt Guarantees**) of the

payments to be made by the applicable Debt Issuer(s) in respect of New Debt Securities, as stipulated in agreements governing the rights of holders of New Debt Securities. In addition, the Filer and one or more of the Other Guarantors will provide full and unconditional joint and several guarantees (collectively, the **Preferred Share Guarantees**) of the payments to be made by the CDN Pref Issuer in respect of the Preferred Shares and the Resulting Preferred Shares (if applicable), as stipulated in agreements governing the rights of holders of the Preferred Shares and the Resulting Preferred Shares (if applicable). The Debt Guarantees and the Preferred Share Guarantees result in the holders of such securities being entitled to receive payment from the Guarantors within 15 days of any failure by the Issuers to make a payment, as contemplated by paragraph (d) of the definition of "designated credit support security" in NI 51-102.

Offering of Securities

45. At the time of the filing of any short form prospectus or shelf prospectus supplement in connection with an offering of Securities:

    (a) each Issuer will comply with all of the filing requirements and procedures set out in NI 44-101, other than the Qualification Requirements in the case of the CDN Pref Issuer, and, if applicable, NI 44-102, except as permitted by the Legislation;

    (b) the prospectus will be prepared in accordance with the short form prospectus requirements of NI 44-101 and, if applicable, NI 44-102 other than the Prospectus Disclosure Requirements, except as permitted by the Legislation;

    (c) the Filer will continue to be a reporting issuer under the Legislation;

    (d) the prospectus will incorporate by reference the documents of the Filer set forth under Item 11.1 of Form 44-101F1;

    (e) the prospectus disclosure required by Item 11 of Form 44-101F1 will be addressed by incorporating by reference the Filer's public disclosure documents referred to in paragraph 45(d) above; and

    (f) the Filer will continue to satisfy all of the criteria in section 2.2 of NI 44-101, as applicable, pursuant to Part 4 of NI 71-102.

46. Prior to issuing any New Debt Securities:

    (a) the Filer will provide its Guarantee in respect of the New Debt Securities; and

    (b) if there are multiple Issuers of such New Debt Securities, such Issuers will be jointly and severally liable for the New Debt Securities under the applicable indenture.

47. Prior to issuing any Preferred Shares, the Filer will provide its Guarantee in respect of such Preferred Shares and any Resulting Preferred Shares (if applicable).

Decision

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

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

1. in respect of the Continuous Disclosure Requirements, each Issuer and the Filer continue to satisfy the conditions set out in subsection 13.4(2.1) of NI 51-102, except as modified as follows:

    (a) any reference to parent credit supporter in section 13.4 shall be deemed to include the Filer notwithstanding its indirect ownership of the Issuers through the Holding LP;

    (b) any reference to subsidiary credit supporter in section 13.4 of NI 51-102 shall be deemed to include the Holding Entities, BI LLC, BIPC Holdings and their affiliates, including the Filer's Related Entities, notwithstanding the Filer's indirect ownership of such entities through the Holding LP;

    (c) the Filer does not have to comply with the conditions in section 13.4(2)(a) and section 13.4(2.1)(b) of NI 51-102 if:

        (i) no party other than the Filer, Brookfield and Infrastructure Special LP will have any direct or indirect ownership of, or control or direction over, voting securities of the Holding LP;

(ii) no party other than the Filer, Brookfield, Infrastructure Special LP, the Holding LP and the Filer's Related Entities will have any direct or indirect ownership of, or control or direction over, voting securities of the Holding Entities, BI LLC or BIPC Holdings;

(iii) no party other than the Filer, Brookfield, Infrastructure Special LP, the Holding LP, the Holding Entities, BI LLC and their affiliates, including the Filer and the Filer's Related Entities, will have any direct or indirect ownership of, or control or direction over, voting securities of the Issuers;

(iv) the Filer consolidates in its financial statements the Holding LP, the Holding Entities and the Issuers as well as any entities consolidated by any of the foregoing and, if any Issuer has issued Debt Securities, Preferred Shares or Resulting Preferred Shares that remain outstanding, files its financial statements pursuant to Part 4 of NI 51-102, except that the Filer does not have to comply with the conditions in section 4.2 of NI 51-102 if it files such financial statements on or before the date that it is required to file its Form 20-F with the U.S. Securities and Exchange Commission (**SEC**);

(v) other than the US Holdco Preferred Share owned by Brookfield, the issued and outstanding voting securities of the Holding Entities, BI LLC, BIPC Holdings and the Issuers are 100% owned, directly or indirectly, by their respective parent companies or entities; and

(vi) Brookfield does not have any direct or indirect ownership of, or control or direction over, any securities of the Holding LP other than Redemption-Exchange Units, Special General Partnership Units and non-voting securities of the Holding LP;

(d) section 13.4(4) of NI 51-102 does not apply to the Filer (the **SEC Foreign Issuer Relief**) if:

(i) the Filer continues to be a reporting issuer;

(ii) the Filer continues to be a SEC foreign issuer (as defined in NI 71-102) and only relies on the exemptions in Part 4 of NI 71-102;

(iii) to the extent that the Filer complies with the foreign private issuer disclosure regime under U.S. securities law, it does not rely on any exemption from that regime;

(iv) if any Issuer has issued Debt Securities, Preferred Shares or Resulting Preferred Shares that remain outstanding, the summary financial information referred to in section 13.4(2.1)(c) of NI 51-102 will be reconciled to the consolidated financial statements of the Filer, including any minority interest adjustments;

(v) if any Issuer has issued Debt Securities, Preferred Shares or Resulting Preferred Shares that remain outstanding, the Filer files a material change report as set out in Part 7 of NI 51-102 in respect of any material change in the affairs of the Filer that is not reported or filed by the Filer on SEC Form 6-K;

(vi) if any Issuer has issued Debt Securities, Preferred Shares or Resulting Preferred Shares that remain outstanding, the Filer files an interim financial report as set out in Part 4 of NI 51-102 and the Management Discussion and Analysis as set out in Part 5 of NI 51-102 for each period commencing on the first day of the financial year and ending nine, six or three months before the end of the financial year; and

(vii) the Filer includes in any prospectus of each Issuer financial statements or other information about any acquisition that would have been or would be a significant acquisition for the purposes of Part 8 of NI 51-102 that the Filer has completed or has progressed to a state where a reasonable person would believe that the likelihood of the Filer completing the acquisition is high if the inclusion of the financial statements is necessary for the prospectus to contain full, true and plain disclosure of all material facts relating to the securities being distributed. The requirement to include financial statements or other information must be satisfied by including or incorporating by reference (a) the financial statements or other information as set out in Part 8 of NI 51-102, or (b) satisfactory alternative financial statements or other information, unless at least 9 months of the operations of the acquired business or related businesses are incorporated into the Filer's current annual financial statements included or incorporated by reference in the prospectus of each Issuer;

(e) the Issuers do not have to comply with the conditions in section 13.4(2)(c) of NI 51-102 if each Issuer does not issue any securities and does not have any securities outstanding other than:

(i) designated credit support securities;

(ii) securities issued to and held by the Filer or the Filer's Related Entities;

(iii) non-voting securities held by Brookfield;

(iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, saving or credit unions, financial services cooperatives, insurance companies or other financial institutions;

(v) securities issued under exemptions from the prospectus requirements in section 2.35 of National Instrument 45-106 — *Prospectus and Registration Exemptions*; and

(vi) Debt Securities or Preferred Shares and Resulting Preferred Shares, provided that (A) the Filer has provided Debt Guarantees and Preferred Share Guarantees, as applicable, in respect of such securities, and (B) such Preferred Shares and Resulting Preferred Shares are not convertible into any security other than Resulting Preferred Shares, Preferred Shares, Units, Class A Preferred Units and/or Convertible Preferred Units;

2. in respect of the Certification Requirements, the Audit Committee Requirements and the Corporate Governance Requirements, the Filer and each Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above;

3. in respect of the Insider Reporting Requirements, an insider of an Issuer can only rely on the Exemption Sought so long as:

(a) the insider complies with the conditions in sections 13.4(3)(b) and (c) of NI 51-102; and

(b) the Filer and each Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above;

4. in respect of the Qualification Requirements and the Prospectus Disclosure Requirements so long as:

(a) any preliminary short form prospectus of the Issuers is in respect of an offering of Securities;

(b) the Issuers are qualified to file a preliminary short form prospectus under section 2.4 of NI 44-101, except modified as follows:

(i) the CDN Pref Issuer does not have to comply with the condition in section 2.4 of NI 44-101 that the securities being distributed be non-convertible preferred shares if, on completion of any offering of Preferred Shares, such Preferred Shares are only convertible into Resulting Preferred Shares, Units, Class A Preferred Units and/or Convertible Preferred Units, the Issuer meets the conditions in paragraph 1(e) of this decision above, and the Filer will continue to satisfy all of the criteria in section 2.2 of NI 44-101, as applicable, pursuant to Part 4 of NI 71-102;

(c) the Issuers remain, so long as any of the Securities issued to the public remain outstanding, electronic filers under National Instrument 13-101 — *System for Electronic Data Analysis and Retrieval* + (**SEDAR+**);

(d) the Issuers continue to maintain profiles on SEDAR+;

(e) the Issuers and the Filer satisfy the conditions set out in section 13.3 of Form 44-101F1, except as modified as follows:

(i) any reference to parent credit supporter in section 13.3 of Form 44-101F1 shall be deemed to include the Filer notwithstanding its indirect ownership of the Issuers through the Holding LP;

(ii) any reference to subsidiary credit supporter in section 13.3 of Form 44-101F1 shall be deemed to include the Holding Entities, BI LLC, BIPC Holdings and their affiliates, including the Filer's Related Entities, notwithstanding the Filer's indirect ownership of such entities through the Holding LP;

(iii) the Filer does not have to comply with the conditions in sections 13.3(1)(e) and 13.3(1)(f) of Form 44-101F1 if it meets the conditions in paragraph 1(c) of this decision above;

(iv) the CDN Pref Issuer does not have to comply with the condition in section 13.3(1)(d) of Form 44-101F1 if, on completion of any offering of Preferred Shares, the CDN Pref Issuer meets the conditions in paragraph 1(e) of this decision above; and

(v) the summary financial information referred to in section 13.3(1)(g) of Form 44-101F1 will be reconciled to the consolidated financial statements of the Filer, including any minority interest adjustments;

(f) any preliminary short form prospectus and final short form prospectus of the Issuers contains (or incorporates by reference a document containing) a corporate organizational chart showing the ownership and control relationships among Brookfield, the Filer, the BIP General Partner, Infrastructure Special LP, the Holding LP, the Holding Entities, BI LLC, BIPC Holdings and the Issuers;

(g) the Filer and each Issuer continue to satisfy the conditions for relief from the Continuous Disclosure Requirements set forth above;

(h) the Issuers and the Filer, as applicable, comply with paragraphs 45, 46 and 47 above, as applicable; and

(i) the Issuers will issue a news release and file a material change report as set out in Part 7 of NI 51-102 in respect of any material change in the affairs of the Issuers that is not also a material change in the affairs of the Filer.

The further decision of the principal regulator is that the Prior Decision is revoked.

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

OSC File #: 2024/0618

B.3.9 Brookfield Infrastructure Partners L.P. and Brookfield Infrastructure Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – partnership creates corporation to provide investors with alternative way to hold its units – corporation issues exchangeable shares whose terms are structured so that each exchangeable share is functionally and economically equivalent to a partnership unit – each exchangeable share provides an equivalent economic return as a partnership unit – both the partnership and the corporation are reporting issuers – related party transactions between the partnership and the corporation, and vice versa, will be required from time to time, and the corporation will also, from time to time, enter into related party transactions with persons other than the partnership – the partnership may not be party to each of these related party transactions but each such transaction will be treated by the partnership as a related party transaction – related party transactions between the partnership and the corporation are exempt from the related party transaction requirements, subject to conditions – the corporation is exempt from related party transaction requirements, subject to conditions, including that the partnership will comply with the related party transaction requirements for each of the corporation's related party transactions as though the partnership entered into such related party transaction directly – partnership may include corporation's exchangeable shares when calculating market capitalization for the purposes of using the 25% market capitalization exemption for certain related party transactions, subject to conditions.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, Part 5, and 9.1.

December 24, 2024

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

AND

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

AND

IN THE MATTER OF
BROOKFIELD INFRASTRUCTURE PARTNERS L.P.
AND
BROOKFIELD INFRASTRUCTURE CORPORATION

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Infrastructure Partners L.P. (**BIP**) and Brookfield Infrastructure Corporation (formerly 1505109 B.C. Ltd.) (**New BIPC**, and together with BIP, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

(a) BIP be exempt from the requirements of Part 5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**, and such requirements, the **Related Party Transaction Requirements**) in connection with any related party transaction of BIP with New BIPC or any of New BIPC's subsidiary entities (the **BIP Related Party Relief**);

(b) New BIPC be exempt from the Related Party Transaction Requirements in connection with any related party transaction of New BIPC with:

(i) BIP or any of BIP's subsidiary entities (together but excluding New BIPC, the **BIP Group**, and such relief, the **Group Related Party Relief**); and

(ii) persons not in the BIP Group (the **Non-Group Related Party Relief** and collectively with the Group Related Party Relief, the **New BIPC Related Party Relief**); and

(c) BIP be exempt from the requirements of sections 5.4 and 5.6 of MI 61-101 (the **Valuation and Minority Approval Requirements**) in connection with any related party transaction of BIP entered into indirectly through Brookfield Infrastructure L.P. (**Holding LP**) or any subsidiary entity of Holding LP, if that transaction would qualify for the transaction size exemptions set out in sections 5.5(a) and 5.7(1)(a) of MI 61-101 if the class A exchangeable subordinate voting shares of New BIPC (the **New Exchangeable Shares**) and the class A.2 non-voting shares of Brookfield Infrastructure Corporation (the **Class A.2 Shares**) were included in the calculation of BIP's market capitalization (the **Transaction Size Relief**, collectively with the BIP Related Party Relief and the New BIPC Related Party Relief, the **Exemption Sought**).

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

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

(b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Québec and Saskatchewan.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and MI 61-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

Relevant Entities

BIP

1. BIP is an exempted limited partnership established, registered and in good standing under the laws of Bermuda. BIP's registered and head office is located at 73 Front Street, 5th Floor, Hamilton HM 12, Bermuda.

2. BIP is a reporting issuer in all of the provinces and territories of Canada and is an SEC foreign issuer within the meaning of section 1.1 of National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**) and satisfies its continuous disclosure obligations by complying with U.S. federal securities laws as permitted under NI 71-102. BIP is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

3. The authorized capital of BIP consists of: (a) an unlimited number of non-voting limited partnership units (the **BIP Units**); (b) an unlimited number of class A preferred limited partnership units; and (c) an unlimited number of general partnership units. As of October 15, 2024, there were 461,754,508 BIP Units (784,078,904 BIP Units assuming the exchange of redeemable partnership units of Holding LP (the **Redeemable Partnership Units**) and Exchangeable Shares (as defined below)), 43,901,312 class A preferred limited partnership units and one (1) general partnership unit issued and outstanding.

4. The BIP Units are listed on the New York Stock Exchange (**NYSE**) and the Toronto Stock Exchange (**TSX**) under the symbols "BIP" and "BIP.UN", respectively.

5. Brookfield Infrastructure Partners Limited (**BIP GP**), a wholly-owned subsidiary of Brookfield Corporation (**Brookfield**), holds the general partnership unit of BIP.

6. BIP's sole material asset is its managing general partnership interest and preferred limited partnership interest in Holding LP, a Bermuda exempted limited partnership established, registered and in good standing under the laws of Bermuda. The authorized capital of Holding LP is comprised of: (a) special general partner units held by Brookfield Infrastructure Special L.P. (the **Special General Partner**), an indirect subsidiary of Brookfield; (b) class A preferred units held by BIP; (c) managing general partner units held by BIP; and (d) Redeemable Partnership Units held indirectly by Brookfield. The Special General Partner has, pursuant to the limited partnership agreement of Holding LP, delegated to BIP, as managing general partner of the Holding LP, all of the rights, powers and authority granted to it as a general partner under applicable law. Accordingly, all management powers over the activities and affairs of the Holding LP are exclusively vested in BIP.

7. Pursuant to the terms of the limited partnership agreement of Holding LP, the special general partner of Holding LP receives incentive distributions that are calculated by reference to the distributions that are ultimately paid to holders of BIP Units. Accordingly, the special general partner units of Holding LP effectively represent an economic interest in the collective operations of BIP, rather than Holding LP.

8. The Redeemable Partnership Units are, in all material respects, economically equivalent to the BIP Units and effectively represent an economic interest in the collective operations of BIP, rather than Holding LP.

9. As the class A preferred units and managing general partner units of Holding LP are held by BIP, and the special general partner units of Holding LP and Redeemable Partnership Units effectively represent economic interests in the collective operations of BIP rather than Holding LP, (a) Holding LP is, in effect, a wholly-owned subsidiary of BIP, and (b) direct and indirect wholly-owned subsidiaries of Holding LP are, in effect, wholly-owned subsidiaries of BIP.

BIPC

10. Brookfield Infrastructure Holdings Corporation (formerly Brookfield Infrastructure Corporation) (**BIPC**) is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). BIPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. BIPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

11. BIPC is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

12. BIPC was created, in part, to provide investors that would not otherwise invest in BIP with an opportunity to gain access to BIP's portfolio of infrastructure assets, and to provide investors with the flexibility to own, through the ownership of an Exchangeable Share, the economic equivalent of a BIP Unit. The rights, privileges, restrictions and conditions attached to each Exchangeable Share are such that each Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BIP Unit.

13. Prior to completion of the Reorganization (as defined below):

    (a) the authorized share capital of BIPC consisted of: (i) an unlimited number of class A exchangeable subordinate voting shares (the **Exchangeable Shares**); (ii) an unlimited number of class B multiple voting shares (the **Class B Shares**); (iii) an unlimited number of class C non-voting shares (the **Class C Shares**); (iv) an unlimited number of class A senior preferred shares (issuable in series); and (v) an unlimited number of class B junior preferred shares (issuable in series). As of October 15, 2024, there were 132,024,440 Exchangeable Shares, two (2) Class B Shares, 11,117,660 Class C Shares, zero class A senior preferred shares, and zero class B junior preferred shares issued and outstanding;

    (b) the only voting securities of BIPC were the Exchangeable Shares and the Class B Shares. Holders of Exchangeable Shares were entitled to one (1) vote per Exchangeable Share held and holders of Class B Shares were entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Exchangeable Shares. Accordingly, the Exchangeable Shares collectively represented a 25% voting interest in BIPC and the Class B Shares collectively represented a 75% voting interest in BIPC;

    (c) neither the Exchangeable Shares nor the Class B Shares carried a residual right to participate in the assets of BIPC upon liquidation or winding-up of BIPC, and accordingly, were not equity securities under the Legislation. The Class C Shares were the only equity securities of BIPC;

    (d) BIP, indirectly through subsidiary entities, owned 100% of the issued and outstanding Class B Shares and 100% of the Class C Shares. Through its ownership of these securities, BIP (i) had a 75% voting interest in BIPC, thereby controlling BIPC and the appointment and removal of directors of BIPC, and (ii) was entitled to all of the residual value in BIPC after payment in full of the amount due to holders of Exchangeable Shares and Class B Shares, and subject to the prior rights of holders of preferred shares;

    (e) the Class B Shares and the Class C Shares were not transferable except to BIP or persons controlled by BIP; and

    (f) the board of directors of BIPC consisted of each of the directors of BIP GP and one additional director.

14. The Exchangeable Shares are listed on the NYSE and the TSX under the symbol "BIPC".

15. In connection with the Reorganization:

    (a) BIPC applied to cease to be a reporting issuer; and

    (b) the Exchangeable Shares will be delisted from the NYSE and the TSX.

Brookfield

16. Brookfield (formerly Brookfield Asset Management Inc.) is a corporation existing and in good standing under the *Business Corporations Act* (Ontario). Brookfield's registered and head office is located at Suite 100, Brookfield Place, 181 Bay Street, Toronto, Ontario, M5J 2T3.

17. Brookfield is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

18. The Class A Limited Voting Shares of Brookfield are listed on the NYSE and the TSX under the symbol "BN".

19. Prior to completion of the Reorganization, Brookfield and Brookfield Wealth Solutions Ltd. and their subsidiaries held an approximate 26.6% economic interest in BIP on a fully-exchanged basis through their indirect ownership of BIP Units, Redeemable Partnership Units, and Exchangeable Shares.

20. Following completion of the Reorganization, Brookfield and Brookfield Wealth Solutions Ltd. and their subsidiaries hold an approximate 26.6% economic interest in BIP on a fully-exchanged basis through their indirect ownership of BIP Units, Redeemable Partnership Units, New Exchangeable Shares, and Class A.2 Shares.

21. Brookfield indirectly holds a 100% voting interest in BIP through its ownership of the general partnership unit of BIP.

22. BIP, Holding LP, BIPC, New BIPC and certain of their subsidiaries have retained Brookfield and its related entities to provide management, administrative and advisory services under a master services agreement.

New BIPC

23. New BIPC is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). New BIPC was incorporated on October 3, 2024. New BIPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. New BIPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

24. New BIPC is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

25. The authorized share capital of New BIPC consists of: (a) an unlimited number of New Exchangeable Shares; and (b) an unlimited number of class B multiple voting shares (the **New Class B Shares**). Prior to completion of the Reorganization, there were no New Exchangeable Shares and one (1) New Class B Share issued and outstanding, which is held by Brookfield Infrastructure Holdings (Canada) Inc. (**CanHoldco**), a subsidiary entity of BIP.

26. Except as provided below, holders of New Exchangeable Shares are entitled to one (1) vote per New Exchangeable Share held and holders of New Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the New Exchangeable Shares. Accordingly, the New Exchangeable Shares collectively represent a 25% voting interest in New BIPC and the New Class B Shares collectively represent a 75% voting interest in New BIPC.

27. At any time that no New Exchangeable Shares are outstanding or for any vote held only in respect of the New Class B Shares, holders of New Class B Shares are entitled to cast one (1) vote per New Class B Share.

28. The New Exchangeable Shares do not carry a residual right to participate in the assets of New BIPC upon liquidation or winding-up of New BIPC, and accordingly, are not equity securities under the Legislation. The New Class B Shares are the only equity securities of New BIPC.

29. BIP, indirectly through its subsidiary entities, owns 100% of the issued and outstanding New Class B Shares. The New Class B Shares are not transferable except to BIP or persons controlled by BIP. Through its ownership of New Class B Shares, BIP (a) has a 75% voting interest in New BIPC, thereby controlling New BIPC and the appointment and removal of directors of New BIPC, and (b) is entitled to all of the residual value in New BIPC after payment in full of the amount due to holders of New Exchangeable Shares.

<u>The Reorganization</u>

30. BIPC currently qualifies as a "mutual fund corporation" as defined in the *Income Tax Act* (Canada) (the **Tax Act**).

31. The 2024 Canadian federal budget included proposed amendments to the tax rules relating to mutual fund corporations which, if enacted as proposed, were expected to result in additional costs to BIPC.

32. On October 9, 2024, BIP, BIPC, New BIPC and Brookfield entered into an arrangement agreement in respect of a reorganization (the **Reorganization**) designed to preserve the current benefits received by holders of Exchangeable Shares from holding their investments in the business of BIP and its subsidiary entities through a corporation that is intended to qualify as a "mutual fund corporation" (as defined in the Tax Act).

33. On December 3, 2024, the Reorganization was approved at a special meeting of holders of Exchangeable Shares and Class B Shares (the **Meeting**) by: (a) not less than $66^2/_3\%$ of the votes cast at the Meeting by holders of Exchangeable Shares and holders of Class B Shares, voting together; (b) not less than $66^2/_3\%$ of the votes cast at the Meeting by holders of Exchangeable Shares, voting separately as a class; and (c) not less than $66^2/_3\%$ of the votes cast at the Meeting by holders of Class B Shares, voting separately as a class.

34. On December 9, 2024, the Supreme Court of British Columbia approved the Reorganization.

35. As part of the Reorganization:

    (a) BIPC amended its articles to create two (2) new classes of securities: class A.1 exchangeable subordinate voting shares (the **Class A.1 Shares**) and Class A.2 Shares;

    (b) holders of Exchangeable Shares (other than Brookfield and its subsidiaries) received one (1) New Exchangeable Share from New BIPC for each Exchangeable Share held;

    (c) New BIPC transferred the Exchangeable Shares received from holders of Exchangeable Shares (other than Brookfield and its subsidiaries) to BIPC in exchange for Class A.1 Shares on a one-for-one basis, and the Exchangeable Shares were cancelled by BIPC;

    (d) Brookfield and its subsidiaries transferred the Exchangeable Shares held by them to BIPC in exchange for Class A.2 Shares on a one-for-one basis, and the Exchangeable Shares were cancelled by BIPC;

    (e) CanHoldco transferred one (1) Class B Share to New BIPC in exchange for one (1) New Class B Share;

    (f) BIPC amended its articles to, among other things, rename BIPC to "Brookfield Infrastructure Holdings Corporation" and remove the Exchangeable Shares from its authorized share capital;

    (g) BIPC applied to cease to be a reporting issuer;

    (h) the Exchangeable Shares will be delisted from the NYSE and the TSX;

    (i) New BIPC was renamed "Brookfield Infrastructure Corporation" and the New Exchangeable Shares will be listed on the NYSE and the TSX under the symbol "BIPC";

    (j) New BIPC, BIPC and BIP entered into a pairing agreement pursuant to which the parties have agreed that New BIPC will, at all times, hold such number of Class A.1 Shares equal to the number of New Exchangeable Shares that are outstanding to support the duties and obligations of New BIPC to holders of New Exchangeable Shares (the **Pairing Agreement**); and

    (k) New BIPC entered into an option agreement with CanHoldco that provides New BIPC with the right to acquire any or all of the Class B Shares and/or Class C Shares held by CanHoldco in exchange for newly issued New Class B Shares.

36. Following completion of the Reorganization, New BIPC:

    (a) became a reporting issuer in each of the provinces and territories of Canada;

    (b) qualifies as a "mutual fund corporation" as defined in the Tax Act;

    (c) has taken the place of BIPC and serves as the entity through which investors who do not wish to hold BIP Units directly may hold their interests in BIP through the ownership of a New Exchangeable Share, which is economically equivalent to a BIP Unit; and

    (d) carries on its business through BIPC, whose Class A.1 Shares and one (1) Class B Share are New BIPC's sole material assets.

37. BIP consolidates New BIPC and BIPC and their businesses in BIP's financial statements, and the collective operations of BIP and its subsidiaries (including New BIPC, BIPC and their subsidiary entities) are the same as they were prior to the creation of New BIPC and occurrence of the transactions conducted in connection with, and to facilitate, the Reorganization.

38. The board of directors of New BIPC consists of the directors that were on the board of directors of BIPC immediately prior to completion of the Reorganization.

39. New BIPC is not a wholly-owned subsidiary entity of BIP; BIP does not own, directly or indirectly, all of the voting securities of New BIPC because members of the public hold New Exchangeable Shares and Brookfield and its subsidiaries hold Class A.2 Shares, which are exchangeable for New Exchangeable Shares (subject to the Ownership Cap (as defined below)). However, by virtue of the terms of the New Class B Shares, BIP holds a 75% voting interest in New BIPC thereby controlling New BIPC and the appointment and removal of directors of New BIPC. The voting rights attached to the New Exchangeable Shares do not allow holders of New Exchangeable Shares to affect the control of New BIPC. The voting right attached to each New Exchangeable Share is expected to assist with index inclusion.

The New Exchangeable Shares

40. The New Exchangeable Shares have substantially the same terms as the Exchangeable Shares. Each New Exchangeable Share has been structured with the intention of providing an economic return equivalent to a BIP Unit, and the rights, privileges, restrictions and conditions attached to each New Exchangeable Share (the **New Exchangeable Share Provisions**) are such that each New Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BIP Unit. In particular:

    (a) each New Exchangeable Share is exchangeable at the option of a holder for one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of New BIPC) (an **Exchange**);

    (b) the New Exchangeable Shares are redeemable by New BIPC at any time (including following a notice requiring redemption having been given by BIP) for BIP Units (or their cash equivalent, at New BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) (a **Redemption**);

    (c) upon a liquidation, dissolution or winding up of New BIPC, holders of New Exchangeable Shares are entitled to receive BIP Units (or their cash equivalent, at New BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of New BIPC following such payment (a **New BIPC Liquidation**);

    (d) upon a liquidation, dissolution or winding up of BIP (a **BIP Liquidation**), including where substantially concurrent with a New BIPC Liquidation, all of the New Exchangeable Shares will be automatically redeemed for BIP Units (or their cash equivalent, at New BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

    (e) subject to applicable law and in accordance with the New Exchangeable Share Provisions, each New Exchangeable Share entitles the holder to dividends from New BIPC payable at the same time as, and equivalent to, each distribution on a BIP Unit. The New Exchangeable Share Provisions also provide that if a distribution is declared on the BIP Units and an equivalent dividend is not declared and paid concurrently on the New Exchangeable Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

41. Upon being notified by New BIPC that New BIPC has received a request for an Exchange, BIP has an overriding call right to purchase (or have one of its affiliates purchase) all of the New Exchangeable Shares that are the subject of the Exchange notice from the holder of New Exchangeable Shares for BIP Units (or their cash equivalent, at BIP's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

42. Upon being notified by New BIPC that it intends to conduct a Redemption, BIP has an overriding call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding New Exchangeable Shares for BIP Units (or their cash equivalent, at BIP's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

43. Upon the occurrence of a BIP Liquidation or a New BIPC Liquidation, BIP has an overriding liquidation call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding New Exchangeable Shares on the day prior to the effective date of such BIP Liquidation or New BIPC Liquidation for BIP Units on a one-for-one basis (subject to adjustment to reflect certain capital events).

44. In connection with the Reorganization, Brookfield entered into a rights agreement (the **Rights Agreement**) pursuant to which it agreed that, until March 31, 2025, Brookfield will guarantee New BIPC's obligation to deliver BIP Units or their cash equivalent in connection with an Exchange. The Rights Agreement replaced the rights agreement in respect of exchanges of Exchangeable Shares.

45. Investments in New Exchangeable Shares are, as nearly as practicable, functionally and economically, equivalent to an investment in BIP Units. BIP expects that:

    (a) investors of New Exchangeable Shares will purchase New Exchangeable Shares as an alternative way of owning BIP Units rather than a separate and distinct investment; and

    (b) the market price of the New Exchangeable Shares will be significantly impacted by (i) the combined business performance of New BIPC and BIP as a single economic unit, and (ii) the market price of the BIP Units, in a manner that results in the market price of the New Exchangeable Shares closely tracking the market price of the BIP Units.

Share Capital of BIPC after the Reorganization

46. Following completion of the Reorganization:

    (a) the authorized share capital of BIPC consists of: (i) an unlimited number Class A.1 Shares; (ii) an unlimited number of Class A.2 Shares; (iii) an unlimited number of Class B Shares; (iv) an unlimited number of Class C Shares; (v) an unlimited number of class A senior preferred shares (issuable in series); and (vi) an unlimited number of class B junior preferred shares (issuable in series); and

    (b) there are (based on the issued and outstanding share capital of BIPC as of October 15, 2024):

        (i) 119,011,651 Class A.1 Shares issued and outstanding, all of which are held by New BIPC;

        (ii) 13,012,789 Class A.2 Shares issued and outstanding, all of which are held by Brookfield and its subsidiaries;

        (iii) three (3) Class B Shares issued and outstanding, two (2) of which are held by CanHoldco, and one (1) of which is held by New BIPC;

        (iv) 11,117,660 Class C Shares issued and outstanding, all of which are held by CanHoldco;

        (v) zero class A senior preferred shares issued and outstanding; and

        (vi) zero class B junior preferred shares issued and outstanding.

47. Other than the ability to receive additional dividends at such time as there are no unpaid dividends in respect of the Class A.1 Shares or the Class A.2 Shares, and if, as and when declared by the board of directors of BIPC (the **Additional Dividends**), the Class A.1 Shares have terms that are substantially the same as the New Exchangeable Shares, including with respect to the exchange mechanics, dividend rights, voting rights and rights on liquidation. It is expected that Additional Dividends may be declared from time to time in order to fund expenses of New BIPC.

48. The Class A.1 Shares carry one (1) vote per share, and the holders of the Class A.1 Shares are entitled to an aggregate 25% voting interest in BIPC. Each Class A.1 Share has been structured with the intention of providing an economic return equivalent to a BIP Unit and the rights, privileges, restrictions and conditions attached to each Class A.1 Share (the **A.1 Exchangeable Share Provisions**) are such that each Class A.1 Share is, as nearly as practicable, functionally and economically, equivalent to a New Exchangeable Share and a BIP Unit. In particular:

    (a) each Class A.1 Share is exchangeable at the option of a holder for one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC);

    (b) the Class A.1 Shares are redeemable by BIPC at any time (including following a notice requiring redemption having been given by BIP) for BIP Units (or their cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events);

    (c) upon a liquidation, dissolution or winding up of BIPC (a **BIPC Liquidation**), holders of Class A.1 Shares are entitled to receive BIP Units (or their cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of BIPC following such payment;

    (d) upon a BIP Liquidation, including where substantially concurrent with a BIPC Liquidation, all of the Class A.1 Shares will be automatically redeemed for BIP Units (or their cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

(e) subject to applicable law and in accordance with the A.1 Exchangeable Share Provisions, each Class A.1 Share entitles the holder to dividends from BIPC payable at the same time as, and equivalent to, each distribution on a BIP Unit. The A.1 Exchangeable Share Provisions also provide that if a distribution is declared on the BIP Units and an equivalent dividend is not declared and paid concurrently on the Class A.1 Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

49. As required pursuant to the terms of the Pairing Agreement, any and all Class A.1 Shares will be held by New BIPC. New BIPC may use the exchange right pursuant to the A.1 Exchangeable Share Provisions to obtain BIP Units necessary, from time to time, to satisfy exchanges of the New Exchangeable Shares.

50. Each Class A.2 Share is non-voting and structured with the intention of providing an economic return equivalent to a BIP Unit, and the rights, privileges, restrictions and conditions attached to each Class A.2 Share (the **A.2 Exchangeable Share Provisions**) are such that each Class A.2 Share is, as nearly as practicable, functionally and economically, equivalent to a New Exchangeable Share and a BIP Unit. In particular:

(a) each Class A.2 Share is exchangeable at the option of a holder for (i) one (1) New Exchangeable Share (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC), or (ii) one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC), provided that, after giving effect to any such exchange, Brookfield and its subsidiaries are not permitted to receive a number of New Exchangeable Shares that would result in Brookfield and its subsidiaries owning 9.5% or more of the aggregate fair market value of all issued and outstanding shares of New BIPC (the **Ownership Cap**);

(b) the Class A.2 Shares are redeemable by BIPC at any time (including following a notice requiring redemption having been given by BIP) for (i) one (1) New Exchangeable Share (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC), or (ii) one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC);

(c) upon a BIPC Liquidation, holders of Class A.2 Shares are entitled to receive one (1) BIP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BIPC) and not any remaining property or assets of BIPC following such payment;

(d) upon a BIP Liquidation, including where substantially concurrent with a BIPC Liquidation, all of the Class A.2 Shares will be automatically redeemed for BIP Units (or their cash equivalent, at BIPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

(e) subject to applicable law and in accordance with the A.2 Exchangeable Share Provisions, each Class A.2 Share entitles the holder to dividends from BIPC payable at the same time as, and equivalent to, each distribution on a BIP Unit. The A.2 Exchangeable Share Provisions also provide that if a distribution is declared on the BIP Units and an equivalent dividend is not declared and paid concurrently on the Class A.2 Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

51. The Ownership Cap is designed to preserve New BIPC's status as a "mutual fund corporation" under the Tax Act.

52. The Class B Shares continue to be structured to provide the holders with control of BIPC. In particular:

(a) holders of Class B Shares are entitled to, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Class A.1 Shares. As a result, holders of Class B Shares have a 75% voting interest in BIPC and holders of Class A.1 Shares have a 25% voting interest in BIPC; and

(b) in the event that a share/stock dividend is declared and paid on the Class A.1 Shares, a share/stock dividend will be paid to holders of Class B Shares in an equal number of Class B Shares as Class A.1 Shares are paid to holders of Class A.1 Shares.

53. The only voting securities of BIPC are the Class A.1 Shares and the Class B Shares.

54. The Class C Shares were unaffected by the Reorganization and continue to be structured to provide the holders thereof with all of the residual value in BIPC. In particular:

(a) subject to applicable law and in accordance with the terms of the Class C Shares, only holders of Class C Shares are entitled to a residual right to participate, on a BIPC Liquidation, in its assets;

(b) subject to applicable law and in accordance with the term of the Class C Shares, subject to the prior rights of the holders of the Class A.1 Shares and Class A.2 Shares and of any preferred shares then outstanding, the holders of Class C Shares are entitled to receive dividends if, as, and when declared by the board of directors of BIPC; and

(c) share/stock dividends, if any, will be paid to holders of Class C Shares in an equal number of Class C Shares as Class A.1 Shares are paid to holders of Class A.1 Shares and Class A.2 Shares are paid to holders of Class A.2 Shares.

55. The Class B Shares and Class C Shares continue to be subject to restrictions on transfer, other than to BIP or persons controlled by BIP.

New BIPC Related Party Transactions

BIP Related Party Relief and Group Related Party Relief

56. The Related Party Transaction Requirements do not apply to an issuer carrying out a related party transaction if:

(a) as provided under paragraph 5.1(d) of MI 61-101, the parties to the transaction consist solely of (i) an issuer and one or more of its wholly-owned subsidiary entities, or (ii) wholly-owned subsidiary entities of the same issuer. A person is considered to be a "wholly-owned subsidiary entity" of an issuer if the issuer owns, directly or indirectly, all of the voting and equity securities and securities convertible into voting and equity securities of the person; and/or

(b) as provided under paragraph 5.1(g) of MI 61-101 (the **Downstream Transaction Carve-Out**), the transaction is a downstream transaction for the issuer. A "downstream transaction" means, for an issuer, a transaction between the issuer and a related party of the issuer if, at the time the transaction is agreed to, (i) the issuer is a control person of the related party, and (ii) to the knowledge of the issuer after reasonable inquiry, no related party of the issuer, other than a wholly-owned subsidiary entity of the issuer, beneficially owns or exercises control or direction over, other than through its interest in the issuer, more than five per cent of any class of voting or equity securities of the related party that is a party to the transaction.

57. Section 1.3 of MI 61-101 provides that, for the purposes of MI 61-101, a transaction of a wholly-owned subsidiary entity of an issuer is deemed to be a transaction of the issuer.

58. Related party transactions between BIP and New BIPC will be required for the operation of the New Exchangeable Share Provisions and in connection with ordinary course financial support arrangements which may be entered into from time to time.

59. The only voting securities of New BIPC are the New Exchangeable Shares and the New Class B Shares.

60. Holders of New Exchangeable Shares are entitled to one (1) vote per New Exchangeable Share held and holders of New Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the New Exchangeable Shares.

61. The New Exchangeable Shares do not carry a residual right to participate in the assets of New BIPC upon liquidation or winding-up of New BIPC, and accordingly, are not equity securities under the Legislation. The New Class B Shares are the only equity securities of New BIPC.

62. All of the New Class B Shares are indirectly owned by BIP and none of them are transferable except to an affiliate of BIP. Accordingly, all of the equity securities of New BIPC are held indirectly by BIP.

63. New BIPC is not a wholly-owned subsidiary of BIP; BIP does not own, directly or indirectly all of the voting securities of New BIPC because members of the public hold New Exchangeable Shares and Brookfield and its subsidiaries hold Class A.2 Shares, which are exchangeable for New Exchangeable Shares (subject to the Ownership Cap). However, by virtue of the terms of the New Class B Shares, BIP holds a 75% voting interest in New BIPC thereby controlling New BIPC and the appointment and removal of directors of New BIPC.

64. BIP will not be able to rely on the Downstream Transaction Carve-Out because Brookfield and its subsidiaries beneficially own or exercise control or direction over, more than five per cent of the New Exchangeable Shares, as it holds, directly or indirectly, 100% of the Class A.2 Shares, which are exchangeable into New Exchangeable Shares, representing more than 5% of the New Exchangeable Shares on a fully-exchanged basis. However, as it relates to BIP, the interests of Brookfield, as the indirect holder of the general partnership unit of BIP, the special general partner units of Holding LP, and Redeemable Partnership Units, are fully aligned with the interests of BIP.

65. As the alternative investment vehicle of BIP for investors who prefer owning securities through a corporation, New BIPC is, in effect, an alter ego of BIP.

66. New BIPC is a controlled subsidiary of BIP and BIP consolidates New BIPC and its businesses in BIP's financial statements.

67. By virtue of the New Exchangeable Share Provisions, the economic rights of the holders of the New Exchangeable Shares will not be affected by transactions between New BIPC and the BIP Group. BIP, as the sole holder of equity securities of New BIPC, will receive any benefit and/or bear any detriment from related party transactions between New BIPC and the BIP Group.

68. Minority approval is required of every class of affected securities, being equity securities of the issuer. For New BIPC, minority approval of a related party transaction of New BIPC with the BIP Group would be sought from the holders of its New Class B Shares, all of which are held by BIP. BIP, as the counterparty to such a related party transaction, does not require the protections of MI 61-101.

Non-Group Related Party Relief

69. It is anticipated that New BIPC will, from time to time, enter into related party transactions with persons not in the BIP Group (**Other New BIPC Related Party Transactions**).

70. A member of the BIP Group may not be a party to each Other New BIPC Related Party Transaction entered into. However, every Other New BIPC Related Party Transaction will indirectly be a related party transaction for BIP and will be treated by BIP as a related party transaction of BIP.

71. Subject to the availability of an exemption, New BIPC would be required to obtain: (a) a formal valuation in respect of the non-cash assets involved in the Other New BIPC Related Party Transaction; and (b) minority approval for the Other New BIPC Related Party Transaction from the holders of every class of affected securities of New BIPC voting separately as a class, excluding the votes attached to affected securities held by the persons enumerated in section 8.1(2) of MI 61-101.

72. Minority approval is required of every class of affected securities, being equity securities of the issuer. The New Exchangeable Shares are not equity securities and thus are not entitled to vote for the purposes of minority approval under MI 61-101. The only equity securities of New BIPC are the New Class B Shares, all of which are held by BIP. BIP, as an entity for which each Other New BIPC Related Party Transaction would also constitute a related party transaction, does not require the protections of MI 61-101.

73. By virtue of the New Exchangeable Share Provisions, the economic rights of the holders of BIP Units and New Exchangeable Shares will be affected in an identical manner in respect of any related party transaction entered into by either BIP or New BIPC. A related party transaction for New BIPC is, in effect, a related party transaction for BIP.

74. BIP, as the sole holder of the equity securities of New BIPC, will receive any benefit and/or bear any detriment from any Other New BIPC Related Party Transaction entered into.

75. A majority of any committee of independent directors of BIP that considers an Other New BIPC Related Party Transaction will be comprised of directors who are also directors of New BIPC.

76. New BIPC is the entity through which members of the public who do not wish to hold BIP Units directly may hold their interests in BIP, and BIP is the entity through which holders of New Exchangeable Shares, Class A.2 Shares and BIP Units hold their interests in the collective operations of BIP and its subsidiaries, including New BIPC and its subsidiaries. BIP, New BIPC and BIPC are a single economic entity.

77. BIP will comply with the Related Party Transaction Requirements for each Other New BIPC Related Party Transaction as though BIP entered into the Other New BIPC Related Party Transaction directly.

78. Other than where a member of the BIP Group is also party to the Other New BIPC Related Party Transaction, in which case any formal valuation required to be obtained by BIP under the Related Party Transaction Requirements (including for the Other New BIPC Related Party Transaction) will be in respect of the BIP Group (including New BIPC and New BIPC's subsidiary entities) on a consolidated basis:

    (a) the subject matter of any formal valuation required to be obtained by BIP under the Related Party Transaction Requirements for an Other New BIPC Related Party Transaction and the value or range of values of such subject matter would be identical to any formal valuation obtained by New BIPC for the same Other New BIPC Related Party Transaction; and

(b) the form and substance of any formal valuation required to be obtained by BIP under the Related Party Transaction Requirements for an Other New BIPC Related Party Transaction would be identical, in all material respects, to any formal valuation obtained by New BIPC for the same Other New BIPC Related Party Transaction.

79. Any and all disclosure documents in connection with an Other New BIPC Related Party Transaction, including any formal valuations, information circulars or material change reports, will be filed on the SEDAR+ profiles of both BIP and New BIPC.

80. Holders of New Exchangeable Shares who wish to vote at the BIP level may do so by conducting an Exchange of New Exchangeable Shares for BIP Units.

Market Capitalization Calculation

81. It is anticipated that BIP will, from time to time, enter into transactions with certain related parties, including Brookfield and its affiliates (other than BIP and its related entities, including New BIPC) indirectly through Holding LP and its subsidiaries (including New BIPC and its subsidiaries).

82. The Valuation and Minority Approval Requirements require, subject to the availability of an exemption, that an issuer obtain: (a) a formal valuation of the transaction in a form satisfying the requirements of MI 61-101 by an independent valuator; and (b) approval of the transaction by disinterested holders of the affected securities of the issuer.

83. A related party transaction that is subject to MI 61-101 may be exempt from the Valuation and Minority Approval Requirements if, at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, exceeds 25% of the issuer's market capitalization (the **Market Cap Exemption**).

84. It is unclear whether BIP would be entitled to rely on the Market Cap Exemption available under the Legislation because the definition of market capitalization in the Legislation does not contemplate securities of another entity that are exchangeable into equity securities of the issuer.

85. The New Exchangeable Shares represent part of the equity value of BIP and are functionally and economically equivalent to the BIP Units. As a result of the New Exchangeable Share Provisions, holders of New Exchangeable Shares have the ability to receive a BIP Unit or its cash equivalent (the form of payment to be determined at the election of New BIPC) and will receive identical distributions to the BIP Units, as and when declared by the board of directors of New BIPC. Moreover, the economic interests that underlie the New Exchangeable Shares are identical to those underlying the BIP Units; namely, the assets and operations held directly or indirectly by BIP.

86. The Class A.2 Shares also represent part of the equity value of BIP and are functionally and economically equivalent to the New Exchangeable Shares and the BIP Units. As a result of the A.2 Exchangeable Share Provisions, holders of Class A.2 Shares have the ability to receive a New Exchangeable Share or a BIP Unit (or the applicable cash equivalent at the election of BIPC) and will receive identical distributions to the BIP Units, as and when declared by the board of directors of BIPC. Moreover, the economic interests that underlie the Class A.2 Shares are identical to those underlying the BIP Units; namely, the assets and operations held directly or indirectly by BIP.

87. Any costs related to a transaction entered into by New BIPC, BIPC or their subsidiary entities will be borne by BIP as the sole holder of the equity securities of New BIPC and BIPC. BIP consolidates New BIPC and BIPC and their businesses in its financial statements and the business of BIP (including New BIPC, BIPC and their subsidiary entities) is the same as it was before the creation of New BIPC and the transactions conducted in connection with, and to facilitate, the Reorganization.

88. If the New Exchangeable Shares and Class A.2 Shares are not included in the market capitalization of BIP, the equity value of BIP will be understated initially by the value of the New Exchangeable Shares and the Class A.2 Shares, being approximately 20% as of October 15, 2024. As a result, related party transactions of BIP that are entered into through Holding LP or any subsidiary entity of Holding LP may be subject to the Valuation and Minority Approval Requirements in circumstances where the fair market value of the transactions are effectively less than 25% of the fully diluted market capitalization of BIP.

Decision

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

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

1. in respect of the BIP Related Party Relief and New BIPC Related Party Relief:

   (a) all of the equity securities of New BIPC are owned, directly or indirectly, by BIP;

   (b) all of the voting securities of New BIPC, other than the New Exchangeable Shares, are owned, directly or indirectly, by BIP;

   (c) BIP has voting control over New BIPC and controls the appointment and removal of directors of New BIPC;

   (d) there are no material changes to the New Exchangeable Share Provisions, as described above; and

   (e) BIP consolidates New BIPC and BIPC and their businesses in BIP's financial statements;

2. in respect of the Non-Group Related Party Relief:

   (a) BIP will comply with the Related Party Transaction Requirements for each Other New BIPC Related Party Transaction as though BIP entered into the Other New BIPC Related Party Transaction directly;

   (b) other than where a member of the BIP Group is also party to the Other New BIPC Related Party Transaction, in which case any formal valuation required to be obtained by BIP under the Related Party Transaction Requirements (including for the Other New BIPC Related Party Transaction) will be in respect of the BIP Group (including New BIPC and New BIPC's subsidiary entities) on a consolidated basis:

      (i) the subject matter of any formal valuation required to be obtained by BIP under the Related Party Transaction Requirements for an Other New BIPC Related Party Transaction and the value or range of values of such subject matter would be identical to any formal valuation obtained by New BIPC for the same Other New BIPC Related Party Transaction; and

      (ii) the form and substance of any formal valuation required to be obtained by BIP under the Related Party Transaction Requirements for an Other New BIPC Related Party Transaction would be identical, in all material respects, to any formal valuation obtained by New BIPC for the same Other New BIPC Related Party Transaction; and

   (c) any and all disclosure documents in connection with an Other New BIPC Related Party Transaction, including any formal valuations, information circulars or material change reports, are filed on the SEDAR+ profiles of both BIP and New BIPC;

3. in respect of the Transaction Size Relief:

   (a) the transaction would qualify for the Market Cap Exemption if the New Exchangeable Shares and the Class A.2 Shares were considered an outstanding class of equity securities of BIP that were convertible into BIP Units;

   (b) there are no material changes to the New Exchangeable Share Provisions or the A.2 Exchangeable Share Provisions, as described above;

   (c) all of the equity securities of New BIPC and BIPC are held, directly or indirectly, by BIP; and

   (d) any annual information form or equivalent of BIP that is required to be filed in accordance with applicable securities laws contain the following disclosure, with any immaterial modifications as the context may require:

      Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") provides a number of circumstances in which a transaction between an issuer and a related party may be subject to valuation and minority approval requirements. An exemption from such requirements is available when the fair market value of the transaction is not more than 25% of the market capitalization of the issuer. Brookfield Infrastructure Partners L.P. ("**BIP**") has been granted exemptive relief from the requirements of MI 61-101 that, subject to certain conditions, permits it to be exempt from the minority approval and valuation requirements for transactions that would have a value of less than 25% of BIP's market capitalization if the outstanding redeemable partnership units of Brookfield Infrastructure L.P., class A exchangeable subordinate voting shares of Brookfield Infrastructure Corporation ("**BIPC**") and class A.2 non-voting shares of Brookfield Infrastructure Holdings Corporation are included in the calculation of BIP's market capitalization. As a result, the 25% threshold above which the minority approval and valuation requirements would apply is increased to include the approximately **[■]**% indirect interest in BIP in the form of redeemable partnership units of Brookfield Infrastructure L.P. held by Brookfield Corporation or its subsidiaries, the approximately **[■]**% indirect interest in BIP in the form of class A exchangeable subordinate voting shares of BIPC held by the public, and approximately

[■]% indirect interest in BIP in the form of class A.2 exchangeable non-voting shares of Brookfield Infrastructure Holdings Corporation held by Brookfield Corporation or its subsidiaries.

"David Mendicino"
Manager, Corporate Finance Division
Ontario Securities Commission

OSC File #: 2024/0518

B.3.10 Brookfield Renewable Partners L.P. and Brookfield Renewable Corporation

Headnote

National Policy 11-203 National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – partnership creates corporation to provide investors with alternative way to hold its units – corporation issues exchangeable shares whose terms are structured so that each exchangeable share is functionally and economically equivalent to a partnership unit – each exchangeable share provides an equivalent economic return as a partnership unit – both the partnership and the corporation are reporting issuers – related party transactions between the partnership and the corporation, and vice versa, will be required from time to time, and the corporation will also, from time to time, enter into related party transactions with persons other than the partnership – the partnership may not be party to each of these related party transactions but each such transaction will be treated by the partnership as a related party transaction – related party transactions between the partnership and the corporation are exempt from the related party transaction requirements, subject to conditions – the corporation is exempt from related party transaction requirements, subject to conditions, including that the partnership will comply with the related party transaction requirements for each of the corporation's related party transactions as though the partnership entered into such related party transaction directly – partnership may include corporation's exchangeable shares when calculating market capitalization for the purposes of using the 25% market capitalization exemption for certain related party transactions, subject to conditions.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, Part 5, and 9.1.

December 24, 2024

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

AND

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

AND

IN THE MATTER OF
BROOKFIELD RENEWABLE PARTNERS L.P.
AND
BROOKFIELD RENEWABLE CORPORATION

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Brookfield Renewable Partners L.P. (**BEP**) and Brookfield Renewable Corporation (formerly 1505127 B.C. Ltd.) (**New BEPC**, and together with **BEP**, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

(a) BEP be exempt from the requirements of Part 5 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**, and such requirements, the **Related Party Transaction Requirements**) in connection with any related party transaction of BEP with New BEPC or any of New BEPC's subsidiary entities (the **BEP Related Party Relief**);

(b) New BEPC be exempt from the Related Party Transaction Requirements in connection with any related party transaction of New BEPC with:

(i) BEP or any of BEP's subsidiary entities (together but excluding New BEPC, the **BEP Group**, and such relief, the **Group Related Party Relief**); and

(ii) persons not in the BEP Group (the **Non-Group Related Party Relief** and collectively with the Group Related Party Relief, the **New BEPC Related Party Relief**); and

(c) BEP be exempt from the requirements of sections 5.4 and 5.6 of MI 61-101 (the **Valuation and Minority Approval Requirements**) in connection with any related party transaction of BEP entered into indirectly through Brookfield Renewable Energy L.P. (**BRELP**) or any subsidiary entity of BRELP, if that transaction would qualify for the transaction size exemptions set out in sections 5.5(a) and 5.7(1)(a) of MI 61-101 if the class A exchangeable subordinate voting shares of New BEPC (the **New Exchangeable Shares**) and the class A.2 non-voting shares of Brookfield Renewable Corporation (the **Class A.2 Shares**) were included in the calculation of BEP's market capitalization (the **Transaction Size Relief**, collectively with the **BEP Related Party Relief** and the **New BEPC Related Party Relief**, the **Exemption Sought**).

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

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

(b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in Alberta, Manitoba, New Brunswick, Québec and Saskatchewan.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and MI 61-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

Relevant Entities

BEP

1. BEP is an exempted limited partnership established, registered and in good standing under the laws of Bermuda. BEP's registered and head office is located at 73 Front Street, 5th Floor, Hamilton HM 12, Bermuda.

2. BEP is a reporting issuer in all of the provinces and territories of Canada and is an SEC issuer within the meaning of section 1.1 of National Instrument 51-102 *Continuous Disclosure Obligations*. BEP is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

3. The authorized capital of BEP consists of: (a) an unlimited number of non-voting limited partnership units (the **BEP Units**); (b) an unlimited number of class A preferred limited partnership units; and (c) an unlimited number of general partnership units. As of October 15, 2024, there were 285,111,229 BEP Units (659,240,359 BEP Units assuming the exchange of redeemable partnership units of BRELP (the **Redeemable Partnership Units**) and Exchangeable Shares (as defined below)), 31,000,000 class A preferred limited partnership units and 3,977,260 general partnership units issued and outstanding.

4. The BEP Units are listed on the New York Stock Exchange (**NYSE**) and the Toronto Stock Exchange (**TSX**) under the symbols "BEP" and "BEP.UN", respectively.

5. Brookfield Renewable Partners Limited (**BEP GP**), a wholly-owned subsidiary of Brookfield Corporation (**Brookfield**), holds the general partnership units of BEP.

6. BEP's sole material asset is its limited partnership interest and preferred limited partner interests in BRELP, a Bermuda exempted limited partnership established, registered and in good standing under the laws of Bermuda. The authorized capital of BRELP is comprised of: (a) limited partner interests held by BEP; (b) Redeemable Partnership Units held by Brookfield Renewable Power Inc. (**BRPI**), a wholly-owned subsidiary of Brookfield; and (c) general partner units held by BREP Holding L.P. (**BRELP GP LP**), an indirect subsidiary of Brookfield. The general partner of BRELP GP LP is controlled by BEP, through its general partner, pursuant to the terms of a voting agreement between BEP and BRPI (the **Voting Agreement**).

7. Pursuant to the Voting Agreement BRPI agreed that any voting rights with respect to the general partner of BRELP GP LP and BRELP will be voted in accordance with the direction of BEP with respect to (a) the election of directors of the general partner of BRELP GP LP and (b) the approval or rejection of the following matters relating to any such entity, as applicable: (i) any sale of all or substantially all of its assets; (ii) any merger, amalgamation, consolidation, business combination or other material corporate transaction, except in connection with any internal reorganization that does not result in a change of control; (iii) any plan or proposal for a complete or partial liquidation or dissolution, or any reorganization or any case, proceeding or action seeking relief under any existing laws or future laws relating to bankruptcy or insolvency; (iv) any amendment to the limited partnership agreement of BRELP GP LP or BRELP; or (v)

any commitment or agreement to do any of the foregoing. As a result, BEP consolidates BRELP and its businesses in its financial statements.

8. Pursuant to the terms of the limited partnership agreement of BRELP, the general partner of BRELP receives incentive distributions that are calculated by reference to the distributions that are ultimately paid to holders of BEP Units. Accordingly, the general partner units of BRELP effectively represent an economic interest in the collective operations of BEP, rather than BRELP.

9. The Redeemable Partnership Units are, in all material respects, economically equivalent to the BEP Units and effectively represent an economic interest in the collective operations of BEP, rather than BRELP.

10. As the limited partnership interests of BRELP are held by BEP, and the general partner units of BRELP and Redeemable Partnership Units effectively represent economic interests in the collective operations of BEP rather than BRELP, (a) BRELP is, in effect, a wholly-owned subsidiary of BEP, and (b) direct and indirect wholly-owned subsidiaries of BRELP are, in effect, wholly-owned subsidiaries of BEP.

BEPC

11. Brookfield Renewable Holdings Corporation (formerly Brookfield Renewable Corporation) (**BEPC**) is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). BEPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. BEPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

12. BEPC is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

13. BEPC was created, in part, to provide investors that would not otherwise invest in BEP with an opportunity to gain access to BEP's portfolio of renewable power assets, and to provide investors with the flexibility to own, through the ownership of an Exchangeable Share, the economic equivalent of a BEP Unit. The rights, privileges, restrictions and conditions attached to each Exchangeable Share are such that each Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BEP Unit.

14. Prior to completion of the Reorganization (as defined below):

    (a) the authorized share capital of BEPC consisted of: (i) an unlimited number of class A exchangeable subordinate voting shares (the **Exchangeable Shares**); (ii) an unlimited number of class B multiple voting shares (the **Class B Shares**); (iii) an unlimited number of class C non-voting shares (the **Class C Shares**); (iv) an unlimited number of class A senior preferred shares (issuable in series); and (v) an unlimited number of class B junior preferred shares (issuable in series). As of October 15, 2024, there were 179,641,191 Exchangeable Shares, 165 Class B Shares, 194,460,874 Class C Shares, zero class A senior preferred shares, and zero class B junior preferred shares issued and outstanding;

    (b) the only voting securities of BEPC were the Exchangeable Shares and the Class B Shares. Holders of Exchangeable Shares were entitled to one (1) vote per Exchangeable Share held and holders of Class B Shares were entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Exchangeable Shares. Accordingly, the Exchangeable Shares collectively represented a 25% voting interest in BEPC and the Class B Shares collectively represented a 75% voting interest in BEPC;

    (c) neither the Exchangeable Shares nor the Class B Shares carried a residual right to participate in the assets of BEPC upon liquidation or winding-up of BEPC, and accordingly, were not equity securities under the Legislation. The Class C Shares were the only equity securities of BEPC;

    (d) BEP, indirectly through subsidiary entities, owned 100% of the issued and outstanding Class B Shares and 100% of the Class C Shares. Through its ownership of these securities, BEP (i) had a 75% voting interest in BEPC, thereby controlling BEPC and the appointment and removal of directors of BEPC, and (ii) was entitled to all of the residual value in BEPC after payment in full of the amount due to holders of Exchangeable Shares and Class B Shares, and subject to the prior rights of holders of preferred shares;

    (e) the Class B Shares and the Class C Shares were not transferable except to BEP or persons controlled by BEP; and

    (f) the board of directors of BEPC consisted of each of the directors of BEP GP and two additional directors.

15. The Exchangeable Shares are listed on the NYSE and the TSX under the symbol "BEPC".

16. In connection with the Reorganization:

    (a) BEPC applied to cease to be a reporting issuer; and

    (b) the Exchangeable Shares will be delisted from the NYSE and the TSX.

Brookfield

17. Brookfield (formerly Brookfield Asset Management Inc.) is a corporation existing and in good standing under the *Business Corporations Act* (Ontario). Brookfield's registered and head office is located at Suite 100, Brookfield Place, 181 Bay Street, Toronto, Ontario, M5J 2T3.

18. Brookfield is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

19. The Class A Limited Voting Shares of Brookfield are listed on the NYSE and the TSX under the symbol "BN".

20. Prior to completion of the Reorganization, Brookfield and Brookfield Wealth Solutions Ltd. and their subsidiaries held an approximate 47% economic interest in BEP on a fully-exchanged basis through their indirect ownership of BEP Units, Redeemable Partnership Units, and Exchangeable Shares.

21. Following completion of the Reorganization, Brookfield and Brookfield Wealth Solutions Ltd. and their subsidiaries hold an approximate 47% economic interest in BEP on a fully-exchanged basis through their indirect ownership of BEP Units, Redeemable Partnership Units, New Exchangeable Shares, and Class A.2 Shares.

22. Brookfield indirectly holds a 100% voting interest in BEP through its ownership of the general partnership units of BEP.

23. BEP, BRELP, BEPC, New BEPC and certain of their subsidiaries have retained Brookfield and its related entities to provide management, administrative and advisory services under a master services agreement.

New BEPC

24. New BEPC is a corporation existing and in good standing under the *Business Corporations Act* (British Columbia). New BEPC was incorporated on October 3, 2024. New BEPC's registered office is located at 1500 Royal Centre, 1055 West Georgia Street, P.O. Box 11117, Vancouver, British Columbia, V6E 4N7. New BEPC's head office is located at 250 Vesey Street, 15th Floor, New York, New York, 10281, United States of America.

25. New BEPC is a reporting issuer in all of the provinces and territories of Canada and is not in default of any requirement of securities legislation in the jurisdictions in which it is a reporting issuer.

26. The authorized share capital of New BEPC consists of: (a) an unlimited number of New Exchangeable Shares; and (b) an unlimited number of class B multiple voting shares (the **New Class B Shares**). Prior to completion of the Reorganization, there were no New Exchangeable Shares and one (1) New Class B Share issued and outstanding, which is held by Brookfield BRP Holdings (Canada) Inc. (**CanHoldco**), a subsidiary entity of BEP.

27. Except as provided below, holders of New Exchangeable Shares are entitled to one (1) vote per New Exchangeable Share held and holders of New Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the New Exchangeable Shares. Accordingly, the New Exchangeable Shares collectively represent a 25% voting interest in New BEPC and the New Class B Shares collectively represent a 75% voting interest in New BEPC.

28. At any time that no New Exchangeable Shares are outstanding or for any vote held only in respect of the New Class B Shares, holders of New Class B Shares are entitled to cast one (1) vote per New Class B Share.

29. The New Exchangeable Shares do not carry a residual right to participate in the assets of New BEPC upon liquidation or winding-up of New BEPC, and accordingly, are not equity securities under the Legislation. The New Class B Shares are the only equity securities of New BEPC.

30. BEP, indirectly through its subsidiary entities, owns 100% of the issued and outstanding New Class B Shares. The New Class B Shares are not transferable except to BEP or persons controlled by BEP. Through its ownership of New Class B Shares, BEP (a) has a 75% voting interest in New BEPC, thereby controlling New BEPC and the appointment and removal of directors of New BEPC, and (b) is entitled to all of the residual value in New BEPC after payment in full of the amount due to holders of New Exchangeable Shares.

The Reorganization

31. BEPC currently qualifies as a "mutual fund corporation" as defined in the *Income Tax Act* (Canada) (the **Tax Act**).

32. The 2024 Canadian federal budget included proposed amendments to the tax rules relating to mutual fund corporations which, if enacted as proposed, were expected to result in additional costs to BEPC.

33. On October 9, 2024, BEP, BEPC, New BEPC and Brookfield entered into an arrangement agreement in respect of a reorganization (the **Reorganization**) designed to preserve the current benefits received by holders of Exchangeable Shares from holding their investments in the business of BEP and its subsidiary entities through a corporation that is intended to qualify as a "mutual fund corporation" (as defined in the Tax Act).

34. On December 3, 2024, the Reorganization was approved at a special meeting of holders of Exchangeable Shares and Class B Shares (the **Meeting**) by: (a) not less than $66^2/_3\%$ of the votes cast at the Meeting by holders of Exchangeable Shares and holders of Class B Shares, voting together; (b) not less than $66^2/_3\%$ of the votes cast at the Meeting by holders of Exchangeable Shares, voting separately as a class; and (c) not less than $66^2/_3\%$ of the votes cast at the Meeting by holders of Class B Shares, voting separately as a class.

35. On December 9, 2024, the Supreme Court of British Columbia approved the Reorganization.

36. As part of the Reorganization:

    (a) BEPC amended its articles to create two (2) new classes of securities: class A.1 exchangeable subordinate voting shares (the **Class A.1 Shares**) and Class A.2 Shares;

    (b) holders of Exchangeable Shares (other than Brookfield and its subsidiaries) received one (1) New Exchangeable Share from New BEPC for each Exchangeable Share held;

    (c) New BEPC transferred the Exchangeable Shares received from holders of Exchangeable Shares (other than Brookfield and its subsidiaries) to BEPC in exchange for Class A.1 Shares on a one-for-one basis, and the Exchangeable Shares were cancelled by BEPC;

    (d) Brookfield and its subsidiaries transferred the Exchangeable Shares held by them to BEPC in exchange for Class A.2 Shares on a one-for-one basis, and the Exchangeable Shares were cancelled by BEPC;

    (e) CanHoldco transferred 55 Class B Shares to New BEPC in exchange for 55 New Class B Shares;

    (f) BEPC amended its articles to, among other things, rename BEPC to "Brookfield Renewable Holdings Corporation" and remove the Exchangeable Shares from its authorized share capital;

    (g) BEPC applied to cease to be a reporting issuer;

    (h) the Exchangeable Shares will be delisted from the NYSE and the TSX;

    (i) New BEPC was renamed "Brookfield Renewable Corporation" and the New Exchangeable Shares will be listed on the NYSE and the TSX under the symbol "BEPC";

    (j) New BEPC, BEPC and BEP entered into a pairing agreement pursuant to which the parties have agreed that New BEPC will, at all times, hold such number of Class A.1 Shares equal to the number of New Exchangeable Shares that are outstanding to support the duties and obligations of New BEPC to holders of New Exchangeable Shares (the **Pairing Agreement**); and

    (k) New BEPC entered into option agreements with CanHoldco and Brookfield BRP Canada Corp., a subsidiary entity of BEP, that collectively provide New BEPC with the right to acquire any or all of the Class B Shares and/or Class C Shares held by CanHoldco and Brookfield BRP Canada Corp. in exchange for newly issued New Class B Shares.

37. Following completion of the Reorganization, New BEPC:

    (a) became a reporting issuer in each of the provinces and territories of Canada;

    (b) qualifies as a "mutual fund corporation" as defined in the Tax Act;

    (c) has taken the place of BEPC and serves as the entity through which investors who do not wish to hold BEP Units directly may hold their interests in BEP through the ownership of a New Exchangeable Share, which is economically equivalent to a BEP Unit; and

(d) carries on its business through BEPC, whose Class A.1 Shares and 55 Class B Shares are New BEPC's sole material assets.

38. BEP consolidates New BEPC and BEPC and their businesses in BEP's financial statements, and the collective operations of BEP and its subsidiaries (including New BEPC, BEPC and their subsidiary entities) are the same as they were prior to the creation of New BEPC and occurrence of the transactions conducted in connection with, and to facilitate, the Reorganization.

39. The board of directors of New BEPC consists of the directors that were on the board of directors of BEPC immediately prior to completion of the Reorganization.

40. New BEPC is not a wholly-owned subsidiary entity of BEP; BEP does not own, directly or indirectly, all of the voting securities of New BEPC because members of the public hold New Exchangeable Shares and Brookfield and its subsidiaries hold Class A.2 Shares, which are exchangeable for New Exchangeable Shares (subject to the Ownership Cap (as defined below)). However, by virtue of the terms of the New Class B Shares, BEP holds a 75% voting interest in New BEPC thereby controlling New BEPC and the appointment and removal of directors of New BEPC. The voting rights attached to the New Exchangeable Shares do not allow holders of New Exchangeable Shares to affect the control of New BEPC. The voting right attached to each New Exchangeable Share is expected to assist with index inclusion.

The New Exchangeable Shares

41. The New Exchangeable Shares have substantially the same terms as the Exchangeable Shares. Each New Exchangeable Share has been structured with the intention of providing an economic return equivalent to a BEP Unit, and the rights, privileges, restrictions and conditions attached to each New Exchangeable Share (the **New Exchangeable Share Provisions**) are such that each New Exchangeable Share is, as nearly as practicable, functionally and economically, equivalent to a BEP Unit. In particular:

(a) each New Exchangeable Share is exchangeable at the option of a holder for one (1) BEP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of New BEPC) (an **Exchange**);

(b) the New Exchangeable Shares are redeemable by New BEPC at any time (including following a notice requiring redemption having been given by BEP) for BEP Units on a one-for-one basis (subject to adjustment to reflect certain capital events) (a **Redemption**);

(c) upon a liquidation, dissolution or winding up of New BEPC, holders of New Exchangeable Shares are entitled to receive BEP Units (or their cash equivalent, at New BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of New BEPC following such payment (a **New BEPC Liquidation**);

(d) upon a liquidation, dissolution or winding up of BEP (a **BEP Liquidation**), including where substantially concurrent with a New BEPC Liquidation, all of the New Exchangeable Shares will be automatically redeemed for BEP Units (or their cash equivalent, at New BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

(e) subject to applicable law and in accordance with the New Exchangeable Share Provisions, each New Exchangeable Share entitles the holder to dividends from New BEPC payable at the same time as, and equivalent to, each distribution on a BEP Unit. The New Exchangeable Share Provisions also provide that if a distribution is declared on the BEP Units and an equivalent dividend is not declared and paid concurrently on the New Exchangeable Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

42. Upon being notified by New BEPC that New BEPC has received a request for an Exchange, BEP has an overriding call right to purchase (or have one of its affiliates purchase) all of the New Exchangeable Shares that are the subject of the Exchange notice from the holder of New Exchangeable Shares for BEP Units (or their cash equivalent, at BEP's election) on a one-for-one basis (subject to adjustment to reflect certain capital events).

43. Upon being notified by New BEPC that it intends to conduct a Redemption, BEP has an overriding call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding New Exchangeable Shares for BEP Units on a one-for-one basis (subject to adjustment to reflect certain capital events).

44. Upon the occurrence of a BEP Liquidation or a New BEPC Liquidation, BEP has an overriding liquidation call right to purchase (or have one of its affiliates purchase) all but not less than all of the then outstanding New Exchangeable

Shares on the day prior to the effective date of such BEP Liquidation or New BEPC Liquidation for BEP Units on a one-for-one basis (subject to adjustment to reflect certain capital events).

45. In connection with the Reorganization, Brookfield entered into a rights agreement (the **Rights Agreement**) pursuant to which it agreed that, until July 30, 2027 (and as automatically renewed for successive periods of two years, unless Brookfield provides the rights agent with written notice of termination in accordance with the terms of the Rights Agreement), Brookfield will guarantee New BEPC's obligation to deliver BEP Units or their cash equivalent in connection with an Exchange. The Rights Agreement replaced the rights agreement in respect of exchanges of Exchangeable Shares.

46. Investments in New Exchangeable Shares are, as nearly as practicable, functionally and economically, equivalent to an investment in BEP Units. BEP expects that:

    (a) investors of New Exchangeable Shares will purchase New Exchangeable Shares as an alternative way of owning BEP Units rather than a separate and distinct investment; and

    (b) the market price of the New Exchangeable Shares will be significantly impacted by (i) the combined business performance of New BEPC and BEP as a single economic unit, and (ii) the market price of the BEP Units, in a manner that results in the market price of the New Exchangeable Shares closely tracking the market price of the BEP Units.

Share Capital of BEPC after the Reorganization

47. Following completion of the Reorganization:

    (a) the authorized share capital of BEPC consists of: (i) an unlimited number Class A.1 Shares; (ii) an unlimited number of Class A.2 Shares; (iii) an unlimited number of Class B Shares; (iv) an unlimited number of Class C Shares; (v) an unlimited number of class A senior preferred shares (issuable in series); and (vi) an unlimited number of class B junior preferred shares (issuable in series); and

    (b) there are (based on the issued and outstanding share capital of BEPC as of October 15, 2024):

        (i) 134,827,356 Class A.1 Shares issued and outstanding, all of which are held by New BEPC;

        (ii) 44,813,835 Class A.2 Shares issued and outstanding, all of which are held by Brookfield and its subsidiaries;

        (iii) 165 Class B Shares issued and outstanding, 110 of which are held by CanHoldco, and 55 of which are held by New BEPC;

        (iv) 194,460,874 Class C Shares issued and outstanding, all of which are held by Brookfield BRP Canada Corp.;

        (v) zero class A senior preferred shares issued and outstanding; and

        (vi) zero class B junior preferred shares issued and outstanding.

48. Other than the ability to receive additional dividends at such time as there are no unpaid dividends in respect of the Class A.1 Shares or the Class A.2 Shares, and if, as and when declared by the board of directors of BEPC (the **Additional Dividends**), the Class A.1 Shares have terms that are substantially the same as the New Exchangeable Shares, including with respect to the exchange mechanics, dividend rights, voting rights and rights on liquidation. It is expected that Additional Dividends may be declared from time to time in order to fund expenses of New BEPC.

49. The Class A.1 Shares carry one (1) vote per share, and the holders of the Class A.1 Shares are entitled to an aggregate 25% voting interest in BEPC. Each Class A.1 Share has been structured with the intention of providing an economic return equivalent to a BEP Unit and the rights, privileges, restrictions and conditions attached to each Class A.1 Share (the **A.1 Exchangeable Share Provisions**) are such that each Class A.1 Share is, as nearly as practicable, functionally and economically, equivalent to a New Exchangeable Share and a BEP Unit. In particular:

    (a) each Class A.1 Share is exchangeable at the option of a holder for one (1) BEP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BEPC);

    (b) the Class A.1 Shares are redeemable by BEPC at any time (including following a notice requiring redemption having been given by BEP) for BEP Units on a one-for-one basis (subject to adjustment to reflect certain capital events);

(c) upon a liquidation, dissolution or winding up of BEPC (a **BEPC Liquidation**), holders of Class A.1 Shares are entitled to receive BEP Units (or their cash equivalent, at BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events) and not any remaining property or assets of BEPC following such payment;

(d) upon a BEP Liquidation, including where substantially concurrent with a BEPC Liquidation, all of the Class A.1 Shares will be automatically redeemed for BEP Units (or their cash equivalent, at BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

(e) subject to applicable law and in accordance with the A.1 Exchangeable Share Provisions, each Class A.1 Share entitles the holder to dividends from BEPC payable at the same time as, and equivalent to, each distribution on a BEP Unit. The A.1 Exchangeable Share Provisions also provide that if a distribution is declared on the BEP Units and an equivalent dividend is not declared and paid concurrently on the Class A.1 Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

50. As required pursuant to the terms of the Pairing Agreement, any and all Class A.1 Shares will be held by New BEPC. New BEPC may use the exchange right pursuant to the A.1 Exchangeable Share Provisions to obtain BEP Units necessary, from time to time, to satisfy exchanges of the New Exchangeable Shares.

51. Each Class A.2 Share is non-voting and structured with the intention of providing an economic return equivalent to a BEP Unit, and the rights, privileges, restrictions and conditions attached to each Class A.2 Share (the **A.2 Exchangeable Share Provisions**) are such that each Class A.2 Share is, as nearly as practicable, functionally and economically, equivalent to a New Exchangeable Share and a BEP Unit. In particular:

(a) each Class A.2 Share is exchangeable at the option of a holder for (i) one (1) New Exchangeable Share (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BEPC), or (ii) one (1) BEP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BEPC), provided that, after giving effect to any such exchange, Brookfield and its subsidiaries are not permitted to receive a number of New Exchangeable Shares that would result in Brookfield and its subsidiaries owning 9.5% or more of the aggregate fair market value of all issued and outstanding shares of New BEPC (the **Ownership Cap**);

(b) the Class A.2 Shares are redeemable by BEPC at any time (including following a notice requiring redemption having been given by BEP) for (i) one (1) New Exchangeable Share (subject to adjustment to reflect certain capital events), or (ii) one (1) BEP Unit (subject to adjustment to reflect certain capital events) (the form of payment to be determined at the election of BEPC);

(c) upon a BEPC Liquidation, holders of Class A.2 Shares are entitled to receive one (1) BEP Unit (subject to adjustment to reflect certain capital events) or its cash equivalent (the form of payment to be determined at the election of BEPC) and not any remaining property or assets of BEPC following such payment;

(d) upon a BEP Liquidation, including where substantially concurrent with a BEPC Liquidation, all of the Class A.2 Shares will be automatically redeemed for BEP Units (or their cash equivalent, at BEPC's election) on a one-for-one basis (subject to adjustment to reflect certain capital events); and

(e) subject to applicable law and in accordance with the A.2 Exchangeable Share Provisions, each Class A.2 Share entitles the holder to dividends from BEPC payable at the same time as, and equivalent to, each distribution on a BEP Unit. The A.2 Exchangeable Share Provisions also provide that if a distribution is declared on the BEP Units and an equivalent dividend is not declared and paid concurrently on the Class A.2 Shares, then the undeclared or unpaid amount of such dividend accrues and accumulates and is to be paid upon the first to occur of any of the circumstances contemplated by paragraphs (a) to (d) above, if not yet paid.

52. The Ownership Cap is designed to preserve New BEPC's status as a "mutual fund corporation" under the Tax Act.

53. The Class B Shares continue to be structured to provide the holders with control of BEPC. In particular:

(a) holders of Class B Shares are entitled to, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the Class A.1 Shares. As a result, holders of Class B Shares have a 75% voting interest in BEPC and holders of Class A.1 Shares have a 25% voting interest in BEPC; and

(b) in the event that a share/stock dividend is declared and paid on the Class A.1 Shares, a share/stock dividend will be paid to holders of Class B Shares in an equal number of Class B Shares as Class A.1 Shares are paid to holders of Class A.1 Shares.

54. The only voting securities of BEPC are the Class A.1 Shares and the Class B Shares.

55. The Class C Shares were unaffected by the Reorganization and continue to be structured to provide the holders thereof with all of the residual value in BEPC. In particular:

    (a) subject to applicable law and in accordance with the terms of the Class C Shares, only holders of Class C Shares are entitled to a residual right to participate, on a BEPC Liquidation, in its assets;

    (b) subject to applicable law and in accordance with the term of the Class C Shares, subject to the prior rights of the holders of the Class A.1 Shares and Class A.2 Shares and of any preferred shares then outstanding, the holders of Class C Shares are entitled to receive dividends if, as, and when declared by the board of directors of BEPC; and

    (c) share/stock dividends, if any, will be paid to holders of Class C Shares in an equal number of Class C Shares as Class A.1 Shares are paid to holders of Class A.1 Shares and Class A.2 Shares are paid to holders of Class A.2 Shares.

56. The Class B Shares and Class C Shares continue to be subject to restrictions on transfer, other than to BEP or persons controlled by BEP.

New BEPC Related Party Transactions

BEP Related Party Relief and Group Related Party Relief

57. The Related Party Transaction Requirements do not apply to an issuer carrying out a related party transaction if:

    (a) as provided under paragraph 5.1(d) of MI 61-101, the parties to the transaction consist solely of (i) an issuer and one or more of its wholly-owned subsidiary entities, or (ii) wholly-owned subsidiary entities of the same issuer. A person is considered to be a "wholly-owned subsidiary entity" of an issuer if the issuer owns, directly or indirectly, all of the voting and equity securities and securities convertible into voting and equity securities of the person; and/or

    (b) as provided under paragraph 5.1(g) of MI 61-101 (the **Downstream Transaction Carve-Out**), the transaction is a downstream transaction for the issuer. A "downstream transaction" means, for an issuer, a transaction between the issuer and a related party of the issuer if, at the time the transaction is agreed to, (i) the issuer is a control person of the related party, and (ii) to the knowledge of the issuer after reasonable inquiry, no related party of the issuer, other than a wholly-owned subsidiary entity of the issuer, beneficially owns or exercises control or direction over, other than through its interest in the issuer, more than five per cent of any class of voting or equity securities of the related party that is a party to the transaction.

58. Section 1.3 of MI 61-101 provides that, for the purposes of MI 61-101, a transaction of a wholly-owned subsidiary entity of an issuer is deemed to be a transaction of the issuer.

59. Related party transactions between BEP and New BEPC will be required for the operation of the New Exchangeable Share Provisions and in connection with ordinary course financial support arrangements which may be entered into from time to time.

60. The only voting securities of New BEPC are the New Exchangeable Shares and the New Class B Shares.

61. Holders of New Exchangeable Shares are entitled to one (1) vote per New Exchangeable Share held and holders of New Class B Shares are entitled to cast, in the aggregate, a number of votes equal to three (3) times the number of votes attached to the New Exchangeable Shares.

62. The New Exchangeable Shares do not carry a residual right to participate in the assets of New BEPC upon liquidation or winding-up of New BEPC, and accordingly, are not equity securities under the Legislation. The New Class B Shares are the only equity securities of New BEPC.

63. All of the New Class B Shares are indirectly owned by BEP and none of them are transferable except to an affiliate of BEP. Accordingly, all of the equity securities of New BEPC are held indirectly by BEP.

64. New BEPC is not a wholly-owned subsidiary of BEP; BEP does not own, directly or indirectly all of the voting securities of New BEPC because members of the public hold New Exchangeable Shares and Brookfield and its subsidiaries hold Class A.2 Shares, which are exchangeable for New Exchangeable Shares (subject to the Ownership Cap). However, by virtue of the terms of the New Class B Shares, BEP holds a 75% voting interest in New BEPC thereby controlling New BEPC and the appointment and removal of directors of New BEPC.

65. BEP will not be able to rely on the Downstream Transaction Carve-Out because Brookfield and its subsidiaries beneficially own or exercise control or direction over, more than five per cent of the New Exchangeable Shares, as it holds, directly or indirectly, 100% of the Class A.2 Shares, which are exchangeable into New Exchangeable Shares, representing more than 5% of the New Exchangeable Shares on a fully-exchanged basis. However, as it relates to BEP, the interests of Brookfield, as the indirect holder of the general partnership units of BEP, BRELP GP Units, and Redeemable Partnership Units, are fully aligned with the interests of BEP.

66. As the alternative investment vehicle of BEP for investors who prefer owning securities through a corporation, New BEPC is, in effect, an alter ego of BEP.

67. New BEPC is a controlled subsidiary of BEP and BEP consolidates New BEPC and its businesses in BEP's financial statements.

68. By virtue of the New Exchangeable Share Provisions, the economic rights of the holders of the New Exchangeable Shares will not be affected by transactions between New BEPC and the BEP Group. BEP, as the sole holder of equity securities of New BEPC, will receive any benefit and/or bear any detriment from related party transactions between New BEPC and the BEP Group.

69. Minority approval is required of every class of affected securities, being equity securities of the issuer. For New BEPC, minority approval of a related party transaction of New BEPC with the BEP Group would be sought from the holders of its New Class B Shares, all of which are held by BEP. BEP, as the counterparty to such a related party transaction, does not require the protections of MI 61-101.

Non-Group Related Party Relief

70. It is anticipated that New BEPC will, from time to time, enter into related party transactions with persons not in the BEP Group (**Other New BEPC Related Party Transactions**).

71. A member of the BEP Group may not be a party to each Other New BEPC Related Party Transaction entered into. However, every Other New BEPC Related Party Transaction will indirectly be a related party transaction for BEP and will be treated by BEP as a related party transaction of BEP.

72. Subject to the availability of an exemption, New BEPC would be required to obtain: (a) a formal valuation in respect of the non-cash assets involved in the Other New BEPC Related Party Transaction; and (b) minority approval for the Other New BEPC Related Party Transaction from the holders of every class of affected securities of New BEPC voting separately as a class, excluding the votes attached to affected securities held by the persons enumerated in section 8.1(2) of MI 61-101.

73. Minority approval is required of every class of affected securities, being equity securities of the issuer. The New Exchangeable Shares are not equity securities and thus are not entitled to vote for the purposes of minority approval under MI 61-101. The only equity securities of New BEPC are the New Class B Shares, all of which are held by BEP. BEP, as an entity for which each Other New BEPC Related Party Transaction would also constitute a related party transaction, does not require the protections of MI 61-101.

74. By virtue of the New Exchangeable Share Provisions, the economic rights of the holders of BEP Units and New Exchangeable Shares will be affected in an identical manner in respect of any related party transaction entered into by either BEP or New BEPC. A related party transaction for New BEPC is, in effect, a related party transaction for BEP.

75. BEP, as the sole holder of the equity securities of New BEPC, will receive any benefit and/or bear any detriment from any Other New BEPC Related Party Transaction entered into.

76. A majority of any committee of independent directors of BEP that considers an Other New BEPC Related Party Transaction will be comprised of directors who are also directors of New BEPC.

77. New BEPC is the entity through which members of the public who do not wish to hold BEP Units directly may hold their interests in BEP, and BEP is the entity through which holders of New Exchangeable Shares, Class A.2 Shares and BEP Units hold their interests in the collective operations of BEP and its subsidiaries, including New BEPC and its subsidiaries. BEP, New BEPC and BEPC are a single economic entity.

78. BEP will comply with the Related Party Transaction Requirements for each Other New BEPC Related Party Transaction as though BEP entered into the Other New BEPC Related Party Transaction directly.

79. Other than where a member of the BEP Group is also party to the Other New BEPC Related Party Transaction, in which case any formal valuation required to be obtained by BEP under the Related Party Transaction Requirements (including

for the Other New BEPC Related Party Transaction) will be in respect of the BEP Group (including New BEPC and New BEPC's subsidiary entities) on a consolidated basis:

(a) the subject matter of any formal valuation required to be obtained by BEP under the Related Party Transaction Requirements for an Other New BEPC Related Party Transaction and the value or range of values of such subject matter would be identical to any formal valuation obtained by New BEPC for the same Other New BEPC Related Party Transaction; and

(b) the form and substance of any formal valuation required to be obtained by BEP under the Related Party Transaction Requirements for an Other New BEPC Related Party Transaction would be identical, in all material respects, to any formal valuation obtained by New BEPC for the same Other New BEPC Related Party Transaction.

80. Any and all disclosure documents in connection with an Other New BEPC Related Party Transaction, including any formal valuations, information circulars or material change reports, will be filed on the SEDAR+ profiles of both BEP and New BEPC.

81. Holders of New Exchangeable Shares who wish to vote at the BEP level may do so by conducting an Exchange of New Exchangeable Shares for BEP Units.

Market Capitalization Calculation

82. It is anticipated that BEP will, from time to time, enter into transactions with certain related parties, including Brookfield and its affiliates (other than BEP and its related entities, including New BEPC) indirectly through BRELP and its subsidiaries (including New BEPC and its subsidiaries).

83. The Valuation and Minority Approval Requirements require, subject to the availability of an exemption, that an issuer obtain: (a) a formal valuation of the transaction in a form satisfying the requirements of MI 61-101 by an independent valuator; and (b) approval of the transaction by disinterested holders of the affected securities of the issuer.

84. A related party transaction that is subject to MI 61-101 may be exempt from the Valuation and Minority Approval Requirements if, at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, exceeds 25% of the issuer's market capitalization (the **Market Cap Exemption**).

85. It is unclear whether BEP would be entitled to rely on the Market Cap Exemption available under the Legislation because the definition of market capitalization in the Legislation does not contemplate securities of another entity that are exchangeable into equity securities of the issuer.

86. The New Exchangeable Shares represent part of the equity value of BEP and are functionally and economically equivalent to the BEP Units. As a result of the New Exchangeable Share Provisions, holders of New Exchangeable Shares have the ability to receive a BEP Unit or its cash equivalent (the form of payment to be determined at the election of New BEPC) and will receive identical distributions to the BEP Units, as and when declared by the board of directors of New BEPC. Moreover, the economic interests that underlie the New Exchangeable Shares are identical to those underlying the BEP Units; namely, the assets and operations held directly or indirectly by BEP.

87. The Class A.2 Shares also represent part of the equity value of BEP and are functionally and economically equivalent to the New Exchangeable Shares and the BEP Units. As a result of the A.2 Exchangeable Share Provisions, holders of Class A.2 Shares have the ability to receive a New Exchangeable Share or a BEP Unit (or the applicable cash equivalent at the election of BEPC) and will receive identical distributions to the BEP Units, as and when declared by the board of directors of BEPC. Moreover, the economic interests that underlie the Class A.2 Shares are identical to those underlying the BEP Units; namely, the assets and operations held directly or indirectly by BEP.

88. Any costs related to a transaction entered into by New BEPC, BEPC or their subsidiary entities will be borne by BEP as the sole holder of the equity securities of New BEPC and BEPC. BEP consolidates New BEPC and BEPC and their businesses in its financial statements and the business of BEP (including New BEPC, BEPC and their subsidiary entities) is the same as it was before the creation of New BEPC and the transactions conducted in connection with, and to facilitate, the Reorganization.

89. If the New Exchangeable Shares and Class A.2 Shares are not included in the market capitalization of BEP, the equity value of BEP will be understated initially by the value of the New Exchangeable Shares and the Class A.2 Shares, being approximately 30% as of October 15, 2024. As a result, related party transactions of BEP that are entered into through BRELP or any subsidiary entity of BRELP may be subject to the Valuation and Minority Approval Requirements in circumstances where the fair market value of the transactions are effectively less than 25% of the fully diluted market capitalization of BEP.

Decision

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

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

1. in respect of the BEP Related Party Relief and New BEPC Related Party Relief:

   (a) all of the equity securities of New BEPC are owned, directly or indirectly, by BEP;

   (b) all of the voting securities of New BEPC, other than the New Exchangeable Shares, are owned, directly or indirectly, by BEP;

   (c) BEP has voting control over New BEPC and controls the appointment and removal of directors of New BEPC;

   (d) there are no material changes to the New Exchangeable Share Provisions, as described above; and

   (e) BEP consolidates New BEPC and BEPC and their businesses in BEP's financial statements;

2. in respect of the Non-Group Related Party Relief:

   (a) BEP will comply with the Related Party Transaction Requirements for each Other New BEPC Related Party Transaction as though BEP entered into the Other New BEPC Related Party Transaction directly;

   (b) other than where a member of the BEP Group is also party to the Other New BEPC Related Party Transaction, in which case any formal valuation required to be obtained by BEP under the Related Party Transaction Requirements (including for the Other New BEPC Related Party Transaction) will be in respect of the BEP Group (including New BEPC and New BEPC's subsidiary entities) on a consolidated basis:

      (i) the subject matter of any formal valuation required to be obtained by BEP under the Related Party Transaction Requirements for an Other New BEPC Related Party Transaction and the value or range of values of such subject matter would be identical to any formal valuation obtained by New BEPC for the same Other New BEPC Related Party Transaction; and

      (ii) the form and substance of any formal valuation required to be obtained by BEP under the Related Party Transaction Requirements for an Other New BEPC Related Party Transaction would be identical, in all material respects, to any formal valuation obtained by New BEPC for the same Other New BEPC Related Party Transaction; and

   (c) any and all disclosure documents in connection with an Other New BEPC Related Party Transaction, including any formal valuations, information circulars or material change reports, are filed on the SEDAR+ profiles of both BEP and New BEPC;

3. in respect of the Transaction Size Relief:

   (a) the transaction would qualify for the Market Cap Exemption if the New Exchangeable Shares and the Class A.2 Shares were considered an outstanding class of equity securities of BEP that were convertible into BEP Units;

   (b) there are no material changes to the New Exchangeable Share Provisions or the A.2 Exchangeable Share Provisions, as described above;

   (c) all of the equity securities of New BEPC and BEPC are held, directly or indirectly, by BEP; and

   (d) any annual information form or equivalent of BEP that is required to be filed in accordance with applicable securities laws contain the following disclosure, with any immaterial modifications as the context may require:

      > Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") provides a number of circumstances in which a transaction between an issuer and a related party may be subject to valuation and minority approval requirements. An exemption from such requirements is available when the fair market value of the transaction is not more than 25% of the market capitalization of the issuer. Brookfield Renewable Partners L.P. ("**BEP**") has been granted exemptive relief from the requirements of MI 61-101 that, subject to certain conditions, permits it to be exempt from the minority approval and valuation requirements for transactions that would have a value of less than 25% of BEP's market capitalization if the outstanding redeemable partnership units of Brookfield Renewable Energy L.P., class A exchangeable subordinate voting shares of Brookfield Renewable

Corporation ("**BEPC**") and class A.2 non-voting shares of Brookfield Renewable Holdings Corporation are included in the calculation of BEP's market capitalization. As a result, the 25% threshold above which the minority approval and valuation requirements would apply is increased to include the approximately **[■]**% indirect interest in BEP in the form of redeemable partnership units of Brookfield Renewable Energy L.P. held by Brookfield Corporation or its subsidiaries, the approximately **[■]**% indirect interest in BEP in the form of class A exchangeable subordinate voting shares of BEPC held by the public, and approximately **[■]**% indirect interest in BEP in the form of class A.2 exchangeable non-voting shares of Brookfield Renewable Holdings Corporation held by Brookfield Corporation or its subsidiaries.

"David Mendicino"
Manager, Corporate Finance Division
Ontario Securities Commission

OSC File #: 2024/0517

B.3.11 Ndax Canada Inc.

Headnote

Application for time-limited relief from the prospectus requirement, trade reporting requirements and certain provisions of National Instrument 21-101 Marketplace Operation – relief to allow the Filer to distribute Crypto Contracts and operate a platform that facilitates the buying, selling, holding and staking of crypto assets – relief granted subject to certain conditions set out in the decision, including investment limits, disclosure and reporting requirements – relief will expire upon two (2) years – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovative businesses in Canada – decision should not be viewed as precedent for other filers.

Statute cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 53 & 74.

Instrument, Rule or Policy cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 21-101 Marketplace Operation, s. 15.1.
OSC Rule 91-506 Derivatives: Product Determination, ss. 2 & 4.
OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Part 3.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA,
ONTARIO,
BRITISH COLUMBIA,
MANITOBA,
NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR,
NORTHWEST TERRITORIES,
NOVA SCOTIA,
NUNAVUT,
PRINCE EDWARD ISLAND,
QUEBEC,
SASKATCHEWAN,
AND
YUKON
(collectively, the Jurisdictions)

AND

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

AND

IN THE MATTER OF
NDAX CANADA INC.
(the Filer)

DECISION

Background

As set out in Canadian Securities Administrators (**CSA**) Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (**Staff Notice 21-327**) and Joint CSA/Investment Industry Regulatory Organization of Canada Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (**Staff Notice 21-329**), securities legislation applies to crypto asset trading platforms (**CTPs**) that facilitate or propose to facilitate the trading of instruments or contracts involving crypto assets because the user's contractual right to the crypto asset may itself constitute a security and/or a derivative (**Crypto Contract**).

To foster innovation and respond to novel circumstances, the CSA has considered an interim, time-limited registration that would allow CTPs to operate within a regulated framework, with regulatory requirements tailored to the CTP's operations. The overall

goal of the regulatory framework is to ensure that there is a balance between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer operates a proprietary and fully automated Dealer Platform and Marketplace Platform (as described in Staff Notice 21-329) (the **Ndax Platform**) that enables clients to enter into Crypto Contracts with the Filer to purchase, sell, hold, deposit, withdraw and stake crypto assets, such as Bitcoin, Ether and anything commonly considered to be a crypto asset, digital or virtual currency, or digital or virtual token (**Crypto Asset** and collectively, **Crypto Assets**). Prior to the date of this Decision, the Filer operated under a pre-registration undertaking dated March 24, 2023 in favour of the Principal Regulator (as defined below) and the other members of the CSA. The Filer has filed an application to be registered in the category of investment dealer and approved as a dealer and marketplace member with the Canadian Investment Regulatory Organization (**CIRO**) and for approval to operate an alternative trading system as a registered investment dealer. The Filer has also filed an application to be exempted from certain requirements under applicable securities legislation.

This Decision has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Jurisdictions will not consider this Decision as constituting a precedent for other filers.

Relief Requested

The securities regulatory authority or regulator in Alberta and Ontario (the **Dual Exemption Decision Makers**) have received an application from the Filer (the **Dual Application**) for a decision under the securities legislation of those jurisdictions (the **Legislation**) exempting the Filer from the prospectus requirement under the Legislation in respect of the Filer entering into Crypto Contracts with clients to purchase, sell, hold, deposit, withdraw and stake, as applicable, Crypto Assets (the **Prospectus Relief**).

The securities regulatory authority or regulator in each of the jurisdictions where required (the **Coordinated Review Decision Makers**), has received an application from the Filer (collectively with the Dual Application, the **Application**) for a decision under the securities legislation of those jurisdictions exempting the Filer from:

(a) certain reporting requirements under the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**); and

(b) except in British Columbia, Saskatchewan, New Brunswick and Nova Scotia, relief from the following marketplace requirements:

  (i) section 6.3 of National Instrument 21-101 *Marketplace Operation* (**NI 21-101**), which prohibits an alternative trading system (**ATS**) from trading securities other than "exchange-traded securities", "corporate debt securities", "government debt securities" and "foreign exchange-traded securities", as those terms are defined in NI 21-101;

  (ii) section 6.7 of NI 21-101, which requires an ATS to notify the securities regulatory authority in writing if the total dollar trading value or volume on the ATS exceeds thresholds set out in section 6.7;

  (iii) section 12.3(1)(a) of NI 21-101, which requires an ATS to make available all technology requirements regarding interfacing with or accessing the marketplace prior to commencing operations; and

  (iv) section 13.1 of NI 21-101, which requires trades on a marketplace to be reported to and settled through a clearing agency.

  (the **Marketplace Relief,** and together with the Prospectus Relief and the Trade Reporting Relief, the **Requested Relief**).

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

(a) the Alberta Securities Commission is the principal regulator for the Application (the **Principal Regulator**);

(b) the decision in respect of the Prospectus Relief is the decision of the Principal Regulator and the decision evidences the decision of the securities regulatory authority or regulator in Ontario;

(c) in respect of the Prospectus Relief, the Filer has provided notice that, in the jurisdictions where required, subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other Jurisdictions except Ontario; and

(d) the decision in respect of the Trade Reporting Relief and the Marketplace Relief is the decision of the Principal Regulator and evidences the decision of each Coordinated Review Decision Maker.

Interpretation

For the purposes of this Decision:

(a) "Acceptable Third-party Custodian" means an entity that:

(i) is one of the following:

1. a Canadian custodian or Canadian financial institution;

2. a custodian qualified to act as a custodian or sub-custodian for assets held in Canada pursuant to section 6.2 [*Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada*] of National Instrument 81-102 *Investment Funds*;

3. a custodian that meets the definition of an "acceptable securities location" in accordance with the Investment Dealer and Partially Consolidated Rules and Form 1 of CIRO;

4. a foreign custodian (as defined in NI 31-103) for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Jurisdiction(s); or

5. an entity that does not meet the criteria for a qualified custodian (as defined in NI 31-103) and for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Jurisdiction(s);

(ii) is functionally independent of the Filer within the meaning of NI 31-103;

(iii) has obtained audited financial statements within the last twelve months which

1. are audited by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction and that meets the professional standards of that jurisdiction;

2. are accompanied by an auditor's report that expresses an unqualified opinion, and

3. unless otherwise agreed to by the Principal Regulator, discloses on their statement of financial position or in the notes of the audited financial statements the amount of liabilities that it owes to its clients for holding their assets, and the amount of assets held by the custodian to meet its obligations to those custody clients, broken down by asset; and

(iv) has obtained a Systems and Organization Controls (**SOC**) 2 Type 1 or SOC 2 Type 2 report within the last twelve months or has obtained a comparable report recognized by a similar accreditation board satisfactory to the Principal Regulator and the regulator or securities regulatory authority of the Jurisdiction(s);

(b) "Accredited Crypto Investor" means

(i) an individual

1. who, alone or with a spouse, beneficially owns financial assets (as defined in section 1.1 of NI 45-106) and Crypto Assets, if not included in financial assets, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000,

2. whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year,

3. whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year, or

4. who, alone or with a spouse, beneficially owns net assets of at least $5,000,000,

(ii) a person or company described in paragraphs (a) to (i) of the definition of "accredited investor" as defined in subsection 73.3(1) of the *Securities Act* (Ontario) or section 1.1 of NI 45-106, or

(iii) a person or company described in paragraphs (m) to (w) of the definition of "accredited investor" as defined in section 1.1 of NI 45-106;

(c) "Act" means the *Securities Act* (Alberta);

(d) "Account Appropriateness Factors" has the meaning ascribed to that term in representation 29(a);

(e) "Apps" means iOS and Android applications that provide access to the Ndax Platform;

(f) "Audited financial statements" means either consolidated financial statements of the Filer's parent company prepared in accordance with International Financial Reporting Standards (**IFRS**), or the non-consolidated statements of CIRO Form 1 special purpose report, prepared in accordance with IFRS except for the prescribed IFRS departures as specified in the Form and at the direction of CIRO;

(g) "Canadian custodian" has the meaning ascribed to that term in NI 31-103;

(h) "Canadian financial institution" has the meaning ascribed to that term in NI 45-106;

(i) "Client Account" means an account opened by a client of the Filer using the Filer's website and/or Apps to access the Ndax Platform;

(j) "Client Limit" has the same meaning as in representation 29(b);

(k) "Crypto Asset Statement" has the meaning ascribed to that term in representation 29(c)(v);

(l) "Dealer Platform" has the meaning ascribed to that term in Staff Notice 21-329;

(m) "Eligible Crypto Investor" means

(i) a person whose

1. net assets, alone or with a spouse, in the case of an individual, exceed $400,000,

2. net income before taxes exceeded $75,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or

3. net income before taxes, alone or with a spouse, in the case of an individual, exceeded $125,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year, or

(ii) an Accredited Crypto Investor;

(n) "foreign custodian" has the meaning ascribed to that term in NI 31-103;

(o) "IOSCO" means the International Organization of Securities Commissions;

(p) "KYP Policy" has the meaning ascribed to that term in representation 18;

(q) "Liquidity Provider" means a crypto asset trading platform or marketplace or other entity that the Filer uses to fulfill its obligations under Crypto Contracts;

(r) "Marketplace Platform" has the meaning ascribed to that term in Staff Notice 21-329;

(s) "NI 31-103" means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(t) "NI 45-106" means National Instrument 45-106 *Prospectus Exemptions*;

(u) "permitted client" has the meaning ascribed to that term in NI 31-103;

(v) "Proprietary Token" means a Crypto Asset that is not a Value-Referenced Crypto Asset, and for which the person or company or an affiliate of the person or company acted as the issuer (and mints or burns the Crypto Asset) or a promoter (as defined under Canadian securities legislation);

(w) "Risk Statement" has the meaning ascribed to that term in representation 29(c);

(x) "Specified Crypto Asset" means the Crypto Assets listed in Appendix B to this Decision;

(y) "Specified Foreign Jurisdiction" means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, the Republic of Korea, New Zealand, Singapore, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America and any other jurisdiction that the Principal Regulator may advise;

(z) "Stakeable Crypto Assets" means (i) Crypto Assets of blockchains that use a proof-of-stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain;

(aa) "Staking" means the act of committing or locking Stakeable Crypto Assets in smart contracts to permit the owner or the owner's agent to act as a Validator for a particular proof-of-stake consensus algorithm blockchain;

(bb) "Staking Services" means any and all services conducted by the Filer and third parties in order to enable the staking of Stakeable Crypto Assets that are held on the Ndax Platform for the benefit of clients;

(cc) "Validator" means in connection with a particular proof-of-stake consensus algorithm blockchain, an entity that operates nodes that meet protocol requirements for a Crypto Asset and participates in consensus by broadcasting votes and committing new blocks to the blockchain;

(dd) "Value-Referenced Crypto Asset" means a Crypto Asset that is designed to maintain a stable value over time by referencing the value of a fiat currency or any other value or right, or combination thereof; and

(ee) "Website" means the website www.ndax.io or such other website as may be used, among other things, to host the Ndax Platform from time to time.

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

Representations

This decision (the **Decision**) is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation incorporated under the laws of the province of Alberta with its head office in Calgary, Alberta.

2. The Filer operates under the business name "Ndax".

3. The Filer is registered as a money services business (**MSB**) under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).

4. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada.

5. The Filer has applied to be a registered dealer in the category of investment dealer with the Jurisdictions and a member of CIRO. The Filer's books and records, financial controls and compliance systems (including its policies and procedures) are in compliance with CIRO requirements and the Legislation.

6. The Filer's personnel consists of software engineers, compliance professionals, finance professionals and customer support representatives who each have experience operating in a regulated environment as an MSB and expertise in blockchain technology. All of the Filer's personnel have passed, and new personnel will pass, criminal records and credit checks.

7. The Filer is not in default of securities legislation of any of the Jurisdictions, other than in respect of the subject matter to which the Decision relates. Prior to obtaining investment dealer registration and CIRO membership, the Filer operated under a pre-registration undertaking dated March 24, 2023.

The Ndax Platform

8. The Filer operates a proprietary and fully automated internet-based platform for the trading of Crypto Assets in Canada that, if applicable, enables clients to buy, sell, hold, deposit, withdraw and stake Crypto Assets.

9. Clients' buy and sell orders for Crypto Assets are either matched with other clients on the Ndax Platform or are entered into with the Filer. In either case, the Filer enters into Crypto Contracts with its clients in respect of the Crypto Assets that are bought or sold, whether as counterparty to the trades or for purposes of settlement. The Crypto Contract is a bilateral contract between a client and the Filer.

10. To use the Ndax Platform or the over-the-counter (**OTC**) trading desk, each client must open a Client Account using the Filer's Website or the Apps. Client Accounts are governed by a user agreement (**Ndax User Agreement**) that is accepted by clients at the time of account opening. The Ndax User Agreement governs all activities in Client Accounts, including with respect to all Crypto Assets purchased on, or transferred to, the Ndax Platform (**Client Assets**). While clients are entitled to transfer Client Assets out of their Client Accounts immediately after purchase, many clients choose to leave their Client Assets in their Client Accounts.

11. The Filer also offers Staking Services for the Stakeable Crypto Assets through the Ndax Platform.

12. Under the Ndax User Agreement, the Filer maintains certain controls over Client Accounts to ensure compliance with applicable law and with the by-laws, rules, regulations and policies of CIRO (**CIRO Rules**) and to provide secure custody of Client Assets.

13. The Filer displays client orders for Crypto Assets and its own orders as principal on the Ndax Platform, which functions as a Dealer Platform and Marketplace Platform as described under "Operation of the Ndax Platform".

14. In each case, the Filer enters into Crypto Contracts with its clients to facilitate trading in Crypto Assets, which is consistent with activities described in Staff Notice 21-327 and constitutes the trading of securities and/or derivatives.

15. The Filer provides order execution only (**OEO**) account services as a CIRO dealer under CIRO Rules.

16. The Filer does not have any authority to act on a discretionary basis on behalf of clients and does not offer or provide discretionary investment management services relating to Crypto Assets.

17. The Filer will be a member firm of the Canadian Investor Protection Fund (**CIPF**), but the Crypto Assets in the Filer's custody will not qualify for CIPF coverage. The Risk Statement includes disclosure that there will be no CIPF coverage for the Crypto Assets and clients must acknowledge that they have read and understood the Risk Statement before opening a Client Account with the Filer.

Crypto Assets Made Available through the Ndax Platform

18. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow clients on the Ndax Platform to enter into Crypto Contracts to buy, sell or hold a Crypto Asset on the Ndax Platform (**KYP Policy**). Such review includes, but is not limited to, publicly available information concerning:

    (a) the creation, governance, usage and design of the Crypto Asset, including the source code, security and roadmap for growth in the developer community and, if applicable, the background of the developer(s) that created the Crypto Asset;

    (b) the supply, demand, maturity, utility and liquidity of the Crypto Asset;

    (c) material technical risks associated with the Crypto Asset, including any code defects, security breaches and other threats concerning the Crypto Asset and its supporting blockchain (such as the susceptibility to hacking and impact of forking), or the practices and protocols that apply to them; and

    (d) legal and regulatory risks associated with the Crypto Asset, including any pending, potential or prior civil, regulatory, criminal or enforcement action relating to the issuance, distribution or use of the Crypto Asset.

19. The Filer only offers and trades Crypto Contracts based on (a) Crypto Assets that are not in and of themselves securities or derivatives, or (b) Value-Referenced Crypto Assets in accordance with conditions CC and DD of this Decision.

20. The Filer will not allow clients to enter into a Crypto Contract to buy, sell or stake Crypto Assets unless the Filer has taken steps to:

    (a) assess the relevant aspects of each of the Crypto Assets pursuant to the KYP Policy and as described in representation 18 to determine whether it is appropriate for its clients;

    (b) approve the Crypto Asset, and Crypto Contracts to buy, sell and stake such Crypto Asset, as applicable, to be made available to clients, and

    (c) monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

21. The Filer is not engaged, and will not engage, in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset or affiliates or associates of such persons.

22. The Filer has established and applies policies and procedures to determine whether a Crypto Asset available on the Ndax Platform is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include, but are not limited to:

    (a) consideration of statements made by any regulators or securities regulatory authorities of the Jurisdictions, other regulators in the IOSCO-member jurisdictions, or the regulator with the most significant connection to a Crypto Asset about whether the Crypto Asset, or generally about whether the type of Crypto Asset, is a security and/or derivative; and

    (b) if the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under securities legislation of the Jurisdictions.

23. The Filer monitors ongoing developments related to the Crypto Assets available on the Ndax Platform that may cause a Crypto Asset's status as a security and/or derivative or the assessment conducted by the Filer pursuant to its KYC Policy and as described in representations 18 to 22 to change.

24. The Filer acknowledges that any determination made by the Filer does not prejudice the ability of any of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset available on the Ndax Platform is a security and/or derivative.

25. The Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available on the Ndax Platform and to allow clients to liquidate, in an orderly manner, their positions in Crypto Assets and Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on the Ndax Platform.

Account Opening

26. Subject to the Filer determining that it is appropriate for a Client Account to be opened, the Ndax Platform is available to any individual, and any legal entity where the instructions are authorized to be given by any individual, who is a Canadian citizen, permanent resident or temporarily legally resident in Canada based on a work or student visa and who has reached the age of majority in the jurisdiction in which they are resident and who has the legal capacity to open a securities brokerage account. Each potential client must also hold an account with a Canadian financial institution. The Filer also conducts know-your-client information which satisfies the identity verification requirements applicable to reporting entities under Canadian anti-money laundering and anti-terrorist financing laws and CIRO requirements.

27. Clients of the Filer can access the Ndax Platform through its Website and on its Apps.

28. The Filer does not provide recommendations or advice to clients or conduct a trade-by-trade suitability determination for clients, but rather performs account appropriateness assessments and applies Client Limits.

29. As part of the account opening process:

    (a) in addition to the account opening assessment required under CIRO Rules and guidance for dealer members offering OEO account services, the Filer assesses "account appropriateness." Specifically, the Filer collects know-your-client (**KYC**) information and will, prior to opening a Client Account, use electronic questionnaires to collect information that the Filer will use to determine whether it is appropriate for a prospective client to buy and sell Crypto Assets, enter into Crypto Contracts and participate in the Staking Service, if applicable. The account appropriateness assessment conducted by the Filer considers the following factors (the **Account Appropriateness Factors**):

        (i) the client's experience and knowledge in investing in Crypto Assets;

        (ii) the client's financial assets and income;

        (iii) the client's risk and loss tolerance; and

        (iv) the Crypto Assets approved to be made available to a client by entering into Crypto Contracts on the Ndax Platform.

        The Account Appropriateness Factors are used by the Filer to evaluate whether and to what extent entering into Crypto Contracts on the Ndax Platform is appropriate for a prospective client before the opening of a Client Account. After completion of the account-level appropriateness assessment, a prospective client receives electronically appropriate messaging about using the Ndax Platform to buy and sell Crypto Assets, enter into Crypto Contracts and participate in the Staking Services, if applicable, which, in circumstances where the Filer has evaluated that buying and selling Crypto Assets, entering into Crypto Contracts or engaging in the Staking

Services is not appropriate for the client, will include prominent messaging to the client that this is the case and that the client will not be permitted to open a Client Account with the Filer;

(b) the Filer has adopted and applies policies and procedures to conduct an assessment to establish appropriate limits on the losses that a client that is not a permitted client can incur, what limits will apply to such client based on the Account Appropriateness Factors (**Client Limit**), and what steps the Filer will take when the client approaches or exceeds their Client Limit. After completion of the assessment, the Filer implements controls to monitor and apply the Client Limit;

(c) the Filer provides a prospective client with a separate Risk Statement that clearly explains the following in plain language:

(i) the Crypto Contracts;

(ii) the risks associated with the Crypto Contracts;

(iii) a prominent statement that no securities regulatory authority or regulator in Canada has assessed or endorsed the Crypto Contracts or any of the Crypto Assets made available through the Ndax Platform;

(iv) the due diligence performed by the Filer before making a Crypto Asset available through the Ndax Platform, including the due diligence undertaken by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities legislation of each of the Jurisdictions and the securities and derivatives laws of the foreign jurisdiction with which the Crypto Asset has the most significant connection, and the risks if the Filer has incorrectly determined that the Crypto Asset is not a security and/or derivative;

(v) that the Filer has prepared a plain language description of each Crypto Asset and the risks of each Crypto Asset made available through the Ndax Platform, with instructions as to where on the Ndax Platform the client may obtain the descriptions (each, a **Crypto Asset Statement**);

(vi) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading on the Ndax Platform, including criteria that would be considered by the Filer, options available to clients holding such a Crypto Asset, any notification periods and any risks to clients;

(vii) the location and manner in which Crypto Assets are held for the client, the risks and benefits to the client of the Crypto Assets being held in that location and in that manner, including the impact of insolvency of the Filer or the Acceptable Third-party Custodian;

(viii) the manner in which the Crypto Assets are accessible by the Filer, and the risks and benefits to the client arising from the Filer having access to the Crypto Assets in that manner;

(ix) that the Filer is a member of CIPF, but the Crypto Contracts issued by the Filer and the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection;

(x) a statement that the statutory rights in section 204(1) of the Act, and, if applicable, similar statutory rights under securities legislation of other Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in the Decision;

(xi) prior to a client deciding to stake Stakeable Crypto Assets through the Ndax Platform, the disclosure referred to in condition L; and

(xii) the date on which the information was last updated.

30. The Filer will require clients to agree to the Ndax Platform's access requirements, which are available on the Website and include the following:

(a) trading hours of the Ndax Platform;

(b) procedures for funding purchases and withdrawing funds from the Ndax Platform;

(c) the fees charged to a client on the Ndax Platform;

(d) requirement that the client must comply with any restrictions on use of the Ndax Platform, including complying with trading requirements applicable to CIRO members, such as CIRO's Universal Market Integrity Rules and all applicable laws;

(e) the possible consequences of any unauthorized use or non-compliance; and

(f) the Filer's conflict of interest policies and procedures.

31. In order for a prospective client to open and operate a Client Account with the Filer, the Filer will obtain an electronic acknowledgment from the prospective client confirming that the prospective client has received, read and understood the Risk Statement. Such acknowledgement will be prominent and separate from other acknowledgements provided by the prospective client as part of the account opening process.

32. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Ndax Platform.

33. The Filer has policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts, Crypto Assets generally, or a specific Crypto Asset, as the case may be. In the event the Risk Statement is updated, existing clients of the Filer will be promptly notified of the update and provided with a copy of the updated Risk Statement. In the event a Crypto Asset Statement is updated, existing clients of the Filer will be promptly notified through Website or in-App disclosures, with links provided to the updated Crypto Asset Statement.

34. For clients with pre-existing Client Accounts with the Filer at the time of this Decision and to the extent that the Filer has not previously done all of the following, the Filer will do the following at the earlier of (a) the next time they log in to their Client Account and (b) before placing their next trade or deposit of Crypto Assets on the Ndax Platform:

(a) confirm prior KYC information on file;

(b) assess the "account appropriateness" for the client;

(c) establish the Client Limit for the client; and

(d) deliver to the client a Risk Statement and require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement. The Risk Statement will be prominent and separate from other disclosures given to the client at that time and the acknowledgment will be separate from other acknowledgements by the client at that time.

35. Each Crypto Asset Statement will include in plain language:

(a) a prominent statement that no securities regulatory authority in Canada has assessed or endorsed the Crypto Contracts or any of the Crypto Assets made available through the Ndax Platform;

(b) a description of the Crypto Asset, including the background of the creation of the Crypto Asset, including the background of the developer(s) that created the Crypto Asset, if applicable;

(c) a description of the due diligence performed by the Filer with respect to the Crypto Asset;

(d) any risks specific to the Crypto Asset;

(e) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the Ndax Platform;

(f) a statement that the statutory rights in section 204(1) of the Act, and, if applicable, similar statutory rights under securities legislation of other Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

(g) the date on which the information was last updated.

36. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website or Apps.

37. In addition to any monitoring required by CIRO, the Filer monitors and will continue to monitor Client Accounts after opening to identify activity inconsistent with the client's Client Account and Crypto Asset assessment. If warranted, the client may receive further messaging about the Ndax Platform and the Crypto Assets, specific risk warnings and/or receive direct outreach from the Filer about their activity. The Filer monitors compliance with the Client Limits established in representation 29(b).

38. The Filer also periodically prepares and makes available to its clients, on an ongoing basis and in response to emerging issues in Crypto Assets, educational materials and other informational updates about trading on the Ndax Platform and the ongoing development of Crypto Assets and Crypto Asset trading markets.

Operation of the Ndax Platform

39. The Ndax Platform uses an order book that matches buy and sell orders on a non-discretionary basis based on strict price-time priority. In some Jurisdictions the Ndax Platform constitutes an ATS under applicable securities legislation, while in other Jurisdictions it constitutes an exchange under applicable securities legislation and will be regulated as an exempt exchange. The Filer has filed an exemptive relief application requesting relief from the obligation to be recognized as an exchange in those Jurisdictions.

40. Trading pairs available on the Ndax Platform include Crypto Asset-for-fiat and Crypto Asset-for-Crypto Asset.

41. Clients will be able to submit buy and sell orders, either in units of the applicable Crypto Asset or in fiat currency, 24 hours a day, 7 days a week. Clients will be able to deposit and withdraw Crypto Assets and fiat currency, 24 hours a day, 7 days a week (or where applicable, for fiat currency during banking hours).

42. Certain clients may be granted permission to access the Ndax Platform via Ndax's application programming interface (**API**). API access will be provided in accordance with CIRO requirements and the Legislation.

43. In addition to complying with the same onboarding requirements as clients who do not use an API, API clients are required to complete an additional questionnaire, are subject to additional terms and conditions, and are required to read and acknowledge the Crypto Asset Statement for each Crypto Asset on the Ndax Platform. Such clients are only permitted to use Ndax's API to trade as principal, and may not trade on behalf of any other person.

44. The Filer does not provide direct electronic access to a person or company that is acting as a dealer (whether registered or otherwise), unless permitted under the CIRO Rules and the Legislation and in compliance with the CIRO Rules and the Legislation.

45. Clients can enter orders to the Ndax Platform in two ways: (i) Quick Trade is a "Request for Quote" system that allows a client to enter a market order that specifies the desired trading pair and quantity; and (ii) Advanced Trade allows a client to enter a variety of limit orders (limit, stop, stop limit, trailing stop, trailing stop limit, iceberg, fill or kill and IOC (defined below)) or market orders and provides clients with a full-depth view of the two-sided displayed order book.

46. All Crypto Contracts entered into by clients to buy, sell and hold Crypto Assets through Quick Trade and Advanced Trade will be placed with the Filer through the Website or its Apps or through an API.

47. When a client enters a market order, the Filer presents an indicative average price calculated based on the available displayed contra-side bids or asks, as applicable (**Contra-Side Orders**) on the Ndax Platform that are required to fill the client's market order. If the client finds the price agreeable, the client then agrees to the entry of an order to the Ndax Platform against the available Contra-Side Orders.

48. When a client enters a limit order using Advanced Trade, the limit order is partially or completely filled if there is one or more Contra-Side Orders at or better than the price of the limit order. Any unfilled portion of a limit order remains open as a displayed Contra-Side Order on the Ndax Platform, and is eligible to participate in subsequent matches of orders on a strict price-time priority basis, until modified or cancelled by the client or completely filled.

49. The Contra-Side Orders against which a client's order may be matched in the automated order book may be orders entered by other clients or may be orders entered by the Filer as a passive liquidity provider.

50. The Ndax Platform does not support contingent orders, dark orders, or indications of interest. The Ndax Platform also does not support short sale orders.

51. The following designations or markers are recorded in respect of orders, as appropriate: trading participant number; marketplace number; account type - OEO client / non-client / principal; client identifier (i.e., legal entity identifier or client account number, as applicable); and time in force - good till cancelled / fill or kill / immediate execution or cancel (**IOC**).

52. To ensure sufficient liquidity on the Ndax Platform, the Filer acts as a passive liquidity provider that automatically generates and enters orders on both sides of the market using an algorithm operated by the Filer. The Filer obtains buy and sell prices for Crypto Assets from crypto asset trading firms, after which the Filer incorporates a spread to compensate the Filer, and presents these adjusted prices as open buy and sell orders on the Ndax Platform.

53. The Filer also operates an OTC trading desk for larger orders and for orders where the client has the option to elect to take immediate delivery of the Crypto Assets or keep the purchased Crypto Assets in the Client Account. These services

are subject to securities legislation, including the terms and conditions of this Decision. The OTC services are used by institutional and high-net-worth clients to execute orders that are generally larger than Quick Trade or Advanced Trade orders and provide more personalized execution assistance and greater access to liquidity through designated representatives of the Filer. The OTC services are also used by clients who want to immediately withdraw their Crypto Assets from the Ndax Platform. In respect of its OTC business, the Filer will be the counterparty to each buy or sell transaction initiated by a client. The OTC trading desk trades in the same Crypto Assets as the Ndax Platform.

54. The Filer is compensated by the spread earned on trades it enters into as a result of its passive liquidity provision activities, trading commissions associated with trades occurring on the Ndax Platform, and fees charged for Crypto Asset withdrawals.

55. All fees payable by a client, including transaction fees, are clearly disclosed on the Website and the Apps on the "Fees" page and through the trade confirmation summary page. Clients can verify pricing for Crypto Assets on the Ndax Platform against publicly available pricing information on other CTPs.

56. The Filer does not allow clients to enter into a Crypto Contract to buy and sell a particular Crypto Asset unless the Filer has taken steps:

    (a) to review the Crypto Asset, including the information specified in representation 18;

    (b) to approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to clients;

    (c) as set out in representation 23, to monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

57. The Filer maintains an internal ledger that records all of the trades executed via the Ndax Platform. The Filer's internal ledger records all of the transactions executed on the Ndax Platform. No order is accepted by the Filer unless there are sufficient assets available in the Client Account to fund the trade. When client orders are executed through the Ndax Platform, the internal ledger is updated. All Crypto Contracts are settled directly between the Filer using its own Crypto Assets and each of the buyers and sellers when the matching takes place on the Ndax Platform with respect to Advanced Trade orders, since the Filer has verified that assets are available prior to order entry.

58. For each trade entered into by the Filer with clients on the Ndax Platform resulting from a match between a client's order and an available order at a Liquidity Provider, the Filer uses its own Crypto Assets to execute the trade in real time. Transactions settle in real time and balances of the Filer's clients and proprietary assets are immediately adjusted. Periodically, the Filer reviews the balances of its proprietary Crypto Assets and, in accordance with its liquidity and risk management policies, may arrange for cash or Crypto Assets to be transferred to or from a Liquidity Provider. Currently, the Filer uses six Liquidity Providers and may use additional Liquidity Providers, as necessary after reasonable due diligence, when considering the interest of the Filer's clients. The Filer will not submit orders on a proprietary basis, other than in connection with offsetting trades relating to client orders that are executed on a riskless principal basis, or as it otherwise deems appropriate for the delivery of its services. For clarity, at no time shall the Filer trade against its clients for speculative purposes.

59. The Filer periodically evaluates the price obtained from its Liquidity Providers against appropriate benchmarks relating to Crypto Assets to confirm that in using its Liquidity Providers it is providing fair and reasonable pricing to the Filer's clients. If the Filer concludes from its review that it is not providing fair and reasonable pricing to its clients, the Filer will take steps to address this.

60. The Filer has taken, and will take, reasonable steps to verify that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Jurisdictions. The Filer also assesses liquidity and concentration risks posed by its Liquidity Providers.

61. Clients have real time access to a complete record of all transactions in their Client Account, including all transfers in of fiat or Crypto Assets, all purchases, sales and withdrawals, and the relevant prices, commissions and withdrawal fees charged in respect of such transactions.

62. The Filer does not extend margin, credit or other forms of leverage to clients in connection with trading of Crypto Assets on the Ndax Platform and will not offer derivatives based on Crypto Assets to clients other than Crypto Contracts. For this purpose, the ability of clients to fund their fiat requirements through the use of credit cards is not considered to be the offering of credit or leverage by the Filer.

63. Clients can fund their Client Account by transferring in fiat currency or Crypto Assets they obtained outside the Ndax Platform. Clients can, or will be able to, transfer in fiat currency by cash, Interac e-transfer, bank wire, bank draft or credit

card payment, with the maximum amount for each transfer type set out on the Ndax Platform. Credit card payments are subject to fees disclosed on the Ndax Platform on the "Fees" page and incorporated by reference into the Ndax User Agreement. No quote or order will be accepted unless there are sufficient assets available in the Client Account to complete the trade. Crypto Assets deposited with the Filer will be promptly delivered by the Filer to one of the Filer's Acceptable Third-party Custodians to be held in trust and for the benefit of the client.

64. The Filer will promptly, and generally no later than one business day after the trade, settle transactions with the Liquidity Providers on a net basis. When there are net purchases of Crypto Assets, the Filer will arrange for consideration to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer. Where there are net sales of Crypto Assets, the Filer will arrange for Crypto Assets to be sent from the Filer to the Liquidity Provider in exchange for consideration received by the Filer from the Liquidity Provider. Defaults in settlement are avoided by building into each trading work flow a step to make sure that adequate assets of a client are present to effect the trade.

65. Clients will receive electronic trade confirmations and monthly statements setting out the details of the transaction history in their Client Account with the Filer in compliance with CIRO Rules. Clients will also be able to view their transaction history and account balances in real time by accessing their Client Account with the Filer.

66. Upon request by a client, the Filer will promptly deliver possession and/or control of the Crypto Assets purchased under a Crypto Contract to a blockchain address specified by the client. Clients are charged a withdrawal fee when transferring Crypto Assets out of their Client Account to a blockchain address specified by the client. The withdrawal fee varies by Crypto Asset and is disclosed on the Ndax Platform on the "Fees" page. The total withdrawal fee payable in respect of a withdrawal is disclosed to the client prior to confirmation of the withdrawal.

67. Prior to transferring Crypto Assets out of a Client Account to a blockchain address specified by the client, the Filer will satisfy all applicable legal and regulatory requirements, including anti-money laundering requirements. The Filer conducts a second verification of the blockchain address and screens the blockchain address specified by the transferring client using blockchain forensics software.

68. The Filer has expertise in and has developed anti-fraud and anti-money laundering monitoring systems, for both fiat and Crypto Assets, to reduce the likelihood of fraud, money laundering, or client error in sending or receiving Crypto Assets to incorrect wallet addresses.

69. Clients can transfer fiat currency out of their Client Accounts by Interac e-transfer, electronic funds transfer or bank wire, subject to a withdrawal fee disclosed on the Ndax Platform on the "Fees" page and incorporated by reference into the Ndax User Agreement. Part of the withdrawal fee covers fees charged by the Filer's payment processor to process the withdrawal transaction. The total withdrawal fee payable in respect of a fiat currency withdrawal is disclosed to the client prior to confirmation of the withdrawal.

70. In addition to the Risk Statement, Crypto Asset Statement and ongoing education initiatives, and the account appropriateness assessment, the know-your-product assessments, and the Client Limits, the Filer also monitors client activity, and contacts clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required. The outcome of this engagement with a client may result, in some cases, in a decision by the Filer to close a client's account.

Custody of Cash and Crypto Assets

71. Each client of the Filer has a Client Account for the purposes of holding cash and Crypto Assets that the client may use to engage in transactions on the Ndax Platform. All cash in Client Accounts will be held in accordance with CIRO requirements.

72. Not less than 80% of Crypto Assets held on behalf of clients are held with Acceptable Third-party Custodians that are regulated as trust companies. The Filer primarily uses Coinbase Custody Trust Company LLC (**Coinbase**), a limited purpose trust company with the New York Department of Financial Services, Tetra Trust Company (**Tetra**), a licensed Alberta trust company regulated by the Alberta Treasury Board and Finance, and BitGo Trust Company (**BitGo**), a licensed trust company with the South Dakota Division of Banking, as the custodians (Coinbase, Tetra and BitGo, collectively, the **Custodians**), and will use other custodians as necessary after reasonable due diligence. In addition, the Filer has its own custody solution for Crypto Assets in order to facilitate client deposit and withdrawal requests, to facilitate trade settlement with Liquidity Providers and to hold certain of the Stakeable Crypto Assets that have been staked by clients.

73. The Filer has conducted due diligence on the Custodians, including, among others, their policies and procedures for holding Crypto Assets and a review of their respective SOC 2 Type 2 examination reports. The Filer has not identified any material concerns. The Filer has also assessed whether each Custodian meets the definition of an Acceptable Third-party Custodian.

74. The Custodians will operate custody accounts for the Filer to use for the purpose of holding the clients' Crypto Assets in trust for clients of the Filer. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients.

75. Those Crypto Assets that the Custodians hold in trust for clients of the Filer are held in segregated omnibus accounts in the name of the Filer in trust for or for the benefit of the Filer's clients and are held separate and distinct from the assets of the Filer, the Filer's affiliates, and the Custodians' other clients.

76. Each Custodian has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian and to mitigate security breaches and cyber incidents. Each Custodian has established and applies written disaster recovery and business continuity plans.

77. The Filer considers it prudent to maintain relationships with more than one Custodian so that it can provide back-up custodial services in appropriate circumstances for Crypto Assets supported by the Filer.

78. Each of the Custodians maintains an appropriate level of insurance for Crypto Assets held by the Custodian. Coinbase currently maintains US$320 million *in specie* coverage for digital assets, including the Crypto Assets owned by clients of the Filer, held in Coinbase's cold storage system. Tetra's security technology provider currently maintains US$150 million *in specie* coverage for digital assets, including the Crypto Assets owned by clients of the Filer, held in Tetra's cold storage system. Tetra intends to maintain a dedicated limit to the Filer of *in specie* coverage for Crypto Assets owned by clients of the Filer in accordance with CIRO requirements. BitGo currently maintains US$250 million *in specie* coverage for digital assets, including the Crypto Assets owned by clients of the Filer, held in BitGo's cold storage system. The Filer has assessed the Custodians' insurance policies and has determined, based on information that is publicly available and on information provided by the Custodians and considering the controls of the Custodians' business, that the amount of insurance is appropriate.

79. The Filer is proficient and experienced in holding Crypto Assets and has established and applies policies and procedures that manage and mitigate custodial risks, including an effective system of controls and supervision to safeguard the Crypto Assets. The Filer also maintains appropriate policies and procedures related to information technology security, cyber-resilience, disaster recovery capabilities and business continuity plans.

80. Crypto Assets held by the Filer for its clients are held separate and apart from the assets of the Filer and the Filer's affiliates. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients, although the Filer uses Crypto Assets owned by its clients in respect of the Staking Service as directed by the clients.

81. The insurance obtained by the Filer includes coverage for loss or theft of the Crypto Assets in accordance with the terms of the Filer's insurance policies. Specifically, the Filer has coverage under a financial institution bond that provides insurance against losses of Crypto Assets held by the Filer as custodian. The Filer intends to obtain additional vault insurance coverage for the Crypto Assets held by the Filer through the Custodians, where the Custodians do not provide the Filer with its own dedicated limit. The Filer has assessed the insurance coverage to be sufficient to cover the loss of Crypto Assets held directly by the Filer.

82. The Filer licenses software from Fireblocks Inc. (**Fireblocks**), which includes a crypto asset wallet that stores private and public keys and interacts with various blockchains to send and receive Crypto Assets and monitor balances. Fireblocks uses secure multiparty computation to share signing responsibility for a particular blockchain address among multiple independent persons.

83. Fireblocks has obtained a SOC report under the SOC 2 Type 2 standards from a global audit firm. The Filer has reviewed a copy of the SOC 2 Type 2 audit report prepared by the auditors of Fireblocks, and has not identified any material concerns.

84. Fireblocks has insurance coverage which, in the event of theft of Crypto Assets from hot wallets secured by Fireblocks due to an external cyber breach of Fireblocks' software or any malicious or intentional misbehaviours or fraud committed by employees, will be distributed among applicable Fireblocks customers, which could include the Filer, pursuant to an insurance settlement agreement.

85. In accordance with the CIRO requirements, the Filer confirms on a monthly basis that clients' Crypto Assets held with the Custodians and held by the Filer reconcile with the Filer's books and records to ensure that all clients' Crypto Assets are accounted for. To the best knowledge of the Filer, after due inquiry, clients' Crypto Assets held in trust for them or for their benefit in hot wallets and with Custodians are deemed to be the clients' Crypto Assets in case of the insolvency and/or bankruptcy of the Filer or of its Custodians.

Staking Service

86. The Filer also offers Staking Services to its clients resident in each of the Jurisdictions.

87. The Filer offers clients the Staking Services only for certain Crypto Assets that are also Stakeable Crypto Assets.

88. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

89. The Filer itself does not, and will not, without the prior written consent of CIRO, act as a Validator or contract with a staking services provider under terms requiring the Filer to authorize the delegation of validator keys. The Filer has written agreements with certain of its Custodians and has or will have written agreements with third party Validators to provide services in respect of staking Stakeable Crypto Assets. These Custodians and Validators are proficient and experienced in staking Stakeable Crypto Assets.

90. Before engaging a Validator, the Filer conducts due diligence on the Validator, with consideration for the Validator's management, infrastructure and internal control documentation, security measures and procedures, reputation of operating nodes, use by others, measures to operate nodes securely and reliably, amount of crypto assets staked by the Validator on its own nodes, quality of work, including any slashing incidents or penalties, financial status and insurance, and registration, licensing or other compliance under applicable laws, particularly securities laws. Where the Filer engages a Custodian to provide Staking Services, the Filer will conduct due diligence on how the Custodian provides the Staking Services and selects the Validators.

91. The Filer offers the Staking Services in respect of the Ethereum, Solana, Cardano, Polkadot, Polygon, Near and Cosmos blockchains. The Filer may offer the Staking Services in respect of other Stakeable Crypto Assets in the future.

92. The Filer, as part of its KYP Policy, reviews the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

    (a) the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (b) the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (c) the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (d) the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

    (e) the Validators engaged by the Filer or the Filer's Custodians, including, but not limited to, information about:

        (i) the persons or entities that manage and direct the operations of the Validator,

        (ii) the Validator's reputation and use by others,

        (iii) the amount of Crypto Assets the Validator has staked on its own nodes,

        (iv) the measures in place by the Validator to operate the nodes securely and reliably,

        (v) the financial status of the Validator,

        (vi) the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

        (vii) any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

        (viii) any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

93. The Filer, as part of its account appropriateness assessment, evaluates whether offering the Staking Services is appropriate for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

94. If, after completion of an account appropriateness assessment, the Filer determines that providing the Staking Services is not appropriate for the client, the Filer will notify the client that this is the case and the Filer will not make available the Staking Services to the client.

95. The Filer only stakes the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer will cease to stake those Stakeable Crypto Assets.

96. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer will deliver to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in representation 97 below and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

97. The Filer will clearly explain in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which includes:

    (a) the details of the Staking Services and the role of all third parties involved;

    (b) the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Stakeable Crypto Asset for which the Filer provides the Staking Services;

    (c) the details of the Validators that are used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

    (d) the details of whether and how the custody of staked Stakeable Crypto Assets differs from Stakeable Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

    (e) the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses are allocated to clients;

    (f) whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Crypto Asset protocol, custodian or Validator, where such Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards (**Lock-up Periods**); and

    (g) how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

98. Immediately before each time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer requires the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

    (a) that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

    (b) that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, combined with the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

    (c) how rewards are calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

    (d) unless the Filer has clearly indicated the reward yield is fixed and unconditional, that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

    (e) whether rewards may be changed at the discretion of the Filer;

    (f) that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network; and

    (g) that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

99. To stake Stakeable Crypto Assets, a client instructs the Filer to stake a specified amount of Stakeable Crypto Assets held by the client on the Ndax Platform.

100. For certain Stakeable Crypto Assets, the Filer also allows clients to automatically stake those Stakeable Crypto Assets under existing opt-ins when purchasing more of the asset. If a client turns on this "auto-stake" feature, Stakeable Crypto Assets are automatically staked upon being purchased by the client. The client can disable this feature at any time.

101. Immediately before each time a client buys Stakeable Crypto Assets that are automatically staked, the Filer will provide prominent disclosure to the client that the Stakeable Crypto Asset the client is about to buy will be automatically staked.

102. Subject to any Lock-up Periods that may apply, the client may at any time instruct the Filer to unstake a specified amount of Stakeable Crypto Assets that the client had previously staked.

103. The Filer will stake and unstake Crypto Assets on an omnibus basis by calculating the total amount of a Stakeable Crypto Asset that clients wish to stake or unstake and adjusting the amount actually staked to reconcile with the net amount that clients have, in total, instructed the Filer to stake or unstake.

104. The Filer has established and will apply policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

105. Staking rewards are issued periodically and automatically by the blockchain protocol of the Stakeable Crypto Asset and received directly into addresses or wallets where the Stakeable Crypto Assets are held. Other than any "validator commission" that may be received by a Validator under the rules of the blockchain protocol, Validators will not receive or otherwise have control over staking rewards earned by clients.

106. Staking rewards are typically issued for a specific time period, often referred to as an "epoch". For each epoch, the Filer promptly determines the amount of staking rewards earned by each client that had staked Stakeable Crypto Assets under the Staking Services.

107. When staking rewards for a Stakeable Crypto Asset are earned, the Filer promptly calculates the amount of the staking reward earned by each client using the Staking Services in respect of that asset and credits each client's Client Account accordingly. Staking reward distributions are shown on clients' account statements.

108. For certain Stakeable Crypto Assets, staking rewards are automatically staked by the blockchain protocol to compound rewards. Clients must unstake some or all of these rewards if they wish to sell or transfer them.

109. Where staking rewards are not compounded by the blockchain protocol, the Filer transfers staking rewards to the omnibus wallets holding client Crypto Assets.

110. Certain Stakeable Crypto Assets are subject to a so-called "warm-up" or "bonding" period after being staked, during which time the Stakeable Crypto Assets do not earn any staking rewards. A client will not receive staking rewards in respect of any of their staked Stakeable Crypto Assets that are still subject to "warm-up" periods.

111. Similarly, a client will not receive staking rewards in respect of Stakeable Crypto Assets that have been unstaked by the client, but are still subject to Lock-up Periods.

112. The Filer may show on the Ndax Platform the current estimated reward rate for Stakeable Crypto Assets. This estimated reward rate is based on data derived from the blockchain for the Stakeable Crypto Asset and adjusted for any applicable validator commission or fees payable to the Filer.

113. The Filer offers a fixed reward to clients, which is subject to change at any time and to certain terms and conditions. This reward is paid even if the Filer does not receive the applicable reward. The Filer's policies and procedures provide for the accrual of reward obligations and for the maintenance of sufficient inventory to offset reward obligations at the time of accrual.

114. The Filer estimates the rewards it has earned on behalf of its clients and proprietary positions in Crypto Assets, compares the estimate to rewards received, investigates significant discrepancies, and takes appropriate corresponding actions.

115. The Filer charges a fee to each client using Staking Services based on a percentage of the client's staking rewards. The Filer clearly discloses the fees charged by the Filer for the Staking Services and provides a clear calculation of the rewards earned by each client that agrees to the Staking Services.

116. When staking rewards are received into staking wallets each epoch, the Filer promptly calculates the total amount of the fee payable by clients using the Staking Services for that epoch and transfers an amount of Stakeable Crypto Assets equal to the fee to a separate wallet exclusively holding Crypto Assets belonging to the Filer.

117. For certain Stakeable Crypto Assets, a Validator can, as part of the blockchain consensus protocol, set a percentage of the staking rewards earned by Stakeable Crypto Assets staked with the Validator to be received by the Validator. This is typically referred to as the "validator commission". The validator commission is deducted automatically by the underlying blockchain protocol from staking rewards and transferred by the protocol directly to the Validator. Where a validator commission applies, the Filer will clearly disclose the existence and amount of the validator commission to clients using the Staking Services.

118. Under the commercial agreements between the Filer and Validators, Validators may pay some of the validator commission to the Filer for arranging the staking of clients' Stakeable Crypto Assets with the Validators. The Filer discloses to clients that it receives a share of validator commissions. Further, the Filer has adopted policies and procedures for the selection of Validators and staking of clients' Stakeable Crypto Assets to Validators to ensure that these decisions are based on factors other than the Filer's financial considerations under these commercial agreements.

119. For Stakeable Crypto Assets that do not have validator commissions, the Filer pays a fee to the Validator for activating and operating nodes for the Filer's clients using the Staking Services. This fee is included in the fee paid by clients to the Filer in connection with the Staking Services.

120. The Filer has engaged its auditor to perform procedures, satisfactory to CIRO, designed to verify that the Filer maintains books and records reflecting:

    (a) rewards earned from all proof of stake networks on which it participates in the Staking Services; and

    (b) the allocation of rewards to clients and the Filer in a manner that is consistent with the Filer's policies and procedures.

121. Certain proof of stake blockchain protocols impose penalties where a validator fails to comply with protocol rules. This penalty is often referred to as "slashing" or "jailing". If a Validator is slashed or jailed, a percentage of the tokens staked with that Validator and/or a percentage of staking rewards earned by clients staking to that Validator is permanently lost and/or the Validator will not be selected to participate in transaction validation and any Stakeable Crypto Assets staked with that Validator will not be eligible to earn staking rewards. Accordingly, if a Validator fails to comply with protocol rules, a percentage of Crypto Assets staked or earned by the Filer's clients may be lost (i.e., the balance of the staking wallet will be reduced automatically by the blockchain protocol) and/or the Filer's clients will not earn staking rewards for a period of time.

122. The Filer will not provide any guarantee against slashing or other penalties imposed due to validator error, action or inactivity. The Ndax User Agreement clearly discloses that the Filer will not provide any reimbursement in respect of a Stakeable Crypto Asset. The unavailability of any reimbursement is also described in the Risk Statement.

123. To mitigate the risk of penalties imposed due to Validator error, action or inactivity, the Filer may, where feasible, arrange to stake Stakeable Crypto Assets across multiple Validators, so that any penalty resulting from the actions or inaction of a specific Validator does not affect all staked Crypto Assets and the Filer can, if appropriate, re-stake with alternative Validators.

124. In addition, the Filer will monitor its Validators for, among other things, downtime, jailing and slashing events and will take any appropriate action to protect Stakeable Crypto Assets staked by clients.

125. For certain Stakeable Crypto Assets that are subject to Lock-up Periods, the Filer may permit clients using the Staking Services to remove assets from the Staking Services prior to the expiry of the Lock-up Period. However, the Filer will extend this permission only on a best-efforts basis, and this condition is expressly disclosed to and acknowledged by the client.

126. Where the Filer provides this service in connection with a Stakeable Crypto Asset, the Filer will provide the liquidity necessary for clients to sell or withdraw Crypto Assets prior to the expiry of Lock-up Periods from the Filer's own inventory of Stakeable Crypto Assets in accordance with its liquidity management policies and procedures. When the Lock-up Period applicable to a client's unstaked Crypto Assets expires, the Filer will return the now freely transferable assets to its inventory. The Filer will establish and maintain internal controls to:

    (a) promptly segregate positions from its inventory equal to the amount the Filer has permitted to be unstaked; and

    (b) prevent the Filer from using client assets to settle delivery obligations related to positions it has permitted to be unstaked.

127. Where the Filer does not provide this liquidity for a Stakeable Crypto Asset, a client that unstakes Stakeable Crypto Assets must wait until the applicable Lock-up Period expires before the client can sell or transfer those assets.

Conflict of Interest

128. The Filer carries out its passive liquidity provision activities on the Ndax Platform, as described in representations 49 and 52, through an API exclusively for the purposes of providing liquidity to the Filer's clients. Orders entered by the Filer through the API are the same order types available to clients. The Filer's orders are also handled in the same manner as client limit orders entered on the Ndax Platform, with no preference given to the handling of the Filer's orders.

129. The Filer's passive liquidity provision activities do not have an advantage over clients as the matching engine on the central limit order book that powers the Ndax Platform does not distinguish between the Filer's orders and the orders of the Filer's clients. The Filer's passive liquidity provision algorithm also does not analyze or consider, or have any advanced knowledge of, any existing orders on the centralized order book when determining the bids or asks to place. In determining what bids or asks to place, the Filer relies on current market pricing provided to it by the Liquidity Providers.

130. The Filer earns the same fee from a client regardless of whether that client's order is filled on the Ndax Platform as a result of a match against the order of another client or the Filer.

131. All order matching and other functionality of the Ndax Platform is entirely automated. The Filer's automated matching does not favour some clients over others or favour the Filer's own orders over the orders of clients.

132. The Filer informs clients in the Ndax User Agreement that Ndax participates passively as a liquidity provider on the Ndax Platform by posting bid and ask orders to provide liquidity to the market. The Filer also provides disclosure regarding the nature of its liquidity provision activities on the Ndax Platform, including how it determines pricing for the orders it places and how it may earn profit from its activities as a passive liquidity provider.

133. The Filer does not trade or otherwise use client Crypto Assets held on the Ndax Platform in the conduct of the Filer's own business.

134. The Filer is of the view that all potential conflicts of interest arising from the operation of the Ndax Platform are adequately addressed through avoidance, appropriate disclosure or the controls implemented within the operational model of the Ndax Platform.

135. The Filer has established and maintains, and ensures compliance with, policies and procedures that identify and manage conflicts of interest arising from the operation of the Ndax Platform and its related services, including conflicts between the interests of its owners, its commercial interests, and the responsibilities and sound functioning of the Ndax Platform and related services.

136. The Filer's policies and procedures to identify and manage conflicts of interest address those that arise from the trading activities of the Filer or its affiliates as principal on the Ndax Platform, as described above.

137. These policies and procedures also include an appropriate level of disclosure of the specific conflicts to clients against whom the Filer or its affiliates may trade, and the circumstances in which they may arise. This disclosure is included in the Ndax User Agreement and other disclosures made to clients that specifically address conflicts of interest.

Fair Access

138. The Filer has established and applies written standards for access to the Ndax Platform and related services, as described in representations 26 through 28 and representation 29(a), and has established and maintains and ensures compliance with policies and procedures to ensure clients are onboarded to the Ndax Platform and related services in accordance with those written standards.

Market Integrity

139. The Filer has taken reasonable steps to ensure that it operates a fair and orderly marketplace for Crypto Contracts, including the establishment of price and volume thresholds for orders entered on the Ndax Platform.

140. The Filer does not expect trading on the Ndax Platform to have a material impact on the global market for any Crypto Asset available through the Ndax Platform.

141. The Filer does not provide a client with access to the Ndax Platform unless it has the ability to terminate all or a portion of a client's access, if required.

142. The Filer has the ability to cancel, vary or correct trades and makes public, fair and appropriate policies governing the cancellation, variation or correction of trades on the Ndax Platform, including in relation to trades where the Filer acting as principal was a counterparty to the trade.

143. The Filer has established, maintains and ensures compliance with policies and procedures and maintains staff knowledge and expertise, and systems to monitor for and investigate potential instances of trading on the Ndax Platform that does not comply with applicable securities legislation or any trading requirements set out in the Ndax User Agreement, and has appropriate provisions and mechanisms for escalation of identified issues of non-compliance, including referral to the applicable securities regulatory authority where appropriate, to allow the Filer to take any resulting action considered appropriate to promote a fair and orderly market and address potential breaches of securities legislation relating to trading on the Ndax Platform, which may include halting trading or limiting a client's activities on the Ndax Platform.

144. The policies and procedures referred to in the preceding paragraph include policies and procedures to track, review and take appropriate action in the context of complaints and reports from clients of potential instances of abusive trading on the Ndax Platform.

145. The Filer currently conducts surveillance of the Ndax Platform, which includes both automated and manual processes, for detecting abusive trading (including wash trading) and fraudulent activity.

146. The Filer discloses information reasonably necessary to enable a person or company to understand the marketplace operations or services, including:

(a) access criteria, including how access is granted, denied, suspended, or terminated and whether there are differences between clients in access and trading;

(b) risks related to the operation of and trading on the Ndax Platform, including loss and cyber-risk;

(c) hours of trading;

(d) all fees and any compensation provided to the Filer, including foreign exchange rates, spreads, etc.;

(e) how orders are entered, handled and interact including:

(i) the circumstances where orders trade with the Filer acting as principal or Liquidity Provider, including any compensation provided;

(ii) where entered into the order book, the types of orders, and how orders are matched and executed;

(f) policies and procedures relating to error trades, cancellations, modifications and dispute resolution;

(g) a list of all Crypto Assets and products available for trading on the Ndax Platform, along with the associated Crypto Asset Statements;

(h) conflicts of interest and the policies and procedures to manage them;

(i) the process for payment and settlement of transactions;

(j) how the Filer safeguards client assets;

(k) access arrangements with a third-party services provider, if any; and

(l) requirements governing trading, including prevention of manipulation and other market abuse.

147. The Filer provides for an appropriate level of transparency regarding the orders and trades on the Ndax Platform, including that:

(a) the Filer displays on its Website a Canadian dollar price chart for each Crypto Asset traded on which the public can view historic pricing information; and

(b) the Filer also makes publicly available on its Website a history of the last 50 trades that occurred on the Ndax Platform.

This information allows clients and prospective clients to make informed investment and trading decisions.

Confidentiality of Clients' Order and Trade Information

148. The Filer maintains policies and procedures to safeguard the confidentiality of client information, including information relating to their trading activities.

Books and Records

149. The Filer keeps books and records and other documents to accurately record its business activities, financial affairs and client transactions, and to demonstrate the Filer's compliance with applicable requirements of securities legislation, including, but not limited to:

(a) a record of all investors granted or denied access to the Ndax Platform;

(b) daily trading summaries of all Crypto Assets traded, with transaction volumes and values; and

(c) records of all orders and trades, including the price, volume, times when the orders are entered, matched, cancelled or rejected, and the identifier of the client that entered the order or that was counterparty to the trade.

Internal Controls over Order Entry and Execution

150. The Filer maintains effective internal controls over systems that support order entry and execution, including that the Filer:

(a) has effective controls for system operations, information security, change management, problem management, network support and system software support;

(b) has effective security controls to prevent, detect and respond to security threats and cyber-attack on its systems that support trading and settlement services;

(c) has effective business continuity and disaster recovery plans;

(d) in accordance with prudent business practice, and on a reasonably frequent basis (at least annually):

(i) makes reasonable current and future systems capacity estimates;

(ii) conducts capacity stress tests to determine the ability of its order entry and execution systems to process transactions in an accurate, timely and efficient manner;

(iii) tests its business continuity and disaster recovery plans, and

(iv) reviews system vulnerability and its cloud-hosted environment to mitigate internal and external cyber threats; and

(e) continuously monitors and maintains internal controls over its systems.

Marketplace Filings

151. In certain jurisdictions, the Filer will operate a "marketplace" as that term is defined in NI 21-101 and in Ontario, subsection 1(1) of the *Securities Act* (Ontario).

152. The Filer has filed with the Principal Regulator all completed exhibits to the Form 21-101F2 – *Information Statement Alternative Trading System*.

Clearing Agency

153. In some of the Jurisdictions, but not in Ontario, the Filer may be operating a "clearing agency," a "clearing house" or a "settlement system," as those terms are defined or referred to in securities or commodities futures legislation and may need relief from recognition as a "clearing agency," a "clearing house" or a "settlement system." In Alberta, the Filer may rely on Blanket Order 24-506, *Re Exemption for certain CTPs to be recognized as clearing agencies*, 2022 ABASC 115, for such relief.

Decision

The Dual Exemption Decision Makers are satisfied that the Decision satisfies the test set out in the Legislation for the Dual Exemption Decision Makers to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Trade Reporting Relief and the Marketplace Relief, as applicable, satisfies the tests set out in the securities legislation of its jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Trade Reporting Relief and the Marketplace Relief, as applicable.

The Decision of the Dual Exemption Decision Makers under the Legislation is that the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation in its jurisdiction is that the Trade Reporting Relief and the Marketplace Relief, as applicable, are granted, provided that:

Dealer Activities

A. Unless otherwise exempted by a further decision of the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Jurisdiction, the Filer complies with all of the terms, conditions, restrictions and requirements applicable to a registered dealer under securities legislation, including the Legislation, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer, the Filer complies with all of the terms, conditions, restrictions and requirements set out in this Decision.

B. The Filer is registered as an investment dealer in Alberta and the jurisdiction where the client is resident and is a member of CIRO.

C. The Filer only engages in the business of trading Crypto Contracts in relation to Crypto Assets, performing its obligations under those contracts, and offering Staking Services in respect of Stakeable Crypto Assets.

D. At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of clients with one or more custodians that meets the definition of an Acceptable Third-party Custodian, unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with an Acceptable Third-party Custodian or has obtained the prior written approval of the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions to hold at least 80% of the total value of the Crypto Assets with an entity that does not meet certain criteria of an Acceptable Third-party Custodian.

E. Before the Filer holds Crypto Assets with a custodian, the Filer will take reasonable steps to verify that the custodian:

    (i) will hold the Crypto Assets for the Filer's clients (a) in an account clearly designated for the benefit of the Filer's clients or in trust for the Filer's clients, (b) separate and apart from the assets of the custodian's other clients, and (c) separate and apart from the custodian's own assets and from the assets of any custodial service provider;

    (ii) has appropriate insurance to cover the loss of Crypto Assets held at the custodian;

    (iii) has established and applies written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian;

    (iv) has obtained a SOC 2 Type 2 report within the last 12 months, unless the Filer has obtained the prior written approval of the Principal Regulator to alternatively verify that the custodian has obtained a SOC 1 Type 1 or Type 2 report or a SOC 2 Type 1 report within the last 12 months; and

    (v) meets each of the requirements to be an Acceptable Third-party Custodian, except for those criteria in respect of which the custodian does not meet and the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions have provided prior written approval for use of the custodian.

F. The Filer will promptly notify the Principal Regulator if the Alberta Ministry of Treasury Board and Finance, the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, the South Dakota Division of Banking or the New York State Department of Financial Services or any other regulatory authority applicable to a custodian of the Filer makes a determination that (i) the Filer's custodian is not permitted by that regulatory authority to hold client Crypto Assets, or (ii) if there is a change in the status of the custodian as a regulated financial institution. In such a case, the Filer will take immediate steps to identify a suitable alternative custody provider that meets the definition of an Acceptable Third-party Custodian to hold the Crypto Assets.

G. For the Crypto Assets held by the Filer, the Filer will:

    (i) hold the Crypto Assets in trust for the benefit of its clients, and separate and distinct from the assets of the Filer;

    (ii) ensure there is appropriate insurance for the loss of Crypto Assets held by the Filer; and

    (iii) have established and apply written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.

H. The Filer uses or will only use Liquidity Providers that it has verified are registered and/or licensed, to the extent required in their respective home jurisdictions, to execute trades in the Crypto Assets and are not in default of securities legislation in any of the Jurisdictions, and will promptly stop using a Liquidity Provider if (i) the Filer is made aware that the Liquidity Provider is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determined it to be, not in compliance with securities legislation.

I. When the Filer trades with its clients on a principal basis in its capacity as a dealer, the Filer will abide by policies it has adopted with a view to providing fair and reasonable prices to its clients.

J. The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks and will provide fair and reasonable prices to its clients.

K. The Filer will assess liquidity risk and concentration risk posed by its Liquidity Providers. The liquidity and concentration risks assessment will consider trading volume data (as provided in paragraph 1(e) of Appendix E) and complete a historical analysis of each Liquidity Provider and a relative analysis between the Liquidity Providers. Consideration will be given to whether the Liquidity Provider has issued its own Proprietary Tokens and to consider limiting reliance on those Liquidity Providers.

L. Before each prospective client opens a Client Account, the Filer will deliver to the client a Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

M. For each client with a pre-existing Client Account at the date of the Decision, the Filer will deliver to the client a Risk Statement, and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement, at the earlier of (i) before placing their next trade or deposit of Crypto Assets on the Ndax Platform and (ii) the next time they log into their Client Account with the Filer.

N. The Risk Statement delivered as set out in conditions L and M will be prominent and separate from other disclosures given to the client at that time and the acknowledgement will be separate from other acknowledgements by the client at that time.

O. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Ndax Platform.

P. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide the client with the Crypto Asset Statement for the applicable Crypto Asset for review, including a link to the Crypto Asset Statement on the Website or Apps and includes the information set out in representation 35.

Q. Existing clients at the time of the Decision will be provided with links to the Crypto Asset Statements.

R. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and Crypto Assets, and,

(i) in the event of any update to the Risk Statement, will promptly notify each existing client of the update and deliver to them a copy of the updated Risk Statement, and

(ii) in the event of any update to a Crypto Asset Statement, will promptly notify clients through electronic disclosures on the Ndax Platform and the Apps with links to the updated Crypto Asset Statement.

S. Prior to the Filer delivering a Risk Statement to a client, the Filer will deliver, or will have previously delivered, a copy of the Risk Statement delivered to the client to the Principal Regulator.

T. For each client, the Filer will perform an appropriateness assessment as described in representation 29(a) prior to opening a Client Account on an ongoing basis and at least every 12 months.

U. For each client with a pre-existing Client Account at the date of the Decision, the Filer will conduct the account appropriateness assessment and establish the appropriate Client Limit for the client as set out in representations 29 and 34 the next time the client uses their account. The client will not be permitted to trade until the completion of the account appropriateness assessment and a determination that the Client Account is appropriate.

V. The Filer will monitor client activity and contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading or Crypto Asset staking, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract or using the Staking Service is not appropriate for the client, or that additional education is required.

W. The Filer has established and will apply and monitor the Client Limits as set out in representation 29(b).

X. The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets, that a client, except those clients resident in Alberta, British Columbia, Manitoba and Québec, may enter Crypto Contracts to purchase and sell on the Ndax Platform (calculated on a net basis and is an amount not less than $0) in the preceding 12 months:

(i) in the case of a client that is not an Eligible Crypto Investor, does not exceed a net acquisition cost of $30,000;

(ii) in the case of a client that is an Eligible Crypto Investor, but is not an Accredited Crypto Investor, does not exceed a net acquisition cost of $100,000; and

(iii) in the case of an Accredited Crypto Investor, is not limited.

Y. In the Jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Contract is deemed to be a distribution under securities legislation of that Jurisdiction.

Z. The Filer will ensure that clients that are granted permission to access the Ndax Platform via Ndax's API only use Ndax's API to trade as principal, and not on behalf of any other person. The Filer will not provide an API access to a client that is acting as a dealer (whether registered or otherwise), unless permitted under the CIRO Rules and the Legislation and in compliance with the CIRO Rules and the Legislation.

AA. The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:

(i) change of or use of a new custodian; and

(ii) material changes to the Filer's ownership, its business operations, including its systems, or its business model.

BB. The Filer will notify CIRO and the Principal Regulator, promptly, of any material breach or failure of its or its custodian's system of controls or supervision, and what steps have been taken by the Filer to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.

CC. The Filer will only trade with clients Crypto Assets or Crypto Contracts based on Crypto Assets that are:

(i) not in and of themselves securities or derivatives; or,

(ii) Value-Referenced Crypto Assets that comply with the terms and conditions set out in Appendix C.

DD. Notwithstanding condition CC(ii), the Filer may allow clients to buy or deposit Value-Referenced Crypto Assets, or to enter into Crypto Contracts to buy or deposit Value-Referenced Crypto Assets, subject to the following conditions:

(i) the Value-Referenced Crypto Asset complies with the conditions set out in section (1) of Appendix C; and,

(ii) the ability for any client to buy or deposit, or enter into Crypto Contracts to buy or deposit, any such Value-Referenced Crypto Assets must cease on or before December 31, 2024.

EE. The Filer will evaluate Crypto Assets as set out in its KYP Policy and described in representation 18.

FF. The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a client in a Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of the Jurisdiction, where the Crypto Asset was issued by or on behalf of a person or company that is or has in the last five years been the subject of a publicly announced order, judgment, decree, sanction, fine or administrative penalty imposed by, or has entered into a publicly announced settlement agreement with, a government or government agency, administrative agency, self-regulatory organization, administrative tribunal or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of anti-money laundering laws, conspiracy, breach of trust, breach of fiduciary duty, insider trading, market manipulation, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar or analogous conduct.

GG. Except to allow clients to liquidate their positions, in an orderly manner, in those Crypto Contracts or transfer such Crypto Assets to a blockchain address specified by the client, the Filer will promptly stop trading Crypto Contracts where the underlying asset is a Crypto Asset that (i) the Filer determines it to be, (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada or the foreign jurisdiction with which the Crypto Asset has the most significant connection determines it to be, or (iii) the Filer is made aware or is informed that the Crypto Asset is viewed by a regulator or securities regulatory authority to be (a) a security and/or derivative, or (b) a Value Referenced Crypto Asset that does not satisfy the conditions set out in conditions CC and DD.

HH. The Filer will not engage in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuers or affiliates or associates of such persons.

Books and Records

II. The Filer will keep books, records and other documents reasonably necessary for the proper recording of its businesses and to demonstrate compliance with the Legislation and the conditions of this Decision, including, but not limited to, records of all orders and trades, including the product, quotes, executed price, volume, time when the order is entered, matched, cancelled or rejected, and the identifier of any authorized user that entered the order.

JJ. The Filer will maintain the aforementioned books, records and other documents in electronic form and promptly provide them in the format and at the time requested by the Principal Regulator pursuant to the Legislation. Such books, records and other documents will be maintained by the Filer for a minimum of seven years.

Staking

KK. The Filer will comply with the terms and conditions in Appendix D in respect of the Staking Services.

Reporting

LL. The Filer will deliver the reporting as set out in Appendix E.

MM. The Filer will deliver to the regulator or the securities regulatory authority in each of the Jurisdictions, in a form and format acceptable to the regulator or the securities regulatory authority, a report that includes the following aggregated quarterly information relating to trading activity on the Ndax Platform within 30 days of the end of each March, June, September and December:

(i) total number of trades and total traded value on a by pair basis, with each such reported value further broken out by the proportion of trades and traded value that were a result of trades between two clients compared to trades between a client and the Filer or affiliate of the Filer; and

(ii) total number of executed client orders and total value of executed client orders on a by pair basis, with each such reported value further broken out by the proportion of executed market orders compared to executed limit orders.

NN. The Filer will provide to the Principal Regulator quarterly summary statistics on its trade monitoring and complaint handling activities in relation to the Platform, including the following:

(i) the number of instances of improper trading activity identified, by category, and the proportion of each such category that arose from client complaints/reports;

(ii) the number of instances in (i) that were further investigated or reviewed, by category;

(iii) the number of investigations in (ii), by category, that were closed with no action;

(iv) a summary of each investigation in (ii) that was escalated for action to be taken, including a description of the action taken in each case; and

(v) a summary of the status of any open investigations.

OO. Within 7 calendar days from the end of each month, the Filer will deliver to the regulator or securities regulatory authority in each of the Jurisdictions, a report of all Client Accounts for which the Client Limits established pursuant to representation 29(b) were exceeded during that month.

PP. The Filer will provide certain reporting in respect of the preceding calendar quarter to its Principal Regulator and CIRO within 30 days of the end of March, June, September and December in connection with the Staking Services, including, but not limited to:

(i) the total number of clients to which the Filer provides the Staking Services;

(ii) the Crypto Assets for which the Staking Services are offered;

(iii) for each Crypto Asset that may be staked:

A. the amount of Crypto Assets staked,

B. the amount of each such Crypto Assets staked that is subject to a Lock-up Period and the length of the Lock-up Period;

C. the amount of Crypto Assets that clients have requested to unstake; and

D. the amount of rewards earned by the Filer and the clients for the Crypto Assets staked under the Staking Services;

(iv) the names of any third parties used to conduct the Staking Services;

(v) any instance of slashing, jailing or other penalties being imposed for validator error;

(vi) the details of why these penalties were imposed;

(vii) any reporting regarding the Filer's liquidity management as requested by the Principal Regulator; and

(viii) the value, at the end of each period, of the Filer's residual proprietary interest in segregate staked omnibus wallets or addresses for each Crypto Asset staked.

QQ. The Filer will deliver to the Principal Regulator, within 30 days of the end of each March, June, September and December, either (i) blackline copies of changes made to the policies and procedures on the operations of its wallets (including, but not limited to, establishment of wallets, transfer of Crypto Assets into and out of the wallets, and authorizations to access the wallets) previously delivered to the Principal Regulator or (ii) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.

RR. In addition to any other reporting required by the Legislation, the Filer will provide, on a timely basis, any report, data, document or information to the Principal Regulator, including any information about the Filer's custodian(s) and the Crypto Assets held by the Filer's custodian(s), that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with the Legislation and the conditions in the Decision, in a format acceptable to the Principal Regulator. Unless otherwise prohibited under applicable law, the Filer will share with the Principal Regulator information relating to regulatory and enforcement matters that will materially impact its business.

SS. Upon request, the Filer will provide the Principal Regulator and the regulators or securities regulatory authorities of each of the other Jurisdictions with aggregated and/or anonymized data concerning client demographics and activity on the Ndax Platform that may be useful to advance the development of the Canadian regulatory framework for trading crypto assets.

TT. The Filer will promptly make any changes to its business practices or policies and procedures that may be required to address investor protection concerns that may be identified by the Filer, or by the Principal Regulator or CIRO arising from the operation of the Ndax Platform.

Financial Viability

UU. The Filer will maintain sufficient financial resources for the proper performance of the marketplace services and the clearing or settlement services, and for the performance of these functions in furtherance of its compliance with these terms and conditions.

VV. The Filer will notify the Principal Regulator immediately upon becoming aware that the Filer does not or may not have sufficient financial resources in accordance with the requirements of condition UU.

Trading Limitations

WW. The Filer will not submit orders on a proprietary basis, other than in connection with offsetting trades relating to client orders that are executed on a riskless principal basis, or as it otherwise deems appropriate for the delivery of its services. For clarity, at no time shall the Filer trade against its clients for speculative purposes.

XX. The Filer must not implement a significant change to the information in the Form 21-101F2 unless it has delivered an amendment of the Form 21-101F2 describing the significant change to the Principal Regulator at least 45 days prior to implementing the significant change.

Marketplace Activities

Fair Access

YY. The Filer will not unreasonably prohibit, condition or limit access to the Ndax Platform and related services.

ZZ. The Filer will not permit unreasonable discrimination among clients of the Ndax Platform.

Market Integrity

AAA. The Filer will take reasonable steps to ensure its operations do not interfere with fair and orderly markets in relation to the Ndax Platform.

BBB. The Filer will not provide access to the Ndax Platform unless it has the ability to terminate all or a portion of a client's access, if required.

CCC. The Filer will maintain accurate records of all of its trade monitoring and complaint handling activities in relation to the Ndax Platform, and of the reasons for actions taken or not taken. The Filer will make such records available to the Principal Regulator upon request.

DDD. The Filer must monitor each client's compliance with restrictions relating to its use of the Ndax Platform, including complying with the trading requirements and applicable securities laws and report breaches of securities law, as appropriate, to the applicable securities regulatory authority or regulator.

Conflicts of Interest

EEE. When the Filer or an affiliate trades with the Filer's clients on a principal basis, the Filer will ensure that its clients receive fair and reasonable prices.

FFF. The Filer will annually review compliance with the policies and procedures that identify and manage conflicts of interest described in representations 128 to 131 and will document in each review any deficiencies that were identified and how those deficiencies were remedied.

Transparency of Operations and of Order and Trade Information

GGG. The Filer will publicly disclose information outlined in representation 146 in a manner that reasonably enables a person or company to understand the marketplace operations or services.

HHH. The Filer will maintain public disclosure of the information outlined in condition GGG in a manner that reasonably enables a person or company to understand the marketplace operations or services.

III. For orders and trades entered to and executed on the Ndax Platform, the Filer will make available an appropriate level of information regarding those orders and trades in real-time to facilitate clients' investment and trading decisions, as described in representation 147.

Confidentiality

JJJ. The Filer will not release a client's order or trade information to a person or company, other than the client, a securities regulatory authority or a regulation services provider unless:

(i) the client has consented in writing to the release of the information;

(ii) the release is made under applicable law; or

(iii) the information has been publicly disclosed by another person or company and the disclosure was lawful.

Clearing and Settlement Activities

KKK. For any clearing or settlement activity conducted by the Filer, the Filer will:

(i) maintain adequate procedures and processes to ensure the provision of accurate and reliable settlement services in connection with Crypto Assets;

(ii) maintain appropriate risk management policies and procedures and internal controls to minimize the risk that settlement will not take place as expected;

(iii) limit the provision of clearing and settlement services to Crypto Assets and fiat currency which underlie the Crypto Contracts traded on the Platform; and

(iv) limit the provision of clearing and settlement services to clients of the Filer.

Notification to Principal Regulator

LLL. The Filer will promptly notify the Principal Regulator and indicate what steps have been taken by the Filer to address the situation should any of the following occur:

(i) any failure or breach of systems of controls or supervision that has a material impact on the Filer, including when they:

(a) involve the Filer's business;

(b) involve the services or business of an affiliate of the Filer;

(c) involve the Acceptable Third-party Custodian;

(d) are cybersecurity breaches of the Filer, an affiliate of the Filer, or services that impact the Filer;

(e) are a malfunction, delay, or security breach of the systems or controls relating to the operation of the marketplace, clearing or settlement functions; or

(f) any amount of specified Crypto Assets are identified as lost;

(ii) any investigations of, or regulatory action against, the Filer, or an affiliate of the Filer, by a regulatory authority in any jurisdiction in which it operates which may impact the operations of the Filer;

(iii) details of any litigation instituted against the Filer, or an affiliate of the Filer, which may impact the operation of the Filer;

(iv) notification that the Filer, or an affiliate of the Filer, has instituted a petition for a judgment of bankruptcy, insolvency, or similar relief, or to wind up or liquidate the Filer, or an affiliate of the Filer, or has a proceeding for any such petition instituted against it; and

(v) the appointment of a receiver or the making of any voluntary arrangement with a creditor.

Systems and internal controls

MMM. The Filer will maintain, update and test a business continuity plan, including emergency procedures, and a plan for disaster recovery that provides for the timely recovery of operations and fulfilment of its obligations with respect to the Ndax Platform, including in the event of a wide-scale or major disruption.

Additional Relief

NNN. The Filer will establish, maintain and ensure compliance with appropriate policies and procedures as required under NI 23-103 for clients that access the Ndax Platform via an API. In the event that the Filer requires relief from regulatory requirements in support of providing API access to its clients, the Filer will make an application for relief through its Principal Regulator.

Time Limited Relief

OOO. This Decision shall expire on December 19, 2026.

PPP. This Decision may be amended by the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Jurisdiction, upon prior written notice to the Filer in accordance with applicable securities legislation.

In respect of the Prospectus Relief

Date: December 19, 2024

“Tom Cotter”
Vice-Chair
Alberta Securities Commission

“Kari Horn, K.C.”
Vice-Chair
Alberta Securities Commission

In respect of granting the Marketplace Relief and the Trade Reporting Relief

Date: December 19, 2024

“Signed by”

“Lynn Tsutsumi”
Director, Market Regulation
Alberta Securities Commission

APPENDIX A

LOCAL TRADE REPORTING RULES

In the Decision, the "**Local Trade Reporting Rules**" means each of the following:

(i) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 Trade Repositories and Derivatives Data Reporting (**OSC Rule 91-507**);

(ii) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 Trade Repositories and Derivatives Data Reporting (**MSC Rule 91-507**); and

(iii) Part 3, Data Reporting of Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**).

APPENDIX B

LIST OF SPECIFIED CRYPTO ASSETS

- Bitcoin
- Ether
- Bitcoin Cash
- Litecoin
- A Value-Referenced Crypto Asset that complies with conditions CC and DD of this Decision.

APPENDIX C

TERMS AND CONDITIONS FOR TRADING VALUE-REFERENCED CRYPTO ASSETS WITH CLIENTS

(1) The Filer establishes that all of the following conditions are met:

(a) the Value-Referenced Crypto Asset references, on a one-for-one basis, the value of a single fiat currency (the "reference fiat currency").

(b) the reference fiat currency is the Canadian dollar or United States dollar.

(c) the Value-Referenced Crypto Asset entitles a Value-Referenced Crypto Asset holder who maintains an account with the issuer of the Value-Referenced Crypto Asset to a right of redemption, subject only to reasonable publicly disclosed conditions, on demand directly against the issuer of the Value-Referenced Crypto Asset or against the reserve of assets, for the reference fiat currency on a one-to-one basis, less only any fee that is publicly disclosed by the issuer of the Value-Referenced Crypto Asset, and payment of the redemption proceeds within a reasonable period as disclosed by the issuer of the Value-Referenced Crypto Asset.

(d) the issuer of the Value-Referenced Crypto Asset maintains a reserve of assets that is:

(i) in the reference fiat currency and is comprised of any of the following:

1. cash;

2. investments that are evidence of indebtedness with a remaining term to maturity of 90 days or less and that are issued, or fully and unconditionally guaranteed as to principal and interest, by the government of Canada or the government of the United States;

3. securities issued by one or more Money Market Funds licensed, regulated or authorized by a regulatory authority in Canada or the United States of America; or

4. such other assets that the Principal Regulator of the Filer and the regulator or securities regulatory authority in each Canadian jurisdiction where clients of the Filer reside has consented to in writing;

(e) all of the assets that comprise the reserve of assets are:

(i) measured at fair value in accordance with Canadian GAAP for publicly accountable enterprises or U.S. GAAP at the end of each day,

(ii) held with a Qualified Custodian,

(iii) held in an account clearly designated for the benefit of the Value-Referenced Crypto Asset holders or in trust for the Value-Referenced Crypto Asset holders,

(iv) held separate and apart from the assets of the issuer of the Value-Referenced Crypto Asset and its affiliates and from the reserve of assets of any other Crypto Asset, so that, to the best of the knowledge and belief of the Filer after taking steps that a reasonable person would consider appropriate, including consultation with experts such as legal counsel, no creditors of the issuer other than the Value-Referenced Crypto Asset holders in their capacity as Value-Referenced Crypto Asset holders, will have recourse to the reserve of assets, in particular in the event of insolvency, and

(v) not encumbered or pledged as collateral at any time; and

(f) the fair value of the reserve of assets is at least equal to the aggregate nominal value of all outstanding units of the Value-Referenced Crypto Asset at least once each day.

(2) The issuer of the Value-Referenced Crypto Asset makes all of the following publicly available:

(a) details of each type, class or series of the Value-Referenced Crypto Asset, including the date the Value-Referenced Crypto Asset was launched and key features and risks of the Value-Referenced Crypto Asset;

(b) the quantity of all outstanding units of the Value-Referenced Crypto Asset and their aggregate nominal value at least once each business day;

(c) the names and experience of the persons or companies involved in the issuance and management of the Value-Referenced Crypto Asset, including the issuer of the Value-Referenced Crypto Asset, any manager of the reserve of assets, including any individuals that make investment decisions in respect of the reserve of assets, and any custodian of the reserve of assets;

(d) the quantity of units of the Value-Referenced Crypto Asset held by the issuer of the Value-Referenced Crypto Asset or any of the persons or companies referred to in paragraph (c) and their nominal value at least once each business day;

(e) details of how a Value-Referenced Crypto Asset holder can redeem the Value-Referenced Crypto Asset, including any possible restrictions on redemptions such as the requirement for a Value-Referenced Crypto Asset holder to have an account with the issuer of the Value-Referenced Crypto Asset and any criteria to qualify to have an account;

(f) details of the rights of a Value-Referenced Crypto Asset holder against the issuer of the Value-Referenced Crypto Asset and the reserve of assets, including in the event of insolvency or winding up;

(g) all fees charged by the issuer of the Value-Referenced Crypto Asset for distributing, trading or redeeming the Value-Referenced Crypto Asset;

(h) whether Value-Referenced Crypto Asset holders are entitled to any revenues generated by the reserve of assets;

(i) details of any instances of any of the following:

(i) the issuer of the Value-Referenced Crypto Asset has suspended or halted redemptions for all Value-Referenced Crypto Asset holders;

(ii) the issuer of the Value-Referenced Crypto Asset has not been able to satisfy redemption rights at the price or in the time specified in its public policies;

(j) within 45 days of the end of each month, an assurance report from a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America, and that meets the professional standards of that jurisdiction, that complies with all of the following:

(i) provides reasonable assurance in respect of the assertion by management of the issuer of the Value-Referenced Crypto Asset that the issuer of the Value-Referenced Crypto Asset has met the requirements in paragraphs (1)(d)-(f) as at the last business day of the preceding month and at least one randomly selected day during the preceding month;

(ii) the randomly selected day referred to in subparagraph (i) is selected by the public accountant and disclosed in the assurance report;

(iii) for each day referred to in subparagraph (i), management's assertion includes all of the following:

1. details of the composition of the reserve of assets;

2. the fair value of the reserve of assets in subparagraph (1)(e)(i);

3. the quantity of all outstanding units of the Value-Referenced Crypto Asset in paragraph (b);

(iv) the assurance report is prepared in accordance with the Handbook, International Standards on Assurance Engagements or attestation standards established by the American Institute of Certified Public Accountants;

(k) starting with the first financial year ending after December 1, 2023, within 120 days of the issuer of the Value-Referenced Crypto Asset's financial year end, annual financial statements of the issuer of the Value-Referenced Crypto Asset that comply with all of the following:

(i) the annual financial statements include all of the following:

1. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

2. a statement of financial position, signed by at least one director of the issuer of the Value-Referenced Crypto Asset, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

3. notes to the financial statements;

(ii) the statements are prepared in accordance with one of the following accounting principles:

1. Canadian GAAP applicable to publicly accountable enterprises;

2. U.S. GAAP;

(iii) the statements are audited in accordance with one of the following auditing standards:

1. Canadian GAAS;

2. International Standards on Auditing;

3. U.S. PCAOB GAAS;

(iv) the statements are accompanied by an auditor's report that,

1. if (iii)(1) or (2) applies, expresses an unmodified opinion,

2. if (iii)(3) applies, expresses an unqualified opinion,

3. identifies the auditing standards used to conduct the audit, and

4. is prepared and signed by a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America.

(3) The Crypto Asset Statement includes all of the following:

(a) a prominent statement that no securities regulatory authority or regulator in Canada has evaluated or endorsed the Crypto Contracts or any of the Crypto Assets made available through the Ndax Platform;

(b) a prominent statement that the Value-Referenced Crypto Asset is not the same as and is riskier than a deposit in a bank or holding cash with the Filer;

(c) a prominent statement that although Value-Referenced Crypto Assets may be commonly referred to as "stablecoins", there is no guarantee that the Value-Referenced Crypto Asset will maintain a stable value when traded on secondary markets or that the reserve of assets will be adequate to satisfy all redemptions;

(d) a prominent statement that, due to uncertainties in the application of bankruptcy and insolvency law, in the event of the insolvency of [Value-Referenced Crypto Asset issuer], there is a possibility that creditors of [Value-Referenced Crypto Asset issuer] would have rights to the reserve assets that could outrank a Value-Referenced Crypto Asset holder's rights, or otherwise interfere with a Value-Referenced Crypto Asset holder's ability to access the reserve of assets in the event of insolvency;

(e) a description of the Value-Referenced Crypto Asset and its issuer;

(f) a description of the due diligence performed by the Filer with respect to the Value-Referenced Crypto Asset;

(g) a brief description of the information in section (2) and links to where the information in that section is publicly available;

(h) a link to where on its website the issuer of the Value-Referenced Crypto Asset will disclose any event that has or is likely to have a significant effect on the value of the Value-Referenced Crypto Asset or on the reserve of assets;

(i) a description of the circumstances where the secondary market trading value of the Value-Referenced Crypto Asset may deviate from par with the reference fiat currency and details of any instances where the secondary market trading value of the Value-Referenced Crypto Asset has materially deviated from par with the reference fiat currency during the last 12 months on the Filer's platform;

(j) a brief description of any risks to the client resulting from the trading of a Value-Referenced Crypto Asset or a Crypto Contract in respect of a Value-Referenced Crypto Asset that may not have been distributed in compliance with securities laws;

(k) any other risks specific to the Value-Referenced Crypto Asset, including the risks arising from the fact that the Filer may not, and a client does not, have a direct redemption right with the issuer of the Value-Referenced Crypto Asset;

(l) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the Ndax Platform;

(m) a statement that the statutory rights in section 204 of the Act and, if applicable, similar statutory rights under securities legislation of other Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in the Decision;

(n) the date on which the information was last updated.

(4) If the Filer uses the term "stablecoin" or "stablecoins" in any information, communication, advertising or social media related to the Ndax Platform and targeted at or accessible by Canadian investors, the Filer will also include the following statement (or a link to the following statement when impractical to include):

"Although the term "stablecoin" is commonly used, there is no guarantee that the asset will maintain a stable value in relation to the value of the reference asset when traded on secondary markets or that the reserve of assets, if there is one, will be adequate to satisfy all redemptions."

(5) The issuer of the Value-Referenced Crypto Asset has filed an undertaking acceptable to the CSA in substantially the same form as set out in Appendix B of CSA Notice 21-333 *Crypto Asset Trading Platforms: Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients* (**CSA SN 21-333**).

(6) The KYP Policy of the Filer requires the Filer to assess whether the Value-Referenced Crypto Asset or the issuer of the Value-Referenced Crypto Asset satisfies the criteria in sections (1), (2) and (5) of this Appendix on an ongoing basis.

(7) The Filer has policies and procedures to facilitate halting or suspending deposits or purchases of the Value-Referenced Crypto Asset, or Crypto Contracts in respect of the Value-Referenced Crypto Asset, as quickly as is commercially reasonable, if the Value-Referenced Crypto Asset no longer satisfies the criteria in sections (1), (2) and (5) of this Appendix.

(8) In this Appendix, terms have the same meanings set out in Appendix D of CSA SN 21-333.

APPENDIX D

STAKING TERMS AND CONDITIONS

1. The Staking Services are offered in relation to the Stakeable Crypto Assets that are subject to a Crypto Contract between the Filer and a client.

2. Unless the Principal Regulator has provided its prior written consent, the Filer only offers clients the Staking Services only for (i) Crypto Assets of blockchains that use a proof of stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain (i.e., Stakeable Crypto Assets).

3. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

4. The Filer itself does not act as a Validator. The Filer has entered into written agreements with third parties to stake Stakeable Crypto Assets and each such third party is proficient and experienced in staking Stakeable Crypto Assets.

5. The Filer's KYP Policy includes a review of the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

    (a) the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (b) the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (c) the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (d) the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

    (e) the Validators engaged by the Filer, including, but not limited to, information about:

        (i) the persons or entities that manage and direct the operations of the Validator,

        (ii) the Validator's reputation and use by others,

        (iii) the amount of Stakeable Crypto Assets the Validator has staked on its own nodes,

        (iv) the measures in place by the Validator to operate the nodes securely and reliably,

        (v) the financial status of the Validator,

        (vi) the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

        (vii) any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

        (viii) any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

6. The Filer has policies and procedures to assess account appropriateness for a client that include consideration of the Staking Services to be made available to that client.

7. The Filer applies the account appropriateness policies and procedures to evaluate whether offering the Staking Services is appropriate for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

8. If, after completion of an account-level appropriateness assessment, the Filer determines that providing the Staking Services is not appropriate for the client, the Filer will include prominent messaging to the client that this is the case and the Filer will not make available the Staking Services to the client.

9. The Filer only stakes the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that

permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer ceases to stake those Stakeable Crypto Assets.

10. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer delivers to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in representation 11 below, and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

11. The Filer clearly explains in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which include, at a minimum:

    (a) the details of the Staking Services and the role of all third parties involved;

    (b) the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Crypto Asset for which the Filer provides the Staking Services;

    (c) the details of the Validators that will be used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

    (d) the details of whether and how the custody of staked Stakeable Crypto Assets differs from Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

    (e) the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses will be allocated to clients;

    (f) whether the Filer will reimburse clients for any Stakeable Crypto Assets lost due to slashing or other penalties imposed due to Validator error, action or inactivity or how any losses will be allocated to clients;

    (g) whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Stakeable Crypto Asset protocol, custodian or Validator, where such Stakeable Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards (**Lock-up Periods**); and

    (h) how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

12. Immediately before the first time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer requires the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

    (a) that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

    (b) that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, and the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

    (c) how rewards will be calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

    (d) that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

    (e) whether rewards may be changed at the discretion of the Filer;

    (f) unless the Filer guarantees any Stakeable Crypto Assets lost to slashing, that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network;

    (g) if the Filer offers a guarantee to prevent loss of any Stakeable Crypto Assets arising from the Staking Services, including due to slashing, any limits on that guarantee and requirements for a client to claim under the guarantee; and

(h) that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

13. Immediately before each time a client buys or deposits Stakeable Crypto Assets that are automatically staked pursuant to an existing agreement by the client to the Staking Services, the Filer provides prominent disclosure to the client that the Stakeable Crypto Asset it is about to buy or deposit will be automatically staked.

14. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Staking Services and/or Stakeable Crypto Assets.

15. In the event of any update to the Risk Statement, for each existing client that has agreed to the Staking Services, the Filer will promptly notify the client of the update and deliver to them a copy of the updated Risk Statement.

16. In the event of any update to a Crypto Asset Statement, for each existing client that has agreed to the Staking Services in respect of the Stakeable Crypto Asset for which the Crypto Asset Statement was updated, the Filer will promptly notify the client of the update and deliver to the client a copy of the updated Crypto Asset Statement.

17. The Filer or the Custodians remain in possession, custody and control of the staked Stakeable Crypto Assets at all times.

18. The Filer holds the staked Stakeable Crypto Assets for its clients in one or more omnibus staking wallets in the name of the Filer for the benefit of the Filer's clients and the staked Stakeable Crypto Assets are held separate and distinct from (i) the assets of the Filer's other clients; and (ii) the Crypto Assets held for the Filer's clients that have not agreed to staking those specific Crypto Assets.

19. The Filer has established policies and procedures that manage and mitigate custodial risks for staked Stakeable Crypto Assets, including but not limited to, an effective system of controls and supervision to safeguard the staked Stakeable Crypto Assets.

20. If the Filer permits clients to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-up Period, the Filer establishes and applies appropriate liquidity management policies and procedures to fulfill withdrawal requests made, which may include using the Stakeable Crypto Assets it holds in inventory, setting aside cash for the purpose of purchasing such inventory, and/or entering into agreements with its Liquidity Providers that permit the Filer to purchase any required Crypto Assets. The Filer holds Stakeable Crypto Assets in trust for its clients and will not use Stakeable Crypto Assets of those clients who have not agreed to the Staking Services for fulfilling such withdrawal requests.

21. If the Filer provides a guarantee to clients from some or all of the risks related to the Staking Services, the Filer has established, and will maintain and apply, policies and procedures to address any risks arising from such guarantee.

22. In the event of bankruptcy or insolvency of the Filer, the Filer will assume and will not pass to clients any losses arising from slashing or other penalties arising from the performance or non-performance of the Validator.

23. The Filer monitors its Validators for downtime, jailing and slashing events and takes any appropriate action to protect Stakeable Crypto Assets staked by clients.

24. The Filer has established and applies policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

25. The Filer regularly and promptly determines the amount of staking rewards earned by each client that has staked Stakeable Crypto Assets under the Staking Services and distributes each client's staking rewards to the client promptly after they are made available to the Filer.

26. The Filer clearly discloses the fees charged by the Filer for the Staking Services and provides a clear calculation of the rewards earned by each client that agrees to the Staking Services.

APPENDIX E

DATA REPORTING

1. Commencing with the quarter ending September 30, 2024, the Filer will deliver the following information to the Principal Regulator and each of the Coordinated Review Decision Makers in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers with respect to Clients residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December:

    (a) aggregate reporting of activity conducted pursuant to the Ndax Platform's operations that will include the following:

        i. number of Client Accounts opened each month in the quarter;

        ii. number of Client Accounts frozen or closed each month in the quarter;

        iii. number of Client Account applications rejected by the Ndax Platform each month in the quarter based on the account appropriateness factors described in representation 29(a) of the Decision;

        iv. number of trades each month in the quarter;

        v. average value of the trades in each month in the quarter;

        vi. number of Client Accounts with a net acquisition cost greater than $30,000 of Crypto Assets at the end of each month in the quarter;

        vii. number of Client Accounts that in the preceding 12 months, excluding Specified Crypto Assets, that: (a) in the case of a client that is not an Eligible Crypto Investor, exceeded a net acquisition cost of $30,000 at the end of each month in the quarter, and (b) in the case of a client that is an Eligible Crypto Investor, but not an Accredited Crypto Investor, exceeded a net acquisition cost of $100,000 at the end of each month in the quarter;

        viii. number of Client Accounts at the end of each month in the quarter;

        ix. number of Client Accounts with no trades during the quarter;

        x. number of Client Accounts that have not been funded at the end of each month in the quarter; and

        xi. number of Client Accounts that hold a positive amount of Crypto Assets at end of each month in the quarter; and

        xii. number of Client Accounts that exceeded their Client Limit at the end of each month in the quarter.

    (b) the details of any client complaints received by the Filer during the calendar quarter and how such complaints were addressed;

    (c) a listing of all blockchain addresses, except for deposit addresses, that hold Crypto Assets on behalf of Clients, including all hot and cold wallets;

    (d) the details of any fraudulent activity or cybersecurity incidents on the Ndax Platform during the calendar quarter, any resulting harms and effects on clients, and the corrective measures taken by the Filer to remediate such activity or incident and prevent similar activities or incidents from occurring in the future; and

    (e) the details of the transaction volume per Liquidity Provider, per Crypto Asset during the quarter.

2. The Filer will deliver to the Principal Regulator and each of the Coordinated Review Decision Makers, in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers, a report that includes the anonymized account-level data for the Ndax Platform's operations for each client residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December for data elements outlined in Appendix F.

APPENDIX F

DATA ELEMENT DEFINITIONS, FORMATS AND ALLOWABLE VALUES

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
Data Elements Related to each Unique Client					
1	Unique Client Identifier	Alphanumeric code that uniquely identifies a customer.	Varchar(72)	An internal client identifier code assigned by the CTP to the client. The identifier must be unique to the client.	ABC1234
2	Unique Account Identifier	Alphanumeric code that uniquely identifies an account.	Varchar(72)	A unique internal identifier code which pertains to the customer's account. There may be more than one Unique Account Identifier linked to a Unique Client Identifier.	ABC1234
3	Jurisdiction	The Province or Territory where the client, head office or principal place of business is, or under which laws the client is organized, or if an individual, their principal place of residence.	Varchar(5)	Jurisdiction where the client is located using ISO 3166-2 - See the following link for more details on the ISO standard for Canadian jurisdictions codes. https://www.iso.org/obp/ui/#iso:code:3166:CA	CA-ON
Data Elements Related to each Unique Account					
4	Account Open Date	Date the account was opened and approved to trade.	YYYY-MM-DD, based on UTC.	Any valid date based on ISO 8601 date format.	2022-10-27
5	Cumulative Realized Gains/Losses	Cumulative Realized Gains/Losses from purchases, sales, deposits, withdrawals and transfers in and out, since the account was opened as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in, transfers out, deposits and withdrawals of the Digital Token to determine the cost basis or the realized gain or loss.	205333
6	Unrealized Gains/Losses	Unrealized Gains/Losses from purchases, deposits and transfers in as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in or deposits of the Digital Token to determine the cost basis.	-30944
7	Digital Token Identifier	Alphanumeric code that uniquely identifies the Digital Token held in the account.	Char(9)	Digital Token Identifier as defined by ISO 24165. See the following link for more details on the ISO standard for Digital Token Identifiers. https://dtif.org/	4H95J0R2X

[1] Note: Digital Token refers to either data associated with a Digital Token, or a Digital Token referenced in an investment contract.

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
Data Elements Related to each Digital Token Identifier Held in each Account					
8	Quantity Bought	Number of units of the Digital Token bought in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	4358.326
9	Number of Buy Transactions	Number of transactions associated with the Quantity Bought during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	400
10	Quantity Sold	Number of units of the Digital Token sold in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	125
11	Number of Sell Transactions	Number of transactions associated with the Quantity Sold during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3325
12	Quantity Transferred In	Number of units of the Digital Token transferred into the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	10.928606
13	Number of Transactions from Transfers In	Number of transactions associated with the quantity transferred into the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3
14	Quantity Transferred Out	Number of units of the Digital Token transferred out of the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	603
15	Number of Transactions from Transfers Out	Number of transactions associated with the quantity transferred out of the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	45
16	Quantity Held	Number of units of the Digital Token held in the account as of the end of the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	3641.25461

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
17	Value of Digital Token Held	Value of the Digital Token held as of the end of the reporting period.	Num(25,0)	Any value greater than or equal to zero rounded to the nearest dollar in CAD. Use the unit price of the Digital Token as of the last business day of the reporting period multiplied by the quantity held as reported in (16).	45177788
18	Client Limit	The Client Limit established on each account.	Num(25,2)	Any value greater than or equal to zero rounded to the nearest dollar in CAD, or if a percentage, in decimal format.	0.50
19	Client Limit Type	The type of limit as reported in (18).	Char(3)	AMT (amount) or PER (percent).	PER

B.3.12 RP Investment Advisors LP and The Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted revoking and replacing existing short selling, cash cover and custodial relief to extend existing relief beyond a "government security" as defined in NI 81-102 to also include an evidence of indebtedness issued, or fully and unconditionally guaranteed as to principal and interest, by any of the federal government of the United Kingdom (U.K.) or the federal government of Germany, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.6.1(1)(c)(ii), 2.6.1(1)(c)(v), 2.6.1(1)(c)(iv), 2.6.1(2), 2.6.2, 6.1(1) and 19.1.

January 2, 2025

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

AND

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

AND

IN THE MATTER OF
RP INVESTMENT ADVISORS LP
(the Filer)

AND

THE FUNDS
(as defined below)

DECISION

1. Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

A. revoking the Current Decisions (as defined below) (the **Revocation**); and

B. replacing the Current Decisions with a decision pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) exempting the following Funds from the following provisions of NI 81-102 as part of facilitating the interest rate risk hedging strategy further described in paragraphs 3(xi) and (xii) below (the **Interest Rate Risk Hedging Strategy**):

   (i) the Conventional Mutual Funds (as defined below) from paragraph 2.6.1(1)(c)(ii) of NI 81-102 to permit these Funds to increase the limit on aggregate short sale exposure to Government Securities (as defined below) of a single issuer from 5% to 20% of the NAV (as defined below) of the applicable Fund (the **Conventional Mutual Fund Short Sale Single Issuer Relief**);

   (ii) the Alternative Mutual Funds (as defined below) from: (i) subparagraph 2.6.1(1)(c)(iv) of NI 81-102, which restricts an Alternative Mutual Fund from short selling the securities of a single issuer, other than government securities (as such term is defined in NI 81-102), to not more than 10% of the NAV of the Fund; (ii) subparagraph 2.6.1(1)(c)(v) of NI 81-102, which restricts an Alternative Mutual Fund from selling a security short if, at the time, the aggregate market value of the securities sold short by the Alternative Mutual Fund exceeds 50% of the Alternative Mutual Fund's NAV; and (iii) section 2.6.2 of NI 81-102, which states that an Alternative Mutual Fund may not borrow cash or sell securities short if, immediately after entering into a cash borrowing or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the Alternative Mutual Fund would exceed 50% of the Fund's NAV, in order to permit each

Alternative Mutual Fund to short sell Government Securities up to a maximum of 300% of its NAV (the **Alternative Mutual Fund Short Sale Relief**);

(iii) the Conventional Mutual Funds from subsection 2.6.1(2) of NI 81-102 which requires a Conventional Mutual Fund that sells securities short to hold cash cover in an amount that, together with portfolio assets deposited with Borrowing Agents (as defined below) as security in connection with short sales of securities by the mutual fund, is at least 150% of the aggregate market value of the securities sold short by the Conventional Mutual Fund on a daily market-to-market basis in relation to short sales of Government Securities by a Conventional Mutual Fund (the **Cash Cover Relief**); and

(iv) each of the Funds from the requirement set out in subsection 6.1(1) of NI 81-102 which provides that, except as provided in sections 6.8, 6.8.1 and 6.9, all portfolio assets of an investment fund must be held under the custodianship of one custodian that satisfies the requirements of section 6.2 in order to permit a Fund to deposit portfolio assets with a Borrowing Agent that is not the Fund's custodian or sub-custodian as security in connection with a short sale of securities, provided that the aggregate market value of the portfolio assets held by the Borrowing Agent after such deposit, excluding the aggregate market value of the proceeds from outstanding short sales of securities held by the Borrowing Agent, does not:

(i) in the case of each Conventional Mutual Fund, exceed 10% of the NAV of the fund at the time of deposit; and

(ii) in the case of each Alternative Mutual Fund, exceed 25% of the NAV of the fund at the time of deposit.

(the **Custodial Relief**).

(collectively, the **Exemptions Sought**).

C. Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

2. Interpretation

Terms defined in MI 11-102, National Instrument 14-101 – *Definitions*, NI 81-102, NI 81-107 and NI 31-103 have the same meaning if used in this decision, unless otherwise defined.

The following terms have the following meanings:

Alternative Mutual Fund means a Fund that is an alternative mutual fund, as defined in NI 81-102;

Borrowing Agents means has the meaning set out in NI 81-102;

Conventional Mutual Fund means a Fund that is mutual fund, as defined in NI 81-102, other than an Alternative Mutual Fund;

Current Decisions means, collectively, (i) *In the Matter of RP Investment Advisors LP* dated December 9, 2019 – (2019), 42 OSCB 9473; and (ii) *In the Matter of RP Investment Advisors LP and The Funds* dated June 6, 2022 **–** (2022), 45 OSCB 6255;

Existing Funds means the RP Strategic Income Plus Fund, a Conventional Mutual Fund and the RP Alternative Global Bond Fund, an Alternative Mutual Fund, each of which is a reporting issuer subject to NI 81-102 and for which the Filer currently acts as investment fund manager and portfolio adviser;

Funds means the Existing Funds and any Future Funds;

Future Funds means each future mutual fund that is a reporting issuer subject to NI 81-102 established by the Filer for which the Filer acts as investment fund manager and may act as portfolio manager and that may rely on the Exemptions Sought;

Government Security includes and is limited to: (a) a "government security" as defined in NI 81-102; and (b) an evidence of indebtedness issued, or fully and unconditionally guaranteed as to principal and interest, by any of the federal government of the United Kingdom (U.K.) or the federal government of Germany;

NAV means net asset value; and

Prime Broker means an entity that acts as a prime broker to a Fund.

3. Representations

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

The Filer

(i) The Filer is a limited partnership formed under the laws of the Province of Ontario with its head office located in Toronto, Ontario.

(ii) The Filer is registered as (a) an investment fund manager in Ontario, Québec and Newfoundland and Labrador; (b) an adviser in the category of portfolio manager in British Columbia, Ontario and Québec; (c) a dealer in the category of exempt market dealer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Nunavut and Yukon; and (d) a commodity trading manager in Ontario.

(iii) The Filer is the investment fund manager and portfolio manager of the Existing Funds and the Filer will be the investment fund manager of the Future Funds.

(iv) The Filer is not in default of securities legislation in any of the Jurisdictions.

The Funds

(v) Each of the Existing Funds is an open-ended mutual fund trust established under the laws of the Province of Ontario and is a reporting issuer in each of the Jurisdictions. The RP Strategic Income Plus Fund is a Conventional Mutual Fund subject to NI 81-102 and the RP Alternative Global Bond Fund is an Alternative Mutual Fund subject to NI 81-102. The Future Funds will be Conventional Mutual Funds or Alternative Mutual Funds that are reporting issuers in one or more Jurisdictions and will be subject to NI 81-102. Each of the Funds distributes, or will distribute, its securities to the public pursuant to disclosure documents prepared and filed in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure.*

(vi) The investment objective of the RP Strategic Income Plus Fund is to generate stable, risk-adjusted absolute returns consisting of dividend, interest income and capital gains by investing primarily in investment grade corporate debt and debt-like securities, with a focus on capital preservation.

(vii) The investment objective of the RP Alternative Global Bond Fund is to generate attractive risk-adjusted returns with an emphasis on capital preservation by investing primarily in investment grade debt and debt-like securities of corporations and financial institutions.

(viii) The investment objective of the Future Funds will generally be to seek to produce risk-adjusted returns through investments in debt and debt-like securities.

(ix) Neither of the Existing Funds is in default of the securities legislation of any of the Jurisdictions.

The Interest Rate Risk Hedging Strategy

(x) Each of the Funds actively invests, or will actively invest, in fixed income instruments of issuers located in Canada, the U.S., the U.K. and Europe and seeks, or will seek, to hedge its interest rate exposure by using a short-selling hedging strategy. Since the value of fixed income securities is influenced by interest rate changes (i.e., bond prices usually decrease as interest rates increase, while bond prices usually increase as interest rates decrease), interest rate volatility can adversely affect a Fund's performance and impede its ability to achieve stable risk-adjusted returns in a manner that is consistent with its investment objectives.

(xi) In order to hedge against the inherent interest rate risk associated with the corporate fixed income securities invested in by the Funds, the Filer enters into, or will enter into, short selling arrangements relating to Government Securities at the same time that the Fund invests, or will invest, in long positions in the corporate fixed income securities as further described in paragraph (xii) below (the **Interest Rate Risk Hedging Strategy**). Further, the most effective interest rate hedge occurs where the Government Securities selected by the Filer for hedging purposes most closely correlate to the underlying interest rate characteristics of the particular corporate fixed income securities held by a Fund and, as a result, the Filer cannot remain within the 5% single issuer restriction for Conventional Mutual Funds by using the government securities currently permitted under NI 81-102 and still achieve an optimal interest rate hedge.

The Revocation and Exemptions Sought

(xii) Collectively, the Current Decisions granted the same relief as the Exemptions Sought except that the relief granted under the Current Decisions was limited to "government securities" (as defined by NI 81-102). The Filer is of the view that the Funds would benefit from amending the relief granted in the Current Decisions by expanding the definition of government securities for the purposes of the relief, beyond the definition in NI 81-102 (namely, "an evidence of indebtedness issued, or fully and unconditionally guaranteed as to principal and interest, by any of the government of Canada, the government of a jurisdiction or the government of the United States of America") to include government securities issued by, or fully and unconditionally guaranteed as to principal and interest by, the federal governments of the U.K. and Germany for the following reasons:

(a) The Filer believes that the investment objectives and hedging strategies of the Funds represent an important investment diversification tool for Canadian investors;

(b) In order to provide investors with a high degree of diversification, and in line with their respective investment objectives the Funds invest, or will invest, in a variety of fixed income securities, including corporate debt securities of Canadian, U.S., U.K. and European issuers in their local markets and currencies;

(c) The Filer seeks greater flexibility to implement its interest rate risk hedging strategy on behalf of the Funds by short selling a wider variety of government securities than is permitted under the Current Decisions. The Filer notes that an increased ability to short sell securities issued by, or fully and unconditionally guaranteed as to principal and interest by, the U.K. and/or German governments in particular will enable the Funds to implement and benefit from more effective interest rate risk hedging strategies;

(d) If a Conventional Mutual Fund utilizes its ability to enter into short sale transactions up to 20% of the Fund's NAV as permitted under paragraph 2.6.1(c)(iii) of NI 81-102, it would be required to hold on behalf of the Conventional Mutual Fund cash cover equal to 150% of the aggregate market value of such securities, effectively meaning that up to an additional 30% of the Fund's NAV would need to be held in assets which qualify as cash cover and could not be utilized by the Filer in making investments on behalf of the Fund in furtherance of its investment objectives. The purpose of the cash cover requirements for mutual funds in subsection 2.6.1(2) of NI 81-102 is to mitigate the risk of a mutual fund having to rapidly liquidate large portions of its investment portfolio (at potentially lower prices) in the event that the trading price of the security sold short increases, thereby requiring the mutual fund to repurchase the securities at a higher price in order to satisfy its obligations under the short sale transaction to deliver the securities to the borrowing agent. The Filer believes that exempting the Conventional Mutual Funds from the cash cover requirements in subsection 2.6.1(2) of NI 81-102 in relation to Government Securities would further enhance the ability of the Funds to deploy their assets to: (i) further mitigate risk to the portfolio as a result of greater flexibility to make strategic investments, increase diversification and engage in portfolio rebalancing; and (ii) maximize returns to security holders without materially increasing the risk to the Funds relating to the ability to settle such short sale transactions;

(e) Each of the U.K. and Germany is a G7 member alongside Canada and the U.S. and the debt securities of each of these countries remains highly rated by independent credit rating agencies. Currently, the government debt of all four of these countries is rated AA or higher by Standard & Poor's, with similarly high ratings from other major ratings agencies;

(f) German government securities are highly liquid and stable securities that, in the Filer's experience, can effectively be utilized as part of the short selling interest rate risk hedging strategies utilized by the Funds in relation to Euro denominated fixed income securities issued by corporate entities not just within Germany but also the broader European Union;

(g) The markets for securities issued by the governments of the U.K. and Germany are highly developed and can provide superior liquidity and risk mitigation opportunities compared to the use of Canadian and U.S. government securities when the goal is to minimize the risks associated with investments in U.K. and European fixed income securities;

(h) Unlike the short selling of equity securities, the total possible loss when short selling government issued securities is quantifiable at time of trade. The total exposure to loss on the short sale of a government security is the sum of all future coupon payments on the security, plus the difference between the trade price and par value of the security. As a result, the Funds are not (or will not be) exposed to any greater risk of significant losses by engaging in the short selling of government securities of the U.K. or Germany;

(i) The Filer has experience managing the strategies described herein in the Existing Funds as well as in privately offered investment funds under its management;

(j) While derivatives may be used to manage interest rate risk, the Filer views the use of derivatives in an interest rate risk hedging strategy as more inefficient, complex and potentially riskier than a hedging strategy of managing interest rate risk through the physical short selling of Government Securities which has been demonstrated to be an effective and economically efficient strategy to mitigate the interest rate risk that is inherent in investments in corporate fixed income securities;

(k) The Filer believes that the Funds will not be exposed to any greater risk of significant losses by engaging in the short selling of securities issued by the governments of the U.K. and/or Germany; and

(l) The Filer believes that permitting the Funds to engage increased short selling of securities issued by the governments of the U.K. and/or Germany in accordance with the terms of this decision, which are consistent with the terms of the Current Decisions, will maximize the assets of the Funds which can be deployed in furtherance of the investment objectives of the Funds without increasing the risk to the Funds relating to the settlement of such short sale transactions.

(xiii) in connection with the Current Decisions, the Funds have implemented the following controls when conducting a short sale and will continue to observe same under this decision:

(a) the Fund assumes the obligation to return to the Borrowing Agent the securities borrowed to effect the short sale;

(b) the Fund receives cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;

(c) the Filer monitors (or will monitor) the short positions of the Fund at least as frequently as daily;

(d) the security interest provided by a Fund over any of its assets that is required to enable the Fund to effect a short sale transaction is made in accordance with section 6.8.1 of NI 81-102 and with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

(e) the Fund maintains appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls and proper books and records;

(f) The Filer and the Fund keep proper books and records of short sales and all of its assets are deposited with Borrowing Agents as security; and

(g) Each Alternative Mutual Fund's aggregate exposure to short selling, cash borrowing and specified derivatives transactions used for purposes other than hedging will not exceed 300% of the Alternative Mutual Fund's NAV, in compliance with section 2.9.1 of NI 81-102 (the **Aggregate Exposure Limit**).

(xiv) The Filer wishes to amend the Current Decisions to include the Conventional Mutual Fund Short Sale Single Issuer, the Alternative Mutual Fund Short Sale Relief and the Cash Cover Relief and to maintain the Custodial Relief (further referenced below) by revoking the Current Decisions and replacing them with the relief granted under this decision.

The Custodial Relief

(xv) In connection with, among other things, the short sale of securities that the Funds will or may engage in, each Fund is permitted to grant a security interest in favour of, and deposit pledged portfolio assets with, a Borrowing Agent that is a Prime Broker.

(xvi) If a Conventional Mutual Fund engages as its Prime Broker an entity that is not its custodian or sub-custodian, then it may, under section 6.8.1 of NI 81-102, only deliver to its Prime Broker portfolio assets having a market value, in the aggregate, of not more than 10% of the NAV of the Conventional Mutual Fund at the time of deposit. If an Alternative Mutual Fund engages as its Prime Broker an entity that is not its custodian or sub-custodian, then it may, under section 6.8.1 of NI 81-102, only deliver to its Prime Broker portfolio assets having a market value, in the aggregate, of not more than 25% of the NAV of the Alternative Mutual Fund at the time of deposit

(xvii) A Prime Broker may not wish to act as Borrowing Agent for a Conventional Mutual Fund that wants to sell short securities having an aggregate market value of up to 20% of the Conventional Mutual Fund's NAV if the Prime Broker is only permitted to hold, as security for such transactions, portfolio assets, including the proceeds from the short sale, having an aggregate market value that is not in excess of 10% of the NAV of the Conventional Mutual Fund.

(xviii) The issue is even greater in the context of an Alternative Mutual Fund, as a Prime Broker will not act as Borrowing Agent for an Alternative Mutual Fund that wants to sell short securities having an aggregate market value of up to 50% of the Alternative Mutual Fund's NAV if the Prime Broker is only permitted to hold, as security for such transactions, portfolio

assets, including the proceeds from the short sale, having an aggregate market value that is not in excess of 25% of the NAV of the Alternative Mutual Fund.

(xix) The prime brokerage operational and pricing models in the context of short selling are premised on the ability of the Prime Broker to retain, as collateral for the obligations of the applicable Fund, the proceeds from the short sales, whether such proceeds are cash or are used by the Fund to purchase other portfolio assets. These models are also based on the ability of the Prime Broker to hold additional assets of the Fund as collateral for those obligations.

(xx) Given the collateral requirements that Prime Brokers impose on their customers that engage in the short sale of securities, if the 10% and 25% of NAV limitations set out in section 6.8.1 of NI 81-102 apply, then the Funds will need to retain two, or more, Prime Brokers in order to sell short securities to the extent permitted under section 2.6.1 of NI 81-102. This would result in inefficiencies for the Funds and would increase their costs of operations.

(xxi) The requirement for additional Prime Brokers increases costs for the Fund, which will reduce returns and negatively impact investors.

(xxii) The Filer submits that it would not be prejudicial to the public interest to maintain the Custodial Relief.

4. Decision

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

The decision of the principal regulator under the Legislation is that:

A. The Revocation is granted; and

B. The Exemptions Sought are granted provided that:

(a) each short sale will be made consistent with the Fund's investment objectives, Interest Rate Risk Hedging Strategy and other investment strategies;

(b) the Conventional Mutual Fund Short Sale Single Issuer Relief, the Alternative Mutual Fund Short Sale Relief and the Cash Cover Relief will apply (i) only to short sales of Government Securities; and (ii) only as part of the Fund's Interest Rate Risk Hedging Strategy;

(c) In respect of the Conventional Mutual Fund Short Sale Single Issuer Relief and the Cash Cover Relief:

(i) the security interest provided by a Fund over any of its assets that is required to effect a short sale transaction is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;

(ii) each short sale made by a Fund will otherwise comply with the mutual fund short sale requirements in section 2.6.1 of NI 81-102;

(iii) the Filer monitors the short positions of the Funds at least as frequently as daily;

(iv) the Funds maintain appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls and proper books and records;

(v) the Filer and the Funds keep proper books and records of short sales and all assets of the Funds deposited with Borrowing Agents as security; and

(vi) the prospectus of the Funds will disclose the material terms and conditions of the Conventional Mutual Fund Short Sale Single Issuer Relief and the Cash Cover Relief including its restricted application to short sales of Government Securities;

(d) In respect of the Alternative Mutual Fund Short Sale Relief:

(i) the only securities which an Alternative Mutual Fund will sell short in an amount that exceeds 50% of the Alternative Mutual Fund's NAV will be Government Securities (as such term is defined above);

(ii) each short sale by an Alternative Mutual Fund will otherwise comply with all of the short sale requirements applicable to alternative mutual funds in sections 2.6.1 and 2.6.2 of NI 81-102;

(iii) an Alternative Mutual Fund's aggregate exposure to short selling, cash borrowing and specified derivatives used for purposes other than hedging will not exceed the Aggregate Exposure Limit; and

(iv) each Alternative Mutual Fund's Prospectus will disclose that the Alternative Mutual Fund is able to short sell "Government Securities" (as defined above) in an amount up to 300% of the Alternative Mutual Fund's NAV, including the material terms of this decision; and

(e) In respect of the Custodial Relief, the Funds otherwise comply with subsections 6.8.1(2) and (3) of NI 81-102.

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

Application File #: 2024/0430
SEDAR+ File #: 6158292

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B.4
Cease Trading Orders

[Editor's Note: this report covers the date range of December 19, 2024 to January 7, 2025 inclusive]

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
Organto Foods Inc.	July 16, 2024	January 2, 2025

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

Company Name	Date of Order	Date of Lapse
Organto Foods Inc.	May 8, 2024	January 6, 2025

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	January 6, 2025
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

[Editor's Note: this report covers the date range of December 19, 2024 to January 7, 2025 inclusive]

INVESTMENT FUNDS

Issuer Name:
Canada Life Global Multi-Asset Defensive+ Fund
Canada Life Global Opportunities+ Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 18, 2024
NP 11-202 Preliminary Receipt dated Dec 18, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06220790

Issuer Name:
Probity Mining 2025 Short Duration Flow-Through Limited Partnership - National Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Dec 20, 2024
NP 11-202 Preliminary Receipt dated Dec 20, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06222082

Issuer Name:
JPMorgan US Growth Active ETF
JPMorgan US Value Active ETF
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Dec 19, 2024
NP 11-202 Preliminary Receipt dated Dec 20, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06221613

Issuer Name:
Harvest Coinbase High Income Shares ETF
Harvest Diversified High Income Shares ETF
Harvest Meta Enhanced High Income Shares ETF
Harvest MicroStrategy High Income Shares ETF
Harvest Palantir Enhanced High Income Shares ETF
Harvest Tesla Enhanced High Income Shares ETF
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Dec 9, 2024
NP 11-202 Preliminary Receipt dated Dec 10, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06217881

Issuer Name:
1832 AM Tactical Asset Allocation PLUS Pool
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 20, 2024
NP 11-202 Preliminary Receipt dated Dec 20, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06222102

Issuer Name:
Probity Mining 2025 Short Duration Flow-Through Limited Partnership - Quebec Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Dec 20, 2024
NP 11-202 Preliminary Receipt dated Dec 20, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06222124

Issuer Name:
Vanguard All-Equity ETF Portfolio Fund
Vanguard Balanced ETF Portfolio Fund
Vanguard Conservative ETF Portfolio Fund
Vanguard Growth ETF Portfolio Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 20, 2024
NP 11-202 Preliminary Receipt dated Dec 24, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06223264

Issuer Name:
Canoe EIT Income Fund
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus (NI 44-102) dated Dec 17, 2024
NP 11-202 Final Receipt dated Dec 17, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06217873

Issuer Name:
Canada Life Global Multi-Asset Defensive+ Fund
Canada Life Global Opportunities+ Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Dec 24, 2024
NP 11-202 Preliminary Receipt dated Dec 18, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06220790

Issuer Name:
Probity Mining 2025 Short Duration Flow-Through Limited Partnership - British Columbia Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Dec 20, 2024
NP 11-202 Preliminary Receipt dated Dec 20, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06222108

Issuer Name:
Brompton Energy Split Corp. (formerly named, Brompton Oil Split Corp.)
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated Dec 18, 2024
NP 11-202 Final Receipt dated Dec 18, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06218814

Issuer Name:
WaveFront All-Weather Alternative Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jan 1, 2025
NP 11-202 Final Receipt dated Jan 3, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06214034

Issuer Name:
Encasa Canadian Bond Fund
Encasa Canadian Short-Term Bond Fund
Encasa Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Dec 12, 2024
NP 11-202 Final Receipt dated Dec 17, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06201270

Issuer Name:
Ninepoint 2025 Flow-Through Limited Partnership
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Dec 20, 2024
NP 11-202 Preliminary Receipt dated Dec 20, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06222070

Issuer Name:
iShares Bitcoin ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 3, 2025
NP 11-202 Final Receipt dated Jan 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06203158

Issuer Name:
NewGen Credit Strategies Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Dec 19, 2024
NP 11-202 Final Receipt dated Dec 20, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06205843

Issuer Name:
Fidelity Long-Term Leaders Fund
Fidelity Long-Term Leaders Currency Neutral Fund
Fidelity Women's Leadership Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated December 19, 2024
NP 11-202 Final Receipt dated Dec 18, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06191308, 06191402

Issuer Name:
Marquest Mutual Funds Inc. - Explorer Series Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Dec 18, 2024
NP 11-202 Final Receipt dated Dec 19, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06207678

Issuer Name:
Friedberg Asset Allocation Fund
Friedberg Global-Macro Hedge Fund
Principal Regulator – Ontario
Type and Date:
Amended and Restated to Final Simplified Prospectus dated December 13, 2024
NP 11-202 Final Receipt dated Dec 17, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06131488

Issuer Name:
Arrow EC Equity Advantage Alternative Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated January 1, 2025
NP 11-202 Final Receipt dated Jan 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06042872

Issuer Name:
Waratah Core Fund (formerly, Waratah Alternative ESG Fund)
Principal Regulator – Ontario
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated January 1, 2025
NP 11-202 Final Receipt dated Jan 6, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06133635

Issuer Name:
Desjardins Dividend Growth Fund
Desjardins Global Small Cap Equity Fund
Wise Conservative ETF Portfolio
Wise Moderate ETF Portfolio (formerly Wise Balanced ETF Portfolio)
Wise Balanced 50 ETF Portfolio
Wise Growth ETF Portfolio
Wise Aggressive ETF Portfolio (formerly Wise Maximum Growth ETF Portfolio)
Wise 100 % Equity ETF Portfolio
Principal Regulator – Quebec
Type and Date:
Amendment No. 4 to Final Simplified Prospectus dated December 3, 2024
NP 11-202 Final Receipt dated Dec 19, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06076697, 06076683, 06076709

Issuer Name:
Fidelity Disruptive™ Automation Class
Fidelity Disruptors® Class
Principal Regulator – Ontario
Type and Date:
Amendment 1 to Amended and Restated Simplified Prospectus dated December 19, 2024
NP 11-202 Final Receipt dated Dec 24, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06098017

Issuer Name:
Longevity Pension Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated December 20, 2024
NP 11-202 Final Receipt dated Dec 23, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06119771

Issuer Name:
Counsel Retirement Accumulation Portfolio
Counsel Retirement Foundation Portfolio
Counsel Retirement Preservation Portfolio
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated December 19, 2024
NP 11-202 Final Receipt dated Dec 19, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06182812

Issuer Name:
Auspice One Fund Trust
Principal Regulator – Alberta
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated December 19, 2024
NP 11-202 Final Receipt dated Dec 24, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06078186

Issuer Name:
Viewpoint Diversified Commodities Trust
Viewpoint Enhanced Global Multi-Asset Trust
Viewpoint Global Multi-Asset Trust
Principal Regulator – Alberta
Type and Date:
Amendment No. 1 to Final Simplified Prospectus dated December 16, 2024
NP 11-202 Final Receipt dated Dec 18, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06158403

Issuer Name:
Purpose Marijuana Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated December 27, 2024
NP 11-202 Final Receipt dated Dec 30, 2024
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing # 06096884

_____

NON-INVESTMENT FUNDS

Issuer Name:
Global Uranium Corp.
Principal Regulator – Alberta
Type and Date:
Amendment to Preliminary Shelf Prospectus dated January 2, 2025
NP 11-202 Amendment Receipt dated January 3, 2025
Offering Price and Description:
$25,000,000 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities
Filing # 06190779

Issuer Name:
Vitalhub Corp.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated January 2, 2025
NP 11-202 Final Receipt dated January 3, 2025
Offering Price and Description:
$30,000,070
2,752,300 Common Shares
$10.90 per Common Share
Filing # 06221497

Issuer Name:
Adonis Minerals Corp.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated December 24, 2024
NP 11-202 Final Receipt dated December 31, 2024
Offering Price and Description:
3,000,000 Common Shares
$0.10 per Common Share
$300,000
Filing # 06204857

Issuer Name:
Dynacor Group Inc.
Principal Regulator – Québec
Type and Date:
Preliminary Shelf Prospectus dated December 23, 2024
NP 11-202 Preliminary Receipt dated December 27, 2024
Offering Price and Description:
$100,000,000 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06223504

Issuer Name:
Plazacorp Willowgrove Residential Real Estate Development Trust
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated December 20, 2024
NP 11-202 Final Receipt dated December 23, 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
$10.00 per Class A Unit
$10.00 per Class F Unit
Filing # 06199751

Issuer Name:
Vitalhub Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 20, 2024
NP 11-202 Preliminary Receipt dated December 20, 2024
Offering Price and Description:
$30,000,070
2,752,300 Common Shares
$10.90 per Common Share
Filing # 06221497

Issuer Name:
CI Financial Corp.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated December 19, 2024
NP 11-202 Final Receipt dated December 19, 2024
Offering Price and Description:
Debt Securities (unsecured)
Filing # 06221575

Issuer Name:
Arizona Metals Corp.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated December 18, 2024
NP 11-202 Final Receipt dated December 19, 2024
Offering Price and Description:
$25,000,001
$1.70 per Common Share
Filing # 06217554

Issuer Name:
WonderFi Technologies Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated December 19, 2024
NP 11-202 Preliminary Receipt dated December 19, 2024
Offering Price and Description:
$100,000,000 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06221412

Issuer Name:
Stantec Inc.
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated December 19, 2024
NP 11-202 Final Receipt dated December 19, 2024
Offering Price and Description:
Common Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06221467

Issuer Name:
Light AI Inc., formerly, Mojave Brands Inc.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated December 17, 2024
NP 11-202 Final Receipt dated December 17, 2024
Offering Price and Description:
Minimum Offering: $10,000,000 or 18,181,818 Units
Maximum Offering: $16,086,400 or 29,248,000 Units
$0.55 per Unit
Filing # 06197312

Issuer Name:
Fraser Big Sky Capital Corp.
Principal Regulator – British Columbia
Type and Date:
Final CPC Prospectus dated December 13, 2024
NP 11-202 Final Receipt dated December 18, 2024
Offering Price and Description:
Minimum Offering: $250,000 or 2,500,000 Common Shares
Maximum Offering: $450,000 or 4,500,000 Common Shares
Price: $0.10 per Common Share
Filing # 06189606

Issuer Name:
Rupert Resources Ltd.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated December 16, 2024
NP 11-202 Final Receipt dated December 16, 2024
Offering Price and Description:
$80,000,000 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities
Filing # 06214155

Issuer Name:
Marshall Technologies Corp.
Principal Regulator – Alberta
Type and Date:
Preliminary Long Form Prospectus dated December 16, 2024
NP 11-202 Preliminary Receipt dated December 17, 2024
Offering Price and Description:
Minimum Offering: $2,500,000 or 5,000,000 Units
Maximum Offering: $4,000,000 or 8,000,000 Units
$0.50 per Unit
Filing # 06220316

Issuer Name:
Aureum Exploration Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated December 13, 2024
NP 11-202 Preliminary Receipt dated December 16, 2024
Offering Price and Description:
Minimum $360,000
3,600,000 Common Shares
$0.10 per Common Share
Filing # 06219734

Issuer Name:
dentalcorp Holdings Ltd.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated December 16, 2024
NP 11-202 Final Receipt dated December 16, 2024
Offering Price and Description:
Subordinate Voting Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Share Purchase Contracts, Units
Filing # 06220022

Issuer Name:
Bank of Montreal
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated December 13, 2024
NP 11-202 Final Receipt dated December 16, 2024
Offering Price and Description:
Debt Securities (subordinated indebtedness), Common Shares, Class A Preferred Shares, Class B Preferred Shares, Subscription Receipts, Instalment Receipts
Filing # 06219600

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B.10
Registrations

[Editor's Note: this report covers the date range of December 19, 2024 to January 7, 2025]

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Suspended (Pending Surrender)	Oak Bay Capital Incorporated	Portfolio Manager	December 17, 2024
New Registration	Tikehau Capital Canada Inc.	Exempt Market Dealer	December 17, 2024
Voluntary Surrender	Cassels Investment Management Inc.	Portfolio Manager	December 17, 2024
Suspended (Pending Surrender)	Covenant Securities Corp.	Restricted Dealer	December 18, 2024
New Registration	NDAX Canada Inc.	Investment Dealer	December 19, 2024
Voluntary Surrender	Acker Finley Asset Management Inc.	Portfolio Manager and Investment Fund Manager	December 19, 2024
Change in Registration Category	Acker Finley Inc.	From: Investment Dealer To: Investment Dealer and Investment Fund Manager	December 19, 2024
Suspended (Pending Surrender)	Power Sustainable Investment Management Inc.	Portfolio Manager, Exempt Market Dealer, Investment Fund Manager and Commodity Trading Manager	December 20, 2024
New Registration	Stygian Pearl Capital Management Inc.	Portfolio Manager	December 23, 2024
Voluntary Surrender	NEO-CRITERION CAPITAL SINGAPORE PTE. LTD.	Portfolio Manager	December 17, 2024
Suspended (Pending Surrender)	STONE ASSET MANAGEMENT LIMITED	Investment Fund Manager, Portfolio Manager, and Restricted Dealer	December 20, 2024
Suspended (Pending Surrender)	Doheny Securities Limited	Mutual Fund Dealer	December 27, 2024
Suspended (Pending Surrender)	VULCAN ASSET MANAGEMENT CORPORATION	Portfolio Manager	December 27, 2024
Suspended (Pending Surrender)	VERITION ADVISORS (CANADA) ULC	Portfolio Manager	December 27, 2024
Suspended (Pending Surrender)	360 ONE CAPITAL PTE. LTD.	Portfolio Manager	December 30, 2024
Voluntary Surrender	NORTHPOINT INVESTMENT PARTNERS LIMITED	Investment Fund Manager, Portfolio Manager	December 31, 2024

Type	Company	Category of Registration	Effective Date
Suspended (Pending Surrender)	Bitbuy Technologies Inc.	Restricted Dealer	December 31, 2024
New Registration	Trunity Partners Ltd.	Portfolio Manager	January 2, 2025
Amalgamation	Martin, Lucas & Seagram Ltd. and Beutel, Goodman & Company Ltd. To Form: Beutel, Goodman & Company Ltd.	Investment Fund Manager, Mutual Fund Dealer, Portfolio Manager and Commodity Trading Manager	January 1, 2025
Voluntary Surrender	STORMONT PARTNERS SECURITIES INC.	Exempt Market Dealer	December 24, 2024
Voluntary Surrender	BLUEWATER TECHNOLOGIES INC.	Commodity Trading Manager	December 19, 2024
Consent to Suspension (Pending Surrender)	SUMMERWOOD CAPITAL CORP.	Portfolio Manager, Investment Fund Manager, Exempt Market Dealer, Commodity Trading Manager and Commodity Trading Counsel	December 20, 2024
Consent to Suspension (Pending Surrender)	HORIZONONE ASSET MANAGEMENT INC.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	December 20, 2024

B.11
CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.1 CIRO

B.11.1.1 Canadian Investment Regulatory Organization (CIRO) – Proposed Amendments Respecting Mandatory Close-Out Requirements – Request for Comment

REQUEST FOR COMMENT

CANADIAN INVESTMENT REGULATORY ORGANIZATION (CIRO)

PROPOSED AMENDMENTS RESPECTING MANDATORY CLOSE-OUT REQUIREMENTS

CIRO is publishing for public comment proposed amendments to the Universal Market Integrity Rules (**UMIR**) and Investment Dealer Partially Consolidated Rules respecting mandatory close-out requirements (**Proposed Amendments**).

The Proposed Amendments would require applicable Dealer Members that are Investment Dealers to:

- close out a fail-to-deliver position in the event of a settlement failure in a listed security at the recognized clearing agency by specified timelines by buying or borrowing shares,
- pre-borrow the affected security where there has been a failure to close out by specified timelines,
- provide certain reporting and notifications in connection with mandatory close-out requirements, and
- have a reasonable expectation to settle on settlement date for Investment Dealer Members that are not Participants under UMIR.

A copy of the CIRO Bulletin, including the text of the Proposed Amendments, is also available on the Commission's website at www.osc.ca. The comment period ends April 10, 2025.

B.11.2 Marketplaces

B.11.2.1 Canadian Securities Exchange – Housekeeping Amendments to CSE Listing Policy & Procedures – Notice of Housekeeping Rule Amendments

CANADIAN SECURITIES EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS

HOUSEKEEPING AMENDMENTS TO CSE LISTING POLICY & PROCEDURES

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto attached as Appendices to the Exchange's recognition order (the "Protocol"), CNSX Markets Inc., operator of the Canadian Securities Exchange ("CSE" or "Exchange") has adopted housekeeping rule changes to CSE Listing Policies (the "Amendments"). The Amendments have been classified as Housekeeping Rules and as such, have not been published for comment. Staff of the British Columbia Securities Commission ("BCSC") and the Ontario Securities Commission ("OSC") have not disagreed with this classification.

DESCRIPTION OF THE AMENDMENTS AND RATIONALE

The Amendments are necessary to correct typographical errors and clarify previously approved and implemented changes.

In particular, amendments are made to the following CSE Listing Policies:

- 4.5 *Requirements for Issuers with Principal Business Operations or Operating Assets in Emerging Markets;*
- *5.1 Introduction;*
- 5.3 *Consultation with the Market Regulator;*
- 6.2 *Private Placements*;
- 6.5 *Security Based Compensation Arrangements;* and
- *6.6 Rights Offerings.*

The addition of the CIRO contact information in Policy 5 includes a weblink to the CIRO page for Listed Issuers to upload news releases through the new CIRO portal.

	CSE Policy Section	Amendment	Rationale
1.	***Policy 4 – Corporate Governance, Security Holder Approvals and Miscellaneous Provisions*** *4.5 Requirements for Issuers with Principal Business Operations or Operating Assets in Emerging Markets*	**(2) Audit Committee** In addition to the guidance in ~~section 2.7~~ 4.2(7) and requirements of NI 52-110, the majority of the members of a Listed Issuer's audit committee must be financially literate as defined in NI 52-110, subject to a minimum of three financially literate members. Disclosure in the Listing Statement must include a summary of the steps taken in selecting an external auditor and the procedures in place to ensure the audit committee can effectively evaluate the audit process.	To correct a typographical error concerning an incorrect policy reference.

2.	***Policy 5 – Timely Disclosure, Trading Halts and Posting Requirements*** *5.1 Introduction*	(1) ~~The Exchange believes that two of the~~ Two fundamental requirements for a fair and efficient capital market that fosters confidence and protects investors from unfair, improper or fraudulent practices are: (a) high quality, ~~and~~ timely and continuous disclosure by Listed Issuers, and (b) comprehensive market regulation to ensure that ~~high quality and timely continuous~~ disclosure occurs. ~~All investors must have equal and timely access to Material Information about a Listed Issuer, both to allow investors to make reasoned and informed investment decisions, and to participate in securities markets on an equal footing with other investors.~~ (2) All investors must have equal and timely access to Material Information about a Listed Issuer, both to allow investors to make reasoned and informed investment decisions, and to participate in securities markets on an equal footing with other investors. ~~Information dissemination sources such as SEDAR facilitate immediate, widespread and economical dissemination of Listed Issuer information.~~ For this reason, the Exchange requires Listed Issuers to provide an enhanced standard of disclosure to secondary market participants, irrespective of the Listed Issuer's size. The establishment of a comprehensive, publicly available disclosure base for every Listed Issuer is fundamental.	To correct grammatical errors and reformat for clarity. Also, to amend incorrect drafting which references SEDAR. The current Policy 5.6 makes it clear that news services are the only appropriate mechanism to meet timely disclosure obligations relating to material information.
3.	***Policy 5 – Timely Disclosure, Trading Halts and Posting Requirements*** *5.3 Consultation with the Market Regulator*	[…] (3) Contact Information for Market Regulator: Telephone: (604) 643-2792 https://www.ciro.ca/markets/trade-surveillance/surveillance-contacts	To add CIRO contact information and link to contact page on CIRO website.
4.	***Policy 6 – Distributions & Corporate Finance*** *6.2 Private Placements*	[…] (2) Price […] (e) An Issuer relying on a closing price established pursuant to 6.2(2) ~~(ii)~~(a) may rely on that price for a period of no longer than 45 days.	To correct a typographical error concerning an incorrect policy reference.

5.	***Policy 6 – Distributions & Corporate Finance*** *6.5 Security Based Compensation Arrangements*	(6) Upon the first Grant under a Security Based Compensation Arrangement, or following an amendment to a Security Based Compensation Arrangement, the Listed Issuer must provide the Exchange with: (a) an opinion of counsel that all the securities issuable under the Security Based Compensation Arrangement will be duly issued and be outstanding as fully paid and non-assessable shares ("Opinion"). For Grants outside of a plan, the Opinion must be provided with each Grant; ~~(i)~~ (b) a copy of the of the Security Based Compensation Arrangement; and ~~(ii)~~ (c) evidence of shareholder approval of the Security Based Compensation Arrangement and confirmation that it was adopted by the majority of shareholders other than those excluded by law, Exchange Requirements, or the Listed Issuer constating documents if the Security Based Compensation Arrangement provides for: (i) the issuance of greater than 5% of the issued and outstanding shares at the time of adoptions as applying to an individual, or (ii) 10% in total in the next 12 months~~, evidence of shareholder approval of the Security Based Compensation Arrangement and confirmation that it was adopted by the majority of shareholders other than those excluded by law, Exchange Requirements, or the Listed Issuer constating documents~~.	To correct numbering format and emphasize the existing shareholder approval requirement.
6.	***Policy 6 – Distributions & Corporate Finance*** *6.6 Rights Offerings*	(2) Prior to the Record Date, the Listed Issuer must provide the Exchange with: (a) written confirmation of the Record Date; and (b) an opinion of counsel that the securities issued in connection with the rights offering (including any underlying securities, if applicable) will be duly issued and outstanding as fully paid and non-assessable shares.	To clarify an existing administrative practice.

The CSE Listing Policy can be viewed at:

Policies | CSE - Canadian Securities Exchange (thecse.com)

A. Effective Date

The Housekeeping Amendments will be effective immediately.

B. Classification

Amendments have been classified as housekeeping and were not published for comment.

C. Questions

Questions regarding this notice may be directed to:

Chioma Nwachukwu
Legal Counsel
Email: legal@thecse.com

BLACKLINE VERSION OF CSE POLICIES

CSE Listing Policies and Procedures

Policy 4 Corporate Governance, Security Holder Approvals and Miscellaneous Provisions

[…]

4.5 Requirements for Issuers with Principal Business Operations or Operating Assets in Emerging Markets

[…]

(2) **Audit Committee**

In addition to the guidance in ~~section 2.7~~ 4.2(7) and requirements of NI 52-110, the majority of the members of a Listed Issuer's audit committee must be financially literate as defined in NI 52-110, subject to a minimum of three financially literate members. Disclosure in the Listing Statement must include a summary of the steps taken in selecting an external auditor and the procedures in place to ensure the audit committee can effectively evaluate the audit process.

[…]

Policy 5 Timely Disclosure, Trading Halts and Posting Requirements

[…]

5.1 Introduction

(1) ~~The Exchange believes that two of the~~ Two fundamental requirements for a fair and efficient capital market that fosters confidence and protects investors from unfair, improper or fraudulent practices are: (a) high quality, ~~and~~ timely and continuous disclosure by Listed Issuers, and (b) comprehensive market regulation to ensure that ~~high quality and timely continuous~~ disclosure occurs. ~~All investors must have equal and timely access to Material Information about a Listed Issuer, both to allow investors to make reasoned and informed investment decisions, and to participate in securities markets on an equal footing with other investors.~~

(2) All investors must have equal and timely access to Material Information about a Listed Issuer, both to allow investors to make reasoned and informed investment decisions, and to participate in securities markets on an equal footing with other investors.

~~Information dissemination sources such as SEDAR facilitate immediate, widespread and economical dissemination of Listed Issuer information.~~ For this reason, the Exchange requires Listed Issuers to provide an enhanced standard of disclosure to secondary market participants, irrespective of the Listed Issuer's size. The establishment of a comprehensive publicly available disclosure base for every Listed Issuer is fundamental.

[…]

5.3 Consultation with the Market Regulator

[…]

(3) Contact Information for Market Regulator: Telephone: (604) 643-2792 https://www.ciro.ca/markets/trade-surveillance/surveillance-contacts.

[…]

Policy 6 Distributions & Corporate Finance

[…]

6.2 Private Placements

[…]

(2) Price

[…]

(e) An Issuer relying on a closing price established pursuant to 6.2(2) ~~(ii)~~(a) may rely on that price for a period of no longer than 45 days.

[…]

6.5 Security Based Compensation Arrangements

(6) Upon the first Grant under a Security Based Compensation Arrangement, or following an amendment to a Security Based Compensation Arrangement, the Listed Issuer must provide the Exchange with:

(a) an opinion of counsel that all the securities issuable under the Security Based Compensation Arrangement will be duly issued and be outstanding as fully paid and non-assessable shares ("Opinion"). For Grants outside of a plan, the Opinion must be provided with each Grant;

~~(i)~~ (b) a copy of the of the Security Based Compensation Arrangement; and

~~(ii)~~ (c) evidence of shareholder approval of the Security Based Compensation Arrangement and confirmation that it was adopted by the majority of shareholders other than those excluded by law, Exchange Requirements, or the Listed Issuer constating documents if the Security Based Compensation Arrangement provides for:

(i) the issuance of greater than 5% of the issued and outstanding shares at the time of adoptions as applying to an individual, or

(ii) 10% in total in the next 12 months~~, evidence of shareholder approval of the Security Based Compensation Arrangement and confirmation that it was adopted by the majority of shareholders other than those excluded by law, Exchange Requirements, or the Listed Issuer constating documents~~.

[…]

6.6 Rights Offerings

[…]

(2) Prior to the Record Date, the Listed Issuer must provide the Exchange with:

(a) written confirmation of the Record Date; and

(b) an opinion of counsel that the securities issued in connection with the rights offering (including any underlying securities, if applicable) will be duly issued and outstanding as fully paid and non-assessable shares.

CLEAN VERSION OF CSE POLICIES

CSE Listing Policies and Procedures

Policy 4 Corporate Governance, Security Holder Approvals and Miscellaneous Provisions

[…]

4.5 Requirements for Issuers with Principal Business Operations or Operating Assets in Emerging Markets

[…]

(2) **Audit Committee**

In addition to the guidance in 4.2(7) and requirements of NI 52-110, the majority of the members of a Listed Issuer's audit committee must be financially literate as defined in NI 52-110, subject to a minimum of three financially literate members. Disclosure in the Listing Statement must include a summary of the steps taken in selecting an external auditor and the procedures in place to ensure the audit committee can effectively evaluate the audit process.

[…]

Policy 5 Timely Disclosure, Trading Halts and Posting Requirements

[…]

5.1 Introduction

(1) Two fundamental requirements for a fair and efficient capital market that fosters confidence and protects investors from unfair, improper or fraudulent practices are: (a) high quality, timely and continuous disclosure by Listed Issuers, and (b) comprehensive market regulation to ensure that disclosure occurs.

(2) All investors must have equal and timely access to Material Information about a Listed Issuer, both to allow investors to make reasoned and informed investment decisions, and to participate in securities markets on an equal footing with other investors.

For this reason, the Exchange requires Listed Issuers to provide an enhanced standard of disclosure to secondary market participants, irrespective of the Listed Issuer's size. The establishment of a comprehensive publicly available disclosure base for every Listed Issuer is fundamental.

[…]

5.3 Consultation with the Market Regulator

[…]

(3) Contact Information for Market Regulator: Telephone: (604) 643-2792 https://www.ciro.ca/markets/trade-surveillance/surveillance-contacts.

[…]

Policy 6 Distributions & Corporate Finance

[…]

6.2 Private Placements

[…]

(2) Price

[…]

(e) An Issuer relying on a closing price established pursuant to 6.2(2) (a) may rely on that price for a period of no longer than 45 days.

[…]

6.5 Security Based Compensation Arrangements

(6) Upon the first Grant under a Security Based Compensation Arrangement, or following an amendment to a Security Based Compensation Arrangement, the Listed Issuer must provide the Exchange with:

(a) an opinion of counsel that all the securities issuable under the Security Based Compensation Arrangement will be duly issued and be outstanding as fully paid and non-assessable shares ("Opinion"). For Grants outside of a plan, the Opinion must be provided with each Grant;

(b) a copy of the of the Security Based Compensation Arrangement; and

(c) evidence of shareholder approval of the Security Based Compensation Arrangement and confirmation that it was adopted by the majority of shareholders other than those excluded by law, Exchange Requirements, or the Listed Issuer constating documents if the Security Based Compensation Arrangement provides for:

(i) the issuance of greater than 5% of the issued and outstanding shares at the time of adoptions as applying to an individual, or

(ii) 10% in total in the next 12 months.

[…]

6.6 Rights Offerings

[…]

(2) Prior to the Record Date, the Listed Issuer must provide the Exchange with:

(a) written confirmation of the Record Date; and

(b) an opinion of counsel that the securities issued in connection with the rights offering (including any underlying securities, if applicable) will be duly issued and outstanding as fully paid and non-assessable shares.

B.11.3 Clearing Agencies

B.11.3.1 Canadian Derivatives Clearing Corporation (CDCC) – Proposed Amendments to the Default Manual of the CDCC Regarding the Corporation's Default Risk Capital Amount Available During a Default Management Process – Notice of Commission Approval

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

NOTICE OF COMMISSION APPROVAL

PROPOSED AMENDMENTS TO
THE DEFAULT MANUAL OF THE CDCC REGARDING
THE CORPORATION'S DEFAULT RISK CAPITAL AMOUNT AVAILABLE
DURING A DEFAULT MANAGEMENT PROCESS

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and the Canadian Derivatives Clearing Corporation (CDCC), the Commission approved on December 24, 2024 the amendments to the CDCC Default Manual to increase the amount of Default Risk Capital available during a default management process.

For further details, please see the Request for Comments Notice published on **CDCC's website** on May 24, 2024.

B.12
Other Information

B.12.1 Consents

B.12.1.1 Gold'n Futures Minerals Corp. – s. 21(b) of Ont. Reg. 398/21 of the OBCA

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Business Corporations Act (British Columbia).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 398/21, as am., s. 21(b).

IN THE MATTER OF
ONTARIO REGULATION 398/21,
AS AMENDED
(the Regulation)

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

AND

IN THE MATTER OF
GOLD'N FUTURES MINERALS CORP.

CONSENT
(subsection 21(b) of the Regulation)

UPON the application of Gold'n Futures Minerals Corp. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) requesting the consent of the Commission pursuant to subsection 21(b) of the Regulation, for the Applicant to continue into the Province of British Columbia pursuant to section 181 of the OBCA (the **Continuance**);

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is an offering corporation under the OBCA.

2. The Applicant was incorporated under the name University Avenue Financial Corporation on May 30, 1997, under the OBCA. On October 5, 2001, the Applicant changed its name to Blue Heron Financial Corporation. On May 8, 2002, the Applicant changed its name to Avenue Financial Corporation. On May 3, 2007, the Applicant changed its name to Mantis Mineral Corp. On February 24, 2014, the Applicant merged, under the OBCA, with Gondwana Energy Corp. to form Gondwana Oil Corp. On September 18, 2014, the Applicant changed its name to European Metals Corp. On July 6, 2020, the Applicant changed its name to Gold'n Futures Minerals Corp.

3. The Applicant's registered and head office is located at 409 22 Leader Lane, Toronto, Ontario, M5E 0B2, Canada.

4. The authorized share capital of the Applicant consists of an unlimited number of common shares, of which 224,500,209 common shares were issued and outstanding as of October 24, 2024.

5. The Applicant's common shares are listed and posted for trading on the Canadian Securities Exchange (the **CSE**) under the symbol "FUTR" and are also traded on the Frankfurt Stock Exchange under the symbol "G6M" and on the OTC Markets under the symbol "GFTRF".

6. The Applicant intends to apply to the Director under the OBCA pursuant to section 181 of the OBCA (the **Application for Continuance**) for authorization to continue as a corporation under the *Business Corporations Act* (British Columbia), SBC 2002, c. 57 (the **BCBCA**).

7. The principal reason for the Continuance is that the Applicant's principal place of business is located in British Columbia and management therefore believes it to be in the best interest to conduct the Applicant's affairs in accordance with the BCBCA so as to permit the Applicant to affect the relocation of its registered and head office from Ontario to British Columbia.

8. The Application for Continuance was also made for corporate and administrative reasons as the board of directors of the Applicant is of the view that the BCBCA provides the Applicant with increased flexibility with respect to capital management, resulting from more flexible rules relating to dividends, share purchases, redemptions and consolidations of capital.

9. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA.

10. The Applicant is currently a reporting issuer under the *Securities Act* (Ontario) R.S.O. 1990, c. S.5, as amended (the **OSA**), the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 (the **BCSA**) and the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the **ASA**). The Applicant will remain a reporting issuer in the provinces of Ontario, British Columbia, and Alberta, following the Continuance.

11. The Applicant is not in default of any provision of the OBCA, the OSA, the BCSA or the ASA, including any regulations or rules made thereunder.

12. The Applicant is not subject to any proceeding under the OBCA, the OSA, the BCSA or the ASA.

13. The Applicant is not in default of any provision of the rules, regulations or policies of the CSE.

14. The Applicant's registered and head office is located in Ontario and the Commission is the principal regulator of the Applicant.

15. Following the Continuance, the Applicant's registered and head office will be relocated to 408 - 55 Water Street, Vancouver, BC, V6B 1A1, Canada. The Applicant intends for the British Columbia Securities Commission to become its principal regulator.

16. The Applicant's management information circular dated July 5, 2024 (the **Circular**) which was provided to all shareholders of the Applicant in connection with its special meeting of shareholders held on August 15, 2024 (the **Meeting**) described the proposed Continuance and disclosed the reasons for it and its implications. The Applicant's shareholders had the right to dissent with respect to the proposed Continuance pursuant to section 185 of the OBCA, and the Circular disclosed particulars of this right in accordance with applicable law.

17. The Applicant's shareholders authorized the Continuance at the Meeting by a special resolution that was approved by 99.23% of the votes cast by the shareholders of the Applicant in person or represented by proxy. No shareholders exercised dissent rights pursuant to section 185 of the OBCA.

18. Subsection 21(b) of the Regulation requires the Application for Continuance to be accompanied by a consent from the Commission.

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

THE COMMISSION CONSENTS to the Continuance of the Applicant under the BCBCA.

DATED at Toronto on this 18th day of November, 2024.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0591

B.12.1.2 Dentalcorp Holdings Ltd.

Headnote

Director's consent, pursuant to subsection 58(5) of the Securities Act (Ontario) that a promoter not sign a promoter certificate in the well-known seasoned issuer's short form base shelf prospectus.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 58(1), 58(5).

November 14, 2024

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

AND

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

AND

IN THE MATTER OF
DENTALCORP HOLDINGS LTD.
(the Filer)

CONSENT

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer, pursuant to subsection 58(5) of the *Securities Act* (Ontario) (the **Act**), for the consent of the Director to Graham Rosenberg (**Mr. Rosenberg**) not signing a certificate of a promoter (a **Promoter Certificate**), as required under subsection 58(1) of the Act, section 5.11 of National Instrument 41-101 *General Prospectus Requirements* and the corresponding requirement in section 5.5 of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) (the **Consent**), in connection with the filing by the Filer of a short form base shelf prospectus (the **Shelf Prospectus**) pursuant to Ontario Instrument 44-501 *Exemption from Certain Prospectus Requirements for Well-known Seasoned Issuers (Interim Class Order)*, as extended by OSC Rule 44-502 *Extension to Ontario Instrument 44-501 Certain Prospectus Requirements for Well-Known Seasoned Issuers* (**WKSI Blanket Order**), any prospectus supplements thereto and any amendments thereto, as applicable (collectively, the **Prospectuses**).

Furthermore, the principal regulator in the Jurisdiction has received a request from the Filer for a decision that the Application, any supporting materials and this decision document in connection with the subject matter herein (**Confidential Material**) be kept confidential and not be made public until the Filer publicly files the Shelf Prospectus.

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

(i) the Ontario Securities Commission is the principal regulator (the **Principal Regulator**) for this Application; and

(ii) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in each of British Columbia, Alberta, Québec, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut.

Representations

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

1. The Filer is a corporation incorporated under the *Business Corporations Act* (British Columbia) with its head office located at 181 Bay Street, Suite 2600, Toronto, Ontario, Canada, M5J 2T3 and registered and records office located at 1133 Melville Street, Suite 3500, The Stack, Vancouver, British Columbia, Canada, V6E 4E5.

2. As of the date hereof, the Filer is a reporting issuer in each of the provinces and territories of Canada, and is not in default of its obligations under the securities laws of any such jurisdictions.

3. The authorized share capital of the Filer consists of (i) an unlimited number of subordinate voting shares, (ii) an unlimited number of multiple voting shares and (iii) an unlimited number of preferred shares, issuable in series. As of November 12, 2024, 181,724,196 subordinate voting shares and 9,183,822 multiple voting shares were issued and outstanding.

4. The Filer's subordinate voting shares are listed on the Toronto Stock Exchange under the symbol "DNTL".

5. The Filer is a consumer healthcare service company and the largest provider of dental services in Canada. The Filer is a mature, well-known and seasoned business and has carried on its business for over 12 years, has acquired over 550 dental practices, has a large number of dentists, auxiliary dental professionals and employees and has significant revenues (in excess of $1.2503 billion in fiscal 2023).

6. Mr. Rosenberg founded the Filer in 2011 and is currently the Chief Executive Officer and a director of the Filer. As of November 12, 2024, Mr. Rosenberg held an approximate 4.8% economic interest in the Filer (representing an approximate 33.6% voting interest).

7. The Filer is eligible to file the Shelf Prospectus pursuant to the terms and conditions of the WKSI Blanket Order.

8. Each applicable Prospectus will be filed in accordance with and comply with the applicable terms and conditions of the WKSI Blanket Order.

9. Staff of the Principal Regulator has notified the Filer that it is currently of the view that Mr. Rosenberg remains a promoter of the Filer within the meaning of applicable securities laws in Canada. Neither the Filer nor Mr. Rosenberg agree or admit that Mr. Rosenberg is a promoter of the Filer.

10. The Filer will include the issuer certificate prescribed by method 1 (as defined in NI 44-102) in its Shelf Prospectus and Mr. Rosenberg will sign the issuer certificate for each of the applicable Prospectuses in his capacity as Chief Executive Officer of the Filer or as a director of the Filer.

Decision

The Director is satisfied that to do so would not be prejudicial to the public interest and provides this Consent, provided that:

(i) the Filer includes disclosure as described in representation 9 above and of the Consent in the Shelf Prospectus;

(ii) representation 7 is true and correct as of the date of the filing of the Shelf Prospectus;

(iii) representations 8 and 10 are true and correct as of the date of each filing of an applicable Prospectus; and

(iv) the Shelf Prospectus is filed on SEDAR+ within 90 days from the date of this Consent.

The further decision of the Director is that the application of the Filer, any supporting materials and this decision document in connection with the subject matter herein be kept confidential and not be made public until the earlier of the date: (i) on which the Filer advises the decision maker that there is no need for the Confidential Material to remain confidential; (ii) on which the Filer receives a receipt in respect of the Shelf Prospectus; and (iii) that is 90 days from the date of this decision.

DATED this 14th day of November, 2024.

"Leslie Milroy"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0492

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