



Ontario
Securities
Commission

Commission des
valeurs mobilières
de l'Ontario

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January 23, 2025

**IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO**

(the Jurisdiction)

AND

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

AND

**IN THE MATTER OF
BANK OF MONTREAL
(the Filer)**

DECISION

Relief Sought

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for the following relief (the **Relief Sought**):

- (a) that the requirements to deliver to the purchaser or its agent the latest prospectus (including applicable prospectus supplements) and any amendment to the prospectus in respect of CDRs (as defined below) that are being distributed (the **Prospectus Delivery Requirement**) do not apply to the Filer or any other person in respect of CDR Distributions (as defined below) conducted on a regulated Canadian marketplace; and related purchaser rights to withdraw from the purchase and sale transaction (**Withdrawal Right**) and any purchaser right of action for rescission or damages (**Right of Action for Non-Delivery**) if the Prospectus Delivery Requirement is not fulfilled or the relevant rescission period has not elapsed do not apply in respect of CDR Distributions conducted on a regulated Canadian marketplace;
- (b) that the requirement in section 7.2 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) to distribute securities under a prospectus

at a fixed price and the requirement in section 8.1 of National Instrument 44-102 *Shelf Distributions* (NI 44-102) to file a pricing supplement in order to distribute securities under a base shelf prospectus by way of a continuous distribution (the **Pricing Requirements**) do not apply in respect of the CDR Distributions;

- (c) that the following prospectus form requirements (collectively, the **Prospectus Form Requirements**) do not apply to the Shelf Prospectus (as defined below), any Prospectus Supplement (as defined below) or an amendment thereto:
- (i) subsection 5.5(2) and 5.5(3) of NI 44-102, which each require the inclusion in a base shelf prospectus of statements specified therein related to the delivery to purchasers of one or more applicable prospectus supplements; and
 - (ii) the prospectus form requirement that a statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in substantially the form prescribed by Item 20 of Form 44-101F1 *Short Form Prospectus* (Form 44-101F1) be included in the prospectus;

provided that the Filer includes in the Shelf Prospectus or an amendment thereto the revised description set out below of a purchaser's statutory rights of withdrawal and remedies for rescission or damages;

- (d) exemptive relief from the requirement to identify each underwriter and to include a certificate of an underwriter in the Shelf Prospectus or any Prospectus Supplement for a Series of CDRs (or any amendments or supplements thereto) (the **Underwriter's Certificate Requirement**), provided that the alternative disclosure described below is provided;
- (e) that the requirements pursuant to section 4.6 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to deliver annual financial statements, interim financial reports and the related management's discussion and analysis to registered holders and beneficial owners of the Filer's securities (the **51-102 Delivery Requirements**) do not apply to the Filer in respect of registered holders and beneficial owners of CDRs;
- (f) that the requirements pursuant to section 8.2 of NI 41-101 to cease distribution after a specified period of time (not to exceed 180 days from the date of receipt for the final prospectus) if securities are being distributed on a best efforts basis (the **Distribution Time Limit**) does not apply in respect of CDR Distributions;
- (g) that the requirement pursuant to section 2.1(1) of National Instrument 33-105 *Underwriting Conflicts* (NI 33-105) that no specified firm registrant shall act as a direct underwriter in a distribution of securities of a connected issuer or a related issuer of the specified firm unless the prescribed disclosure is included in the relevant prospectus (the **Connected Issuer Requirement**) does not apply in respect of CDR Distributions;

- (h) that the requirement pursuant to section 2.1(2) of NI 33-105 that no specified firm registrant shall act as a direct underwriter of a related issuer of the specified firm registrant unless certain conditions are satisfied (the **Independent Underwriter Requirement**) does not apply to the Filer or its affiliates in connection with CDR Distributions; and
- (i) that the restrictions (the **48-501 Purchasing Restrictions**) imposed by section 2.2 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions (Rule 48-501)* on issuer-restricted persons bidding for or purchasing CDRs or other restricted securities during the period of the Offerings (as defined below) or attempting to induce or cause a purchase of CDRs or other restricted securities (as such terms are defined in Rule 48-501) do not apply in connection with CDR Distributions.

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

- (a) pursuant to subsection 3.6(3)(b) National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*, as the Filer's principal executive offices are located in Ontario, the Ontario Securities Commission is the principal regulator for this application;
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and the Yukon Territory (collectively and together with the Jurisdiction, the **Reporting Jurisdictions**); and
- (c) the decision is the decision of the principal regulator and evidences the decision of the securities regulatory authority.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, in National Instrument 13-103 *System for Electronic Data Analysis and Retrieval + (SEDAR+)*, in MI 11-102 or in NI 44-102 have the same meaning if used in this decision, unless otherwise defined herein. References herein to "C\$" mean Canadian dollars and references to "US\$" mean United States dollars.

Representations

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

The Filer

1. The Filer is a Schedule I bank governed by the *Bank Act* (Canada) that operates as a diversified financial institution directly and through its subsidiaries. The principal executive offices of the Filer are located in Toronto, Ontario.

2. The Filer is a reporting issuer or the equivalent under the securities legislation of each Reporting Jurisdiction and is in compliance in all material respects with the applicable requirements of the securities legislation of each Reporting Jurisdiction.

The CDRs

3. The Filer proposes to offer securities of the Filer that are identified as “Canadian Depositary Receipts” (**CDRs**) pursuant to a series of continuous offerings (the **Offerings**).
4. CDRs will be issued in one or more series (each a **Series**), with each Series of CDRs relating to a single class of equity securities (the **Underlying Shares**) of an issuer incorporated or formed outside of Canada (each an **Underlying Issuer**). The Underlying Shares for each Series will be listed for trading in U.S. Dollars or another foreign currency (the **Underlying Currency**) on the principal securities exchange or other trading market for such Underlying Shares identified by the Filer in the related Supplemented Prospectus (the **Primary Trading Market**). **Trading Day** means a Toronto business day that ordinary trading is scheduled to occur on both (i) the primary Canadian securities exchange(s) on which the Filer has decided to list the relevant Series of CDRs as identified for the Series in the related Supplemented Prospectus (as defined below) (each a **Canadian Listing Exchange**), and (ii) the foreign stock exchange which is the Primary Trading Market for the relevant Underlying Shares.
5. Series of CDRs for which the Underlying Issuer is incorporated or formed in the United States and for which the Underlying Shares trade on a U.S. stock exchange in U.S. Dollars are referred to as **U.S. CDRs**. Series of CDRs for which the Underlying Issuer is incorporated or formed outside the United States are referred to as **Global CDRs**.
6. For greater certainty, where Underlying Shares are traded on more than one marketplace, for the purposes of the issuance of a Series of CDRs, the relevant Primary Trading Market will generally be that located in the country in which the Underlying Issuer is incorporated or formed.
7. CDRs are transferrable depositary receipts issued by the Filer and are designed to provide Canadian investors with an efficient alternative to ownership of the Underlying Shares of the Underlying Issuers through Canadian-dollar denominated receipts trading on Canadian markets.
8. Each CDR represents the interest of the holder of the CDR (each, a **CDR Holder**) in the pool of Underlying Shares held for the relevant Series (the **Underlying Share Pool** for the Series) in a segregated securities account (the **Custody Account**) with a specified Custodian (as defined below) pursuant to the terms of a deposit agreement (a **Deposit Agreement**).
9. CDRs will be issued with a notional currency hedge to Canadian dollars. Each CDR’s interest in the pool of Underlying Shares represents a beneficial interest in the relevant Underlying Share Pool with entitlements based on an interest in a number of the Underlying Shares equal to the CDR Ratio (as defined below) for the Series, with a notional currency hedge to Canadian dollars.

10. The **CDR Ratio** in respect of a Series of CDRs will be equal to the initial CDR Ratio specified in respect of such Series of CDRs in the applicable Prospectus Supplement, as adjusted formulaically from time to time on the terms set out in the applicable Deposit Agreement. The formulaic adjustments to the CDR Ratio will provide an embedded daily notional currency hedge of such Underlying Shares' market value in the relevant Underlying Currency into Canadian dollars (each a **Notional FX Hedge**).
11. An investment in the CDRs of a Series is unlikely to produce investment returns that are identical to those of a comparable investment in the related Underlying Shares due to a number of factors, including differences in trading currency, trading characteristics and operating hours and rules of the Primary Trading Market. Further, there may not be a direct correlation between the trading prices of CDRs of a Series and the related Underlying Shares because of potential tracking differences between the securities, arising from the spread embedded in the Notional FX Hedge, differences between short term interest rates in Canada and in the applicable foreign jurisdiction (which introduce a spread between foreign exchange spot rates and foreign exchange forward rates), currency and equity volatility, and the fact that the Notional FX Hedge is determined once daily at the applicable valuation time on each Trading Day. As a consequence of the foregoing factors, the tracking difference over time could be greater than the spread embedded in the notional forward rate in the Notional FX Hedge. Specific disclosure will be included in the Shelf Prospectus and each Supplemented Prospectus that the percentage return of an investment in Canadian dollars in CDRs of a particular Series over a particular time period may be less than the percentage return of an investment in the Underlying Currency in the Underlying Shares over the same time period due to a number of factors.
12. Each Deposit Agreement sets out the terms of the interests and rights of CDR Holders of the applicable Series, including their entitlements to receive dividends and other distributions in respect of Underlying Shares (which is based on the number of CDRs held multiplied by the applicable CDR Ratio) and, upon the surrender and cancellation of CDRs, the right to withdraw Underlying Shares equal to the number of CDRs held multiplied by the applicable CDR Ratio. In view of the different trading and settlement mechanisms and exchange trading hours across different jurisdictions and the time zone differences between Canada and the jurisdiction in which each Primary Trading Market is located, there will be multiple Deposit Agreements governing CDRs of different Series, although their principal terms will be substantially similar.
13. Each CDR represents an equal undivided direct beneficial interest in the relevant Underlying Share Pool. CDR Holders (individually or collectively) do not have any ownership interest in any particular Underlying Shares or number or fraction thereof, and CDR Holders will not be considered to be securityholders of the Underlying Issuer for the purposes of Canadian or U.S. securities laws (or the securities laws of other applicable jurisdictions in respect of Global CDRs). CDR Holders may not have the same statutory rights and remedies under securities legislation as shareholders of the Underlying Issuer. Specific risk factor disclosure will be included in the Shelf Prospectus and each Supplemented Prospectus describing the key differences between holding CDRs and owning securities of the Underlying Issuer directly.

14. In addition to the undivided co-ownership interest represented by all CDRs of a Series, the Filer will also own an undivided co-ownership interest in the Underlying Share Pool for that Series. The Filer, in its capacity as depositary under each Deposit Agreement (the **Depositary**), will deposit Underlying Shares in respect of each Series to the Custody Account pursuant to the applicable Deposit Agreement to acquire its undivided co-ownership interest. Consequently, CDR Holders of a Series and the Filer will be co-owners as tenants-in-common (the **Co-Owners**) of the Underlying Share Pool for each Series, each with undivided co-ownership interests therein.
15. As a result of this undivided co-ownership arrangement, a CDR can be considered a “security” issued by the Filer within the meaning of the Legislation given that it is a “document constituting evidence of title to or interest in the capital, assets, property, earnings or royalties of any person or company”.
16. The undivided co-ownership interests in the Underlying Share Pool represented by all CDRs of a Series is referred to as the **CDR Holder Interest** for the Series, and the Filer’s undivided co-ownership interest in the Underlying Share Pool is referred to as the **Issuer Interest** for the Series.

Custodial Arrangements

17. For each Series of CDRs, the Underlying Shares deposited under the Deposit Agreement shall be held with one or more custodians (each a **Custodian**) that qualify as “custodians” or “sub-custodians”, as applicable, that may be appointed under Part 6 of National Instrument 81-102 *Investment Funds (NI 81-102)*. It is expected that each qualified Custodian will hold deposited Underlying Shares and related proceeds (including all cash held for CDR Holders and the Issuer Interest) in a segregated Custody Account separate and apart from the qualified Custodian’s own property using an account number or other designation in its records sufficient to show that the securities deposited under the relevant Deposit Agreement are held for the benefit of the CDR Holders of the Series and the Filer. The Custodian is not empowered to enter into transactions on behalf of CDR Holders. Custodians will maintain these positions in the Underlying Shares (directly or indirectly through sub-custodians) through a central securities depository set out in the following table (which will in most cases be the central securities depository generally used in the home market for trading of the Underlying Shares, and in each case will be disclosed in the relevant Supplemented Prospectus for each Series):

Jurisdiction	Central Securities Depository
Austria	OeKB CSD GmbH
Belgium	Euroclear Belgium; Banque Nationale de Belgique
Denmark	EuroNext Securities Copenhagen (VP Securities A/S)
Finland	Euroclear Finland
France	Euroclear France

Germany	Clearstream Banking AG
Greece	Hellenic Exchanges S.A. Holding, Clearing, Settlement & Registry (HELEX) (Central Securities Depository)
Ireland	Clearstream Banking S.A.; Euroclear Bank
Italy	EuroNext Securities Milan (Monte Titoli SPA)
Japan	Japan Securities Depository Center, Inc.
Luxembourg	LuxCSD S.A.; Clearstream Banking S.A.; Euroclear Bank
The Netherlands	Euroclear Nederland
Norway	Euronext Securities Oslo (Verdipapirsentralen ASA)
Portugal	EuroNext Securities Porto (Interbolsa)
Spain	Iberclear – BME Group
Sweden	Euroclear Sweden AB
Switzerland	SIX SIS AG
The United Kingdom of Great Britain and Northern Ireland	Euroclear UK & International Limited
The United States of America	Depository Trust Company

18. CIBC Mellon Trust Company (**CIBC Mellon**) will be the initial Custodian that will be designated to hold the Underlying Shares for each Series of CDRs, either directly or through qualified sub-custodians that meet the requirements of section 6.3 of NI 81-102. CIBC Mellon is a federally regulated financial institution and is supervised by the Office of the Superintendent of Financial Institutions (Canada). As such, it is subject to the professional standards applicable to Canadian custodians. CIBC Mellon is audited by an independent third party and has issued a System and Organization Controls (SOC) 1 Type 2 report in respect of its business process controls and its information technology control objectives and testing.
19. The Filer, the Custodian and CDR Holders from time to time will be parties to the respective Deposit Agreements, which require the Custodian to comply with its standard of care in relation to its custody of the Underlying Shares held in respect of each Series of CDRs. The Deposit Agreements also require the Custodian to comply with the terms and conditions relating to the maintenance for the benefit of the Co-Owners of each Series of a dedicated securities account to hold all of the Underlying Shares for the Series, which is segregated from the Custodian’s own property, and to comply with specified requirements related to the accuracy of information provided with respect to those accounts. CIBC Mellon will provide to the Filer daily reports of its holdings of Underlying Shares, custodied in segregated accounts at CIBC Mellon, which reports will be monitored and reviewed by the Filer’s team responsible for overseeing custodial arrangements for the

CDRs. There will also be a daily reconciliation undertaken between the trading book of record maintained by the Filer and CIBC Mellon's reports, to confirm the parties' Underlying Share balances for each Underlying Share Pool and to verify that the required balances for each such pool are satisfied. As such, the Filer believes that it will be able to confirm at all times that the number of Underlying Shares in the Underlying Share Pool for a Series of CDRs is equal to the product of (i) the number of outstanding CDRs of that Series, and (ii) the then-applicable CDR Ratio for that Series, plus the then-applicable Issuer Interest.

20. Neither the Filer nor the Custodian will engage in any securities lending, repurchase or reverse repurchase transactions in respect of the Underlying Shares held in the Underlying Share Pools, and accordingly for each Series, the Custody Account for the Series shall hold a pool of Underlying Shares that is equal to the outstanding number of CDRs of the Series times the CDR Ratio for the Series plus a number of Underlying Shares held in respect of the Issuer Interest for the Series.

Offerings and Cancellations of CDRs

21. Each Offering of CDRs of a particular Series will be conducted by the offering and sale of CDRs on a continuous basis through non-fixed-price open-market distributions (**CDR Distributions**) primarily completed on regulated marketplaces (which are expected to include the securities exchange operated by Cboe Canada Inc.). Each Offering will be made pursuant to a single base shelf prospectus (the **Shelf Prospectus**) of the Filer that applies to all Series of CDRs, a prospectus supplement containing disclosure specific to Underlying Issuers incorporated or organized in a particular country and/or whose Underlying Shares are traded on a Primary Trading Market (the **Jurisdiction Supplement**) and a prospectus supplement describing one or more particular Series of CDRs, including the disclosure with respect to the applicable Underlying Shares and Underlying Issuer(s) and the availability of each Underlying Issuer's disclosure record (each, an **Issuer Supplement**; the Shelf Prospectus as supplemented by a Jurisdiction Supplement and an Issuer Supplement is referred to as a **Supplemented Prospectus**, and the Jurisdiction Supplements and the Issuer Supplements are referred to collectively as **Prospectus Supplements**). For each Offering, the Filer will issue the CDRs to registered dealers purchasing as principals or as agents on behalf of subscribers, and such registered dealers when purchasing as principal are expected to distribute the CDRs on regulated marketplaces but may also complete distributions by private sales.
22. If trading in an Underlying Share has been halted on the applicable Primary Trading Market (other than due to ordinary course "circuit breaker" trading halts due to changes in market price or halts which impact shares of a number of issuers or general exchange halts), the Filer will adhere to the expectations of the Canadian Investment Regulatory Organization in respect of trading halts and to the extent required will use its commercially reasonable efforts to initiate a business halt for the Series of CDRs through coordination with the applicable Canadian Listing Exchange and to maintain the halt for the duration of the halt of the Underlying Share.

23. CDRs of a Series can only be created or redeemed in accordance with the terms of the applicable Deposit Agreement, in connection with a deposit or withdrawal of the then-applicable number of Underlying Shares per CDR. Each Series of CDRs may be issued on a continuous basis and there is no minimum or maximum number of CDRs (in the aggregate or with respect to any particular Series) that may be issued.
24. The Filer may enter into various agreements with registered dealers, including BMO Nesbitt Burns Inc. (**BMO NB**), pursuant to which Dealers may subscribe for and purchase CDRs. All subscriptions for newly issued CDRs from the Depository must be placed by or through a Dealer. **Dealer** means any registered or exempted securities dealer that is permitted to subscribe for CDRs of any Series.
25. To initiate a subscription for CDRs, a Dealer must confirm the terms of the CDR subscription agreement and specify the number of CDRs of a particular Series (the **Subscription Number**) subscribed for. Subscription requests must be submitted to the Depository in advance of a cutoff time specified in the Deposit Agreement on the Trading Day the subscription is to take effect (the **Subscription Date**). Once accepted by the Depository, subscription requests give rise to an irrevocable obligation to deliver in advance of a cutoff time specified in the applicable Deposit Agreement on the Trading Day after the Subscription Date (or, for some Series, on the Trading Day two Trading Days after the Subscription Date) (the **Issuance Date**) a number of Underlying Shares equal to the applicable CDR Ratio times the Subscription Number (the **Share Delivery Number**).
26. The CDR Ratio that applies in respect of any subscription is equal to the Trade Date Ratio for the Subscription Date. The **Trade Date Ratio** for any Trading Day (the **Current Trading Day**) is generally equal to the trade date ratio for the immediately preceding Trading Day as adjusted based on the value of the notional FX forward transaction that terminates on the Current Trading Day. If such amount is positive, such amount is notionally invested in additional Underlying Shares, which gives rise to an increase in the Trade Date Ratio, and if such amount is negative, Underlying Shares with a market value equal to the absolute value of such amount are notionally divested, which gives rise to a decrease in the Trade Date Ratio.
27. Pursuant to the Deposit Agreement, the Custodian is responsible to (i) take delivery of Underlying Shares for deposit to the Custody Account in respect of the creation of new CDRs pursuant to a valid subscription, and (ii) to deliver Underlying Shares in respect of the cancellation of outstanding CDRs pursuant to a valid withdrawal request. As provided in each Deposit Agreement, no CDRs of a Series shall be issued unless all conditions precedent set out in the Deposit Agreement (other than the payment of fees if and to the extent waived by the Depository) have been satisfied, and consequently the Depository is not permitted to issue CDRs unless the required number of Underlying Shares are actually deposited on a fully settled basis in the Custody Account for the relevant Series (referred to as the **Contractual Restriction**).
28. The Filer confirms that compliance with the Contractual Restriction on issuance of new CDRs is ensured operationally by the permanent standing directions that have been issued to the Custodian and the registrar and transfer agent in respect of the CDRs (the **Transfer**

- Agent**) to the effect that: (1) for each subscription, the Custodian (in its capacity as agent of the Depository) shall confirm the Underlying Share delivery requirement to the subscriber, the Filer and the Transfer Agent, (2) the Custodian (in its capacity as the Custodian) shall only confirm to the Transfer Agent satisfaction of receipt of the Underlying Shares required to be delivered in respect of a subscription once the Share Delivery Number of Underlying Shares are settled in the Custody Account, and (3) the Transfer Agent shall only issue new CDRs in connection with a subscription once the foregoing confirmations are received from the Custodian.
29. For each Series of CDRs, the Custodian has established processes in place with the Filer and the Transfer Agent to control the release of CDRs. The issuance of CDRs will only occur once the required number of Underlying Shares is delivered to the Custodian, Underlying Shares will only be transferred to a CDR Holder after the CDR Holder has surrendered the corresponding number of CDRs, and the Depository will only be permitted to withdraw Underlying Shares to the extent the number of Underlying Shares in the Custody Account will continue to exceed the number of CDRs outstanding multiplied by the applicable CDR Ratio. The Custodian will not otherwise transfer, purchase or sell Underlying Shares pursuant to the Deposit Agreements. The procedures through which CDRs are issued follow the well-established operational routines that apply to the issuance of exchange-traded funds (**ETFs**), and CIBC Mellon has used its existing ETF platform to operationalize these procedures for CDR Distributions.
30. The Deposit Agreement subscription provisions provide that in some cases a small portion of the Underlying Shares required to be delivered to the Custody Account by the subscriber are instead delivered to the Custody Account by the Filer on the subscriber's behalf (referred to as the **BMO Sourced Number of Shares**); and in some cases the subscriber delivers to the Custody Account a number of Shares that exceeds the Subscription Number required to be delivered in respect of the subscription (referred to as the **Excess Deposited Number of Shares**) by a small portion in which case the excess shares are delivered by the subscriber on behalf of the Filer as the Issuer Interest holder (i.e., the Filer as holder of what is effectively a residual interest in excess shares on deposit in the Custody Account). The subscriber is required to pay the Filer for the BMO Sourced Number of Shares and the Filer is required to pay the subscriber for the Excess Deposited Number of Shares for a market price, as set out in the Deposit Agreement. The Filer, in its capacity as Depository in respect of the CDR program, does not purchase Underlying Shares except (a) in respect of the Issuer Interest, and (b) to deliver the BMO Sourced Number of Shares on behalf of subscribers. The Filer does not receive any cash proceeds from CDR Distributions other than in connection with delivery of the BMO Sourced Number of Shares.
31. BMO NB is a wholly-owned subsidiary of the Filer. By virtue of such ownership, the Filer is a "related issuer" and a "connected issuer" of BMO NB within the meaning of applicable securities legislation in connection with any offering of CDRs under the Supplemented Prospectus. The Filer is directly managing and taking responsibility for all due diligence and all disclosure in respect of its CDR program, and the Filer bears the program marketing costs. No underwriting fees or commissions will be paid to any Dealer, including BMO NB, in connection with the issuance of CDRs.

32. CDR Holders of a Series may irrevocably request to cancel any whole number of CDRs and to withdraw the applicable related Underlying Shares. All such requests to the Filer to cancel CDRs must be placed by or through a Dealer.

Termination of CDRs

33. The Filer has the discretion to terminate any or all Series of CDRs at any time in its sole discretion on not less than 30 days' prior notice, provided, however, that the Filer may terminate any Series of CDRs on not less than three Trading Days' notice if (i) the Underlying Shares of such Series cease to be listed on their Primary Trading Market; (ii) the Series of CDRs is suspended from trading on a Canadian stock exchange; (iii) the number of CDR Holders of the Series of CDRs and/or of other Series of CDRs is such that it is uneconomical for the Filer to continue to offer that Series of CDRs or to offer the CDRs and other Series of CDRs; or (iv) there is a change in law or regulation (including a change of tax law, regulation or administrative position of the Canada Revenue Agency or another domestic or foreign taxation authority) which makes it impractical or uneconomical for the Filer to continue to maintain or offer CDRs, to hold the Issuer Interest, or to operate its CDR business. The Filer will post any such termination notice on the CDR Website (as defined below) and will file a news release in respect of the termination of any Series not less than 15 days, nor more than 90 days, prior to the termination of the applicable Series (or, if the Filer is only required to provide three Trading Days' notice of the termination, not less than two Trading Days, nor more than 90 days, prior to, such termination).
34. The Filer also has discretion to terminate a Series of CDRs without any prior advance notice in certain limited circumstances, including (i) during any period when normal trading is suspended on a stock exchange or other market on which the Underlying Shares are listed and traded; (ii) if at any time it is not possible for the Filer to maintain its Issuer Interest in compliance with the applicable Deposit Agreement; or (iii) if the obligations of the Filer under the applicable Deposit Agreement are uneconomical or raise regulatory, prudential or commercial concerns. In these circumstances, the Filer will promptly post a termination notice for the relevant Series of CDRs on the CDR Website and file a news release in respect of the termination.
35. The Filer will monitor events affecting Underlying Issuers and may consider terminating a Series of CDRs in certain circumstances, such as in the event that an Underlying Issuer is made subject to Canadian or international sanctions or is affected by other matters (such as long-term trading halts based on securities law breaches or an inability to deliver audited financial statements) raising regulatory, prudential or commercial concerns for the Filer as Depositary in respect of the applicable Series of CDRs.

Fees and Expenses

36. No fees or expenses will be charged by the Filer to CDR Holders or applied by the Filer to reduce the CDR Ratio upon the issuance of CDRs, and no fees will be directly charged by the Filer to CDR Holders while holding CDRs, in each case in connection with the administration of the CDR program. The CDR Ratio may be adjusted in accordance with

the applicable Deposit Agreement in respect of (i) actual out-of-pocket costs and expenses incurred in connection with the purchases and sales of Underlying Shares for the Underlying Share Pool, and (ii) applicable foreign transaction taxes, withholding taxes or other governmental charges. In addition, the Filer may adjust the CDR Ratio as set out in the applicable Deposit Agreement to compensate the Filer for actual out-of-pocket costs and expenses incurred in connection with a Corporate Action (**Specified Corporate Action Expenses**), such adjustment to the CDR Ratio reflecting a reduction in the aggregate value of all outstanding CDRs of the relevant Series by the amount of the relevant Specified Corporate Action Expense. The amount of any Specified Corporate Action Expense shall not exceed 0.10% of the aggregate value of the CDRs of the relevant Series. **Corporate Action** means any event resulting in a distribution of cash, securities or other property by the relevant Underlying Issuer or a third-party to the holders of relevant Underlying Shares (other than an ordinary course dividend payment), a conversion in whole or in part of the relevant Underlying Shares into a different series or class of securities and/or a mandatory, voluntary or elective exchange of all or any part of the relevant Underlying Shares (or any right or entitlement in respect thereof) for other securities, cash and/or other property. The Filer may amend the fees and expenses it charges, or introduce new types of fees and expenses, for any Series of CDRs upon 30 business days' prior notice posted to the CDR Website, and there will be no increases to fees or expenses and no introduction of any new type of fee or expense (including, in each case, any change to the adjustments to the CDR Ratio to reflect fees or expenses) unless disclosed in an amendment to or replacement of the Shelf Prospectus or in a Prospectus Supplement at least 30 business days prior to the effective date of such change to fees or expenses (provided that this restriction shall not apply in respect of the foregoing items (i) and (ii)). Dealers that subscribe for newly issued CDRs or place a Withdrawal Notice with the Depositary (for themselves or on behalf of a client) may also be charged fees directly by the Depositary in an amount not to exceed 0.20% of the value of the related CDRs. These subscription and cancellation fees do not have any impact on the CDR Ratios applicable to CDRs and they do not apply in respect of purchases or sales of CDRs by CDR Holders on any exchange or other secondary market.

37. The notional forward rate to be used for each new Notional FX Hedge will be a forward rate for an equivalent cash-settled FX forward transaction based on market rates on the relevant Trading Day, as specified in the applicable Deposit Agreement and determined by the Filer in its commercially reasonable judgement, provided that the FX forward rate so determined will on average not include a spread of greater than (i) 60 basis points, on an annualized basis, or (ii) such other basis point amount as may be specified in the relevant Supplemented Prospectus (provided that, as indicated above, the Filer may amend the fees and expenses it charges, or introduce new types of fees and expenses, for any Series of CDRs upon 30 business days' prior notice posted to the CDR Website).
38. Furthermore, to the extent dividends or other amounts are received by the Custodian in respect of Underlying Shares in a foreign currency, the Filer shall convert or cause to be converted relevant foreign currency amounts into Canadian dollars on the date of receipt at an exchange rate equal to (i) for conversions effected by the Custodian, the Custodian's benchmark rate (WM/Reuters FX) at the relevant time of conversion plus a fee of not more than 10 basis points (which fee may be subject to change by the Custodian), or (ii) for

conversions effected by the Filer, the Filer's current institutional spot rate at the relevant time of conversion plus, at the Depository's option, a spread in favour of the Depository of not more than (x) 60 basis points or (y) such other basis point amount as may be specified in the relevant Supplemented Prospectus (provided that, as indicated above, the Filer may amend the fees and expenses it charges, or introduce new types of fees and expenses, for any Series of CDRs upon 30 business days' prior notice posted to the CDR Website).

39. The Depository will bear all costs and expenses related to the offering, marketing, listing, administration and management of the CDRs including fees payable to the Custodian and the registrar and transfer agent for the CDR program (the **Transfer Agent**). The Depository also bears the costs of regulatory fees and fees payable to its legal counsel and other advisors.

Disclosure in Respect of CDRs

40. Each Deposit Agreement will be filed by the Filer on SEDAR+ as a material contract.
41. If the Filer elects to commence the Offering of a Series of CDRs, it will immediately do the following:
- (a) file the applicable Prospectus Supplements on SEDAR+;
 - (b) issue a news release and a notice on the CDR Website each indicating that the applicable Prospectus Supplements for the Series of CDRs have been filed on SEDAR+ and disclosing where and how copies of the Supplemented Prospectus may be obtained; and
 - (c) provide copies of the Shelf Prospectus and the applicable Prospectus Supplements on the CDR Website.
42. The Filer will maintain by way of continuous disclosure a website for the CDR program (the **CDR Website**) on which it will post on each Trading Day for each Series of CDRs:
- (a) the applicable Deposit Agreement;
 - (b) the then-applicable CDR Ratio calculated on the immediately preceding Trading Day;
 - (c) the current notional forward rate for the Notional FX Hedges;
 - (d) the name and jurisdiction of organization of the Underlying Issuer, the ticker of the Underlying Shares, and the name and country of the foreign stock exchange that is the Primary Trading Market of the Underlying Shares;
 - (e) all current Prospectus Supplements for the CDRs and all notices provided to CDR Holders in respect of the CDRs; and

- (f) copies of documents incorporated by reference into the current Supplemented Prospectus for each Series of CDRs (including the Semi-Annual Issuer Reports and Performance Reports, as described below) or, in respect of applicable continuous disclosure documents of the Filer that are incorporated by reference, a link to a webpage of the Filer which provides such continuous disclosure documents.
43. The Filer will file on SEDAR+ and provide on the CDR Website semi-annual custody account statements (**Semi-Annual Custody Account Statements**) that are certified by the Custodian and that set out, for each outstanding Series of CDRs as of the last business day of June and December in each calendar year, the number of Underlying Shares in the Custody Account for the Series as of the close of business on such day. The Filer has committed that it will continue to file Semi-Annual Custody Account Statements on SEDAR+ within one month of the end of each half-year period for each Series of CDRs for which CDRs remain outstanding as of the time of filing of such Semi-Annual Custody Account Statement.
44. The Filer will file on SEDAR+ and provide on the CDR Website semi-annual statements (the **Semi-Annual Issuer Reports**) in the English and French languages setting out the following information for each outstanding Series of CDRs as of the last business day of June and December in each calendar year:
- (a) the name of the applicable Underlying Issuer;
 - (b) the designation of the applicable Underlying Shares;
 - (c) the number of CDRs outstanding, which number will be certified by the Transfer Agent;
 - (d) the CDR Ratio;
 - (e) the calculated amount equal to item (c) times item (d), which is the number of Underlying Shares that is required to be maintained in the Custody Account for the Series for the benefit of CDR Holders;
 - (f) the actual number of Underlying Shares held in the Custody Account for the Series (which number must equal the number disclosed in the corresponding Semi-Annual Custody Account Statement certified by the Custodian and filed on SEDAR+ as described in paragraph 43);
 - (g) the residual number of Underlying Shares held for the benefit of the Issuer Interest (i.e., the number equal to item (f) minus item (e)); and
 - (h) a statement of the Filer that the CDR Ratio included in the Semi-Annual Issuer Report has been calculated in accordance with provisions of the applicable Deposit Agreement, and that the aggregate number of Underlying Shares forming the CDR Holder Interest is not less than the product of the number of outstanding CDRs of the Series multiplied by the CDR Ratio.

45. The Filer has committed that it will continue to file the Semi-Annual Issuer Report on SEDAR+ within one month of the end of each half-year period for each Series of CDRs for which CDRs remain outstanding as of the time of filing of such Semi-Annual Issuer Report. For each Series of CDRs, disclosure in respect of such Series included in the most recently filed Semi-Annual Issuer Report in respect of the Series will be incorporated by reference into the Supplemented Prospectus for such Series.
46. The Filer will provide on the CDR Website the following disclosure for each Series of CDRs beginning (on a commercially reasonable efforts basis) no later than the day that is 120 days after the date of this decision:
 - (a) a table setting out the notional daily FX forward rates that have applied for the Series of CDRs for each day since launch;
 - (b) a document (a **Performance Report**) that includes a table for each Series of CDRs setting out, for each of the one, three, five and ten year periods ending on the last day of the preceding calendar year (to the extent returns for such periods are available based on the date of launch of the Series of CDRs) (the **Performance Periods**), the following:
 - (i) the past performance of the CDRs over the Performance Period based on CDR closing prices, expressed as an annual compound return reflecting the reinvestment of CDR distributions (and such presented performance figures would not reflect tax obligations or withholdings, so as to be neutral relative to the potential differing tax treatment of CDRs or Underlying Shares according to applicable circumstances, and the presented figures would assume that no brokerage fees, commissions or transaction costs would apply in respect of the associated purchases and sales; and these and other material assumptions with respect to the calculations will be presented in each Performance Report); and
 - (ii) the past performance of an investment in the related Underlying Shares, expressed as an annual compound return that would have applied if an investor were to have invested in the Underlying Shares throughout the Performance Period as calculated by converting Canadian dollars into the relevant Underlying Currency on the first day of the Performance Period, maintaining an investment in the Underlying Shares throughout the Performance Period (reinvesting dividends before tax obligations or withholdings at market close on each ex-dividend date), selling the investment in the Underlying Shares on the last day of the Performance Period, and converting the proceeds into Canadian dollars at such time. For this purpose, 1.00% (or a different disclosed rate that the Depositary considers reasonable in the circumstances) will be used as the cost of the FX conversion at the start and end of the relevant Performance Period; and the Performance Report shall also include a narrative explanation of any material differences between the performance of the Series of CDRs and the performance of the related Underlying Shares that are not considered to be

related to the applicable Notional FX Hedge as disclosed in the Performance Report (including standard potential sources of tracking error such as (i) the spread charged by the Filer which is embedded in the notional forward rate for each Notional FX Hedge, (ii) the timing of the CDR Ratio adjustments resulting from each Notional FX Hedge which may impact the extent of such adjustments, (iii) notional FX forward rates which are influenced by differences in short-term interest rates in Canadian dollars and the Underlying Currency, (iv) currency and equity volatility, including potential correlation between exchange rate changes and equity prices, and (v) the fact that Notional FX Hedges are executed once per day);

- (c) a table in respect of the relevant Underlying Shares setting out the ticker symbol, indicated dividend yield, most recent closing price, 52-week trading range, current market capitalization level and average trading volume as well as a table showing the CDR Distribution history before giving effect to withholding taxes on a per-CDR basis;
- (d) notices describing all dividends scheduled to be received by the Custodian on Underlying Shares and the amount, which is to be distributed to CDR Holders per CDR before giving effect to withholding taxes;
- (e) disclosure concerning the sourcing of the applicable market data; and
- (f) a cross-reference to the applicable risk factor disclosures in the Supplemented Prospectus.

For each Series of CDRs, disclosure in respect of such Series included in the most recently filed Performance Report in respect of the Series will be incorporated by reference into the Supplemented Prospectus for such Series.

The Filer has committed that it will file Performance Reports on SEDAR+ within one month of the end of each calendar year for each Series of CDRs for which CDRs remain outstanding as of the time of filing of such Performance Report.

47. For each Series of CDRs, disclosure in respect of such Series included in the most recently filed Semi-Annual Issuer Report and Performance Report (if any) in respect of such Series of CDRs will be incorporated by reference into the Filer's Supplemented Prospectus for such Series of CDRs. Accordingly, CDR Holders may rely on such disclosure as if included directly in the Supplemented Prospectus and prospectus liability shall apply under applicable securities laws. Additionally, as required by National Instrument 44-101 *Short Form Prospectus Distributions* and NI 44-102, the Filer will file a consent of the Transfer Agent with respect to the incorporation by reference in each Supplemented Prospectus of the Semi-Annual Issuer Reports, including the Transfer Agent's certification given as an expert whose profession gives authority to the statements, and accordingly prospectus liability shall also apply under applicable securities laws to the extent its certifications contain any misrepresentations.

48. The Offerings will be conducted without the knowledge or consent of Underlying Issuers. Accordingly, the Filer's personnel responsible for the Offerings will not have direct knowledge or access to material information regarding the Underlying Issuers or Underlying Shares other than publicly available information.
49. In similar circumstances under CSA Staff Notice 44-304 *Linked Notes Distributed under Shelf Prospectus System (SN 44-304)*, it has been recognized that it is appropriate for a Canadian issuer of a structured note linked to the market performance of a security of a non-Canadian issuer to provide only "abbreviated disclosure" based on basic information from publicly available sources regarding the underlying issuer and reference securities, and that subscribers should not rely upon the issuer of the structured note to provide full, plain and true disclosure in respect of the non-Canadian issuer and the relevant reference securities, and instead the Canadian issuer may direct investors to public disclosure made available by the non-Canadian issuer in accordance with the rules of the relevant non-Canadian jurisdiction, provided that there is sufficient market interest and publicly available information about an underlying issuer.
50. The Filer proposes to only provide such abbreviated disclosure in respect of Underlying Shares for the CDRs, and accordingly the Filer confirms that it will only launch a new Series of CDRs if, at the time of listing of the CDRs, the related Underlying Issuer and Underlying Shares satisfy the CDR Issuance Standards set out in Appendix A. The Filer believes the CDR Issuance Standards provide an appropriate level of assurance that there will be sufficient market interest and publicly available information about the Underlying Shares in respect of a Series of CDRs that satisfies such standards. The Filer is not required to monitor whether the Underlying Issuer and Underlying Shares with respect to any Series of CDRs continue to satisfy the CDR Issuance Standards after the listing of the Series of CDRs, nor is the Filer required to take any action should such standards no longer be satisfied.
51. In respect of requirements under the Legislation and NI 44-102 that each Supplemented Prospectus contain full, true and plain disclosure of all material facts relating to the securities to be distributed in the Offering, the Filer shall comply with SN 44-304 in relation to disclosure in respect of Underlying Issuers and Underlying Shares for each Series of CDRs. The Filer intends to meet the principles set out in SN 44-304 as if the CDRs were linked notes, and the Filer intends to meet the full, true and plain disclosure requirement in connection with the CDRs without having responsibility for the accuracy of disclosure issued by the Underlying Issuer. Each Prospectus Supplement will clearly state that the Filer is not the source of disclosure relating to the Underlying Shares and will clearly disclaim the Filer's responsibility both for verifying the accuracy of such disclosure and for updating such disclosure.

Prospectus Delivery Requirement

52. Pursuant to the Prospectus Delivery Requirement, a dealer effecting a trade of securities offered under a prospectus is required to deliver a copy of the prospectus (including the applicable prospectus supplement(s) in the case of a base shelf prospectus) to the purchaser within prescribed time limits.

53. Delivery of a prospectus is not practicable in the circumstances of a CDR Distribution conducted on a regulated Canadian marketplace because neither the Filer nor the Dealer effecting the trade will know the identity or address of the purchasers or have a mechanism to directly deliver the prospectus to purchasers.
54. The Supplemented Prospectus will be filed and readily available electronically via SEDAR+ and the CDR Website to all purchasers under CDR Distributions. As stated in paragraph 41 above, the Filer will disclose by news release where and how copies of the Supplemented Prospectus may be obtained.
55. Rights of action for damages under the civil liability provisions of the Legislation that apply where a prospectus contains a misrepresentation are not contingent upon receipt of the prospectus by a purchaser of the security issued pursuant to that prospectus, rather these provisions expressly provide that such rights apply without regard as to whether the purchaser relied on the misrepresentation and accordingly, the grant of an exemption from the Prospectus Delivery Requirement will not limit such rights of action.
56. For so long as there is material uncertainty concerning, or material limitations on, how statutory liability provisions and certification of class actions would apply in respect of the Offerings and other similar offerings such as offerings of ETFs and at-the-market offerings, the Filer will include in each relevant Supplemented Prospectus risk factor disclosure to the effect that (a) the removal of the Prospectus Delivery Requirement means that an investor that receives a newly issued CDR from a Dealer pursuant to a purchase on a Canadian exchange or marketplace will not receive effective notice that it is entitled to the protections of section 130 of the *Securities Act* (Ontario), and it may not be possible for investors to determine or provide evidence in a proceeding that they are entitled to rely on such protections, (b) it may be difficult for CDR Holders to certify a class action under statutory liability provisions in respect of CDRs, (c) such difficulty was recognized in class action proceedings in 2020 and 2021 (or the Filer may refer to such other proceedings as it considers relevant in respect of this issue at the relevant time) with respect to an ETF including due to the fact that it was not possible to identify with certainty which purchasers of ETF units that purchased ETF units on an exchange or other market had purchased newly created units of the relevant ETF, and (d) such difficulty could also apply to proceedings related to CDRs given that the same offering model applies to both CDRs and ETF units.
57. The Filer acknowledges that the ability of exchange purchasers of CDRs to bring a class action or an individual claim for misrepresentation based on the secondary market statutory civil liability provisions is a fundamental investor protection, particularly for retail investors, and that the grant of the Relief Sought is not intended to impact an investor's ability to access rights based on the statutory civil liability provisions of the Legislation.

Withdrawal Right and Right of Action for Non-Delivery

58. Pursuant to the Legislation, an agreement to purchase a security in respect of a distribution to which the prospectus requirement applies is not binding on the purchaser if the dealer from whom the purchaser purchases the security receives a notice in writing evidencing the intention of the purchaser not to be bound by the agreement of purchase not later than

midnight on the second day (exclusive of Saturdays, Sundays and holidays) after receipt by the purchaser of the latest prospectus or any amendment to the prospectus (the **Withdrawal Right**).

59. Pursuant to the Legislation, a purchaser of securities to whom a prospectus was required to be sent or delivered in compliance with the Prospectus Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against the dealer who did not comply with the Prospectus Delivery Requirement (the **Right of Action for Non-Delivery**).
60. Neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of the CDR Distributions conducted on a regulated Canadian marketplace because of the impracticability of delivering the Supplemented Prospectus to a purchaser that purchases CDRs on a Canadian marketplace.

Pricing Requirements

61. Rather than completing separate prospectuses in respect of each new Series of CDRs to be issued, the Filer considers that the use of a base shelf prospectus and a prospectus supplement covering different Series of CDRs, which in each case describe the mechanism for pricing of the offering and refer to the CDR Website that includes the current CDR Ratio, is appropriate to provide necessary disclosure in respect of each Series of CDRs, and no purpose would be served by also requiring a pricing supplement to be filed as contemplated by section 8.1 of NI 44-102.
62. Similarly, the general requirement that securities must be issued at a fixed price is not appropriate in respect of a continuous distribution of CDRs that are issued to registered dealers (purchasing as principal or as agent) in exchange for the deposit of a number of Underlying Shares based on the current CDR Ratio, with such dealers typically selling such CDRs in open-market trades at market prices prevailing from time to time.

Prospectus Form Requirements

63. The proposed CDR Distribution method involves a continuous distribution, and does not involve (a) the use of pricing supplements, (b) the delivery of prospectuses or amendments thereto, (c) typical Withdrawal Rights and Rights of Action for Non-Delivery, (d) a typical dealer compensation model, or (e) a predetermined set of Dealers that will participate in CDR Distributions (other than BMO NB). Accordingly, a number of changes to prescribed form disclosure and descriptions of statutory rights are required to implement the proposed CDR Distribution method.
64. A different statement of purchasers' rights than that required by the Legislation is necessary so that each Supplemented Prospectus will accurately reflect the relief granted from the Prospectus Delivery Requirement. Accordingly, each Prospectus Supplement will state that:

The rights of investors relying on this Prospectus in respect of newly issued CDRs differ from those of investors in other equity securities. See “Notice Regarding Non-Standard Securityholder Rights” in the Base Prospectus.

and each base shelf prospectus for the CDRs will state the following, with the definition of “Exemptive Relief Order” identifying this decision by reference to the date hereof:

*Securities legislation in certain of the provinces and territories of Canada provides purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revisions of the purchase price, or damages if the prospectus, prospectus supplements relating to securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. **However, purchasers of CDRs will not have the right to withdraw from an agreement to purchase the CDRs and will not have remedies of rescission or, in some jurisdictions, revisions of the price, or damages for non-delivery of the prospectus supplement, the accompanying prospectus and any amendment thereto relating to CDRs purchased by such purchaser because the prospectus supplement, the accompanying prospectus and any amendment thereto relating to the CDRs purchased by such purchaser are not required to be delivered to the purchaser as provided for under a decision dated [*], 2025 and granted pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.***

*Securities legislation in certain of the provinces and territories of Canada further provides purchasers with remedies for damages or rescission or, in some jurisdictions, revisions of the purchase price if the prospectus together with any applicable prospectus supplements relating to securities purchased by a purchaser and any amendment thereto contains a misrepresentation (as defined in the applicable legislation), provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation that a purchaser of CDRs under a distribution of CDRs may have for damages, rescission or revisions of the purchase price if the prospectus, together with any applicable prospectus supplements relating to securities purchased by a purchaser and any amendment thereto contain a misrepresentation will remain unaffected by the non-delivery and the Exemptive Relief Order except that **neither BMO nor any other person involved in the distribution of CDRs accepts any responsibility for any disclosure provided by any Underlying Issuer (including information included herein or in any Prospectus Supplement that has been extracted from any Underlying Issuer’s publicly disseminated disclosure), and accordingly purchasers shall have no remedies or rights in respect of or against BMO, any dealer or any of their respective affiliates, agents, officers and employees for any***

misrepresentations that pertain to such disclosure in respect of an Underlying Issuer or Underlying Share.

A purchaser should refer to any applicable provisions of the securities legislation of the purchaser's province and the terms of the Exemptive Relief Order for the particulars of these rights or consult with a legal adviser.

Underwriter's Certificate Requirement

65. Unlike under an ordinary public offering where a subscriber and an underwriter determine the terms of a subscription on a private bilateral basis and the subscriber can reasonably look to the underwriter as owing particular duties to its client, a purchaser of a CDR on a Canadian marketplace will not know in advance the identity of the seller from which it will purchase securities or whether or not such securities are being newly issued. Furthermore, investment dealers are not and will not be involved in the preparation of the prospectus for any Series of CDRs. The Relief Sought in respect of the Underwriter's Certificate Requirement reflects that the role of Dealers participating in CDR Distributions is to facilitate liquidity of the CDR trading market. The Underwriter's Certificate Requirement is not necessary in light of the Dealers' role in CDR Distributions and would introduce a barrier to a diversity of dealers performing such role.
66. Similarly, any requirement to list in a prospectus the Dealers that may be selling newly issued CDRs is not necessary for these same reasons, would introduce an unnecessary barrier to dealers providing liquidity and could inappropriately lead some investors to consider that such Dealers are responsible for the prospectus disclosure or are performing a traditional underwriting role in respect of the CDR issuances. Accordingly, the Relief Sought will reflect the role of the Dealers in CDR Distributions and is consistent with the disclosure provided in respect of ETFs that also obtain relief from the Underwriter's Certificate Requirement given that ETFs are not subject to a separate requirement to list the underwriters.

51-102 Delivery Requirements

67. A reporting issuer is required under section 4.6 of NI 51-102 to offer to deliver financial statements and MD&A to the registered holders and beneficial owners of its securities, other than debt instruments.
68. The CDRs are not debt instruments; however, a holder of CDRs does not hold any ownership or economic interest in the Filer or its assets, and a CDR Holder's economic and other entitlements in respect of the CDRs and the associated Underlying Shares are not determined by reference to the Filer's business, operations, financial position or creditworthiness (rather, their investment decisions will be based upon available information in respect of the respective Underlying Issuers and the Underlying Shares). Further, CDR Holders do not have any rights to vote in respect of the Filer or its internal governance and management; and voting instructions that may be provided by CDR Holders will relate to the property of CDR Holders (i.e., their proportionate interest in the Underlying Shares) and will be exercised by third-parties with the Filer simply facilitating

the communication of such instructions. Accordingly, CDR Holders will not require the information otherwise available through the 51-102 Delivery Requirements in order to make investment decisions in respect of the CDRs. Further, the Filer has taken the view that it is appropriate to consider that the CDRs will not constitute “voting securities” of the Filer, and accordingly that other provisions of securities legislation in the Jurisdiction and the Reporting Jurisdictions that require the delivery of proxy statements, management information circulars or any other materials that are not typically provided to holders of debt instruments of an issuer do not apply in respect of the CDRs.

Distribution Time Limit

69. Section 8.2 of NI 41-101 requires that, if securities are being distributed on a best efforts basis, the distribution must cease after a specified period of time (not to exceed 180 days from the date of receipt for the final prospectus).
70. An exception to Distribution Time Limit is provided pursuant to section 8.1 of NI 41-101 for an investment fund in continuous distribution, but this exception does not apply to CDRs. However, the distribution model of CDRs is similar to that of certain investment funds in continuous distribution, and accordingly, the policy basis for the exception applicable to investment funds in continuous distribution applies equally in the case of the CDR Distributions.

Connected Issuer Requirement

71. Pursuant to section 2.1(1) of NI 33-105, specified firm registrants are prohibited from acting as direct underwriters for securities issued by a connected issuer or a related issuer of the specified firm registrants unless prescribed disclosure describing potential conflicts of interest arising from the underwriter’s dealings with or relationship to the issuer is included in the applicable prospectus (or other applicable offering document).
72. Given that CDR Distributions do not result in the Filer receiving subscription proceeds or other payments from CDR investors, the intended policy basis for the Connected Issuer Requirement does not apply in respect of the Offerings.
73. The Filer’s related party status in respect of each of its affiliates that is a specified firm registrant will be disclosed in accordance with the requirements under NI 33-105.

Independent Underwriter Requirement

74. Pursuant to section 2.1(2) and 2.1(3) of NI 33-105, a specified firm registrant is prohibited from acting as a direct underwriter of an offering if a related issuer of the specified firm registrant is the issuer in the distribution unless an “independent underwriter” (a) purchases the requisite portion of securities (where underwriters purchase the offered securities as principals) or (b) receives the requisite portion of the total agents’ fees (where underwriters are acting as agents).
75. The Independent Underwriter Requirement is not workable in the context of CDR Distributions, as these will generally take place by way of open-market transactions and it

is not possible for the Filer to know in advance whether any particular independent dealer will distribute a particular proportion of any newly issued CDRs.

48-501 Purchasing Restrictions

76. The stated policy rationale for Rule 48-501 is to prohibit “purchases of or bids for restricted securities in circumstances where there is heightened concern over the possibility of manipulation by those with an interest in the outcome of the distribution or transaction”. In particular, an issuer or person selling securities under a prospectus and its affiliates and insiders, as well as any underwriters or other persons acting jointly or in concert with any of them, should not bid for offered securities or induce others to purchase offered securities since such purchases could be used to artificially and temporarily inflate the market price of a security that is the subject of a prospectus offering.
77. The policy rationale for the purchase restrictions in Rule 48-501 does not apply in respect of CDR Distributions because the Filer does not materially benefit from any temporary or artificial increase in the valuation of CDRs. As noted above, the Filer does not receive a subscription payment for CDRs and all or substantially all of the consideration delivered for CDRs is in the form of a fixed number per CDR of Underlying Shares that are deposited with the Custodian for the benefit of the CDR Holders. Accordingly, there is no material risk that any issuer-restricted person or dealer-restricted person will seek to temporarily manipulate the CDR trading price in order to benefit the Filer or any other issuer-restricted person or dealer-restricted person. CDRs should also be recognized as generally not susceptible to manipulation given the CDR creation and security withdrawal features and their linkage to market pricing of the widely traded Underlying Shares.
78. No exemption from the 48-501 Purchasing Restrictions is available in Part 3 of OSC Rule 48-501 to the Filer’s affiliates in respect of anticipated market-making in CDRs (which is a necessary element of maintaining a narrow bid-ask spread for CDRs with pricing that actively tracks the market price of the Underlying Shares).

Decision

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

The decision of the principal regulator under the Legislation is that the Relief Sought is granted, provided that:

- (a) the Underlying Issuer and Underlying Shares satisfy the CDR Issuance Standards at the time of listing of the CDRs;
- (b) each Deposit Agreement will be filed by the Filer on SEDAR+ as a material contract;
- (c) if the Filer elects to commence the Offering of a Series of CDRs, it will immediately do the following:

- (i) file the applicable Prospectus Supplements on SEDAR+;
 - (ii) issue a news release and a notice on the CDR Website each indicating that the applicable Prospectus Supplements for the Series of CDRs have been filed on SEDAR+ and disclosing where and how copies of the Supplemented Prospectus may be obtained; and
 - (iii) provide copies of the Shelf Prospectus and the applicable Prospectus Supplements on the CDR Website;
- (d) the Filer will maintain the CDR Website on which it will post for each Series of CDRs:
- (i) the applicable Deposit Agreement;
 - (ii) the then-applicable CDR Ratio calculated on the immediately preceding Trading Day;
 - (iii) the current notional forward rate for the Notional FX Hedges;
 - (iv) the name and jurisdiction of organization of the Underlying Issuer, the ticker of the Underlying Shares, and the name and country of the foreign stock exchange that is the Primary Trading Market of the Underlying Shares;
 - (v) all current Prospectus Supplements for the CDRs and all notices provided to CDR Holders in respect of the CDRs; and
 - (vi) copies of documents incorporated by reference into the current Supplemented Prospectus for each Series of CDRs (including the Semi-Annual Issuer Reports and Performance Reports) or, in respect of applicable continuous disclosure documents of the Filer that are incorporated by reference, a link to a webpage of the Filer which provides such continuous disclosure documents;
- (e) the Filer will file on SEDAR+ and provide on the CDR Website Semi-Annual Custody Account Statements setting out the information described in paragraph 43, and Semi-Annual Issuer Reports setting out the information described in paragraph 44, in each case for each outstanding Series of CDRs as of the last business day of June and December in each calendar year;
- (f) for each Series of CDRs, disclosure in respect of such Series included in the most recently filed Semi-Annual Issuer Report (if any) in respect of the Series will be incorporated by reference into the Supplemented Prospectus for such Series and the Semi-Annual Issuer Report will be subject to prospectus liability;

- (g) the Filer will file a consent of the Transfer Agent with respect to the incorporation by reference in each Supplemented Prospectus of the Semi-Annual Issuer Reports;
- (h) the Filer will provide on the CDR Website the following disclosure for each outstanding Series of CDRs beginning (on a commercially reasonable efforts basis) no later than the day that is 120 days after the date of this decision:
 - (i) a table setting out the notional daily FX forward rates that have applied for the Series of CDRs for each day since launch;
 - (ii) a Performance Report;
 - (iii) a narrative explanation of any material differences between the performance of the Series of CDRs and the performance of the related Underlying Shares that are not considered to be related to the applicable Notional FX Hedge as disclosed in the Performance Report (including standard potential sources of tracking error such as (i) the spread charged by the Filer which is embedded in the notional forward rate for each Notional FX Hedge, (ii) the timing of the CDR Ratio adjustments resulting from each Notional FX Hedge which may impact the extent of such adjustments, (iii) notional FX forward rates which are influenced by differences in short-term interest rates in Canadian dollars and the Underlying Currency, (iv) currency and equity volatility, including potential correlation between exchange rate changes and equity prices and (v) the fact that Notional FX Hedges are executed once per day);
 - (iv) a table in respect of the relevant Underlying Shares setting out the ticker symbol, indicated dividend yield, most recent closing price, 52-week trading range, current market capitalization level and average trading volume as well as a table showing the CDR Distribution history before giving effect to withholding taxes on a per-CDR basis;
 - (v) notices describing all dividends scheduled to be received by the Custodian on Underlying Shares and the amount which is to be distributed to CDR Holders per CDR before giving effect to withholding taxes;
 - (vi) disclosure concerning the sourcing of the applicable market data; and
 - (vii) a cross-reference to the applicable risk factor disclosures in the Supplemented Prospectus;
- (i) for each Series of CDRs, disclosure in respect of such Series included in the most recently filed Performance Report (if any) in respect of the Series will be incorporated by reference into the Supplemented Prospectus for such Series and the Performance Report will be subject to prospectus liability;

- (j) the Filer's personnel responsible for the Offerings will not have direct knowledge or access to material information regarding the Underlying Issuers or Underlying Shares other than publicly available information;
- (k) the Filer will not cooperate with Underlying Issuers or any persons acting jointly or in concert with any Underlying Issuer so as to permit the CDRs to be used as a financing vehicle by Underlying Issuers or to permit an indirect offering of Underlying Shares into a jurisdiction of Canada and the Offerings will be conducted without the prior knowledge or consent of Underlying Issuers;
- (l) the CDRs are issued in exchange for the deposit of a number of Underlying Shares based on the CDR Ratio calculated after acceptance of the related subscription request;
- (m) a statement of purchasers' rights described in paragraph 64 is included in the Supplemented Prospectus;
- (n) the Filer's related party status in respect of each of its affiliates that is a specified firm registrant that at any time may offer or distribute CDRs will be disclosed in accordance with the requirements under NI 33-105; and
- (o) this decision will terminate upon the coming into force of any legislation or rule of the principal regulator specifically regulating CDRs or similar products.

"David Surat"

David Surat
Manager, Corporate Finance
Ontario Securities Commission

APPENDIX A

The **CDR Issuance Standards** referenced in paragraph 50 are as follows:

- (a) the Underlying Issuer must be incorporated or formed in a jurisdiction listed under “Jurisdiction/Country” in the table below (the **Underlying Issuer’s Jurisdiction**);
- (b) the Underlying Issuer must publish English language versions of its annual reports, financial statements and notices of annual shareholder meetings;
- (c) the Underlying Shares must be included in one of the following three indices (or any successor or replacement indices selected by the Filer): the S&P 500 Index, S&P Europe 350 Index, or S&P/TOPIX 150 Index;
- (d) the Primary Trading Market of the Underlying Shares must be one of the trading markets listed under “Primary Trading Market” in the table below, or such trading market’s successor, and ordinary trading of the Underlying Shares on such Primary Trading Market must not be suspended or subject to any cease-trade order or trading halt as of the Trading Day immediately prior to the time of listing of the CDRs; and furthermore the Underlying Shares may not be listed for trading on a stock exchange in Canada;
- (e) the Underlying Issuer must have a market capitalization in excess of C\$25 billion (or its equivalent in the relevant Underlying Currency) on the last day of the calendar month before the initial listing of the applicable Series of CDRs; and
- (f) the average daily trading volume of the Underlying Shares across all trading markets in the calendar month before the initial listing of the applicable Series of CDRs must exceed C\$125 million (or its equivalent in the relevant Underlying Currency).

Jurisdiction/Country	Primary Trading Market
Austria	Vienna Stock Exchange (Wiener Borse)
Belgium	Euronext Brussels
Denmark	Nasdaq Copenhagen
Finland	Nasdaq Helsinki
France	Euronext Paris
Germany	Frankfurt Stock Exchange (Borse Frankfurt) or Xetra
Greece	Athens Stock Exchange
Ireland	Euronext Dublin
Italy	Italian Stock Exchange (Borsa Italiana)
Japan	Tokyo Stock Exchange or Osaka Securities Exchange
Luxembourg	Luxembourg Stock Exchange
The Netherlands	Euronext Amsterdam

Jurisdiction/Country	Primary Trading Market
Norway	Oslo Stock Exchange
Portugal	Euronext Lisbon
Spain	Madrid Stock Exchange (Bolsa de Madrid) or Barcelona Stock Exchange (Bolsa de Barcelona)
Sweden	Nasdaq Stockholm
Switzerland	Six Swiss Exchange
The United Kingdom of Great Britain and Northern Ireland	Aquis Exchange or London Stock Exchange
The United States of America	NASDAQ or New York Stock Exchange