The Ontario Securities Commission

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Table of Contents

A. Capital Markets Tribunal

A.2
Other Notices

A.2.1 Troy Richard James Hogg et al.

NOTICE OF CORRECTION

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.

(2024), 47 OSCB 5075. Please be advised that the following typographical errors have been corrected in the Reasons and Decision in the above matter:

- on page 6 at footnote 4, "(***First Global***)" is replaced with "(***First Global Motion***)";
- on page 6 at footnote 5, "*First Global* at para 13" is replaced with "*First Global Motion* at para 13";
- on page 32 at footnote 39, "*First Global* at para 346" is replaced with "*First Global Data Ltd (Re)*, 2022 ONCMT 25 (***First Global***) at para 346"; and
- on page 34 at footnote 54, "*First Global* at para 820" is replaced with "*First Global* at para 420".

A.2.2 Thomas John Finch

FOR IMMEDIATE RELEASE
January 10, 2025

THOMAS JOHN FINCH,
File No. 2023-29

TORONTO – The Tribunal issued an Order in the above-named matter.

A copy of the Order dated January 10, 2025 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.3
Orders

A.3.1 Thomas John Finch

IN THE MATTER OF
THOMAS JOHN FINCH

File No. 2023-29

Adjudicators: Jane Waechter (chair of the panel)
Andrea Burke

January 10, 2025

ORDER

WHEREAS on January 10, 2025, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for the Ontario Securities Commission and for Thomas John Finch;

IT IS ORDERED THAT by 4:30 p.m. on February 12, 2025, the Commission shall:

1. provide to the Registrar an electronic version of its book of documents containing the documents it intends to rely on or enter as evidence at the merits hearing; and

2. file the affidavit of its witness Yu Chen.

“Jane Waechter”

“Andrea Burke”

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A.4
Reasons and Decisions

A.4.1 Troy Richard James Hogg et al. – s. 127(1)

Citation: *Hogg (Re)*, 2024 ONCMT 15
Date: 2024-06-14
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) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Andrea Burke (chair of the panel) Sandra Blake M. Cecilia Williams
Hearing:	November 21, 22, 30, 2023 and February 7, 2024; final written submissions received February 23, 2024
Appearances:	Erin Hoult — For the Ontario Securities Commission Alvin Qian
	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] This enforcement case is about the sale and promotion of crypto assets by unregistered parties, without a prospectus. Significant funds were raised from investors based on broadly circulated promotional materials allegedly containing false and misleading statements.

[2] The Ontario Securities Commission makes allegations against six respondents:

a. Troy Richard James Hogg, the only individual respondent, and the alleged directing mind of the five corporate respondents;

b. Cryptobontix Inc., Arbitrade Exchange Inc. and Arbitrade Ltd. (**Arbitrade Bermuda**), all three of which allegedly promoted and sold crypto tokens issued by Cryptobontix, under Hogg's direction; and

c. T.J.L. Property Management Inc. (**TJL**) and Gables Holdings Inc., two other companies of Hoggs', that were not directly involved in the promotion and sale of the crypto tokens, but that allegedly benefited from those activities.

[3] The Commission alleges that between May 2017 and June 2019 (the **Material Time**), Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda promoted and sold Unity Ingot tokens and, later, Dignity tokens (together, the **Tokens**), to investors around the world. They raised approximately US $51 million by selling the Tokens.

[4] The Commission alleges that the Tokens are securities, something that must be established for there to be any breaches of the *Securities Act* (the ***Act***)[1].

[1] RSO 1990, c S.5

[5] The Commission further alleges that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda each:

a. perpetrated a fraud on investors by distributing promotional materials which contained false and misleading statements regarding the acquisition of gold bullion to support the value of the Tokens and regarding the audit of such gold bullion, contrary to s. 126.1(1)(b) of the *Act*;

b. engaged in the business of trading in securities without registration, contrary to s. 25(1) of the *Act*; and

c. traded in securities where the trades were a distribution of securities, without a prospectus, contrary to s. 53(1) of the *Act*.

[6] As well, the Commission alleges that all the respondents perpetrated a fraud on investors, contrary to s. 126.1(1)(b) of the *Act*, by misappropriating investor funds, contrary to representations to investors that the funds would be used to purchase cryptocurrency mining equipment to increase the value of the Tokens.

[7] Finally, the Commission alleges that, in addition to Hogg directly breaching these provisions of the *Act*, Hogg as a director or officer of each of the corporate respondents authorized, permitted or acquiesced in their non-compliance with Ontario securities law and should be deemed liable under s. 129.2 of the *Act*.

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

a. the sale of Tokens, considering all the surrounding circumstances of the sale, including the related representations made to prospective purchasers, are "investment contracts" and therefore securities under the *Act*;

b. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda acted fraudulently by falsely representing to investors that the Tokens were backed by gold or that gold was acquired and confirmed through an audit;

c. the respondents acted fraudulently by misappropriating funds raised from the sale of Tokens for purposes other than those represented to investors;

d. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda engaged in the business of trading in securities without registration and without an exemption from registration; and

e. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda distributed the Tokens without complying with the prospectus requirements.

[9] We also find that Hogg, as a director and officer of Arbitrade Bermuda authorized, permitted or acquiesced in all of Arbitrade Bermuda's breaches of Ontario securities law. As a result, Hogg is deemed under s. 129.2 of the *Act* to also have not complied with Ontario securities law in respect of each of Arbitrade Bermuda's breaches. The Commission asked us to make similar findings against Hogg in respect of the other corporate respondents' breaches of the *Act*. We decline to do so because we attributed these other corporate respondents' breaches of the *Act* to Hogg when finding Hogg's direct breaches of the *Act.*

[10] Before moving to outline the background facts, we first address two preliminary issues:

a. our denial of Hogg's and various corporate respondents' request for an adjournment of the merits hearing; and

b. our decision to proceed with the merits hearing despite the respondents' decision not to participate.

2. PRELIMINARY ISSUES

2.1 The Adjournment Motion

2.1.1 Background

[11] The dates for the merits hearing were set in April 2023. The hearing was scheduled for 28 days beginning on November 21, 2023.

[12] On October 20, 2023, we approved a request to withdraw brought by counsel for Hogg, Arbitrade Exchange, TJL and Gables. A week later, Hogg filed notice that he intended to act on his own behalf and on behalf of Arbitrade Exchange, TJL and Gables (but not Cryptobontix and Arbitrade Bermuda).

[13] On October 30, 2023, Hogg, Arbitrade Exchange, TJL and Gables (together, the **Moving Respondents**) moved to adjourn the start of the merits hearing (the **Adjournment Motion**). We heard the motion on November 10, 2023. We were not satisfied that there were exceptional circumstances requiring an adjournment of the merits hearing.

2.1.2 Law on adjournments

[14] Rule 29(1) of the Tribunal's *Rules of Procedure and Forms* (the ***Rules*** that were in place at the time of the Adjournment Motion) provides that every merits hearing in an enforcement proceeding shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment".

[15] That standard is difficult to meet. It reflects the important objective, set out in r. 1 of the *Rules*, that Tribunal proceedings be "conducted in a just, expeditious and cost-effective manner".

[16] That objective must, however, be balanced against the parties' ability to participate meaningfully in hearings and present their case. A determination about whether to grant an adjournment is necessarily dependent on the circumstances of the case.[2]

2.1.3 Analysis

2.1.3.a Introduction

[17] The Moving Respondents requested the adjournment because:

a. their counsel recently withdrew, and they were trying to raise funds to retain their former counsel again or to retain new counsel, who would need time to prepare;

b. Hogg was unable to access files that the Commission had disclosed;

c. the process to compel foreign witnesses on the Moving Respondents' witness list to give evidence in this proceeding was still underway and would take another two to two-and-a-half months; and

d. a civil proceeding by the US Securities and Exchange Commission against some of the same respondents (**SEC proceeding**) was scheduled to be heard in April 2024, and evidence from that hearing would help the Moving Respondents defend this proceeding.

[18] We needed to decide whether any of these grounds, considered alone or together, constituted exceptional circumstances requiring an adjournment of the merits hearing. We considered the following factors:

a. whether the principal delay was caused by unforeseen circumstances;

b. the Moving Respondents' conduct, including whether they tried to delay or manipulate the process;

c. the seriousness of the potential consequences to the Moving Respondents;

d. whether the Moving Respondents needed more time to respond;

e. the Tribunal's interest in making decisions on a full factual record; and

f. any prejudice because of an adjournment.[3]

[19] The allegations against the Moving Respondents, and the potential consequences of this proceeding, are serious. The Commission submitted that while this factor may weigh in favour of an adjournment, there was no evidence that but for an adjournment, these respondents would not receive a fair hearing.

2.1.3.b Withdrawal of counsel

[20] The Commission submitted that counsel's inability to continue to represent the respondents was clearly foreseeable. In their motion asking to be removed from the record, counsel had relied on the non-payment of their accounts dating back to January 2022. The motion materials also included correspondence from counsel advising Hogg that because of non-payment of fees, they were only working on issues related to compelling the attendance of foreign witnesses, and not on other matters related to the merits hearing. The Commission submitted that the Moving Respondents had provided no evidence to prove that they were retaining new counsel or even whether they had the funds to retain new counsel. The Commission further submitted that withdrawal of counsel alone does not meet the exceptional circumstances test.

[21] Because the Moving Respondents were without counsel, Hogg submitted that he needed more time to prepare for the merits hearing. He based this submission on several scenarios.

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2 *Money Gate Mortgage Investment Corporation (Re),* 2019 ONSEC 40 (***Money Gate***) at para 54

3 *Pro-Financial Asset Management (Re),* 2018 ONSEC 18 (***Pro-Financial***) at para 29

[22] Hogg submitted that he was trying to secure funds to pay former counsel but that this might take several weeks, and former counsel might become unavailable because they might take on new cases. Hogg advised that if he was self-represented, he would need time to prepare for the merits hearing because he did not understand the Tribunal's processes and the case is complex. Hogg said that he had spoken to several potential new lawyers, all of whom would need additional time (approximately six months) to prepare. Hogg said it was unclear whether and when he might be able to raise funds through family and friends to pay counsel.

[23] This situation is like that in *First Global Data (Re)*.[4] In that case, a respondent lost his counsel and became self-represented. He argued that he was ill-equipped to represent himself, he was close to retaining counsel, and his health issues further delayed his preparation. The Tribunal denied the adjournment request, stating that the right to counsel is not absolute. Respondents in Tribunal proceedings often represent themselves and there are many protections in place to ensure they get a fair hearing.[5]

[24] We decided that in this case, counsel's recent withdrawal did not amount to exceptional circumstances. The withdrawal was reasonably foreseeable, the Moving Respondents were uncertain whether and when they might be able to raise sufficient funds to retain counsel, and they would receive a fair hearing even without counsel.

2.1.3.c Access to disclosure files

[25] Hogg submitted that he had been unable to open thousands of files in the Commission's electronic disclosure because of broken links. Despite getting advice from his lawyer and from the Commission, he had been unable to resolve the issue. He submitted that he had developed a "work around" but that it was a time-consuming process. He therefore needed more time to prepare for the merits hearing.

[26] We did not find this submission compelling. The Moving Respondents and their counsel received the Commission's disclosure on October 27, 2022, more than one year before the scheduled commencement of the merits hearing. Other than an inquiry in November 2022, neither the Moving Respondents nor their counsel complained about the Commission's disclosure or brought a disclosure-related motion. Hogg raised his issue with the Commission for the first time on October 20, 2023, and the Commission promptly helped him.

[27] We were not satisfied that there were any technical issues with the Commission's disclosure that might require an adjournment. Parties do bear some responsibility to be able to access electronic records. At the very least, respondents must promptly raise any issues regarding access to electronic records they receive. The Moving Respondents did not do that.

2.1.3.d Foreign witnesses

[28] In March 2023, the Moving Respondents said they intended to call multiple foreign witnesses at the merits hearing. The hearing dates were set on consent of the parties with that in mind. Hogg submitted that his former counsel told him to "wait" until they had received an order from the Ontario Superior Court of Justice issuing letters of request addressed to foreign courts before making efforts in those foreign jurisdictions to seek to compel the foreign witnesses to provide their evidence. We understood Hogg to be saying that he relied on advice of former counsel to wait before retaining foreign counsel and preparing any materials for the foreign courts. Hogg confirmed that although the Court issued the order on September 21, 2023, he still needed to retain multiple foreign counsel and he had not yet filed anything in the foreign courts seeking to compel the foreign witnesses to provide evidence. Hogg's US lawyer informed him that it would take two to two-and-a-half months from November 10, 2023, to have the foreign courts recognize the letters of request.

[29] The Commission submitted that the Moving Respondents caused the delay in compelling the foreign witnesses and would benefit from delaying the proceeding as a result. In addition, the Commission submitted that the Moving Respondents acknowledged that their lack of funding made it uncertain whether they would even pursue the process to compel foreign witnesses, and even if they did, there was no guarantee that they would succeed.

[30] While compelling foreign witnesses takes time and is not entirely within a party's control, the Moving Respondents failed to take any steps in the seven weeks since the issuance of the letters of request by the Court. That failure is significant. A party seeking an adjournment for this reason must show that they have moved diligently.

[31] Because of the uncertainty as to whether the Moving Respondents would even pursue the process to compel the foreign witnesses, we declined to grant an adjournment on this ground. When we advised the parties of our decision, we told Hogg that because the Commission would present its case first, and given the Commission's proposed timetable for the merits hearing, the Moving Respondents would likely not need to call their witnesses before January 2024, which was two months away. We urged Hogg to take steps to compel the foreign witnesses.

4 2022 ONCMT 23 (***First Global Motion***)
5 *First Global Motion* at para 13

2.1.3.e The SEC proceeding

[32] The Moving Respondents submitted that the SEC proceeding would be critical in telling the full story. They asserted that the SEC proceeding would bring forward evidence that would help their defence in this proceeding. They therefore asked that we adjourn this proceeding until after the disposition of the SEC proceeding.

[33] The Commission explained that the SEC proceeding was commenced on the same day as this proceeding. It arose out of an SEC investigation that was conducted in parallel to the Commission's investigation that resulted in this proceeding. Although many of the same facts will be in issue in both proceedings, the proceedings are not the same. The parties are not identical and different laws apply.

[34] The Moving Respondents had never previously raised the timing of the SEC proceeding as an issue, including when the merits hearing dates were set in April 2023, at which time the hearing for the SEC proceeding had already been scheduled to begin after the merits hearing here. Given that the SEC proceeding was not scheduled to start until April 2024, the requested adjournment until after the disposition of the SEC proceeding could be very lengthy.

[35] Generally, the Tribunal will not stay its proceedings in favour of other proceedings. It is fundamental to properly functioning capital markets that a regulator be able to respond efficiently and effectively to protect the investing public. It is in the public interest for the Tribunal to hear proceedings as soon as possible.[6]

[36] We distinguish this case from *Hollinger Inc. (Re)*,[7] in which the Tribunal stayed a proceeding in favour of a US proceeding. In that case, the US matter was a criminal proceeding with a risk of incarceration. The Tribunal recognized that issues might arise if the Tribunal proceeding went ahead of the US criminal proceeding, given the different approaches to the right to protection against self-incrimination under Canadian and American law. Here, the SEC proceeding is civil and not criminal, and the same concerns are not engaged.

[37] We did not find that the SEC proceeding constituted exceptional circumstances requiring an adjournment.

2.1.3.f Cases cited by the Moving Respondents

[38] The Moving Respondents submitted that the Tribunal has granted adjournments in circumstances that were not as "exceptional" as here. However, every case that Hogg cited is distinguishable because, the adjournment was on consent, did not involve the adjournment of the merits hearing, pre-dated the adoption of r. 29(1) of the *Rules* in 2017, or did meet the high bar of exceptional circumstances.

2.1.3.g Prejudice

[39] Finally, the Moving Respondents submitted that an adjournment would cause no prejudice (*i.e.*, risk of harm to the capital markets) because the courts had frozen all of Hogg's money, and the subject "cryptocurrency" and corporation were no longer operating in Canada or in Hogg's name.

[40] Lack of prejudice arising from an adjournment does not meet or obviate the exceptional circumstances test. In any event, there is generally always prejudice, including time and expense thrown away, that arises as a result of the adjournment of a merits hearing, especially when the adjournment is sought close in time to scheduled hearing dates.

2.1.3.h Conclusion on the adjournment motion

[41] We concluded that many months had passed since this proceeding began, during most of which time the Moving Respondents had the benefit of counsel to navigate securing foreign witnesses and managing the SEC proceeding. In fact, Hogg was still represented by US counsel when we heard the Adjournment Motion. In addition, there was a lengthy scheduled gap between the close of the Commission's case and the start of the Moving Respondents' case. The Moving Respondents had a reasonable opportunity to prepare their defence.

[42] The Moving Respondents failed to demonstrate that any of the grounds advanced, even taken together, amounted to exceptional circumstances that would require an adjournment. We therefore dismissed the motion.

2.2 Proceeding in the absence of the respondents

[43] The respondents chose not to participate in the merits hearing and we proceeded in their absence.

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6 *Robinson (Re)*, (1993) 16 OSCB 5667 at paras 11-14; *David Charles Phillips et al*, 2015 ONSEC 1 at paras 51-59

7 2006 ONSEC 2 (***Hollinger***)

[44] Hogg, Arbitrade Exchange, TJL and Gables participated in earlier hearings in this proceeding and consented to the scheduled merits hearing dates. However, on the first day of the merits hearing, Hogg advised the Tribunal in writing that "under advisement from my attorneys" he would not be attending the hearing.

[45] Neither Cryptobontix nor Arbitrade Bermuda attended any hearings in this proceeding, despite having been given reasonable notice.

[46] Where notice of a hearing has been given to a party to a proceeding and the party does not attend the hearing, the Tribunal may proceed without the party's participation and the party is not entitled to any further notice in the proceeding.[8]

[47] All respondents had proper notice of the proceeding. It was appropriate to proceed in their absence.

3. BACKGROUND

3.1. The respondents

3.1.1 Hogg

[48] Hogg was a resident of Ontario at all relevant times. He founded Cryptobontix and was its sole officer and director throughout the Material Time. Hogg was also the company's sole shareholder until he sold his shares to SION Trading FZE in or about June 2019.

[49] Throughout the Material Time, Hogg was also the sole director, officer and shareholder of Arbitrade Exchange.

[50] During the Material Time, Hogg was also the majority shareholder of Arbitrade Bermuda, indirectly owning 67% of its shares through his personal holding company.

3.1.2 Cryptobontix

[51] Cryptobontix is an Ontario company incorporated in 2014.

[52] Cryptobontix developed and issued a family of crypto tokens that were represented as backed by precious metals. These tokens included the Unity Ingot token, which was later replaced with the Dignity token. Both the Unity Ingot token and the Dignity token were represented to be backed by gold bullion.

[53] In 2018 there was a plan that Arbitrade Bermuda would acquire the business or assets of Cryptobontix. Although no evidence established that this happened, Arbitrade Bermuda treated Cryptobontix and the Tokens as part of its business and represented this to be the case.

3.1.3. Arbitrade Exchange

[54] Arbitrade Exchange is an Ontario company incorporated in 2014. Originally a retail business, Hogg later used it for the crypto asset business until Arbitrade Bermuda was established.

[55] In June 2018, counsel for Arbitrade Exchange advised the Commission that Arbitrade Exchange had engaged in promotional activity consisting of the issuance of press releases and emailing business updates to a subscriber list developed by Cryptobontix to raise market awareness of the business intended to be conducted by Cryptobontix (or in Arbitrade Bermuda after its intended acquisition of the business or assets of Cryptobontix).

3.1.4 Arbitrade Bermuda

[56] Arbitrade Bermuda is a Bermuda corporation incorporated on May 30, 2018.

[57] Arbitrade Bermuda was established by Hogg and others with the intention that it acquire or combine with Cryptobontix and Arbitrade Exchange and operate a digital asset business, including a "cryptocurrency exchange".

[58] Hogg was the majority shareholder of Arbitrade Bermuda. Although he was not formally appointed a director or officer of Arbitrade Bermuda, he was to own enough shares of the company to appoint a majority of its board of directors and control it once its organization was completed, which he did. Hogg was also the "technical advisor" to Arbitrade Bermuda. His responsibilities included marketing, and preparing press releases, government documents, white papers, and presentations. Hogg said that his role as a consultant at Arbitrade Bermuda included "all the technical aspects and marketing materials".

[8] *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 7(1); *Rules of Procedure*, r 21(3)

3.1.5 TJL and Gables

[59] TJL is an Ontario corporation incorporated on April 30, 2014. Throughout the Material Time, Hogg was TJL's sole shareholder, director and officer.

[60] Hogg operates various businesses through TJL, including consulting, advertising, software developing, real estate developments, and restaurants in Grand Bend, Ontario.

[61] Gables is an Ontario corporation incorporated on June 8, 2018. Hogg owns Gables, which holds approximately half of his real property and other local business interests.

[62] From June 8, 2018, to at least April 12, 2019, Hogg was the sole director of Gables.

3.2 Factual background relevant to the Tokens

3.2.1 The development of the Tokens

[63] Hogg developed the concept of the Tokens. At Hogg's direction, Cryptobontix arranged for a developer to create and deploy on the blockchain Unity Ingot tokens (also known as UNY tokens) and, later, the Dignity tokens (also known as DIG tokens), which replaced the Unity Ingot tokens. Cryptobontix described these tokens as "cryptocurrencies based on the Ethereum Smart Contract technology".

[64] Initially, Cryptobontix stated that 10 billion Unity Ingot tokens would be released. This number was later reduced to 3 billion. It is not clear whether this reduction occurred during what Cryptobontix described as a November 2017 "reissuance" or in or about February 2018 when the Unity Ingot tokens were replaced with Dignity tokens which were provided to holders of Unity Ingot tokens on a 1-to-1 exchange basis. Cryptobontix "released" 3 billion Dignity tokens in total. We understand that the "released" figure represented the maximum amount of tokens that were available for purchase. It was not explained whether 3 billion tokens were created.

3.2.2 How the Unity Ingot and Dignity tokens were sold

[65] The Unity Ingot tokens (and, later, the Dignity tokens) were sold on two crypto asset trading platforms: Livecoin and C-CEX. The Unity Ingot tokens first traded on Livecoin and C-CEX on May 2, 2017.

[66] During the Material Time, Hogg engaged two individuals, Stephen Braverman and James Goldberg, to sell the Unity Ingot tokens and Dignity tokens. Braverman and Goldberg both became shareholders of Arbitrade Bermuda. Braverman was its Chief Operating Officer and Goldberg was an assistant to the Chairman and CEO.

[67] The Tokens were generally sold in the following manner:

a. Hogg was responsible for the relationship with Livecoin in connection with the Tokens.

b. Hogg controlled the Unity Ingot tokens (and later the Dignity tokens) in a master account.

c. On request, Hogg would transfer blocks of Tokens to Braverman and Goldberg, each of whom had accounts on the Livecoin and C-CEX crypto asset trading platforms.

d. Braverman and Goldberg, in turn, sold the Tokens to purchasers through Livecoin and C-CEX in exchange for bitcoin (or other cryptocurrency).

e. Braverman sold Tokens on the trading platforms to purchasers who were known to him. According to Hogg, Goldberg sold Tokens to anyone who was willing to buy them on the trading platforms without knowing who the purchaser was. The Commission's evidence about the knowledge of the investors who purchased Tokens from both Braverman and Goldberg was not detailed.

f. Purchasers of Tokens sent their payments (in bitcoin or other cryptocurrency or crypto asset) to accounts on Livecoin controlled by Hogg, or Braverman or Goldberg. In each case, the payments then went from the applicable Livecoin account to an account on the Genesis trading platform held by Braverman's company Rozgold Capital LLC.

g. On the Genesis platform, Rozgold converted the bitcoin (or other cryptocurrency or crypto asset) received from purchasers of the Tokens into US dollars.

h. Upon confirmation of receipt of the purchaser's funds, the purchased Tokens were released to the purchaser either from Hogg directly or through Braverman.

[68] In addition, on a "couple" of occasions Hogg transferred Tokens directly from his master account to purchasers at blockchain addresses or wallets that Braverman identified. He also sold Tokens directly or indirectly to two friends of his.

[69] Below, we analyze the flow of proceeds from Token sales. To summarize, Arbitrade Bermuda received approximately US $41.6 million. In addition, Cryptobontix and Arbitrage Exchange also received proceeds in an amount that the Commission did not establish and used them to develop their respective businesses. Finally, an additional approximately US $10.1 million was transferred by Rozgold to, or used for the personal benefit of, Hogg and his companies TJL and Gables.

3.2.3 The promotion campaign for the Tokens

3.2.3.a How the Tokens were described to potential purchasers

[70] The Commission introduced extensive evidence of the various promotional materials that were created and made available to the public about the Tokens.

[71] Beginning in November 2017, some materials stated that the Tokens operated as a "coupon". Apart from that, though:

a. the materials presented a generally consistent picture as to what purchasers could expect in connection with the Tokens; and

b. the materials gave similar descriptions of the two tokens. Purchasers of the Dignity token, and individuals who exchanged their Unity Ingot tokens for Dignity tokens, would reasonably have understood that the promotional materials referring to the Unity Ingot tokens (including the Cryptobontix White Paper dated November 5, 2017, discussed below) also extended to the Dignity tokens after they were issued as a replacement for the Unity Ingot tokens in February 2018.

[72] From as early as May 8, 2017, the materials included the following representations:

a. **The Tokens are backed by cryptocurrency "mining":** Cryptocurrency mining involves using hardware to run programs and provide computing power needed to generate cryptocurrencies. The miner is rewarded with the cryptocurrency that is supported by the mining activity. A percentage of the proceeds received from selling the Tokens was to go directly into purchasing mining rigs (also referred to as mining servers) and the related infrastructure that would be used to mine other cryptocurrencies and generate earnings.

b. **The earnings from the cryptocurrency mining would be used as follows:**

i. 50% of the mining earnings would be used to purchase physical gold bullion (in earlier materials there was also reference to the purchase of bitcoin in addition to gold bullion) that would "back" the Tokens and create a guaranteed intrinsic "floor value" for each Token;

ii. 15% (later in November 2017 this percentage increased to 20%) would be reinvested into additional mining servers so that the size of the cryptocurrency mining operations backing the Tokens would continue to grow;

iii. 15% would be used to buy back Tokens from sellers in the market (later materials referred to both "buy back" and Token "burning" programs); and

iv. 20% (later in November 2017 this percentage decreased to 15%) would be used for operations, expansions and upkeep, including hydro expenses for mining operations, keeping the mining servers operating, and staffing and insurance costs.

c. **The Tokens were consistently touted as a "store of wealth" (due to the gold bullion backing) with a "growth component" (due to the cryptocurrency mining activities and related earnings as well as the growth in investment in gold bullion):** Descriptions of the Tokens like the following were repeatedly used:

i. "a compounding interest model in the way that it grows both daily mining abilities and the store of wealth on reserve";

ii. "will grow in a physical asset value of 35% or greater per year and never dropping [*sic*] below its initial value";

iii. "it exponentially grows in value with every passing day. Many are viewing this strategy as the most attractive compound growth strategy ever introduced to the investment community to date";

iv. "operates on a model that 'exponentially' scales";

v. "the potential for this token is into the billions. Those that are investment savvy and can buy and hold should prove to make substantial returns"; and

vi. "exponential earnings are predicted by bringing new mining rigs online daily in the cryptocurrency mining facilities. Thus, as the daily purchase volume of bullion and additional mining rigs grows, the net holding that each token represents makes the Cryptobontix tokens the most secure and valuable cryptocurrency in the sector".

d. **Beginning in the Cryptobontix White Paper, the Tokens were also described as a "coupon" for the physical bullion backing them.** It was explained that "after year two", holders of the Tokens could liquidate their position and exchange the Tokens for the physical bullion that backs the Tokens.

3.2.3.b The extensive public promotion of the Tokens

[73] The above representations about the investment opportunity, and periodic updates about the Tokens, were extensively and repeatedly made available to the public and to prospective purchasers of the Tokens. Some updates related to cryptocurrency mining, the acquisition of mining rigs, and efforts to acquire and audit gold bullion. The representations and updates were made in many forms, including the following:

a. between May 8, 2017, and May 30, 2019, the Bitcoin Talk Forum at bitcointalk.org contained a dedicated page and discussion thread entitled "[ANN] DIGNITY (DIG) Official Page – Formerly Unity Ingot." The thread was authored by a user who self-identified as the "admin for Cryptobontix and the UNY/DIG token". That user began the thread by posting promotional materials regarding the Unity Ingot token on May 8, 2017. The thread was later updated to clarify that it also applied to the Dignity token;

b. between May 28, 2017, and June 15, 2018, Livecoin made several paid email announcements regarding the Tokens;

c. Braverman gave several prospective investors a PowerPoint presentation about the Unity Ingot token, prepared by Hogg around July 11, 2017;

d. Braverman provided the Cryptobontix White Paper to potential institutional investors as early as November 7, 2017. The White Paper was circulated to subscribers to the Cryptobontix website by February 12, 2018, and made available to the public via a website link on cryptobontix.com in 2018;

e. during the Material Time the Cryptobontix website and the "Arbitrade" website, purporting to speak for Arbitrade Exchange and then, later, Arbitrade Bermuda, allowed members of the public to subscribe for email newsletters regarding the Tokens. These were sent to over 3,800 subscribers to those websites, including in newsletters between March 7, 2018, and May 22, 2019;

f. between February 26, 2018, and January 11, 2019, multiple press releases were issued on behalf of Cryptobontix, Arbitrade Exchange, the prospective Arbitrade Bermuda entity and Arbitrade Bermuda. The press releases issued between February 26, 2018, and June 23, 2018, were distributed to various worldwide regions, including the United States and Canada;

g. during February to May 2018, the Cryptobontix Twitter social media account posted several tweets and the Cryptobontix Telegram Channel disseminated messages, which contained links to many of the email newsletters and press releases noted above;

h. during the period between May 2018 and May 2019, the Arbitrade Twitter social media account posted several tweets and the Arbitrade Telegram Channel disseminated messages, which contained links to many of the email newsletters and press releases noted above;

i. an Arbitrade Bermuda June 28, 2018, telephone press conference was open to the public and was announced via some of the press releases and email newsletters noted above; and

j. an analyst report on the Unity Ingot token (recommending a "buy") from an analyst that Hogg, Braverman and Goldberg hired to prepare such a report. On February 10, 2018, the analyst sent the report to his subscribers, more than 360 of whom purchased the Dignity token.

3.2.4 Sales of the Tokens

3.2.4.a Number of Tokens sold and amount raised

[74] We find that at least 1.5 billion Tokens were sold between May 2017 and November 2018. There was insufficient evidence for us to find, on a balance of probabilities, the total number of Tokens that were sold during the Material Time.

[75] Arbitrade Exchange and Cryptobontix confirmed to the Commission during its investigation that they used an unspecified amount of capital raised from Token sales to develop their businesses.

[76] The Commission introduced a memorandum titled, "Cryptobontix Tax Planning" dated March 25, 2019, that was prepared by Arbitrade Bermuda and shared with Hogg at the time (**Arbitrade Memorandum**). The Arbitrade Memorandum specifies that Arbitrade Bermuda received US $41,622,965.27 from Cryptobontix in 2018. Based upon the Arbitrade Memorandum and other related evidence, we find that in 2018 Arbitrade Bermuda received US $41,622,965.27 in Cryptobontix "token sale proceeds", and that all or nearly all this amount was proceeds from the sale of the Tokens.

[77] Further, as we find below, additional Tokens were sold, resulting in a further US $10,109,038 of proceeds from Token sales not identified in the Arbitrade Memorandum that was transferred to or used for the benefit of Hogg, TJL and Gables. In making this finding, we reject the evidence provided by Hogg and Cryptobontix to the Commission during its investigation that all US dollars from Rozgold's conversion of the proceeds received from purchasers of the Tokens were forwarded to Arbitrade Bermuda.

[78] These two amounts combine to establish that the proceeds of Token sales were at least US $51,732,003.27. Some evidence suggested there may have been additional sales, but that evidence does not meet the balance of probabilities standard.

3.2.4.b The purchasers of the Tokens

[79] Hogg said he knew the identity of two purchasers and knew that Braverman and Goldberg had sold Tokens. However, apart from that, the only other evidence and information about purchasers of the Tokens introduced by the Commission was contained in nine completed questionnaires of individuals who self-identified as purchasers of Tokens during the Material Time, and email correspondence the Commission received from twenty-one additional individuals who also self-identified as purchasers of Tokens.

[80] Other than the above, the Commission introduced no evidence that confirmed the total number of purchasers of Tokens, how many each purchased, when they purchased them, or their identities.

4. ISSUES AND ANALYSIS

[81] The issues before us are as follows:

a. Are the alleged breaches in relation to securities?

b. Did the respondents engage in fraud contrary to s. 126(1)(b) of the *Act*?

c. Did Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda engage in the business of trading securities without registration contrary to s. 25(1) of the *Act*?

d. Did Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda illegally distribute securities contrary to s. 53(1) of the *Act*?

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

[82] Our analysis and conclusions on each of these issues is set out below.

4.1 Are the alleged breaches in relation to securities?

[83] All the Commission's allegations of breaches of the Act are predicated on the Commission first establishing that the alleged breaches were in relation to securities.

[84] The Commission submits that the Tokens are securities by virtue of being "investment contracts".[9] The Commission submits alternatively that if the Tokens are not investment contracts, they are securities by virtue of being "other evidence of indebtedness"[10] or "any document constituting evidence of title to or interest in the capital, assets, property, profits, earnings or royalties of any person or company".[11]

[85] We find that the Tokens considered alone are not "investment contracts". However, we do find that the initial sale transactions of the Tokens to purchasers, considering all the surrounding circumstances of the sales, including how the Tokens were represented to prospective purchasers, are "investment contracts" and therefore securities under the Act.

9 *Act*, s 1(1), "security" para (n)
10 *Act*, s 1(1), "security" para (e)
11 *Act*, s 1(1), "security" para (b)

[86] As the Commission need only satisfy one definition of "security", we need not consider whether the other two categories of securities invoked by the Commission, namely "evidence of indebtedness" or "evidence of title or interest", are established on the facts.

4.1.2 "Security" must be interpreted broadly and purposively

[87] The Act defines "security" to include 16 enumerated categories of instruments. The Commission principally relies on one of those categories, "investment contracts", to establish that this case involves securities.

[88] In deciding whether an instrument is a security, we must give the term a broad and purposive meaning, given that the Act is remedial legislation intended to protect the investing public. The Act must be "read in the context of the economic realities to which it is addressed" and "[s]ubstance, not form, is the governing factor".[12] Investor protection is the "overarching lens" through which we should view the attributes of an alleged security.[13]

[89] This Tribunal has previously noted that crypto assets, such as the Tokens in this case, are "unique and complex, extremely difficult to objectively value and subject to significant volatility" and that "few retail investors would have much, if any, experience with these complex and risky products".[14]

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

[90] The *Act* provides that "any investment contract" is a security.[15] The term "investment contract" is not defined in the *Act*.

[91] The Supreme Court of Canada's decision in *Pacific Coast Coin* considered two approaches to the interpretation of "investment contract" developed in two American cases: *Howey* and *Hawaii*.[16] The Supreme Court adopted a modified version of the *Howey* test (the **Common Enterprise Approach**) and also found that the *Hawaii* test (the **Risk Capital Approach**) applied in the circumstances.[17]

[92] In *Pacific Coast Coin*, the Court held that any definition of investment contract must embody "a flexible rather than a static principle, one that is capable of adaptation to meet the countless and variable schemes devised by those who seek the use of the money of others on the promise of profits."[18] The Court emphasized the role of policy and legislative choice over a buyer-beware approach or any recently formed judicial test that had outlived its usefulness.[19]

[93] An investment contract may be a "contract, transaction or scheme".[20] Many investment contract cases in the securities context involve one or more written or oral common law contracts. The sales of Tokens in this case raise various factual issues that may be relevant to whether a common law contract was formed with each of the purchasers of Tokens, including that: a) the identities of some of the purchasers were not known, b) some representations about the Tokens changed over time and each purchaser may not have heard each representation, and c) the "obligations" of Crytobontix or Arbitrade Bermuda might be unclear.

[94] We considered whether there must be a technically valid and enforceable written or oral common law contract in relation to each of the sale transactions for the Tokens for us to find that there is an "investment contract". We are satisfied that this is not necessary. By stating that "transactions" and "schemes"—and not just contracts—can qualify as investment contracts, the Supreme Court made this clear. US courts have taken a similar approach.[21] *Pacific Coast Coin* itself is an example where a representation in marketing materials external to the written contract (and even contrary to the written contract's express terms) was important to establishing the existence of an investment contract.[22] *Hawaii*'s emphasis on an offeree being induced to advance value to the enterprise by the offeror's "promises or representations" also confirms this point.[23]

[95] On a separate note, we asked the Commission whether a security (including an investment contract) can exist when some or all the relevant facts are either untrue when they are represented to investors or the promises to investors do not materialize. We accept the Commission's submissions in this regard—namely that, consistent with the *Act*'s policy of protecting the investing public against securities fraud, analysis about the existence of a security must consider what is

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

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

14 *Polo Digital Assets, Ltd (Re)*, 2022 ONCMT 32 at para 55 (***Polo***)

15 *Act*, s 1(1), "security" para (n)

16 *Pacific Coast Coin* at 127-132, citing *SEC v W J Howey Co,* 328 US 293 (1946) (***Howey***) and *State of Hawaii, Commissioner of Securities v Hawaii Market Center, Inc*, 485 P 2d 105 (1971) (***Hawaii***)

17 *Pacific Coast Coin* at 127-131

18 *Pacific Coast Coin* at 127

19 *Pacific Coast Coin* at 132

20 See *Re Pacific Coast Coin Exchange of Canada Ltd et al v Ontario Securities Commission*, 1975 CanLII 686 (ONSC) (***Pacific Coin (Div Ct)***), citing Howey at 298-299

21 *SEC v Terraform Labs Pte Ltd,* 2023 US Dist LEXIS 132046 at 33-34.

22 *Pacific Coast Coin* at 125 and 129

23 *Pacific Coast (Div Ct*), citing *Hawaii*

offered or promised to investors, and not what happens or materializes. For example, in this case, we considered the representations made to potential investors in relation to the gold bullion backing and cryptocurrency mining operations.

4.1.3.a What is the "investment contract" in this case?

[96] Before we turn to consider whether the Commission has established that the elements of an investment contract are met, we consider the issue of what the "investment contract" is in this case.

[97] The Commission submits that the Tokens themselves are the investment contract, as opposed to the overall transaction or scheme for the offer and sale of the Tokens, including the representations made to investors, considered together.

[98] In support of this submission, the Commission references this Tribunal's approval of a settlement in Coinlaunch Corp. (Re),[24] where the Tribunal found that two crypto tokens were securities on the basis that they were investment contracts.[25] The Commission also notes that some US decisions conclude that particular crypto assets are securities on the basis that they are investment contracts.[26]

[99] The Commission submits that the Tokens are the investment contract here because they are a "smart contract", "contract", the equivalent of a "written document", "the embodiment of the contract", and also the "investment instrument" (analogous to a share certificate) by which investors' interests are made manifest. According to the Commission, the Tokens have "features and functions embedded within them" and the "terms" embedded in them are based on the representations made to investors that the Tokens could be exchanged for gold during the coupon redemption periods and the Tokens could be traded and sold to others.

[100] The Commission argues that the Tokens are therefore analogous to the commodity account agreement found to be a security in *Pacific Coast Coin*. That commodity account agreement was a written contract between each of the investors and Pacific Coast Coin. The subject of the commodity account agreement was bags of silver coins. The commodity account agreement included multiple terms governing the investment relationship between Pacific Coast Coin and the investors who were essentially investing in silver coins on margin and relying on Pacific Coast Coin to make a market for their investment when they wanted to close out their account.[27]

[101] The Commission also submits that because the Tokens are the things being traded, the application of an investor protection lens warrants a finding that that the Tokens themselves are the investment contract and therefore the securities, as otherwise there may be ramifications for secondary market purchasers. This case does not involve secondary market purchases, and the Commission did not substantiate its submission on this point, so while we do not exclude the possibility that the submission is correct, we cannot give effect to it.

[102] We are not satisfied that the Tokens can themselves be an investment contract.

[103] Determining whether something is a security by virtue of being an investment contract depends on the relevant facts. The Tribunal's decision in *Coinlaunch* does not stand for the proposition that crypto tokens are always securities. Further, we give that decision little weight, because it was a settlement approval and nothing on the face of the decision indicates that the parties made submissions about whether a crypto token is itself the investment contract or whether it is simply the subject of an investment contract. Although the US cases cited by the Commission involve findings that the crypto assets in those cases were investment contracts and therefore securities, we note that once those decisions find that the elements of the *Howey* test for an investment contract are met, they contain little to no analysis as to why the crypto assets are themselves the securities.

[104] We were not convinced by the Commission's assertion that the Tokens here are a "smart contract", "contract", "equivalent of a written document", or that they have "terms" embedded within them. The Commission relied on a single line in the Cryptobontix White Paper indicating that the Tokens are "based on the Ethereum Smart Contract technology, otherwise known as ERC20 tokens". The Commission did not satisfactorily explain why this was significant. There was no evidence supporting these assertions of the Commission. In contrast to the commodity account agreement in *Pacific Coast Coin*, the Tokens, considered alone, do not incorporate or reflect what purchasers of the Tokens might reasonably expect from their investments. As we find below, purchasers' reasonable expectations, based upon the representations that were made to them in promotional materials, are an essential element of what we find to be the investment contract.

[105] We were also not satisfied that the Tokens here are an investment instrument like a share certificate. It was not established that there is anything inherent in them that gives investors any interest in Cryptobontix or a business.

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[24] 2019 ONSEC 26 (***Coinlaunch***)

[25] *Coinlaunch* at paras 7-11

[26] *SEC v LBRY, Inc* (2022), 639 F Supp 3d 211 (***LBRY***) at 220-221; *SEC v Terraform Labs Pte Ltd*, 2023 US Dist LEXIS 230518 (***Terraform***) at 42, 45-48; *United States SEC v Kik Interactive Inc* (2020), 492 F Supp 3d 169 at 177-178; *In the Matter of Munchee Inc*, 2017 SEC LEXIS 4005 (***Munchee***) at 2-3; *In re BitConnect Securities Litigation*, 2019 US Dist LEXIS 231976 at 27-28

[27] *Pacific Coast Coin* at 123-125

[106] On this question of what is the "investment contract", we prefer the approach and analysis taken in the US decision in *SEC v. Ripple Labs, Inc*.,[28] namely that the subject of a "contract, transaction or scheme" can be a variety of tangible or intangible assets. The subject itself is not necessarily a security by virtue of being an investment contract. Although the Tokens are the subject of the transaction or scheme in this case, we find that the Tokens (like the bags of silver coins in *Pacific Coast Coin* and the citrus groves in *Howey,* involving contracts in which investors bought citrus groves and essentially leased them back to a service provider to harvest, pool and market the produce), in and of themselves, do not embody the elements of an investment contract.

[107] Instead, we find, as detailed below, that the investment contract (and therefore the security) here is the transaction or scheme for the offer and sale of the Tokens, including the economic reality of all the surrounding circumstances and, in particular, the representations made to investors (the **Cryptobontix Security**). Without those representations, there is no investment contract in this case.

[108] For avoidance of any doubt, our decision should not be taken to mean that in no circumstances can a crypto token ever be a security either by reason of it being an "investment contract" or satisfying another of the enumerated categories of instruments that are securities. Every case will depend on its facts. We also note that because there was no need for us to consider whether one of the alternate definitions of a security (i.e. "evidence of indebtedness" or "evidence of title or interest") was satisfied in this case by virtue of the Tokens being represented to be a "coupon" that could be exchanged for gold bullion, we have also not considered the corresponding question of whether the Tokens themselves might be a security had one of those alternate definitions of a security been satisfied.

4.1.3.b Application of the Common Enterprise Approach

[109] We now apply the Common Enterprise Approach to the transaction or scheme involving the sale of the Tokens. The Common Enterprise Approach provides that an investment contract is made up of four elements:

a. an investment of money;

b. with a view to a profit;

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

d. the efforts made by those others significantly affect the success or failure of the enterprise.[29]

[110] Below we find that the facts of this case satisfy the Common Enterprise Approach. Therefore, we need not also consider the Risk Capital Approach.

4.1.3.b.i Investment of money

[111] The Commission submits that the first element of the test (an investment of money) can be satisfied if there was a payment.[30] The Commission submits that because investors paid for the Tokens with cryptocurrencies, such as bitcoin, this element of the test is clearly satisfied.

[112] We agree. The payment need not be in fiat currency. It can be in crypto assets. In at least two prior decisions, this Tribunal accepted that the payment or deposit of crypto assets can satisfy this element of the test.[31] In this case, the bitcoin (and other cryptocurrency or crypto assets) that purchasers used to buy the Tokens was valuable and readily convertible into fiat currency. The Commission confirmed that this case is restricted to the initial sales of Tokens by or on behalf of Cryptobontix. Thus, all the proceeds raised through Token sales were available for use by the enterprise (Cryptobontix and Arbitrade Bermuda). The economic reality was that the sale proceeds were available for use by the enterprise offering the Tokens.

4.1.3.b.ii View to a profit

[113] We must adopt a broad approach in deciding whether an investment of money is made "with a view to a profit". This element of the test has been interpreted to include "all types of economic return, financial benefit or gain."[32]

[114] We agree with the Commission's submission that this element of the test is established where an investor shares in an enterprise's profits. We go further and find that this element of the test can also be established where an investor invests money with the reasonable expectation that they will share in an enterprise's profits.

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28 2023 US Dist LEXIS 120486 (SDNY July 13, 2023) (***Ripple***) at 22-24
29 *Pacific Coast Coin* at 128-130
30 *Edward Furtak et al*, 2016 ONSEC 35 (***Furtak***) at para 78, aff'd *Furtak v Ontario (Securities Commission)*, 2018 ONSC 6616 (Div Ct); *Polo* at para 44
31 *Mek Global Limited (Re)*, 2022 ONCMT 15 (***Mek Global***) at para 43; *Polo* at para 44
32 See *Furtak* at para 82, citing *Kustom Design Financial Services Inc (Re)*, 2010 ABASC 179

[115] During the Material Time, the potential to profit from the Tokens was repeatedly represented to potential investors through various materials that were widely available. As a result, investors would have reasonably expected that they would share in the profits of Cryptobontix (or Arbitrade Bermuda) including: a) by virtue of the Tokens growing in value based on the promised gold bullion reserves and earnings from the cryptocurrency mining program "backing" the Tokens, and b) through Token-holders' ability to sell or swap the Tokens on trading platforms that support the Tokens.

[116] We considered whether the Commission needed to establish that each individual purchaser of the Tokens had that expectation. We concluded that the Commission need not do so. The Commission need only establish that given all the circumstances, investors would have reasonably had that expectation.

[117] In coming to that conclusion, we applied an investor protection lens, and placed emphasis on the representations and offers made in connection with the Tokens. Those were fundamental to defining the relevant transaction or scheme. We also emphasized the scope of publication of the representations and offers, rather than a search for each purchaser's precise motivation or expectation. This approach also addresses the reality that the sale of crypto assets, by its very nature, can make it difficult to identify individual purchasers.

[118] The SEC and US courts have taken a similar approach in cases involving crypto assets and the question of whether they are securities by virtue of being "investment contracts" under US securities law, including the *Howey* test. The decisions focus on what purchasers or potential purchasers "would reasonably believe or expect" or "would understand" based on statements made in white papers, blog posts, social media, podcasts, interviews and other public statements.[33]

4.1.3.b.iii "Common Enterprise" and "Efforts of Others"

[119] The third and fourth elements of the test are interwoven and frequently considered together.[34] We do so here.

[120] A common enterprise "exists when it is undertaken for the benefit of the supplier of capital (the investor) and of those who solicit the capital (the promoter)."[35] The third and fourth elements are satisfied where there is a common enterprise where the fortunes of the investor are interwoven with and dependent upon the efforts and success of those seeking the investment or of third parties.[36]

[121] These elements of the test are met in this case. The investors' role was limited to advancing money to the Cryptobontix or Arbitrade Bermuda enterprise. Based on the representations made to investors, they would reasonably have expected that the profitability of their investment depended upon the efforts of others to increase the value of the Tokens by:

a. using investor funds to acquire and operate cryptocurrency mining equipment; and

b. using the proceeds of cryptocurrency mining to:

i. acquire gold to "back" the Tokens;

ii. acquire and operate further cryptocurrency mining equipment and thereby generate additional returns; and

iii. buy back and "burn" Tokens.

4.2 Other Preliminary Matters

[122] Before moving to consider the alleged breaches of the *Act*, we address two additional matters:

a. Cryptobontix's, Arbitrade Exchange's and Arbitrade Bermuda's the roles and involvement in the matters in issue; and

b. the basis for our jurisdiction over the respondents and, in particular, Arbitrade Bermuda.

4.2.1 The roles and involvement of Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda

[123] There appears to have been a shift during the Material Time regarding the involvement and role of various entities in the "business" related to the promotion and sale of the Tokens and the related cryptocurrency mining and gold bullion backing activities.

[124] Initially, and into 2018, Arbitrade Exchange and Cryptobontix issued and sold the Tokens and used capital raised through the sale of the Tokens to develop their businesses. Arbitrade Exchange conducted marketing and advertising for the

33 *Munchee* at paras 14-24; *LBRY* at 216-219; *Ripple* at 11-13 and 29-33; *Terraform* at 46
34 *Pacific Coast Coin* at 128-129; *Polo* at para 49
35 *Pacific Coast Coin* at 129
36 *Pacific Coast Coin* at 128-129

Cryptobontix business (as well as for Arbitrade Bermuda's business in anticipation of its acquisition of Cryptobontix or its assets) and Cryptobontix engaged a public relations firm to promote awareness of Cryptobontix. Braverman and Goldberg were also "consultants" to Arbitrade Exchange.

[125] Later, Hogg, along with others, incorporated Arbitrade Bermuda. The stated intention was that Arbitrade Bermuda would acquire Cryptobontix or its assets and maybe also the business of Arbitrade Exchange. Although there is no evidence that this happened, Arbitrade Bermuda nevertheless treated Cryptobontix and the Tokens as part of its business and represented this to be the case.

4.2.2 Jurisdiction

[126] Hogg, Cryptobontix, Arbitrade Exchange, TJL and Gables all reside in Ontario. As a result, the Tribunal has jurisdiction over them and their activities.

[127] The Commission submits that we have jurisdiction over Arbitrade Bermuda on multiple grounds:

a. Hogg, a resident of Ontario, was the directing mind of Arbitrade Bermuda and Arbitrade Bermuda was his alter ego. Hogg conducted some of his activities that breached Ontario securities laws through Arbitrade Bermuda;

b. Arbitrade Bermuda engaged in its Token-related promotional activities through Hogg in Ontario; and

c. Arbitrade Bermuda's Token-related promotional activities were widely targeted and available to Ontario residents.

[128] We do not agree that Arbitrade Bermuda was Hogg's alter ego. However, we accept the other submissions, with the caveat that Hogg was one of several directing minds of Arbitrade Bermuda. We note that Hogg had power to control the board and represent the company, and he was responsible for the technical operations and marketing. Furthermore, several of the newsletters circulated on behalf of Arbitrade Bermuda are signed "Arbitrade Management" with a related address in Grand Bend, Ontario.

[129] These factors provide a sufficient nexus for us to conclude that we have jurisdiction over Arbitrade Bermuda.

4.3 Did the respondents engage in a fraud contrary to s. 126.1(1)(b) of the *Act*?

[130] The Commission submits that the respondents engaged in or participated in a course of conduct regarding the Tokens that they knew or ought to have known perpetrated a fraud, contrary to s. 126.1(1)(b) of the *Act*. The Commission alleges two frauds. The first relates to the acquisition of gold to back the Tokens and the audit of that gold. The second relates to the use of investor funds. We first address the law relating to fraud before turning to the two alleged frauds.

4.3.1 Law on fraud

[131] The prohibition against fraud in the *Act* provides that a person or company shall not, either directly or indirectly, engage in a course of conduct relating to securities that the person or company knows or reasonably ought to know perpetrates a fraud on any person or company.[37]

[132] Fraud is not defined in the *Act.* The Tribunal relies on the test for fraud developed in the criminal context as set out by the Supreme Court of Canada in *R v Théroux*.[38] The elements for determining fraud are:

a. a prohibited act and deprivation caused by that act (*actus reus*); and

b. knowledge of the prohibited act and that the act could have as a consequence the deprivation of another (*mens rea*).[39]

4.3.1.a *Actus reus*

[133] There are two elements to the *actus reus*:

a. a prohibited or dishonest act, which can be an act of:

i. deceit;

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37 *Act*, s 126.1(1)(b)
38 1993 CanLII 134 (SCC) (***Théroux***)
39 *Al-Tar Energy Corp (Re)*, 2010 ONSEC 11 (***Al-Tar***) at paras 215-217, citing *Théroux; Feng (Re)*, 2023 ONCMT 12 (***Feng***) at para 37; *First Global Data Ltd (Re),* 2022 ONCMT 25 (***First Global***) at para 346

ii. falsehood; or

iii. other fraudulent means; and

b. deprivation, which includes detriment, prejudice, or risk of prejudice to the financial interests of the victim.[40]

[134] The *actus reus* is assessed objectively, except in limited circumstances not relevant in this proceeding.[41]

[135] The Supreme Court of Canada has stated that to prove deceit or falsehood, "all that need be determined is whether the accused, as a matter of fact, represented that a situation was of a certain character, when, in reality, it was not."[42]

[136] "Other fraudulent means" broadly encompasses all other means, beyond deceit or falsehood, that could be considered dishonest. The concept has, "at its heart, the wrongful use of something in which another person has an interest, in such a manner that the other's interest is extinguished or put at risk."[43] The types of conduct that have been found to constitute "other fraudulent means" include:

a. the use of investors funds in an unauthorized manner;

b. the use of corporate funds for personal purposes;

c. non-disclosure of important facts;[44]

d. exploiting the weakness of another;

e. unauthorized diversion of funds; and

f. unauthorized appropriation of funds or property.[45]

[137] When determining if there was fraud, we need not find that the investors relied on the dishonest act. It is sufficient if the respondent undertook the dishonest act voluntarily, causing a deprivation.[46]

[138] Proof of actual economic loss is not necessary to establish the "deprivation" portion of the *actus reus* of fraud. "Deprivation" is established by proof of:

a. actual loss to a victim;

b. prejudice to a victim's economic interests; or

c. risk of prejudice to a victim's economic interests.[47]

[139] A risk of prejudice may be established where investors are induced, by dishonest means, to purchase or hold an investment.[48] The "mere creation of a financial risk to another by a dishonest act is sufficient to establish deprivation."[49]

[140] The Tribunal has held in past decisions that where there is an unauthorized diversion of funds, investors are exposed to risks for which they did not bargain, which also causes a risk of prejudice to their economic interests.[50]

4.3.1.b *Mens rea*

[141] To establish the *mens rea* of fraud there must be proof of knowledge, by the respondent:

a. of the prohibited act; and

b. that the prohibited act could have as a consequence deprivation of another (which may be knowledge that the other's economic interests are put at risk).[51]

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40 *Al-Tar* at paras 215-217, citing *Théroux; Feng* at para 37; *First Global* at para 346
41 *First Global* at para 346; *Feng* at para 38; *Théroux* at 15-16
42 *Théroux* at 17
43 *R v Zlatic*, 1993 CanLII 135 (SCC) (***Zlatic***); *Solar Income Fund Inc (Re)*, 2022 ONSEC 2 (***Solar Income Fund***) at 86
44 *Money Gate* at para 223
45 *Quadrexx et al (Re)*, 2017 ONSEC 3 (***Quadrexx***) at para 20, aff'd 2020 ONSC 4392 (Div Ct); *Théroux* at 16; *Zlatic* at 44
46 *First Global* at para 371
47 *Feng* at 39; *Théroux* at 15-16
48 *First Global* at para 375; *Quadrexx* at para 21
49 *Feng* at para 58
50 *First Global* at para 376; *Feng* at para 61
51 *Théroux* at 19-20; *Feng* at para 64

[142] To establish knowledge of the act, it is sufficient to prove that the respondent knowingly undertook the prohibited act. It is not necessary to prove that the respondent knew the act was prohibited.[52]

[143] For example, for an alleged unauthorized diversion of funds, the Tribunal has found that knowledge will be established by proof that the respondent was aware of:

a. the representations made; and

b. the diversion of the funds contrary to the representations made.[53]

[144] Knowledge of the consequences can be inferred from the act itself.[54] Where a respondent tells a lie knowing that others will act on it, the inference of subjective knowledge that the property of another would be put at risk is clear.[55]

[145] A change in risk, even if not an increase in risk, may be sufficient to find fraud.[56]

[146] Maintaining that one did not think that the acts were wrong, or that one hoped that deprivation would not occur is not a defence.[57]

[147] *Mens rea* under s. 126.1(1)(b) of the *Act* can be established where a respondent knew or reasonably ought to have known that the impugned act, practice, or conduct perpetrated a fraud.[58] Where a respondent is a corporation, a fraud will have been committed under s. 126.1(1)(b) of the *Act* where its directing mind knew or ought reasonably to have known that the corporation perpetrated a fraud.[59]

4.3.2 Gold title and audit fraud

4.3.2.a Overview

[148] The Commission submits that during the Material Time, Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda made, or caused to be made, false and misleading statements in promotional materials. The promotional materials said that the Tokens issued by Cryptobontix were backed by gold and that the existence of the gold had been verified through an audit.

[149] For the reasons below, we find that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda all knew, or ought to have known, that their representations were false or misleading and could cause deprivation to investors. These respondents failed to disclose the truth to investors. They acted fraudulently.

4.3.2.b *Actus reus* – the prohibited act

[150] The Commission submits that initial promotional materials about the gold bullion backing the Tokens included:

a. postings by Hogg on the Bitcoin Talk Forum;

b. the Cryptobontix White Paper issued by Cryptobontix and provided by Hogg to investors through Braverman and the Cryptobontix website;

c. sponsored announcements coordinated by Hogg on Livecoin;

d. press releases by Arbitrade Exchange and Cryptobontix; and

e. email newsletters issued through the Cryptobontix and Arbitrade Exchange websites (which were controlled by Hogg).

[151] We find that these initial promotional materials focused on the features of the Tokens, including that gold bullion backing the Tokens would be a significant feature that would drive their value. The materials said that the Tokens would "create a store of wealth", that the "tokens have a floor price" and further, the "tokens will be redeemable into their physical precious metal forms."

52 *First Global* at paras 386, 390; *Théroux* at 19-20; *Feng* at para 64
53 *First Global* at para 391; *Feng* at paras 66-70
54 *Théroux* at 18; *First Global* at para 420
55 *Théroux* at 20-21
56 *First Global* at para 421
57 *Théroux* at 19, 23-24; *Feng* at 65
58 *First Global* at para 388
59 *First Global* at para 347; *Feng* at para 64; *Solar Income Fund* at para 82

[152] We also find that later promotional materials elaborated on the acquisition and audit of the gold. These materials included statements prepared or reviewed by Hogg and others at Arbitrade Bermuda and issued on behalf of Cryptobontix and Arbitrade Bermuda as well as statements attributable directly to Hogg at a press conference:

a. an email newsletter issued through the Cryptobontix website controlled by Hogg on behalf of "Cryptobontix/Arbitrade" and "Arbitrade Management" and written on behalf of both Cryptobontix and Arbitrade Bermuda or the soon-to-be-incorporated Arbitrade Bermuda. The newsletter referenced an Asset Pledge Agreement entered between Arbitrade Bermuda and SION, touted as one of the only licensed gold traders on the Dubai gold exchange and the company that ultimately purchased Hogg's shares of Cryptobontix. The newsletter stated that the gold acquisition "is similar to that of a house purchase with a mortgage" and that "everyday, a certain amount of the bullion becomes wholly owned by the tokens";

b. a June 2018 Arbitrade Bermuda press release and telephone press conference, July 2018 Arbitrade Bermuda newsletter, and November 2018 Arbitrade Bermuda press release announcing that Arbitrade Bermuda had secured the gold to back its tokens. Hogg stated at the press conference that in partnership with SION, Arbitrade Bermuda would be granted US $10 billion worth of physical gold. Hogg said that Arbitrade Bermuda was receiving title to the gold, agreements were in place and signed, and the gold would be held at Brinks; and

c. a July 2018 Arbitrade Bermuda newsletter issued through the Cryptobontix website announcing the intended audit and a November 2018 Arbitrade Bermuda press release announcing the completed audit by an accounting firm verifying the existence of the gold. The December 2018 Arbitrade Bermuda email newsletter stated "finally, the company recently announced receiving full title and audit of gold bullion holdings stored at independent security facilities in the amount of 395,000 kgs with a current market value in excess of US $10 billion."

[153] We find that Cryptobontix was not a party to any of the agreements referenced above to back the Tokens with gold bullion during the Material Time. There is no evidence that there was any gold backing the Tokens. This by itself is sufficient to establish fraud. However, we outline below other misrepresentations about the acquisition and auditing of gold.

[154] In June 2018, Arbitrade Bermuda and SION entered into an Asset Pledge Agreement, which stated:

a. SION arranged for sufficient bullion (US $3 billion) to be pledged to the Tokens as collateral;

b. this collateral gold would be secured at a location agreed to by the parties with Arbitrade Bermuda to have title to the full US $10 billion of gold;

c. a third party would maintain custody of the reserve gold, to be evidenced by a safe-keeping receipt;

d. the agreement had an initial term of three years and was renewable for up to 15 years;

e. Arbitrade Bermuda would purchase the gold over the 15-year period; and

f. Arbitrade Bermuda would pay SION an annual fee of .125% of the bullion value, payable on a monthly basis.

[155] In September 2018, the Asset Pledge Agreement was amended and restated to say that SION pledged a safe-keeping receipt (a document acknowledging that an agent is safe-keeping your assets), not the physical bullion. SION and Arbitrade Bermuda also entered into an Assignment Agreement. The agreement stated that SION would transfer its ownership rights in relation to the US $10 billion of gold, provided that Arbitrade Bermuda remained liable for the payment obligations under the terms of the Asset Pledge Agreement.

[156] The Commission submits and we find that:

a. The Asset Pledge Agreement and Assignment Agreement did not pledge or transfer title in any physical gold. The agreements only pledged a safe-keeping receipt held in a vault at G4S (a security company).

b. Arbitrade Bermuda never purchased any gold from SION. The payments made under the Asset Pledge Agreement were fee payments for the pledge only.

c. SION did not own any gold that it purportedly pledged. A third party owned the gold. This fact is further supported by the facts and claims pleaded by Hogg in a lawsuit he commenced against SION and others.

d. Hogg confirmed to the Commission that no audit of physical gold was performed. All the firms that Arbitrade Bermuda approached about conducting an audit were simply asked to confirm that G4S issued the safe-keeping receipt. The firm that was retained only confirmed the issuance of the safe-keeping receipt.

[157] As a result of these additional findings, we conclude that Arbitrade Bermuda's and Hogg's further representations about the gold acquisition were also false or misleading.

[158] We find that each of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda made various false or misleading statements directly. We also find that where Cryptobontix and Arbitrade Exchange made various false or misleading statements, such statements are also attributable directly to Hogg because Hogg was the sole officer, director and shareholder of these companies during the Material Time and essentially acted through them. We also find that the Commission established that Hogg was either involved in preparing or approving Arbitrade Bermuda's false and misleading statements, or was aware in advance of each of Arbitrade Bermuda's false and misleading statements.

[159] Thus, we conclude that the Commission has established the first part of the *actus reus* component of the alleged gold and audit fraud as against each of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda. All of them made false or misleading statements to potential and existing investors about the Tokens being backed by gold or that the gold had been secured, stored and verified through a third-party audit. These false and misleading statements were falsehoods that satisfy the first component of the *actus reus* test articulated in *Théroux*.

4.3.2.c *Actus reus* – deprivation

[160] Some investors contacted the Commission and said that they had lost money. We find that some investors were harmed.

[161] Additionally, some of these investors said they invested in the Tokens because they were told that the Tokens were backed by gold. The misrepresentations that the Tokens were backed by gold created a risk to investors' economic interests for which they did not bargain. The gold backing for the Tokens was one of the key elements touted to potential investors in the promotional materials for the Tokens.

4.3.2.d *Mens rea*

[162] The Commission submits, and we find, that each of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda:

a. had subjective knowledge of various representations identified above regarding the acquisition of gold bullion to back the Tokens and the audit of that gold; and

b. knew that those representations were false or misleading.

[163] As the sole director and officer of Cryptobontix and Arbitrade Exchange, Hogg was the directing mind of both companies. As a result, we can determine the *mens rea* of Cryptobontix and Arbitrade Exchange based on Hogg's *mens rea*.

[164] Similarly, we can determine Arbitrade Bermuda's *mens rea* based on Hogg's *mens rea*, as he was a directing mind of the company, as well as on the *mens rea* of the formally appointed directors of the company.

[165] Except for Hogg's posting on the Bitcoin Talk Forum and statements at the June 2018 Arbitrade Bermuda telephone press conference, none of the false or misleading statements related to gold were directly attributed to Hogg. However, Hogg was aware of all of these statements. He was directly involved in their preparation, approval or dissemination. He:

a. controlled the account that posted promotional materials on the Bitcoin Talk Forum;

b. contributed to the drafting of the Cryptobontix White Paper and disseminated it to investors;

c. was involved in preparing and coordinating the Livecoin announcements;

d. controlled both the cryptobontix.com and arbitrade.io websites through which email newsletters were distributed to existing and potential investors, and was involved in sending the newsletters and in drafting or reviewing all the newsletters before they were sent; and

e. he drafted or received drafts of nearly all press releases issued by or on behalf of Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda.

[166] Hogg, Cryptobontix and Arbitrade Exchange (through Hogg) and Arbitrade Bermuda were therefore also each aware of the following facts:

a. Cryptobontix was not a party to any agreement backing the Tokens with gold. Its knowledge can be inferred because Hogg knew there was no such agreement. Additionally, Hogg asked the owner of SION to sign new agreements for gold under the name of Cryptobontix like those signed with Arbitrade Bermuda;

b. the Asset Pledge Agreement and Assignment Agreement pertained to a document held in a vault at G4S, as opposed to physical gold. Arbitrade Bermuda as a party to the agreements would certainly have been aware. Hogg received a copy of the July Asset Pledge Agreement, and was copied on various other documents and on related correspondence that discussed holding a document (rather than physical gold) in a vault with G4S;

c. Arbitrade Bermuda did not purchase any gold from SION. Arbitrade Bermuda's knowledge can be inferred. Hogg was aware because he received the Arbitrade Memorandum from Arbitrade Bermuda that only referred to fee payments and no gold purchases under the Asset Pledge Agreement;

d. SION did not own US $10 billion in gold bullion. There is no evidence of any due diligence performed on SION as a company that would have significant gold holdings. The Asset Pledge Agreement refers to SION *arranging* for sufficient bullion holdings, which suggests that at the time of the agreement SION did not own gold. Hogg had ongoing concerns about the existence of gold, as is evident from his communications with the principal of SION. The communications raised red flags about the existence of gold, but instead of addressing those red flags, Hogg continued to work with the principal of SION with the aim of convincing the public that the gold-related representations were true in order to raise more money through the sale of Tokens;

e. the Asset Pledge Agreement and Assignment Agreement did not give full title to 395,000 kg of gold bullion. A Gold Memorandum of Understanding referred to "nominal title", Hogg described the Asset Pledge Agreement as providing Arbitrade Bermuda with "contractual title", Arbitrade Bermuda never treated the alleged entitlement to gold bullion as an asset, and Hogg conceded to the Commission that Arbitrade Bermuda never owned any amount of gold close to 395,000 kg; and

f. the gold bullion purportedly pledged or assigned to Arbitrade Bermuda by SION was not verified or audited. Arbitrade Bermuda was aware of the limitations of the audit, including that the audit would not confirm the existence of any physical gold. Hogg knew that the verification was limited to the safe-keeping receipt at G4S.

[167] We conclude that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda knew or ought to have known about each of the facts outlined above, which rendered the various representations relating to gold ascribed to each of them false or misleading. We also find that they knew that these false and misleading representations could have as a consequence deprivation of another by inducing investors to assume risk they did not bargain for. The Commission has therefore established the *mens rea* component of the allegation that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda committed fraud related to the acquisition, storing and auditing of gold.

[168] The requisite *actus reus* and *mens rea* have been established. We therefore find that the respondents' false and misleading statements in relation to gold backing the Tokens amounted to fraud.

4.3.3 Misappropriation of investor funds fraud

4.3.3.a Overview

[169] The Commission alleges that during the Material Time, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda made or caused to be made false and misleading statements about the use of proceeds from the sale of the Tokens, when they knew that they had used a significant amount of investor funds for unrelated purposes.

[170] The Commission submits that investors were told their funds would be used to purchase cryptocurrency mining equipment to create growth in the value of the Tokens. Instead, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda knew that investor funds were directed to unrelated purposes. Some investor funds were directed to or for the benefit of:

a. Hogg and his companies, TJL and Gables. The Commission submits that neither entity had a legitimate reason to receive or benefit from investor funds. In addition, the Commission submits both entities knew or ought reasonably to have known that by participating in a scheme of diverting investor funds for purposes unrelated to the Tokens they participated in a course of conduct that perpetrated a fraud on investors; and

b. Arbitrade Bermuda for its operations, including the purchase of a property. The Commission submits that Arbitrade Bermuda knew or ought reasonably to have known that by participating in a scheme that diverted investor funds for purposes unrelated to the Tokens it participated in a course of conduct that perpetrated a fraud on investors.

[171] For the reasons below, we find that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda made false and misleading statements about the use of proceeds from the sale of Tokens. We also find that the respondents knowingly diverted investor funds from the purposes represented to investors, and that the respondents knew or ought reasonably to have known that by doing so they could cause a deprivation to investors. The respondents therefore acted fraudulently.

4.3.3.a *Actus reus* – the prohibited act

[172] We find that beginning as early as May 2017 a series of representations were made by Hogg and Cryptobontix to potential investors in the Tokens about the use of their funds. These representations were that investor funds would be under the control of Cryptobontix and would be used to acquire cryptocurrency mining equipment that would generate funds to

acquire gold bullion and additional cryptocurrency mining equipment. These representations were repeated and made as follows:

a. in the White Paper provided to investors by Hogg and through the Cryptobontix website;

b. in a May 2017 Bitcoin Talk Forum hosted by Hogg on behalf of Cryptobontix;

c. in Livecoin announcements in May and July of 2017 arranged by Hogg on behalf of Cryptobontix; and

d. in a July 2017 PowerPoint presentation created by Hogg.

[173] In addition, later promotional materials disseminated by or on behalf of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda provided updates on the acquisition and operation of cryptocurrency mining equipment. These later promotional materials include:

a. email newsletters, disseminated through websites that Hogg controlled, issued on behalf of Cryptobontix, Cryptobontix and Arbitrade Exchange jointly, Arbitrate Bermuda, and Cryptobontix and Arbitrade Bermuda jointly;

b. sponsored announcements on Livecoin coordinated by Hogg; and

c. press releases of:

i. Arbitrade Exchange which Hogg was involved in drafting or which Hogg received in advance of their dissemination; and

ii. Arbitrade Bermuda provided by Hogg to other senior management of Arbitrade Bermuda or which Hogg received in advance of their dissemination.

[174] There is no evidence that potential and existing investors were told that their funds would be used for any other purpose. There are some instances of disclosure by or on behalf of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda about the acquisition of other properties, but that disclosure does not mention that investor funds would be used to purchase those properties.

[175] The Commission submits and we find that contrary to these representations, significant amounts of investor funds were used not only for purchasing cryptocurrency mining equipment, but also for other purposes entirely unrelated to the acquisition or operation of mining equipment:

a. out of the US $41,622,965.27 in “token sales proceeds” identified in the Arbitrade Memorandum, all or nearly all which was from the sale of Tokens:

i. US $6,666,666.34 was used to pay fees that Arbitrade Bermuda owed to SION under the Asset Pledge Agreement; and

ii. at least US $15,940,605.23 was used by Arbitrade Bermuda to make payments related to the operation of Arbitrade Bermuda (e.g. purchase of a building and art, directors’ and officers’ fees, travel, and business meals, etc.); and

b. US $4,141,700 was used to acquire 3,400 S9 mining rigs, of which 3,300 mining rigs were transferred to Hogg by Cryptobontix on June 7, 2019; and

c. an additional US $10,109,038 of investor funds from the sale of Tokens was transferred to or used for the benefit of Hogg and his companies TJL and Gables, in particular:

i. US $7,008,023 was used for the purchase of real properties and related businesses in Grand Bend, Ontario by TJL and Gables;

ii. US $2,010,015 was transferred to bank accounts at BMO and TD held by TJL and Gables; and

iii. US $1,091,000 was transferred to third parties for the benefit of Hogg and TJL.

[176] The Commission has therefore established the first component of the *actus reus* of the alleged fraud. Hogg, Arbitrade Exchange, Cryptobontix and Arbitrade Bermuda made false and misleading statements to investors that their funds would be used to acquire and operate cryptocurrency mining equipment to enhance the value of the Tokens. In fact, some of the investor funds were provided to or for the benefit of Hogg, TJL, Gables and Arbitrade Bermuda and used for other purposes.

[177] Similarly, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda failed to disclose that some of the investor funds were used to pay for Arbitrade Bermuda's expenses, and for Arbitrade Bermuda's acquisition of assets that were unrelated to the mining of cryptocurrencies.

[178] We also conclude, for the same reasons noted above, that where Cryptobontix and Arbitrade Exchange made various false or misleading statements, those statements are also attributable directly to Hogg and Hogg was either involved in preparing or approving Arbitrade Bermuda's false and misleading statements or was aware in advance of each of Arbitrade Bermuda's false and misleading statements. Further, we find that the unauthorized diversion of investor funds to or for the benefit of TJL and Gables is also attributable directly to Hogg who owned and controlled them.

[179] These false and misleading statements were falsehoods that satisfy the first component of the *actus reus* test articulated in *Théroux*. The unauthorized diversion of investor funds and property and the unauthorized use of investor funds was "other fraudulent means" that also satisfies the first component of the test.

4.3.3.b *Actus reus* – deprivation

[180] The various representations made about use of investor funds provided to potential and existing investors, as discussed in more detail above, linked the growth in the value of the Tokens to the enterprise's cryptocurrency mining activities.

[181] Hogg, Cryptobontix, Arbitrade Exchange, Arbitrade Bermuda, TJL and Gables knew or ought to have known that by using investor funds for their own use and diverting them for uses unrelated to buying cryptocurrency mining equipment, they were putting the economic interests of the Token investors at risk. Also, Hogg and Cryptobontix knew or ought to have known that by transferring ownership of a large portion of the mining equipment that had been purchased to Hogg, they were subjecting the investors to risks for which they had not bargained.

4.3.3.c *Mens rea*

[182] The respondents were all aware of the various representations that investor funds would be used to buy cryptocurrency mining equipment:

a. Hogg was aware because he prepared and finalized the Cryptobontix White Paper and made it available to investors;

b. Cryptobontix, Arbitrade Exchange, Arbitrade Bermuda, TJL and Gables were all aware through Hogg's knowledge as he was a directing mind of each entity;

c. Cryptobontix was also aware as it made the representations including through the Cryptobontix White Paper that it released; and

d. Arbitrade Bermuda was aware because individuals who later became directors and officers of Arbitrade Bermuda were provided with draft and final copies of the Cryptobontix White Paper by Hogg.

[183] Further, each respondent knew that significant amounts of investor funds were used for purposes other than the acquisition of mining equipment as represented:

a. Hogg and Arbitrade Bermuda were aware that investor funds were used for expenditures by or for Arbitrade Bermuda, including to maintain the Asset Pledge Agreement and to make other payments for Arbitrade Bermuda, including the purchase of an office building;

b. Arbitrade Exchange and Cryptobontix were generally aware that investor funds were used to pay for expenditures by or for Arbitrade Bermuda, given Hogg's knowledge and his status as a directing mind of those entities;

c. Hogg, Cryptobontix and Arbitrade Bermuda were aware that ownership of crypto mining rigs purchased with investor funds was transferred to Hogg personally, because Cryptobontix issued a resolution to that effect which was signed by Hogg, and Hogg, Cryptobontix and Arbitrade Bermuda all signed an agreement authorizing the transfer;

d. Arbitrade Exchange was aware of the transfer of the mining rigs to Hogg, given Hogg's knowledge and his status as the directing mind of Arbitrade Exchange;

e. Hogg was aware that investor funds from the sale of the Tokens were used or transferred to or for the benefit of Hogg, TJL and Gables, because:

    i. Hogg directed Braverman to transfer funds to the lawyer taking care of Hogg's real estate transactions;

ii. it can be inferred that Hogg was aware funds transferred to accounts at BMO and TD held by TJL and Gables were from Braverman because Hogg controlled the accounts, and the funds came from Rozgold, which Hogg knew was Braverman's company;

iii. Hogg directed Braverman to make payments to third parties to benefit Hogg and TJL by giving Braverman the wire details and supporting documents indicating the payments were made at Hogg's direction; and

iv. Hogg knew that the funds from Braverman or Rozgold came from the sale of the Tokens because:

- Hogg knew that cryptocurrency from the sale of Tokens to investors was sent to the Rozgold account at Genesis that was controlled by Braverman and where it was converted into US dollars;

- as far as Hogg knew, Braverman had no meaningful employment other than selling Tokens and Hogg could not identify any other sources of funds in the Rozgold account other than from the sale of Tokens; and

- there was no other reason for Braverman to give Hogg or Hogg's companies money other than in relation to the Tokens.

f. TJL and Gables were aware that investor funds from the sale of Tokens were transferred to or used for the benefit of Hogg and themselves because of Hogg's knowledge and his role as the directing mind of these entities;

g. Cryptobontix and Arbitrade Exchange were aware that investor funds from the sale of Tokens were transferred to or used for the benefit of Hogg, TJL and Gables because of Hogg's knowledge and his role as the directing mind of those entities; and

h. Arbitrade Bermuda was aware that investor funds from the sale of Tokens were transferred to or used for the benefit of Hogg, TJL and Gables because of Hogg's knowledge and his role as a directing mind of Arbitrade Bermuda, and because of Braverman's knowledge as the sender of the funds and his role as the Executive VP and Chief Operations Officer of Arbitrade Bermuda.

[184] All of the respondents were also aware that the misuse of investor funds could cause deprivation. We therefore conclude that the Commission has established the *mens rea* component of the allegation that the respondents committed fraud in relation to a misuse of investor funds contrary to s. 126.1(1)(b) of the *Act*.

[185] As we have already concluded that the respondents engaged in conduct constituting falsehoods and "other fraudulent means" and exposed investors to risks other than what they had bargained for, thereby satisfying both components of the *actus reus* of the alleged fraud, we find that the Commission has established that the respondents committed fraud in relation to a misuse of investor funds contrary to s. 126.1(1)(b) of the *Act.*

4.4 Did Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda engage in the business of trading securities without registration contrary to s. 25(1) of the *Act*?

[186] The Commission alleges that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda engaged in the business of trading in securities without registration and without an exemption from registration, contrary to s. 25(1) of the *Act*. We agree.

4.4.1 Law

[187] Registration is a cornerstone of the *Act*. It is an important gate-keeping mechanism that protects investors and the capital markets by imposing obligations of proficiency, integrity, and solvency on those who seek to be in the business of trading in securities.[60]

[188] The *Act* requires those engaged in the business of trading to be registered.[61] The *Act* defines "trade" or "trading" to include:

a. any sale or disposition of a security for valuable consideration, whether the terms of payment be on margin, installment or otherwise,

[60] *Limelight Entertainment Inc et al*, 2008 ONSEC 4 (***Limelight***) at paras 135-136; *Meharchand (Re)* 2018 ONSEC 51 (***Meharchand)*** at para 107
[61] *Act*, s 25(1)

….

e. any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.[62]

[189] The Tribunal determines whether a person or company has engaged in the business of trading by looking at the events as a whole, in the circumstances in which they took place, while also assessing the impact on those towards whom the acts were directed.[63]

[190] The Tribunal has found a wide range of activities to constitute acts in furtherance of a trade, including distributing promotional materials concerning potential investments.[64] Direct solicitation or direct contact with an investor is not required for an act to constitute an act in furtherance of a trade. Nor is it necessary for an actual trade to occur.[65]

[191] The requirement in s. 25 of the *Act* to be registered applies to anyone who engages in or holds themselves out as engaging in the business of trading.

[192] The Tribunal has consistently used the criteria set out in Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* to determine whether a person or company is engaged in the business of trading for the purposes of s. 25(1) of the *Act* (referred to as the "business trigger" test).[66]

[193] Those criteria include:

a. engaging in activities like a registrant, including stating in any way that the firm will buy or sell securities, or setting up a company to sell securities or promoting the sale of securities;

b. acting as a market maker;

c. carrying on the activity with repetition, regularity or continuity, whether or not that activity is the sole or even the primary endeavour;

d. receiving or expecting to receive compensation for carrying on the activity, regardless of the form of compensation; and

e. directly or indirectly soliciting securities transactions.[67]

4.4.2 Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda traded securities

[194] The Commission submits that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda traded securities during the Material Time. We agree:

a. Hogg traded the Cryptobontix Securities (which, as explained above were the transaction or scheme for the offer and sale of the Tokens, including the economic reality of all of the surrounding circumstances and the representations made to investors) during the Material Time, given that he:

i. was heavily involved in choosing and contacting Livecoin and C-CEX, the crypto asset trading platforms where the Tokens were sold;

ii. retained Braverman and Goldberg to sell the Tokens;

iii. provided training instructions to Goldberg (and through Goldberg to Braverman), including on setting up accounts on Livecoin and C-CEX for trading;

iv. transferred blocks of Tokens from his master account to Goldberg and Braverman for them to sell them to investors;

v. maintained an account on Livecoin which received bitcoin and other cryptocurrency from investors for the purchase of the Tokens;

vi. released Tokens to investors upon confirmation of the investor funds;

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62 *Act*, s 1(1)
63 *Sandy Winick et al*, 2013 ONSEC 31 (***Winick***) at para 98; *Money Gate* at para 160
64 *Winick* at para 99
65 *Winick* at para 101; *Momentas Corporation et al*, 2006 ONSEC 15 (***Momentas***) at para 78
66 *Mek Global* at paras 70–72; *VRK* at paras 124-126
67 Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, s 1.3 "Factors in determining business purpose" (**CP 31-103**)

vii. sold Tokens directly to at least two investors and communicated with investors and potential investors on around 30 phone calls to explain "the technical side of things";

viii. prepared and/or disseminated numerous related promotional materials; and

ix. together with Braverman and Goldberg, hired a firm to prepare an analyst report on the Unity Ingot token with the intention that the report would be disseminated to potential investors and, to that end, provided the firm with materials;

b. Cryptobontix traded the Cryptobontix Securities during the Material Time, given that it:

i. created the Tokens and deployed them on the blockchain;

ii. sold the Tokens, through Hogg, Braverman and Goldberg; and

iii. disseminated, directly or indirectly, related promotional materials, including through announcements on Livecoin it paid for, email newsletters and a press release;

c. Arbitrade Exchange traded the Cryptobontix Securities during the Material Time, given that:

i. Arbitrade Exchange and Cryptobontix sold Tokens; and

ii. Arbitrade Exchange disseminated, directly or indirectly, related promotional materials, including a sponsored announcement on Livecoin, emails and press releases; and

d. Arbitrade Bermuda traded the Cryptobontix Securities during the Material Time, given that:

i. it received investor funds from the sale of the Tokens;

ii. two of its directors and officers kept track of how much was earned from the sale of the Tokens; and

iii. it disseminated, directly or indirectly, related promotional materials, including a sponsored announcement on Livecoin, email newsletters, press releases and a press conference.

4.4.3 Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda engaged in the business of trading

[195] We have concluded that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda traded in securities. We must now decide whether they engaged in the business of trading in securities. We conclude that they did, based on the factors in the business trigger test.

4.4.3.a Engaging in activities like a registrant

[196] Like a registrant, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda promoted the Cryptobontix Securities and solicited investors.

[197] The Cryptobontix White Paper stated that part of Cryptobontix's business would be managing the crypto mining equipment. However, the evidence shows that this responsibility was delegated to a third party and its principal. That third party's principal was in turn a consultant of Arbitrade Exchange and Arbitrade Bermuda and worked with a director of Arbitrade Bermuda to oversee mining operations during the Material Time. Hogg, Cryptobontix's sole employee during the Material Time, was focused primarily on marketing and selling the Tokens.

[198] Arbitrade Exchange and Arbitrade Bermuda purported to have other lines of business such as mining and exchange. However, there is no evidence that either entity pursued those other businesses or that their directors, officers, and employees devoted any time to such businesses. In fact:

a. Arbitrade Exchange did not carry on any active business other than marketing and advertising primarily related to the Tokens;

b. by July 2019, Arbitrade Bermuda had no other assets than a building in Bermuda that it never occupied or used;

c. Arbitrade Bermuda had been winding down business since the second or third quarter of 2019; and

d. Braverman and Goldberg, who had significant roles with Arbitrade Bermuda, were primarily responsible for selling the Tokens during the Material Time.

[199] Because Cryptobontix was the issuer of the Cryptobontix Securities, there is no basis for concluding that Arbitrade Exchange's and Arbitrade Bermuda's trading activities were ancillary to the business of the issuer.

[200] We therefore conclude that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda engaged in activities like those of a registrant.

4.4.3.b Acting as a market maker

[201] Hogg retained Braverman and Goldberg to make the market for the Tokens. According to Hogg, Braverman made a market by putting supporting bids for Tokens into the market. Hogg was Cryptobontix's sole employee during the Material Time. Braverman and Goldberg were later also employed by Arbitrade Bermuda during the period when Arbitrade Bermuda was receiving proceeds from sales of the Tokens. We therefore conclude that Hogg, Cryptobontix and Arbitrade Bermuda engaged in market making activities.

4.4.3.c Repetitive, regular, or continuous activity

[202] During the Material Time, Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda regularly and continuously promoted and solicited investments in the Cryptobontix Securities.

4.4.3.d Receiving or expecting to receive compensation

[203] Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda received investor funds from the sale of the Tokens. While some of those funds were used to acquire cryptocurrency mining equipment, a significant amount of those funds were used by Hogg (and his companies TJL and Gables) and by Arbitrade Bermuda for unrelated purposes. Some of the investor funds were used by Cryptobontix and Arbitrade Exchange to develop their respective businesses. We conclude that this constitutes a form of compensation received by Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda from the sale of the Tokens.

4.4.3.e Soliciting securities transactions

[204] Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda solicited securities transactions through the promotional materials described above.

4.4.4 Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda were not registered

[205] None of Hogg, Cryptobontix, Arbitrade Exchange or Arbitrade Bermuda was registered to trade securities during the Material Time.

4.4.5 No exemptions were available

[206] The onus of establishing that an exemption from the registration requirement is available lies with the respondents. None of the respondents alleged to have breached s. 25(1) claimed any such exemption and there is no evidence before us to support a claim that an exemption was available. We therefore conclude that no exemption from the registration requirement was available to them.

4.4.6 Conclusion regarding s. 25(1) of the *Act*

[207] We conclude that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda traded the Cryptobontix Securities and were engaged in the business of trading the Cryptobontix Securities without being registered and without an exemption, in breach of s. 25(1) of the *Act*. In finding that Hogg breached s. 25(1) of the *Act,* we have also considered, and attributed to him personally, the breaches by Cryptobontix and Arbitrade Exchange through which companies Hogg was acting.

4.5 Did Hogg, Cryptobontix, Arbitrade Exchange, and Arbitrade Bermuda illegally distribute securities contrary to s. 53(1) of the *Act*?

[208] The Commission submits that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda distributed the Cryptobontix Securities without complying with the prospectus requirements, contrary to s.53(1) of the *Act*. We agree.

4.5.1 Law

[209] No person or company may trade in a security, if the trade would be a distribution, without a preliminary prospectus and a prospectus being filed and receipts issued by the Commission.[68]

[68] *Act*, s 53(1)

[210] The prospectus requirement is another cornerstone of Ontario's securities regulatory regime. A prospectus ensures that investors have full, true, and plain disclosure of information to properly assess the risks of an investment and to make an informed decision.[69] The prospectus is therefore fundamental to the protection of investors rights.

[211] "Distribution" is defined by the *Act* to include "a trade in securities of an issuer that have not been previously issued."[70] As discussed above, "trade" is defined to include "acts in furtherance of a trade". The Commission submits that, therefore, "distribution" includes "acts in furtherance of trade". We agree.

[212] Each of Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda was actively engaged in promoting the Cryptobontix Securities and soliciting investors. They were also actively engaged in trading or acts in furtherance of trading. Counsel for Cryptobontix and Arbitrade Exchange confirmed to the Commission that the Tokens were sold by Cryptobontix and Arbitrade Exchange. Braverman and Goldberg were retained by Hogg to solicit and make a market in the Tokens. They later became employees of Arbitrade Bermuda and continued to sell the Tokens to raise money. Proceeds from the sale of Tokens went to the benefit of all of the respondents.

4.5.2 No prospectus was filed and no exemptions were available

[213] Cryptobontix was the issuer of the Cryptobontix Securities. Cryptobontix did not file a prospectus, and there is no evidence of an exemption being available to Cryptobontix.

4.5.3 Conclusion regarding s. 53(1) of the *Act*

[214] We conclude that Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda distributed the Cryptobontix Securities without a prospectus and without an exemption contrary to s. 53(1) of the *Act*. In finding that Hogg breached s. 53(1) of the *Act,* we have also considered, and attributed to him personally, the breaches by Cryptobontix and Arbitrade Exchange through which companies Hogg was acting.

4.6 Did Hogg permit, authorize or acquiesce in the corporate respondents' breaches?

[215] The Commission alleges that Hogg, as a director or officer of Cryptobontix, Arbitrade Exchange, TJL and Gables and as a *de facto* director and officer of Arbitrade Bermuda, authorized, permitted, or acquiesced in the breaches of the *Act* by those entities and therefore should be deemed to have breached the *Act* under s. 129.2 in respect of each of the corporate respondents' breaches.

[216] Section 129.2 of the *Act* provides that "if a company or a person other than an individual has not complied with Ontario securities law, a director or officer of the company or person who authorized, permitted or acquiesced in the non-compliance shall be deemed to have also not complied with Ontario securities law."

[217] The *Act* defines "director" and "officer" to include, respectively, individuals performing or occupying a similar position to a director and individuals who perform functions like those normally performed by an officer.[71] We concluded earlier that Hogg was a director and officer of Cryptobontix, Arbitrade Exchange, TJL and Gables, and a directing mind of Arbitrade Bermuda. Having regard to numerous factors that the Tribunal has previously identified as relevant to determine whether someone is a carrying on a function like that of a director or officer,[72] we also conclude that Hogg was a director and officer of Arbitrade Bermuda.

[218] 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 of the *Act*. The Commission submits that we should not take that approach. The Commission has alleged that Hogg is accountable under s.129.2 of the *Act* for the corporate respondents' breaches of the *Act*. The Commission submits that the principles of justification and transparency require us to address the allegation.

[219] These recent Tribunal decisions appear to be applying, without directly referring to, the principle from *Kienapple v R*[73] or a similar concept. We asked the Commission for further written submissions about the application of *Kienapple* to Tribunal proceedings and about jurisprudence from other Canadian securities commissions regarding the application of provisions like s.129.2 of the *Act* in circumstances where a direct breach of securities laws by an individual has been found.

[220] We conclude that because *Kienapple* is a criminal law decision, it is not binding on the Tribunal. However, the decision does provide useful guidance. Where the Tribunal finds that an individual acting through a corporation has directly breached Ontario securities law, we do not need to also deem the individual liable for a corporate breach.

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69 *Limelight* at para 139
70 *Act*, s 1(1) "distribution"
71 *Act*, s.1(1) "director" and "officer"
72 *Winick* at para 120; *Momentas* at paras 100-102
73 [1975] 1 SCR 729 (***Kienapple***)

[221] We also conclude that:

a. had we not found Hogg directly liable for the breaches of the *Act* by Cryptobontix, Arbitrade Exchange, TJL and Gables, we would have deemed him liable under s. 129.2 for those respondents' breaches; and

b. Hogg is deemed liable under s. 129.2 of the *Act* in respect of the breaches of the *Act* by Arbitrade Bermuda.

4.6.1 The principle in *Kienapple*

[222] The principle in *Kienapple* is a criminal law concept that prohibits multiple convictions for the same "cause, matter or delict".[74] The principle only applies when there is a sufficient factual and legal nexus between the offences in question. Even if the same act grounds multiple offences, the legal nexus requires that there be no additional and distinguishing element that goes to guilt.[75] The legal nexus will not be demonstrated if the offences target different societal interests or victims or prohibit different consequences.[76]

[223] The Commission submits that it is unsettled law whether *Kienapple* applies generally to Tribunal proceedings. We are not aware of any binding authority that the principle does apply. The Tribunal has discussed *Kienapple* on limited occasions with limited analysis.[77] The Commission submits that Tribunal proceedings are administrative rather than civil or criminal. The Tribunal has held that criminal principles are not necessarily applicable to administrative proceedings.[78]

[224] The Commission further submits that it would be preferable for us to reject *Kienapple* as being unsuited to s. 127 proceedings for several other reasons. Given our conclusion that *Kienapple* is not binding on the Tribunal it is not necessary for us to consider those submissions.

[225] *Kineapple* is a criminal case. The Court's reasons speak only to the criminal context and not to administrative proceedings. The Tribunal is an administrative and regulatory body, not a criminal or quasi-criminal body. There is nothing in the *Kineapple* decision that suggests the principle should apply in the administrative context.[79]

[226] We note that in *Carruthers v. College of Nurses of Ontario*[80] the Ontario Divisional Court held that *Kienapple* applies in disciplinary proceedings taken against members of a self-regulated profession and that there is "no reason in principle to permit the application of the doctrine in respect of "regulatory" offences under provincial law, yet deny it to members of self-regulated professions in the case of prosecutions for alleged misconduct."[81] However, in subsequent decisions involving appeals of findings of professional misconduct by the Law Society of Upper Canada, the Divisional Court has concluded that *Kienapple* does not apply.[82] In the context of the Law Society decisions, the Court states that the complaint about professional misconduct "was not in the form of an indictment and should not be approached in an overly technical manner". We do not take from these Divisional Court decisions that *Kienapple* must apply to Tribunal proceedings.

[227] A review of the relevant decisions of this Tribunal supports a conclusion that while *Kienapple* is not binding on the Tribunal, the Tribunal has found the guidance in that decision, namely the idea of not finding multiple breaches of laws based on the same facts and wrongdoing or not punishing someone twice for the same matter, useful where the circumstances warrant it. On occasion the Tribunal has, either with or without reference to *Kienapple*, applied the principle that having found a respondent directly liable for breaches of Ontario securities law there is no need to also consider whether they are also deemed to have breached the law under s. 129.2.[83] We think this is the correct approach.

4.6.1.a Should Hogg be deemed to have breached the *Act* in respect of each of the corporate respondents' respective breaches of the *Act*?

[228] We decline to find that Hogg is deemed to have breached the *Act* under s.129.2 for TJL's and Gables's breaches of s. 126(1)(b). This is because our finding that Hogg directly breached s. 126(1)(b) is based upon, among other things, the very same misconduct that underlies the breaches by TJL and Gables. In this case, because Hogg was the sole shareholder and director of both TJL and Gables and these companies' knowledge and actions were entirely through Hogg, we have already attributed these companies' misconduct to Hogg as part of our finding of Hogg's direct breach.

[229] Similarly, we decline to find that Hogg is deemed under s. 129.2 to have breached the *Act* because of each of Arbitrade Exchange's and Cryptobontix's breaches of the *Act*. Given Hogg's role with each of these companies, we consider that

74 *R v Prince* [1986] 2 SCR 480 (***Prince***) at paras 14-15, 17
75 *Prince* at para 32
76 *R v Kinnear* 2005 CanLII 212092 (ONCA) (***Kinnear***) at para 39
77 *Coventree Inc. et al (Re)*, 2011 ONSEC 38 at paras 64-66; *Axcess Automation LLC et al (Re)*, 2012 ONSEC 34 at para 136; *Irwin Boock et al (Re)*, 2013 ONSEC 33 at apras 106-109; *Natural Beeworks Apiaries Inc (Re)*, 2019 ONSEC 23 at para 146
78 *Bridging Finance Inc (Re),* 2023 ONCMT 21 (***Bridging***) at paras 10, 14
79 *Bridging* at paras 10, 14
80 1996 CanLII 11803 (ONSC) (***Carruthers***)
81 *Carruthers* at para 87
82 *Stevens v Law Society of Upper Canada*, 1979 CanLII 1749 (Div Ct), cited in *Law Society of Ontario v von Achten* (***Achten***), 2022 ONLSTH 117
83 *Stinson (Re),* 2023 ONCMT 26 at para 78; *Feng* at paras 72-73; *Mughal (Re),* 2023 ONCMT 39 at paras 104-108.

Hogg made the false and misleading statements and is responsible for the other misconduct ascribed to these companies and we have already found that these companies' knowledge of their fraud was based, in part, upon Hogg's knowledge (or *mens rea*). We also attributed Arbitrade Exchange's and Cryptobontix's misconduct underlying their breaches of s. 25 and s. 53 to Hogg in finding that Hogg breached those provisions.

[230] We do, however, find that Hogg is deemed under s. 129.2 to have violated Ontario securities laws for permitting, authorizing or acquiescing in Arbitrade Bermuda's breaches of Ontario securities laws. Despite finding Hogg was significantly involved with Arbitrade Bermuda during the Material Time, we do not attribute the breaches by Arbitrade Bermuda directly to Hogg, and Hogg alone. Given our factual findings about Hogg's role with Arbitrade Bermuda, including his knowledge of and involvement in Arbitrade Bermuda's breaches of the *Act*, we find that he permitted, authorized and acquiesced in such breaches.

5. CONCLUSION

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

a. the transaction or scheme for the offer and sale of the Tokens, including the economic reality of all the surrounding circumstances and, in particular, the representations made to investors constitute "investment contracts" and are therefore securities under the *Act*;

b. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda acted fraudulently by falsely representing to investors that the Tokens were backed by gold and that gold was acquired and confirmed through an audit, contrary to s. 126.1(1)(b) of the *Act*;

c. the respondents acted fraudulently by misappropriating funds raised from the sale of Tokens for purposes other than those represented to investors, contrary to s. 126.1(1)(b) of the *Act*;

d. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda engaged in the business of trading in securities without registration and without an exemption from registration, contrary to s. 25(1) of the *Act*;

e. Hogg, Cryptobontix, Arbitrade Exchange and Arbitrade Bermuda distributed the securities without complying with the prospectus requirements, contrary to s.53(1) of the *Act*; and

f. Hogg is deemed under s. 129.2 of the *Act* to have not complied with Ontario securities law in relation to each of Arbitrade Bermuda's breaches of the *Act*.

[232] We decline to deem Hogg liable under s. 129.2 for the breaches of the *Act* by Arbitrade Exchange, Cryptobontix, TJL and Gables due to our attribution to Hogg of such breaches in our finding that Hogg directly breached ss. 126.1(1)(b), 25(1), and 53(1) of the *Act*.

[233] We therefore require that the parties contact the Registrar by 4:30 p.m. on July 2, 2024, to arrange an attendance, to schedule a hearing regarding sanctions and costs, and the delivery of materials in advance of that hearing. The attendance is to take place on a mutually convenient date that is fixed by the Governance & Tribunal Secretariat, and that is no later than July 19, 2024.

[234] If the parties are unable to present a mutually convenient date 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 July 2, 2024.

Dated at Toronto this 14th day of June, 2024

"Andrea Burke"

"Sandra Blake"

"M. Cecilia Williams"

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B. Ontario Securities Commission

B.1
Notices

B.1.1 Notice of General Order – Ontario Instrument 13-512 Temporary Exemption from the Requirement to Transmit a Report of Exempt Distribution through SEDAR+ in connection with Distributions of Eligible Foreign Securities to Permitted Clients (Interim Class Order)

NOTICE OF GENERAL ORDER

ONTARIO INSTRUMENT 13-512
TEMPORARY EXEMPTION FROM THE REQUIREMENT TO TRANSMIT A REPORT OF EXEMPT DISTRIBUTION THROUGH SEDAR+ IN CONNECTION WITH DISTRIBUTIONS OF ELIGIBLE FOREIGN SECURITIES TO PERMITTED CLIENTS (INTERIM CLASS ORDER)

January 16, 2025

Introduction

The Ontario Securities Commission (the **Commission**) has made an order under subsection 143.11(2) of the *Securities Act* (Ontario) (the **Act**) providing an exemption from the requirement to transmit a Form 45-106F1 *Report of Exempt Distribution* (**Report of Exempt Distribution**) through the System for Electronic Data Analysis and Retrieval + (**SEDAR+**) and to expressly limit the application of this exemption to circumstances in which specified conditions are satisfied.

Background

On June 9, 2023, National Instrument 13-103 *System for Electronic Data Analysis and Retrieval + (SEDAR+)* (**NI 13-103**) came into force. Pursuant to NI 13-103, a Report of Exempt Distribution must be transmitted through SEDAR+.

On July 21, 2023, Coordinated Blanket Order 13-933 *Temporary exemption from the requirement to transmit a report of exempt distribution through SEDAR+ in connection with distributions of eligible foreign securities to permitted clients* (**Blanket Order 13-933**) came into force. Blanket Order 13-933 provides an exemption from the requirement to transmit Forms 45-106F1 through SEDAR+ for a distribution of an eligible foreign security to a permitted client. Blanket Order 13-933 will expire in Ontario on January 21, 2025.

Blanket Order 13-933 continues to be in force in certain jurisdictions[1] across the Canadian Securities Administrators (**CSA**). Blanket Order 13-933 has a limited duration in the remaining CSA jurisdictions and is expected to be extended following its expiration on January 21, 2025.[2]

Description of Order

Ontario Instrument 13-512 *Temporary Exemption from the Requirement to Transmit a Report of Exempt Distribution through SEDAR+ in connection with Distributions of Eligible Foreign Securities to Permitted Clients (Interim Class Order)* (the **Order**) provides an exemption in Ontario from the requirement to transmit a Report of Exempt Distribution through SEDAR+ for a distribution of an "eligible foreign security" to a "permitted client", as such terms are defined in the Report of Exempt Distribution, provided the distribution satisfies the conditions set out in the Order. A person or company eligible to rely on the Order must file the form of report in Appendix B to the Order[3] in the manner set out in Appendix A to the Order.[4]

The Order also provides an exemption from the requirement to transmit an offering memorandum through SEDAR+, provided that it is transmitted in the manner set out in Appendix A to the Order.

1 These jurisdictions include Alberta, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan.
2 These jurisdictions include British Columbia, Newfoundland, Northwest Territories, Nunavut, Prince Edward Island and the Yukon.
3 The version of the report in Appendix B is based on the version of the report that was in force on June 8, 2023 and remains unchanged from the version of the report included as Appendix B to Blanket Order 13-933. The Report of Exempt Distribution was amended on June 9, 2023, to remove certain information captured by a SEDAR+ profile, to reduce duplication.
4 Filers must use the Excel spreadsheets for Schedule 1 and Schedule 2 of the report that are available on the Canadian Securities Administrators website at the following address: https://www.securities-administrators.ca/resources/reports-of-exempt-distribution/. The Order also requires filers use the fillable PDF form available on that website, which remains unchanged from the version of the report included as Appendix B to Blanket Order 13-933.

The exemption is available to allow the CSA to continue to consider potential enhancements to the functionality of SEDAR+.

The Order does not otherwise relieve a person or company from any of the reporting requirements in Part 6 of National Instrument 45-106 *Prospectus Exemptions* or the filing fees or late fees in respect of the Report of Exempt Distribution. Reports of Exempt Distribution filed in reliance on the Order are available to the public upon request made to the Commission.

Reasons for the Order

Under current securities laws, businesses distributing securities under certain prospectus exemptions are required to file a Report of Exempt Distribution through SEDAR+ within ten days of the distribution. An investment fund is required to file the Report of Exempt Distribution through SEDAR+ not later than 30 days after the end of the calendar year for exempt distributions. Blanket Order 13-933 provides a temporary exemption from this requirement for a distribution of an eligible foreign security to a permitted client. Blanket Order 13-933 is premised on the fact that, by definition, the offering of an eligible foreign security would be expected to primarily occur in a foreign jurisdiction by a foreign issuer with a limited nexus to Canada and that the distribution of such eligible foreign security to a Canadian permitted client would constitute a *de minimus* distribution in Canada.

Since the introduction of Blanket Order 13-933 on July 21, 2023, the Commission has observed instances where certain issuers relying on the exemption contained in Blanket Order 13-933 had an existing SEDAR+ profile and/or were a reporting issuer in Canada at the time of the applicable distribution.

Accordingly, this Order is being issued to clarify the types of distributions that were permitted by Blanket Order 13-933 as originally contemplated. Pursuant to the Order, reporting issuers in any jurisdiction of Canada and those with an existing SEDAR+ profile at the time of distribution of an eligible foreign security to a permitted client are not permitted to avail themselves of the exemption contained in this Order and accordingly, should be filing the applicable Report of Exempt Distribution on SEDAR+.

In addition, the Commission has been advised by a number of stakeholders that Blanket Order 13-933 provided an important exemption that facilitates participation by Ontario permitted clients in global offerings of foreign issuers.

This Order aims to fulfill the Commission's mandate in a way that protects investors and market integrity while facilitating investment activities by Ontario-based permitted clients.

This Order reflects stakeholder feedback and is intended to promote right-size regulation that has been informed by changing needs, risks and practices in Ontario and globally. However, the Commission also recognizes the importance of the information it receives regarding exempt market issuances, which provides important data for assessing capital-raising activities in Ontario.

In light of the foregoing, the Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, an exemption from the requirements described above subject to the conditions of the Order.

Term of Order

We expect that the Order will be revoked or replaced before the expiry date. We will provide advance notice before revoking or replacing the Order.

Day on which the Order Ceases to Have Effect

The Order will come into effect on January 21, 2025, and remains in effect until July 21, 2026, unless extended by the Commission.

Questions

If you have any questions regarding the blanket order, please contact any of the following:

Erin O'Donovan
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Ontario Securities Commission
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B.1.2 Notice of Correction – Nuvei Corporation

The Order for *Nuvei Corporation* published December 19, 2024 in (2024), 47 OSCB 9698, has since been revised. The revised version is published in Chapter B.2 of this Bulletin.

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B.2
Orders

B.2.1 Brookfield Infrastructure Holdings Corporation (formerly, Brookfield Infrastructure 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 8, 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 INFRASTRUCTURE HOLDINGS
CORPORATION
(formerly, Brookfield Infrastructure 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.

"David Surat"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024/0695

B.2.2 Ontario Instrument 13-512 Temporary Exemption from the Requirement to Transmit a Report of Exempt Distribution through SEDAR+ in connection with Distributions of Eligible Foreign Securities to Permitted Clients (Interim Class Order)

Ontario Securities Commission

Ontario Instrument 13-512
Temporary Exemption from the Requirement to Transmit a Report of Exempt Distribution through SEDAR+ in connection with Distributions of Eligible Foreign Securities to Permitted Clients (Interim Class Order)

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective January 21, 2025, Ontario Instrument 13-512 entitled "*Temporary Exemption from the Requirement to Transmit a Report of Exempt Distribution through SEDAR+ in connection with Distributions of Eligible Foreign Securities to Permitted Clients (Interim Class Order)*" is made.

January 10, 2025

"Grant Vingoe"
Chief Executive Officer
Ontario Securities Commission

Authority under which the order is made:

Act and section: *Securities Act*, subsection 143.11(2)

Ontario Securities Commission

Ontario Instrument 13-512
Temporary Exemption from the Requirement to Transmit a Report of Exempt Distribution through SEDAR+ in connection with Distributions of Eligible Foreign Securities to Permitted Clients
(Interim Class Order)
(the Order)

Interpretation

1. In this Order:

   "**eligible foreign security**" has the same meaning as in Form 45-106F1 *Report of Exempt Distribution*;

   "**permitted client**" has the same meaning as in Form 45-106F1 *Report of Exempt Distribution*;

   "**SEDAR+**" has the same meaning as in National Instrument 13-103 *System for Electronic Data Analysis and Retrieval + (SEDAR+)*.

2. Terms defined in the *Securities Act* (Ontario) (the **Act**) and National Instrument 14-101 *Definitions* have the same meanings in this Order, unless otherwise defined.

Background

3. On June 9, 2023, National Instrument 13-103 *System for Electronic Data Analysis and Retrieval + (SEDAR+)* (**NI 13-103**) came into force. Pursuant to NI 13-103, Form 45-106F1 *Report of Exempt Distribution* (**Form 45-106F1**) must be transmitted through SEDAR+.

4. On July 21, 2023, Coordinated Blanket Order 13-933 *Temporary exemption from the requirement to transmit a report of exempt distribution through SEDAR+ in connection with distributions of eligible foreign securities to permitted clients* (**Blanket Order 13-933**) came into force. Blanket Order 13-933 provided an exemption from the requirement to transmit a Form 45-106F1 through SEDAR+ for a distribution of an eligible foreign security to a permitted client. Blanket Order 13-933 will expire in Ontario on January 21, 2025.

5. Blanket Order 13-933 continues to be in force in certain jurisdictions[1] across the Canadian Securities Administrators (**CSA**). Blanket Order 13-933 has a limited duration in the remaining CSA jurisdictions and is expected to be extended following its expiration on January 21, 2025.[2]

6. The purpose of this Order is to provide an exemption in Ontario to a person or company that meets certain eligibility criteria from transmitting certain Forms 45-106F1 through SEDAR+ while the CSA continue to consider potential enhancements to the functionality of SEDAR+.

Class Orders under the Securities Act

7. Under subsection 143.11(2) of the Act, if the Commission considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to paragraph (b) of subsection 143.11(3) of the Act.

8. The Commission is satisfied that it would not be prejudicial to the public interest to provide, on an interim basis, the exemption set out below, subject to the conditions of this Order.

Exemption

9. The Commission orders under subsection 143.11(2) of the Act that a person or company is exempt from the requirement in section 2 of NI 13-103 to transmit a Form 45-106F1 through SEDAR+, provided that

   (a) the Form 45-106F1 is only in respect of a distribution of an eligible foreign security to a permitted client,

[1] These jurisdictions include Alberta, Manitoba, New Brunswick, Nova Scotia, Quebec and Saskatchewan.
[2] These jurisdictions include British Columbia, Newfoundland, Northwest Territories, Nunavut, Prince Edward Island and the Yukon.

(b) at the time of distribution of the eligible foreign security to the permitted client, the issuer

(i) has not filed a profile pursuant to subsection 4(1) of NI 13-103, and

(ii) is not a reporting issuer in any jurisdiction of Canada, and

(c) the person or company transmits the Form 45-106F1 to the Commission

(i) in the manner set out in Appendix A to this Order, and

(ii) in the form set out in Appendix B to this Order.

10. The Commission orders under subsection 143.11(2) of the Act that a person or company is exempt from the requirement in section 2 of NI 13-103 to transmit an offering memorandum through SEDAR+, provided that

(a) the offering memorandum was provided to a prospective purchaser in connection with a distribution of an eligible foreign security to a permitted client,

(b) the issuer distributing the eligible foreign security satisfies all of the conditions set out in section 9(b) of this Order, and

(c) the person or company transmits the offering memorandum to the Commission in the manner set out in Appendix A to this Order.

Effective date and term

11. This Order comes into effect on January 21, 2025, and will cease to be effective on July 21, 2026, unless extended by the Commission.

APPENDIX A

A Form 45-106F1 must be:

(1) completed using the fillable PDF of the form set out in Appendix B to this Order that is available on the Canadian Securities Administrators website at the following address: https://www.securities-administrators.ca/resources/reports-of-exempt-distribution/; and

(2) filed through the OSC electronic filing portal (https://www.osc.ca/en/filing-documents-online) in the following manner:

(a) under “PDF submissions”;

(b) using the “Issuer” filer category;

(c) under the document types “45-106F1 Report of Exempt Distribution Filings [Non-Investment Funds]” or “45-106F1 Report of Exempt Distribution Filings [Investment Funds]”; and

(d) with Schedule 1 and, if applicable, Schedule 2 uploaded in Excel format under the “Other supporting documents” section.

An offering memorandum must be delivered:

(1) through the OSC electronic filing portal (https://www.osc.ca/en/filing-documents-online); and

(2) in either of the following manners:

(a) at the same time as a Form 45-106F1, uploaded under the “Other supporting documents section”; or

(b) separately from a Form 45-106F1, under the “Issuer” filer category and the document types “Any other document not identified above [Non-Investment Funds]” or “Any other document not identified above [Investment Funds]”.

APPENDIX B

Form 45-106F1 *Report of Exempt Distribution*

Filed in reliance on Coordinated Blanket Order 13-933

A. General Instructions

1. Filing instructions

An issuer or underwriter must file the information required by this form in the manner specified in Appendix A to the blanket order. In all jurisdictions, the Excel spreadsheets for Schedule 1 and Schedule 2 that are available on the Canadian Securities Administrators website at the following address must be used: https://www.securities-administrators.ca/resources/reports-of-exempt-distribution/. In Ontario, the fillable PDF of this form available on the Canadian Securities Administrators website at that same address must be used. The fillable PDF may not be used in Québec and its use is optional in jurisdictions other than Ontario and Québec. **Note: This form is only available in respect of distributions of eligible foreign securities to permitted clients as set out in Coordinated Blanket Order 13-933 *Temporary exemption from the requirement to transmit a report of exempt distribution through SEDAR+ in connection with distributions of eligible foreign securities to permitted clients.***

For all other reports of exempt distribution, an issuer or underwriter must file the information required by this form in the manner and using the templates specified in the System for Electronic Data Analysis and Retrieval + (SEDAR+) in accordance with National Instrument 13-103 *System for Electronic Data Analysis and Retrieval + (SEDAR+)* (in Québec, Regulation 13-103 respecting System for Electronic Data Analysis and Retrieval + (SEDAR+)).

The issuer or underwriter must file the report in a jurisdiction of Canada if the distribution occurs in the jurisdiction. If a distribution is made in more than one jurisdiction of Canada, the issuer or underwriter may satisfy its obligation to file the report by completing a single report identifying all purchasers, and file the report in each jurisdiction of Canada in which the distribution occurs. Filing fees payable in a particular jurisdiction are not affected by identifying all purchasers in a single report.

In order to determine the applicable filing fee in a particular jurisdiction of Canada, consult the securities legislation of that jurisdiction.

2. Issuers located outside of Canada

If an issuer located outside of Canada determines that a distribution has taken place in a jurisdiction of Canada, include information about purchasers resident in that jurisdiction only.

3. Multiple distributions

An issuer may use one report for multiple distributions occurring within 10 days of each other, provided the report is filed on or before the 10th day following the first distribution date. However, an investment fund issuer that is relying on the exemptions set out in subsection 6.2(2) of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions) may file the report annually in accordance with that subsection.

4. References to purchaser

References to a purchaser in this form are to the beneficial owner of the securities.

However, if a trust company, trust corporation, or registered adviser described in paragraph (p) or (q) of the definition of "accredited investor" in section 1.1 of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions) has purchased the securities on behalf of a fully managed account, provide information about the trust company, trust corporation or registered adviser only; do not include information about the beneficial owner of the fully managed account.

Joint purchasers may be treated as one purchaser for the purposes of Item 7(f) of this form.

5. References to issuer

References to "issuer" in this form include an investment fund issuer and a non-investment fund issuer, unless otherwise specified.

6. Investment fund issuers

If the issuer is an investment fund, complete Items 1-3, 6-8, 10, 11 and Schedule 1 of this form.

7. Mortgage investment entities

If the issuer is a mortgage investment entity, complete all applicable items of this form other than Item 6.

8. Language

The report must be filed in English or in French. In Québec, the issuer or underwriter must comply with linguistic rights and obligations prescribed by Québec law.

9. Currency

All dollar amounts in the report must be in Canadian dollars. If the distribution was made or any compensation was paid in connection with the distribution in a foreign currency, convert the currency to Canadian dollars using the daily exchange rate of the Bank of Canada on the distribution date. If the distribution date occurs on a date when the daily exchange rate of the Bank of Canada is not available, convert the currency to Canadian dollars using the most recent daily exchange rate of the Bank of Canada available before the distribution date. For investment funds in continuous distribution, convert the currency to Canadian dollars using the average daily exchange rate of the Bank of Canada for the distribution period covered by the report.

If the distribution was not made in Canadian dollars, provide the foreign currency in Item 7(a) of the report.

10. Date of information in report

Unless otherwise indicated in this form, provide the information as of the distribution end date.

11. Date of formation

For the date of formation, provide the date on which the issuer was incorporated, continued or organized (formed). If the issuer resulted from an amalgamation, arrangement, merger or reorganization, provide the date of the most recent amalgamation, arrangement, merger or reorganization.

12. Security codes

Wherever this form requires disclosure of the type of security, use the following security codes:

Security code	Security type
BND	Bonds
CER	Certificates *(including pass-through certificates, trust certificates)*
CMS	Common shares
CVD	Convertible debentures
CVN	Convertible notes
CVP	Convertible preferred shares
DCT	Digital coins or tokens
DEB	Debentures
DRS	Depository receipts *(such as American or Global depository receipts/shares)*
FTS	Flow-through shares
FTU	Flow-through units
LPU	Limited partnership units and limited partnership interests *(including capital commitments)*
MTG	Mortgages *(other than syndicated mortgages)*
NOT	Notes *(include all types of notes except convertible notes)*
OPT	Options
PRS	Preferred shares
RTS	Rights

Security code	Security type
SMG	Syndicated mortgages
SUB	Subscription receipts
UBS	Units of bundled securities *(such as a unit consisting of a common share and a warrant)*
UNT	Units *(exclude units of bundled securities, include trust units and mutual fund units)*
WNT	Warrants *(including special warrants)*
OTH	Other securities not included above *(if selected, provide details of security type in Item 7d)*

13. Distributions by more than one issuer of a single security

If two or more issuers distributed a single security, provide the full legal names of the co-issuers in Item 3.

B. Terms used in the form

1. For the purposes of this form:

"designated foreign jurisdiction" means Australia, France, Germany, Hong Kong, Italy, Japan, Mexico, the Netherlands, New Zealand, Singapore, South Africa, Spain, Sweden, Switzerland or the United Kingdom of Great Britain and Northern Ireland;

"eligible foreign security" means a security offered primarily in a foreign jurisdiction as part of a distribution of securities in either of the following circumstances:

(a) the security is issued by an issuer

(i) that is incorporated, formed or created under the laws of a foreign jurisdiction,

(ii) that is not a reporting issuer in a jurisdiction of Canada,

(iii) that has its head office outside of Canada, and

(iv) that has a majority of the executive officers and a majority of the directors ordinarily resident outside of Canada;

(b) the security is issued or guaranteed by the government of a foreign jurisdiction;

"foreign public issuer" means an issuer where any of the following apply:

(a) the issuer has a class of securities registered under section 12 of the 1934 Act;

(b) the issuer is required to file reports under section 15(d) of the 1934 Act;

(c) the issuer is required to provide disclosure relating to the issuer and the trading in its securities to the public, to security holders of the issuer or to a regulatory authority and that disclosure is publicly available in a designated foreign jurisdiction;

"legal entity identifier" means a unique identification code assigned to the person

(a) in accordance with the standards set by the Global Legal Entity Identifier System, or

(b) that complies with the standards established by the Legal Entity Identifier Regulatory Oversight Committee for pre-legal entity identifiers;

"NRD" means National Registration Database;

"permitted client" has the same meaning as in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (in Québec, Regulation 31-103 *respecting Registration Requirements, Exemptions and Ongoing Registrant Obligations*);

"SEDAR+" has the same meaning as in National Instrument 13-103 *System for Electronic Data Analysis and Retrieval + (SEDAR+)*(in Québec*,* Regulation 13-103 respecting System for Electronic Data Analysis and Retrieval + (SEDAR+));

"SEDAR+ profile" means a profile required under section 4 of National Instrument 13-103 *System for Electronic Data Analysis and Retrieval* + (SEDAR+) (in Québec*,* Regulation 13-103 respecting System for Electronic Data Analysis and Retrieval + (SEDAR+)).

2. For the purposes of this form, a person is connected with an issuer or an investment fund manager if either of the following applies:

(a) one of them is controlled by the other;

(b) each of them is controlled by the same person.

Form 45-106F1 *Report of Exempt Distribution*

Filed in reliance on Coordinated Blanket Order 13-933

Item 1 – Report Type

☐ New report

☐ Amended report If amended, provide filing date of report that is being amended. ☐☐☐ (YYYY-MM-DD)

Item 2 – Party Certifying the Report

Indicate the party certifying the report (select only one). For guidance regarding whether an issuer is an investment fund, refer to section 1.1 of National Instrument 81-106 Investment Fund Continuous Disclosure *and the companion policy to NI 81-106 (in Québec, Regulation 81-106 respecting Investment Fund Continuous Disclosure and Policy Statement to Regulation 81-106 respecting Investment Fund Continuous Disclosure).*

☐ Investment fund issuer

☐ Issuer (other than an investment fund)

☐ Underwriter

Item 3 – Issuer Name and Other Identifiers

Provide the following information about the issuer, or if the issuer is an investment fund, about the fund.

Full legal name

Previous full legal name

If the issuer's name changed in the last 12 months, provide most recent previous legal name.

Website (if applicable)

If the issuer has a legal entity identifier, provide below. Refer to Part B of the Instructions for the definition of "legal entity identifier".

Legal entity identifier

If two or more issuers distributed a single security, provide the full legal name(s) of the co-issuer(s) other than the issuer named above.

Full legal name(s) of co-issuer(s) (if applicable)

Item 4 – Underwriter Information

If an underwriter is completing the report, provide the underwriter's full legal name, firm NRD number, and SEDAR+ profile number.

Full legal name

Firm NRD number ☐☐☐☐☐☐☐ (if applicable)

SEDAR+ profile number | | | | | | | | (if applicable)

If the underwriter does not have a firm NRD number or a SEDAR+ profile, provide the head office contact information of the underwriter.

Street address

Municipality | Province/State

Country | Postal code/Zip code

Telephone number | Website (if applicable)

ITEM 5 – ISSUER INFORMATION

If the issuer is an investment fund, do not complete Item 5. Proceed to Item 6.

a) Primary industry

Provide the issuer's North American Industry Classification Standard (NAICS) code (6 digits only) that in your reasonable judgment most closely corresponds to the issuer's primary business activity.

NAICS industry code | | | | | | |

*If the issuer is in the **mining industry**, indicate the stage of operations. This does not apply to issuers that provide services to issuers operating in the mining industry. Select the category that best describes the issuer's stage of operations.*

☐ Exploration ☐ Development ☐ Production

Is the issuer's primary business to invest all or substantially all of its assets in any of the following? If yes, select all that apply.

☐ Mortgages ☐ Real estate ☐ Commercial/business debt ☐ Consumer debt ☐ Private companies

☐ Cryptoassets

b) Number of employees

Number of employees: ☐ 0 – 49 ☐ 50 – 99 ☐ 100 – 499 ☐ 500 or more

c) SEDAR+ profile number (if applicable)

If the issuer does not have a SEDAR+ profile complete Item 5(d) – (h).

d) Head office address

Street address | Province/State

Municipality | Postal code/Zip code

Country | Telephone number

e) Date of formation and financial year end

Date of formation ☐☐☐☐ (YYYY) ☐☐ (MM) ☐☐ (DD) Financial year end ☐☐ (MM) ☐☐ (DD)

f) Reporting issuer status

Is the issuer a reporting issuer in any jurisdiction of Canada? ☐ No ☐ Yes

If yes, select the jurisdictions of Canada in which the issuer is a reporting issuer.

☐ All ☐ AB ☐ BC ☐ MB ☐ NB ☐ NL ☐ NT

☐ NS ☐ NU ☐ ON ☐ PE ☐ QC ☐ SK ☐ YT

g) Public listing status

If the issuer has a CUSIP number, provide below (first 6 digits only).

CUSIP number ☐☐☐☐☐☐

If the issuer is publicly listed, provide the name of the exchange on which the issuer's equity securities primarily trade. Provide only the name of an exchange and not a trading facility such as, for example, an automated trading system.

Exchange name ☐

h) Size of issuer's assets

Select the size of the issuer's assets based on its most recently available annual financial statements (Canadian $). If the issuer has not prepared annual financial statements for its first financial year, provide the size of the issuer's assets at the distribution end date.

☐ $0 to under $5M ☐ $5M to under $25M ☐ $25M to under $100M

☐ $100M to under $500M ☐ $500M to under $1B ☐ $1B or over

ITEM 6 – INVESTMENT FUND ISSUER INFORMATION

If the issuer is an investment fund, provide the following information.

a) Investment fund manager information

Full legal name ☐

Firm NRD number ☐☐☐☐☐☐☐ (if applicable)

SEDAR + profile number ☐☐☐☐☐☐☐☐ (if applicable)

If the investment fund manager does not have a firm NRD number or a SEDAR+ profile, provide the head office contact information of the investment fund manager.

Street address

Municipality | Province/State

Country | Postal code/Zip code

Telephone number | Website (if applicable)

b) Type of investment fund

Type of investment fund that most accurately identifies the issuer (select only one).

☐ Money market ☐ Equity ☐ Fixed income ☐ Balanced

☐ Alternative strategies ☐ Cryptoasset ☐ Other (describe)

Indicate whether one or both of the following apply to the investment fund.

☐ Invests primarily in other investment fund issuers

☐ Is a UCITs Fund[1]

[1]Undertaking for the Collective Investment of Transferable Securities funds (UCITs Funds) are investment funds regulated by the European Union (EU) directives that allow collective investment schemes to operate throughout the EU on a passport basis on authorization from one member state.

c) Net asset value (NAV) of the investment fund

Select the NAV range of the investment fund as of the date of the most recent NAV calculation (Canadian $).

☐ $0 to under $5M ☐ $5M to under $25M ☐ $25M to under $100M

☐ $100M to under $500M ☐ $500M to under $1B ☐ $1B or over Date of NAV calculation: YYYY MM DD

If the investment fund does not have a SEDAR+ profile complete Item 6(d) – (f).

d) Date of formation and financial year end of the investment fund

Date of formation YYYY MM DD Financial year end MM DD

e) Reporting issuer status of the investment fund

Is the investment fund a reporting issuer in any jurisdiction of Canada? ☐ No ☐ Yes

If yes, select the jurisdictions of Canada in which the investment fund is a reporting issuer.

☐ All ☐ AB ☐ BC ☐ MB ☐ NB ☐ NL ☐ NT

☐ NS ☐ NU ☐ ON ☐ PE ☐ QC ☐ SK ☐ YT

f) Public listing status of the investment fund

If the investment fund has a CUSIP number, provide below (first 6 digits only).

CUSIP number | | | | | | |

If the investment fund is publicly listed, provide the name of the exchange on which the investment fund's equity securities primarily trade. Pro only the name of an exchange and not a trading facility such as, for example, an automated trading system.

Exchange name

ITEM 7 – INFORMATION ABOUT THE DISTRIBUTION

If an issuer located outside of Canada completes a distribution in a jurisdiction of Canada, include in Item 7 and Schedule 1 information about purchasers resident in that jurisdiction of Canada only. Do not include in Item 7 securities issued as payment of commissions or finder's fees in connection with the distribution, which must be disclosed in Item 8. The information provided in Item 7 must reconcile with the information provided in Schedule 1 of the report.

a) Currency

Select the currency or currencies in which the distribution was made. All dollar amounts provided in the report must be in Canadian dollars.

☐ Canadian dollar ☐ US dollar ☐ Euro Other (describe)

b) Distribution date(s)

State the distribution start and end dates. If the report is being filed for securities distributed on only one distribution date, provide the distribution date as both the start and end dates. If the report is being filed for securities distributed on a continuous basis, include the start and end dates for the distribution period covered by the report.

Start date YYYY MM DD End date YYYY MM DD

c) Detailed purchaser information

Complete Schedule 1 of this form for each purchaser and attach the schedule to the completed report.

d) Types of securities distributed

Provide the following information for all distributions reported on a per security basis. Refer to Part A(12) of the Instructions for how to indicate the security code. If providing the CUSIP number, indicate the full 9-digit CUSIP number assigned to the security being distributed.

					Canadian $		
Security code	CUSIP number (if applicable)	Description of security	Number of securities	Single or lowest price	Highest price	Total amount

e) Details of rights and convertible/exchangeable securities

If any rights (e.g. warrants, options) were distributed, provide the exercise price and expiry date for each right. If any convertible/exchangeable securities were distributed, provide the conversion ratio and describe any other terms for each convertible/exchangeable security.

Convertible / exchangeable security code			Underlying security code			Exercise price (Canadian $)		Expiry date (YYYY-MM-DD)	Conversion ratio	Describe other terms (if applicable)
						Lowest	Highest			

f) Summary of the distribution by jurisdiction and exemption

State the total dollar amount of securities distributed and the number of purchasers for each jurisdiction of Canada and foreign jurisdiction where a purchaser resides and for each exemption relied on in Canada for that distribution. However, if an issuer located outside of Canada completes a distribution in a jurisdiction of Canada, include distributions to purchasers resident in that jurisdiction of Canada only.

This table requires a separate line item for: (i) each jurisdiction where a purchaser resides, (ii) each exemption relied on in the jurisdiction where a purchaser resides, if a purchaser resides in a jurisdiction of Canada, and (iii) each exemption relied on in Canada, if a purchaser resides in a foreign jurisdiction.

For jurisdictions within Canada, state the province or territory, otherwise state the country.

Province or country	Exemption relied on	Number of unique purchasers[2a]	Total amount (Canadian $)
	Total dollar amount of securities distributed		
	Total number of unique purchasers[2b]		

[2a]In calculating the number of unique purchasers per row, count each purchaser only once. Joint purchasers may be counted as one purchaser.

[2b]In calculating the total number of unique purchasers to which the issuer distributed securities, count each purchaser only once, regardless of whether the issuer distributed multiple types of securities to, and relied on multiple exemptions for, that purchaser.

g) Net proceeds to the investment fund by jurisdiction

If the issuer is an investment fund, provide the net proceeds to the investment fund for each jurisdiction of Canada and foreign jurisdiction where a purchaser resides.[3] If an issuer located outside of Canada completes a distribution in a jurisdiction of Canada, include net proceeds for that jurisdiction of Canada only. For jurisdictions within Canada, state the province or territory, otherwise state the country.

Province or country	Net proceeds (Canadian $)
Total net proceeds to the investment fund	

[3]"Net proceeds" means the gross proceeds realized in the jurisdiction from the distributions for which the report is being filed, less the gross redemptions that occurred during the distribution period covered by the report.

h) Offering materials – This section applies only in Saskatchewan, Ontario, Québec, New Brunswick and Nova Scotia

If a distribution has occurred in Saskatchewan, Ontario, Québec, New Brunswick or Nova Scotia, complete the table below by listing the offering materials that are required under the prospectus exemption relied on to be filed with or delivered to the securities regulatory authority or regulator in those jurisdictions.

In Ontario, if the offering materials listed in the table are required to be filed with or delivered to the Ontario Securities Commission (OSC), attach an electronic version of the offering materials that have not been previously filed with or delivered to the OSC.

	Description	Date of document or other material (YYYY-MM-DD)	Previously filed with or delivered to regulator? (Y/N)	Date previously filed or delivered (YYYY-MM-DD)
1.				
2.				
3.				

ITEM 8 – COMPENSATION INFORMATION

Provide information for each person (as defined in NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions)) to whom the issuer directly provides, or will provide, any compensation in connection with the distribution. ***Complete additional copies of this page if more than one person was, or will be, compensated.***

Indicate whether any compensation was paid, or will be paid, in connection with the distribution.

☐ No ☐ Yes If yes, indicate number of persons compensated. ☐

a) Name of person compensated and registration status

Indicate whether the person compensated is a registrant.

☐ No ☐ Yes

If the person compensated is an individual, provide the name of the individual.

Full legal name of individual

Family name	First given name	Secondary given names

If the person compensated is not an individual, provide the following information.

Full legal name of non-individual

Firm NRD number ☐☐☐☐☐☐☐ (if applicable)

Indicate whether the person compensated facilitated the distribution through a funding portal or an internet-based portal.

☐ No ☐ Yes

b) Business contact information

If a firm NRD number is not provided in Item 8(a), provide the business contact information of the person being compensated.

Street address

Municipality Province/State

Country Postal code/Zip code

Email address | Telephone number

c) Relationship to issuer or investment fund manager

Indicate the person's relationship with the issuer or investment fund manager (select all that apply). Refer to the meaning of "connected" in Part B(2) of the Instructions and the meaning of "control" in section 1.4 of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions) for the purposes of completing this section.

- ☐ Connected with the issuer or investment fund manager
- ☐ Insider of the issuer (other than an investment fund)
- ☐ Director or officer of the investment fund or investment fund manager
- ☐ Employee of the issuer or investment fund manager
- ☐ None of the above

d) Compensation details

Provide details of all compensation paid, or to be paid, to the person identified in Item 8(a) in connection with the distribution. Provide all amounts in Canadian dollars. Include cash commissions, securities-based compensation, gifts, discounts or other compensation. Do not report payments for services incidental to the distribution, such as clerical, printing, legal or accounting services. An issuer is not required to ask for details about, or report on, internal allocation arrangements with the directors, officers or employees of a non-individual compensated by the issuer.

Cash commissions paid

Value of all securities distributed as compensation[4]

Security codes

Security code 1			Security code 2			Security code 3		

Describe terms of warrants, options or other rights

Other compensation[5] | Describe

Total compensation paid

☐ Check box if the person will or may receive any deferred compensation (describe the terms below)

[4]Provide the aggregate value of all securities distributed as compensation, excluding options, warrants or other rights exercisable to acquire additional securities of the issuer. Indicate the security codes for all securities distributed as compensation, including options, warrants or other rights exercisable to acquire additional securities of the issuer.

[5]Do not include deferred compensation.

ITEM 9 – DIRECTORS, EXECUTIVE OFFICERS AND PROMOTERS OF THE ISSUER

If the issuer is an investment fund, do not complete Item 9. Proceed to Item 10.

Indicate whether the issuer is any of the following (select the one that applies – if more than one applies, select only one).

☐ Reporting issuer in any jurisdiction of Canada

☐ Foreign public issuer

☐ Wholly owned subsidiary of a reporting issuer in any jurisdiction of Canada[6]

Provide name of reporting issuer _____

☐ Wholly owned subsidiary of a foreign public issuer[6]

Provide name of foreign public issuer _____

☐ Issuer distributing only eligible foreign securities and the distribution is to permitted clients only[7]

If the issuer is at least one of the above, do not complete Item 9(a) – (c). Proceed to Item 10.

[6]An issuer is a wholly owned subsidiary of a reporting issuer or a foreign public issuer if all of the issuer's outstanding voting securities, other than securities that are required by law to be owned by its directors, are beneficially owned by the reporting issuer or the foreign public issuer, respectively.

[7]Check this box if it applies to the current distribution even if the issuer made previous distributions of other types of securities to non-permitted clients. Refer to the definitions of "eligible foreign security" and "permitted client" in Part B(1) of the Instructions.

☐ ***If the issuer is none of the above, check this box and complete Item 9(a) – (c).***

a) Directors, executive officers and promoters of the issuer

Provide the following information for each director, executive officer and promoter of the issuer. For locations within Canada, state the province or territory, otherwise state the country. For "Relationship to issuer", "D" – Director, "O" – Executive Officer, "P" – Promoter.

Organization or company name	Family name	First given name	Secondary given names	Business location of non-individual or residential jurisdiction of individual	Relationship to issuer (select all that apply)		
				Province or country	D	O	P

b) Promoter information

If the promoter listed above is not an individual, provide the following information for each director and executive officer of the promoter. For locations within Canada, state the province or territory, otherwise state the country. For "Relationship to promoter", "D" – Director, "O" – Executive Officer.

Organization or company name	Family name	First given name	Secondary given names	Residential jurisdiction of individual	Relationship to promoter (select one or both if applicable)	
				Province or country	D	O

c) Residential address of each individual

Complete Schedule 2 of this form, including the full residential address of each individual whose name appears in Item 9(a) or (b) and attach to the completed report. Schedule 2 also requires information to be provided about control persons.

ITEM 10 – CERTIFICATION

Provide the following certification and business contact information of an officer, director or agent of the issuer or underwriter. If the issuer or underwriter is not a company, an individual who performs functions similar to that of a director or officer may certify the report. For example, if the issuer is a trust, the report may be certified by the issuer's trustee. If the issuer is an investment fund, a director or officer of the investment fund manager (or, if the investment fund manager is not a company, an individual who performs similar functions) may certify the report if the director or officer has been authorized to do so by the investment fund.

The certification may be delegated, but only to an agent that has been authorized by an officer or director of the issuer or underwriter to prepare and certify the report on behalf of the issuer or underwriter. If the report is being certified by an agent on behalf of the issuer or underwriter, provide the applicable information for the agent in the boxes below.

If the individual completing and filing the report is different from the individual certifying the report, provide the name and contact details for the individual completing and filing the report in Item 11.

The signature on the report must be in typed form rather than handwritten form. The report may include an electronic signature provided the name of the signatory is also in typed form.

Securities legislation requires an issuer or underwriter that makes a distribution of securities under certain prospectus exemptions to file a completed report of exempt distribution.

By completing the information below, I certify, on behalf of the issuer/underwriter/investment fund manager, to the securities regulatory authority or regulator, as applicable, that I have reviewed this report and to my knowledge, having exercised reasonable diligence, the information provided in this report is true and, to the extent required, complete.

Name of issuer/underwriter/ investment fund manager/agent			
Full legal name			
	Family name	First given name	Secondary given names
Title			

Telephone number		Email address	
Signature		Date	YYYY / MM / DD

ITEM 11 – CONTACT PERSON

Provide the following business contact information for the individual that the securities regulatory authority or regulator may contact with any questions regarding the contents of this report, if different than the individual certifying the report in Item 10.

☐ Same as individual certifying the report

Full legal name	Family name	First given name	Secondary given names	Title	
Name of company					
Telephone number		Email address			

Notice – Collection and use of personal information

The personal information required under this form is collected on behalf of and used by the securities regulatory authority or regulator under the authority granted in securities legislation for the purposes of the administration and enforcement of the securities legislation.

If you have any questions about the collection and use of this information, contact the securities regulatory authority or regulator in the local jurisdiction(s) where the report is filed, at the address(es) listed at the end of this form.

Schedules 1 and 2 may contain personal information of individuals and details of the distribution(s). The information in Schedules 1 and 2 will not be placed on the public file of any securities regulatory authority or regulator. However, freedom of information legislation may require the securities regulatory authority or regulator to make this information available if requested.

By signing this report, the issuer/underwriter confirms that each individual listed in Schedule 1 or 2 of the report who is resident in a jurisdiction of Canada:

a) has been notified by the issuer/underwriter of the delivery to the securities regulatory authority or regulator of the information pertaining to the individual as set out in Schedule 1 or 2, that this information is being collected by the securities regulatory authority or regulator under the authority granted in securities legislation, that this information is being collected for the purposes of the administration and enforcement of the securities legislation of the local jurisdiction, and of the title, business address and business telephone number of the public official in the local jurisdiction, as set out in this form, who can answer questions about the security regulatory authority's or regulator's indirect collection of the information, and

b) has authorized the indirect collection of the information by the securities regulatory authority or regulator.

SCHEDULE 1 TO FORM 45-106F1 (CONFIDENTIAL PURCHASER INFORMATION)

Schedule 1 must be filed in the format of an Excel spreadsheet in a form acceptable to the securities regulatory authority or regulator.

The information in this schedule will not be placed on the public file of any securities regulatory authority or regulator. However, freedom of information legislation may require the securities regulatory authority or regulator to make this information available if requested.

a) General information *(provide only once)*

1. Name of issuer
2. Certification date (YYYY-MM-DD)

Provide the following information for each purchaser that participated in the distribution. For each purchaser, create separate entries for each distribution date, security type and exemption relied on for the distribution.

b) Legal name of purchaser

If two or more individuals have purchased a security as joint purchasers, provide information for each purchaser under the columns for family name, first given name and secondary given names, if applicable, and separate the individuals' names with an ampersand. For example, if Jane Jones and Robert Smith are joint purchasers, indicate "Jones & Smith" in the family name column.

1. Family name
2. First given name
3. Secondary given names *(if applicable)*
4. Full legal name of non-individual *(if applicable)*

c) Contact information of purchaser

1. Residential street address
2. Municipality
3. Province/State
4. Postal code/Zip code
5. Country
6. Telephone number
7. Email address *(if available)*

d) Details of securities purchased

1. Date of distribution (YYYY-MM-DD)
2. Number of securities
3. Security code
4. Amount paid (Canadian $)

e) Details of exemption relied on

1. Rule, section and subsection number
2. If relying on section 2.3 [*Accredited investor*] of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions), provide the paragraph number in the definition of "accredited investor" in section 1.1 of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions) that

applies to the purchaser. *(select only one – if the purchaser is a permitted client that is not an individual, "NIPC" can be selected instead of the paragraph number)*

3. If relying on section 2.5 [*Family, friends and business associates*] of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions), provide:

   a. the paragraph number in subsection 2.5(1) that applies to the purchaser *(select only one)*; and

   b. if relying on paragraphs 2.5(1)(b) to (i), provide:

      i. the name of the director, executive officer, control person, or founder of the issuer or affiliate of the issuer claiming a relationship to the purchaser. *(Note: if Item 9(a) has been completed, the name of the director, executive officer or control person must be consistent with the name provided in Item 9 and Schedule 2.)*

      ii. the position of the director, executive officer, control person, or founder of the issuer or affiliate of the issuer claiming a relationship to the purchaser.

4. If relying on subsection 2.9(2) or, in Alberta, New Brunswick, Nova Scotia, Ontario, Québec, or Saskatchewan, subsection 2.9(2.1) [*Offering memorandum*] of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions) and the purchaser is an eligible investor, provide the paragraph number in the definition of "eligible investor" in section 1.1 of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions) that applies to the purchaser. (*select only one)*

f) Other information

Paragraphs f)1. and f)2. do not apply if any of the following apply:

(a) the issuer is a foreign public issuer;

(b) the issuer is a wholly owned subsidiary of a foreign public issuer;

(c) the issuer is distributing only eligible foreign securities and the distribution is to permitted clients only.

1. Is the purchaser a registrant? (Y/N)

2. Is the purchaser an insider of the issuer? (Y/N) *(not applicable if the issuer is an investment fund)*

3. Full legal name of person compensated for distribution to purchaser. If a person compensated is a registered firm, provide the firm NRD number only. *(Note: the names must be consistent with the names of the persons compensated as provided in Item 8.)*

INSTRUCTIONS FOR SCHEDULE 1

Any securities issued as payment for commissions or finder's fees must be disclosed in Item 8 of the report, not in Schedule 1.

Details of exemption relied on – When identifying the exemption the issuer relied on for the distribution to each purchaser, refer to the rule, statute or instrument in which the exemption is provided and identify the specific section and, if applicable, subsection or paragraph. For example, if the issuer is relying on an exemption in a National Instrument, refer to the number of the National Instrument, and the subsection or paragraph number of the specific provision. If the issuer is relying on an exemption in a local blanket order, refer to the blanket order by number.

For exemptions that require the purchaser to meet certain characteristics, such as the exemption in section 2.3 [*Accredited investor*], section 2.5 [*Family, friends and business associates*] or subsection 2.9(2) or, in Alberta, New Brunswick, Nova Scotia, Ontario, Québec, or Saskatchewan, subsection 2.9(2.1) [*Offering memorandum*] of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions), provide the specific paragraph in the definition of those terms that applies to each purchaser.

Reports filed under paragraph 6.1(1)(j) [*TSX Venture Exchange offering*] of NI 45-106 (in Québec, Regulation 45-106 *respecting Prospectus Exemptions*) – For reports filed under paragraph 6.1(1)(j) [*TSX Venture Exchange offering*] of NI 45-106 (in Québec, Regulation 45-106 respecting Prospectus Exemptions), Schedule 1 must list the total number of purchasers by jurisdiction only, and is not required to include the name, residential address, telephone number or email address of the purchasers.

SCHEDULE 2 TO FORM 45-106F1 (CONFIDENTIAL DIRECTOR, EXECUTIVE OFFICER, PROMOTER AND CONTROL PERSON INFORMATION)

Schedule 2 must be filed in the format of an Excel spreadsheet in a form acceptable to the securities regulatory authority or regulator.

Complete the following only if Item 9(a) is required to be completed. **This schedule also requires information to be provided about control persons of the issuer at the time of the distribution.**

The information in this schedule will not be placed on the public file of any securities regulatory authority or regulator. However, freedom of information legislation may require the securities regulatory authority or regulator to make this information available if requested.

a) General information *(provide only once)*

1. Name of issuer
2. Certification date (YYYY-MM-DD)

b) Business contact information of Chief Executive Officer *(if not provided in Item 10 or 11 of report)*

1. Email address
2. Telephone number

c) Residential address of directors, executive officers, promoters and control persons of the issuer

Provide the following information for each individual who is a director, executive officer, promoter or control person of the issuer at the time of the distribution. If the promoter or control person is not an individual, provide the following information for each director and executive officer of the promoter and control person. (Note: names of directors, executive officers and promoters must be consistent with the information in Item 9 of the report, if required to be provided.)

1. Family name
2. First given name
3. Secondary given names
4. Residential street address
5. Municipality
6. Province/State
7. Postal code/Zip code
8. Country
9. Indicate whether the individual is a control person, or a director and/or executive officer of a control person (*if applicable*)

d) Non-individual control persons *(if applicable)*

If the control person is not an individual, provide the following information. For locations within Canada, state the province or territory, otherwise state the country.

1. Organization or company name
2. Province or country of business location

Questions:

Refer any questions to:

Alberta Securities Commission
Suite 600, 250 – 5th Street SW
Calgary, Alberta T2P 0R4
Telephone: 403-297-6454
Facsimile: 403-297-6156
Toll free in Canada: 1-877-355-0585
Public official contact regarding indirect collection of information: FOIP Coordinator

British Columbia Securities Commission
P.O. Box 10142, Pacific Centre
701 West Georgia Street
Vancouver, British Columbia V7Y 1L2
Inquiries: 604-899-6854
Toll free in Canada: 1-800-373-6393
Facsimile: 604-899-6506
Email: FOI-privacy@bcsc.bc.ca
Public official contact regarding indirect collection of information: Privacy Officer

The Manitoba Securities Commission
500 – 400 St. Mary Avenue
Winnipeg, Manitoba R3C 4K5
Telephone: 204-945-2561
Toll free in Manitoba: 1-800-655-5244
Facsimile: 204-945-0330
Public official contact regarding indirect collection of information: Director

Financial and Consumer Services Commission (New Brunswick)
85 Charlotte Street, Suite 300
Saint John, New Brunswick E2L 2J2
Telephone: 506-658-3060
Toll free in Canada: 1-866-933-2222
Facsimile: 506-658-3059
Email: info@fcnb.ca
Public official contact regarding indirect collection of information: Chief Executive Officer and Privacy Officer

Government of Newfoundland and Labrador
Office of the Superintendent
Department of Digital Government and Service NL
P.O. Box 8700
Confederation Building
2nd Floor, West Block
Prince Philip Drive
St. John's, Newfoundland and Labrador A1B 4J6
Attention: Superintendent of Securities
Telephone: 709-729-2571
Facsimile: 709-729-6187
Public official contact regarding indirect collection of information: Superintendent of Securities

Government of the Northwest Territories
Office of the Superintendent of Securities
P.O. Box 1320
Yellowknife, Northwest Territories X1A 2L9
Telephone: 867-767-9305
Facsimile: 867-873-0243
Public official contact regarding indirect collection of information: Superintendent of Securities

Nova Scotia Securities Commission
Suite 400, 5251 Duke Street
Duke Tower
P.O. Box 458
Halifax, Nova Scotia B3J 2P8
Telephone: 902-424-7768
Facsimile: 902-424-4625
Public official contact regarding indirect collection of information: Executive Director

Government of Nunavut Office of the Superintendent of Securities
Legal Registries Division
P.O. Box 1000, Station 570
4th Floor, Building 1106
Iqaluit, Nunavut X0A 0H0
Telephone: 867-975-6590
Facsimile: 867-975-6594
Public official contact regarding indirect collection of information: Superintendent of Securities

Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto, Ontario M5H 3S8
Telephone: 416-593-8314
Toll free in Canada: 1-877-785-1555
Facsimile: 416-593-8122
Email: exemptmarketfilings@osc.gov.on.ca
Public official contact regarding indirect collection of information: Inquiries Officer

Prince Edward Island Securities Office
95 Rochford Street, 4th Floor Shaw Building
P.O. Box 2000
Charlottetown, Prince Edward Island C1A 7N8
Telephone: 902-368-4569
Facsimile: 902-368-5283
Public official contact regarding indirect collection of information: Superintendent of Securities

Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, Place Victoria
Montréal, Québec H4Z 1G3
Telephone: 514-395-0337 or 1-877-525-0337
Facsimile: 514-873-6155 (For filing purposes only)
Facsimile: 514-864-6381 (For privacy requests only)
Email: financementdessocietes@lautorite.qc.ca (For corporate finance issuers); fonds_dinvestissement@lautorite.qc.ca (For investment fund issuers)
Public official contact regarding indirect collection of information: Corporate Secretary

Financial and Consumer Affairs Authority of Saskatchewan
Suite 601 - 1919 Saskatchewan Drive
Regina, Saskatchewan S4P 4H2
Telephone: 306-787-5842
Facsimile: 306-787-5899
Public official contact regarding indirect collection of information: Executive Director, Securities Division

Office of the Superintendent of Securities
Government of Yukon
Department of Community Services
307 Black Street, 1st Floor
P.O. Box 2703, C-6
Whitehorse, Yukon Y1A 2C6
Telephone: 867-667-5466
Facsimile: 867-393-6251
Email: securities@yukon.ca
Public official contact regarding indirect collection of information: Superintendent of Securities

B.2.3 Greenbrook TMS 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 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
GREENBROOK TMS INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2024**/**0645

B.2.4 Nuvei Corporation and Neon Maple Parent 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).

[Original text in French]

January 8, 2025

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

AND

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

AND

IN THE MATTER OF
NUVEI CORPORATION
(Nuvei)

NEON MAPLE PARENT INC.
(Parent, and together with Nuvei, the Filers)

ORDER

Background

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

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

a) the Autorité des marchés financiers is the principal regulator for this application,

b) the Filers have provided notice that subsection 4C.5(1) of *Regulation 11-102 respecting Passport System* (Regulation 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, Saskatchewan and Yukon, and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, Regulation 11-102 and, in Québec, in *Regulation 14-501Q on definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. the Filer is not an OTC reporting issuer under *Regulation 51-105 respecting 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 *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

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

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

Order

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

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

This decision revises decision n° 2024-IC-1071351 and adds Parent as a Filer.

"Benoît Gascon"
Senior Director, Corporate Finance
Autorité des marchés financiers

OSC File #: 2024/0666

B.2.5 Loop Energy Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Securities Act, s. 88 – Cease to be a reporting issuer in BC – The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market – The issuer is not an OTC reporting issuer; the securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders worldwide; no securities of the issuer are traded on a market in Canada or another country; the issuer is not in default of securities legislation except it has not filed certain continuous disclosure documents and it has contravened terms of a failure-to-file cease trade order.

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – filer became wholly-owned subsidiary of another company as a result of insolvency proceedings.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

Citation: 2025 BCSECCOM 18

January 13, 2025

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

AND

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

AND

IN THE MATTER OF
LOOP ENERGY INC.
(the Filer)

ORDER

Background

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

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

(a) the British Columbia Securities Commission is the principal regulator for this application,

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

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

Interpretation

¶ 2 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

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

1. the Filer's head office is located in British Columbia;

2. the Filer is a reporting issuer in British Columbia, Ontario, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador;

3. the Filer is an issuer existing under the *Business Corporations Act* (British Columbia);

4. on July 17, 2024, the Filer initiated proposal proceedings under the *Bankruptcy and Insolvency Act* (Canada) (the Bankruptcy Act) in the Supreme Court of British Columbia (the Court);

5. on August 20, 2024, the British Columbia Securities Commission issued a failure-to-file cease trade order (the FFCTO) as a result of the Filer's failure to file the following continuous disclosure for the interim period ended June 30, 2024 (the Required Records):

   (a) interim financial statements;

   (b) the related management's discussion and analysis; and

   (c) certification of interim filings;

6. the Filer's failure to file the Required Records was a result of the financial distress that led to the Filer initiating proceedings under the Bankruptcy Act;

7. the common shares of the Filer were delisted from the Toronto Stock Exchange on September 3, 2024 and also removed from the OTC Pink Market in the United States on September 3, 2024;

8. on October 29, 2024, the Court approved and granted a reverse vesting order (the RVO) pursuant to which the Court approved, among other things, a proposal (the Proposal) to cancel all existing securities in the Filer and to issue new equity interests in the Filer in exchange for a capital injection from a prospective purchaser;

9. the Proposal was funded from the proceeds of a Subscription Agreement between the Filer and Teralta Hydrogen Solutions Inc. (the Purchaser) dated October 28, 2024 (the Subscription Agreement);

10. on November 1, 2024, the Filer completed the various transactions under the Proposal and the Subscription Agreement (collectively, the Transactions), which were effected in accordance with their terms and pursuant to the provisions of the RVO;

11. as a result of the Transactions, among other things, all outstanding equity interests, including shares, convertible securities, or any other rights or interests to purchase the same, of the Filer were deemed cancelled for no consideration;

12. the Purchaser was issued 1,000,000 common shares of the Filer pursuant to the Transactions to become the sole securityholder of the Filer, and the Filer does not have any other securities issued and outstanding;

13. 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;

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

15. 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;

16. 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;

17. the Filer is not in default of securities legislation in any jurisdiction, other than:

   (a) the defaults that led to the issuance of the FFCTO and its obligations to file on or before November 29, 2024 its interim financial statements and related management's discussion and analysis for the three

months ended September 30, 2024 as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (the Subsequent Records), and

(b) conducting the Transactions without a partial revocation of the FFCTO

(collectively, the Defaults);

18. the Filer's failure to file the Subsequent Records was a result of financial distress;

19. the Filer has requested a full revocation of the FFCTO;

20. the Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* due to the Defaults;

21. the Filer has no current intention to seek public financing by way of an offering of securities in Canada or elsewhere or to make or maintain a market in securities of the Filer; and

22. upon the granting of the Order Sought, the Filer will no longer be a reporting issuer or the equivalent in any jurisdiction in Canada.

Order

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

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

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

OSC File #: 2024/0643

B.3
Reasons and Decisions

B.3.1 National Bank Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Investment funds subject to National Instrument 81-102 that are "qualified institutional buyers" under the US Securities Act investing in unregistered fixed income securities pursuant to Rule 144A of the US Securities Act – Rule 144A exempts resales of unregistered securities by and to a Qualified Institutional Buyer from the registration requirements of the US Securities Act – Public resales of 144A Securities to non-qualified institutional buyer subject to prescribed holding period – Prescribed holding period causes 144A Securities to be considered restricted securities under part (b) of the definition of "illiquid assets" in section 1.1 of National Instrument 81-102 notwithstanding that trades of 144A Securities between Qualified Institutional Buyer are not subject to holding periods – Funds granted exemption that: (i) purchases by a Fund that is a Qualified Institutional Buyer of 144A Securities are exempt from part (b) of the definition of "illiquid asset" in section 1.1 of National Instrument 81-102, and (ii) a Fund's holdings of 144A Securities purchased as a Qualified Institutional Buyer are excluded from consideration as an "illiquid asset" for the purposes of the illiquid asset restrictions in section 2.4 of National Instrument 81-102, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 1.1, 2.4 and 19.1.

September 25, 2024

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

AND

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

AND

IN THE MATTER OF
NATIONAL BANK INVESTMENTS INC.
(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 on behalf of all current and future investment funds that are, or will be, managed by the Filer or an affiliate of the Filer and to which *Regulation 81-102 respecting Investment Funds*, RLRQ, c. V-1.1, r.39 (**Regulation 81-102**) applies (collectively, the **Funds**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that grants exemptive relief to the Funds such that:

a) the purchases by a Fund that is a Qualified Institutional Buyer (as defined below) at the time of purchase, of those fixed income securities that qualify for, and may be traded pursuant to, the exemption from the registration requirements of the Securities Act of 1933, as amended (the "**US Securities Act**"), as set out in Rule 144A of the US Securities Act ("**Rule 144A**") for resales of certain fixed income securities (the "**144A Securities**") to "qualified institutional buyers" (as defined in the US Securities Act) are exempt from part (b) of the definition of "illiquid asset" in section 1.1 of Regulation 81-102; and

b) a Fund's holdings of 144A Securities purchased as a Qualified Institutional Buyer are excluded from consideration as an "illiquid asset" for the purposes of section 2.4 of Regulation 81-102;

(collectively, the "**Exemption Sought**").

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

(a) the Autorité des marchés financiers is the principal regulator for this application;

(b) the Filer has provided notice that subsection 4.7(1) of *Regulation 11-102 respecting Passport System*, RLRQ, c. V-1.1, r. 1 (**Regulation 11-102**) is intended to be relied upon in each of the provinces and territories of Canada other than the Jurisdictions (together with the Jurisdictions, the **Canadian territories**); and

(c) the decision is the decision of the principal regulator and evidences the decision of the regulator in Ontario.

Interpretation

Unless expressly defined herein, terms in this decision have the respective meanings given to them in Regulation 81-102, *Regulation 14-101 respecting Definitions*, RLRQ, c. V-1.1, r. 3, and Regulation 11-102. In addition to the defined terms used in this decision, capitalized terms used in this decision have the following meanings:

"**IRC**" means the independent review committee of the Funds.

"**Qualified Institutional Buyer**" has the same meaning as is given to such term in §230.144A of the US Securities Act.

"**Registered Securities**" means securities that have been registered with the United States Securities and Exchange Commission.

Representations

This decision is based on the following facts represented by the Filer on behalf of itself and the Funds:

The Filer

1. The Filer is a corporation amalgamated under the laws of Canada with its head office in Montreal, Québec.

2. The Filer is registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador and as a mutual fund dealer in each jurisdiction of the Canadian territories.

3. The Filer or an affiliate of the Filer is, or will be, the investment fund manager of the Funds and an affiliate of the Filer or a third-party portfolio manager is, or will be, the portfolio manager of the Funds. The portfolio manager of a Fund may also engage one or more sub-adviser(s) in respect of the investments of such Fund.

4. The Filer is not in default of applicable securities legislation in any of the Canadian territories.

The Funds

5. Each Fund is, or will be, an investment fund organized and governed by the laws of any of the Canadian territories or the laws of Canada.

6. Each Fund is, or will be, governed by the provisions of Regulation 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.

7. None of the existing Funds is in default of securities legislation in any of the Canadian territories.

Definition of Illiquid Assets

8. Pursuant to section 1.1 of Regulation 81-102, an "illiquid asset" is defined as:

   a) a portfolio asset that cannot be readily disposed of through market facilities on which public quotations in common use are widely available at an amount that at least approximates the amount at which the portfolio asset is valued in calculating the net asset value per security of the investment fund, or

   b) a restricted security held by an investment fund.

9. Rule 144A provides an exemption from the registration requirements of the US Securities Act for resales of unregistered securities by and to Qualified Institutional Buyers. Rule 144A also requires that there must be adequate current public information about the issuing company before the sale can be made.

10. The definition of a Qualified Institutional Buyer under §230.144A of the US Securities Act includes several types of entities, but in general, such entities must, in the aggregate, own and invest on a discretionary basis at least USD$100 million in securities of issuers that are not affiliated with such entity.

11. While issuers themselves cannot rely on Rule 144A, as Rule 144A provides an exemption for resales of unregistered securities, the existence of Rule 144A allows financial intermediaries to purchase unregistered securities from issuers and resell them to Qualified Institutional Buyers in transactions that comply with Rule 144A without registering such securities.

12. Pursuant to the provisions of the US Securities Act, public resales of 144A Securities to non-qualified institutional buyers are subject to certain holding periods which range from a minimum of six months to a minimum of one year depending on the issuer of the securities.

13. Though public resales of 144A Securities are subject to certain holding periods, 144A Securities may be traded among Qualified Institutional Buyers in accordance with Rule 144A without regard to any holding periods. 144A Securities may also be sold to and purchased by non-qualified institutional buyers after registration of the securities, or pursuant to another exemption from registration under the US Securities Act, if any exemption is available at that time.

14. Because public resales of 144A Securities are subject to certain holding periods notwithstanding that Qualified Institutional Buyers may purchase 144A Securities in accordance with Rule 144A, which does not require a holding period, they may be considered to be restricted securities for the purposes of part (b) of the definition of "illiquid asset" in section 1.1. of Regulation 81-102, and each Fund's holdings of 144A Securities would be subject to the limits on holdings of illiquid assets in section 2.4 of Regulation 81-102 (the "**Illiquid Asset Restrictions**").

15. The segment of the U.S. investment grade corporate bond market that is made up of 144A Securities has grown substantially over the past 15 years. The segment of the U.S. high-yield corporate bond market that is made up of 144A Securities has also grown significantly over the past decade. As a result, the average daily trading volume/market size has also increased. Given this, the Filer is of the view that (i) 144A Securities are liquid, and (ii) 144A Securities are an increasing part of the Funds' potential investment universe.

Reasons for the Exemption Sought

16. The Filer is of the view that certain 144A Securities provide an attractive investment opportunity for the Funds. Due to the definition of "illiquid asset" under section 1.1 of Regulation 81-102, the Funds may be unable to pursue these investment opportunities without risking a breach of the Illiquid Asset Restrictions.

17. The ability of Qualified Institutional Buyers to freely trade 144A Securities pursuant to Rule 144A has substantially reduced the discounts and illiquidity that were present in unregistered offerings historically. The market for 144A Securities consists of a very deep pool of Qualified Institutional Buyers.

18. The most liquid 144A Securities have traded with comparable volumes to the most liquid corporate debt Registered Securities over the past few years.

19. Daily market quotations are obtained in the same way through fixed income market platforms for 144A Securities as they are for Registered Securities. Real-time price quotes and market trade data are available for 144A Securities. Many fixed income trades including 144A Securities, are reported within minutes into the Trade Reporting and Compliance Engine, a program initially developed by the National Association of Securities Dealers, Inc. (now the Financial Industry Regulatory Authority, Inc.) that provides for the reporting of over-the-counter transactions pertaining to eligible fixed income securities, including 144A Securities, thus meeting market integrity requirements.

20. A Fund that qualifies as a Qualified Institutional Buyer at the time it purchases 144A Securities may trade those 144A Securities to another Qualified Institutional Buyer without further restriction (i.e., not subject to any holding period). Typically, a Fund would sell 144A Securities to other brokers or dealers that are Qualified Institutional Buyers themselves, who would then on-sell the securities to other Qualified Institutional Buyers.

21. In addition to 144A Securities being freely tradable among Qualified Institutional Buyers immediately, 144A Securities may be sold to and purchased by retail investors under other available exemptions, such as Rule 144 of the US Securities Act. Rule 144 allows a seller to sell 144A Securities to a purchaser who does not qualify as a Qualified Institutional Buyer after a prescribed period of time, if certain other reporting requirements of the issuer are satisfied.

22. A Fund is not required to maintain its Qualified Institutional Buyer status in order to be able to resell its holdings of 144A Securities to another Qualified Institutional Buyer at any time.

23. In the course of determining the potential liquidity of a security, the portfolio manager or sub-adviser may use several factors, including, but not limited to, market volatility, trending credit quality, current valuation, maturity, size of the tranche

or offering, the applicable underwriters, the status of well-covered credit or first-time issuer, index eligibility, and in the case of 144A Securities, whether the security falls under "144A for life" status.

24. The Filer is of the view that it has, or each Fund's portfolio manager or sub-adviser has or will have, the tools, resources and expertise necessary to assess issuances of 144A Securities and to evaluate the creditworthiness of corporations on a per issuance basis. The Filer or the applicable portfolio manager or sub-adviser has or will have the ability to conduct sufficient analysis and should have the opportunity to invest in 144A Securities as if they were deemed liquid investments and are not "restricted securities" under part (b) of the definition of "illiquid asset" in section 1.1 of Regulation 81-102.

25. The purpose of the Illiquid Asset Restrictions is to govern a core investment fund principle: investors should be able to redeem mutual fund securities and, where applicable, non-redeemable investment fund securities, on demand. Considering that 144A Securities trade in an active institutional market, the Filer is of the view that 144A Securities can be liquid relative to a Fund's need to satisfy redemptions. The result of the current part (b) of the definition of "illiquid asset" in Regulation 81-102 is that all 144A Securities may be rendered illiquid, whereas 144A Securities may be more liquid than other types of securities that meet the liquidity criteria set out in Regulation 81-102.

26. Exempting 144A Securities from part (b) of the definition of "illiquid asset" in section 1.1 of Regulation 81-102 will not result in a Fund being unable to satisfy redemption requests. Investing in 144A Securities may be more beneficial to the Funds than various other securities in which the Funds may invest, and the liquidity determination regarding any such 144A Securities should be made based on the actual trading liquidity of the security and not simply based on the manner in which the security was offered into the market.

27. The Filer maintains policies and procedures that address liquidity risk, and uses a combination of risk management tools, including (i) IRC approved conflict of interest policies that have been adopted to protect investors in the Funds, (ii) internal portfolio manager notification requirements of significant cash flows into the Funds, (iii) ongoing liquidity monitoring of each Fund's portfolio, and (iv) the consideration of factors in order to assess the potential liquidity of a security including, but not limited to, trending credit quality, current valuation, maturity, and index eligibility.

28. If a Fund can no longer certify that it meets the requirements for qualifying as a Qualified Institutional Buyer, then the Filer will arrange to restrict any further purchases of 144A Securities until such time as the Fund can recertify its status as a Qualified Institutional Buyer.

29. The Filer is of the view that, if 144A Securities were deemed to be illiquid assets, it may have the effect of prohibiting the Funds from accessing and investing in 144A Securities, and thus the Funds and their investors would lose out on potential investment opportunities in the fixed income space.

30. It would not be detrimental to the protection of investors to grant the Exemption Sought to the Funds.

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:

a) a Fund that purchases 144A Securities is a Qualified Institutional Buyer at the time of purchase;

b) the 144A Securities purchased pursuant to the Exemption Sought are not illiquid assets under part (a) of the definition of "illiquid asset" in section 1.1. of Regulation 81-102;

c) the 144A Securities purchased pursuant to the Exemption Sought are traded on a mature and liquid market; and

d) the prospectus of each Fund relying on the Exemption Sought discloses, or will disclose at its next renewal following the date of this decision, the fact that the Fund has obtained the Exemption Sought.

"Frédéric Belleau"
Senior Director, Investment Products and Sustainable Finance
Autorité des marchés financiers

Application File #: 2024/0505
SEDAR+ File #: 6172665

B.3.2 I.G. Investment Management, Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from paragraphs 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit investment funds to invest up to 10% of NAV in securities of an underlying investment fund that is not a reporting issuer in any Canadian jurisdiction and not subject to NI 81-102.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, paragraphs 2.5(2)(a) and 2.5(2)(c) and section 19.1.

Order No. 7666

October 17, 2024

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

AND

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

AND

IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
(IGIM)

DECISION

I. BACKGROUND

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application (the **Application**) from IGIM on behalf of iProfile International Equity Private Pool (the **Initial Top Fund**) and any additional existing mutual funds or those mutual funds established in the future of which IGIM is the manager (the **Additional Top Funds** and together with the **Initial Top Funds**, the **Top Funds** and individually a **Top Fund**) for relief from:

1. Paragraph 2.5(2)(a) of NI 81-102, to permit each Top Fund that is a mutual fund to invest in securities of Rockefeller Capital Management IG PE Fund (the **Underlying Rockefeller Fund**), which will be a non-redeemable investment fund that is not subject to NI 81-102; and

2. Paragraph 2.5(2)(c) of NI 81-102, to permit each Top Fund that is a mutual fund to invest in securities of the Underlying Rockefeller Fund, which will not be a reporting issuer in any jurisdiction.

(the **Requested Relief**)

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

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

(b) IGIM has provided notice that section 4.7(1) of Multilateral Instrument 11102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut (together with the Jurisdictions, the **Canadian Jurisdictions**); and

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

II. INTERPRETATION

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

III. REPRESENTATIONS

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

IGIM

1. IGIM is a corporation continued under the laws of Ontario. It is the trustee, portfolio advisor and manager of the Top Fund. IGIM's head office is in Winnipeg, Manitoba.

2. IGIM is registered as a Portfolio Manager and an Investment Fund Manager in Manitoba, Ontario and Quebec and as an Investment Fund Manager in Newfoundland and Labrador.

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

The Top Fund

4. The Top Funds are, or will be, mutual funds subject to NI 81-102, organized and governed by the laws of a jurisdiction of Canada.

5. Each Top Fund distributes, or will distribute, its securities pursuant to a simplified prospectus and Fund Facts prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**).

6. Securities of each Top Fund are, or will be, qualified for distribution in the Jurisdictions.

7. The Top Funds are, or will be, reporting issuers in the provinces and territories of Canada in which their securities are distributed.

8. The simplified prospectus of each Top Fund discloses, or will disclose, in its description of the Top Fund's investment strategies that the Top Fund may invest up to 10% of its assets directly or indirectly in a diversified portfolio of privately held companies. This limit is consistent with the classification of the Underlying Rockefeller Fund as illiquid assets for purposes of NI 81-102.

9. Each Top Fund is, or will be, subject to National Instrument 81-107 – Independent Review Committee for Investment Funds (**NI 81-107**) and IGIM has established an independent review committee (**IRC**) to review conflict of interest matters pertaining to the Top Funds as required by NI 81-107.

Rockefeller Capital Management and the Underlying Rockefeller Fund

10. Rockefeller Capital Management LP (together with its affiliates, **RCM**) is a leading independent, privately-owned financial services firm offering global private wealth management, asset management and strategic advisory services to ultra-high-net-worth individuals and families, institutions, and corporations. RCM, which is headquartered in New York City, provides these services on a discretionary, non-discretionary or consulting basis for domestic and non-U.S. clients. The firm is responsible for in excess of $142 billion in client assets, as of June 30, 2024. RCM and its predecessor entities have advised clients on their private asset investment portfolios for decades with diversified commingled fund-of-fund vehicles dating back to 2003 as well as through a range of customized portfolio solutions.

11. On April 3, 2023 IGM Financial Inc. (**IGM**), the parent company of IGIM, purchased an approximately 20.5% equity interest in RCM.

12. The Underlying Rockefeller Fund will be a non-redeemable investment fund and it will seek to provide each Top Fund with access to private equity assets primarily focused in Europe and Asia consisting of a combination of mid-market and growth-oriented primary investments, secondary investments, evergreen private market strategies as well as private company direct and co-investments (each a **Portfolio Investment** and collectively the **Portfolio Investments**). A "primary investment" is an investment in non-redeemable securities of a private equity fund issued directly by the issuer fund, whereas a "secondary investment" generally involves purchasing securities in an existing private equity fund from an existing securityholder through a private purchase and sale transaction between the existing securityholder and the buyer. A "direct investment" is an investment made directly in the securities of a private company, generally alongside other investment partners. The Underlying Rockefeller Fund will seek to earn a long-term rate of return in excess of returns generally available through conventional investments in public equity markets and with lower volatility of returns than public markets. The Underlying Rockefeller Fund's strategy is Europe and Asia-focused in scope and in making primary and secondary investments for the Underlying Rockefeller Fund, RCM intends to focus on making investments

in or alongside a core group of private equity managers with well-established franchises, strong, long-term track records and demonstrated access to privileged deal flow.

13. The Underlying Rockefeller Fund will fall within the definition of "investment fund" under the Securities Act (Manitoba) (the **Act**) as it will invest in a portfolio of securities and will not invest for the purpose of exercising or seeking to exercise control over issuers. While certain investments in the portfolio of the Underlying Rockefeller Fund, particularly direct and co-invest investments, may include "control" characteristics including the right to appoint voting or observer members to an issuer's board of directors (or similar), the majority of the exposure to private assets in the fund will be achieved through investments in other private funds rather than direct holdings in portfolio companies. Further, direct or co-investments made by the Underlying Rockefeller Fund will be minority investments in issuers which do not include "control" characteristics, meaning RCM and its affiliates will own a minority of the investment and have minority representation on any related governing boards.

14. The Underlying Rockefeller Fund will be managed by RCM. Rockefeller & Co. LLC, an operating subsidiary of RCM, is registered as an international adviser in British Columbia, Manitoba, Ontario and Quebec, and an international investment fund manager in Ontario and Quebec. Rockefeller Financial LLC is registered as an international dealer and advisor in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan.

15. The Underlying Rockefeller Fund will not be subject to NI 81-102, and will not prepare a simplified prospectus or annual information form in accordance with NI 81-101 or a long form prospectus in accordance with NI 41-101.

16. The Underlying Rockefeller Fund will not be a reporting issuer in any of the Jurisdictions or listed on any recognized stock exchange.

17. The Top Funds will be the sole investors of the Underlying Rockefeller Fund.

18. The Top Funds qualify to invest in the Underlying Rockefeller Fund pursuant to an exemption from the prospectus requirement under applicable Canadian securities laws.

19. RCM is not in default of the securities legislation of any of the Jurisdictions.

20. There will be no established, publicly available secondary market for interests in the Underlying Rockefeller Fund nor will there generally be any redemption rights applicable to the Top Funds as investors of the Underlying Rockefeller Fund. As such, the Top Funds will not be able to readily dispose of their interest in the Underlying Rockefeller Fund and any interest that a Top Fund holds in an Underlying Rockefeller Fund will be considered an "illiquid asset" under NI 81102.

21. As the Underlying Rockefeller Fund will be a closed-end, non-redeemable investment fund, and there are no redemption rights, the Top Funds neither subscribe nor redeem based on the net asset value (**NAV**) of the Underlying Rockefeller Fund.

22. The Underlying Rockefeller Fund will invest in third-party private equity funds and may invest in direct private investments in partnership with third-party fund managers with whom RCM has an investment relationship. The Underlying Rockefeller Fund may also invest directly in private companies without a third-party sponsor vehicle. In such cases, RCM will engage a third-party valuation agent on a semi-annual basis to assess the current fair market value of the positions based on audited financial information, latest fundraising activities, the company's capitalization, and comparable company valuation metrics. With respect to co-investments, RCM generally reviews and adopts the co-investment partner's valuation as set forth in the quarterly Partners Capital Account Statement (**PCAP**) and requires co-investment partner to provide audited financial statements for the co-investment vehicle annually. The Underlying Rockefeller Fund will be valued quarterly by RCM. In preparing the quarterly valuations of the Underlying Rockefeller Fund, RCM considers the quarterly valuations that it receives in respect of each Portfolio Investment from the applicable fund manager in respect of the Underlying Rockefeller Fund's proportionate share of the Portfolio Investment. For valuation purposes, the Underlying Rockefeller Fund's Portfolio Investments are reported at fair value based on financial statements and other relevant information as supplied by the relevant fund manager at each year end. Additionally, as part of the due diligence onboarding process, RCM reviews and evaluates the valuation process of each fund manager that constitutes a Portfolio Investment. Fund manager valuations remain subject to adjustment in the event that RCM concludes that the valuation provided by the relevant fund manager does not accurately reflect the fair value of the Portfolio Investment. In such situations, RCM may consider adjustments to reported net asset value or other sources of fair value, such as trading comparables (including orderly secondary transactions), transaction multiples or prior financing rounds.

23. On an annual basis, the financial statements of the Underlying Rockefeller Fund will be audited by RCM's external auditors for its private equity funds, currently Deloitte & Touche LLP (**Deloitte**). Deloitte's audit also considers if controls and processes are in place to ensure Portfolio Investments are valued in accordance with RCM's valuation policy.

24. RCM's private equity valuation policy is consistent with U.S. Generally Accepted Accounting Principles.

General

25. Absent the Requested Relief, a Top Fund would be prohibited by sections 2.5(2)(a) and 2.5(2)(c) of NI 81-102 from purchasing or holding securities of the Underlying Rockefeller Fund because the Underlying Rockefeller Fund (i) is not subject to NI 81-102 and (ii) is not a reporting issuer in the Jurisdictions.

26. IGIM believes that a meaningful allocation to private equity investments provides Top Funds' investors with differentiated diversification opportunities and represents an appropriate investment tool for the Top Funds that has not been widely available in the past. Private equity investments have historically performed well in down markets; IGIM believes that permitting the Top Funds to invest in private equity, a subset of alternative investments, offers the potential to improve the Top Funds' risk-adjusted returns.

27. An investment in the Underlying Rockefeller Fund by a Top Fund is an efficient and cost-effective way for the Top Fund to implement a private equity investment strategy. IGIM believes it is in the best interests of the Top Funds to make use of RCM's experience and expertise as a private equity investor to achieve a Top Fund's desired exposure to a diversified portfolio of private companies. An investment in the Underlying Rockefeller Fund will provide a Top Fund with exposure to top-tier private equity funds and assets the Top Fund would not be able access directly. Without established relationships and internal private equity expertise, which RCM possesses but IGIM does not, it is extremely difficult to invest with leading global private equity managers, due to capped fund sizes and limited access to the funds. As an asset class, there has historically been a much larger dispersion of returns across private equity managers than there is for public equity managers. Accessing the top performing funds in private equity has historically made a material difference to returns. For this reason, there is significant competition to access the strongest performers and many are closed to new investors. RCM's longstanding relationships with and access to strong performing European and Asian private equity funds provides a distinct advantage that would be very difficult for IGIM to generate directly.

28. Further, RCM provides an active and purposeful approach to private equity portfolio construction, risk management and diversification that IGIM does not have the expertise to replicate. RCM engages in extensive due diligence of each investment opportunity to ensure that the investment meets the expected risk/return profile for the Underlying Rockefeller Fund participating in the investment. In summary, investing in the Underlying Rockefeller Fund will provide the Top Funds with access to investments in hard to access private equity funds and assets that the Top Funds would not otherwise have exposure to through portfolios of private equity investments diversified across different strategies, industry sectors and geographies constructed by RCM's experienced private equity professionals.

29. We note that the private equity funds that the Underlying Rockefeller Fund will invest in may be considered "investment funds" under securities laws. Notwithstanding the foregoing, the Top Funds will ensure compliance with section 2.5(2)(b) of NI 81-102.

30. RCM's focus on secondaries, co-investments, and direct investments will also be beneficial to the Top Funds. The secondaries market has grown considerably over the past decade but can generally only be accessed effectively by firms that have extensive relationships with private equity managers and other investors in private equity funds. These relationships provide Rockefeller with significant "deal flow". These interests can take many forms, including interests in one or more private equity funds sold as a portfolio and "single asset" vehicles where, as the name indicates, a sole company or asset is purchased in the secondary market indirectly through a managed vehicle structure. Since IGIM does not possess the applicable expertise internally, these opportunities cannot be accessed by the Top Funds except through a longstanding private equity investor like RCM.

31. The reason for this proposed "fund-of-one" structure is that RCM does not currently offer a pooled fund focused on European and Asian private equity that fits with a Top Fund's investment objectives and strategies. Furthermore, this "fund-of-one" structure will ensure that RCM can efficiently provide portfolio monitoring, treasury, accounting, and other reporting tasks that a Top Fund is not set up to undertake. RCM has proven success in structuring, investing and managing more than US$ 5 billion across private equity and venture capital/growth mandates on behalf of its clients, including a proprietary diversified private equity fund-of-fund with a greater than 20-year track record.

32. The Top Funds being the sole investors of an underlying fund is permissible under section 2.5 of NI 81-102 and therefore, but for the lack of applicability of section 2.5(2)(a) of NI 81-102 and 2.5(2)(c) 81-102 to the Underlying Rockefeller Fund, no additional relief would be necessary to organize the funds in this manner.

33. Investments in the Underlying Rockefeller Fund are considered illiquid investments under NI 81-102 and therefore are not permitted to exceed 10% of the NAV of a Top Fund. The investments in the Underlying Rockefeller Fund are included as part of the calculation for the purposes of the illiquid asset restriction in section 2.4 of NI 81-102 for the Top Fund. NI 81-102 allows holdings in illiquid investments so long as the aggregate exposure to illiquid investments is within the thresholds of the rule. IGIM has its own liquidity policy and manages the Top Funds' liquidity prudently under the policy.

34. As with any other illiquid investment, the portfolio managers of a Top Fund will carefully monitor the portfolio holdings and the liquidity needs of the Top Fund. Further, while the Top Funds may go up to 10% in illiquid assets in accordance

with NI 81-102, IGIM intends to keep the percentage of a Top Fund that is invested in illiquid assets at a moderately lower percentage to allow for fluctuations in the size of the Top Fund in order to manage compliance with the 10% restriction.

35. IGIM expects that the main source of liquidity for a Top Fund's interest in the Underlying Rockefeller Fund would be for the Top Fund to turn to the secondary market where a Top Fund could seek out other institutional investors who, subject to RCM's approval, could purchase a Top Fund's interest in the Underlying Rockefeller Fund in a secondary transaction**.**

36. The decision to permit a Top Fund to invest in the Underlying Rockefeller Fund represents IGIM's business judgment and is not influenced by factors other than the best interests of the Top Fund.

37. Aside from the sections covered by the Requested Relief, a Top Fund will comply with section 2.5 of NI 81-102 with respect to the investment in the Underlying Rockefeller Fund.

IV. 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 Requested Relief is granted, provided that:

1. No Top Fund will actively participate in the business or operations of the Underlying Rockefeller Fund.

2. In respect of an investment by a Top Fund in the Underlying Rockefeller Fund, no sales or redemption fees will be paid as part of the investment in the Underlying Rockefeller Fund.

3. In respect of an investment by a Top Fund in the Underlying Rockefeller Fund, no management fees or incentive fees will be payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by the Underlying Rockefeller Fund for the same service.

4. Where applicable, a Top Fund's investment in the Underlying Rockefeller Fund, will be disclosed to investors in such Top Fund's quarterly portfolio holding reports, financial statements and fund facts.

5. The prospectus of each Top Fund will disclose in the next renewal or amendment the fact that the Top Fund is invested in the Underlying Rockefeller Fund, which is managed by RCM and that IGM, an affiliate of IGIM holds a significant ownership interest in RCM.

6. The manager of each of the Top Funds complies with section 5.1 of NI 81-107 and the manager and the IRC of the Top Funds will comply with section 5.4 of NI 81-107 for any possible standing instructions concerning an investment by a Top Fund in the Underlying Rockefeller Fund.

"Chris Besko"
Manitoba Securities Commission

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B.4
Cease Trading Orders

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

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Loop Energy Inc.	August 20, 2024	January 13, 2025

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

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

B.4.3 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	
Perk Labs Inc.	April 4, 2024	
Cloud3 Ventures Inc.	October 29, 2024	
Falcon Gold Corp.	October 29, 2024	

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B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Fidelity Core U.S. Bond ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 9, 2025
NP 11-202 Final Receipt dated Jan 10, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06212838

Issuer Name:
RBC Indigo Strategic Aggressive Growth Fund
RBC Indigo Strategic Balanced Fund
RBC Indigo Strategic Conservative Fund
RBC Indigo Strategic Growth Fund
RBC Indigo Strategic Moderate Conservative Fund
RBC Indigo U.S. Dollar Money Market Fund
RBC Indigo U.S. Dollar Monthly Income Fund
RBC Indigo U.S. Equity Fund
RBC Indigo U.S. Equity Index Fund
RBC Indigo U.S. Equity Pooled Fund
Principal Regulator – British Columbia
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 10, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06132467

Issuer Name:
Mackenzie FuturePath US All Cap Growth Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jan 13, 2025
NP 11-202 Final Receipt dated Jan 13, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06209904

Issuer Name:
Big Pharma Split Corp.
Principal Regulator – Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated Jan 6, 2025
NP 11-202 Final Receipt dated Jan 7, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06218326

Issuer Name:
RBC Asia Pacific ex-Japan Equity Fund
RBC China Equity Fund
RBC European Equity Fund
RBC QUBE Global Equity Fund
RBC QUBE Low Volatility Global Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06135487

Issuer Name:
BlueBay $U.S. Global Investment Grade Corporate Bond Fund (Canada)
RBC Balanced Fund
RBC Select Aggressive Growth Portfolio
RBC Select Balanced Portfolio
RBC Select Conservative Portfolio
RBC U.S. Monthly Income Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06135456

Issuer Name:
Fidelity Absolute Income Fund
Fidelity Advanced U.S. Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jan 9, 2025
NP 11-202 Final Receipt dated Jan 10, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06212910

Issuer Name:
RBC Target 2025 Education Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06135460

Issuer Name:
Phillips, Hager & North Monthly Income Fund
Phillips, Hager & North Overseas Equity Fund
Phillips, Hager & North U.S. Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06135068

Issuer Name:
Hamilton Canadian Financials Index ETF
Hamilton Canadian Financials YIELD MAXIMIZER™ ETF (formerly Hamilton Canadian Financials Yield Maximizer ETF)
HAMILTON CHAMPIONS™ Canadian Dividend Index ETF
HAMILTON CHAMPIONS™ Enhanced Canadian Dividend ETF
HAMILTON CHAMPIONS™ Enhanced U.S. Dividend ETF
HAMILTON CHAMPIONS™ U.S. Dividend Index ETF
Hamilton Energy YIELD MAXIMIZER™ ETF (formerly Hamilton Energy Yield Maximizer ETF)
Hamilton Enhanced Canadian Financials ETF
Hamilton Enhanced U.S. Covered Call ETF
Hamilton Gold Producer YIELD MAXIMIZER™ ETF (formerly Hamilton Gold Producer Yield Maximizer ETF)
Hamilton Healthcare YIELD MAXIMIZER™ ETF (formerly Hamilton Healthcare Yield Maximizer ETF)
Hamilton U.S. Financials YIELD MAXIMIZER™ ETF (formerly Hamilton U.S. Financials Yield Maximizer ETF)
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 9, 2025
NP 11-202 Final Receipt dated Jan 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06218595

Issuer Name:
RBC Indigo AsiaPacific Fund
RBC Indigo Canadian Balanced Fund
RBC Indigo Canadian Bond Fund
RBC Indigo Canadian Bond Pooled Fund
RBC Indigo Canadian Dividend Pooled Fund
RBC Indigo Canadian Equity Pooled Fund
RBC Indigo Canadian Money Market Fund
RBC Indigo Canadian Money Market Pooled Fund
RBC Indigo Canadian Short/Mid Bond Fund
RBC Indigo Canadian Small Cap Equity Pooled Fund
RBC Indigo Chinese Equity Fund
RBC Indigo Diversified Aggressive Growth Fund
RBC Indigo Diversified Balanced Fund
RBC Indigo Diversified Conservative Fund
RBC Indigo Diversified Growth Fund
RBC Indigo Diversified Moderate Conservative Fund
RBC Indigo Dividend Fund
RBC Indigo Emerging Markets Debt Fund
RBC Indigo Emerging Markets Debt Pooled Fund
Principal Regulator – British Columbia
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 10, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06132369

Issuer Name:
RBC Bond Fund
RBC Emerging Markets Bond Fund
RBC Premium $U.S. Money Market Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06135452

Issuer Name:
Harvest Canadian T-Bill ETF
Harvest Coinbase High Income Shares ETF
Harvest Diversified High Income Shares ETF
Harvest Diversified Monthly Income ETF
Harvest Meta Enhanced High Income Shares ETF
Harvest MicroStrategy High Income Shares ETF
Harvest Palantir Enhanced High Income Shares ETF
Harvest Premium Yield 7-10 Year Treasury ETF
Harvest Tesla Enhanced High Income Shares ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 8, 2025
NP 11-202 Final Receipt dated Jan 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06217881

Issuer Name:
RBC Indigo Emerging Markets Equity Index Fund
RBC Indigo Emerging Markets Fund
RBC Indigo Emerging Markets Fund II
RBC Indigo Emerging Markets Pooled Fund
RBC Indigo Equity Fund
RBC Indigo European Fund
RBC Indigo Global Corporate Bond Fund
RBC Indigo Global Equity Fund
RBC Indigo Global Equity Volatility Focused Fund
RBC Indigo Global High Yield Bond Pooled Fund
RBC Indigo Global Inflation Linked Bond Pooled Fund
RBC Indigo Global Real Estate Equity Pooled Fund
RBC Indigo Indian Equity Fund
RBC Indigo International Equity Index Fund
RBC Indigo International Equity Pooled Fund
RBC Indigo Monthly Income Fund
RBC Indigo Mortgage Fund
RBC Indigo Mortgage Pooled Fund
RBC Indigo Small Cap Growth Fund
Principal Regulator – British Columbia
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 10, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06132439

Issuer Name:
Phillips, Hager & North Canadian Equity Fund
Phillips, Hager & North Dividend Income Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06134893

Issuer Name:
RBC Canadian Mid-Cap Equity Fund
Principal Regulator – Ontario
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated Jan 9, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06135480

Issuer Name:
Dynamic Active Innovation and Disruption ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Jan 10, 2025
NP 11-202 Final Receipt dated Jan 13, 2025
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06216204

NON-INVESTMENT FUNDS

Issuer Name:
Fédération des caisses Desjardins du Québec
Principal Regulator – Québec
Type and Date:
Amendment to Final Shelf Prospectus dated January 6, 2025
NP 11-202 Amendment Receipt dated January 7, 2025
Offering Price and Description:
$4,000,000,000 - Debt Securities (unsubordinated indebtedness), Debt Securities (subordinated indebtedness)
Filing # 06072778

Issuer Name:
Cybin Inc.
Principal Regulator – Ontario
Type and Date:
Amendment to Final Shelf Prospectus dated January 6, 2025
NP 11-202 Amendment Receipt dated January 7, 2025
Offering Price and Description:
$650,000,000 - Common Shares, Warrants, Units, Debt Securities, Subscription Receipts
Filing # 03550875

Issuer Name:
Brookfield Infrastructure Finance ULC
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated January 7, 2025
Offering Price and Description:
Debt Securities
C$3,000,000,000
Filing # 06226114

Issuer Name:
Brookfield Infrastructure Finance LLC
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated January 7, 2025
Offering Price and Description:
Debt Securities
C$3,000,000,000
Filing # 06226119

Issuer Name:
Brookfield Infrastructure Finance Limited
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated January 7, 2025
Offering Price and Description:
Debt Securities
C$3,000,000,000
Filing # 06226120

Issuer Name:
Brookfield Infrastructure Finance Pty Ltd
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated January 7, 2025
Offering Price and Description:
Debt Securities
C$3,000,000,000
Filing # 06226130

Issuer Name:
Brookfield Infrastructure Preferred Equity Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated January 7, 2025
NP 11-202 Final Receipt dated January 7, 2025
Offering Price and Description:
Class A Preference Shares
C$3,000,000,000
Filing # 06226144

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Change in Registration Category	Shakepay Inc.	From: Restricted Dealer To: Investment Dealer	January 8, 2025
New Registration	JDJ MERCHANT PARTNERS INC.	Exempt Market Dealer	January 9, 2025

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B.11
CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 Cboe Canada Inc. – Trading Policies Amendments – Notice of Approval

CBOE CANADA INC.

TRADING POLICIES AMENDMENTS

NOTICE OF APPROVAL

In accordance with the *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto*, the Ontario Securities Commission (the "**OSC**") has approved certain Public Interest Rule amendments to the Cboe Canada Inc. (the "**Exchange**") Trading Policies (the "**Rule Amendments**").

On August 15, 2024, the Rule Amendments, which pertain to several new functionalities for the NEO-L, NEO-N, and NEO-D Trading Books (collectively, the "**NEO Platform**") that the Exchange intends to adopt in connection with a planned migration of the NEO Platform to technology developed by its parent company, Cboe Global Markets, Inc. (the "**Cboe Technology Migration**"), were published for comment. For additional details, please refer to the Request for Comments published on the OSC website and in the OSC Bulletin on August 15, 2024. One comment letter was received; the comments made in that letter, along with the Exchange's response to each one, are set out in Appendix A.

A copy of the amended Trading Policies can be found on the Exchange's website.

The Exchange is planning to implement the Rule Amendments on **March 3**, **2025**.

Appendix A

SUMMARY OF PUBLIC COMMENTS AND RESPONSES

The following is a summary of comments received in response to the Request for Comments published on August 15, 2024 regarding the Rule Amendments proposed in connection with the Cboe Technology Migration (the **Notice**), and the responses thereto. Capitalized terms used but not defined herein are as defined in the Notice.

One comment letter was received in response to the Notice (from National Bank Financial Inc.).

Comment	Exchange Response
General support was expressed for the proposed changes. In particular, the commenter supports in principle the proposed updates to the Closing Call, which would bring the Exchange's closing auction functionality in line with other Canadian marketplaces. The commenter acknowledged that the proposal deviates from other Canadian market designs in some subtle ways in order to maintain similarity to other global markets. The commenter's view is that harmonizing Canadian and global markets is essential to ensuring that global investors can efficiently and confidently transact in Canada.	The Exchange appreciates the support for the Rule Amendments. In particular, we appreciate the positive feedback expressed with regard to some of the nuances that the Rule Amendments introduces to the Closing Call, which make it similar, yet distinctive within the Canadian context, thereby offering our clients (both Members and issuers) what we believe will be a compelling market alternative for trading around market close.
The commenter noted that it was unclear from the Notice whether auction imbalance messages will be sent from 3:56-4:00pm; it is the commenter's view that updates should be sent during this period.	As codified in Section 6.09 of the Trading Policies, as amended (and as published in Appendix A of the Notice), imbalance messages will be published "at the start of the Imbalance Period until the Closing Call at set time intervals as specified by Notice to Members," and that most certainly includes the new "Closing Offset" phase, which will run from 3:56 pm to 4:00 pm. This will be made clear in the Trading Functionality Guide (i.e., the "Notice to Members" required by the new rule) that will be published on or around the date on which the Rule Amendments are expected to be implemented (March 3, 2025). Unfortunately, after the Notice was published, it came to our attention that the table provided in section 2 ("New Closing Call") of the "Description of the Public Interest Rule Amendment" section of the Notice, which was meant to summarize the new Closing Call process in a visually simple way, contained a typographical error—namely, the text in the "Market Data" – "Message" sub-column for the "Closing Offset" row should have stated "Auction update every 10 seconds" (rather than "No auction message"). We apologize for the error and any confusion it caused.
Regarding order allocation priority in the closing auction, the commenter recommended a price/broker/time allocation similar to that used on the TSX, as distinguishing between "active" and "passive" sides is not relevant in the context of a call auction. Additionally, the commenter was of the view that the possibility of the sign of the imbalance "flipping" in the final moments of the continuous session could result in unexpected behaviour if different priority rules are applied depending on order side.	Our choice of words in the Notice (including the reference to "active" and "passive" orders) may have inadvertently caused some confusion. To be clear, the order matching priority applicable to the Closing Call is not changing; the same order matching priority that applies today (see Section 6.11 of the Trading Policies), will apply following the implementation of the Rule Amendments, except that one new order type (the Late Limit on Close or "LLOC" order) is being added to the mix. Nevertheless, the Exchange is open to making adjustments to the order matching priority applicable to the Closing Call at a future time, and we will seek out feedback from our clients before proposing any changes.

Index

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