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1.1 Notices

1.1.1 CSA Staff Notice 81-325 – Status Report on Consultation under CSA Notice 81-324 and Request for Comment on Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts

CSA Staff Notice 81-325
Status Report on Consultation under CSA Notice 81-324 and Request for Comment on Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts

January 29, 2015

Introduction

On December 12, 2013, the Canadian Securities Administrators (CSA or we) published CSA Notice 81-324 and Request for Comment *Proposed CSA Mutual Fund Risk Classification Methodology for Use in Fund Facts* (the Proposed Methodology) for a 90 day comment period (the Consultation).

The Proposed Methodology set out the framework and details of a methodology for the purpose of calculating and disclosing a fund's volatility risk on the risk scale included in the Fund Facts document (Fund Facts) as required under Form 81-101F3 *Contents of Fund Facts Document*.

Currently, the Fund Facts requires the manager of a mutual fund to provide a risk rating for the mutual fund based on a risk classification methodology chosen at the manager's discretion. One of the objectives of the Consultation was to seek feedback on the merits of introducing a standardized methodology to identify this risk rating. The CSA also sought feedback on using the Proposed Methodology for documents similar to the Fund Facts for other types of publicly offered investment funds, particularly exchange traded funds (ETFs).

This notice provides a summary of the key themes arising from the Proposed Methodology through the comment process and CSA next steps.

Background

The CSA developed the Proposed Methodology to address stakeholder feedback that we have received throughout the development of the point of sale disclosure framework for mutual funds. According to stakeholders, the lack of a standardized risk classification methodology results in inconsistent evaluations and disclosure of a mutual fund's risk rating in the Fund Facts, thereby making meaningful comparisons between different mutual funds difficult. The Proposed Methodology aims to enable a fund to identify its risk level on the Fund Facts' scale in a more consistent and transparent manner.

Key Themes from the Consultation

We received 56 comment letters on the Proposed Methodology. Copies of the comment letters are available on the Autorité des marchés financiers website at www.lautorite.qc.ca and on the Ontario Securities Commission website at www.osc.gov.on.ca.

The Proposed Methodology elicited feedback and comments from a broad cross-section of participants in the Canadian investment fund industry and from investors. We heard divergent views on many aspects of the Proposed Methodology. There was, however, almost unanimous support for a standardized methodology to assess a mutual fund's risk rating for disclosure in the Fund Facts so that investors can readily compare funds while providing a level-playing field for all mutual funds. We wish to thank all those who submitted a comment letter.

While many diverse opinions were submitted on elements of the Proposed Methodology, several key themes emerged from the comment letters. A very high level summary of these themes is set out below.

a. Use of Standard Deviation (SD) as the risk indicator

The Proposed Methodology uses SD as the indicator of risk. We had requested feedback regarding the appropriateness of SD as the risk indicator and, alternatively, recommendations for risk indicators other than SD that may be more suitable for the purposes of the Proposed Methodology.

The majority of commenters agreed with the use of SD as the risk indicator, and acknowledged that SD is also the predominant indicator currently in use by the industry. A few commenters, however, recommended using other measures such as Value at Risk (VaR) and Conditional Value at Risk (CVaR).

Other commenters felt that SD may not be easily understood by retail investors.

b. Monthly total returns

The Proposed Methodology suggests that the SD be calculated using the monthly total returns of the mutual fund.

Commenters were almost unanimous in agreeing that using the mutual fund's monthly returns is appropriate as monthly data is currently used to calculate SD in the investment fund industry.

c. 10 year history

The Proposed Methodology contemplates a 10-year performance return period to calculate the SD as it allows, in the CSA's view, for a reasonable balance between indicator stability and the availability of data. A 10-year performance return period will also prevent too many fluctuations in the risk rating.

Many commenters supported the use of a 10-year performance history as it tends to attenuate sudden changes in financial markets. Other commenters, however, suggested using shorter time periods to better reflect the fact that close to 80% of mutual funds have an average lifespan of only five to six years. We received comments stating that (approximately) 4% of ETFs have ten years of performance history. Some commenters also said that the average period for which an investor holds a mutual fund is less than seven years, with that period being substantially shorter for investors holding ETFs.

d. Fund series/class used

The Proposed Methodology uses the total return of the oldest fund series/class of the securities of each fund as the basis for the volatility risk calculation across all series/classes of that fund, unless an attribute of a particular series/class would result in a materially different level of volatility risk In such instances, the total return of that particular fund series/class is used.

Commenters almost unanimously agreed with this proposal. Commenters noted that it is not necessary to apply the Proposed Methodology to individual series/class as they generally bear similar levels of volatility risk.

e. Use of reference index data

For funds that do not have 10 years of performance history, the Proposed Methodology contemplates funds using the returns of an appropriate reference index to impute the missing performance data that is required for the calculation of SD. The Proposed Methodology outlines criteria for the selection of the reference index.

Several commenters suggested that the reference index should be consistent with the broad-based market index chosen for the management report of fund performance[1].

On the other hand, a few commenters had concerns with the practice of fund managers selecting their own reference index as this practice might lead to a biased result.

A number of commenters also asked for additional clarification relating to the criteria outlined in the Proposed Methodology. For example, while the criteria require a reference index to have returns that correlate to fund returns, and stipulate that the reference index have a high proportion of the same securities as the fund, some commenters noted that the criteria may not be applicable to funds that pursue unique strategies.

[1] See National Instrument 81-106 *Investment Fund Continuous Disclosure*, Part 4.

Commenters also requested clarity on a range of topics such as the use of blended indices, disclosure requirements related to the reference index, and the definition of "widely recognized" in the context of reference index selection.

f. Six category risk scale in the Fund Facts

The Proposed Methodology contemplates changing the volatility risk scale in the Fund Facts from a five band to a six band risk scale. The CSA's intent with this proposal was to provide more meaningful risk categorization distinctions between fund types and asset classes. Although there was some support for using a six band risk scale, the majority of commenters opposed a change from five to six bands. Several commenters told us that the Proposed Methodology's risk bands would lead to a large number of funds being re-labeled with an apparent higher risk classification, without any associated change in the fund's risk. According to some of these commenters, between 70 to 80% of their funds would move upwards to a higher risk classification under the Proposed Methodology.

Many commenters expressed the concern that the creation of a sixth band would be an administrative burden that would result in increased costs for stakeholders as product suitability would need to be reassessed on the same day for many investors. Some commenters suggested that the CSA adopt the Investment Fund Institute of Canada's risk classification methodology.

Other commenters noted that the impact of reclassification of funds into different risk categories is not a valid reason to not adopt the Proposed Methodology.

g. Monitoring and changing of risk categorizations

The Proposed Methodology sets out the calculation and process that must be followed by fund managers when monitoring changes in the risk band categories.

Many commenters told us that monthly monitoring is excessive and burdensome. Some of them recommended an annual monitoring process that is linked to a mutual fund's annual renewal or a material change to the business, operations or affairs of a mutual fund.

h. Records of SD calculation

The Proposed Methodology specifies that the calculation of a mutual fund's SD be adequately documented and that records be kept by the fund managers for at least 10 years.

The vast majority of commenters recommended that the CSA limit data retention to a 7 year period for consistency with paragraph 11.6 (1) (a) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

i. Discretion to override quantitative calculation of SD

The Proposed Methodology does not contemplate allowing fund managers any discretion for qualitative factors to override the result of the stipulated quantitative calculation of SD for assessing a mutual funds' risk rating. This was aligned with the CSA's stated intent of having a uniform and transparent application of the Proposed Methodology, for meaningful comparisons across investment funds.

Several commenters urged the CSA to revise the Proposed Methodology to allow for discretion in assessing a fund's risk rating, while some commenters opposed the use of discretion. Still others suggested allowing a fund manager to use its discretion solely to increase the risk rating of a fund.

j. Transition issues

The CSA invited comments on any transition issues that could arise as a result of the initial application of the Proposed Methodology.

Commenters urged the CSA to work with self-regulatory organizations in an effort to minimize the impact on investors as well as the costs and additional resources associated with the initial and future application of the Proposed Methodology. Other commenters encouraged the CSA to consider the next filing of annual renewal of regulatory documents as a window for implementation of a risk rating change.

Status and Next Steps

SD continues to be CSA staff's preferred risk indicator for the Proposed Methodology, and, based on the feedback received, most commenters appear to agree with that. We also continue to assess the potential impact on a large number of mutual funds being re-labeled within an apparently higher risk category as a result of the introduction of a six category scale in the Proposed Methodology.

The CSA is committed to being responsive to the feedback provided throughout the comment process. In this regard, the CSA will continue engaging with stakeholders and with self-regulatory organizations.

In 2015, we expect to publish for comment proposed rule amendments aimed at implementing a standardized risk classification methodology for use by mutual funds in their Fund Facts. A more detailed summary of comments received on the Proposed Methodology, with CSA responses, will also be published at that time.

Questions

Please refer your questions to any of the following CSA members:

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1.1.2 CSA Staff Notice 54-303 – Progress Report on Review of the Proxy Voting Infrastructure

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 54-303
Progress Report on Review of the Proxy Voting Infrastructure

January 29, 2015

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1. Purpose of Notice

On August 15, 2013, the Canadian Securities Administrators (the **CSA** or **we**) published for comment CSA Consultation Paper 54-401 *Review of the Proxy Voting Infrastructure* (the **Consultation Paper**). The purpose of the Consultation Paper was to outline and seek feedback from market participants on a proposed approach to address concerns regarding the integrity and reliability of the proxy voting infrastructure.

This Notice:

- reports on the progress we have made in our review of the proxy voting infrastructure since publication of the Consultation Paper, and
- outlines our next steps in this initiative.

2. Background – Why We are Reviewing the Proxy Voting Infrastructure

Shareholder voting is one of the most important methods by which shareholders can affect governance and communicate preferences about an issuer's management and stewardship. Issuers rely on shareholder voting to approve corporate

governance matters or certain corporate transactions. Shareholder voting is therefore fundamental to, and enhances the quality and integrity of, our public capital markets.

Shareholders typically do not vote in person at meetings, but instead vote by proxy. The **proxy voting infrastructure** is the network of organizations, systems, legal rules and market practices that support the solicitation, collection, submission and tabulation of proxy votes for a shareholder meeting. It is important that the proxy voting infrastructure is reliable, accurate and transparent and that it operates as a coherent system. It is also important for market confidence that issuers and investors *perceive* the infrastructure to operate in this way.

Some issuers and investors have expressed concern about the proxy voting infrastructure's integrity and reliability. This lack of confidence stems in large part from the opacity and complexity of the infrastructure, which makes it difficult for issuers and investors to assess it as a whole.

Given the centrality of the proxy voting infrastructure to our public capital markets, we believe that it is appropriate for us as securities regulators to be actively involved in reviewing the proxy voting infrastructure.

3. Our Approach – Focus on Vote Reconciliation

The Consultation Paper did three things.

First, it provided an overview of how proxy voting works in Canada's intermediated holding system from both legal and operational perspectives.

Second, it identified various aspects of the proxy voting infrastructure that commenters had suggested undermined its integrity and reliability.

Third, it indicated that we intended to evaluate the proxy voting infrastructure's integrity and reliability by focusing on two questions:[1]

Question 1: Is accurate vote reconciliation occurring within the proxy voting infrastructure?

Vote reconciliation is the process by which proxy votes from registered shareholders and voting instructions from beneficial owners of shares are reconciled against the securities entitlements in the intermediated holding system. This is one of the central functions of the proxy voting infrastructure.

There are two distinct aspects of vote reconciliation.

The first aspect is where intermediaries reconcile and allocate vote entitlements to individual client accounts. We refer to this as **client account vote reconciliation**. Client account vote reconciliation involves the internal back-office systems of intermediaries and how they track and allocate vote entitlements for individual client accounts.

The second is where meeting tabulators reconcile proxy votes to intermediary vote entitlements, which we refer to as **meeting vote reconciliation**. Meeting vote reconciliation involves the systems and processes that link depositories, intermediaries and meeting tabulators with one another in order for the following three things to occur:

1. Depositories and intermediaries provide vote entitlement information to meeting tabulators through omnibus proxies,

2. Meeting tabulators calculate the vote entitlement that an intermediary has for a meeting based on the information provided by depositories and intermediaries (the **Official Vote Entitlement**), and

3. Meeting tabulators reconcile intermediary proxy votes to the Official Vote Entitlements.

Appendix A – Meeting Vote Reconciliation provides more information about the vote reconciliation process.

[1] The Consultation Paper also sought comment on three other issues that had been identified by commenters as potentially affecting the reliability and integrity of the proxy voting infrastructure but that we did not intend to focus on:

- the NOBO-OBO concept,
- gaps in managed account information, and
- the level of accountability or regulatory oversight of service providers.

The Consultation Paper:

- outlined at a high-level the various component processes of vote reconciliation and the parties involved, and
- asked market participants for their views on whether accurate vote reconciliation was occurring, and asked for relevant empirical data to determine whether these various component processes supported accurate vote reconciliation.

Question 2: What type of end-to-end vote confirmation system should be added to the proxy voting infrastructure?

End-to-end vote confirmation is a communication to shareholders that allows them to confirm that their proxy votes and voting instructions have been properly transmitted by the intermediaries, received by the tabulator and tabulated as instructed. The Consultation Paper:

- noted that the proxy voting infrastructure and existing vote reconciliation process did not have such a system in place,
- stated our view that the lack of such a confirmation system could undermine confidence in the accuracy and reliability of proxy voting results, and
- asked market participants for their views on what an end-to-end vote confirmation system should look like and for information on industry initiatives to develop end-to-end vote confirmation.

4. Initial Feedback and Information – Comment Letters and Roundtables

The comment period ended on November 13, 2013. We received 32 comment letters from various market participants. We have reviewed the comments received and wish to thank all commenters for contributing to the consultation. **Appendix B – Summary of Comments** contains a summary of the comments received.

We also sought feedback on our framework and more information on vote reconciliation in the Consultation Paper through roundtables held by the British Columbia Securities Commission, the Alberta Securities Commission, the Ontario Securities Commission and the Autorité des marchés financiers between January and March 2014.[2]

The following were the key themes from the comment letters and roundtables.

1. Securities regulators need to take a leadership role in reviewing the accuracy of vote reconciliation because no single market participant or set of market participants is able to access all the information used for vote reconciliation.

The initial feedback and information confirmed that it was highly unlikely that market participants would be able to adequately assess for themselves whether the proxy voting infrastructure was supporting accurate vote reconciliation. Vote reconciliation requires information about proxy votes and vote entitlements to be generated by and shared among depositories, intermediaries, the intermediaries' service provider (e.g., Broadridge) and meeting tabulators. Not only do issuers and investors lack access to all of this information; the key participants themselves lack access because they operate in silos. For example, an intermediary would typically not know that a meeting tabulator had determined that the intermediary was in an over-vote position because there is no protocol for when and how intermediaries and tabulators communicate with each other about potential over-votes.

The silo-ed nature of vote reconciliation means that securities regulators need to take a leadership role in bringing all the parties together in order to properly assess the accuracy of vote reconciliation.

[2] The OSC roundtable was public and a transcript is available at: http://www.osc.gov.on.ca/documents/en/Securities-Category5/csa_20140129_54-401_roundtable-transcript.pdf

2. Over-voting is occurring, indicating that vote reconciliation is not always occurring accurately. However, there was no consensus either about the causes or about how to solve the problem.

The initial feedback and information indicated that **over-voting** is occurring. We define an over-vote as a situation where a meeting tabulator receives proxy votes from an intermediary that exceed the intermediary's Official Vote Entitlement.[3] If unresolved, an over-vote can result in a meeting tabulator rejecting or pro-rating an intermediary's proxy votes (and consequently, the votes of the clients who provided the intermediary with voting instructions).

Several transfer agent members of the Securities Transfer Association of Canada (**STAC**) tracked instances of over-voting at meetings for which they were tabulators. STAC compiled these statistics and found that in 2013, over-voting occurred in 51% of the meetings for which these members were tabulators.[4] These statistics were troubling as they suggested that there was significant inaccurate vote reconciliation occurring. We emphasize, however, that these statistics did not provide any insight into the number of vote entitlements or proxy votes involved; nor did they provide any insight into whether over-voting:

- changed the outcome of a shareholder meeting, or
- had a material impact on the relative percentages of For/Against/Withheld proxy votes on the matters being voted on.

While there was consensus that over-voting was occurring, there was no consensus as to its cause. As a consequence, there was no consensus on how to solve the problem. For example:

- STAC suggested that over-voting was caused by problems with **client account vote reconciliation**. They viewed over-voting as evidence that some intermediaries were allocating vote entitlements to client accounts that significantly exceeded the number of shares that those intermediaries held in accounts with depositories and/or other intermediaries. Some investors and issuers raised a similar concern, and also wanted us to review whether some intermediary back-office systems allowed more than one entity to vote the same share. This situation is known as **double or multiple voting**.
- The Investment Industry Association of Canada (**IIAC**) suggested that over-voting was caused by problems with **meeting vote reconciliation**; specifically, lack of communication between meeting tabulators and intermediaries. They thought that most instances of over-voting could be resolved if meeting tabulators contacted intermediaries when they had problems reconciling an intermediary's proxy votes to its Official Vote Entitlement. However, STAC raised concerns about whether it was feasible or appropriate to place the onus on meeting tabulators to identify and resolve over-voting in this manner.

5. Subsequent Steps in Our Review

Following the comment letter and roundtable process, we undertook the following initiatives related to evaluating vote reconciliation.

1. Shareholder Meeting Review

We felt strongly that a proper assessment of meeting vote reconciliation required key participants in the proxy voting infrastructure to:

- develop a better understanding of how meeting vote reconciliation *actually* works, i.e. how the various processes that were identified and outlined in the Consultation Paper are actually implemented for shareholder meetings,
- identify and analyze instances where it appeared that an intermediary's calculations of its vote entitlements did not match the meeting tabulator's calculations (i.e. **over-reporting**), and
- identify and analyze actual instances of over-voting.

[3] The Consultation Paper used the term over-reporting to refer to this phenomenon. After further analysis, we think over-voting is a more descriptive term as it captures the concept that the discrepancy involves actual proxy votes submitted by an intermediary. We use the term over-reporting elsewhere in this Notice to refer to a discrepancy between the vote entitlements as calculated by an intermediary and the Official Vote Entitlement as calculated by the meeting tabulator. We also note that some commenters define over-voting as a situation where the same share may be voted more than once. We think that a more precise term for this situation is double or multiple voting. We discuss double or multiple voting later in the Notice.

[4] See STAC's comment letter at: http://www.stac.ca/Public/PublicShowFile.aspx?fileID=218

To that end, we conducted a qualitative[5] review of six uncontested, uncontentious shareholder meetings that were held in 2014 (the **Shareholder Meeting Review**). The shareholder meetings were held by reporting issuers in Ontario, Alberta, British Columbia and Quebec. Our sample included issuers:

- that were listed on the Toronto Stock Exchange (**TSX**) and TSX Venture Exchange,
- that used different meeting tabulators,
- that were listed only in Canada and inter-listed in the U.S.,
- that were closely- and widely-held,
- that conducted direct NOBO solicitations and that solicited only through intermediaries,
- whose shares were the subject of securities lending activity around the record date, and
- that operated in different industries.

Appendix C – Shareholder Meeting Review: Objective, Scope and Methodology provides more information about the Shareholder Meeting Review.

By identifying instances of over-reporting and over-voting, we hoped to identify potential gaps in the proxy voting infrastructure. We were particularly interested in finding out whether over-reporting and over-voting were caused by tabulators not receiving some or all of the documents necessary to correctly establish an intermediary's Official Vote Entitlement, i.e. problems with meeting vote reconciliation. We were also interested in finding out whether there was any evidence that over-voting was caused by intermediaries allocating too many vote entitlements to their client accounts relative to the number of shares these intermediaries held in accounts with depositories or other intermediaries, i.e. problems with client account vote reconciliation. Some commenters have suggested that over-voting is extremely common and is evidence of large-scale over-allocation of vote entitlements.

2. Technical Working Group

We also thought it important for securities regulators to continue bringing the key parties in the proxy voting infrastructure together and breaking down the operational and information silos within which these parties performed meeting vote reconciliation. To that end, we formed a Technical Working Group with representatives from:

- issuers,
- investors,
- intermediaries,
- an intermediary service provider, Broadridge,[6]
- transfer agents, and
- CDS.

The Technical Working Group met three times, once in August, once in September and once in November 2014. At each of these meetings, the participants:

- shared information about their respective operational processes in meeting vote reconciliation,
- identified potential gaps in the meeting vote reconciliation process, and

[5] Due to resource and timing constraints, we determined that it was not feasible to conduct a review that would provide us with statistically significant findings regarding the causes of over-reporting and over-voting. We therefore determined that the review would be qualitative in nature.

[6] Broadridge represents intermediaries that hold approximately 97% of all beneficial positions in Canada. See Broadridge's comment letter at: https://www.osc.gov.on.ca/documents/en/Securities-Category5-Comments/com_20131113_54-401_bfsinc.pdf

- discussed possible solutions to the gaps. In particular, we asked Broadridge U.S. to present some initial findings on a U.S. pilot project (the **U.S. End-to-End Vote Confirmation Pilot**) that established an electronic communication tool for meeting tabulators and intermediaries to confirm intermediary vote entitlements for meetings and confirm that an intermediary's proxy votes had been accepted.

3. Targeted consultations with custodians and investment-dealers on client account vote reconciliation and double or multiple voting

As noted above, several investors and issuers raised concerns about double or multiple voting, and wanted us to examine this issue. **Double or multiple voting** occurs when more than one entity is allowed or not prevented from voting the same share. Double or multiple voting can also be further broken down into:

- *possible* double or multiple voting, whereby more than one entity *may vote or is not prevented from voting* the same share, and

- actual double or multiple voting, whereby two or more entities *actually* vote the same share.

The main area where concerns about double or multiple voting have arisen is share lending. Some intermediaries such as custodians have back-office systems in place that track lent shares per client account, i.e. they have back-office systems that eliminate possible double or multiple voting. Concerns have been raised that other intermediaries do not have the same type of back-office systems in place. In particular, concerns were raised about the client account vote reconciliation methods investment dealers used for retail margin accounts.

We engaged in targeted consultations with custodians and investment dealers through the Canadian Securities Lending Association (**CASLA**) and IIAC to find out more about the custodian and investment dealer back-office systems used in client account vote reconciliation and the implications for possible and actual double or multiple voting.

6. Key Findings to Date – Meeting Vote Reconciliation

The following are our five key findings to date on the meeting vote reconciliation process based our Shareholder Meeting Review and our work with the Technical Working Group.

Finding 1: We identified over-reporting and over-voting in all meetings of the Shareholder Meeting Review; however the number of vote entitlements and proxy votes involved did not appear to be material.

In the Shareholder Meeting Review, we identified apparent over-reporting and over-voting in all six shareholder meetings.[7] However, the number of vote entitlements and proxy votes involved in each case was immaterial with respect to:

- the total number of proxy votes submitted for the meeting,

- the relative percentages of proxy votes cast For/Against/Withheld as applicable on the matters being voted on, or

- the outcome of the votes (i.e. in no case would the outcome of any vote have been changed).

We note that meeting tabulators did not always agree with our assessment that over-reporting or an over-vote had occurred. This issue is discussed below in Finding 4.

Finding 2: The over-reporting and over-voting we reviewed was due to meeting tabulators missing or having incorrect vote entitlement information when calculating the Official Vote Entitlement. The causes of missing or incorrect information included the use of paper omnibus proxies and human and technology errors. In the reviews we conducted, we did not find evidence that over-voting was caused by intermediaries submitting "too many" proxy votes because they allocated too many vote entitlements to client accounts.

In the Shareholder Meeting Review, each instance of over-reporting or over-voting that we reviewed was ultimately related to missing or incorrect vote entitlement information that resulted in intermediaries not receiving their full Official Vote Entitlement from the meeting tabulator. In other words, over-voting appeared to be caused by too few vote entitlements being allocated to the Official Vote Entitlement for the intermediary (which signified problems with meeting vote reconciliation). In our review, we did not find evidence that over-voting was due to intermediaries allocating vote entitlements to client accounts that exceeded the number of shares that those intermediaries held in accounts with depositories and/or other intermediaries.

[7] Please refer to **Appendix C – Shareholder Meeting Review: Objective, Scope and Methodology** for an explanation of how we identified over-reporting and over-voting for purposes of the Shareholder Meeting Review.

The causes of missing or incorrect information included the use of paper omnibus proxies and human and technology errors. Below are some examples:

- *Paper intermediary omnibus proxies were sent to tabulator but not actually received*

  Broadridge generated and mailed a number of intermediary omnibus proxies on behalf of its U.S. intermediary clients for a meeting. The meeting tabulator received some, but not all, of the intermediary omnibus proxies mailed.[8]

- *Coding error prevented the generation of intermediary omnibus proxy by Broadridge*

  Broadridge could not generate an intermediary omnibus proxy for an intermediary client for an annual meeting because there was an error in the coding that meant that an intermediary omnibus proxy would only be generated if the meeting was a special meeting.

- *Incorrect intermediary name in an intermediary omnibus proxy*

  An intermediary omnibus proxy used an outdated name for the client intermediary.

The Technical Working Group also discussed other potential issues that could lead to the meeting tabulator not receiving complete vote entitlement information for an intermediary, such as:

- whether some intermediaries are not providing information to their intermediary service provider (e.g. Broadridge) to allow it to generate intermediary omnibus proxies, and

- Canadian issuers being unfamiliar or uncomfortable with the steps required to obtain a DTC omnibus proxy.

Finding 3: A significant factor that would appear to increase the risk of over-reporting and over-voting is that intermediaries do not have access to their Official Vote Entitlement. As a result, they do not know if the meeting tabulator has missing or incomplete vote entitlement information.

A significant factor that would appear to increase the risk of over-reporting and over-voting is that intermediaries do not have access to their Official Vote Entitlement. As a result, intermediaries do not know if their Official Vote Entitlement as calculated by the meeting tabulator is less than the vote entitlement that they have calculated for themselves or if they do not have an Official Vote Entitlement at all.

Broadridge partially addresses this gap by offering an Over-Reporting Prevention Service to subscribing intermediaries. The Over-Reporting Prevention Service generates a Broadridge-Calculated Vote Entitlement that is intended to be an indicator of the Official Vote Entitlement. The Broadridge-Calculated Vote Entitlement is calculated using:

- information Broadridge obtains from depository data feeds, and

- data provided by intermediaries that is used by Broadridge to generate intermediary omnibus proxies.[9]

Subscribing intermediaries can compare the total number of vote entitlements they have calculated to the Broadridge-Calculated Vote Entitlement to identify if there are any discrepancies.

However, Broadridge's Over-Reporting Prevention Service and the Broadridge-Calculated Vote Entitlement as currently implemented do not perfectly substitute for an intermediary finding out its Official Vote Entitlement for a meeting. Most importantly, the Broadridge-Calculated Vote Entitlement is not based on the information that the meeting tabulator *actually* uses to calculate the Official Vote Entitlement, i.e. the omnibus proxies that the meeting tabulator *actually* receives. If the meeting tabulator is missing or has incorrect information, as outlined in Finding 2 above, the Broadridge-Calculated Vote Entitlement for an intermediary will not match the Official Vote Entitlement.

We also found through the Shareholder Meeting Review that for some meetings that occurred during the 2014 proxy season, the Broadridge-Calculated Vote Entitlements for some intermediaries contain duplicates of certain DTC positions. Specifically, a number of intermediaries held shares both directly in CDS and through a DTC account with CDS. The DTC positions held

[8] Some meeting tabulators also received intermediary omnibus proxies by electronic feeds but will require a stamped or otherwise validly executed paper form of proxy (including a form of proxy transmitted in .pdf format) to establish Official Vote Entitlements.

[9] And where applicable, the NOBO omnibus proxy.

through CDS were included in both the DTC data feed as well as the CDS data feed into Broadridge, resulting in both positions being counted in the Broadridge-Calculated Vote Entitlements for some intermediaries.[10]

> ***Finding 4: Meeting tabulators employed different methods to reconcile proxy votes from intermediaries to Official Vote Entitlements. As a result, a meeting tabulator's determination of whether an intermediary was in an over-vote position appeared to depend to a certain extent on the particular reconciliation method used by that meeting tabulator. A significant cause of these different reconciliation methods is the lack of protocols as to when and how to use numeric intermediary identifiers to match intermediary proxy votes to Official Vote Entitlements.***

In the Shareholder Meeting Review, we asked the meeting tabulators to explain why they accepted proxy votes in cases where we identified an over-vote.

Based on the responses provided, we found that meeting tabulators used different methods to reconcile proxy votes from intermediaries to Official Vote Entitlements. In some cases this meant that proxy votes from intermediaries were reconciled to Official Vote Entitlements for intermediaries with different names, usually on the basis of a common numeric intermediary identifier. However, different meeting tabulators used different methods to do so.

For example:

- One meeting tabulator reconciled or matched proxy votes to an Official Vote Entitlement if the meeting tabulator could link the two intermediaries through a CUID, FINS number or DTC number.

  In one case, Broadridge sent the meeting tabulator a paper intermediary omnibus proxy from Intermediary B allocating a vote entitlement to Intermediary A. However, the meeting tabulator did not receive the document and therefore theoretically could not establish an Official Vote Entitlement for Intermediary A. The meeting tabulator nevertheless accepted Intermediary A's proxy votes by reconciling them to the Official Vote Entitlement of Intermediary B. The meeting tabulator did so because Intermediary A and Intermediary B had a common DTC number and the meeting tabulator was aware that Intermediary B was the clearing broker for Intermediary A.

- Another meeting tabulator reconciled or matched proxy votes to an Official Vote Entitlement if the other intermediary had a similar name and the same CUID.[11] The tabulator would follow up and try to resolve potential over-vote situations with intermediaries.

These different practices result from the fact that there is no single, industry-wide protocol as to when and how to use numeric intermediary identifiers to match intermediary proxy votes to Official Vote Entitlements in lieu of matching by name. Nor is there a cross-reference or association document as to the numeric identifiers that are associated with particular intermediary names. The intermediary omnibus proxies generated by Broadridge only contain intermediary names and Broadridge client numbers, while Broadridge's formal vote reports can contain, among other identifiers, intermediary names, CUIDs, FINS numbers and DTC numbers.

> ***Finding 5: Some meeting tabulators made errors resulting in valid proxy votes being rejected or not counted. These errors were not detected because there is no communication between meeting tabulators and intermediaries about whether proxy votes are accepted, rejected or pro-rated.***

In the Shareholder Meeting Review, we asked for clarification in several situations where the meeting tabulator rejected or pro-rated an intermediary's proxy votes although the meeting documentation indicated there was a sufficient Official Vote Entitlement for the intermediary.

In two of those situations, the meeting tabulators acknowledged that a tabulation error had been made which resulted in valid proxy votes from intermediaries not being counted. In neither case was the number of proxy votes involved material to:

- the relative percentages of proxy votes cast For/Against/Withheld as applicable on the matters being voted on, or

- the outcome of the votes (i.e. in no case would the outcome of any vote have been changed).

However, in one case, the number of votes involved represented approximately 13% of the votes cast on a particular matter for that meeting.[12]

[10] Broadridge informed us that it is working to address this situation and expects to implement a solution prior to the 2015 proxy season.

[11] More precisely, the same first three characters of a CUID which identify a company.

But for the Shareholder Meeting Review, these errors would not have been detected because there is no communication between meeting tabulators and intermediaries about whether proxy votes are accepted, rejected or pro-rated.

7. Information Obtained – Client Account Vote Reconciliation

CASLA informed us that the bulk of share lending activity in Canada occurs through institutional securities lending programs administered by custodians who act as agents for lenders. The major custodians are:

- CIBC Mellon,
- RBC Investor Services,
- State Street, and
- Northern Trust.

The lenders are custodial-services clients and are typically large institutional investors such as pension funds, mutual funds, endowment funds and insurance companies. These lenders are paid fees for participation in these securities lending programs and treat securities lending as a source of revenue.

We heard from CASLA that each of the four custodians have established back-office systems that track the number of shares that have been lent from each individual client account. The following is an illustrative example:

> A custodian has a client that holds 100,000 shares in a custody account. If the client participates in the custodian's securities lending program and 10,000 shares are lent, the custodian's back-office systems would "move" the 10,000 shares from the custody account. There would be a record or coding that these 10,000 shares could not be voted by the client, and no vote entitlements would be allocated for those shares if they were still lent on the record date for a shareholder meeting.

According to CASLA, however, custodians also have recall procedures in place to support clients who wish to vote. CASLA explained that clients either provide standing instructions to their custodian to recall shares for all shareholder meetings, or provide notice on a case-by-case basis to the custodian to recall the shares. A custodian would take steps pursuant to these instructions and pursuant to the recall procedures agreed upon with the client to replace any lent shares so that they would be in the client's custody account on the record date for the shareholder meeting.

We also discussed with IIAC how investment dealer back-office systems track lent or pledged shares from retail margin accounts and whether there is a double or multiple voting risk. A margin account is an account that an investor has with its investment dealer that allows the investor to trade securities on margin, i.e. with money borrowed from the investment dealer. Under the typical terms of a margin agreement, if the investor draws on the margin and is in debt to the investment dealer, a subset of the securities in the margin account is allocated to serve as collateral to cover the drawn-upon amount. The assets that are allocated to serve as margin collateral are available for pledging or lending by the investment dealer and will be included in the investment dealer's own holdings. These holdings are in fungible bulk and include all securities available for pledging or lending. A loan or pledge of shares will be reflected as a reduction in the investment dealer's account with CDS.

Investment dealers do not have back-office systems that eliminate *possible* double or multiple voting for retail margin accounts, because there are no linkages between the systems that track lent or pledged shares and the systems that track individual client account holdings. However, we heard from IIAC that they think that the risk of *actual* double or multiple voting occurring in respect of retail margin accounts is low for the following reasons:

1. Shares are less likely to be used as margin collateral than other margin account assets. Generally, investment dealers use back office systems that employ a logic known as a "segregation hierarchy" to determine which margin account assets to use as margin collateral. This process occurs on a daily basis. The logic will look to margin account assets in the following order:
    - cash or cash equivalents,
    - fixed income securities, and
    - equity securities.

[12] The intermediaries in question did not submit proxy votes on all matters being voted on at the meeting.

2. The likelihood of a share actually being lent or pledged and voted is relatively low. Where shares are used as margin collateral and are available to be lent out or pledged by the dealer, the shares are often not lent out to other intermediaries because there is insufficient quantity to meet a borrower's demand (and thus remain in the investment dealer's inventory). In other instances, shares may be pledged by an investment dealer to its parent bank as collateral on call loans, and are also not voted.

We are continuing to review client account reconciliation practices and to analyze the extent to which they appear to cause double or multiple voting concerns.

8. Next Steps

It is crucial that the proxy voting infrastructure support **accurate, reliable and accountable vote reconciliation**. Ultimately, the proxy voting infrastructure is meant to operate for the benefit of investors and issuers. The current proxy voting infrastructure is antiquated and fragmented and needs to be improved. Our review to date has clearly demonstrated the need for the following five improvements:

1. modernizing how meeting tabulators receive omnibus proxies (Finding 2),

2. ensuring the accuracy and completeness of vote entitlement information in omnibus proxies (Finding 2),

3. enabling intermediaries to find out their Official Vote Entitlement for a meeting (Finding 3),

4. increasing consistency in how tabulators reconcile proxy votes to Official Vote Entitlements (Finding 4), and

5. establishing communication between meeting tabulators and intermediaries about whether proxy votes are accepted, rejected or pro-rated (Finding 5).

For the 2015 proxy season, all the entities that play key roles in vote reconciliation should assess their meeting vote reconciliation processes to identify and implement any immediate steps they can take to improve the accuracy and reliability of vote reconciliation. In particular:

- Intermediaries should take appropriate steps to ensure that they provide vote entitlement information to meeting tabulators in a timely and accurate manner. In particular, intermediaries that use Broadridge as a service provider should verify that they have provided the requisite information for Broadridge to generate intermediary omnibus proxies and that the information provided to Broadridge is accurate.

- At our request, Broadridge has developed an up-to-date cross-reference or association document that links the various numeric identifiers for intermediaries with the relevant intermediary names. STAC should work with its members to develop consistent and transparent standards for how meeting tabulators use this document to reconcile intermediary proxy votes to Official Vote Entitlements.

In addition, we intend to review in 2015 one or more proxy contests that have occurred to determine if there are any vote reconciliation issues that are specific to proxy contests. We would like to explore whether factors such as higher volumes of proxy votes, revocations of previous proxy votes, and the use of a dissident form of proxy pose specific challenges to accurate meeting vote reconciliation.

For the 2016 proxy season, we will direct the key entities that engage in vote reconciliation to work collectively to develop appropriate industry protocols for meeting vote reconciliation. Having industry protocols would support:

- **accuracy** in the information used to calculate the Official Vote Entitlement and disclosure of proxy voting results,

- **reliability**, by reducing inconsistency in vote reconciliation practices, and

- **accountability**, by providing issuers, investors and regulators with transparent protocols that can be used to evaluate the performance of the key entities in the proxy voting infrastructure.

The protocols would:

- specify the roles and responsibilities that depositories, intermediaries, Broadridge and the meeting tabulator have in meeting vote reconciliation, and

- outline the specific operational processes that each of these key participants is expected to implement in vote reconciliation, including the enhanced use where appropriate of electronic methods of data transmission and communication.

The protocols would, at a minimum, address the five areas requiring improvement that we have identified through our Shareholder Meeting Review and work with the Technical Working Group. We will also use the information obtained from the planned proxy contest review to identify other areas that should be addressed by the protocols.

We intend to continue taking a leadership role by overseeing the development of these protocols. We will also consider if any new rules need to be made in order to allow the various parties to effectively implement these protocols. We may recommend mandating aspects of the protocols and/or regulating entities in the proxy voting infrastructure if it appears to us that this would be necessary or appropriate.

Finally, we also intend to continue gathering more information on the intermediary practices used in client account vote reconciliation. For example, we intend to gain a better understanding of investment dealer practices for shares in institutional margin accounts and that are lent through investment dealer securities lending programs. We will provide a further update should we determine to take any steps in respect of client account reconciliation practices. We invite issuers, investors and other market participants to contact us if they have information they wish to share on this issue.

9. Questions

Please refer your questions to any of:

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Appendix A
Meeting Vote Reconciliation

1. What is Vote Reconciliation?

Vote reconciliation is the process by which proxy votes from registered holders and voting instructions from beneficial owners of shares are reconciled against the securities entitlements in the intermediated holding system. Vote reconciliation is implemented through the **proxy voting infrastructure** – the network of organizations, systems, legal rules and market practices that support the solicitation, collection, submission and tabulation of proxy votes for a shareholder meeting.

There are two distinct aspects of vote reconciliation.

The first aspect is where intermediaries reconcile and allocate voting entitlements to individual client accounts. We refer to this as **client account vote reconciliation**. Client account vote reconciliation involves the internal back-office systems of intermediaries and how they track and allocate vote entitlements for individual client accounts.

The second is where meeting tabulators reconcile proxy votes to intermediary vote entitlements, which we refer to as **meeting vote reconciliation**. Meeting vote reconciliation involves the systems and process that link depositories, intermediaries and meeting tabulators with one another in order for the following three things to occur:

1. Depositories and intermediaries provide vote entitlement information to meeting tabulators through omnibus proxies,

2. Meeting tabulators calculate Official Vote Entitlements for intermediaries, and

3. Meeting tabulators reconcile intermediary proxy votes to the Official Vote Entitlements.

2. The Three Phases of Meeting Vote Reconciliation

1. Depositories and intermediaries provide vote entitlement information to meeting tabulators through omnibus proxies

The first phase of meeting vote reconciliation is typically triggered several days after the record date for a meeting.

In functional or operational terms, each depository and intermediary at each tier of the intermediated holding system notifies the meeting tabulator of the vote entitlements that their intermediary clients are entitled to. This notification occurs through depositories and intermediaries sending **omnibus proxies** to meeting tabulators.

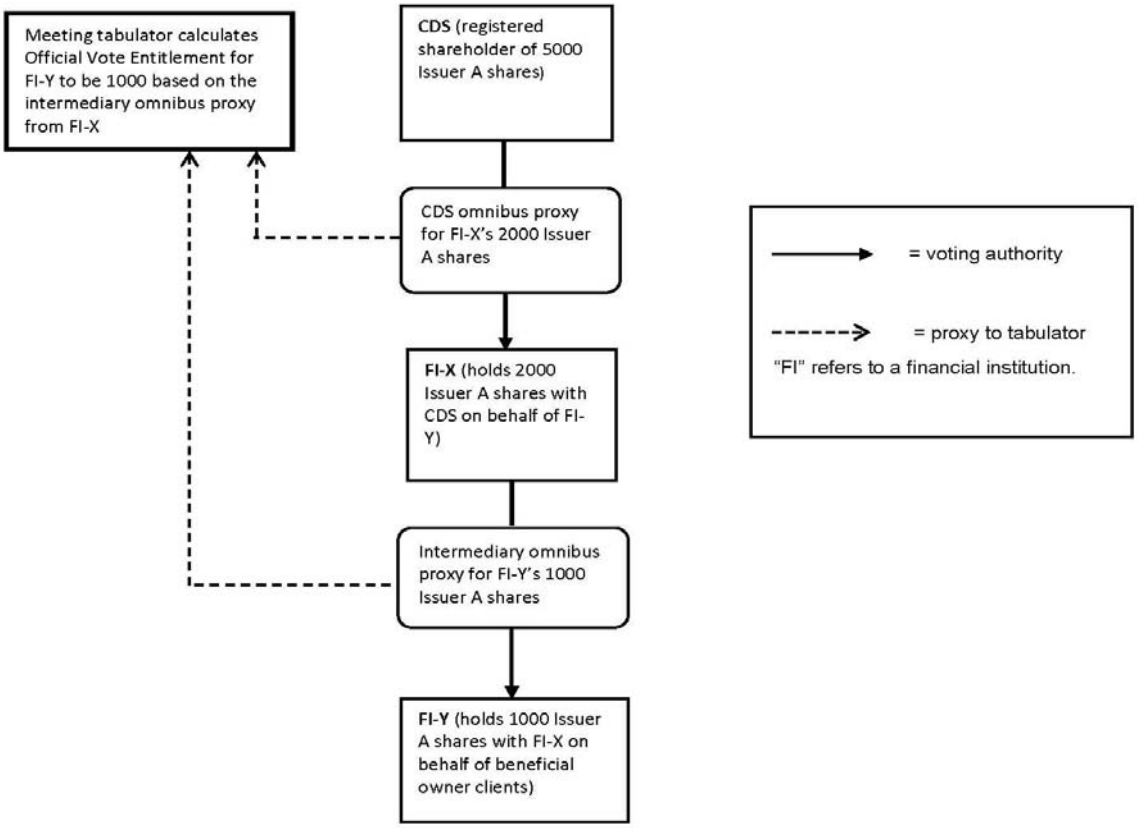
In legal terms, the depository or intermediary who is the registered holder or who itself holds a proxy executes the omnibus proxy to give its clients authority to vote the number of shares in the client's account as at the record date and sends the executed omnibus proxy to the meeting tabulator.

The two main types of omnibus proxies used in Canada are:

- **depository omnibus proxies** that depositories use to allocate vote entitlements/give voting authority to client intermediaries that are depository participants, and

- **intermediary omnibus proxies** that custodians and investment dealers use to allocate vote entitlements/give voting authority to client intermediaries.

Figure 1: Allocation of vote entitlements through omnibus proxies



This chain of cascading omnibus proxies is intended to allow the intermediary that is closest to the beneficial owner to submit proxy votes directly to the meeting tabulator on behalf of beneficial owner clients. This intermediary will submit proxy votes to the meeting tabulator for all its beneficial owner clients that have submitted voting instructions on an aggregate basis, i.e. the meeting tabulator generally has no insight into:

- the identities of an intermediary's beneficial owner clients,
- how many vote entitlements a specific beneficial owner client has in its account with the intermediary, or
- how a particular beneficial owner client voted.

The exception is where a reporting issuer conducts a NOBO solicitation directly. If a reporting issuer conducts a direct NOBO solicitation, the intermediary will also allocate vote entitlements to management of a reporting issuer through a **NOBO omnibus proxy**. In legal terms, the intermediary executes an omnibus proxy that gives management authority to vote the number of shares that are in the intermediary's NOBO client accounts upon receipt of voting instructions. In that case, the meeting tabulator will know:

- the identities of an intermediary's NOBO clients,
- how many vote entitlements the NOBO client has in its account with the intermediary, and
- how the NOBO client voted.

In practice, most intermediaries provide data to Broadridge about their intermediary clients that Broadridge will use to generate and send intermediary omnibus proxies[1] to the meeting tabulator. Broadridge will also receive voting instructions from beneficial owners[2] on behalf of its intermediary clients and submit proxy votes to the meeting tabulator.

2. Meeting tabulators calculate Official Vote Entitlements for intermediaries

The second phase of meeting vote reconciliation involves the meeting tabulator establishing the vote entitlement for an intermediary. As noted above, depositories and intermediaries will send to meeting tabulators depository omnibus proxies and intermediary omnibus proxies that allocate vote entitlements to their intermediary clients. The meeting tabulator will use the vote entitlement information in these documents[3] to establish the Official Vote Entitlement for each intermediary.

Where the issuer chooses to do a NOBO solicitation, intermediaries (through Broadridge) will also send the meeting tabulator a NOBO omnibus proxy that the tabulator will use to establish the Official Vote Entitlement for NOBOs.

The Official Vote Entitlement for an Intermediary is therefore:

[Vote entitlements allocated to the intermediary in the depository omnibus proxies received by the tabulator]

plus

[Vote entitlements allocated to the intermediary in any intermediary omnibus proxy received by the tabulator]

minus

[Vote entitlements the intermediary allocates to another intermediary through an intermediary omnibus proxy received by the tabulator]

minus

[If the issuer is conducting a direct NOBO solicitation, vote entitlements the intermediary allocates to issuer management in respect of the intermediary's NOBO accounts through a NOBO omnibus proxy received by the tabulator].

1 And if applicable, NOBO omnibus proxies.

2 If an issuer conducts a direct NOBO solicitation, Broadridge will only receive voting instructions from OBOs on behalf of its intermediary clients to submit proxy votes to the meeting tabulator. NOBOs will be submitting voting instructions directly to management of the issuer.

3 The meeting tabulator will also refer to the list of registered holders to determine the Official Vote Entitlements. However, the vast majority of the shares are held in the intermediated holding system.

There is no process in place for intermediaries to see and verify their Official Vote Entitlement for a meeting. Instead, Broadridge offers an Over-Reporting Prevention Service that generates a Broadridge-Calculated Vote Entitlement. This number is intended to be an indicator of the Official Vote Entitlement. It is calculated using information Broadridge obtains from depository data feeds and data in its system provided by intermediaries and that is used to generate intermediary omnibus proxies.[4]

The Broadridge-Calculated Vote Entitlement for an intermediary is therefore:

> [Vote entitlements allocated to the intermediary in the depository data feeds received by Broadridge]
>
> *plus*
>
> [Vote entitlements allocated to the intermediary based on information that intermediaries have provided to Broadridge's system that is used to generate intermediary omnibus proxies]
>
> *minus*
>
> [Vote entitlements the intermediary allocates to another intermediary by providing information to Broadridge's system that is used to generate intermediary omnibus proxies]
>
> *minus*
>
> [If the issuer is conducting a direct NOBO solicitation, vote entitlements the intermediary allocates to issuer management by providing NOBO account information to Broadridge's system]

Over-reporting occurs if the vote entitlement an intermediary calculates for itself is greater than the Official Vote Entitlement, i.e. Intermediary-calculated vote entitlement > Official Vote Entitlement.

3. Meeting tabulators reconcile intermediary proxy votes to the Official Vote Entitlements

The third phase of meeting vote reconciliation occurs when meeting tabulators review proxy votes submitted by each intermediary and reconciles the intermediary's proxy votes to the intermediary's Official Vote Entitlement.

Over-voting occurs if the number of proxy votes an intermediary submits is greater than the Official Vote Entitlement, i.e. Intermediary proxy votes > Official Vote Entitlement.

There is no process in place for intermediaries to find out:

- whether a meeting tabulator has identified an over-vote for an intermediary, or
- whether a meeting tabulator has accepted, rejected or pro-rated an intermediary's proxy votes.

Instead, if an intermediary subscribes to Broadridge's Over-Reporting Prevention Service, the Over-Reporting Prevention Service will pend voting instructions if the number of proxy votes submitted by the subscribing intermediary through the Broadridge system exceeds the Broadridge-Calculated Vote Entitlement and require that the intermediary make adjustments to avoid exceeding the Broadridge-Calculated Vote Entitlement.

3. The Key Players and Their Roles in Meeting Vote Reconciliation

The following chart summarizes the key players and their role in vote reconciliation.

[4] And if applicable, NOBO omnibus proxies.

Key Players in Vote Reconciliation

Key Players	Role in Meeting Vote Reconciliation
Depositories (CDS and DTC)	• allocate vote entitlements to intermediary participants through depository omnibus proxies • send the depository omnibus proxies to the meeting tabulator or issuer • provide data feeds to Broadridge that are used to calculate the Broadridge-Calculated Vote Entitlement
Intermediaries	• provide client intermediary information to Broadridge to generate intermediary omnibus proxies that allocate vote entitlements to their client intermediaries (e.g. clearing broker allocates vote entitlements to correspondent broker) • if applicable, provide NOBO data to Broadridge to generate the NOBO list and the NOBO omnibus proxy Note: A widely-held reporting issuer would typically have several hundred intermediaries submitting proxy votes.
Broadridge (for clients who have retained its services)	• assists intermediaries in various aspects of proxy voting including solicitation of voting instructions from beneficial owners and submitting proxy votes for intermediaries to tabulators • offers Over-Reporting Prevention Service that: o generates the Broadridge-Calculated Vote Entitlement for each subscribing intermediary to assist them with managing the risk of over-reporting o pends subscribing intermediary voting instructions that exceed the Broadridge-Calculated Vote Entitlement to assist them with managing the risk of over-voting • generates and sends to the meeting tabulator intermediary omnibus proxies based on information provided by intermediaries • if applicable, generates and sends to the meeting tabulator the NOBO omnibus proxy and NOBO list based on information provided by intermediaries
Meeting tabulator	• establishes the Official Vote Entitlement for an intermediary using the depository omnibus proxies and intermediary omnibus proxies (and if applicable, the NOBO omnibus proxy) it has received • tabulates proxy votes received from each intermediary and accepts, rejects or pro-rates votes depending on whether the number of votes is supported by or exceeds the Official Vote Entitlement for that intermediary

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Appendix B
Summary of Comments

1. General

The commenters generally acknowledged the importance of the proxy voting infrastructure in the capital markets. Through the comment process, a number of commenters, including institutional investors and issuers, expressed a lack of confidence in the accuracy and integrity of the proxy voting system. They viewed over-reporting and over-voting as evidence that accurate vote reconciliation is not occurring within the proxy voting infrastructure. While there was no consensus on the prevalence of over-reporting and over-voting in Canada, some commenters were under the impression that over-reporting and over-voting were not uncommon. STAC provided statistics that, for its members who tracked over-reporting and over-voting, approximately 51% of meetings in 2013 had occurrences of over-reporting and over-voting.

These commenters said that the opacity and complexity of the proxy voting system make it very difficult to understand and assess the infrastructure as a whole. They were concerned that they have no assurance as to whether the votes are received and counted as instructed by the investors.

Intermediaries and their service provider on the other hand emphasized that the proxy voting system is generally well functioning and is not “broken”.

Despite these differing views, commenters generally agreed that improvements could be made, and supported securities regulators becoming involved in reviewing the proxy voting infrastructure.

There was no consensus as to the causes or specific solutions to the problem. Some commenters supported improvements to the system that are incremental and take into account the existing structure and improvements that have already been made to it, after a cost-benefit analysis. The solutions proposed by these commenters included ways to improve communication and collaboration between various participants in the system and the development of industry protocols. Others asked the securities regulators to impose prescriptive rules and to audit the entire system. Some commenters encouraged us to take a big picture approach and consider a re-design of the proxy voting system, such as establishing an entity that performs a clearing and settlement function for votes much like the depositories.

2. Meeting Vote Reconciliation

Several commenters, including the institutional investors, transfer agents, intermediaries and proxy solicitation firms, indicated that reconciliation challenges are caused in part by missing documentation. In particular, STAC indicated that for its members who tracked over-reporting and over-voting, approximately 22% of the meetings in 2013 had reconciliation issues caused by missing or incomplete omnibus proxies.

According to the commenters, missing documentation can be a result of:

- incorrect information provided by intermediaries to their service provider (e.g. Broadridge) for the purpose of generating intermediary omnibus proxies,
- reliance on paper omnibus proxies, and
- DTC omnibus proxy sent by DTC to the issuer not received by the transfer agent/meeting tabulator.

Intermediaries also noted reconciliation challenges where shares were held in both CDS and DTC. They indicated that they had difficulty reconciling their positions with the vote entitlement information on Broadridge’s system because certain DTC positions did not appear to have been reflected in the electronic feeds that Broadridge received.

Some commenters observed that direct NOBO solicitations by issuers, while in and of themselves are not a cause of reconciliation issues, often highlight the phenomena of over-reporting and over-voting.

We were further informed by some institutional investors, intermediaries and transfer agents that, while rarely used, restricted proxies could be a source of reconciliation discrepancies.

We have also received comments regarding the practices transfer agents use to tabulate proxy votes. Intermediaries, institutional investors and proxy solicitation firms would like more transparency surrounding the methods that meeting tabulators use to tabulate proxy votes. They believe that meeting tabulators should communicate to intermediaries whether votes are accepted, pro-rated or rejected. They suggested that most instances of over-voting can be resolved if there is better communication between intermediaries and meeting tabulators.

The commenters generally supported an end-to-end confirmation system that will allow investors to receive confirmation that their votes have been received by the meeting tabulator and voted correctly.

3. Client Account Vote Reconciliation

Transfer agents suggested to us that over-voting was caused by intermediaries not properly allocating vote entitlement to their client accounts. They viewed over-voting as evidence that these intermediaries were reallocating vote entitlements to client accounts that significantly exceeded the intermediary's vote entitlement for that meeting. Some investors and issuers raised a similar concern. They questioned why vote entitlements are not tracked or reconciled to the same extent as dividend entitlements and wanted us to review whether some intermediary back-office systems allowed double or multiple voting.

The main area where concerns about double or multiple voting have arisen appears to be securities lending. We were informed that institutional lending programs do not appear to give rise to double or multiple voting because custodians use the pre-record date reconciliation method, i.e. they reconcile vote entitlements of lent shares prior to the record date. However, retail margin account lending appears to pose a risk of double or multiple voting because investment dealers use the post-record date reconciliation method, i.e. they allocate vote entitlement to all lent shares and only make adjustments post record date if there is an over-vote situation.

These commenters suggested that intermediaries should be required to adopt pre-record date reconciliation. Institutional investors, in particular, called for one-for-one vote reconciliation, i.e. for each outstanding issuer share, there would be a single entity identified as having authority to provide voting instructions.

Intermediaries, however, queried whether it is practical or feasible to implement one-for-one reconciliation due to the fungible nature of securities, the complexities of the intermediated holding system and the massive operational infrastructure that is required to support one-for-one reconciliation.

We have also received comments regarding who (the lender or the borrower) should have the right to vote in a securities lending transaction. There was no consensus on this issue.

4. Other Issues

NOBO-OBO Concept

There was no consensus on the impact of the NOBO-OBO concept on the integrity of the proxy voting system. A number of issuers posited that the NOBO-OBO concept is an impediment to communication between issuers and shareholders and reduces transparency in the proxy voting system. They suggested that the NOBO-OBO concept be eliminated, or alternatively, that there at least be a mechanism to temporarily lift the OBO status to enable issuers and meeting tabulators to identify the OBOs.

Institutional investors and intermediaries, on the other hand, believed that the OBO-NOBO concept in and of itself does not compromise the integrity of the proxy voting system. They said that the elimination of the NOBO-OBO concept will not significantly reduce the complexity of the proxy voting system because the complexity is in large part due to the holding of securities through intermediaries. They further submitted that any reform to the NOBO-OBO concept should recognize investors' legitimate preference to maintain anonymity. Some proxy advisory firms raised the same concern about the impact of any reform on the ability of investors to vote confidentially.

Managed Account Information

We have received comments from certain commenters regarding whether there are gaps in managed account information that would result in the inability of investment managers to vote. Intermediaries and their service provider indicated that they were not aware of issues relating to managed account processing. However, certain commenters suggested that there are issues that could arise and warrant further research, including incorrect [account] set-up between intermediaries.

Accountability of Service Providers

Commenters noted that the activities of a number of service providers to support proxy voting are not currently regulated. They further noted the lack of documented process and accountability with respect to some of these activities. Some institutional

investors suggested that all major service providers within the proxy voting system should be designated as “market participants” under securities law in order to promote accountability. Intermediaries on the other hand believed that market mechanisms and the existing framework have worked well to support accountability, and indicated that participants in the system have changed their practices in response to the market. They therefore supported an industry developed solution and would only seek guidance from securities regulators if industry is not complying with its own standards.

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Appendix C
Shareholder Meeting Review
Objectives, Scope and Methodology

1. Objectives

The objectives of the Shareholder Meeting Review were to:

- allow the key participants in the proxy voting infrastructure to develop a better understanding of how meeting vote reconciliation *actually* works, i.e how the various processes that were identified and outlined in the Consultation paper are actually implemented for shareholder meetings, and
- identify and analyze instances of over-reporting and over-voting.

By identifying instances of over-reporting and over-voting, we hoped to identify potential gaps in the proxy voting infrastructure. We were particularly interested in finding out whether over-reporting and over-voting were caused by tabulators not receiving some or all of the documents necessary to correctly establish an intermediary's Official Vote Entitlement, i.e. problems with meeting vote reconciliation. We were also interested in finding out whether there was any evidence that over-voting was caused by intermediaries allocating too many vote entitlements to their client accounts in comparison to the number of shares they held in their accounts with depositories or other intermediaries, i.e. problems with client account vote reconciliation. Some commenters have suggested that over-voting is extremely common and is evidence of large-scale over-allocation of vote entitlements.

We conducted the Shareholder Meeting Review with the assistance of a proxy solicitor. The proxy solicitor helped us to design and conduct the review.[1]

2. Scope

Due to resource and timing constraints, we determined that it was not feasible to conduct a review that would provide us with statistically significant findings regarding the causes of over-reporting and over-voting.

We therefore determined that the review would be qualitative in nature.

We selected six reporting issuers from Ontario, Alberta, British Columbia and Quebec. These issuers held an uncontested, uncontentious shareholder meeting in 2014.[2] Five of the issuers had filed a report of voting results pursuant to section 11.3 of National Instrument 51-102 *Continuous Disclosure Obligations*. The sixth issuer was a venture issuer that was not subject to this requirement.

Our sample included issuers:

- that were listed on the Toronto Stock Exchange (**TSX**) and TSX Venture Exchange,
- that used different meeting tabulators,
- that were listed only in Canada and inter-listed in the U.S.,
- that were closely- and widely-held,[3]
- that conducted direct NOBO solicitations and that solicited only through intermediaries,
- whose shares were the subject of securities lending activity around the record date,[4] and
- that operated in different industries.

[1] References to actions we took in connection with the Shareholder Meeting Review encompass actions taken by the consultant as well.

[2] The matters considered at each of the shareholder meetings were approved by more than 60% of the shareholders who voted at the meeting.

[3] Based on Capital IQ data on retail ownership and whether the issuer had a single shareholder that held more than 10% of its shares.

[4] Based on Markit data on the number of shares outstanding on loan.

3. Methodology

Our review had three main components:

1. Review of shareholder meeting documents to identify occurrences of over-reporting and over-voting,

2. Inquiries of meeting tabulators as to specific methods they used to reconcile proxy votes to Official Vote Entitlements (including the process they used to calculate those Official Vote Entitlements), and

3. Further investigation into specific instances of over-reporting and over-voting (including inquiries of specific intermediaries, Broadridge and CDS) to understand their causes, and whether they were isolated or systemic.

1. Document Review to Identify Potential Occurrences of Over-Reporting and Over-Voting

For each shareholder meeting, we obtained the documents that were used by the meeting tabulator to tabulate proxy votes. These included:

- registered holder proxies,
- depository omnibus proxies issued by CDS and DTC,
- intermediary omnibus proxies,
- NOBO omnibus proxies (if applicable),
- the list of registered holders maintained by the transfer agent,
- formal vote reports generated by Broadridge on behalf of intermediaries,
- restricted proxies, and
- the meeting tabulator's list of rejected or uncounted votes.

We reviewed the documents to identify instances of over-reporting and over-voting. [5]

(a) Identification of Over-Reporting – Comparison of Broadridge-Calculated Vote Entitlements and Official Vote Entitlements

Over-reporting occurs at phase two of vote reconciliation and consists of a discrepancy between the vote entitlements that an intermediary (or its service provider Broadridge) has calculated and the Official Vote Entitlement as calculated by the meeting tabulator.

The meeting tabulator calculates the Official Vote Entitlement for an intermediary using the information in the depository omnibus proxies and intermediary omnibus proxies it has received. The depositories and Broadridge provide vote entitlement information in electronic form through data feeds as well; however, not all tabulators access all of these feeds. Furthermore, tabulators generally will not rely solely on electronic data to support an Official Vote Entitlement but will require a stamped or validly-executed paper form[6] of omnibus proxy.

We:

- identified the Broadridge-Calculated Vote Entitlement for each intermediary using the "Position" field for each intermediary in the formal vote report generated by Broadridge,[7]

[5] We also compared the total number of vote entitlements in depository omnibus proxies with the total number of shares held by the depository in the transfer agent's list of registered holders. We found one instance of a discrepancy involving a very small number of shares the cause of which we have not as yet been able to determine. We found another instance of a discrepancy where the DTC omnibus proxy did not allocate vote entitlements with respect to a very small number of shares in a predecessor class that are reflected on the issuer's share register.

[6] This includes an omnibus proxy that is transmitted electronically in .pdf format, so long as it is stamped or validly executed.

[7] If an intermediary did not subscribe to the Over-Reporting Prevention Service, the share position field for that intermediary in the formal vote report contains the intermediary's "long" position in its record date file that it uploaded onto Broadridge's system.

- calculated the Official Vote Entitlement for each intermediary using the relevant depository omnibus proxies and intermediary omnibus proxies, and

- compared the Broadridge-Calculated Vote Entitlement[8] to the Official Vote Entitlement to identify any discrepancies.

Where the issuer conducted a NOBO solicitation, we also:

- compared the total number of vote entitlements in the NOBO list to the number of vote entitlements in the NOBO omnibus proxy, and

- identified the vote entitlements allocated by each intermediary in the NOBO omnibus proxy and confirmed that the vote entitlements allocated by the intermediary in the NOBO omnibus proxy did not exceed the positions contained in the depository omnibus proxies and intermediary omnibus proxies for that intermediary (i.e., each intermediary had sufficient entitlements to allocate the number of vote entitlements in the NOBO omnibus proxy).

(b) Identification of Over-Voting – Comparison of Proxy Votes and Official Vote Entitlements

We reviewed the documents as outlined below to identify instances of over-voting.

Meeting tabulators receive proxy votes through paper formal vote reports generated by Broadridge on behalf of its client intermediaries. In addition, Broadridge also provides an electronic data feed whereby proxy votes are submitted electronically. Only some meeting tabulators access the electronic data feed.

Intermediaries can also submit a vote directly to the tabulator by using a document known as a **restricted proxy**, although this is rarely done.

Where an issuer conducts a NOBO solicitation, the issuer's management will submit proxy votes on behalf of NOBOs in accordance with instructions provided by the NOBOs to management. In the meetings reviewed, the meeting tabulator used the NOBO voting instruction forms (**VIFs**) to tabulate NOBO votes.

We:

- calculated the total number of proxy votes submitted by each intermediary using Broadridge's paper formal vote reports[9] and restricted proxies,

- identified the number of proxy votes rejected by the tabulator as over-votes using the list of rejected or uncounted votes, and

- compared the number of proxy votes submitted by each intermediary to the Official Vote Entitlement that the consultant calculated.

We also reviewed the list of rejected or uncounted votes provided by the tabulator to determine on what basis a tabulator rejected a vote.

2. Further inquiries of issuers and meeting tabulators

After the completion of the document review, we sent follow-up questions to issuers and meeting tabulators. In particular, we asked for clarification about how tabulators reconciled proxy votes to Official Vote Entitlements in the following instances:

- the meeting tabulator appeared to have accepted an intermediary's proxy votes although the documentation seemed to indicate that there was an over-vote;

- the meeting tabulator rejected or pro-rated an intermediary's proxy votes although the documentation seemed to indicate that the intermediary's Official Vote Entitlement was sufficient.

[8] See footnote 7.

[9] We did not have access to any votes received electronically by the meeting tabulator.

3. Detailed review of specific instances of over-reporting and over-voting

We identified specific cases of over-reporting and over-voting to investigate further. We organized meetings with two transfer agents, several Canadian intermediaries, Broadridge and CDS to further review two of the shareholder meetings. We reviewed the cases of over-reporting and over-voting and the various attendees shared information to explain why and how these cases occurred.

CSA Staff Notice 54-303
Appendix D
Glossary[1]

Term	Meaning
Beneficial owner	An investor who is not a registered holder of shares, and whose ownership is through a securities entitlement in an intermediary account.
Broadridge	Refers to Broadridge Investor Communication Solutions, Canada, a subsidiary of Broadridge Financial Solutions, Inc. It is a service provider that assists intermediaries in various aspects of proxy voting, including solicitation of voting instructions from beneficial owners and submitting proxy votes on behalf of intermediaries to tabulators.
Broadridge-Calculated Vote Entitlement	For an intermediary that subscribes to the Over-Reporting Prevention Service, the vote entitlement of the intermediary as calculated by Broadridge that is intended to be an indicator of the Official Vote Entitlement. It is calculated using the depository data feeds and data in its system provided by intermediaries that is used to generate intermediary omnibus proxies and, if applicable, NOBO omnibus proxies. See vote entitlement.
Broadridge client number	A numeric identifier assigned by Broadridge to its intermediary clients. See intermediary identifier.
Canadian Securities Lending Association (CASLA)	A securities lending association in Canada.
CDS	Refers to the Canadian Depository for Securities Limited and its subsidiaries, including CDS Clearing and Depository Services Inc. CDS Clearing and Depository Services Inc. is the national securities depository in Canada. See also depository.
CDS omnibus proxy	The omnibus proxy CDS uses to allocate vote entitlements/give voting authority to client intermediaries that are CDS participants. See also depository omnibus proxy.
Clearing broker	A broker that is principal for clearing and settling a trade on behalf of another intermediary. See intermediary.
Client account vote reconciliation	The process by which intermediaries reconcile and allocate vote entitlements to individual client accounts. Client account vote reconciliation involves the internal back-office systems of intermediaries and how they track and allocate vote entitlements for individual client accounts. See vote reconciliation.
CUID	Stands for customer unit identifier. A four letter identifying code system assigned by CDS to institutions that clear and settle securities trades through CDS. The first three characters identify the company and the last character the unit within the company. See intermediary identifier.
CUSIP	Stands for Committee on Uniform Securities Identification Procedures. A nine digit identifier assigned to securities of issuers in the U.S. and Canada. The CUSIP system is owned by the American Bankers Association and operated by Standard & Poor's to facilitate the clearing and settlement process of securities. See intermediary identifier.
Custodian	A financial institutional that holds securities for another person or entity. Custodians in Canada also administer securities lending programs and act as agents for lenders which are typically

[1] This glossary contains operational, rather than legal, definitions.

Term	Meaning
	large institutional investors. See intermediary.
Depository	In connection with clearing and settlement, an entity that takes custody of security certificates or maintains electronic records of securities holdings for participant financial institutions.
Depository omnibus proxy	The omnibus proxy depositories use to allocate vote entitlements/give voting authority to client intermediaries that are depository participants. See also omnibus proxy.
Depository participant	A person or company for whom a depository maintains an account in which entries may be made to effect a transfer or pledge of a security.
Double or multiple voting	A situation in the client account vote reconciliation process where more than one entity is allowed or not prevented from voting the same share. Possible double or multiple voting occurs when more than one entity may vote or is not prevented from voting the same share. Actual double or multiple voting occurs when two or more entities actually vote the same share.
DTC	Stands for Depository Trust Company, a subsidiary of Depository Trust and Clearing Corporation. It is the national securities depository in the United States. See depository.
DTC number	A numeric identifier assigned by DTC to its listed issuers. See intermediary identifier.
DTC omnibus proxy	The omnibus proxy DTC uses to allocate vote entitlements/give voting authority to client intermediaries that are DTC participants. See also depository omnibus proxy.
End-to-end vote confirmation	A communication to shareholders that allows them to confirm that their proxy votes and voting instructions have been properly transmitted by the intermediaries, received by the tabulator and tabulated as instructed.
FINS number	Stands for Financial Institutional Numbering System. A numeric identifier assigned by DTC to each bank, broker-dealer, insurance company, mutual fund, money manager, transfer agent and other institution engaged in securities processing. See intermediary identifier.
Form of proxy	A document by which a security holder or other person with authority to vote appoints a person or company as the security holder's nominee to attend and act for and on the security holder's behalf at a meeting of security holders.
Formal vote report	A form or proxy generated by Broadridge that reflects the voting instructions received from investors, aggregated by intermediary.
Institutional lending program	Securities lending program administered by custodians who act as agents for lenders. The lenders are custodial-services clients and are typically large institutional investors such as pension funds, mutual funds, endowment funds and insurance companies. These lenders are paid fees for participation in these securities lending programs and treat securities lending as a source of revenue. See securities lending.
Intermediary	A person or company that, in connection with its business, holds security on behalf of another person or company.
Intermediary identifier	For purposes of the Progress Report, a numeric identifier assigned by depositories, Broadridge or other entities to identify intermediaries. They include CUIDs, FINS numbers, DTC numbers and Broadridge client numbers.

Term	Meaning
Intermediary omnibus proxy	An omnibus proxy custodians and investment dealers use to allocate vote entitlements/give voting authority to client intermediaries. Also known as supplemental omnibus proxy or mini omnibus proxy. See also omnibus proxy.
Intermediated holding system	A system of holding securities in which a central securities depository will take custody of security certificates or maintain electronic records of securities holdings and maintain accounts for the participant financial institutions, and the participant financial institutions in turn maintain accounts for their clients, who can be investors or other intermediaries.
Investment dealer	A person or company registered under securities law to trade securities for its own account or on behalf of its clients. See also intermediary.
Investment Industry Association of Canada (IIAC)	An association of investment dealers in Canada.
Issuer	A person or company who has outstanding securities, issues or proposes to issue, a security.
Managed account	An investment account that is owned by an individual investor, but managed by a professional investment manager with voting authority.
Margin account	An account that an investor has with its investment dealer that allows the investor to trade securities on margin, i.e. with money borrowed from the investment dealer. See securities lending.
Meeting vote reconciliation	The process by which meeting tabulators reconcile proxy votes to intermediary vote entitlements. Meeting vote reconciliation involves the systems and process that link depositories, intermediaries and meeting tabulators with one another in order for the following three things to occur: 1. Depositories and intermediaries provide vote entitlement information to meeting tabulators through omnibus proxies, 2. Meeting tabulators establish Official Vote Entitlements for intermediaries, and 3. Meeting tabulators reconcile intermediary proxy votes to the Official Vote Entitlements. See vote reconciliation.
NOBO	Stands for non-objecting beneficial owner. A beneficial owner of shares in the intermediated holding system who does not object to disclosure of his or her name, contact information and securities holdings.
NOBO list	For purposes of a direct NOBO solicitation by an issuer, a document generated by an intermediary or an intermediary service provider (in practice, Broadridge) that contains information regarding NOBOs.
NOBO omnibus proxy	For purposes of a direct NOBO solicitation by an issuer, an omnibus proxy an intermediary uses to allocate vote entitlements to management of a reporting issuer to give management authority to vote the number of shares that are in the intermediary's NOBO client accounts. See omnibus proxy.
NOBO solicitation	The sending of materials directly to, and solicitation of voting instructions from, NOBOs by the issuer.
OBO	Stands for objecting beneficial owner. A beneficial owner of shares in the intermediated holding system who objects to the intermediary disclosing his or her name, contact information and securities holdings.

Term	Meaning
OBO-NOBO concept	A feature of the proxy voting infrastructure in Canada describing the right of investors to choose whether to disclose their identities to issuers and others.
Official Vote Entitlement	The vote entitlements of an intermediary as determined by the meeting tabulator based on the depository omnibus proxies and intermediary omnibus proxies received. Where an issuer chooses to do a NOBO solicitation, intermediaries (in practice, through their service provider Broadridge) will also send the meeting tabulator a NOBO omnibus proxy that the tabulator will use to establish the Official Vote Entitlement for NOBOs. See also vote entitlement.
Omnibus proxy	A proxy used by the depository or intermediary who is the registered holder or who itself holds a proxy to give its clients authority to vote the number of shares in the client's account as at the record date. The two main types of omnibus proxies used in Canada are the depository omnibus proxies and intermediary omnibus proxies.
Over-reporting	For an intermediary, a discrepancy between the intermediary-calculated vote entitlement (for an intermediary that subscribes to the Broadridge Over-Reporting Prevention Service, the Broadridge-Calculated Vote Entitlement) and the Official Vote Entitlement as calculated by the tabulator based on supporting documentation where the intermediary-calculated vote entitlement exceeds the Official Vote Entitlement.
Over-Reporting Prevention Service	A tool offered by Broadridge to its subscribing intermediary clients to manage the risk of over-reporting and over-voting. For subscribing intermediaries, Broadridge generates a Broadridge-Calculated Vote Entitlement to assist them with managing the risk of over-reporting and pends voting instructions for an intermediary that in the aggregate exceed the Broadridge-Calculated Vote Entitlement for that intermediary to assist them with managing the risk of over-voting.
Over-voting	A situation where meeting tabulators receive proxy votes from intermediaries that exceed the Official Vote Entitlement that the meeting tabulator has calculated for that intermediary based on supporting documentation.
Proxy advisor	A service provider that assists institutional investors in various aspects of proxy voting, including reviewing and analyzing the matters (either issuer or shareholder proposals) put for a vote at a shareholders' meeting, making a vote recommendation to its clients and assisting with administrative tasks associated with keeping track of the large number of voting decisions.
Proxy solicitor	A service provider that assists with the solicitation of proxies by identifying and contacting investors and encouraging them to vote their shares in favour of the party soliciting the proxies.
Proxy vote	An executed form of proxy submitted to the meeting tabulator that contains voting instructions from registered holders or beneficial owners. See formal vote report.
Proxy voting infrastructure	The network of organizations, systems, legal rules and market practices that support the solicitation, collection, submission and tabulation of proxy votes for a shareholder meeting.
Record date	For a meeting, the date, if any, established in accordance with corporate law for the determination of the registered holders of securities that are entitled to vote at the meeting.
Registered holder	The person or company shown as the holder of the security on the books and records of the reporting issuer.
Registered holder proxy	A form of proxy used by registered holder to submit proxy votes to the meeting tabulator.
Report of voting results	A report that is required to be filed under securities law by non-venture issuer to disclose voting results.

Term	Meaning
Reporting issuer	An issuer with publicly traded securities. See issuer.
Restricted proxy	A form of proxy used by an intermediary to directly submit proxy votes to the meeting tabulator on behalf of a client for whom it holds shares. See form of proxy.
Securities entitlement	A right of an investor in shares he or she purchased and held in intermediary accounts in the intermediated holding system that is equivalent to, but not actually, a direct property right in the security. The entitlement holder's interest is asserted against the entitlement holder's own immediate intermediary, e.g. a client against the dealer with whom the client has an account, or the dealer against the clearing agency/depository.
Securities lending	The market practice whereby shares are temporarily transferred from one party (the lender) to another party (the borrower) in return for a fee. It involves a transfer of title of the shares against a collateralized undertaking to return equivalent shares either on demand or at the end of an agreed term. The "borrower" is the new owner of the shares, and is entitled to vote the shares, receive any dividend or interest payments paid during the loan term or sell the shares (e.g. to satisfy a short sale). However, the borrower is generally contractually required to make equivalent payments to the "lender" for any dividend and interest payments on the securities over the life of the loan; therefore the lender still "owns" or is "long" the share in economic terms.
Securities Transfer Association of Canada (STAC)	An association of Canadian transfer agents.
Segregation Hierarchy	A logic used by investment dealers to determine which margin account assets to use as margin collateral. It looks to margin account assets in the following order: • Cash or cash equivalents, • Fixed income securities, and • Equity securities.
Tabulator	The entity designated by an issuer to review the proxy votes it receives and assess whether these are valid votes that should be counted for the meeting. In Canada, the transfer agent of the issuer usually acts as the meeting tabulator.
Transfer agent	A trust company appointed by a corporation to transfer ownership of its shares. In the majority of instances, the trust company in its capacity as transfer agent maintains the shareholder register and provides other related services. Transfer agents in Canada generally belong to the Securities Transfer Association of Canada.
U.S. End-to-End Confirmation Pilot	A pilot project developed by participants in the proxy voting infrastructure in the U.S. that established an electronic communication tool for meeting tabulators and intermediaries to confirm intermediary vote entitlements for meetings and confirm that an intermediary's proxy votes had been accepted.
Vote entitlement	The number of shares over which a security holder or other person with authority to vote has voting authority.

Term	Meaning
Vote reconciliation	The process by which proxy votes from registered holders and voting instructions from beneficial owners are reconciled against the securities entitlements in the intermediated holding system. The Progress Report identified two distinct aspects of vote reconciliation: client account vote reconciliation and meeting vote reconciliation.
Voting Instruction Form (VIF)	A document by which beneficial owners provide voting instructions to intermediaries. Where the issuer chooses to conduct a NOBO solicitation, a document by which NOBOs provide voting instruction to management of the issuer.

1.1.3 CSA Consultation Paper 92-401– Derivatives Trading Facilities

CANADIAN SECURITIES ADMINISTRATORS

CSA CONSULTATION PAPER 92-401

DERIVATIVES TRADING FACILITIES

Canadian Securities Administrators Derivatives Committee
January 29, 2015

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CSA CONSULTATION PAPER 92-401 – *DERIVATIVES TRADING FACILITIES*

On November 2, 2010, the Canadian Securities Administrators (the **CSA**) Derivatives Committee (the **Committee**) published for comment Consultation Paper 91-401 – *Over-the-Counter Derivatives Regulation in Canada* (**Consultation Paper 91-401**). That consultation paper set out high-level proposals for the regulation of over-the-counter (**OTC**) derivatives in Canada. The Committee sought input from the public with respect to the proposals and eighteen comment letters were received. This public consultation paper is the seventh in a series of papers that build on the regulatory proposals contained in Consultation Paper 91-401. It proposes a framework for the regulation of OTC derivatives trading facilities in Canada.

The Committee continues to consult and collaborate with the Bank of Canada, the Office of the Superintendent of Financial Institutions (Canada), the Department of Finance Canada, and market participants. The Committee also continues to contribute to and follow regulatory proposals and legislative developments in foreign jurisdictions and to work with international regulators and bodies such as the International Organization of Securities Commissions, the Financial Stability Board and the Over-the-Counter Derivatives Regulators' Forum in the development of international standards.

Although a significant market in Canada, the Canadian OTC derivatives market comprises a relatively small share of the global market and a substantial portion of transactions entered into by Canadian market participants involve foreign counterparties. It is therefore important that rules developed for the Canadian market are aligned with international practice to ensure that Canadian market participants have access to the international market and are regulated in accordance with international principles to the extent appropriate. The Committee will continue to monitor and contribute to the development of international standards. In this context, it is hoped that this paper will generate commentary and debate that will assist the CSA in developing harmonized policies and rules that are appropriate for Canada.

EXECUTIVE SUMMARY

At the Pittsburgh Summit held in September 2009, the G20 leaders agreed that "all standardized OTC derivatives should be traded on exchanges or electronic trading platforms, where appropriate".[1]

Exchanges and electronic trading platforms are systems or facilities that bring together buying and selling interests in one or more financial instruments, leading to the execution of transactions in those instruments.[2] In order to implement the G20 commitment to mandate the trading of suitable OTC derivatives on exchanges or electronic trading platforms in Canada, the Committee recommends that the CSA pursue two principal outcomes:

- develop a regulatory framework for "derivatives trading facilities" (**DTFs**), that is, organized trading platforms for the trading of OTC derivatives;
- require suitable OTC derivatives, or classes of OTC derivatives, to trade exclusively through a DTF.

The following is a summary of the Committee's specific recommendations in relation to pursuing these two principal outcomes.

Derivatives trading facilities

1. ***Definition of DTF:*** The Committee proposes to define a DTF to mean a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of OTC derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of trades.

   OTC derivative is used in this paper in its customary sense to refer to a derivatives contract that is traded other than on a formal exchange, such as on a dealer network or directly between two parties.[3]

   The proposed definition of a DTF is intentionally broad and would capture various multilateral execution processes and venues. However, the proposed definition is not intended to capture bilateral or one-to-many facilities such as single-dealer platforms, nor is it intended to capture facilities or processes where there is no actual trade execution or arranging taking place, such as bulletin boards used solely for advertising buying and selling interests.

2. ***Regulatory framework for DTFs***:

   (a) Any DTF, regardless of whether it offers trading in OTC derivatives that are mandated to be traded on a DTF, would require an authorization from the securities regulatory authority in each jurisdiction in which it operates, or an exemption from such requirement.

   (b) An authorized DTF would be permitted to provide facilities for trading in both OTC derivatives that are mandated to be traded on a DTF and those OTC derivatives not mandated to be traded on a DTF. For clarity, market participants would not be required to trade non-mandated OTC derivatives through a DTF.

   (c) DTFs generally would be regulated similarly to an exchange. For example, all DTFs would be required to have rules governing the conduct of participants, designed to ensure compliance with applicable legislation, prevent fraud and manipulative acts and practices, and promote just and equitable principles of trade.

   DTFs generally would also be required—directly or indirectly through an authorized third-party regulation services provider—to monitor compliance by participants with those rules and to appropriately discipline participants in the event of non-compliance.

   (d) A DTF operator that exercises discretion[4] in the execution of transactions would be subject to additional requirements similar to those applicable to dealers.[5] Such requirements would include, for example, the duty to act fairly, honestly and in good faith, and requirements relating to proficiency of individual representatives,

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1 Statement No. 13, *Leaders' Statement: The Pittsburgh Summit* (September 24 – 25, 2009), available at http://g20.org/wp-content/uploads/2014/12/Pittsburgh_Declaration.pdf (the **G20 Leaders Statement**) at 9.

2 Technical Committee of the International Organization of Securities Commissions (IOSCO), *Report on Trading of OTC Derivatives,* February 2011 (**IOSCO Trading Report**) at 10-11.

3 However, for the purposes of this paper, an OTC derivative does not cease to be an OTC derivative merely because it may be traded on an exchange. This is important because, as discussed elsewhere, the Committee anticipates that in some jurisdictions a DTF may be recognized as an exchange.

4 Discussed at para. 0 below.

5 Including those applicable to dealers under current rules and those that will be applicable pursuant to derivatives registration rules yet to be enacted; see CSA Consultation Paper 91-407 – *Derivatives: Registration*, published on April 18, 2013.

"know your client" and suitability, the handling of accounts, confidentiality of customer information, client order exposure rules, and best execution.

In addition, to address the potential for conflicts of interest, a DTF that exercises discretion would be required to retain an authorized third-party regulation services provider to monitor and enforce both its conduct and that of the participants on its platform.

3. ***Organizational requirements:*** All DTFs would be subject to basic organizational requirements, comparable, to the extent appropriate, to those established for marketplaces regulated under National Instrument 21-101 – *Marketplace Operation* (**NI 21-101**) and National Instrument 23-101 – *Trading Rules* (**NI 23-101**). Among other things, DTFs would be subject to requirements related to:

- transparency, e.g., via disclosure on a website of, among other things, fees, how orders are entered, interact and execute, order types, access requirements, technology requirements, trading requirements, including market conduct requirements, and the policies and procedures for managing conflicts of interest;
- record-keeping and record preservation, including in respect of records of market participants with access to the trading facility, trading summaries, and records of trades, orders, and quotations;
- publication of and fair access to trade and price information;
- access, including not unreasonably prohibiting, conditioning or limiting access to services offered;
- system requirements, including adequate controls over those systems;
- business continuity planning and independent system reviews;
- adequate financial resources;
- personnel and outsourcing of functions;
- addressing conflicts of interest; and
- reporting to securities regulators.

4. ***Contrast with NI 21-101:*** NI 21-101 provides a regulatory framework for a number of different "marketplaces", including securities exchanges,[6] alternative trading systems (**ATS**) and quotation and trade reporting systems (**QTRS**). A DTF would be distinct from the "marketplaces" currently regulated under NI 21-101. Although to the extent appropriate the rules governing DTFs will be consistent with NI 21-101, rules governing DTFs will be tailored to specifically address the organized platform trading of OTC derivatives. For example, unlike for trades executed on a marketplace regulated under NI 21-101, trades executed through a DTF would not be required to be cleared unless the derivative was of a class that had been mandated to be cleared pursuant to a clearing rule. As described elsewhere, it is also contemplated that the operator of a DTF will be permitted to exercise discretion in the manner of order execution, which is not something for which NI 21-101 provides.

5. ***Existing marketplaces:***

   (a) The Committee recommends that exchanges trading derivatives that are not OTC derivatives would not be regulated as DTFs in respect of their current (non-OTC derivatives) operations.

   (b) Existing marketplaces that wished to provide a platform for trading in OTC derivatives would be required to apply for authorization to offer trading in OTC derivatives.

   (c) Depending on the products it trades, a trading platform might constitute both a DTF and a marketplace under NI 21-101. Where appropriate and possible, conflicting and duplicative regulation would be avoided, most likely on a case-by-case basis.

6. ***Execution methods:*** A DTF would be permitted to use a variety of execution methods, for example, continuous or periodic order book, request-for-quote, request-for-stream, voice, or hybrid voice-electronic execution methods. As discussed elsewhere in this Consultation Paper, certain execution methods may be compulsory for products that are mandated to trade on a DTF.

[6] And futures exchanges in Quebec.

7. ***Exercise of discretion:*** The Committee is considering whether to permit the operator of a DTF to exercise a degree of discretion in the manner of executing transactions between its participants. In accordance with a DTF's rules, a DTF operator may be permitted to exercise discretion in determining, among other things, when to place an order for a participant or to retract it, which participants are contacted with requests for quote (**RFQ**), which orders or RFQs are matched with other orders or quotes, and the order and timing of such matching. In practice, discretion allows platform operators to run "hybrid systems," consisting of both electronic trading and voice broking, that allow for the periodic execution of trading interests. Such discretion enables platform operators to facilitate the pre-arrangement or pre-negotiation of transactions prior to execution.[7] A DTF exercising discretion would have additional requirements placed upon it, as described above. Even so, discretionary execution methods may not be permitted for products that are mandated to trade on a DTF.

8. ***Pre-trade transparency:*** Except in the case of derivatives that are mandated to trade on a DTF (see below), a DTF would not be required to provide a particular level of pre-trade transparency. However, if a DTF were to execute transactions in a way that inherently provides a certain degree of pre-trade transparency (as would be the case with a published order book), it would be required to do so in a manner that did not unreasonably limit access to such information by a participant or class of participants.

9. ***Post-trade transparency:*** A DTF would be required to report to the public transactions executed on its facility in as close to real-time as technically feasible.[8] Deferred publication would be permitted in certain circumstances, such as for block trades. Additionally, DTFs would be required to provide certain market information to the general public at no charge on a delayed basis. Although not required to, a DTF would not be prohibited from disseminating real-time data.

Mandating OTC derivatives to be traded on derivatives trading facilities

10. ***Trading mandate****:* Members of the CSA, after consultation with other Canadian authorities and with the public, may determine certain OTC derivatives to be appropriate to be mandated to trade exclusively on an authorized DTF.

Determining whether OTC derivatives should be mandated to trade on a DTF

11. ***CSA review of trading data:*** Prior to requiring that any class of OTC derivative be traded exclusively on a DTF, the Committee recommends that members of the CSA review trading and clearing data covering an appropriate time period. In particular, the Committee contemplates that the CSA will wish to review the level of liquidity of OTC derivatives in the Canadian market, the current volume and turnover in derivatives of various asset classes in Canada, the number and type of market participants transacting in OTC derivatives in Canada, and the extent to which multilateral execution methods are currently being used for OTC derivatives transactions. The Committee recommends that an OTC derivative be mandated to be traded on a DTF only after trade reporting and clearing data with respect to that derivative has been analyzed for a sufficient period of time. The Committee anticipates that the trading data would be reviewed periodically with a view to considering whether additional derivatives should be added to the list of those that are mandated to trade through a DTF, and whether there are derivatives on the list that should be removed.

12. ***Factors to be considered in determining whether to mandate trading on a DTF:*** In determining whether to require a class of OTC derivatives to be traded exclusively on a DTF, the Committee recommends that the CSA consider factors including whether the class of OTC derivatives is: subject to a clearing mandate, sufficiently liquid and standardized, subject to a similar trading mandate in other jurisdictions, or already trading through the facilities of a DTF or foreign trading platform.

13. ***Pre-trade transparency requirements applicable to derivatives mandated to be traded on a DTF:*** For OTC derivatives that are mandated to be traded on a DTF, we contemplate that a DTF would be required to provide pre-trade disclosure to all users of its facilities of current bid and offer prices and market depths. We contemplate that the nature of pre-trade transparency may need to be tailored to the form of execution method.[9] Exemptions from pre-trade transparency requirements are contemplated for orders that, because of their size, would expose liquidity providers to undue risk.

14. ***Post-trade transparency requirements applicable to derivatives mandated to be traded on a DTF:*** For derivatives that are mandated to trade on a DTF, we do not contemplate standards of post-trade transparency that differ from the standards that would apply to all transactions executed on the DTF.

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7 Discretion exercised by the participants themselves is not the kind of discretion that is meant here. See infra note 55.

8 The Committee is considering methods for public reporting of transactions; please see section 9, Post-trade Transparency, in the main body of the paper below.

9 E.g., for trading via RFQ, the requests and quotes are only between the requester and the interrogated dealers. As discussed below in the main body of this paper, a degree of pre-trade transparency could be provided by ensuring that the requests are sent to several dealers, and that the reply include not only quotes but any matching orders from the order book.

Exemptive relief for a foreign-based DTF regulated in its home jurisdiction

15. A foreign-based DTF (such as a "swap execution facility" based in the United States) that carries or would like to carry on business in Canada may apply for an exemption from the requirements that would otherwise apply to it as a DTF, where it can demonstrate that the regulation and oversight of the DTF in its home jurisdiction is comparable to that which would apply if the DTF were domiciled in Canada. In such case, the CSA members may, with respect to the day-to-day oversight of the foreign-based DTF, rely on the oversight by its home regulator; however, the ability of the regulator in Canada to engage in general oversight would be retained.[10] Such a DTF also might be required to fulfill reporting requirements to the regulators in the jurisdictions of Canada in which it operates.

[10] CSA members might retain discretion to oversee such matters as fair access and compliance with Canadian market integrity requirements.

SUMMARY OF QUESTIONS

The questions below appear in the order in which they appear in the main body of the paper.

Defining "Derivatives Trading Facility"

1. Is the DTF category appropriately defined? If not, what changes are needed and why?

2. Is it appropriate to permit a DTF operator a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?

Permitted Execution Methods

3. Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?

4. Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?

Regulatory Authorization of DTFs

5. Is the proposed regulatory framework for DTFs appropriate?

6. Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)

7. To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?

8. What factors are relevant in defining the proposed best execution duty?

Organizational and Governance Requirements

9. Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?

10. Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?

11. Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?

12. Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?

13. Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.

14. Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.

15. How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.

Pre-trade Transparency

16. Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

Post-trade Transparency

17. Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?

18. What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?

19. When should deferred publication of trade information be permitted? Are there circumstances other than block trades?

20. Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?

21. What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).

22. In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.

Trading Mandate

23. Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?

24. Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?

25. Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?

26. Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 813?

27. What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).

28. For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?

29. Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?

30. What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?

General

31. Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.

COMMENTS AND SUBMISSIONS

The Committee invites participants to provide input on the issues outlined in this public consultation paper. You may provide written comments in hard copy or electronic form. The comment period expires March 30, 2015.

Certain CSA regulators require publication of the written comments received during the comment period. We will publish all responses received on the websites of the Autorité des marchés financiers (lautorite.qc.ca), the Ontario Securities Commission (osc.gov.on.ca), and the Alberta Securities Commission (albertasecurities.com). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Manitoba Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Nova Scotia Securities Commission
Ontario Securities Commission

Please send your comments only to the following addresses. Your comments will be forwarded to the remaining jurisdictions:

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1. INTRODUCTION

(a) G20 commitment

At the G20 Summit held in Pittsburgh in September 2009, the leaders of the G20 countries agreed that:

All standardized OTC derivative contracts should be traded on exchanges or electronic trading platforms, where appropriate, and cleared through central counterparties by end-2012 at the latest.[11]

The commitment to trade standardized OTC derivative contracts on exchanges or electronic platforms, where appropriate, is a central component of the G20 mandate to reform the OTC derivatives markets. A key objective of this mandate is to enhance the transparency and efficiency of OTC derivatives markets for the benefit of all market participants. Exchanges or electronic trading platforms can foster greater market integrity through transparent and enforceable participation and conduct requirements.[12]

(b) Benefits of organized trading platforms

Organized trading platforms bring together many market participants where their trading interests can interact. The potential benefits of organized trading platforms have been described by international regulatory organizations to include the following:

- the use by participants of similar means to express trading interests and execute trades can result in the accumulation of pools of liquidity on trading platforms;
- the concentration of liquidity may foster broader market participation, resulting in greater operational efficiencies, increased competition and deeper markets;
- increased competition which may, in turn, put downward pressure on trading costs, including a reduction in bid/ask spreads;
- tight bid/ask spreads and deep liquidity particularly for benchmark derivatives contracts;[13]
- increased participation in the OTC derivatives market, contributing to making markets less susceptible to the impairment of a single liquidity provider;[14]
- greater market integrity through transparent and enforceable participation and conduct requirements;[15]
- the verification of trade information through electronic confirmations, and an efficient link to clearing agencies and trade repositories;[16]
- a higher level of transparency, and a reduction in information asymmetry,
- making price and other trade-related information directly available to the market thereby improving price discovery and pricing of assets and enhancing comparability and strengthening risk management;[17]
- allowing market participants to directly price derivatives, with the role of a platform operator being limited to bringing together or facilitating the bringing together of multiple third-party buying and selling interests; and
- improved transparency to and surveillance by regulators and likely a clearer trail in terms of positions and exposures.[18]

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11 G20 Leaders Statement, at 9. Although the G20 commitment contemplates that mandatory trading should be in place by end of 2012, as stated by the Financial Stability Board (**FSB**) in April 2013, implementation is still progressing in FSB member jurisdictions after the end-of-2012 deadline: *OTC Derivatives Market Reforms: Fifth Progress Report on Implementation*, April 15, 2013 at 2. See also infra note 24.

12 FSB, *OTC Derivatives Market Reforms: Sixth Progress Report on Implementation*, September 2, 2013 at 18.

13 Committee of European Securities Regulators (**CESR**), *Standardisation and exchange trading of OTC derivatives*, 19 July 2010 (CESR/10-610) (**CESR Report**) at 18.

14 IOSCO Trading Report at 38.

15 Supra note 12.

16 Council of Financial Regulators (Australia), *OTC Derivatives Market Reform Considerations*, March 2012 (**CFR Report**) at 4; IOSCO Trading Report at 37.

17 Ibid. at 18.

18 Ibid.

The extent to which these benefits would be realized will vary depending on the product or class of product being traded, as well as the particular characteristics of the platform, including, for example, the nature and degree of transparency, the level of discretion afforded a platform operator and the level of automation employed.

(c) Limitations to organized trading platforms

The following limitations and potential drawbacks to the trading of OTC derivatives on organized platforms have also been identified:

- Platform trading may, depending on the structure of a platform, reduce the ability to customize contracts. This potential lack of flexibility may result in a lack of match with customers' needs, and a more limited possibility for product innovation.[19]

- The benefits of multilateral systems may appear only in some cases and not generally. As summarized by the CESR, "In this view, a multilateral system is not suitable for derivatives because of the bilateral character of contracts and little use of transparency information which disregard counterparty risk."[20]

- Mandating or forcing the trading of OTC derivatives on organized platforms could, if not done correctly, be damaging to product markets.[21]

Where a requirement to trade certain OTC derivatives on an organized trading platform introduces costs or risks that outweigh the benefits of trading in derivatives, participants may be discouraged from participating in the OTC derivatives market.

These limitations may be mitigated by requiring a minimum level of standardization and liquidity as a precondition to mandating that an OTC derivative, or class of OTC derivatives, trade through an organized trading platform. This would have a corollary result of excluding from any trading requirement bespoke or illiquid contracts, and potentially transactions above a certain size threshold (relative to the market for a specific type or class of OTC derivative).

(d) Committee recommendations designed to encourage OTC derivatives to trade on organized trading platforms

In Consultation Paper 91-401, the Committee outlined its proposals relating to the regulation of OTC derivatives in Canada. The following three options were proposed for purposes of addressing the G20 commitment on OTC derivatives trading:

- Option 1: Mandate trading of all OTC derivatives on organized trading platforms, with such a requirement being contingent on the availability of a platform that has been recognized or designated.

- Option 2: Mandate trading of only those transactions with sufficient standardization and liquidity and/or that pose systemic risks to the integrity of the markets.

- Option 3: Permit market participants to choose whether or not to trade on an organized trading platform.

The Committee stated that although the benefits of trading on an organized platform were considerable, much could be achieved through post-trade transparency, utilizing data gathered from trade reporting and mandated central clearing. The Committee noted that there are many valid reasons why OTC derivatives do not trade on exchanges, such as increased flexibility and the ability to hedge specific risks. In addition, due to the bespoke nature of many OTC derivatives products and the sheer number of their variations, it was unlikely that all OTC derivatives could be traded successfully on organized platforms. Nonetheless, the Committee felt that considerable benefits for both regulators and market participants resulting from increased transparency and liquidity could be achieved through the trading of certain OTC derivatives on organized platforms.[22]

The Committee now recommends that the CSA pursue Option 2 through the development of

(1) a new regulatory category of "derivatives trading facility", or DTF, for the trading of OTC derivatives, and

(2) criteria for identifying appropriate OTC derivatives to be mandated to be traded exclusively through a DTF.

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19 CESR Report at 19. See also infra note 20 at 20.

20 CESR, *Technical Advice to the European Commission in the Context of the MiFID Review- Standardisation and Organised Platform Trading of OTC* Derivatives, 21 December 2010 (CESR/10-1210) at 16.

21 CESR, *Technical Advice to the European Commission in the Context of the MiFID Review – Standardisation and Organised Platform Trading of OTC Derivatives*, October 2010 (CESR/10-1096) at 12.

22 Consultation Paper 91-401 at 37-39.

The Committee recommends that a DTF be permitted to offer trading in OTC derivatives that have not been mandated to trade on a DTF, though market participants would not be required to trade non-mandated derivatives through a DTF. Additional requirements would apply to a DTF in respect of trading in OTC derivatives that are subject to a DTF-trading mandate including, for example, with respect to pre-trade transparency.

This consultation paper sets out a proposed definition for a DTF as well as proposals regarding the characteristics of a DTF, including permitted execution methods, recognition or registration requirements, organizational and governance requirements, and pre- and post-trade transparency requirements. The paper concludes with a discussion of the proposed parameters of a trading mandate for sufficiently liquid and standardized OTC derivatives, and a brief discussion of the Committee's recommended approach for the CSA with respect to organized derivatives trading platforms based outside of Canada.

The recommendations and proposals in this consultation paper relating to DTFs aim to create a system for regulating organized platform trading of OTC derivatives in Canada. The goal is to encourage the continued development of liquidity, transparency and standardization in the OTC derivatives market. In developing these regulatory proposals, we have been cognizant of the approaches taken in both the United States, with "swap execution facilities" (**SEFs**), and in the European Union, with "organized trading facilities" (**OTFs**).

2. OTHER JURISDICTIONS

Recognizing the international character of OTC derivative markets, the Committee is of the view that a Canadian regulatory approach to the platform trading of OTC derivatives should have regard to the approach taken in other jurisdictions, particularly in the US and EU. Moreover, the Canadian regulatory approach should be designed to coordinate with international regulation where possible, while recognizing the relative size and liquidity of the Canadian market and the unique features of the Canadian regulatory framework.

The regulatory landscape relating to the use of organized trading platforms for OTC derivatives trading has changed significantly since the publication of Consultation Paper 91-401 in November 2010. Legislation in the US now requires all multilateral platforms trading swaps[23] to be registered as a SEF or a designated contract market (**DCM**) and factors have been established for determining those OTC derivatives that will be subject to mandatory trading on SEFs or DCMs. In the EU, a third category of regulated trading venue, OTF has been introduced alongside the existing categories of regulated market (**RM**) and multilateral trading facility (**MTF**). Suitable OTC derivatives, e.g., those sufficiently liquid and standardized to be subject to a clearing requirement and also mandated to trade on a regulated trading venue, must be traded on one of the three venues.

Some jurisdictions have now implemented requirements that certain OTC derivatives be traded exclusively on organized trading platforms.[24] In the US, mandatory platform-trading has been implemented for certain types of interest rate and credit default swaps.[25] In the EU, a revised Markets in Financial Instruments Directive[26] (**MiFID II**), together with a Markets in Financial Instruments Regulation[27] (**MiFIR**), were adopted by the European Parliament and the Council of the European Union to facilitate, among other things, the mandatory trading of specified OTC derivatives. The texts of MiFID II and MiFIR came into force in the EU in July 2014, and must generally apply within European member states by January 3, 2017.

(a) United States

In October 2013, the rules of the US Commodity Futures Trading Commission (the **CFTC**) for the mandatory trading of certain OTC derivatives on SEFs came into effect. A trading mandate is a key aspect of Title VII of the *Dodd-Frank Wall Street Reform and Consumer Protection Act*[28] (the **Dodd-Frank Act**). The Dodd-Frank Act amended both the *Commodity Exchange Act*[29] and the *Securities Exchange Act of 1934* to establish a comprehensive new regulatory framework for swaps and security-based swaps in the wake of the financial crisis.

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23 "Swap" is defined at 7 U.S.C. §1a(47). It is a complex definition that encompasses a broad variety of OTC derivatives contracts.

24 The FSB reported that, as at November 2014, three jurisdictions – China, Indonesia and the US – had regulations in effect requiring organized platform trading. In 2015 such regulations are also expected to become effective or partially effective in India, Japan, and Mexico: FSB, *OTC Derivatives Market Reforms: Eighth Progress Report on Implementation*, November 7, 2014 at 24.

25 In the US, the requirement to execute certain interest rate and credit default swaps on "swap execution facilities", foreign boards of trade or designated contract markets took effect in mid-February 2014;

see http://sirt.cftc.gov/sirt/sirt.aspx?Topic=SwapsMadeAvailableToTradeDetermination.

26 Directive no. 2014/65/EU of the European Parliament and of the Council on markets in financial instruments repealing Directive 2004/39/EC of the European Parliament and of the Council (recast) (**MiFID II**):

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=OJ:JOL_2014_173_R_0009.

27 Regulation no. 600/2014 of the European Parliament and of the Council on markets in financial instruments and amending Regulation (EU) No 648/2012 on OTC derivatives, central counterparties and trade repositories (**MiFIR**):

http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=uriserv:OJ.L_.2014.173.01.0084.01.ENG.

28 http://www.cftc.gov/ucm/groups/public/@swaps/documents/file/hr4173_enrolledbill.pdf.

29 Codified as Title 7 of the United States Code: http://www.law.cornell.edu/uscode/text/7/chapter-1. As section numbers do not always align, note that references herein are to the U.S. Code, not to the Commodity Exchange Act.

The Dodd-Frank Act provides that, where a derivative is subject to the clearing requirement (meaning it must be centrally cleared unless an exemption is available), and any SEF or DCM (i.e., a registered futures exchange) "makes" the derivative "available to trade" (i.e., it is subject to a **MAT determination**), then it must be traded on a SEF or a DCM.

The CFTC established in June 2013 a flexible process for SEFs to make a derivative "available to trade". SEFs are to determine which derivatives they wish to make available to be traded on their platforms. The MAT determination is then submitted to the CFTC either as self-certified by the trading platform or for CFTC approval. Unless the filing is found to be contrary to the CFTC's regulations, the derivative, if subject to the clearing requirement, will become subject to a trading mandate. Since January 2014, the CFTC has approved or deemed certified as available to trade certain specified interest rate swap (**IRS**) and credit default swap (**CDS**) contracts pursuant to MAT determinations by five different SEFs. Once the MAT determinations became effective the specified CDS and IRS contracts became subject to what is known as the "trade execution requirement".[30] A transaction in a swap that is the subject of a certified MAT determination may be made on any SEF or DCM, not just the SEF that submitted the MAT determination.

A SEF is defined under the Dodd-Frank Act to mean "a trading system or platform in which multiple participants have the ability to execute or trade swaps by accepting bids and offers made by multiple participants in the facility or system", and that is not a DCM.[31]

All registered SEFs must offer a "minimum trading functionality" for transactions in all derivatives listed on the SEF, consisting of an order book, or an RFQ system offered in conjunction with an order book. For purposes of the SEF rules, an order book is defined as an "electronic trading facility",[32] a "trading facility",[33] or a trading system or platform in which all market participants have the ability to enter multiple bids and offers, observe or receive bids and offers, and transact on such bids and offers.

The rules do not impose any specific algorithm for matching participant bids and offers on an order book.[34]

One-on-one voice and single-dealer platforms do not meet the definition of a SEF, and may not trade derivatives that are subject to the trade execution requirement because they do not provide for the multiple-to-multiple interaction of buying and selling interests.

A SEF may provide RFQ functionality for those market participants that do not wish to display their bids, offers, or requests to all other market participants. An RFQ functionality allows a participant to transmit a request for a quote to a minimum number[35] of market participants in the trading system or platform, to which such market participants may respond.[36] A SEF's RFQ system may include a voice component.

In order to provide RFQ functionality for trading in products subject to a MAT determination, a SEF's RFQ system must be able to satisfy all of the following minimum functional requirements:

(1) receive a request for quotation from a market participant;

(2) submit that request to at least the prescribed minimum number[37] of unaffiliated market participants chosen by the requester;

(3) communicate the RFQ responses and any firm resting bids or offers on the order book to the RFQ requester; and

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30 I.e., mandatory trading on either a DCM or a SEF; see Title 17 Chapter I of the Code of Federal Regulations, http://www.ecfr.gov/cgi-bin/text-idx?SID=2ed6cb4f87f8320c844139f05049281d&tpl=/ecfrbrowse/Title17/17tab_02.tpl (**CFTC Regulations**), §37.9(a) and 7 U.S.C. §2(h)(8).

31 Dodd-Frank Act, s. 2(6); 7 U.S.C. §1(a)(50).

32 7 U.S.C. §1a(16) defines electronic trading facility as "a trading facility that—

(A) operates by means of an electronic or telecommunications network; and

(B) maintains an automated audit trail of bids, offers, and the matching of orders or the execution of transactions on the facility."

33 7 U.S.C. §1a(51) defines trading facility in paragraph (A) as "a person or group of persons that constitutes, maintains, or provides a physical or electronic facility or system in which multiple participants have the ability to execute or trade agreements, contracts, or transactions—

(i) by accepting bids or offers made by other participants that are open to multiple participants in the facility or system; or

(ii) through the interaction of multiple bids or multiple offers within a system with a pre-determined non-discretionary automated trade matching and execution algorithm."

34 CFTC Regulations §37.3.

35 For products not mandated to trade on a DCM or a SEF (i.e., for "permitted transactions"), the RFQ need not be sent to a minimum number of participants.

36 CFTC Regulations at s. 37.9(a)(3).

37 At least two unaffiliated market participants the first year after the final rule, and at least three unaffiliated market participants thereafter.

(4) allow the requester to execute against such firm resting bids or offers along with any responsive orders (RFQ responses).

The regulations do not require a SEF to display a requester's RFQ to market participants not participating in the RFQ. SEFs are also not required to display responses to an RFQ to anyone but the RFQ requester.[38] At the same time that the RFQ requester receives the first responsive bid or offer, the SEF must communicate to the requester any firm bid or offer pertaining to the same instrument resting on the SEF's order book(s).[39]

In providing either order book or RFQ functionality, a SEF may, for purposes of execution and communication, use "any means of interstate commerce, including, but not limited to, the mail, internet, email, and telephone", provided that the execution method otherwise satisfies the minimum requirements under CFTC regulations applicable to order book and RFQ functionality for SEFs.[40]

(b) European Union

MiFID II and MiFIR introduce new rules with respect to trading infrastructure. Among other things, they introduce the new trading venue category of OTF. Alongside RMs and MTFs, OTFs will be a third type of multilateral system in which multiple buying and selling interests can interact in a way that results in contracts. However, unlike RMs and MTFs, an OTF will only be permitted to trade derivatives and certain non-equity instruments, namely bonds, structured finance products and emissions allowances.[41] Operating an OTF will be considered to be providing an investment service so a person wishing to do so will need to be licensed as an investment firm. An RM operator will also be permitted to operate an OTF. Under MiFID II, the main factor distinguishing an OTF from an RM or MTF is that the operator of an OTF would have discretion over how a transaction is to be executed, whereas the interaction of orders on an RM or MTF must be non-discretionary.

The operator of an OTF would be permitted to exercise its discretion in two circumstances: (i) when deciding to place an order on the OTF or to retract it; and (ii) when deciding not to match a specific order with the orders available in the system at a given point in time, provided that this complies with specific instructions received from clients and with best execution obligations.

The operator of an OTF will be able to decide when and how to match a client order, and therefore to facilitate negotiation between clients, so as to bring together two or more potentially compatible trading interests. As a result of this discretion, the operator of an OTF will owe investor protection duties to its clients, consisting of conduct of business rules, best execution, acting in accordance with the client's best interest and client order handling obligations.[42]

Like RMs and MTFs, OTFs will be required to have transparent and non-discriminatory rules governing access to the facility. Unlike RMs and MTFs, OTFs will be permitted to determine and restrict access to their platforms based, among other things, on the role and obligations which the operator of an OTF will have in relation to its clients.[43]

The concept of an OTF does not include a facility "where there is no genuine trade execution or arranging taking place in the system, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services, or portfolio compression, which reduces non-market risks in existing derivatives portfolios without changing the market risk of the portfolios."[44]

The OTF category was intended to include much of the inter-dealer market. Subject to limited exceptions with respect to sovereign debt, an investment firm or market operator operating an OTF will be prohibited from executing client orders on the OTF against its own proprietary capital or that of any entity that is part of the same "group or legal person" as the operator.[45] Unlike the operator of an RM or MTF, the operator of an OTF will be permitted, with client consent, to engage in matched principal trading[46] of OTC derivatives that are not subject to a trading obligation. When matched principal trading is used, the OTF must comply with all pre-trade and post-trade transparency requirements and best execution obligations. An OTF operator or any entity that is part of the same group or legal person as the investment firm or market operator should not act as

38 CFTC Regulations at s. 37.9(a)(3).

39 Ibid. at 37.9(3)(i).

40 Ibid. at s. 37.9(a)(2)(ii).

41 MiFIR at preamble (8).

42 MiFIR, preamble (9).

43 MiFID II, preamble (14).

44 MiFIR, preamble (8).

45 MiFID II, Article 20 at s. 1.

46 MiFID II, Article 4(1)(38) defines matched principal trading as "a transaction where the facilitator interposes itself between the buyer and the seller to the transaction in such a way that it is never exposed to market risk throughout the execution of the transaction, with both sides executed simultaneously, and where the transaction is concluded at a price where the facilitator makes no profit or loss, other than a previously disclosed commission, fee or charge for the transaction".

systematic internaliser[47] in the OTF it operates. The OTF operator should also be subject to the same obligations as an MTF in relation to potential conflicts of interest.[48]

In order to implement the G20 commitment to require standardized derivatives to be traded on exchanges and electronic platforms, MiFIR also creates a platform-trading obligation such that certain derivatives can only be traded on an RM, MTF, OTF or an equivalent third-country trading venue.[49] MiFIR sets out a procedure for determining whether a derivative should be subject to the platform-trading obligation. In implementing this procedure, ESMA will develop technical standards declaring which classes (or sub-classes) of OTC derivatives should be required to be traded only on these specified platforms.
Generally speaking, to be subject to the platform-trading obligation, a class of OTC derivative would be determined to be subject to the clearing obligation, traded on at least one RM, MTF or OTF, and considered sufficiently liquid.[50] The MiFIR contemplates that liquidity would be considered to exist when there are "ready and willing buyers and sellers on a continuous basis". Having regard to the trading venue and the particular class of OTC derivative, the assessment would involve consideration of the average frequency and size of trades in the class of derivatives over a range of market conditions; the nature and lifecycle of products within the class of derivatives; the number and type of active market participants including the ratio of market participants to products or contracts traded in a given market; and the average size of the bid/ask spreads.[51]
In preparing draft technical standards, ESMA is required to take into consideration the anticipated impact that a trading obligation might have on the liquidity of a class of derivatives or a relevant subset thereof and the commercial activities of end users which are not financial entities.[52]

3. MARKETPLACES REGULATED UNDER NI 21-101 AND NI 23-101

NI 21-101 provides a regulatory framework to regulate the operation of "marketplaces"; NI 23-101 governs trading on marketplaces. NI 21-101 uses the term "marketplace" to describe a facility or venue on which securities – and, in some CSA jurisdictions, derivatives – can be traded, including exchanges, quotation and trade reporting systems (**QTRSs**), alternative trading systems (**ATSs**) and other types of trading systems. In general, each of these marketplaces share the following characteristics:

(a) they constitute, maintain or provide a market or facility for bringing together buyers and sellers,

(b) they bring together orders of multiple buyers and sellers, and

(c) they use established, non-discretionary methods under which the orders interact with each other, and the buyers and sellers entering the orders agree to the terms of a trade.[53]

NI 21-101 and NI 23-101 do not provide that the operator of a marketplace regulated thereunder may exercise discretion in the execution of trades on the marketplace. In contrast, customary execution methods in respect of OTC derivative instruments may involve the exercise of discretion in the execution of transactions, as described below. Furthermore, trades executed on a marketplace regulated under NI 21-101 must be reported to and settled through a clearing agency, whereas the OTC derivatives markets that are the subject of this paper do not necessarily impose such an obligation, and it is proposed that trades executed through a DTF would not be required to be cleared unless the derivative were of a class that had been mandated to be cleared pursuant to a clearing rule.

In the Committee's view, the OTC derivatives market in Canada could benefit from a regulatory framework that has sufficient flexibility to accommodate the unique features of OTC derivatives trading, including discretionary execution methods.

The Committee recommends that rules be developed to introduce the DTF as a new category of trading venue, specifically intended for OTC derivatives. We propose that DTFs be subject to rules tailored specifically to the organized platform trading of OTC derivatives, and which are separate from NI 21-101 and NI 23-101. To the extent appropriate, rules governing DTFs would be consistent with comparable requirements in NI 21-101 and NI 23-101.

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47 A systematic internaliser has been defined as an investment firm 'which on an organised, frequent and systematic' basis deals on own account by executing client orders outside a regulated market or MTF: European Securities and Markets Authority (ESMA), *Discussion Paper: MiFID II/MiFIR*, (**ESMA Discussion Paper**), May 22, 2014 at s. 3.3.

48 MiFIR, preamble (10).

49 MiFIR, Article 28 at s. 1.

50 FIA/FIA Europe, Special Report Series: Market Infrastructure Under MiFID II, 13 June 2014.

51 MiFIR, Article 2(1)(17) and ESMA Discussion Paper at s. 3.6.

52 MiFIR, Article 32 at s. 3.

53 Except in Ontario, the term "marketplace" is defined in subsection 1.1(a) of NI 21-101. In Ontario, the term is defined under subsection 1(1) of the *Securities Act* (Ontario).

4. DEFINING "DERIVATIVES TRADING FACILITY"

Having considered the regulatory context related to OTC derivatives trading platforms in the United States and Europe and the existing regulatory framework for marketplaces in Canada, we set out below the Committee's recommendation for the regulation of OTC derivatives trading facilities in Canada.

(a) Scope and key characteristics

The key characteristics of an organized trading platform that would constitute a DTF are described below.

(i) Execution

The Committee recommends that the application of the proposed DTF regulatory regime be limited to those systems and/or facilities that bring together multiple buying and selling interests leading to the execution of OTC derivatives transactions. This would not include bulletin boards and similar facilities that do not provide for the execution of transactions.

(ii) Single dealer vs. Multi-dealer

The Committee recommends that the DTF regulatory regime be aimed at regulating those platforms that are multi-dealer or that facilitate many-to-many transactions. At this time we do not propose that single-dealer or one-to-many platforms be governed under this regime.

We note that platforms that trade OTC derivatives generally fall into one of two broad categories: those with a single liquidity provider (single-dealer/one-to-many platforms) and those with multiple liquidity providers (multi-dealer platforms). One-to-many platforms are structured around a single liquidity provider that provides liquidity for all trades on a bilateral basis to one or more counterparties. Broadly speaking, one-to-many platforms resemble the direct, principal-to-principal bilateral negotiation of transactions, traditionally by telephone, which has historically been the dominant mode of transacting in OTC derivatives. In contrast, multi-dealer platforms are multilateral (i.e., multiple-to-multiple) platforms structured to facilitate the interaction of multiple buying and selling interests, as well as competitive execution systems involving firm bids and offers from multiple dealers. Examples of multi-dealer platforms include (i) an RFQ system, where a participant requests a quote from multiple dealers that have been selected by the participant, and (ii) a competitive interaction of firm bids and offers through, for instance, an order book.[54]

(iii) Discretionary execution and order books

Derivatives trading platforms can also be distinguished by the degree of discretion, if any, that the operator of a platform is permitted to exercise over the execution process. In this context, discretion describes the ability of the platform operator to determine independently, among other things, when to place an order for a participant or to retract it; which participants are contacted with client RFQs; which client orders or RFQs are matched with other orders or quotes; the order and timing of such matching; and how the trade is executed (e.g., by way of voice, RFQ or another execution method). Such discretion assists the facility in seeking liquidity and arranging and negotiating transactions between buying and selling interests prior to execution.[55] Trading itself may then be neither continuous nor fully electronic, which can be important for purposes of finding liquidity in products that tend to trade episodically.

In contrast, some platforms, such as those utilizing an order book, are non-discretionary. A transparent order book in its most basic form allows market participants to enter multiple bids and offers, observe bids and offers entered by other market participants, and choose to transact on such bids and offers.[56] Such systems typically incorporate pre-determined criteria governing the prioritization of and interactions between orders, so as to provide a transparent and objective basis for the continuous or periodic execution of transactions. The operator provides the same prices for the same volume of trading interest in the same market situation, irrespective of the individual participant or client.[57] The operator is in effect left out of the execution process with no discretion as to how interests may interact.[58]

It is important to distinguish between the discretion that a platform operator may have in executing transactions from the discretion that participants may have. We would not consider a DTF to be providing discretionary execution merely because its participants have the ability to amend or cancel their orders or to choose their counterparties under the rules of the platform.

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54 IOSCO Trading Report at 30.

55 As discussed below, discretion exercised solely by the participants themselves is not what is meant here. What is referred to here is the situation where a party plays an active role in brokering the deal between the two participants, such as the role typically played by an interdealer broker in contacting potential counterparties and negotiating price and volume on behalf of (a typically undisclosed) client.

56 Supra note 54 at 10.

57 Committee of European Securities Regulators (CESR), CESR Technical Advice to the European Commission in the Context of the MiFID Review – Equity Markets (CESR/10-802), 29 July 2010 (**CESR Technical Advice**) at 19.

58 MiFIR at recital (7).

Similarly, we would not consider actions taken by a platform operator to ensure market integrity, such as cancelling or amending erroneous or unreasonable trades according to its rules,[59] or blocking access to the platform by a "runaway" algorithm, as an exercise of discretionary execution by a DTF.

We would also not consider a DTF to be exercising discretion only by reason of the communications medium involved (e.g., voice calls). For example, a non-discretionary trading system may feature a voice-order taker employed by the DTF, who receives telephone calls and enters orders into an order book or sends out an RFQ to specific participants as instructed by the caller.[60]

At this time, we have not defined a DTF to exclude platforms or facilities that engage in discretionary trading methods. This approach is consistent with the regulatory objective of regulating all multilateral facilities for trading in OTC derivatives. The Committee is considering whether to recommend allowing a DTF operator to exercise discretion for trading in some OTC derivatives. If the Committee does recommend allowing discretion, in order to address issues such as conflicts of interest we contemplate that DTFs that employ discretionary trading methods would be subject to additional requirements similar to those that apply to a dealer. Requirements currently under consideration by the Committee include requirements to act in the best interests of a client, including best execution obligations.[61] Furthermore, if the Committee does recommend allowing discretion, it may nevertheless recommend that discretion not be permitted in the execution of trades in products that have been mandated to be traded on a DTF.

(b) Proposed Definition of a DTF

(i) OTC Derivatives

OTC derivative is used in this paper in its customary sense to refer to a derivatives contract that is traded other than on a formal exchange, such as on a dealer network or directly between two parties. However, for the purposes of this paper, an OTC derivative does not cease to be an OTC derivative merely because it may be traded on an exchange. This is important because, as discussed elsewhere, the Committee anticipates that in some jurisdictions a DTF may be recognized as an exchange.

(ii) DTF

The Committee proposes to define a DTF to mean a person or company that constitutes, maintains, or provides a facility or market that brings together buyers and sellers of OTC derivatives, brings together the orders of multiple buyers and multiple sellers, and uses methods under which the orders interact with each other and the buyers and sellers agree to the terms of trades.

The proposed definition of a DTF is intentionally broad and would capture various multilateral execution processes and venues. However, the proposed definition is not intended to capture purely bilateral trading, nor one-to-many facilities such as single-dealer platforms. A participant providing trading services to its clients via a single-dealer platform would instead be subject to dealer registration requirements.

Similarly, the proposed definition would not capture facilities or processes where there is no actual trade execution or arranging taking place, such as bulletin boards used for advertising buying and selling interests, other entities aggregating or pooling potential buying or selling interests, electronic post-trade confirmation services, or portfolio compression, which reduces non-market risks in existing derivatives portfolios without changing the market risk of the portfolios.

As discussed above, the Committee is considering whether to recommend allowing discretionary trade execution methods for some trading on DTFs, and the proposed DTF definition is intended to be broad enough to encompass facilities employing such methods. Should the exercise of discretion ultimately be permitted, we anticipate that a DTF that offered such discretionary execution methods would be permitted do so as part of the same entity offering other execution methods, subject to the entity complying with appropriate conflict-of-interest rules.

It is the Committee's intention that the existing framework for the regulation of securities and futures exchanges, ATS's and QTRS's would not be impacted by the new DTF category. The Committee recommends that exchanges trading derivatives that are not OTC derivatives not be regulated as DTFs in respect of their existing or future non-OTC derivatives operations. Existing exchanges that wished to provide a platform for trading in OTC derivatives would be required to apply for authorization to offer trading in OTC derivatives.

[59] Subject to appropriate conflict-of-interest rules and oversight.

[60] However, if that employee were to engage in negotiations with one or more other market participants on behalf of the market participant who placed the order, this would be indicative of a discretionary trading arrangement.

[61] This is discussed in more detail below in section 6, Regulatory Authorization of DTFs.

The Committee acknowledges that some trading platforms may operate as *both* marketplaces[62] under NI 21-101 and DTFs under applicable securities legislation (for instance, a platform that is both an ATS and a DTF). This may occur, for example, where an existing marketplace begins to offer trading in OTC derivatives. The Committee recommends that such hybrid marketplace-DTFs be subject to different regulatory regimes with respect to the different types of products for which they offer trading. The regulation of hybrid marketplace-DTF platforms would be addressed by CSA members on a case-by-case basis, with a view to mitigating or eliminating duplicative regulation.

Question 1: ***Is the DTF category appropriately defined? If not, what changes are needed and why?***

Question 2: ***Is it appropriate to permit DTF operators a degree of discretion over the execution of transactions? Why or why not? If discretion is permitted, should it be permitted only for trading in products that have not been mandated to trade on a DTF?***

5. PERMITTED EXECUTION METHODS

The Committee recommends that a DTF be permitted to use a range of multiple-to-multiple trading functionalities. Some examples of execution methods a DTF might use include the following:

- **order book** systems, typically fully automated, in which market participants can enter multiple bids and offers, observe bids and offers entered by other market participants, and choose to transact on such bids and offers. Order book systems can operate either continuously, or periodically based on the execution of orders in batches at set intervals, and may execute trades automatically at prices determined by a prescribed methodology;

- **RFQ** systems in which participants could transmit a request for a quote on an OTC derivative to market makers in the trading system or platform, to which such market participants may respond;

- **request-for-stream** systems, whereby market makers provide continuous streaming *firm* quotes to buy and sell derivatives contracts for a predefined period of time based upon a client's interest. The client receiving such streaming quotes can "click-to-trade" when the client is prepared to execute the transaction; or

- **hybrid** systems that blend execution functionalities, including those described above (for instance, an RFQ system linked to an order book as described below), or that combine an electronic platform with an element of voice negotiation in the execution of the transaction.[63]

These are merely examples, and the Committee expects that CSA members, upon appropriate review, could find other execution methods also acceptable.

As noted above, the Committee recommends that a DTF be permitted to use a hybrid system that blends execution functionalities. In particular, the Committee contemplates that a DTF might use an RFQ system that is linked to an order book in a manner similar to the requirements applicable to a SEF in the United States (described on page 813). Like on a SEF, the Committee contemplates that transactions could be executed exclusively through the RFQ system (i.e., off-order book) on the basis that pre-trade transparency would be provided by virtue of the RFQ functionality and the existence of the associated order book upon which the mandated product trades.

The Committee recommends that permitted execution methods include both systems that do and those that do not disclose counterparty identities. For instance, order book systems operating in some jurisdictions may not disclose the identity of the counterparties, while in a hybrid system participants often do not know who the other counterparty is until the negotiation of a transaction has been concluded. With RFQ systems, trading interest is initiated by a client requesting firm quotes from market makers. In some cases, the identities of both counterparties may be fully disclosed to each other in advance of execution.[64] Other RFQ systems may involve dealers and clients having pre-arranged credit limits which the system enforces, preserving the anonymity of both the requesting participants and the dealers who provide quotes.

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62 Including exchanges.

63 To illustrate, some multilateral systems provide for matching of indicative quotes. However, once matching interests are identified, a broker (the operator) directs negotiation of the final terms between the parties, discretionarily asking the parties to offer specific terms and thus shaping the deal. This is a common situation with many complex derivatives and fixed income products, though it is expected that technological progress will continue to reduce the need for such operator intervention: European Capital Markets Institute, *Setting the Institutional and Regulatory Framework for Trading Platforms: Does the MiFID definition of OTF make sense?*, by Diego Valiante, ECMI Research Report No. 8, April 2012 at 5–6.

64 Technical Committee of the International Organization of Securities Commissions (IOSCO), *Follow-On Analysis to the Report on Trading of OTC Derivatives,* January 2012 at 11-12.

As discussed above, the Committee is contemplating whether, and the extent to which, the operator of a DTF should be permitted to exercise discretion in the execution of trades. If discretion is permitted, the Committee may recommend that it be permitted only for products that are not mandated to be traded exclusively on a DTF.

Question 3: ***Is the description of permitted execution methods for a DTF suitable for facilities that currently offer or plan to offer trading in OTC derivatives?***

Question 4: ***Please comment on required modes of execution. Should any particular minimum trading functionality be prescribed for DTFs generally?[65]***

6. REGULATORY AUTHORIZATION OF DTFs

The Committee recommends that a DTF, regardless of whether or not it offers trading in OTC derivatives that are mandated to trade exclusively on a DTF, will require an authorization from the securities regulatory authority in each jurisdiction in which it operates, or an exemption from such requirement. The Committee recommends that DTFs generally be regulated similarly to exchanges. Additionally, a DTF that exercises discretion in the execution of transactions would be subject to requirements that are similar to those applicable to derivatives dealers.

It is the Committee's intention that the features and requirements of DTFs be harmonized across the various jurisdictions in Canada. However, in some provinces a DTF may be a category of exchange, while in other provinces a DTF may be a new type of entity. In either case, as discussed above, NI 21-101 would not apply to DTFs, and a new regulatory framework, with such similarities to NI 21-101 as are appropriate, would apply.

(a) Base regulation for all DTFs

The Committee recommends that a basic level of regulation apply to all DTFs (i.e., the base level of regulation would apply to a DTF that employed only non-discretionary methods of execution, such as an order book or an RFQ system following set rules regarding routing of requests and quotes).

The Committee recommends that all DTFs be required to perform an appropriate regulatory function by, among other things, having established requirements to govern the conduct of participants on the DTF and, whether directly or indirectly through an authorized regulation services provider, monitoring compliance by participants with those requirements and appropriately disciplining participants in the event of non-compliance. The DTF's rules would be required to be designed to ensure compliance with applicable securities legislation, prevention of fraud and manipulative acts and practices, and the promotion of just and equitable principles of trade. A DTF would only be responsible to regulate activity taking place on that DTF. A DTF may also be subject to requirements relating to internal controls and systems, and such other requirements that currently apply to marketplaces as may be appropriate.

(b) DTFs exercising discretion

Additionally, the Committee recommends that a DTF that exercises discretion in the execution of transactions (as discussed above) be subject to requirements that are similar to those applicable to derivatives dealers.[66] Such a DTF would be required to retain a third-party regulation services provider to perform its regulatory function, including monitoring and enforcing the conduct of participants on the DTF—including the DTF operator itself—in light of the fact that the operator would be acting as a dealer on its own platform. Appropriate requirements addressing conflicts of interest would also apply.

The Committee recommends that a DTF exercising discretion be required to comply with relevant dealer requirements including, for example, a duty to act fairly, honestly and in good faith, proficiency requirements for individual representatives of the DTF, "know your client" and suitability obligations, account handling requirements, confidentiality of customer information, and best execution.[67] A DTF exercising discretion would also need to first inform its participants of the extent of its discretion and obtain consent from each participant of the DTF with respect to exercising discretion in its trading interactions with the participant.

Question 5: ***Is the proposed regulatory framework for DTFs appropriate?***

Question 6: ***Is it appropriate to impose dealer requirements on a DTF where the operator of the DTF exercises discretion in the execution of transactions? (Please explain.) If so, should such a DTF be required to register as a dealer, or should only certain dealer requirements be imposed on the DTF? (Which ones?)***

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65 As contrasted with those execution methods that would be permitted for products that are mandated to trade on a DTF; see Question 29.

66 See CSA Consultation Paper 91-407 – *Derivatives: Registration*, published on April 18, 2013.

67 NI 23-101 and its Companion Policy set out best execution obligations in the context of securities trading. Similar considerations may apply to trading on DTFs, as well as additional factors that may be relevant specifically to derivatives trading.

Question 7: ***To address conflicts of interest, should a DTF that exercises discretion in the execution of transactions be required to exercise this functionality in a separate affiliated entity? Why or why not?***

Question 8: ***What factors are relevant in defining the proposed best execution duty?***

7. ORGANIZATIONAL AND GOVERNANCE REQUIREMENTS

All DTFs would be required to meet a number of basic organizational and governance requirements, including with respect to financial resources, systems, personnel, rules, monitoring, record-keeping, conflicts of interest and, where appropriate, non-discriminatory access.

Comparable to those established in NI 21-101 and NI 23-101, these requirements would include policies and procedures and, where applicable, agreements between participants and the facility, designed to define access requirements, ensure best execution,[68] ensure the integrity of market quotations and prices, clearly establish the characteristics of derivatives traded on the DTF, and require the implementation of compliance systems and oversight processes. A summary of the requirements recommended by the Committee is set out below.

(a) Access

To ensure that the rules, policies, procedures, and fees, as applicable, of a DTF do not unreasonably create barriers to access to the services provided by the DTF:

- a DTF would be required to establish written standards that are transparent and equitable for granting access to each of its services, including trade feeds to regulated clearing agencies, and keep records of (i) each grant of access, including the reasons for granting access to an applicant, and (ii) each denial or limitation of access, including the reasons for denying or limiting access to an applicant; and
- a DTF would be prohibited from unreasonably prohibiting, conditioning, or limiting access by a person or company to services offered by the DTF.

A DTF would be required to set fees that were fair and transparent, did not create unreasonable barriers to access and were commensurate with the services provided.

The operator of a DTF might wish to require that all trades on its facility be cleared. The Committee is considering whether it is appropriate to allow a DTF to set such a requirement. (The Committee recognizes that a DTF may offer trading in products that are not cleared at all. Therefore such a requirement, if permitted, would apply only to trades that are capable of being cleared.)

Similarly, the Committee is considering whether or not it would be appropriate to allow a DTF to tie the use of its facility to a specified clearing agency or trade repository, having regard to the number of clearing agencies and trade repositories anticipated to be operating in Canada.[69] Prohibiting such tying could enhance market participants' choice in market infrastructure providers; however, it could also reduce the efficiency of clearing and transaction reporting, and it may be an unreasonable burden to require a DTF to establish links with all recognized trade repositories and clearing agencies.

Finally, the Committee is considering whether to permit a DTF that exercises discretion in trade execution to determine and restrict access to its services based on the role and obligations that the operator will have in relation to its participants.[70] Possible grounds for limiting access might include factors related to client sophistication and technical capability. To prohibit a DTF that exercises execution discretion from restricting access to its services could, in the Committee's view, result in the operator of a DTF being forced to assume a dealer-client relationship in respect of a particular person or company even where deemed unsuitable by the DTF operator.

Question 9: ***Is it appropriate to allow a DTF to require clearing of all trades on the DTF that are capable of being cleared?***

Question 10: ***Is it appropriate to allow a DTF to require transactions executed on its facility to be cleared through a particular clearing agency and/or reported to a particular trade repository?***

Question 11: ***Is it appropriate for a DTF that exercises discretion in trade execution to be permitted to limit access to its facility? If so, on what grounds should it be permissible?***

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68 Supra note 67.

69 Comparable to NI 21-101, s. 5.1 and proposed s. 13.2 published on April 24, 2014.

70 This is comparable to the requirement in MiFID II that "OTFs should be able to determine and restrict access based inter alia on the role and obligations which they have in relation their clients": MiFID II, preamble (14).

(b) Regulatory function and market surveillance

DTFs would be required to establish requirements to govern the conduct of their participants on the platform, and to monitor and enforce compliance with these requirements.

All DTFs would be subject to a requirement to take all reasonable steps to ensure that its operations do not interfere with fair and orderly markets. This obligation would apply both to the operation of the DTF itself and to the impact of the DTF's operations on the Canadian market as a whole.[71]

(i) DTFs generally

All DTFs would be expected to perform certain regulatory and surveillance functions. The Committee contemplates that a DTF that does not exercise execution discretion may perform its regulatory and surveillance functions either itself or through regulation services provider. A DTF that does exercise discretion would be required to retain an authorized third-party regulation services provider to monitor and enforce compliance with the rules of the DTF. The Committee contemplates that these regulatory and surveillance functions would include, but may not be limited to, the following:

- personnel and system capability for real-time monitoring of all activities in the entire transaction cycle on the trading platform;
- reporting of any improper, disorderly or disruptive trading activity on its facilities, including potential manipulative or abusive transactions or behaviour, to regulators;
- systems capable of sharing information related to activities of the entire transaction cycle with regulators on real-time basis; and
- systems capable of recreating the trading environment at any point during the last seven years within a reasonable period of time.

The Committee contemplates that DTFs would be required to enforce compliance with their rules by means other than merely exclusion from the DTF (e.g., by fines). DTFs would be required to maintain sufficient resources to discipline, suspend, or expel participants that violate its rules, and to establish and impartially enforce rules governing denials, suspensions, and revocation of a participant's access privileges to the DTF.

(ii) DTFs with discretion

DTFs exercising discretion in the trade execution process would be required to retain a third-party regulation service provider to perform the functions described above, since compliance by both the participants and the operator itself—due to its dealer-like functions—would need to be monitored.

(c) Rules

A DTF would be required to establish and clearly define rules governing the operation of the DTF and the conduct of the participants on the platform, and to make such rules publicly available. Rules would be required to address:

- participant conduct for order entry and trade executions to address abusive trading practices and/or manipulations;
- emergency procedures for matters such as trading halts or disruptions;
- procedures to resolve any disputes relating to trading activity on the platform, including disputes resulting from decisions, rulings or other determinations made by platform staff; and
- if applicable, the DTF's trading protocol, including the order entry mechanism and priority sequence of any transaction matching.

DTFs would also be required to have rules and policies that are not contrary to the public interest and are designed to

- require compliance with securities legislation;
- ensure compliance with applicable legislation;

[71] Comparable to s. 5.7 of NI 21-101.

- prevent fraudulent and manipulative acts and practices;
- promote just and equitable principles of trade; and
- foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating, transactions in derivatives.[72]

(d) Prohibition against manipulative/fraudulent trading activity

DTFs and their participants will be subject to a prohibition against engaging in, directly or indirectly, any act, practice or course of conduct relating to an OTC derivative that the person or company knew, or reasonably ought to have known, would (i) result in or contribute to a false or misleading appearance of trading activity in, or an artificial price for, an OTC derivative; (ii) perpetrate a fraud on any person or company, or (iii) be otherwise harmful to derivatives markets.

(e) Financial resources

A DTF operator would be required to demonstrate evidence of sufficient financial resources to fund the ongoing operation of the platform.

(f) Personnel

A DTF operator would be required to have sufficient qualified and competent personnel to ensure effective operation of the trading platform, including to ensure technology and system stability and conducting monitoring, and to respond to enquiries or complaints from platform participants without unreasonable delay. DTFs that have assumed responsibility for regulating conduct of their participants would be required to have sufficient qualified and competent personnel to monitor trading on their trading platform, monitor compliance with their rules and applicable legislation, investigate suspected violations and bring enforcement action where appropriate.

(g) Systems

A DTF would be subject to system requirements similar to requirements applicable to marketplaces regulated under NI 21-101. For example, a DTF would be required to

- develop and maintain an adequate system of internal controls over its critical systems;
- develop and maintain adequate information technology general controls, including for example, controls relating to information systems operations, information security, change or problem management, and network and system software support;
- at least annually engage a qualified party to conduct an independent system review and prepare a report in accordance with established audit standards for each system that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance, if applicable, clearing, and the information security controls of its auxiliary systems;
- develop and maintain robust contingency and business continuity procedures;
- at least annually, in accordance with prudent business practice, make current and future capacity estimates for its systems and conduct capacity stress tests of its critical systems to test their ability to process information in an accurate, timely and efficient manner and further, consistent with the requirements of NI 21-101 and proposed changes to it, advise the regulator of the hours of operation of any testing environment provided, a description of any differences between the testing environment and the production environment and the potential impact of these differences on the testing;
- be accessible by all platform participants subject to adequate safeguards and controls, to prevent unauthorised access;
- take reasonable steps to ensure that all participants have a reasonable opportunity to access trading systems without a time delay;
- maintain appropriate documentation of the systems operation and be able to provide such documentation to regulators upon request; and

[72] Compare ss. 5.3-5.4 of NI 21-101.

- have transparent and publicly available documentation relating to on-boarding criteria and system interface requirements.

A DTF would be subject to additional obligations including being capable of reporting transactions involving Canadian counterparties to a trade repository recognized, designated, or exempt in Canada by the applicable local regulator. Although not all transactions on a DTF would be required to be cleared, a DTF would be required to be capable of submitting all derivatives executed on its platform that were subject to mandatory clearing to a clearing agency recognized, designated, or exempt in Canada by the applicable local regulator, and fulfilling obligations placed on it by the clearing agency to ensure efficient and orderly execution of trades to be cleared, such as pre-trade credit limit verification.

In support of the trade reporting functionality described above and the record-keeping requirements described below, a DTF's systems would require

- the capability to assign a unique transaction identifier to each transaction executed on the DTF, to be used in publishing transaction information and in reporting the transaction to a trade repository or regulator, and in processing the transaction through a clearing agency; and

- the capability to time-stamp each activity in the transaction cycle, including order entry, amendments, cancellation, execution, transmission of information for clearing, and reporting to a trade repository.

(h) Record-keeping

A DTF would be required to keep, in electronic form, books, records and other documents reasonably necessary for the proper recording of its business, including the following:

- records of each grant, denial or limitation of access, as well as the reasons therefor;

- transactional records for all orders and trades, including cancellations or amendments of orders and trades, including prices, volume, counterparties, time order received, time trade executed, etc.;

- records of all bids and offers, RFQs, and replies to RFQs, including the time they were made available on the DTF;

- market statistical records, including historical prices, volume, high, low etc.;

- system records, including descriptions of system protocols, records of changes made to order management systems and transaction matching algorithms, results of system tests, and so forth; and

- records of all messages sent to or received from platform participants, including the identity of the participant involved, the instrument, the price, the volume and the time that the message was received or sent.

Consistent with requirements for marketplaces regulated under NI 21-101, a DTF would be required to keep these records for at least 7 years and in an easily retrievable format for at least the first 2 years. Upon request, these records would need to be made available to regulators as soon as practicable but in any event within 10 business days.

(i) Conflicts of interest

A DTF would be expected to establish, maintain and ensure compliance with policies and procedures that identify and manage any conflicts of interest arising from the operation of the DTF or the services it provides.[73] Among other things, this means that a DTF would be required to have appropriate corporate governance structures, policies and procedures to address any conflicts of interest resulting from the ownership or control of the platform or its parent entity. In particular, where the platform is owned by participants in the derivatives market, regulators would expect that the platform's policies will ensure that its owners will not have a competitive advantage as a result of their ownership stake. A DTF would be expected to have appropriate structures to ensure that the interests of all market participants are considered when the platform is making decisions relating to its operations.

The operator of a DTF would be prohibited from entering into trades as principal on its own account. This addresses concerns related to the DTF's access to privileged order information and other information in the system. However, a shareholder or other owner of a DTF should be allowed to trade on the DTF for its own account, subject to appropriate conflict-of-interest rules.

[73] Comparable to NI 21-101, s. 5.11.

(j) Disclosure by DTFs

A DTF would be required to publicly disclose, on its website, information reasonably necessary to enable a person or company to understand the DTF's operations and the services it provides, including but not limited to information related to fees; how orders are entered, interact and are executed; access requirements; and policies and procedures designed to identify and manage conflicts of interest arising from the operation of the DTF or the services it provides.[74]

As discussed above in section 0, a DTF exercising discretion in trade execution would be required to disclose the nature and extent of that discretion.

(k) Confidential treatment of trading information

A DTF would be required to implement reasonable safeguards and procedures to protect a participant's order or trade information. Among other things, a DTF would be prohibited from releasing a participant's order or trade information to a person or company other than the participant, a securities regulatory authority or a regulation services provider unless the DTF participant has provided prior written consent to the release of the information; the release of information is required by applicable law; or the information has already been publicly and lawfully disclosed to another person or company. However, subject to certain conditions, we anticipate that a DTF would be permitted to release trading data for use in research.

Question 12: ***Are the proposed organizational and governance requirements for DTFs appropriate? Are there additional organizational and governance requirements that the Committee should consider?***

Question 13: ***Is it appropriate that a DTF that does not exercise execution discretion be permitted to perform its regulatory and surveillance functions itself, or should it be required in all cases to engage a third-party regulation services provider for this purpose? Please explain.***

Question 14: ***Do you agree with the proposal to prohibit DTF operators from entering into trades on their platforms as principals, on their own accounts? Please explain.***

Question 15: ***How should the sufficiency of a DTF's financial resources be evaluated? Please comment on the methodology and frequency of the calculation.***

8. PRE-TRADE TRANSPARENCY

Pre-trade transparency in the context of OTC derivatives refers to the extent to which participants are able to observe orders and quotations prior to transactions being executed. For market participants, pre-trade transparency improves the price formation process and allows participants to assess liquidity. Market participants need complete, timely, and accurate information about markets or products to assess the potential return and/or exposure to risk posed by a derivative. Accordingly, a lack of pre-trade transparency with respect to product characteristics or market conditions can result in an inability to properly evaluate the appropriateness of a price or value of a trade as well as the potential consequences of entering an order or quote. In most circumstances, pre-trade transparency fosters investor confidence and promotes a fair market.

On the other hand, requiring details such as trade size or size and price of quotes to be publicly disseminated in certain trading systems (for instance, an RFQ system) may disadvantage the entity seeking the quote or its potential counterparty by permitting the broader market to use that information in a way that disadvantages the entity seeking the quote or its potential counterparty. Further, pre-trade transparency information in relation to an illiquid product may not significantly assist in price formation. For example, if a market maker were required to maintain bid and ask prices for an illiquid product, the spread would likely be wider. The price posted would then not accurately reflect the available prices and one would need to call (or otherwise submit a request for quote) to establish these. Accordingly, the Committee recommends that pre-trade transparency requirements apply only to those products that are sufficiently liquid to ensure that the information is of benefit to market participants and the price formation process.

Given the significant differences between these markets and equity market structures, we expect that pre-trade transparency requirements will need to be calibrated to take into account specificities of OTC derivatives. In that regard, we note that presently liquidity providers in derivatives markets often provide liquidity on demand via RFQ systems as opposed to continuous firm quotes.

[74] Comparable to NI 21-101, s. 10.1.

The US approach to pre-trade transparency is to (i) require SEFs to provide an order book on which market participants may make executable bids or offers which are displayed to all participants, (ii) require an RFQ to be disseminated to a minimum number of liquidity providers, and (iii) require dealers to "show" other market participants the terms of a prearranged order book trade between customers or between themselves and a customer through the 15-second rule.[75]

Large notional size swap transactions that would otherwise be required to trade through a SEF or DCM (i.e., block trades) are exempted from pre-trade transparency requirements, where they meet or exceed a minimum threshold. As a result, a block trade could, for example, be pre-arranged and executed away from the SEF's order book.

In contrast to the CFTC approach of promoting pre-trade transparency, under MiFID II, the EU will require each regulated venue, including an OTF, to make public current bid and offer prices, and the depth of trading interests at those prices, for derivatives traded on its platform. An OTF must make this information available to the public on a continuous basis during normal trading hours; however, the requirement for public dissemination will not apply to hedging transactions.[76] The range of bids and offers, and the depth of trading interest at those prices, to be made public for each class of financial instrument, including derivatives, is to be specified by ESMA in forthcoming technical regulations.[77]

European regulators will have discretion to waive the obligation on OTFs and other trading venues to make public certain pre-trade information for any of the following:

(1) orders that are large in scale compared to normal market size (block trades);

(2) actionable indications of interest in RFQ and voice trading systems that are above a threshold size, calibrated specifically to the type of instrument, which would expose liquidity providers to undue risk;

(3) derivatives not subject to the trading obligation;[78] and

(4) other financial instruments for which there is not a liquid market.[79]

The Committee is of the view that requiring DTFs to publish pre-trade information for OTC derivatives that are not sufficiently standardized and liquid could have adverse and unintended consequences for the market and participants, including a negative impact on overall market liquidity. In the absence of a DTF-trading mandate for a particular derivative or class of derivatives, the Committee does not recommend requiring a DTF to provide a particular level of pre-trade transparency with respect to trading in that derivative. Nevertheless, if a DTF chooses to provide an execution method that inherently provides a certain degree of pre-trade transparency (for instance, a published order book),[80] the DTF would be required to provide the resulting pre-trade information in a manner that does not unreasonably prohibit, condition, or limit access by a participant or class of participants to such information. Further, the DTF will be required to report such information accurately and on a timely basis.

For trading in OTC derivatives that are subject to a DTF-trading mandate, the Committee recommends that DTFs be required to satisfy pre-trade transparency requirements, as discussed below in section 0.

Question 16: Should pre-trade transparency requirements apply to OTC derivatives that trade on DTFs but that have not been mandated to be traded on DTFs? If yes, what requirements should apply, and should any exemptions be provided?

9. POST-TRADE TRANSPARENCY

Post-trade transparency in the context of OTC derivatives refers to the dissemination of price and volume information, other than to the executing parties, on completed transactions.

Although orders and quotes may help investors decide where and when to trade, prompt post-trade transparency helps market participants determine whether quotes are reliable, to assess the quality of the markets, and to assess execution costs. Without

[75] Pursuant to the 15-second rule, SEFs must require that brokers or dealers who have the ability to execute on a SEF's order book against a customer's order or to execute two customer orders against each other be subject to a 15-second timing delay between the entry of the two orders, such that one side of the potential transaction is disclosed and made available to other market participants before the second side of the potential transaction (whether for the trader's own account or for a second customer) is submitted for execution.

[76] Defined as "derivatives transactions of non-financial counterparties which are objectively measurable as reducing risks directly relating to the commercial activity or treasury financing activity of the non-financial counterparty or of that group": MiFIR, Article 8 at s. 1.

[77] MiFIR, Article 9 at s. 5.

[78] I.e., the obligation to trade only on regulated markets, MTFs, OTFs, or equivalent foreign facilities.

[79] MiFIR, Article 9 at s. 1.

[80] Although a firm quote in response to a request for quote might be considered to be an order for the purposes of subsection 7.1(1) of NI 21-101, the Committee would likely not recommend that pre-trade transparency be required from DTFs in the situation where a quote is provided only to the requesting party.

post-trade transparency, there may be few warnings of impending market trends. Market participants cannot respond quickly to selling or buying surges because they cannot see them happening as clearly or quickly. Most importantly, post-trade transparency can help market participants assess liquidity in a given market.

In the US, SEFs are required to make public "timely information on price, trading volume, and other trading data on swaps to the extent prescribed by the Commission". Trades are to be reported to a swap data repository "as soon as technologically practicable" after execution.[81] In turn, the swap data repository must publish the information as soon as technologically practicable. Certain market information must also be made "readily available to the news media and the general public without charge, in a format that readily enables the consolidation of such data, no later than the business day following the day to which the information pertains."

Under the SEF regime, block trades benefit from a delay in public dissemination of trade data. The length of the delay varies depending on the counterparty type and whether or not the swap is subject to mandatory clearing; block trade delays are subject to an initial phase-in period. For swaps subject to mandatory clearing involving at least one counterparty that is a swap dealer, the delay in the public dissemination of swap transaction data will ultimately be 15 minutes from the time of execution. The block trade rule also establishes "cap sizes" for notional and principal amounts that will mask the total actual notional size of a swap transaction if it exceeds the cap size for a given swap category. The notional size of such a trade will be reported as larger than the cap size, rather than as a particular notional amount.

The approach in the EU is very similar. Specifically, OTFs and other trading venues are required to make public the price, volume and time of transactions executed in respect of derivatives traded on an OTF or other trading venue, and to make these details public in "as close to real-time as is technically possible" and "on a reasonable commercial basis".[82] The information must then be made available to the public "free of charge 15 minutes after publication".[83] However, regulators will be able to authorize an OTF to defer publication of this information for transactions that are (i) large in scale compared with the normal market size for the derivative, or the class of derivative, being traded (e.g. block trades); (ii) related to derivatives, or a class of derivatives, for which there is not a liquid market; or (iii) above a threshold size, calibrated specifically to the derivative or class of derivative, which would expose liquidity providers to undue risk, taking into account whether the relevant market participants are retail or wholesale investors.[84] The ESMA is to provide further information regarding the meaning of "as close to real-time as is technically possible", and the length of delay that will be allowed for the deferred publication of post-trade information.[85]

With respect to post-trade transparency, the Committee recommends that DTFs be required to report to the public transactions executed on the DTF in as close to real-time as technically feasible. The Committee is considering the best method to achieve the public dissemination of transactions on a DTF, whether by requiring a DTF to disseminate the transaction data to the public directly, or by requiring a DTF to report the transactions to a trade repository, and requiring the trade repository to disseminate the trade data to the public.[86] In either case, deferred publication of this information would be permitted in certain circumstances, such as for block trades.[87] Additionally, the Committee recommends that DTFs be required to provide certain market information, to be determined by the Committee,[88] to the general public at no charge on a delayed basis (e.g., the next business day). Although not required to, a DTF would not be prohibited from disseminating real-time data.[89]

In addition to a DTF's public reporting obligation, and especially in the event that a DTF is permitted to fulfill its public reporting obligation by reporting trade data to a trade repository, the Committee is also considering whether a DTF should be required to disseminate all transactions on the DTF directly to all its participants, in addition to reporting the transactions to a trade repository.

Separate from the post-trade transparency requirements described above, the Committee recommends that DTFs be required to provide information relating to a trade to the participants involved in that trade, at no additional cost to those participants.

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81 CFTC Regulation, s. 37.900 and s. 43.3.

82 MiFIR, Article 10, s. 1; Article 13, s. 1.

83 MiFIR, Article 13, s. 1.

84 MiFIR, Article 11, s. 1.

85 MiFIR, Article 11, s. 4.

86 Cf. CFTC Regulations, §43.3, Method and timing for real-time public reporting.

87 The deferral would take place either at the DTF, before reporting the trade to the trade repository, or at the trade repository, as is the case in the US.

88 See Question 21, below.

89 However, the Committee recognizes that it may not be desirable for a DTF to publish trade information *sooner* than that same information can be published by a trade repository, as this may create unintended incentives. The Committee recommends addressing this situation should the potential for it arise.

Question 17: ***Are the proposed post-trade transparency requirements (involving real-time trade reporting as well as public reporting of certain daily data) appropriate for DTFs?***

Question 18: ***What is the preferred method for real-time public reporting of transactions executed on a DTF (i.e., directly by a DTF, via trade repositories, or some other method)? What are the advantages and disadvantages of the proposed options?***

Question 19: ***When should deferred publication of trade information be permitted? Are there circumstances other than block trades?***

Question 20: ***Assuming that deferred publication of trade information should be permitted for block trades, what criteria should be considered when determining the minimum block trade threshold size to permit deferred trade disclosure?***

Question 21: ***What market information should a DTF be required to provide to the general public without charge, and on what schedule? Please be as specific as possible as to data elements, granularity, and schedule (compare with the US CFTC rules in 17 CFR 16.01).***

Question 22: ***In addition to reporting trade information to a trade repository, should a DTF be required to disseminate trade information directly to all its participants, or only to the counterparties to the trade? Should there be a minimum amount of post-trade information that is disseminated to all participants, containing less detail than the information provided to the counterparties? Please specify.***

10 TRADING MANDATE

(a) Mandating OTC derivatives to be traded on an organized platform

The Committee recommends that sufficiently liquid and standardized OTC derivatives be subject to a requirement to be traded exclusively through a DTF.

At the present time, the Committee does not believe it has sufficient data with respect to liquidity levels in the OTC derivatives market in Canada to be able to assess whether the introduction of mandatory DTF trading for a particular class of OTC derivatives would be appropriate. Similarly, the Committee at present has insufficient data with respect to volume and turnover in OTC derivatives of various asset classes in Canada and the extent to which transactions in such asset classes are currently being executed electronically or on multilateral platforms. We anticipate being in a position to recommend particular OTC derivatives as suitable for mandatory DTF-trading after trade reporting and clearing obligations have been in effect for a period of time and the members of the CSA have had sufficient time to analyze the resulting data and consult with other Canadian authorities and the public. We anticipate further that such analysis will be repeated periodically, with a view to requiring additional derivatives to be traded through a DTF when conditions warrant, and possibly to removing derivatives that no longer meet the criteria for mandatory trading on a DTF.

The Committee is monitoring and will continue to monitor developments in the marketplace in respect of the trading mandate that has recently come into effect in the US for certain interest rate and credit derivatives. The Committee will closely gauge the level of adoption and the consequences, intended or otherwise, of the DTF-trading mandate on OTC derivatives markets.

In considering whether to require that a class of derivatives be traded exclusively through a DTF, the Committee proposes that regulators consider whether the class of derivative is

- subject to a clearing obligation pursuant to applicable securities legislation, which topic has been addressed by the Committee in CSA Consultation Paper 91-406 *Derivatives: OTC Central Counterparty Clearing*, published June 2012 and CSA Staff Notice 91-303 *Model Provincial Rule on Mandatory Central Counterparty Clearing of Derivatives*, published December 2013;
- sufficiently liquid to trade exclusively through a DTF, having regard to factors including the average volume, frequency and size of trades; the number and characteristics of active market participants; and the characteristics of the derivative, including degree of standardization;
- traded by a sufficient number of regularly-participating market participants to ensure that the market is competitive and not susceptible to control by a small number of participants;
- mandated to be traded on a regulated venue in other jurisdictions; and
- already trading through the facilities of a DTF and, if so, the execution method in use for that class of derivatives.

This approach aligns with the procedure in the EU for determining whether a derivative will be subject to a platform-trading mandate (discussed above in section 0). This approach is also like that adopted in the US, in that it would take into account whether an OTC derivative, or class of OTC derivative, has already been made available to trade through the facilities of a DTF.

The Committee recommends that, where a derivative has been mandated to trade exclusively on a DTF, the mandate apply to all trading activity by all market participants. It is anticipated that this would maximize the liquidity and transparency benefits from shifting trading to centralized platforms. However, the Committee would like to learn whether there are any situations in which a product that has been mandated to trade exclusively on a DTF should nevertheless be permitted to trade other than on a DTF (or other exchange that has been authorized to trade in OTC derivatives).

Question 23: ***Are the proposed criteria for determining whether a derivative will be subject to a DTF-trading mandate appropriate? Should other criteria be considered?***

Question 24: ***Are there existing OTC derivatives that should be considered suitable for mandatory trading on a DTF? Are there classes of OTC derivatives for which a mandatory trading obligation would be detrimental to market participants?***

Question 25: ***Are there any situations in which a product that has been mandated to trade exclusively on a DTF should be permitted to trade other than on a DTF? Should any category of market participants be exempt from a trading mandate?***

Question 26: ***Should there be a formal role for DTFs in initiating the process to specify that a class of OTC derivatives is mandated to trade exclusively on a DTF, comparable to the role of SEFs in the MAT process described on page 813?***

(b) Enhanced requirements where derivatives are subject to a DTF-trading mandate

The Committee is considering additional, enhanced requirements for DTFs that offer trading in a class of derivatives that is the subject of a DTF-trading mandate.

First, the Committee recommends that a DTF be required to disclose to its users accurate and timely bid and offer prices, as well as market depth at each price level, with respect to derivatives subject to a DTF-trading mandate.

However, the Committee anticipates that pre-trade transparency requirements imposed in respect of derivatives subject to a DTF-trading mandate may need to be tailored for the execution methods employed on the DTF. For instance, for trading via RFQ, the requests and quotes are only between the requester and the interrogated dealers so that, if pre-trade transparency is to be achieved in an RFQ market, it would have to be through such measures as a requirement for an RFQ to be sent to a minimum number of unaffiliated dealers, as described below.

Pre-trade transparency requirements might also take into account transaction size, including turnover, and other relevant criteria. However, such customization may not be necessary if the range of execution methods is limited for trading in OTC derivatives subject to a DTF-trading mandate.

The Committee recommends that CSA members exempt orders and quotes from pre-trade transparency requirements (or perhaps permit modified disclosure that masks the size of the order or quote) where an order or quote is sufficiently large in scale relative to normal market conditions (specific to the instrument) such that it would expose liquidity providers to undue risk. The Committee is continuing to assess what size threshold would be appropriate for the Canadian OTC derivatives market, recognizing that what is appropriate may vary depending on the liquidity of a particular product.

In addition to an enhanced pre-trade transparency requirement for trading in derivatives subject to a DTF-trading mandate, the Committee is also considering whether to require a DTF that offers trading in a mandated product to provide a minimum order book functionality—comparable to that required of SEFs—so as to enable market participants to make executable bids and offers, and display those bids and offers to all other market participants on the DTF. The requirement for an order book would help to ensure an appropriate degree of pre-trade transparency is provided for OTC derivatives that are subject to a DTF-trading mandate.

The Committee is also considering permitting trading in OTC derivatives subject to a DTF-trading mandate to occur by way of an RFQ system in conjunction with an order book. The Committee contemplates that an acceptable level of pre-trade transparency may be provided where an RFQ is communicated to an appropriate number of unaffiliated participants, and responses to the request, together with matching bids or offers resting on the associated order book, are communicated to the requester. As on a SEF, the Committee contemplates that transactions could be executed exclusively through the RFQ system (i.e., off-order book) on the basis that pre-trade transparency would be provided by virtue of the RFQ functionality and the *existence* of a transparent order book which could encourage orders to compete with quotes.

The Committee contemplates that even if an order book, or hybrid order book and RFQ system, were required for trading in derivatives subject to a DTF-trading mandate, market participants would retain the option to pre-arrange transactions in OTC derivatives that have been mandated to trade—that is, to negotiate on a bilateral basis, separate and apart from the order book or RFQ system—provided that the order was both executed through the order book and subject to an appropriate time-delay. This requirement would be comparable to the 15-second rule applicable to order book trading on SEFs, referenced above in section 8. The underlying policy objective of the time delay is to "expose" the trade to the market prior to execution to allow the market to compete on one side of that trade

Question 27: ***What pre-trade transparency requirements are appropriate for OTC derivatives that have been mandated to be traded on a DTF? In particular, what precise pre-trade information should a DTF be required to publish for OTC derivatives that are subject to a DTF-trading mandate? Please be specific in terms of the execution method (e.g., order book, RFQ, etc.).***

Question 28: ***For the purpose of exempting large orders and quotes from pre-trade transparency requirements or permitting modified disclosure, how should an appropriate size threshold be determined?***

Question 29: ***Is it appropriate to limit trading in OTC derivatives that have been mandated to be traded on a DTF to specific permitted execution methods, e.g., an order book, or a request-for-quote system offered in conjunction with an order book? Why or why not? If so, which modes of execution should be permitted for products that are mandated to trade on a DTF? Can an appropriate level of pre-trade transparency be achieved with other methods of execution? What other factors should be considered?***

Question 30: ***What additional requirements should apply to DTFs with respect to trading in products that have been mandated to trade on a DTF?***

Question 31: ***Please describe any specific characteristics of the Canadian OTC derivatives markets that the Committee should consider, which might justify a divergence between Canadian rules and those in effect in the US and the EU. Please consider transparency requirements, the trading mandate, and anything else you think relevant. Please refer to specific consequences of the characteristics you identify.***

11. FOREIGN-BASED DTFs

The Committee recommends that a foreign-based DTF, such as a SEF or OTF, that provides Canadian participants with direct access[90] to their trading platforms be subject to the requirements of the proposed DTF regulatory regime. A foreign DTF would be required to be authorized, or exempted from authorization, in each local jurisdiction of Canada in which it provides a local participant with direct access. However, the Committee recommends that CSA members consider exemptions for foreign-based DTFs, on a case-by-case basis, from some or all of the requirements of the DTF regime if the foreign-based DTF is able to demonstrate that the regulation and oversight in its home jurisdiction is comparable to that which would apply under the proposed DTF regulatory regime. In such cases the Committee recommends that CSA members consider relying on the day-to-day oversight by the home regulator of the foreign-based DTF, generally limiting direct oversight to matters of particular local importance.[91] The foreign-based DTF would still be subject to reporting obligations to Canadian securities regulators with respect to services provided to local participants.

[90] In this context, "direct access" means that a participant may transmit orders and enter trades directly onto a DTF without intermediation by another participant.

[91] CSA members might retain discretion to oversee such matters as fair access and compliance with Canadian market integrity requirements.

1.1.4 Ontario Securities Commission, Investment Funds and Structured Products Branch – IFRS Release No. 4

ONTARIO SECURITIES COMMISSION,
INVESTMENT FUNDS AND STRUCTURED PRODUCTS BRANCH – IFRS RELEASE NO. 4

FIRST IFRS ANNUAL FINANCIAL STATEMENTS – TIPS FOR YEAR END

Investment fund issuers will begin filing their first IFRS annual financial statements in the first quarter of 2015. In light of this, we are providing a tip sheet that lists key elements that are required in the first IFRS annual financial statements of calendar year-end investment funds. Please note that this publication is not meant to be a complete checklist for all of the requirements under IFRS and securities legislation for annual financial statements, but rather a quick reference tool.

Statement of compliance with IFRS

Securities rules require annual financial statements to be prepared in accordance with Canadian generally accepted accounting principles applicable to publicly accountable enterprises and to disclose an unreserved statement of compliance with IFRS. IFRS states that an issuer shall not describe financial statements as complying with IFRS unless they comply with all the requirements of IFRS. Issuers should note that the annual statement of compliance differs from the statement of compliance with IAS 34 *Interim Financial Reporting* that was included in the interim filings. We also remind investment fund issuers that the audit report accompanying their annual financial statements must also make reference to IFRS.

Opening IFRS Statement of financial position

We expect all investment funds to comply with the requirement in IFRS 1 *First-time Adoption of International Financial Reporting Standards* (IFRS 1) and subsection 18.5.1(2) of National Instrument 81-106 *Investment Fund Continuous Disclosure* to provide an opening IFRS statement of financial position at the date of transition to IFRS (the Opening Statement). The Opening Statement is required to be presented on the face of the financial statements.[1]

Change in accounting policies in the year of IFRS adoption

IAS 8 *Accounting Policies, Changes in Accounting Estimates and Errors* does not apply to changes in accounting policies an issuer makes in the year of adopting IFRS. If an investment fund issuer changes its accounting policies (including early adoption of new IFRS standards) in its first IFRS annual financial statements from those applied in previously issued interim financial reports, it should follow paragraph 27A of IFRS 1, which requires the investment fund issuer to explain such changes in the annual financial statements, as well as to update the reconciliations required to be included in those statements. Similar disclosure should be provided for a change in the use of IFRS 1 exemptions. Investment funds are also reminded that accounting policy changes that are applied retrospectively should be reflected in the comparative amounts in the annual financial statements, including the Opening Statement.

If an investment fund issuer changes its accounting policies subsequent to filing its first interim financial report, it should also be aware of the disclosure requirement in the management report of fund performance (MRFP) to discuss all significant factors that have affected performance of the investment fund (Part B, item 2.3 of Form 81-106F1 *Content Requirements for Annual Management Report of Fund Performance*). The investment fund should include a discussion in its annual MRFP of the effect of these accounting policy changes on the results of operations.

January 23, 2015

[1] New funds that started in 2013 should refer to the discussion in IFRS Release No. 3 *Outcomes from the Review of First IFRS Interim Financial Reports*, issued on December 19, 2014.

ANNUAL 2014 FILING TIP SHEET

(for calendar year-end investment funds)

Check for inclusion of the following items before you file your first IFRS annual financial statements for the year-ending December 31, 2014.

Financial statements

❑ Include all of the following on the face of the financial statements:

- Statements of financial position as at:

  ❑ December 31, 2014 ❑ December 31, 2013 ❑ January 1, 2013[2]

- Statements of comprehensive income for the year ending:

  ❑ December 31, 2014 ❑ December 31, 2013

- Statements of changes in financial position for the year ending:

  ❑ December 31, 2014 ❑ December 31, 2013

  (ensure the statements of changes in equity include all components of equity)

- Statements of cash flows for the year ending:

  ❑ December 31, 2014 ❑ December 31, 2013

- Statement[3] of investment portfolio:

  ❑ December 31, 2014

Notes to financial statements

❑ Include an unreserved statement of compliance with IFRS

❑ Include a summary of significant accounting policies

❑ Include an explanation of the basis for classifying the fund's own securities as equity instruments or financial liabilities

❑ Include a reconciliation of net asset value (NAV) per security compared to net assets attributable to securityholders per security[4] and an explanation of each of the differences between these amounts, if NAV is different from net assets

❑ Include all of the following IFRS 1 reconciliations (with sufficient detail to enable a user to understand the material adjustments):

- Equity reconciliations for:

  ❑ January 1, 2013[2] ❑ December 31, 2013

- Total comprehensive income reconciliations for:

  ❑ The year ended December 31, 2013

- Explain any material adjustments to the statement of cash flows, if a statement of cash flows was presented under pre-changeover Canadian GAAP

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2 Or the date of transition to IFRS for new funds that started in 2013. Please refer to IFRS Release No. 3 *Outcomes from the Review of First IFRS Interim Financial Reports*, issued on December 19, 2014.

3 Section 2.5.1 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* discusses that, while the term "statement of investment portfolio" is used in securities law, preparers of the financial statements may refer to it as a "schedule of investment portfolio" within a complete set of investment fund financial statements.

4 Or a reconciliation of NAV per security compared to total equity per security, if the fund's own securities are classified as equity.

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1.1.5 OSC Staff Notice 51-724 – Report on Staff's Review of REIT Distributions Disclosure

OSC Staff Notice 51-724 – *Report on Staff's Review of REIT Distributions Disclosure* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

Ontario Securities Commission

OSC Staff Notice 51-724
Report on Staff's Review of REIT Distributions Disclosure

January 26, 2015

OSC ONTARIO SECURITIES COMMISSION

Table of Contents

1. Purpose

Real Estate Investment Trusts (REITs) are companies that own, and may also operate, income producing real estate assets. While many REITs may generate capital appreciation, the ability to receive a dividend or distribution is of most importance to investors. As flow through entities, REITs are required to distribute taxable income to unitholders and do not incur tax. As a result, a key attribute of the REIT structure as an investment vehicle is to provide investors with an expectation of a predictable cash flow stream.

Given the importance of distributions to investors, a REIT's continuous disclosure record should provide investors with transparent information to assess the source of funding for distributions paid and, in turn, the sustainability of those distributions.

National Policy 41-201 *Income Trusts and Other Indirect Offerings* (NP 41-201)[1] governs certain disclosure expectations for REITs. Staff of the Ontario Securities Commission (we) recently reviewed the disclosure provided by 30 Ontario head office REITs, to assess the quality and sufficiency of disclosure provided by those REITs relating to the sustainability of their distributions, in light of NP 41-201.

While REITs were generally fulsome in their disclosures, our review identified the following four areas where disclosure should be improved. These concerns were heightened in instances where REITs provided excess distributions (ie. when distributions paid exceeded the cash flows generated by the REIT's underlying real estate properties):

- The content of disclosure where excess distributions are paid.
- Consistency of disclosure about excess distributions.
- Timely disclosure where a reduction or termination of distributions occurs.

[1] Part 1.2 of NP 41-201 specifically states that REITs are included in the scope of this policy.

- Presentation of metrics common to the real estate industry such as adjusted funds from operations (AFFO).

2. Introduction

The opportunity to receive stable and recurring distributions provides investors with an incentive to invest in REIT units. Investors may compare distribution yields across REITs in pursuit of the highest returns available in exchange for the level of risk assumed.

REITs are subject to a variety of risk factors which may negatively impact their distributions. Such risk factors include, but are not limited to, the following:

- Increases in market interest rates may eventually lead to a REIT's debt being refinanced at higher rates, placing downward pressure on the net operating cash flows used to finance distributions.
- Distributions financed by increasing levels of debt (as opposed to increases in underlying income or rents) are not sustainable.
- The population of potential investment properties which meet REIT investment objectives and strategy may be limited.

Since REIT distributions are typically characterized by a distribution of income, which exempt a REIT from the payment of income taxes as a flow through entity, investors will generally regard REIT distributions as a return on capital. In practice, a REIT which distributes more cash than it generated in the period from its operating activities may be using financing activities, such as the incurrence of additional debt, in order to provide distributions. Such distributions represent a return *of* capital, rather than a return *on* capital, since they ultimately decrease the value of the REIT's remaining net assets and therefore also decrease the value each unitholder will receive when they ultimately dispose of their units. REITs which consistently obtain cash flows from other financing sources aside from operations have a higher risk profile. For example, incurring additional debt to

finance distributions creates additional interest expense, which further reduces a REIT's ability to pay ongoing distributions. Additionally, incremental sources of financing may not be available in the future.

As a result, REITs need to provide investors with sufficient information to help them evaluate how much cash is available for distribution and, if distributions exceed this amount, to provide clear disclosure acknowledging that a return of capital has occurred. Given the importance of distributions to investors, it is critical for investors to understand if the source for distributions is a REIT's own capital.

3. Disclosure Expectations

Item 2.1 of NP 41-201 states that "*the amount of cash distributed by [a real estate investment trust] may sometimes be greater than what it can safely distribute without eroding its productive capacity and threatening the sustainability of its distributions… We are concerned that disclosure by [real estate investment trusts] has not always been sufficiently plain to allow an investor to assess whether a possible concern exists in this respect.*" The following is a summary of expected disclosure, as outlined in NP 41-201, which is intended to address this concern:

- Item 2.5 of NP 41-201 discusses disclosure expectations related to any non-GAAP measure that a REIT may use to describe the amount of net cash it has generated during the period which is available for distribution[2]. This may include distributable cash, funds from operations or adjusted funds from operations.
- Item 6.5.2 of NP 41-201 discusses additional disclosure expectations which are applicable only in circumstances where a REIT's distributions exceed its cash flow from operations.

[2] Part 2.5 of NP 41-201 specifically refers to this non-GAAP measure as 'distributable cash' however part 2.1 of the policy further clarifies that disclosure expectations about distributable cash extend to any other non-GAAP measure which a REIT may use to describe the amount of net cash it has generated during the period which is available for distribution (such as funds from operations or adjusted funds from operations).

The following chart summarizes the disclosure expectations presented by NP 41-201 in each of the two aforementioned areas:

Disclosure	Subtopic	Disclosure Expectation[3]
Disclosure expectations when distributions exceed cash flow from operations (Item 6.5.2)	Quantify 'excess' distributions	Quantify the amount of distributions which were funded by sources of cash other than operating activities.
	Discuss any implications of 'excess' distributions	Acknowledge that a return of capital has been provided and discuss why a decision was made to provide distributions partly representing a return of capital.
		Discuss the specific sources of cash, such as debt, mortgages or other financing instruments, which were used to finance distributions in excess of operating activities. Quantify the amount of distributions financed by each instrument and summarize the repayment terms of each instrument, if any.
		Disclose whether a material contract was amended in order to fund distributions in excess of cash flow from operations.
		Disclose any risk factors related to providing distributions in excess of cash flow from operations and discuss whether such 'excess' distributions are expected to continue. Discuss any impact on the sustainability of distributions.
		Disclose whether cash distributions may be suspended in the foreseeable future.
Disclosure expectations regarding non-GAAP measures used to describe cash available for distribution (Item 2.5)	Purpose of the non-GAAP measure	Explain that the non-GAAP measure does not have a standard meaning and may not be comparable to other issuers.
		Explain why the non-GAAP measure provides useful information, and how management uses it as a financial measure.
	Reconciliation to the nearest GAAP measure	Reconcile the non-GAAP measure to the nearest GAAP measure, which is assumed to be cash flow from operations (not net income) since a non-GAAP measure which describes cash available for distribution is a cash flow measure.
		Present cash flow from operations (the nearest GAAP measure) with equal or greater prominence to the non-GAAP measure when providing any reconciliation to the non-GAAP measure.
	Changes in the non-GAAP measure	Explain any changes in the composition of the non-GAAP measure during the reporting period.

[3] The disclosure expectations outlined by NP 41-201 items 6.5.2 (including notes (i) through (vi)) and 2.5 (including subpoints (i) through (v)) are referred to in this column.

4. What We Found

4.1 Overall Results

We found generally that most REITs provide adequate disclosure about their distributions. However, our review did identify a significant number of REITs which distribute more than they generate in cash, without sufficiently highlighting this increased risk. Given the importance of maintaining distribution levels, we are concerned that management of REITs may face inherent pressure to hold or increase distribution yields over time, even if their ability to generate the cash needed to finance these distributions from underlying properties is not aligned. We are also concerned that investors may be potentially misled if these risks are not appropriately disclosed.

We sent comment letters to 50% of the REITs that we reviewed. The remaining REITs were not sent a letter because their distributions did not exceed cash flow from operating activities or because they provided adequate disclosures. Of the REITs that we sent comment letters to, staff requested 67% of these issuers to enhance their disclosure prospectively, which they did. None of the reviews identified the need to refile or restate continuous disclosure documents.

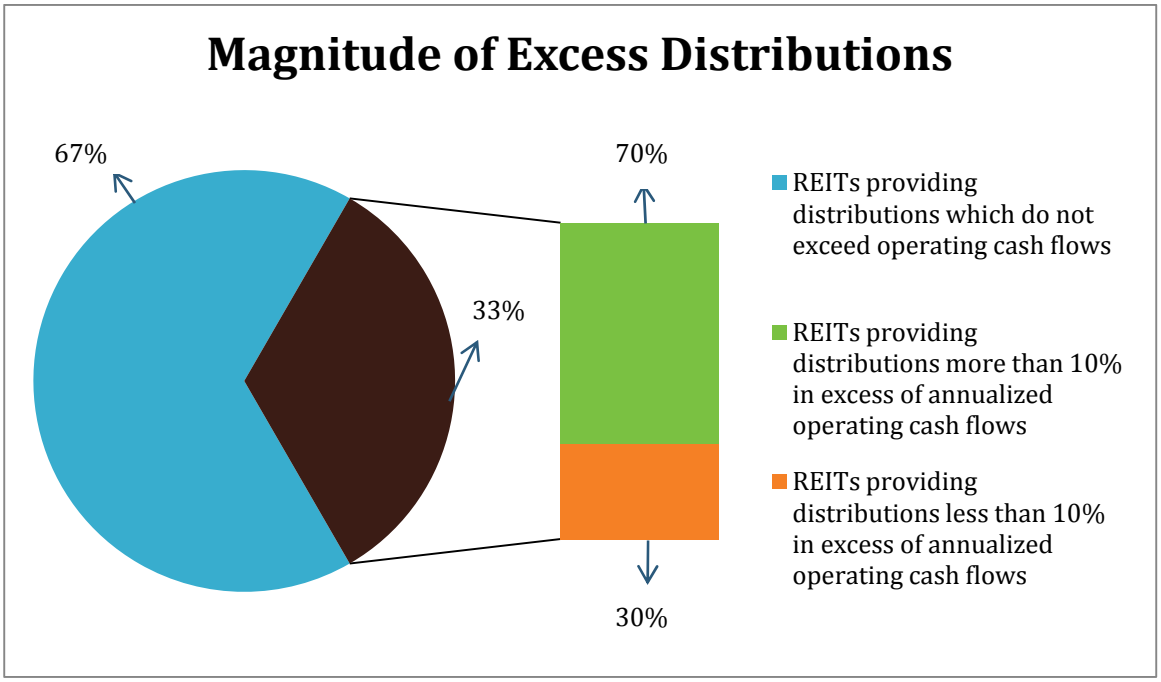
During the course of our review, we identified the following areas where improved disclosure is needed.

4.2 The Content of Disclosure Where Excess Distributions Are Paid

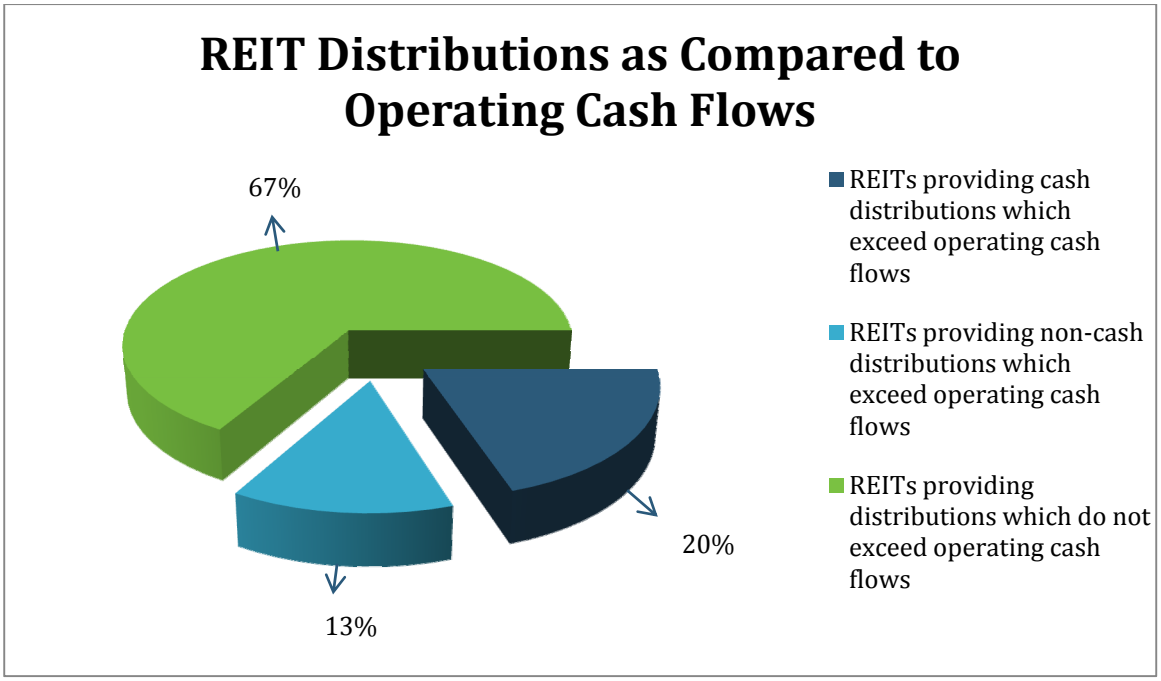
When distributions exceed cash flow from operations, it is important that REITs adequately provide disclosures which are necessary for investors to understand risks relevant to a REIT and its distributions.[4]

[4] Disclosure expectations in such instances are outlined by item 6.5.2 of NP 41-201.

Based on our review, 33% of REITs paid distributions which exceeded cash flow from operations. None of these REITs provided the expected disclosures in relation to their excess distributions, though some may have provided boilerplate disclosure. Distributions were in excess by more than 10% of annualized cash flows in 70% of the REITs whose total distributions (including both cash and non-cash distributions) exceeded cash flow from operations, signaling the magnitude by which other sources were used to finance distributions.



It is critical that investors receive prominent and transparent disclosure about the heightened risk profile which results from distributions in excess of cash flow from operations. REITs declaring distributions in excess of cash flow from operations should include relevant disclosure in their MD&A and in their Annual Information Form, in accordance with Part 1 *General Provisions* of Form 51-102F1 and Part 5.2 *Risk Factors* of Form 51-102F2 respectively.



The following example illustrates the type of boilerplate disclosure which was observed during our review in situations where excess distributions were paid, along with suggestions to improve disclosure with entity specific information.

Boilerplate excess distribution disclosure

Example #4.2(a) – Boilerplate disclosure

For the year ended December 31, 20XX the REIT's distributions paid of $25 million exceeds cash flow from operations over the same period, by $5 million. In assessing its distribution policy, the REIT considers certain items that may not be included in cash flow from operations, where the timing of cash flows may differ from the timing of payment of distributions.

Entity-specific excess distribution disclosure

Example #4.2(a) – Entity-specific disclosure

For the year ended December 31, 20XX the REIT's distributions paid of $25 million exceeded cash flow from operations, by $5 million. Distributions in excess of cash flow from operations represent a return of capital, rather than a return on capital, since they represent cash payments in excess of cash generated by the REIT's continuing operations during the period. The full excess amount of $5 million was financed by leveraging the REIT's existing revolving credit facility, which bears interest at LIBOR + 3% and is repayable on demand.

The REIT has elected to provide distributions partly representing a return of capital in order to maintain the stability of current distribution levels. Management believes that the current per share level of distributions is sustainable, given that cash flow from operations is expected to improve as the REIT continues to integrate its recently acquired European operations.

We also noted that 13% of REITs would have distributions in excess of cash flow from operations, if and only if non-cash distributions (including distributions paid in connection with a Distribution Reinvestment Plan, or "DRIP") are considered in quantifying the amount distributed. We believe that investors may be misled in the event that REITs do not provide any disclosure about excess distributions, solely because such excess distributions were non-cash. Investors may be potentially misled into believing there is no liquidity impact by the issuance of a non-cash distribution, however, recurring non-cash distributions could have an effect on the sustainability of cash distributions over time.

Non-cash distributions have the effect of increasing the number of units outstanding and therefore increase the aggregate dollar amount of distributions over time, assuming a stable cash component of distributions on a per unit basis. The following example suggests how REITs may improve their disclosure in this area.

Boilerplate disclosure regarding non-cash excess distributions

Example #4.2(b) – Boilerplate disclosure

For the year ended December 31, 20XX the REIT's cash distributions of $9 million were lower than cash flow from operations of $10 million.

Entity-specific disclosure regarding non-cash excess distributions

Example #4.2(b) – Entity-specific disclosure

For the year ended December 31, 20XX the REIT's total distributions paid of $13 million, consist of cash distributions of $9 million and non-cash distributions of $4 million provided under the DRIP.

Total distributions ($13 million) exceed cash flow from operations ($10 million) over the period. Distributions in excess of cash flow from operations do not represent an economic return of capital because the excess portion of distributions is non-cash in nature.

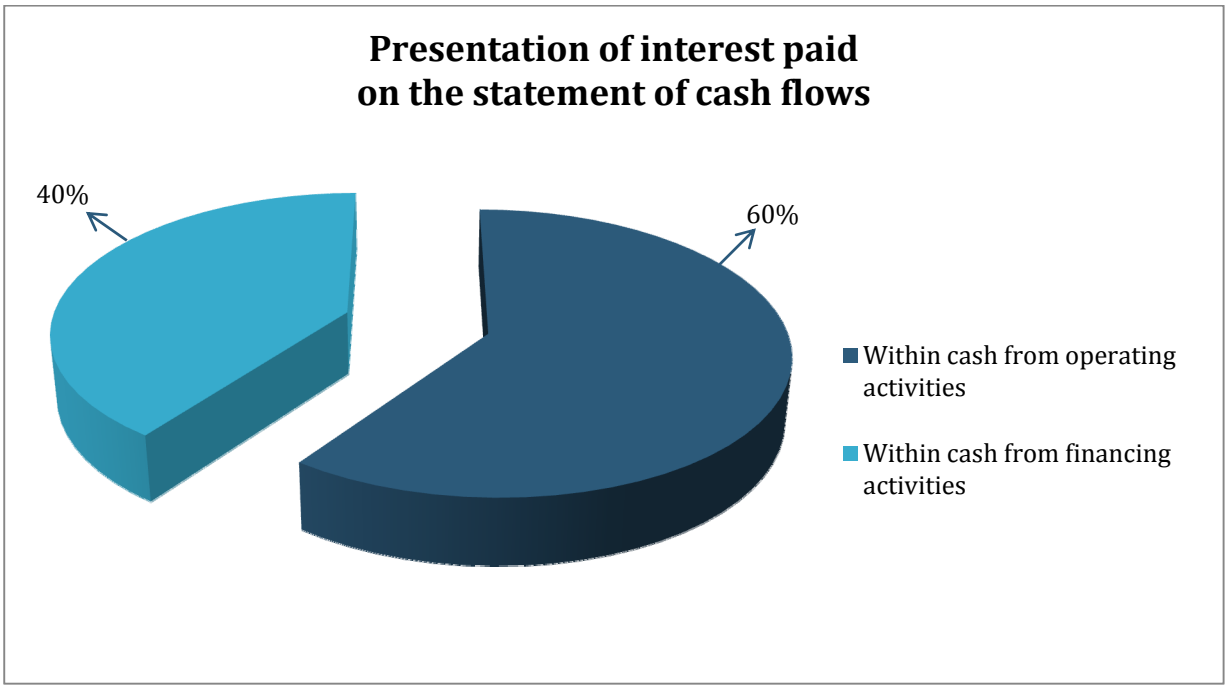
Non-cash distributions have the effect of increasing the number of REIT units outstanding, which will cause cash distributions to increase over time assuming stable per unit cash distribution levels. Management will continue to assess the sustainability of cash and non-cash distributions in each financial reporting period.

4.3 Consistency of Disclosure About Excess Distributions

Long term debt, as well as any related interest expense, is often material for REITs. In virtually all cases, investment properties held by REITs are leveraged against mortgages generating significant period to period interest expense. International Financial Reporting Standards ("IFRS") allow an accounting policy choice as to where borrowing costs are recorded on the statement of cash flows.[5] As a result, a REIT's cash flow from operations may include or exclude interest paid. The purpose of the cash flow from operations caption on a REIT's statement

[5] See paragraph 33 of International Accounting Standard 7 *Statement of Cash Flows*.

of cash flows is to illustrate the net amount of cash generated from, or used by, its principal revenue generating activities during the period.



NP 41-201 outlines additional disclosure expectations for REITs whose distributions exceed their cash flow from operations (see item 4.2 of this notice). However, for 10% of REITs reviewed, distributions did not exceed cash flow from operations only because the REIT has made an accounting policy choice to classify interest paid as a financing activity on the statement of cash flows. If these REITs had instead elected to classify interest as an operating cash flow item, then their distributions would have exceeded cash flow from operations.

While IFRS permits REITs an accounting policy choice relating to the classification of interest paid on the statement of cash flows, we are concerned that investors may be misled if the disclosure expectations outlined by item 6.5.2 of NP 41-201 are not provided soley as a result of this accounting policy choice.

By way of background, this accounting policy choice under IFRS represents a change from Canadian GAAP which previously required interest paid to be included

within cash flow from operations on the statement of cash flows. United States Generally Accepted Accounting Principals also state that cash flow from operations is generally considered to represent the cash effects of transactions and other events that enter into the determination of net income, specifically including cash payments to lenders and other creditors for interest.[6]

During the course of our review, we examined the financial statements of certain REITs prior to and during the year of conversion to IFRS. We confirmed that five REITs did change their classification of interest paid from operating activities to financing activities on transition from Canadian GAAP to IFRS. These REITs typically did not disclose a reason for the change in policy on transition, since such disclosure is not required by IFRS.

While an accounting policy choice is available to REITs, the principal intent of NP 41-201 was the inclusion of interest within cash flow from operations. Now that REITs have a policy choice for the classification of interest under IFRS, we are of the view that if interest were reclassified from a financing activity (as this was the policy choice made under IFRS) to an operating activity, and if distributions would now exceed cash flow from operations, then disclosure under item 6.5.2 of NP 41-201 should be provided. This was and continues to be the principal intent of NP 41-201.

The following example illustrates two different situations in which the 'excess distribution' disclosures outlined by item 6.5.2 of NP 41-201 should be presented in a manner consistent with item 4.2 of this notice. The only difference between the two situations is the classification of interest paid on the IFRS statement of cash flows which, as discussed, should have no bearing on whether or not excess distribution disclosures are expected.

[6] See FASB Accounting Standards Codification 230-10-20 and 230-10-45-17(d)

Example #4.3(a) – Interest paid within operating activities

In the statement of cash flows shown, the REIT has made an accounting policy choice under IFRS to classify interest paid as an operating cash flow item. In this situation, distributions clearly exceed cash flow from operations (ie. the absolute value of [**B**] exceeds the absolute value of [**A**]) and therefore the 'excess distribution' disclosures outlined in item 4.2 of this notice should be provided in the REIT's AIF and MD&A.

CASH FLOW FROM OPERATIONS		
Net income	1,000,000	
Add (deduct) items not affecting cash		
Depreciation of property plant & equipment	150,000	
Stock based compensation	100,000	
Net change in non-cash working capital	(100,000)	
Interest expense	500,000	
Interest paid	(450,000)	
Cash flow from (used in) operations	**1,200,000**	**A**
CASH FLOW FROM INVESTING		
Purchase of property plant & equipment	(200,000)	
Cash flow from (used in) investing	**(200,000)**	
CASH FLOW FROM FINANCING		
Repayment of long term debt	(100,000)	
Distributions paid	(1,500,000)	**B**
Cash flow from (used in) financing	**(1,600,000)**	
Net increase (decrease) in cash during the period	(600,000)	
Cash, beginning of period	2,600,000	
Cash, end of period	2,000,000	

Summary:

Cash flow from operations (includes interest paid)	$1,200,000	**[A]**
Distributions paid	$1,500,000	**[B]**
Excess distributions	**($ 300,000)**	**[A] – [B]**

Example #4.3(a) – Interest paid within financing activities

In this statement of cash flows, the REIT has made an accounting policy choice under IFRS to classify interest paid as a financing item. Excluding the impact of that policy choice, the statement of cash flows shown in this example is identical to the previous example. However, in this example, cash flow from operating activities no longer exceeds distributions (ie. the absolute value of [**B**] no longer exceeds the absolute value of [**A**]). As discussed, we would still expect this REIT to present the 'excess distribution' disclosures outlined in item 4.2 of this notice because distributions would exceed cash flow from operations if those cash flows were adjusted to include a deduction for interest paid currently classified as a financing activity.

CASH FLOW FROM OPERATIONS		
Net income	1,000,000	
Add (deduct) items not affecting cash		
Depreciation of property plant & equipment	150,000	
Stock based compensation	100,000	
Net change in non-cash working capital	(100,000)	
Interest expense	500,000	
Cash flow from (used in) operations	**1,650,000**	**A**
CASH FLOW FROM INVESTING		
Purchase of property plant & equipment	(200,000)	
Cash flow from (used in) investing	**(200,000)**	
CASH FLOW FROM FINANCING		
Repayment of long term debt	(100,000)	
Interest paid	(450,000)	**C**
Distributions paid	(1,500,000)	**B**
Cash flow from (used in) financing	**(2,050,000)**	
Net increase (decrease) in cash during the period	(600,000)	
Cash, beginning of period	2,600,000	
Cash, end of period	2,000,000	

Summary:

Cash flow from operations	$1,650,000	**[A]**
Interest paid	($ 450,000)	**[C]**
Cash flow from operations, including interest paid	$1,200,000	**[A] + [C] = [D]**
Distributions paid	$1,500,000	**[B]**
Excess distributions	**($ 300,000)**	**[D] – [B]**

4.4 Timely Disclosure Where a Reduction or Termination of Distributions Occurs

The 'excess distribution' disclosures discussed in item 4.2 of this notice should be presented by a REIT in any period in which distributions exceed cash flow from operations. Such disclosures would include commentary about the sustainability of any excess distributions. However, there are other situations in which a REIT may need to provide disclosure about risks to the sustainability of distributions.

During our review we observed an instance where a REIT reduced or eliminated its distributions without providing sufficient advance notice to investors.

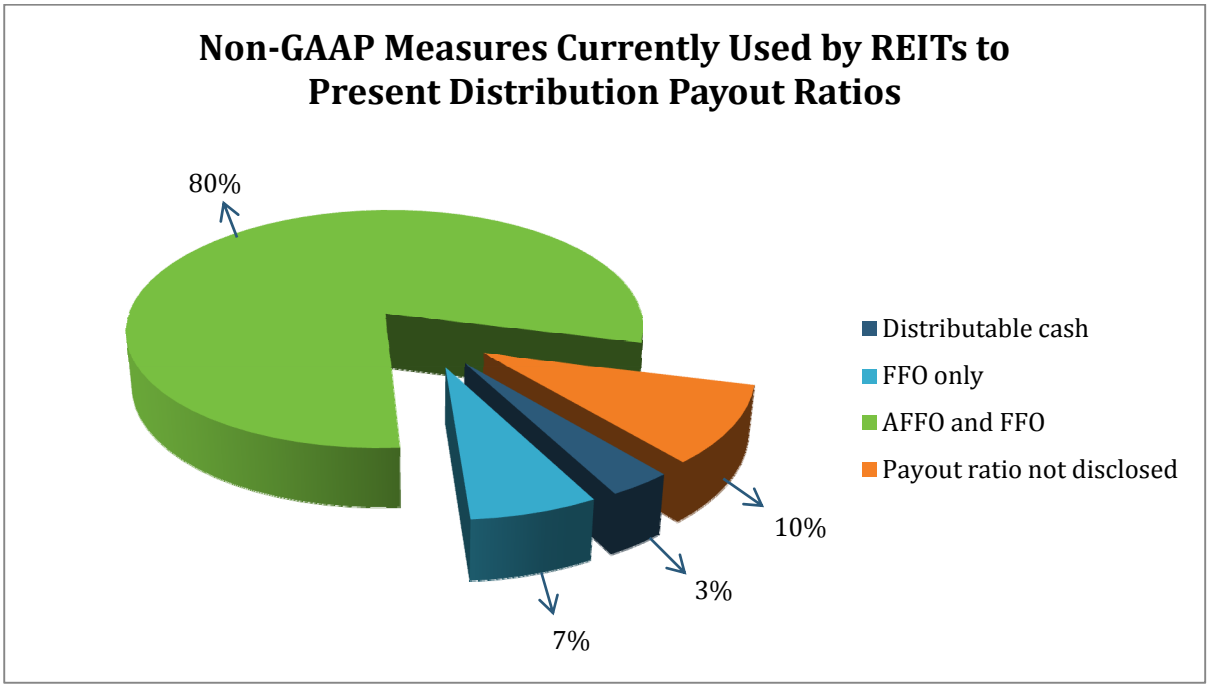
The timely disclosure policies outlined in part 2.1 of National Policy 51-201 – *Disclosure Standards* state that "*companies are required by law to immediately disclose a material change in their business. For changes that a company initiates, the change occurs once the decision has been made to implement it. This may happen even before a company's directors approve it, if the company thinks it is probable they will do so*." We are of the view that the reduction or elimination of distributions may constitute a material change.

Form 51-102F1 *Management's Discussion & Analysis* also requires a REIT to openly discuss bad news as well as good news. REITs should discuss trends and risks that are reasonably likely to affect them in the future, including any risks or events which may result in a possible reduction or elimination of distributions.

Sufficient advance notice of any prospective distribution reduction, either to conserve capital for use in future projects or because current distribution levels have become unsustainable, should be provided to investors as soon as practicable. It is critical that investors receive information required in order to understand and assess any risks related to the sustainability of distributions on a timely basis.

4.5 Presentation of Metrics Common to the Real Estate Industry Such As Adjusted Funds From Operations (AFFO)

Item 2.5 of NP 41-201 outlines disclosure expectations relating to distributable cash, however, distributable cash is infrequently used in practice by REITs today. We have observed that the REIT industry has moved towards the use of AFFO instead of distributable cash. These two terms, while not intended to be identical, in our view often both represent measures of the resources which have been generated by a REIT's operations and are available for distribution.



While industry guidance exists for FFO[7], there is currently no consensus in terms of what type of adjustments may or may not be included in the determination of AFFO. As a result there is diversity in practice amongst REITs as to what items are included in AFFO.

[7] See 'White Paper on Funds From Operations for IFRS' dated April 2014 as issued by the Real Property Association of Canada.

While NP 41-201 does not specifically mention AFFO, part 2.1 of the national policy does indicate that "*some issuers have refered to net cash available for distribution by a term other than distributable cash… Distributable cash includes all such other terms used to describe the amount available for distribution to… securityholders.*"

REITs routinely quantify their distributions as a percent of AFFO. During the course of our review we also noted that some REITs describe the nature and purpose of AFFO as:

- A measure of cash generated by operating activities, after providing for stabilized operating capital requirements.
- An alternative measure of cash generated from operations.
- Indicative of ability to pay distributions.
- An indicator of the sustainability of cash distributions.

When AFFO represents a cash flow measure because the adjustments used to arrive at AFFO encompass adjustments for non-cash items, we are of the view that AFFO would represent a measure of the net cash available for distribution to securityholders. In such situations, REITs should ensure that they are consistent with the disclosure expectations outlined in item 2.5 of NP 41-201 for distributable cash, related to any AFFO disclosure provided.

The following example illustrates deficient AFFO disclosure which is then revised to conform to the disclosure expectations of item 2.5 of NP 41-201 for distributable cash.

Example #4.5(a) – Deficient AFFO disclosure

	Current Year	Prior Year
Net income	1,000,000	700,000
Amortization and depreciation	200,000	100,000
Straight line rent adjustment	(300,000)	(200,000)
Fair value adjustments to investment properties	10,300,000	5,500,000
Adjusted Funds From Operations	**11,200,000**	**6,100,000**

Distributions	7,000,000	4,000,000
Payout ratio (distributions / AFFO)	62.5%	65.6%

This example contains the following areas where disclosure can be improved to meet the disclosure expectations of NP 41-201:

- The non-GAAP measure AFFO has been presented in bold font whereas the nearest GAAP measure (net income) has not. Item 2.5(ii) indicates that the nearest GAAP measure should be presented with equal or greater prominence to the non-GAAP measure.
- AFFO has been reconciled to net income. Item 2.5(iv) indicates that it should be reconciled to cash flow from operations.
- No disclosure has been provided to indicate that AFFO does not have a standard meaning under IFRS and may not be comparable to AFFO as quantified by other entities (item 2.5(i)) or how it provides useful information to investors and how management uses it as a financial measure (item 2.5(iii)).

The above noted deficiencies have been amended in the following enhanced disclosure.

Example #4.5(a) – Enhanced AFFO disclosure

	Current Year	Prior Year
Cash flow from operations	**10,000,000**	**8,000,000**
Change in non-cash working capital	1,000,000	(2,000,000)
Initial direct leasing costs and lease incentives	200,000	100,000
Adjusted Funds From Operations	**11,200,000**	**6,100,000**

Distributions	7,000,000	4,000,000
Payout ratio (distributions / AFFO)	62.5%	65.6%

Management believes that AFFO is an important measure of our economic performance. As an alternate measure of cash flow from operations, AFFO is indicative of our ability to pay distributions to unitholders. AFFO is a non-GAAP measure which does not have a standard meaning as defined by IFRS and therefore it may not be comparable to AFFO as presented by other entities.

REITs should also ensure that the nature of adjustments included within AFFO is sufficiently explained and consistent from reporting period to reporting period.

The following is an example of a REIT's reconciliation of AFFO (a non-GAAP measure) to cash flow from operations (the nearest GAAP measure). This disclosure is expected by item 2.5(iv) of NP 41-201 in respect of distributable cash and, since AFFO is a measure of amounts available for distribution to unitholders, we are of the view that such disclosure should be provided for AFFO.

Example #4.5(b) – Deficient AFFO disclosure

	Current Year	Prior Year
Cash flow from operations	**5,000,000**	**4,000,000**
Change in non-cash working capital	1,000,000	(2,000,000)
Normalized lease expenditures	900,000	-
Adjusted Funds From Operations	**6,900,000**	**2,000,000**

In this reconciliation, it is not clear whether a prior year impact of the normalized lease adjustment is applicable. The REIT may not have included an adjustment for normalized lease expenditures in the prior year as it may not have had a favourable impact to AFFO. REITs should ensure that adjustments included in the determination of AFFO are included consistently from year to year. If REITs identify a new reconciling item then they should ensure that the adjustment is reflected in the prior year comparative figures as well. Additionally, the nature of the normalized lease expenditure adjustment in this example has not been explained in sufficient detail for investors to be able to understand what it relates to and/or how it was determined.

In the enhanced disclosure provided, the prior year AFFO reconciliation included the impact of the normalized lease expenditure adjustment, even though the adjustment was not favourable to AFFO. Additional detail about the nature of the adjustment has also been provided in a footnote, including the factors and assumptions related to the adjustment.

Example #4.5(b) – Enhanced AFFO disclosure

	Current Year	Prior Year
Cash flow from operations	**5,000,000**	**4,000,000**
Change in non-cash working capital	1,000,000	(2,000,000)
Normalized lease expenditures **[1]**	900,000	(1,500,000)
Adjusted Funds From Operations	**6,900,000**	**500,000**

[1] In the calculation of AFFO the REIT makes an adjustment to normalize lease expenditures incurred (such as tenant incentives and direct leasing costs) to 5% of net operating income. The 5% assumption is based on historical results and will continue to be reassessed in prospective reporting periods.

5. Conclusions

Our review identified that the majority of REITs pay their distributions in alignment with cash generated from underlying properties. However, where distributions exceed cash flow from operations, the findings of our review indicate that the quality and consistency of disclosure for REIT distributions are areas which need improvement. In large part, guidance contained in NP 41-201 which was intended to guide staff disclosure expectations where excessive distributions have been paid has been absent in REIT continuous disclosure.

REITs are an important investment vehicle for many investors and we expect a REIT's disclosure to accurately represent its current risk profile, and its ability to sustain distributions at current levels. Wherever possible, this disclosure should be available to investors as soon as relevant information becomes available so that they may assess the sustainability of distributions well in advance of any actual reduction or termination of distributions. We expect the outcome of this review to improve the transparency and completeness of REIT distribution disclosure on a prospective basis.

Given the importance of this disclosure to investors, we will continue to assess these items in our continuous disclosure and prospectus review programs. REITs who have not complied with these disclosure expectations will be expected to take corrective action.

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

osc.gov.on.ca

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

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1.1.6 Practice Guideline – January 26, 2015 – Case Management Timeline for Enforcement Proceedings

PRACTICE GUIDELINE – JANUARY 26, 2015

CASE MANAGEMENT TIMELINE FOR ENFORCEMENT PROCEEDINGS

(Cross-references: *Ontario Securities Commission Rules of Procedure* (2014), 37 O.S.C.B. 4168 and *Statutory Powers Procedure Act*, R.S.O. 1990, c. C.22, as amended)

Preamble

Pursuant to Rules 1.2(3), 1.3, 1.4 and 6 of the *Ontario Securities Commission Rules of Procedure* (2014), 37 O.S.C.B. 4168 (the "*OSC Rules*"), the Ontario Securities Commission (the "Commission" or the "OSC") is issuing the following practice guideline in respect of the Commission's case management procedures (the "Practice Guideline").

The Practice Guideline applies to all proceedings before the Commission commenced by a Notice of Hearing issued pursuant to section 127 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "*Securities Act*") or section 60 of the *Commodity Futures Act*, R.S.O. 1990, c. C.20 in connection with a Statement of Allegations ("Enforcement Proceedings").

Effective February 1, 2015, the Practice Guideline will apply to all Enforcement Proceedings before the Commission, including proceedings commenced by a Notice of Hearing issued prior to the effective date of the Practice Guideline:

1. General Principles and Application

1.1. The purpose of this Practice Guideline is to improve the case management procedure at the Commission through the early identification and resolution of preliminary matters.

1.2. At any appearance following the issuance of a Notice of Hearing and Statement of Allegations, a Panel may exercise its discretion under the *OSC Rules* to waive the time limits for disclosure under Rule 4 of the *OSC Rules* in accordance with the case management timeline set out in this Practice Guideline.

2. Case Management Timeline for Enforcement Proceedings

2.1. Panels of the Commission will impose a case management timeline for interlocutory appearances in Enforcement Proceedings. The case management timeline will provide a schedule for interlocutory appearances before the Commission and disclosure by the parties prior to a hearing on the merits (the "Merits Hearing").

2.2. The schedule is set out below and provided in chart format in Appendix A:

- **The First Appearance:** The first appearance should occur within four weeks of the service of the Notice of Hearing and Statement of Allegations. At the first appearance, timelines will be set for disclosure of documents and things, disclosure of witness lists and summaries, notices of intent to call an expert witness and any other interlocutory matters, including subsequent appearances.

- **Disclosure by Enforcement Staff:** Disclosure of documents and things in the possession or control of Enforcement Staff that are relevant to the hearing should be made to all respondents named in the Statement of Allegations ("Respondents") no later than 30 days following the first appearance.

  Any requests by any of the Respondents for disclosure of additional documents should be set out in a Notice of Motion to be filed no later than 10 days before the second appearance.

- **The Second Appearance:** The second appearance should be held within 120 days following the first appearance. At that appearance, any motions by any of the Respondents with respect to disclosure provided by Enforcement Staff will be heard or scheduled for a subsequent date.

  No later than five days before the second appearance, Enforcement Staff will make disclosure of their witness lists and summaries and indicate any intent to call an expert witness, and will provide to the Respondents the name of the expert and state the issue on which the expert will be giving evidence.

- **The Third Appearance:** The third appearance should be held within 60 days following the second appearance.

  No later than 30 days before the third appearance, unless the Respondents make a motion to strike one or more significant, material allegations of the Statement of Allegations, the Respondents will make disclosure of their witness lists and summaries and indicate any intent to call an expert witness, and will provide to Enforcement Staff the name of the expert and state the issue on which the expert will be giving evidence. Any motion to strike by the Respondents shall be heard promptly.

  Any motions the parties wish to bring in advance of the Merits Hearing will be held on the date of the third appearance or scheduled for a subsequent date. Motion materials should be filed 10 days in advance of the third appearance.

  Dates for the Merits Hearing and for the provision of expert affidavits or reports, if any, will be set.

- **Final Interlocutory Appearance:** A final interlocutory appearance will be held not less than 30 days prior to the commencement of the Merits Hearing.

  By no later than 10 days before the final interlocutory appearance all parties will have delivered to every other party copies of documents which they intend to produce or enter as evidence at the Merits Hearing (the "Hearing Briefs").

  At least five days before the final interlocutory appearance, the parties will file with the Office of the Secretary copies of indices to their Hearing Briefs.

  At the final interlocutory appearance, the parties will advise the Panel of any issues with respect to the authenticity or admissibility of documents in the Hearing Briefs. Any outstanding interlocutory issues will be addressed.

3. Adjournments and Scheduling of Appearances

3.1. In cases for which the case management timeline has been imposed by a Panel, adjournments will not be readily granted.

3.2 Once dates for the Merits Hearing have been set, adjournments or amendments to the Merits Hearing schedule will be granted only in exceptional circumstances.

4. Consequences of Non-Compliance

4.1. A party who fails to disclose documents or things, witness lists and summaries or expert affidavits or reports in accordance with the case management timeline set by the Panel may not introduce such evidence at the Merits Hearing without leave of the Panel.

5. Power of the Panel

5.1. The Practice Guideline does not restrict in any way the discretion of a Panel to make rulings as it deems appropriate in the circumstances, including rulings as to timelines for exchange of information or scheduling of interlocutory appearances in any Enforcement Proceeding

Appendix A: Case Management Timeline

Stage of the Proceeding:	Timeline:
First Appearance: • Timelines set for disclosure of documents and things, disclosure of witness lists and summaries and notices of intent to call an expert witness • Timelines set for any additional interlocutory matters, including subsequent appearances	**On the date set in the Notice of Hearing**
Disclosure of relevant documents by Enforcement Staff: • Enforcement Staff shall disclose to the Respondents all documents and things in the possession or control of Enforcement Staff that are relevant to the hearing	**No later than 30 days after the First Appearance**
Disclosure Motions by Respondents: • Respondents to file Notice of Motion regarding any requests for disclosure of additional documents	**Not less than 10 days before the Second Appearance**
Disclosure of witness lists and intent to call an expert by Enforcement Staff: • Enforcement Staff will make disclosure of preliminary witness lists and statements • Enforcement Staff will indicate any intent to call an expert witness and will provide Respondents with the name of the expert and state the issue on which the expert will be giving evidence	**Not less than five days before the Second Appearance**
Second Appearance: • Any motions by Respondents with respect to disclosure provided by Enforcement Staff will be heard or scheduled for a subsequent date.	**No later than 120 days after the First Appearance**
Disclosure of witness lists and intent to call an expert by Respondents: • Respondents will make disclosure of preliminary witness lists and statements • Respondents will indicate any intent to call an expert witness and will provide Enforcement Staff with the name of the expert and state the issue on which the expert will be giving evidence	**Not less than 30 days before the Third Appearance**
Third Appearance: • Dates will be set for the hearing on the merits • Interlocutory motions will be held or scheduled • Dates will be set for the provision of any expert reports or affidavits, including expert reports or affidavits in response and in reply	**No later than 60 days after the Second Appearance**
Disclosure of Hearing Briefs: • Enforcement Staff and Respondents will make disclosure of documents which they intend to produce or enter as evidence at the Merits Hearing	**Not less than 10 days before the Final Interlocutory Appearance**
Filing of Hearing Brief Indices: • Enforcement Staff and Respondents will file copies of indices to their Hearing Briefs	**Not less than five days before the Final Interlocutory Appearance**

Stage of the Proceeding:	Timeline:
Final Interlocutory Appearance: • The parties will advise the Panel of any issues with respect to the authenticity or admissibility of documents in the Hearing Briefs • Any outstanding interlocutory issues will be addressed	**Not less than 30 days before the Merits Hearing**

1.1.7 CSA Staff Notice 11-312 (Revised) – National Numbering System

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 11-312 (Revised)
National Numbering System

January 29, 2015[1]

The Canadian Securities Administrators (CSA) follows a system in which securities regulatory instruments are assigned numbers that indicate the type and subject matter of the instrument.

The numbering system was designed so as to:

(i) convey as much information as possible about the particular instrument so that a user knows what type of instrument it is, whether the instrument is national, multilateral or local and what subject matter it relates to;

(ii) permit all National[2] Instruments/Multilateral Instruments, National Policies/Multilateral Policies and CSA Notices to have the same numbers in all jurisdictions (as is currently the case); and

(iii) be flexible enough to permit Local Rules, Policies, Notices and implementing instruments of all jurisdictions to be numbered in accordance with the numbering system without affecting the numbering of National Instruments/Multilateral Instruments, National Policies/Multilateral Policies and CSA Notices.

Under the numbering system, each instrument is assigned a five digit number, with a hyphen appearing between the second and third digit. There are four components to the number assigned to a document:

- The first digit represents the broad subject area.
- The second digit represents a sub-category of the broad subject area.
- The third digit represents the type of the document.
- The last two digits represent the number of the document within its document type in its sub-category (in sequential order starting at 01).

More specifically, these four components may be described as follows:

- The **first** digit relates to the subject matter category into which the instrument has been classified. The nine subject matter categories are:

  1. Procedures and Related Matters
  2. Certain Capital Market Participants (Self-Regulatory Organizations, Exchanges and Market Operations)
  3. Registration Requirements and Related Matters (Dealers, Advisers and other Registrants)
  4. Distribution Requirements (Prospectus Requirements and Prospectus Exemptions)
  5. Ongoing Requirements for Issuers and Insiders (Continuous Disclosure)
  6. Take-over Bids and Special Transactions
  7. Securities Transactions Outside the Jurisdiction

[1] This Notice adds sub-categories in the Derivatives category 9 and is a revised version of CSA Staff Notice 11-312, as published on February 6, 2009 and revised on February 19, 2010.

[2] A National Instrument or Policy is an instrument or policy that has been adopted by all CSA jurisdictions, whereas a Multilateral Instrument or Policy is an instrument or policy that has not been adopted by one or more CSA jurisdictions

8. Investment Funds

9. Derivatives

For example, in the context of 54-101, the number "5" indicates that the instrument relates to Ongoing Requirements for Issuers and Insiders.

- The **second** digit relates to the sub-category of the subject matter category into which the instrument has been classified (see the "sub-category" column of the table below).

  Using the 54-101 example, within the Ongoing Requirements for Issuers and Insiders category, a sub-category for instruments dealing with Proxy Solicitation is denoted by the number "4". Accordingly, all instruments dealing with this matter commence with the numbers "54".

- The **third** digit classifies the document as one of nine types of documents:

  1. National Instrument/Multilateral Instrument and any related Companion Policy or Form(s)

  2. National Policy/Multilateral Policy

  3. CSA Notice

  4. CSA Concept Proposal or Discussion Paper

  5. Local Rule, Regulation or Blanket Order or Ruling and any related Companion Policy or Form(s), except an Implementing Instrument described below.

  6. Local Policy

  7. Local Notice

  8. Implementing Instrument[3]

  9. Miscellaneous

  Using the same example, the third digit in 54-101 indicates that the type of instrument is a National Instrument or Multilateral Instrument (or a related Companion Policy or Form).

- The **fourth** and **fifth** digits represent a number assigned to instruments of the same type in consecutive order from 01 to 99 within a particular sub-category.

  Again, using the example 54-101, the number "01" indicates that the instrument is the first document of its type in the sub-category "Proxy Solicitation".

A Companion Policy or Form that is related to an Instrument or Local Rule will have the same number as the Instrument or Local Rule to which it relates, followed by "CP" in the case of a Companion Policy or "F" in the case of a Form. If there is more than one Form related to a particular instrument, the Forms will be numbered consecutively (F1, F2, F3, etc.).

[3] For this purpose, an Implementing Instrument is a local rule making consequential changes relating to the implementation of a National Instrument/Multilateral Instrument.

Category, Sub-Category and Document Type Numbers

Category (1st digit)	**Sub-Category** (2nd digit)	**Document Type** (3rd digit)
1 – Procedure and Related Matters	1 – General 2 – Applications 3 – Filings with Securities Regulatory Authority 4 – Definitions 5 – Hearings and Enforcement	1 – National or Multilateral Instrument (Rule) and any related Companion Policy and Form 2 – National or Multilateral Policy 3 – CSA Notice or CSA Staff Notice 4 – CSA Concept Proposal or Discussion Paper 5 – Local Rule, Regulation or Blanket Order or Ruling and any related Companion Policy or Form 6 – Local Policy 7 – Local Notice 8 – Implementing Instrument (Local Rule that gives effect to a National or Multilateral Instrument) 9 – Miscellaneous item (e.g., a Form that does not relate to another Instrument or Policy)
2 – Certain Capital Market Participants	1 – Stock Exchanges 2 – Other Markets 3 – Trading Rules 4 – Clearing and Settlement 5 – Other Participants	
3 – Registration and Related Matters	1 – Registration Requirements 2 – Registration Exemptions 3 – Ongoing Requirements Affecting Registrants 4 – Fitness for Registration 5 – Non-Resident Registrants	
4 – Distribution Requirements	1 – Prospectus Contents – Non-Financial Matters 2 – Prospectus Contents – Financial Matters 3 – Prospectus Filing Matters 4 – Alternative Forms of Prospectus 5 – Prospectus Exempt Distributions 6 – Requirements Affecting Distributions by Certain Issuers 7 – Advertising and Marketing 8 – Distribution Restrictions	

5 – Ongoing Requirements for Issuers and Insiders	1 – Disclosure – General 2 – Financial Disclosure 3 – Timely Disclosure 4 – Proxy Solicitation 5 – Insider Reporting 6 – Restricted Shares 7 – Cease Trading Orders 8 – Corporate Governance	
6 – Take-Over Bids and Special Transactions	1 – Special Transactions 2 – Take-over Bids	
7 – Securities Transactions Outside the Jurisdictions	1 – International Issuers 2 – Distributions Outside the Jurisdiction	
8 – Investment Funds	1 – Investment Fund Distributions	
9 – Derivatives[4]	1 – General 2 – Trading 3 – Registration and Regulation of OTC Derivatives Market Participants 4 – Clearing and Cleared Derivatives 5 – Uncleared Derivatives 6 – Data Reporting	

Questions

Please refer your questions to any of the following people:

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kari.horn@asc.ca

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Financial and Consumer Affairs Authority of Saskatchewan
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[4] Please note that in Québec, derivatives regulations will be made under the *Derivatives Act* (Québec) and not the *Securities Act* (Québec).

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1.1.8 OSC Staff Notice 51-723 – Report on Staff's Review of Related Party Transaction Disclosure and Guidance on Best Practices

OSC Staff Notice 51-723 – *Report on Staff's Review of Related Party Transaction Disclosure and Guidance on Best Practices* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

OSC Staff Notice 51-723

Report on Staff's Review of Related Party Transaction Disclosure and Guidance on Best Practices

Publication date: January 29, 2015

ONTARIO SECURITIES COMMISSION

Table of Contents

1. Introduction

Related Party Transactions (**RPT**) are a regular feature of business and commerce and can be beneficial to a company. Many issuers, particularly smaller issuers, rely extensively on RPTs because RPTs enable issuers to advance their business on a cost-effective basis by leveraging their existing relationships. Under International Accounting Standards, a RPT is a transfer of resources, services or obligations between an issuer and a party related to the issuer or its executive officers or directors.[1] Under Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**), a RPT is a transaction between the issuer and a related party of the issuer at the time the transaction is agreed to as a consequence of which the issuer directly or indirectly enters into specified transactions, including a purchase or sale of assets, issuing securities or subscribing for securities, borrowing or lending money, and forgiving debts or liabilities.

While RPTs can be beneficial, due to the inherent conflicts of interest, such transactions have the potential in certain circumstances to be unfair or abusive to the issuer or security holders.[2] Controlling shareholders, conflicted directors or others with influence may enter into transactions that are not beneficial to the issuer or may value RPTs in a manner that benefits the related party over the interests of the issuer and its security holders. Accordingly, it is essential, in connection with the disclosure, valuation, review and approval processes followed for RPTs that all security holders be treated in a manner that is fair and perceived to be fair.[3]

Fair treatment of security holders is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.[4] In order to assess fairness, it is critical that issuers provide full and adequate disclosure to their shareholders about these transactions, so investors can better understand their business purpose and value. This is the case for ongoing transactions reflected in normal continuous disclosure filings as well as special transactions subject to MI 61-101.

We reviewed 100 issuers to assess RPT disclosure as described below. Our review found that almost all issuers engaged in some form of RPT and provided disclosure with respect to them. There is a general awareness of the need to provide information on RPTs in both the financial statements and the MD&A. However, our review found that in some instances the disclosure lacked an appropriate level of detail. This staff notice provides insight into areas where issuers can focus on improving their disclosure, including examples. In addition, boards can consider this guidance in developing policies for the identification and review of RPTs and ensuring that sufficient detail of the RPT is included in the issuers' public filings.

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[1] Section 9 of International Accounting Standard 24 *Related Party Disclosures*
[2] Section 1.1 of Companion Policy 61-101CP *To Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions*
[3] Section 1.1 of Companion Policy 61-101CP *To Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions*
[4] Section 1.1 of Companion Policy 61-101CP *To Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions*

2. Scope of Review

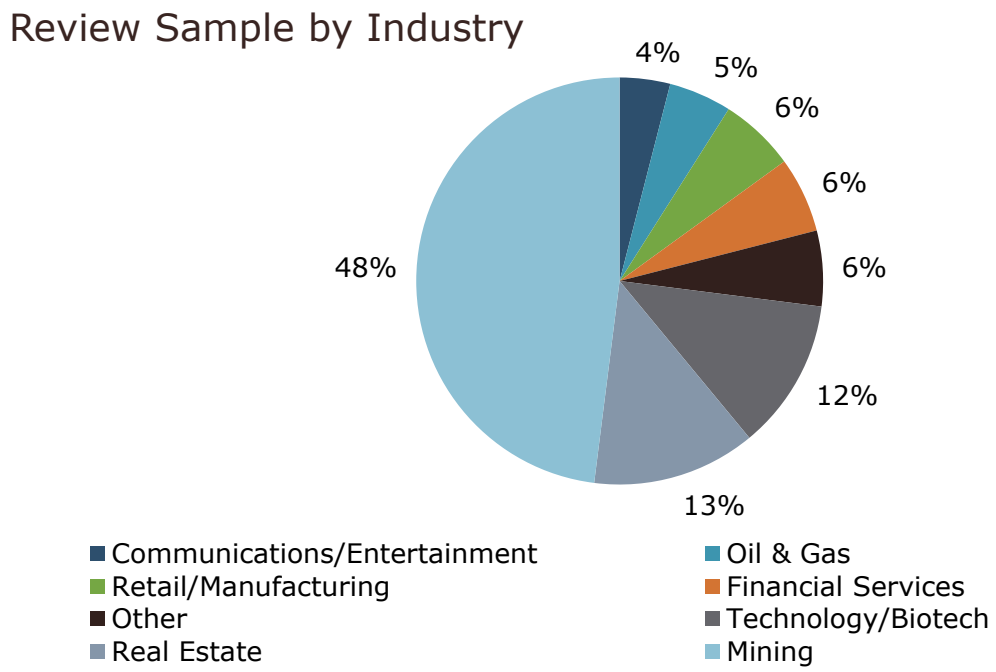
In Canada, financial statement disclosure requirements under International Financial Reporting Standards (**IFRS**) and disclosure requirements under Management's Discussion and Analysis (**MD&A**) in Form 51-102F1 *Management's Discussion & Analysis* (**Form 51-102F1**) serve to ensure that investors are provided with sufficient information to make informed investment decisions. In addition, MI 61-101 outlines the requirements for more significant RPTs to ensure fair treatment of security holders. The following table provides a high level overview of the disclosure requirements under these accounting and securities rules.

IAS 24	Form 51-102F1	MI 61-101
• Relationship of parents and subsidiaries • Nature of the related party relationship • Amount of RPT, including commitments	• Relationship of related parties • Identity of related parties • Business purpose of the RPT • Recorded amount and measurement basis used • Ongoing commitments	• Description of the RPT • Purpose and business reasons for RPT • Effect of RPT on issuer • Review and approval process followed • Description of the interest of every related party and interested party • Exemptions from the formal valuation and minority approval requirements relied upon

Staff of the Ontario Securities Commission (**OSC**) conducted a review of 100 Ontario reporting issuers with the following two objectives:

- assessing issuer compliance with RPT disclosure requirements under securities and financial statement rules; and
- understanding the range of practice around issuer's corporate governance including their disclosure and approval of RPTs.

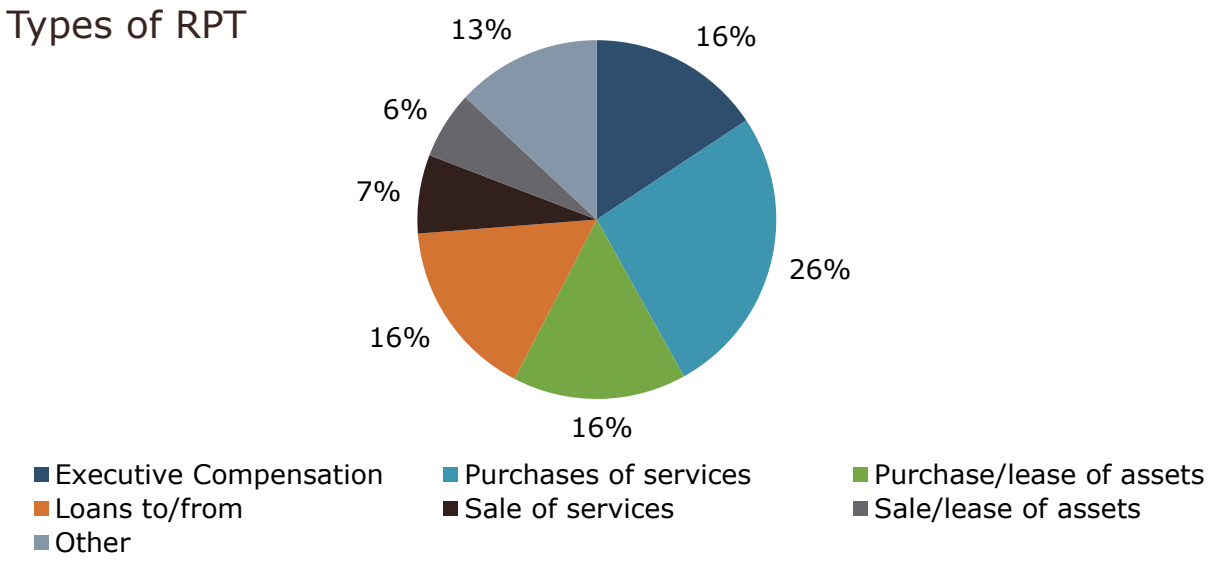
The sample of 100 issuers was selected randomly across all industries.



Forty-seven percent of issuers selected were venture issuers and 53% were non-venture issuers. Those reviewed included issuers of various sizes based on market capitalization. Of the issuers selected, 25% had a market capitalization of less than $5 million and 33% had a market capitalization of greater than $100 million. The remaining 42% had a market capitalization between $5 million and $100 million.

3. Summary of Results

We found that 96% of issuers disclosed RPTs in their financial statements and / or within their MD&A. The most common types of RPTs found in our review were executive compensation, purchase of services or products from a related party, leases of property and loans to or from a related party. Other less common RPTs included sales of products or services to a related party.



Overall, financial statement and MD&A disclosure met most of the key disclosure requirements and there were no instances where we required restatements. In 17% of the financial statements reviewed, a prospective improvement in disclosure was requested, most frequently relating to disclosure of the relationship between an issuer and its parent or subsidiaries. In 47% percent of MD&A reviewed, the main issue related to disclosure that was overly generic and not specific to the issuer. Prospective changes were requested to improve clarity about RPTs disclosed in the MD&A. Consistent with prior findings by OSC staff in its review of MD&A of mining issuers, [5] the most significant issue found in the MD&A was the lack of details relating to who the RPT was with, often using a generic term such as a "director" as opposed to naming the specific individual.

We found that the need for prospective disclosure improvements was a more significant issue for smaller issuers with a market capitalization of less than $100 million. Fifty-five percent of these issuers committed to making prospective changes to enhance the RPT disclosure in their MD&A. Forty percent were asked to add details to their MD&A by disclosing the specific name of the related party involved and 33% were asked to clarify the nature and purpose of the transaction. For larger issuers, 30% were asked to improve the disclosure in their MD&A.

In addition to annual filings, we also reviewed filings relating to corporate governance matters. If an issuer has a code of conduct, they must file it on SEDAR.[6] We found that many issuers made reference to having a code of conduct that described how the board of directors should address RPTs, while a significant number had not filed the code of conduct on SEDAR. As a result of our review, 20% of the issuers were asked to file their code of conduct on SEDAR.

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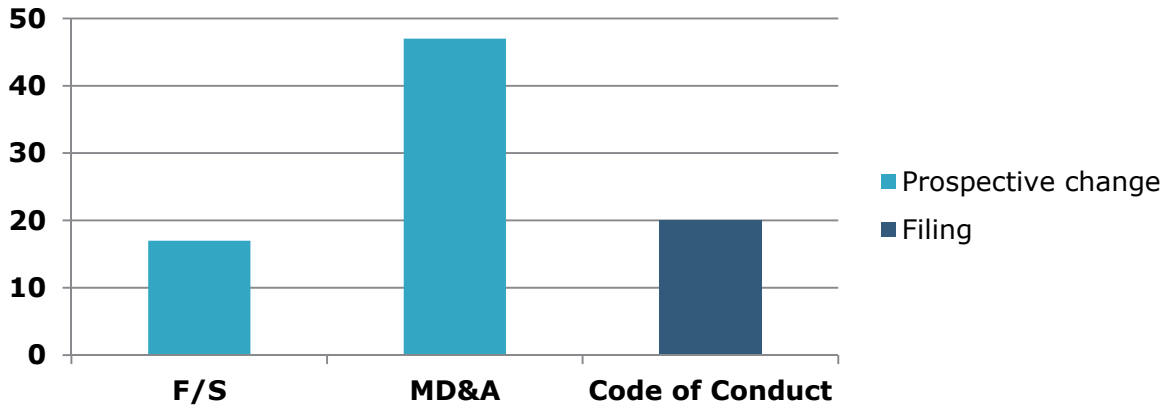
[5] The report of findings in this review together with guidance for issuers are included in OSC Staff Notice 51-722 *Report on a Review of Mining Issuers' Management's Discussion and Analysis and Guidance.*

[6] Section 2.3 of National Instrument 58-101 *Disclosure of Corporate Governance Practices*

Outcomes



4. Financial Statement Disclosure

Disclosure Requirement

IFRS contain specific disclosure requirements for related parties. International Accounting Standard 24 *Related Party Disclosures* (**IAS 24**) requires entities to disclose relationships between a parent and any subsidiaries it controls, even where there have been no transactions between them.[7] In addition to disclosure of key management compensation, IAS 24 requires an entity to disclose the nature of the related party relationship as well as information about the transactions and outstanding balances, including commitments.[8] This information is necessary for users to understand the potential effect of the related party relationship on the financial statements.[9]

Staff Commentary

We found disclosure of related party information in financial statements generally complied with IFRS requirements. The most common omission related to the disclosure in accordance with paragraph 13 of IAS 24 of relationships between a parent and its subsidiaries. IAS 24 explains that such disclosure enables users of financial statements to form a view about the effects of related party relationships on the entity and should be disclosed irrespective of whether there have been transactions between the parties.[10] Nine issuers agreed to prospectively include this disclosure.

In some circumstances, we found issuers disclosed only the existence of RPTs and outstanding amounts payable to, or receivable from, related parties, without providing further description of the nature and terms of the transactions. More descriptive disclosure provides transparency and clarity, which allows investors to better assess the merits of the

[7] Paragraph 13 of IAS 24
[8] Paragraph 18 of IAS 24
[9] Paragraph 14 of IAS 24
[10] Paragraph 14 of IAS 24

transactions, especially when the transactions are material or not in the normal course. As a result of our review, four issuers were asked to prospectively provide more descriptive disclosure in their next set of financial statements.

Example – Entity-specific Disclosure

Disclosure of relationships between a company and both its parent and / or its subsidiaries is required regardless of whether there have been transactions between them. Some companies omit this disclosure. The following is an example of appropriate disclosure when this requirement is applicable:

The following lists the Company's corporate relationships:

Parent:
AA Parent P.L.C., a company incorporated in the United Kingdom and listed on the London Stock Exchange, is the Company's parent company. There were no transactions, other than dividends paid, between the Company and AA Parent P.L.C. during the financial year.

Subsidiaries:

		% equity interest	
Name	Country of Incorporation	2013	2012
X Limited	Canada	80.0	—
Y Limited	Canada	95.0	95.0
Z Inc.	United States	100.0	100.0

Joint venture in which the Company is a venturer:
The Company has a 50% interest in V Limited (2012: 50%). Please refer to note 10 for more disclosure related to this joint venture.

5. MD&A

Disclosure Requirement

The MD&A should complement and supplement the financial statements. While many of the MD&A requirements for RPTs in Form 51-102F1 are similar to the requirements under IAS 24, Form 51-102F1 specifically requires an issuer to identify the related person or entity, as well as to discuss the business purpose of the transaction.[11]

Staff Commentary

MD&A disclosure of RPTs is intended to provide both qualitative and quantitative information that is necessary for an understanding of the business purpose and economic substance of a transaction.[12] In order to meet this requirement, the disclosure should be specific and detailed. Overall, we found the disclosure in the MD&A often repeated the disclosure in the financial statements and did not provide the additional disclosure required in the MD&A. Thirty-six percent of issuers reviewed did not provide details about the

[11] Item 1.9 of Form 51-102F1
[12] Item 1.9 of Form 51-102F1

related party, often using generic terms such as an "officer" or "director" rather than specifically identifying the individual involved in the transaction. In addition, only 38% of the issuers reviewed provided the business purpose for all of their RPTs.

Example – Boilerplate Disclosure

The disclosure below is an example of boilerplate disclosure for RPTs that does not disclose the identity of the related party and the business purpose of the transaction:

> During the year, the Company paid $120,000 to a director as lease payments. As at December 31, 2014, the amount outstanding to the director was $10,000.

Example – Entity-specific Disclosure

A better example of disclosure for RPTs would be as follows:

> During the year, the Company paid $120,000 to Mr. John Smith, a director of the Company, as lease payments for leasing the space used as the Company's warehouse. The current lease expires on December 31, 2015. The terms of the lease were reviewed by disinterested directors of the Board, and were found to be comparable to market terms. The lease is to be reviewed by disinterested directors of the Board every two years and renewed on the condition that the terms are comparable to, or more favourable than, market terms. As at December 31, 2014, the amount outstanding to Mr. Smith was $10,000, which represents the amount for one month's rent.

6. Corporate Governance Practice Disclosure

Disclosure Requirement

While Canadian securities requirements do not mandate corporate governance practices, National Policy 58-201 *Corporate Governance Guidelines* (**NP 58-201**) contains recommended guidance on corporate governance practices. For example, section 3.8 of NP 58-201 states that the board should adopt a written code of business conduct and ethics that addresses, among other things, conflicts of interest, including transactions and agreements in respect of which a director or executive officer has a material interest. National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) contains requirements for disclosure of corporate governance practices for non-venture and venture issuers. A non-venture issuer is required by item 5(b) of Form 58-101F1 *Corporate Governance Disclosure* (**Form 58-101F1**) to describe in its management information circular or annual information form any steps the board takes to ensure that directors exercise independent judgment in considering transactions and agreements in respect of which a director or executive officer has a material interest. Further, item 5(a) of Form 58-101F1 requires non-venture issuers to disclose whether or not the board has adopted a written code of business conduct and ethics for directors, officers and employees, and if so, to make certain disclosure related to the code.

While only non-venture issuers are subject to the requirements in Form 58-101F1, item 4 of Form 58-101F2 requires venture issuers to describe what steps, if any, the board takes to encourage and promote a culture of ethical business conduct. Venture issuers are encouraged to disclose whether the board has adopted a written code of business conduct and ethics to help investors to assess their corporate governance practices with respect to RPTs.

If an issuer has adopted a code, the issuer should file a copy of the code on SEDAR in accordance with section 2.3 of NI 58-101. This requirement applies to both venture and non-venture issuers.

Staff Commentary

The board of directors plays a key role in overseeing the identification of RPTs and ensuring all RPTs are disclosed. We encourage the board of a reporting issuer to adopt a written code of business conduct and ethics that establishes written standards reasonably designed to promote integrity and to deter wrongdoing. Effective codes apply to directors, officers and employees of the issuer and address, among other things, conflicts of interest and transactions and agreements where a director or officer has an interest, including RPTs. It is good practice to require directors, officers and employees to certify on an annual basis that they have complied with the code.

We also encourage issuers to consider providing more detailed disclosure about their process for identifying, evaluating and approving RPTs. This could include considering:

- whether the board or a committee of the board reviews and approves RPTs;
- whether a materiality threshold has been adopted to determine which RPTs are subject to independent review by the board or a committee of the board;
- whether the issuer has rules, guidelines or procedures for RPTs conducted in the normal course of business; and
- whether the issuer has rules, guidelines or processes to satisfy itself that a non-material RPT is transacted at fair value.

The review found that most non-venture issuers have generally complied with the requirement in item 5(b) of Form 58-101F1 to describe any steps the board takes to ensure that directors exercise independent judgment in considering conflicted transactions. However, twelve of the non-venture issuers in our sample either did not disclose whether they had a written code of business conduct and ethics in accordance with item 5(a) of Form 58-101F1, or did not file a code on SEDAR in accordance with section 2.3 of NI 58-101 where they indicated that they had one. At staff's request, the 12 issuers agreed to make the appropriate disclosure prospectively and, if applicable, file the code.

In the case where a venture issuer chooses to adopt a code of conduct, they must file it on SEDAR pursuant to section 2.3 of NI 58-101. Eight of the venture issuers in our sample made reference to a code of conduct that had not been filed on SEDAR. At staff's request, the issuers agreed to file their code of conduct.

Example – Boilerplate Disclosure

The following is a boilerplate example that does not provide details of the process that the audit committee or management undertakes in their review:

> The audit committee reviews and approves all material related party transactions in which the Company is involved or which the Company proposes to enter into.

Example – Entity-specific Disclosure

A better example would be as follows:

> The Company's management team discusses all related party transactions. In considering related party transactions, management will assess the materiality of related party transactions on a case-by-case basis with respect to both the qualitative and quantitative aspects of the proposed related party transaction. Related party transactions that are in the normal course are subject to the same processes and controls as other transactions, that is, they are subject to standard approval procedures and management oversight, but will also be considered by management for reasonability against fair value. Related party transactions that are found to be material are subject to review and approval by the Company's audit committee which is comprised of independent directors.

7. Special Transactions

Requirement

MI 61-101 regulates significant RPTs including those transactions involving directors or senior management of a reporting issuer. When RPTs are undertaken, MI 61-101 requires the board of directors to play an important role in ensuring that all security holders are treated fairly and that the interests of the issuer and minority shareholders are protected. The board is responsible for ensuring that investors are provided with sufficient information to make an informed decision to approve or challenge the approval of a RPT.[13] The board, or an independent special committee appointed by the board, is responsible for overseeing RPTs by, among other things, supervising the preparation of a formal valuation,[14] unless specified exemptions apply,[15] and providing enhanced disclosure in information circulars and material change reports.[16] In addition, RPTs are subject to minority shareholder approval under MI 61-101,[17] unless specified exemptions are available.[18]

If a material change report is required to be filed with respect to a RPT, the material change report must include specific disclosure of the RPT, including:

- a description of the transaction and its material terms;
- the purpose and business reasons for the transaction;
- its effect on the issuer;
- the review and approval process followed by the issuer;
- a description of the interest of every interested party and related party; and
- if applicable, the formal valuation or minority approval exemptions relied upon.[19]

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[13] Subsection 6.1(2) of Companion Policy 61-101CP *To Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions*
[14] Section 5.4 of MI 61-101
[15] Section 5.5 of MI 61-101
[16] Sections 5.2 and 5.3 of MI 61-101
[17] Section 5.6 of MI 61-101
[18] Section 5.7 of MI 61-101
[19] Subsection 5.2(1) of MI 61-101

If the issuer files a material change report less than 21 days before the expected date of the closing of the transaction, the issuer must explain in the news release and in the material change report why the shorter period is reasonable or necessary in the circumstances.[20]

MI 61-101 also prescribes information that an issuer must include in an information circular prepared in connection with a meeting of the holders of affected securities if minority approval of the RPT is required.[21] The information required to be disclosed in an information circular is similar to what should be included in the material change report, discussed above. The disclosure must permit holders of affected securities to make an informed decision whether to approve the RPT.

Staff Commentary

When considering a RPT, consideration should also be given to the guidance provided by Companion Policy 61-101CP *To Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions* (**61-101CP**) to ensure that all security holders are treated fairly. In our view, providing sufficient information to security holders includes directors disclosing their reasonable beliefs as to the desirability or fairness of the proposed RPT and making useful recommendations regarding the RPT.[22] The disclosure should describe in reasonable detail the material factors on which beliefs regarding the RPT are based. The board should also fully discuss the background of deliberations by the directors and any analysis of expert opinions received.[23]

A statement that the directors are unable to make or are not making a recommendation about the RPT, a statement that the directors have no reasonable belief as to the desirability or fairness of the RPT, or a failure to indicate whether the directors consider the RPT to be fair, without more detailed reasons, would generally be viewed as insufficient disclosure.[24]

In addition, it is important for boards to put in place an appropriate review and approval process to safeguard against the potential that a related party would have an unfair advantage arising as a result of a conflict of interest or informational or other advantage in connection with a proposed RPT. A good practice, as set out in subsection 6.1(6) of 61-101CP, is to appoint a special committee of disinterested directors to carry out, review and report on the negotiation of the RPT. In Staff's view, the mandate of any special committee considering a RPT should generally give the special committee full authority to negotiate the terms of the transaction, consider other alternative transactions, and consider whether the RPT is in the interests of, or fair to, security holders.

In our review, the disclosure requirements in MI 61-101 for material change reports for RPTs were generally complied with. Approximately 9% of the issuers reviewed filed a material change report in relation to RPTs. No issuer reviewed was required to provide a formal valuation or obtain minority approval under MI 61-101 of a RPT. The two most commonly relied upon exemptions from the minority shareholder approval and formal

[20] Subsection 5.2(2) of MI 61-101
[21] Subsection 5.3(3) of MI 61-101
[22] Subsection 6.1(2) of 61-101CP
[23] Subsection 6.1(3) of 61-101CP
[24] Subsections 6.1(2) and 6.1(4) of 61-101CP

valuation requirements of MI 61-101 were the 25% market capitalization exemption and the financial hardship exemption.[25]

In a few instances, issuers did not disclose in the material change report information about insider participation in a private placement where the private placement was a material change for the issuer. Although the insider participation in itself may not have been material in value, the obligation to provide disclosure about a RPT is triggered when a material change report is required to be filed even if the transaction is exempt from minority approval under MI 61-101. In other words, when filing a material change report where there is any insider participation, the material change report should contain information about the insider participation in a RPT, including a description of the interest of every interested party and the review and approval process followed by the issuer, even if the insider participation may form only a small part of the private placement.

Example – Boilerplate Disclosure

The example below illustrates the kind of boilerplate disclosure that is occasionally found in a material change report describing RPT:

> The Company announced a non-brokered private placement offering of 5,000,000 shares (the **Offered Shares**) at a price of $0.50 per share for aggregate proceeds of $2,500,000. Insiders of the Company have subscribed for 20% of the Offered Shares.

[25] In the board's assessment of whether the issuer can avail itself of the financial hardship exemption, the board is encouraged to consider the guidance set out in the notice published by the TSX dated April 27, 2009 (the **TSX Staff Notice**) on the types of procedural and informational considerations it would expect from issuers seeking to establish financial hardship as a basis for reliance upon the financial hardship exemption in subsection 604(e) of the TSX Company Manual. As the TSX financial hardship considerations are similar to, and are based on, the financial hardship exemption in MI 61-101, the considerations set out in the TSX Staff Notice may be relevant to not only a TSX listed issuer, but also a venture issuer, that proposes to rely upon the financial hardship exemption in MI 61-101.

Example – Entity-specific Disclosure

The example below illustrates better disclosure included in the material change report when there is a RPT:

> On January 21, 2014, the Company announced a non-brokered private placement offering of 5,000,000 shares (**the Offered Shares**) at a price of $0.50 per share for aggregate proceeds of $2,500,000. The Proposed Private Placement is expected to close on March 1, 2014. The net proceeds of this private placement will be used to advance the Company's exploration in the Company's Ottawa property, as well as for working capital and general administrative purposes.
>
> Insiders of the Company have subscribed for an aggregate of 1,000,000 shares at a price of $0.50 per share, for aggregate proceeds of $500,000, comprising 20% of the total amount raised.
>
> John Smith, the CEO and a director of the Company, subscribed for 600,000 shares for $300,000, increasing his holding from 2.0% to 4.0% of the issued and outstanding shares.
>
> Jane Doe, a director of the Company, subscribed for 400,000 shares for $200,000, increasing her holding from 0.5% to 2.0% of the issued and outstanding shares.
>
> The participation of Mr. Smith and Ms. Doe in the private placement constitutes a "related party transaction" as such terms are defined in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**). The Company is relying on the exemptions from the formal valuation and minority approval requirements set out in subsection 5.5(a) and paragraph 5.7(1)(a) of MI 61-101 because the fair market value of the consideration for the securities of the Company to be issued to the insiders does not exceed 25% of its market capitalization.
>
> The insider private placements were approved by the disinterested directors of the Company who concluded that the private placements were entered into on market terms and were fair to minority security holders.

8. Conclusion

RPTs are a normal feature of commerce and business and such transactions by their very nature give rise to conflicts of interest and have the potential to be unfair or abusive to issuers and their securities holders. As part of a good governance regime, reporting issuers and their board of directors should consider the guidance and recommendations in this staff notice. Consideration should also be given to a company's policies and procedures for identifying, evaluating and approving RPTs. Once RPTs are identified, the board of directors should ensure that they are properly disclosed in accordance with accounting and securities rules.

This is a notice setting forth Staff's views which are not necessarily those of the Commission.

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

osc.gov.on.ca

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1.2 Notices of Hearing

1.2.1 Thomas Hochhausen and Douglas Bender – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
THOMAS HOCHHAUSEN and DOUGLAS BENDER

NOTICE OF HEARING
(Subsections 127(1) and 127(10))

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), at the offices of the Commission, 20 Queen Street West, 17th Floor, commencing on March 2, 2015 at 10:00 a.m.;

TO CONSIDER whether, pursuant to paragraph 5 of subsection 127(10) of the Act, it is in the public interest for the Commission to make an order:

1. against Thomas Hochhausen ("Hochhausen") that:

    a. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Hochhausen resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager, except that Hochhausen may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public;

    b. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Hochhausen be prohibited until February 27, 2024 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that Hochhausen may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public; and

    c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities laws do not apply to Hochhausen until February 27, 2024;

2. against Douglas Bender ("Bender") that:

    a. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Bender resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager, except that Bender may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public;

    b. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Bender be prohibited until February 27, 2019 from becoming or acting as a director or officer of any issuer, registrant or investment fund manager, except that Bender may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public; and

    c. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities laws do not apply to Bender until February 27, 2019;

3. To make such other order or orders as the Commission considers appropriate.

BY REASON of the allegations set out in the Statement of Allegations of Staff of the Commission dated January 20, 2015 and by reason of a Settlement Agreement and Undertaking between Hochhausen, Bender and the Alberta Securities Commission dated February 27, 2014, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that at the hearing on March 2, 2015 at 10:00 a.m., Staff will bring an application to proceed with the matter by written hearing, in accordance with Rule 11 of the Ontario Securities Commission *Rules of Procedure* (2014), 37 OSCB 4168 and section 5.1 of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22, as amended, and any party to the proceeding may make submissions in respect of the application to proceed by written hearing;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by counsel if that party attends or submits evidence at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of the party and such party is not entitled to any further notice of the proceeding.

AND TAKE FURTHER NOTICE that the Notice of Hearing is also available in French, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plut tôt possible et, dans tous les cas, au moins trente (30) jours avant l'audience si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

DATED at Toronto this 20th day of January, 2015.

"Josée Turcotte"
Secretary to the Commission

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

AND

IN THE MATTER OF
THOMAS HOCHHAUSEN and DOUGLAS BENDER

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") allege:

I. OVERVIEW

1. On February 27, 2014, Thomas Hochhausen ("Hochhausen") and Douglas Bender ("Bender") (collectively, the "Respondents") entered into a Settlement Agreement and Undertaking with the Alberta Securities Commission ("ASC") (the "Settlement Agreement").

2. Pursuant to the Settlement Agreement, the Respondents each agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta.

3. Staff are seeking an inter-jurisdictional enforcement order reciprocating the Settlement Agreement, pursuant to paragraph 5 of subsection 127(10) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act").

4. The conduct for which the Respondents were sanctioned took place between February to September 2011 (the "Material Time").

5. In the Settlement Agreement, the Respondents admitted to making statements they knew or ought to have known were misleading or untrue, or which failed to state necessary facts that would reasonably be expected to impact the value of Hypower Fuel Inc. ("Hypower") securities during the Material Time. Bender further admitted to making false statements under oath to an ASC investigator.

6. The Respondents admitted that their unduly promotional, misleading and untrue statements in news releases and untrue statements under oath to ASC investigators constituted conduct contrary to the public interest.

II. THE ASC PROCEEDINGS

Agreed Facts

7. In the Settlement Agreement, the Respondents admitted the following:

Parties

a. Hypower is an Alberta corporation, whose securities were quoted for trading on the OTC pink sheets, No Information tier, beginning in 2006.

b. Hochhausen is an Alberta resident accountant. He acted as a Financial Consultant to Hypower.

c. Bender is a resident of British Columbia and the President of Hypower.

Circumstances

d. From February to September 2011 ("Period"), Hypower issued news releases regarding significant developments to the company. All news releases were drafted or reviewed, or both, by Hochhausen and Bender. The Hypower news releases contained numerous misrepresentations, including (but not limited to) the following:

i. Hypower had "signed a major development agreement for $5 Million" (February 10, 2011), when, in fact, as at February 10, 2011, no development agreement for $5 Million had been signed.

ii. Hypower had an "already extensive patent portfolio", with patents "presently in place" (February 16, 2011), when Hypower had no patents in place at that time.

iii. Hypower had approved a share repurchase/buyback plan, to be funded by the company's available cash (February 22, 2011), when the share buyback program was actually to be funded by a government credit for research conducted by Hypower or from private sources. In fact, Hypower did not receive the credit, never obtained any funds from private sources and no shares were ever repurchased.

iv. Hypower had "entered into negotiations" with two potential acquisition companies that were on "the cusp of explosive growth with the potential for double digit near term profitability" (March 1, 2011). In fact, the first target acquisition company referred in the news releases as "TC1" had minimal inventory, no cash reserves, and only earned enough to pay salaries and bills. From 2008 to 2011, TC1 had no revenue growth. As at March 1, 2011, the second target acquisition company, "TC2," was simply a developmental company with no revenue whatsoever.

v. Hypower had "entered into preliminary agreements with a number of shareholders to repurchase approximately 1.5 million outstanding shares" (March 17, 2011). Hypower never repurchased the 1.5 million outstanding shares as these shares were to be repurchased from revenue or privately sourced funds, and Hypower never earned revenue and did not raise any capital privately.

vi. Hypower [had] "already begun the process of upgrading to the OTC Pink Current Information" (March 22, 2011). In fact, Hypower did not have the money and took no steps to upgrade Hypower to the OTC pink sheets, Current Information tier (apart from preliminary discussions with legal counsel in the US).

vii. Hypower had "reached an Agreement in Principle on the Purchase Formula for the purchase of some or all of the first acquisition Target Company" and the "Target Company's principals have been updating their business plans and projections with the help of Hypower's consultants" (April 14, 2011). In fact, Hypower never had an agreement in principle for a purchase price formula with the Target Company.

viii. The two acquisition companies had "expressed [sic] a strong interest in making use of Hypower's strength to grow quickly, show financial results, and then be Spun Out as separate public entities trading on recognized exchanges, higher than the Pinksheets OTC," and that "Hypower shareholders could receive a special dividend giving them a direct shareholding in the target companies in some manner" (April 20, 2011). In fact, neither acquisition company discussed with Hypower the idea of being acquired by Hypower and spun out as separate public entities.

ix. Both acquisition companies "agreed to provide verifiable information that Hypower can release concerning their operations and business plan in the very near future" (April 25, 2011). In fact, the acquisition companies never agreed to provide to Hypower for dissemination verifiable details of its operations and business plans.

x. Hypower "accepted an invitation for a site visit to TC2's engineering firm to perform due diligence," and that "due diligence is progressing." Also, Hypower was to be granted "unrestricted access to TC2's entire engineering team," and "TC2's technology is truly one of a kind, leading edge, game changer technology that has applications in the medical, oil and gas, automotive and household markets." "The due diligence on TC1 is proceeding well, and Hypower continues to assist both TC's in developing their websites, and with revenue projections" (April 27, 2011). The facts are that Hypower did not conduct due diligence of TC2 or TC1 in 2011, TC2 never spoke to Hypower about Hypower having access to TC2's consulting engineers. TC1 had a website, but Hypower never assisted TC1 with developing that website. TC2 never had a website.

xi. "Verifiable information from TC2's professional advisors will be forthcoming over the next few weeks" (July 13, 2011), when, in fact, TC2 never had any discussions about releasing verifiable information to Hypower.

e. Hypower never issued any clarifying or correcting news release to the public with respect to the above misrepresentations.

f. Hypower, Hochhausen and Bender knew or reasonably ought to have known at the time and in the light of the circumstances in which these representations were made that these statements were misleading or untrue, or

failed to state facts required in order for the statements not to be misleading, and further, that the statements would reasonably be expected to have a significant effect on the market price or value of Hypower securities.

g. Hypower's securities, which traded at less than $0.01 in February 2011, rose to a high of $0.05 during the Period.

Misleading ASC Staff

h. During [ASC] Staff's investigation, Hochhausen and Bender were interviewed under oath. In Bender's interview, he stated that the principals of TC1 received, reviewed and approved Hypower news releases regarding TC1, and that the principal of TC2 received, reviewed and approved Hypower news releases regarding TC2 during the Period described above before they were issued.

i. The principals of TC1 and TC2 refuted Bender's statements in their interviews with ASC Staff.

8. In the Settlement Agreement, the Respondents admitted the following:

Admitted Breaches of Alberta Securities Laws

9. Based on the Admitted Facts outlined above:

a. Hypower, Hochhausen and Bender admit that they have breached subsection 92(4.1) of the Alberta *Securities Act*, R.S.A. 2000, c. S.4 (the "Alberta Act") by making statements that they knew or ought to have known were misleading or untrue, or which failed to state facts necessary to be stated, and which would reasonably be expected to have a significant effect on the market price or value of Hypower's securities.

b. Bender admits that he breached section 221.1 of the Alberta Act by making a statement to an [ASC] investigator, that is TC1 and TC2 received Hypower news releases before they were issued, which was untrue.

c. Hypower, Hochhausen and Bender admit that their unduly promotional, misleading and untrue statements in news releases, and untrue statements under oath to [ASC] Staff investigators, constituted conduct that is contrary to the public interest.

The Settlement Agreement and Undertakings

10. Pursuant to the Settlement Agreement, the Respondents each agreed to certain undertakings and to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta:

a. Hochhausen:

i. Hochhausen pay to the ASC the amount of $40,000;

ii. Hochhausen pay to the ASC the amount of $10,000 towards investigation and legal costs;

iii. for a period of 10 years from the date of the Settlement Agreement:

1. Hochhausen refrain from becoming or acting as either a director or an officer of any issuer, registrant, or investment fund manager, and to immediately resign any such positions he currently holds, except that Hochhausen may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public;

2. Hochhausen refrain from acting in a management or consultative capacity in connection with activities in the securities market, except as permitted under subparagraph 19.3(a) of the Settlement Agreement; and

3. Hochhausen refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws.

b. Bender:

i. Bender pay to the ASC the amount of $30,000;

ii. Bender pay to the ASC the amount of $10,000 towards investigation and legal costs;

iii. for a period of 5 years from the date of the Settlement Agreement:

1. Bender refrain from becoming or acting as either a director or an officer of any issuer, registrant, or investment fund manager, and to immediately resign any such positions he currently holds, except that Bender may act as a director or officer of private issuers with fewer than 10 shareholders that do not issue shares to the general public;

2. Bender refrain from acting in a management or consultative capacity in connection with activities in the securities market, except as permitted under subparagraph 20.3(a) of the Settlement Agreement; and

3. Bender refrain from using any of the prospectus and registration exemptions contained in Alberta securities laws.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

11. In the Settlement Agreement, the Respondents agreed to be made subject to sanctions, conditions, restrictions or requirements within the province of Alberta.

12. Pursuant to paragraph 5 of subsection 127(10) of the Act, an agreement with a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, to be made subject to sanctions, conditions, restrictions or requirements on the person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.

13. Staff allege that it is in the public interest to make an order against the Respondents.

14. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

15. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the Ontario Securities Commission *Rules of Procedure*.

DATED at Toronto, this 20th day of January, 2015.

1.2.2 Ground Wealth Inc. et al. – ss. 127(1), 127.1 and Rule 12 of the OSC Rules of Procedure

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

AND

IN THE MATTER OF
GROUND WEALTH INC., MICHELLE DUNK, ADRION SMITH,
JOEL WEBSTER, DOUGLAS DEBOER,
ARMADILLO ENERGY INC., ARMADILLO ENERGY, INC.,
and ARMADILLO ENERGY, LLC (aka ARMADILLO ENERGY LLC)

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and ADRION SMITH

NOTICE OF HEARING
(Subsections 127(1) & 127.1 and Rule 12 of the Rules of Procedure)

TAKE NOTICE that the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to section 127(1) and 127.1 of the *Securities Act*, R.S.O., 1990 c. S.5, as amended (the "Act") at its offices at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on January 23, 2015, at 1:00 p.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement dated January 22, 2015, between Staff of the Commission and Adrion Smith;

BY REASON OF the allegations set out in the Amended Statement of Allegations of Staff of the Commission dated October 31, 2013, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by counsel at the hearing; and

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of that party and such party is not entitled to any further notice of the proceeding.

DATED at Toronto this 22nd day of January, 2015.

"Josée Turcotte"
Secretary to the Commission

1.4 Notices from the Office of the Secretary

1.4.1 Thomas Hochhausen and Douglas Bender

FOR IMMEDIATE RELEASE
January 21, 2015

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

AND

IN THE MATTER OF
THOMAS HOCHHAUSEN and DOUGLAS BENDER

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to Subsections 127(1) and 127(10) of the *Securities Act* setting the matter down to be heard on March 2, 2015 at 10:00 a.m. as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated January 20, 2015 and Statement of Allegations of Staff of the Ontario Securities Commission dated January 20, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.2 Ground Wealth Inc. et al.

FOR IMMEDIATE RELEASE
January 22, 2015

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

AND

IN THE MATTER OF
GROUND WEALTH INC., MICHELLE DUNK,
ADRION SMITH, JOEL WEBSTER, DOUGLAS DEBOER,
ARMADILLO ENERGY INC.,
ARMADILLO ENERGY, INC., and
ARMADILLO ENERGY, LLC
(aka ARMADILLO ENERGY LLC)

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and ADRION SMITH

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Adrion Smith in the above named matter.

The hearing will be held on January 23, 2015 at 1:00 p.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated January 22, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.3 Ground Wealth Inc. et al.

FOR IMMEDIATE RELEASE
January 23, 2015

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

AND

IN THE MATTER OF
GROUND WEALTH INC., MICHELLE DUNK,
ADRION SMITH, JOEL WEBSTER, DOUGLAS DEBOER,
ARMADILLO ENERGY INC.,
ARMADILLO ENERGY, INC., and
ARMADILLO ENERGY, LLC
(aka ARMADILLO ENERGY LLC)

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and ADRION SMITH

TORONTO – The Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Adrion Smith.

A copy of the Order dated January 23, 2015 and Settlement Agreement dated January 22, 2015 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.4 Wealth Stewards Portfolio Management Inc. and Sushila Lucas

FOR IMMEDIATE RELEASE
January 26, 2015

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

AND

IN THE MATTER OF
WEALTH STEWARDS PORTFOLIO MANAGEMENT INC.
AND SUSHILA LUCAS

TORONTO – The Commission issued an Order pursuant to subsection 8(4) of the Act and Rule 9.2 of the OSC *Rules of Procedure* in the above named matter.

A copy of the Order dated January 23, 2015 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.4.5 Practice Guideline – Case Management Timeline for Enforcement Proceedings

FOR IMMEDIATE RELEASE
January 26, 2015

PRACTICE GUIDELINE – CASE MANAGEMENT TIMELINE FOR ENFORCEMENT PROCEEDINGS

TORONTO – The Ontario Securities Commission (the "Commission") has approved a practice guideline in respect of the Commission's case management procedures (the "Practice Guideline").

The Practice Guideline provides a case management timeline for enforcement proceedings before the tribunal and reflects the Commission's continued efforts to enhance the early identification and resolution of preliminary matters to ensure that adjudicative proceedings can be brought on for final resolution more rapidly and more cost effectively.

The Practice Guideline was developed in accordance with the Commission's *Rules of Procedure* (2014), 37 O.S.C.B. 4168 and the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22.

The Practice Guideline is effective February 1, 2015 and will apply to all enforcement proceedings before the Commission, including those commenced by a Notice of Hearing issued prior to that date. A copy of the Practice Guideline is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
JOSÉE TURCOTTE
ACTING SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 First Asset Investment Management Inc. and the Top Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from subsection 2.1(1) and paragraphs 2.2(1)(a), 2.5(2)(a), 2.5(2)(e) and 2.5(2)(f) of National Instrument 81-102 – Investment Funds to allow investment funds to invest in ETFs under common management or managed by an affiliate, and to allow the top funds to pay brokerage commissions for the purchase and sale of the securities of the underlying ETFs – Underlying ETFs are subject to NI 81-102, are not commodity pools under NI 81-104, and do not rely on any exemptive relief from the restrictions regarding the purchase of physical commodities, the use of derivatives and the use of leverage – Relief subject to terms and conditions based on investment restrictions of NI 81-102 such that top funds cannot do indirectly via investment in underlying ETFs what they cannot do directly under NI 81-102.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1), 2.2(1)(a), 2.5(2)(a), 2.5(2)(e), 2.5(2)(f).

January 9, 2015

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
FIRST ASSET INVESTMENT MANAGEMENT INC.
(the Filer)

AND

IN THE MATTER OF
THE TOP FUNDS
(defined below)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) granting an exemption to the existing investment funds listed at Schedule "A" (the **Existing Top Funds**) and the future investment funds (the **Future Top Funds**, and collectively with the Existing Top Funds, the **Top Funds**), which are subject to National Instrument 81-102 – *Investment Funds* (**NI 81-102**) and are managed by the Filer, or an affiliate of the Filer, from the following prohibitions in NI 81-102 (the **Requested Relief**):

(a) Subsection 2.1(1) (the **Concentration Restriction**), to permit each Top Fund that is a mutual fund to purchase a security of an Underlying ETF (as defined below) or enter into a specified derivatives transaction with respect to an Underlying ETF even though, immediately after the transaction, more than 10 percent of the

net asset value (**NAV**) of the Top Fund would be invested, directly or indirectly, in the securities of the Underlying ETF;

(b) Paragraph 2.2(1)(a) of NI 81-102, to permit each Top Fund to purchase securities of an Underlying ETF such that, after the purchase, the Top Fund would hold securities representing more than 10 percent of: (i) the votes attaching to the outstanding voting securities of the Underlying ETF; or (ii) the outstanding equity securities of the Underlying ETF;

(c) Paragraph 2.5(2)(a) of NI 81-102, to permit each Top Fund that is a mutual fund to invest in securities of an Underlying ETF; and

(d) Paragraphs 2.5(2)(e) and 2.5(2)(f) of NI 81-102, to permit each Top Fund to pay brokerage commissions in relation to its purchase and sale on a recognized exchange (as defined in the *Securities Act* (Ontario)) in Canada of securities of an Underlying ETF.

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

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

(b) the Filer has provided notice that paragraph 4.7(l)(c) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

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

Representations

The Filer

1. The Filer is a corporation formed by amalgamation pursuant to a certificate of amalgamation dated January 1, 2013 under the *Business Corporations Act* (Ontario). The Filer is registered as an investment fund manager, a portfolio manager and an exempt market dealer under the *Securities Act* (Ontario). The head office of the Filer is located at 95 Wellington Street West, Suite 1400, Toronto, Ontario, M5J 2N7.

2. The Filer, or an affiliate of the Filer, acts or will act as the trustee and investment fund manager, and may also act as the portfolio advisor, of the Top Funds.

3. None of the Filer, the existing Top Funds or the existing Underlying ETFs, is in default of any of its obligations under the securities legislation of any of the provinces and territories of Canada.

The Top Funds

4. The Top Funds are, or will be, non-redeemable investment funds, open-ended mutual funds or exchange traded open-ended mutual funds organized and governed by the laws of a jurisdiction of Canada.

5. Each Top Fund has distributed, distributes, or will distribute, its securities pursuant to a simplified prospectus prepared pursuant to NI 81-101 – *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and Form NI 81-101F1 or a long form prospectus prepared pursuant to NI 41-101 – *General Prospectus Requirements* (**NI 41-101**) and Form 41-101F2 and are, or will be, governed by the applicable provisions of NI 81-102, subject to any exemptions therefrom that have been, or may in the future be, granted by the securities regulatory authorities.

6. The Top Funds are, or will be, reporting issuers in the provinces and territories of Canada in which their securities are distributed.

7. Each Top Fund wishes to have the ability to invest up to 100 percent of its NAV in any one or more of the exchange traded mutual funds (the **Existing Underlying ETFs**) listed in Schedule “B” and such other similar exchange traded mutual funds as may be established and managed by the Filer, or an affiliate of the Filer, in the future (together with the Existing Underlying ETFs, the **Underlying ETFs**).

8. Each investment by a Top Fund in securities of an Underlying ETF will be made in accordance with the investment objectives of the Top Fund and will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Top Fund.

The Underlying ETFs

9. The Filer, or an affiliate of the Filer, acts, or will act, as the trustee, investment fund manager, and may act as the portfolio advisor, of the Underlying ETFs.

10. Each Underlying ETF is, or will be:

    (a) an open-ended exchange traded mutual fund, subject to NI 81-102 and NI 41-101, subject to any exemptions therefrom that have been, or may in the future be, granted by the securities regulatory authorities;

    (b) a reporting issuer in the provinces and territories of Canada in which its securities are distributed; and

    (c) listed on the Toronto Stock Exchange (the **TSX**) or another recognized exchange in Canada.

11. Each Underlying ETF distributes, or will distribute, its securities pursuant to a long form prospectus prepared pursuant to NI 41-101 and Form 41-101F2.

12. No Underlying ETF holds, or will hold more than 10 percent of its NAV in securities of other investment funds unless the securities of the other investment fund are securities of a money market fund, as defined in NI 81-102, or index participation units (**IPUs**), as defined in NI 81-102, issued by an investment fund.

13. The securities of the Underlying ETFs do not, or will not, constitute IPUs.

14. Each Underlying ETF does not, or will not, pay management or incentive fees which to a reasonable person would duplicate a fee payable by the Top Fund for the same service.

15. If the investment fund manager of a Top Fund (the **Top Fund Manager**) determines that the management fees and incentive fees payable by an Underlying ETF to its investment fund manager (the **Underlying ETF Manager**) would duplicate a fee payable by the Top Fund for the same service, the Underlying ETF Manager will pay a management fee rebate to the Top Fund that will not exceed the management fee payable by the Top Fund to the Top Fund Manager in respect of the Top Fund's investment in the Underlying ETF.

16. No Top Fund that holds securities of an Underlying ETF will vote any of those securities.

17. Holders of securities of an Underlying ETF may:

    (a) sell such securities on the TSX or other recognized exchange in Canada on which the securities are listed for trading;

    (b) redeem such securities in any number for cash at a redemption price equal to 95 percent of the market price of the security on the applicable exchange on the effective day of redemption; or

    (c) exchange a prescribed number of securities (a **PNU**) (or an integral multiple thereof) of the Underlying ETF for cash and securities, the exchange price being equal to the NAV of the securities of the Underlying ETF tendered for exchange on the effective day of the exchange request.

18. No Underlying ETF is, or will be, a commodity pool governed by National Instrument 81-104 *Commodity Pools* (**NI 81-104**).

19. No Underlying ETF has, or will have, a net market exposure greater than 100 percent of its NAV.

20. Each Underlying ETF primarily achieves, or primarily will achieve, its investment objectives through direct holdings of securities and, in some circumstances, through investments in specified derivatives for hedging and non-hedging purposes, in each case in accordance with its investment objectives and strategies and in compliance with NI 81-102.

21. All brokerage costs related to trades in securities of the Underlying ETFs will be borne by the Top Funds in the same manner as any other portfolio transactions made on an exchange.

22. Each Top Fund is, or will be, subject to National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) generally and in respect of conflicts of interest matters arising from trades in securities of an Underlying ETF. If a Top Fund makes a trade in securities of an Underlying ETF with or through an affiliate or associate of the Filer acting as dealer, the Filer will comply with its obligations under NI 81-107 in respect of any proposed related party transactions and all such related party transactions will be disclosed to securityholders of such Top Fund in the applicable management report of fund performance for such Top Fund.

23. The securities of each Underlying ETF are, or will be, highly liquid, as designated brokers act as intermediaries between investors and each Underlying ETF, standing in the market with bid and ask prices for such securities to maintain a liquid market for them.

Reasons for Requested Relief

24. An investment in an Underlying ETF by a Top Fund is an efficient and cost effective alternative to administering one or more investment strategies directly.

25. Absent the Requested Relief, a Top Fund that is a mutual fund would be prohibited by subsection 2.1(1) of NI 81-102 from investing more than 10 percent of its NAV in the securities of an Underlying ETF. The Requested Relief would only grant each Top Fund relief from the Concentration Restriction in respect of the Top Fund's direct or indirect holdings of the securities issued by an Underlying ETF. The Requested Relief would not relieve a Top Fund from the application of the Concentration Restriction in respect of the Top Fund's indirect holdings held by an Underlying ETF and each Top Fund will comply with the Concentration Restriction in respect of such Top Fund's indirect holdings in securities held by an Underlying ETF and will apply subsections 2.1(3) and 2.1(4) of NI 81-102 in connection therewith.

26. Due to the potential size disparity between the Top Funds and the Underlying ETFs, it is possible that a relatively small investment, on a percentage of NAV basis, by a relatively larger Top Fund in an Underlying ETF could result in such Top Fund holding securities representing more than 10 percent of: (i) the votes attaching to the outstanding voting securities of such Underlying ETF; or (ii) the outstanding equity securities of that Underlying ETF, contrary to the restrictions in paragraph 2.2(1)(a) of NI 81-102.

27. Absent the Requested Relief, an investment by a Top Fund in an Underlying ETF would be prohibited by paragraph 2.5(2)(a) of NI 81-102 because the Underlying ETF does not and will not have offered securities under a simplified prospectus in accordance with NI 81-101 as contemplated by paragraph 2.5(2)(a) of NI 81-102. The only material difference between an Underlying ETF and a mutual fund governed by NI 81-101 is the method of acquisition and disposition of its units. If the Requested Relief is granted, the Top Funds will be permitted to purchase securities of a mutual fund that are listed on the TSX (or another recognized exchange in Canada) in the same manner that they are permitted to invest in a mutual fund that is not listed on a recognized exchange (i.e., a mutual fund governed by NI 81-101).

28. An investment by a Top Fund in an Underlying ETF would not qualify for the exemption in paragraph 2.5(3)(a) of NI 81-102 from paragraph 2.5(2)(a) of NI 81-102 because the Underlying ETF does not issue IPUs.

29. It is anticipated that many of the trades conducted by the Top Funds would not be of the size necessary for a Top Fund to be eligible to purchase or redeem a PNU directly from the Underlying ETF. As a result, it is anticipated that the majority of trading in respect of securities of the Underlying ETFs will be conducted in the secondary market using the facilities of the TSX or other recognized exchange in Canada.

30. An investment by a Top Fund in an Underlying ETF would not qualify for the exemption in subsection 2.5(5) of NI 81-102 from paragraphs 2.5(2)(e) and 2.5(2)(f) of NI 81-102 because the Underlying ETF does not issue IPUs. As such, absent the Requested Relief, when a Top Fund trades securities of an Underlying ETF on the TSX or other recognized exchange in Canada, paragraphs 2.5(2)(e) and 2.5(2)(f) would not permit the Top Fund to pay any brokerage fees incurred in connection with the trade.

Decision

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

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

(a) the investment by a Top Fund in securities of an Underlying ETF is in accordance with the investment objectives of the Top Fund;

(b) the Top Fund does not sell securities of an Underlying ETF short;

(c) the Underlying ETF is not a commodity pool governed by NI 81-104 and will not use leverage;

(d) the Underlying ETF does not rely on exemptive relief from:

(i) the requirements of section 2.3 of NI-81-102 regarding the purchase of physical commodities;

(ii) the requirements of sections 2.7 and 2.8 of NI-81-102 regarding the purchase, sale, or use of specified derivatives; or

(iii) subsections 2.6(a) and 2.6(b) of NI-81-102 with respect to the use of leverage;

(e) in connection with the Requested Relief from subsection 2.1(1) of NI 81-102 under this decision allowing a Top Fund to invest more than 10 percent of its NAV in securities of an Underlying ETF, the Top Fund shall, for each investment it makes in securities of an Underlying ETF, apply subsection 2.1(3) and 2.1(4) of NI 81-102 as if those provisions applied to a Top Fund's investments in securities of an Underlying ETF, and accordingly limit a Top Fund's indirect holdings in securities of an issuer held by one or more Underlying ETFs to no more than 10% of the Top Fund's NAV;

(f) the investment by a Top Fund in securities of an Underlying ETF is made in compliance with section 2.5 of NI 81-102, with the exception of paragraph 2.5(2)(a) and, in respect only of brokerage fees incurred for the purchase and sale of Underlying ETFs by the Top Funds, paragraphs 2.5(2)(e) and 2.5(2)(f); and

(g) the prospectus of each Top Fund that is in continuous distribution discloses, and the annual information form for each Top Fund that is not in continuous distribution discloses, or in either case will disclose the next time it is renewed after the date of this decision, the fact that the Top Funds have obtained the Requested Relief to permit the relevant transactions on the terms described in this decision.

"Darren McKall"
Manager, Investment Funds and Structured Products
Ontario Securities Commission

SCHEDULE "A"

EXISTING TOP FUNDS

First Asset Yield Opportunity Trust
First Asset Canadian REIT Income Fund
First Asset Pipes & Power Income Fund
JFT Strategies Fund
First Asset Resource Fund Inc.
First Asset Global Dividend Fund
First Asset Canadian Dividend Opportunity Fund
First Asset Canadian Dividend Opportunity Fund II
First Asset Canadian Convertible Debenture Fund
First Asset Canadian Energy Convertible Debenture Fund
First Asset Canadian Convertible Bond Fund
First Asset REIT Income Fund
First Asset Utility Plus Fund
First Asset Hamilton Capital European Bank ETF
First Asset U.S. & Canada Lifeco Income ETF
First Asset Active Canadian Dividend ETF
First Asset Active Canadian REIT ETF

SCHEDULE "B"

EXISTING UNDERLYING ETFs

First Asset Canadian Convertible Bond ETF
First Asset Can-60 Covered Call ETF
First Asset Can-Financials Covered Call ETF
First Asset Can-Energy Covered Call ETF
First Asset Can-Materials Covered Call ETF
First Asset Tech Giants Covered Call ETF
First Asset Active Canadian Dividend ETF
First Asset Active Canadian REIT ETF
First Asset Hamilton Capital European Bank ETF
First Asset U.S. & Canada Lifeco Income ETF

2.1.2 UNIPCO Ltd. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from prospectus requirement in connection with the issuance from time to time of common shares and memberships to members – The Filers operate a buying group program for the food services industry sector to reduce costs of procurement through volume purchasing and supplier rebates – securities are not purchased from investment purposes – members have no expectation of realizing an economic return in their capacity of securityholders – there is no market for the securities – relief granted subject to conditions.

Applicable Legislative Provisions

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

January 19, 2015

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

AND

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

AND

IN THE MATTER OF
UNIPCO LTD., CANADIAN FOOD PURCHASING PROGRAM INC.
AND UNIPCO PURCHASING PROGRAM
(the Filers)

DECISION

Background

The security regulatory authority or regulator in each of the Jurisdictions (Decision Maker) has received an application from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) that the prospectus requirement contained in the Legislation of the Jurisdictions (the Prospectus Requirement) shall not apply to the:

(i) distribution of common shares (each a UNIPCO Share) of UNIPCO Ltd. (UNIPCO) by UNIPCO to UNIPCO Members (as herein defined) or the first trade of UNIPCO Shares by a UNIPCO Shareholder to another UNIPCO Shareholder, or to a UNIPCO Member (as herein defined); and

(ii) distribution of memberships (each a UNIPCO Membership) in the UNIPCO Program (as herein defined) by the Partnership (as herein defined) to a UNIPCO Member or to a prospective UNIPCO Member or the first trade of a UNIPCO Membership by a UNIPCO Member to another UNIPCO Member, or to a prospective UNIPCO Member.

(the Exemption Sought).

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

(a) the Financial and Consumer Services Commission is the principal regulator for this application (the Principal Regulator);

(b) the Filers have provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Quebec, Nova Scotia and Prince Edward Island; and

(c) the decision is the decision of the Principal Regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* have the same meaning as is used in this decision, unless otherwise defined.

Representations

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

UNIPCO

1. UNIPCO is a corporation incorporated under the *Business Corporations Act* (New Brunswick) (the NBBCA).

2. UNIPCO's head office and principal place of business is located at 860 Main Street, Moncton, New Brunswick, E1C 1G2.

3. The authorized capital of UNIPCO consists of an unlimited number of UNIPCO Shares with a par value of $100.00 per UNIPCO Share (including both issued and unissued shares); at any given time there shall not be issued and outstanding more than 300 UNIPCO Shares.

4. As of January 8, 2015, there were 210 holders of UNIPCO Shares (UNIPCO Shareholders) and 235 UNIPCO Shares issued and outstanding. Also as of August 21, 2014, the geographical breakdown of UNIPCO shareholdings was as follows:

Jurisdiction	Number of UNIPCO Shareholders	Number of UNIPCO Shares
New Brunswick	81	97
Ontario	0	0
Nova Scotia	80	85
Prince Edward Island	49	53

5. As of January 8, 2015 there were no UNIPCO Shareholders resident in Quebec, however, UNIPCO is intending to extend its operations to Quebec and may wish to issue UNIPCO Shares to residents thereof in the future.

6. All UNIPCO Shareholders are also UNIPCO Members.

7. UNIPCO is not at present, and does not intend to become, a reporting issuer in any jurisdiction.

8. There is no market for the UNIPCO Shares and the UNIPCO Shares are not traded on any market place as defined in National Instrument 21-101 *Marketplace Operation*.

9. UNIPCO Shares are only offered to UNIPCO Members and each UNIPCO Shareholder holds only one UNIPCO Share per location of operation.

10. UNIPCO Shares are only offered to participants in the food service industry.

11. UNIPCO does not qualify as a private issuer as defined in subsection 2.4(1) of National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106).

12. Pursuant to section 38 of UNIPCO's General By-Law, UNIPCO Shares shall not be transferred without first obtaining the written consent of the board of directors of UNIPCO.

CFPP

13. Canadian Food Purchasing Program Inc. (CFPP) is a corporation incorporated under the NBBCA and is a wholly owned subsidiary of UNIPCO.

14. CFPP's head office and principal place of business is located at 860 Main Street, Moncton, New Brunswick, E1C 1G2.

15. The authorized capital of CFPP consists of an unlimited number of common shares (each a CFPP Share) with a par value of $100.00 per CFPP Share; at any given time there shall not be issued and outstanding more than one CFPP Share.

16. As of August 21, 2014, UNIPCO was the only shareholder of CFPP, holding one CFPP Share.

The Partnership

17. UNIPCO and CFPP have entered into a partnership agreement dated April 1, 2011 and are operating as a partnership under the name UNIPCO Purchasing Program (the Partnership).

18. The Partnership was established to further economies of scale in the negotiation with suppliers and distributors (collectively, the distributors) of the purchase price of, and rebates on, food products purchased for the restaurant and food services industry in various Canadian provinces.

19. The Partnership operates the UNIPCO Foodservice Purchasing Program (the UNIPCO Program).

20. UNIPCO Memberships are offered only to participants in the food service industry. UNIPCO Memberships are marketed to potential UNIPCO Members by representatives of the Partnership.

21. Participants in the food services industry who purchase UNIPCO memberships are UNIPCO Members.

22. There is no limit to the number of UNIPCO Members in the UNIPCO Program. As of January 8, 2015 there were 393 UNIPCO Members, 210 of whom are also UNIPCO Shareholders.

Jurisdiction	**Number of UNIPCO Members**
New Brunswick	134
Ontario	89
Nova Scotia	98
Prince Edward Island	61
Québec	11

23. The Partnership does not qualify as a private issuer as defined in subsection 2.4(1) of NI 45-106.

UNIPCO Program

24. The UNIPCO Program is a pricing and rebate program. There are membership fees and minimum annual purchase requirements for UNIPCO Members.

25. The Partnership negotiates with certain distributors on behalf of UNIPCO Members for:

    (a) improved product pricing (distributors charge all UNIPCO Members the same cost plus price);

    (b) rebates based on volume purchases; and

    (c) improved fuel surcharge rates.

26. Rebates that are obtained by the Partnership from distributors as a result of purchases made by UNIPCO Members are paid to the Partnership and passed onto UNIPCO Members based on their proportionate share of the purchases made.

27. The Partnership also receives administrative and management fees from the distributors based on the total purchases made by UNIPCO Members and CFPP Members.

28. In addition, the Partnership negotiates with some manufacturers for bonus payments to be paid to the Partnership based on the volume of purchases made by UNIPCO Members and CFPP Members. These bonuses are distributed to UNIPCO Members only based on their proportionate share of the purchases made.

29. UNIPCO Members receive a share of any surplus (management fees less operating expenses) allocated by the UNIPCO Partnership to UNIPCO based on their proportionate share of the purchases made.

30. As a result of surpluses being paid out to UNIPCO Members, capital is not available to distribute dividends to UNIPCO Shareholders in the form of dividends.

31. The Partnership charges administrative and management fees to the distributors as follows:

    (a) 1.5% of total sales from UNIPCO Members in New Brunswick, Nova Scotia, Prince Edward Island and Quebec; and

    (b) 0.5% of total sales from all UNIPCO Members in Ontario.

32. The Partnership provides enhanced financial analysis services to potential UNIPCO Members to demonstrate to them savings they could obtain through participation in the UNIPCO Program.

33. From time to time, UNIPCO Members are given the opportunity to also become UNIPCO Shareholders. When UNIPCO redeems the UNIPCO Share of a departing UNIPCO Shareholder, the longest standing UNIPCO Member who is not a UNIPCO Shareholder is eligible to subscribe for a UNIPCO Share.

34. There is no redemption process described in the constating documents of UNIPCO. UNIPCO Shareholders, however, wishing to redeem their UNIPCO Shares can, at any time, tender such shares to UNIPCO in consideration for $100 per UNIPCO Share, being the same price paid by such shareholder to acquire the UNIPCO Shares.

35. UNIPCO Shareholders can terminate their relationship with UNIPCO by redeeming their shares as described above. In addition, as all UNIPCO Shareholders are required to be UNIPCO Members, any UNIPCO Member that ceases to be a UNIPCO Member must redeem his, her or its UNIPCO Shares. UNIPCO Members wishing to terminate their UNIPCO Membership do so by advising the Partnership of their decision; they, however, cease to be UNIPCO Members automatically if they do not meet certain minimum purchase requirements or if they fail to pay the UNIPCO Membership Fee when due. These minimum purchase requirements as follows:

    > All UNIPCO Members must agree to pay an initial fee (the UNIPCO Membership Fee) and must agree to make minimum annual purchases for the right to participate in the UNIPCO Program (there are no fees payable to participate in the CFPP Program). The UNIPCO Membership Fee is $4,500 for one location, $1,500 for a second location, $1,000 for a third location and $500 for any additional locations. The UNIPCO Membership Fee is not paid for at the outset, but is deducted from any rebates flowing to the UNIPCO Member until paid in full.

36. Other than as stated above, UNIPCO Shareholders and UNIPCO Members have the same rights and entitlements in relation to the UNIPCO Program. UNIPCO Shareholders, however, have additional rights pursuant to the NBBCA, including the right to vote on matters respecting UNIPCO.

37. UNIPCO Memberships are transferable only upon first obtaining the consent of UNIPCO.

No Investment Intent

38. The UNIPCO Shares and UNIPCO Memberships are being purchased for a business purpose, and not with any investment intent.

39. The Issuance of UNIPCO Shares and UNIPCO Memberships as described above in paragraphs 4 and 22 were not issued pursuant to available statutory or discretionary prospectus exemptions pursuant to the Legislation. The Filers are not in default of any other requirements under the Legislation.

Decision

Each of the Decision Makers is satisfied that the decision meets the test contained in the Legislation for the Decision Maker to make the decision.

The decision of the Decision Maker under the Legislation is that the Exemption Sought is granted, provided that:

(a) prior to the distribution of a UNIPCO Share by UNIPCO to a UNIPCO Member, and prior to a first trade of a UNIPCO Share by a UNIPCO Shareholder to another UNIPCO Shareholder, or to a UNICPO Member,

UNIPCO or the UNIPCO Shareholder, as the case may be, shall deliver to the transferee of the UNIPCO Shares, a copy of:

(i) the Articles and by-laws of UNIPCO and all amendments thereto;

(ii) the most recent annual Review Engagement Financial Statements (as defined in the Canadian Institute of Chartered Accountants Handbook) (the Review Engagement Financial Statements) of UNIPCO, and a copy of any subsequent interim financial statements;

(iii) this decision; and

(iv) a statement to the effect that, as a consequence of this decision, certain protections, rights and remedies provided by the Legislation, including the statutory rights of rescission or damages, will not be available to the UNIPCO Shareholder and that certain restrictions are imposed on the subsequent disposition of the UNIPCO Share.

(b) UNIPCO prepares and sends the Review Engagement Financial Statements to each UNIPCO Shareholder on an annual basis.

(c) the first trade of a UNIPCO Share by a holder thereof to a person other than a UNIPCO Shareholder or UNIPCO Member is deemed to be a distribution.

(d) prior to the distribution of a UNIPCO Membership by the Partnership to a UNIPCO Member or to a prospective UNIPCO Member and prior to a first trade of a UNIPCO Membership by a UNIPCO Member to another UNIPCO Member or to a prospective UNIPCO Member, the Partnership or the UNIPCO Member, as the case may be, shall deliver to the transferee of the UNIPCO Membership a copy of:

(i) the Partnership Agreement;

(ii) the most recent annual Review Engagement Financial Statements of the Partnership, and a copy of any subsequent interim financial statements;

(iii) this decision; and

(iv) a statement to the effect that, as a consequence of this decision, certain protections, rights and remedies provided by the Legislation, including the statutory rights of rescission or damages, will not be available to the UNIPCO Member and that certain restrictions are imposed on the subsequent disposition of the UNIPCO Membership.

(e) the Partnership prepares and sends the Review Engagement Financial Statements to each UNIPCO Member on an annual basis.

(f) the first trade of a UNIPCO Membership by a holder thereof to a person other than aUNIPCO Member is deemed to be a distribution.

(g) the exemptions contained in this Decision cease to be effective if any of the provisions of the articles of incorporation of UNIPCO, or the Partnership Agreement, relevant to the exemptions granted by this ruling are amended in any material aspect without written notice to, and consent of, the Decision Maker.

DATED at Saint John, New Brunswick this 19th day of January 2015.

“Kevin Hoyt”
Executive Director

2.1.3 Encana Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – early adoption of the revised definition of "product types" contained in recent amendments to NI 51-101 that will become effective on July 1, 2015.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. .5, as am.
National Instrument 51-101 Standards of Disclosure for Oil and Gas Activities.

Citation: Re Encana Corporation , 2015 ABASC 537

January 21, 2015

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA AND ONTARIO
(THE JURISDICTIONS)

AND

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

AND

IN THE MATTER OF
ENCANA CORPORATION
(THE FILER)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) which would:

(a) exempt the Filer from using the definition of "product type" (the **Existing Definition**) contained in National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (**NI 51-101**) provided that the Filer uses the definition of "product type" (the **New Definition**) contained in the amendments to NI 51-101 published by the securities regulatory authority in each of the jurisdictions of Canada on December 4, 2014 that are anticipated to come into force on July 1, 2015 (collectively, the **NI 51-101 Amendments**); and

(b) exempt the Filer from using the Existing Definition provided that the Filer uses the New Definition in the preparation of all of its disclosure relating to its oil and gas activities subject to NI 51-101.

(collectively, the **Exemption Sought**).

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

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

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of British Columbia, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut; and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or NI 51-101 have the same meanings if used in this decision, unless otherwise defined herein.

Representations

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

1. The Filer is incorporated under the *Canada Business Corporations Act* and its executive and registered offices are located in Calgary, Alberta.

2. The Filer is engaged in the business of the acquisition, development, production and marketing of natural gas, oil and natural gas liquids. The Filer holds a portfolio of oil and natural gas properties in Canada and the United States of America.

3. The Filer is a reporting issuer in all provinces and territories of Canada and is not, to its knowledge, in default of its obligations as a reporting issuer under the securities legislation of any of the jurisdictions in which it is a reporting issuer. The Filer is also a registrant under U.S. federal securities law.

4. The Filer prepares disclosure with respect to its oil and natural gas activities in accordance with NI 51-101.

Decision

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

This decision will terminate on the effective date on which the NI 51-101 Amendments come into force or the date on which the securities regulatory authority announces that the NI 51-101 Amendments will not be implemented.

"Denise Weeres"
Manager, Legal
Corporate Finance

2.1.4 NexGen Financial Corporation – s. 1(10)(a)(ii)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer deemed to no longer 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 20, 2015

Borden Ladner Gervais LLP
44 King Street W
Toronto, Ontario
M5H 3Y4

Dear Sirs/Mesdames:

Re: NexGen Financial Corporation (the Applicant) – application for a decision under the securities legislation of Ontario and Alberta (the Jurisdictions) that the Applicant is not a reporting issuer

The Applicant has applied to the local securities regulatory authority or regulator (the Decision Maker) in each of the Jurisdictions for a decision under the securities legislation (the Legislation) of the Jurisdictions that the Applicant is not a reporting issuer.

In this decision, "securityholder" means, for a security, the beneficial owner of the security.

The Applicant has represented to the Decision Makers that:

- the outstanding securities of the Applicant, 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;
- no securities of the Applicant, 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;
- the Applicant is applying for a decision that it is not a reporting issuer in all of the jurisdictions in Canada in which it is currently a reporting issuer; and
- the Applicant is not in default of any of its obligations under the Legislation as a reporting issuer.

Each of the Decision Makers is satisfied that the test contained in the Legislation that provides the Decision Maker with the jurisdiction to make the decision has been met and orders that the Applicant is not a reporting issuer.

"Kathryn Daniels"
Deputy Director, Corporate Finance
Ontario Securities Commission

2.2 Orders

2.2.1 Fire River Gold Corp. – s. 144

Headnote

Section 144 – Application by an issuer for a full revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

**IN THE MATTER OF
FIRE RIVER GOLD CORP.**

**ORDER
(Section 144 of the Act)**

WHEREAS the securities of Fire River Gold Corp. (the **Company**) are subject to a cease trade order dated March 24, 2014 issued by the Director of the Ontario Securities Commission (the **Commission**) pursuant to paragraph 2 of subsection 127(1) of the Act (the **Cease Trade Order**) directing that trading in securities of the Company cease, whether direct or indirect, until the order is revoked by the Director;

AND WHEREAS the Cease Trade Order was made on the basis that the Company was in default of certain filing requirements under Ontario securities law as described in the Cease Trade Order;

AND WHEREAS the Company has applied to the Commission pursuant to section 144 of the Act for a full revocation of the Cease Trade Order (the **Application**);

AND UPON the Company having represented to the Commission that:

1. The Company was incorporated on September 22, 1997 in British Columbia under the *Company Act* in the name of 550592 B.C. Ltd. and on November 15, 2007 changed its name to Fire River Gold Corp. and transitioned to the *Business Corporations Act* (British Columbia).

2. The Company's head office is located at 469 Stageline Loop, Elko, Nevada 89801. The Registered and Records Office is at Fasken

Martineau DuMoulin LLP, 550 Burrard Street, Suite 2900, Vancouver, BC V6C 0A3.

3. The Company is a reporting issuer in the provinces of Ontario, British Columbia and Alberta (the **Reporting Jurisdictions**). The Company is not a reporting issuer in any other jurisdiction in Canada.

4. The Company's authorized share capital consists of an unlimited number of common shares, without nominal or par value, of which 316,157,031 common shares are issued and outstanding as of January 19, 2015. The Company does not have a current stock option plan in place. The Company has various sets of share purchase warrants issued as follows: 8,250,000 exercisable at $0.2358 expiring on March 30, 2015; 88,417,458 exercisable at $0.10 expiring August 9, 2017; 16,602,709 exercisable at $0.10 expiring August 31, 2017; 108,694,492 exercisable at $0.10 expiring on September 19, 2017; and the following Agent Options exercisable at $0.065: 2,080,320 expiring August 9, 2017; 1,328,216 expiring August 31, 2017 and 6,262,526 expiring September 19, 2017. The Company has no other securities, including debt securities, outstanding.

5. The Company is suspended from trading from the TSX Venture Exchange and has had its shares moved to the NEX Board under the symbol, FAU.H. The Company is only listed on the NEX Board at this time and is not listed on any other exchange, marketplace or facility.

6. The Cease Trade Order was issued as a result of the Company's failure to file its audited annual financial statements, the related management's discussion and analysis (**MD&A**) and certification of annual filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**) for the year ended October 31, 2013 (the **Annual Filings**).

7. The Company is also subject to similar cease trade orders issued by the British Columbia Securities Commission (the **BCSC**) on March 7, 2014 (the **BC Cease Trade Order**) and by the Alberta Securities Commission (the **ASC**) on June 30, 2014 (the **Alberta Cease Trade Order**) as a result of its failure to make the Annual Filings. The Company has concurrently applied to the BCSC and the ASC for orders for revocation of the BC Cease Trade Order and the Alberta Cease Trade Order.

8. Since the issuance of the Cease Trade Order, the Company has filed the following continuous disclosure documents with the Reporting Jurisdictions as at October 24, 2014:

   (i) Form 13-502F1 – *Class 1 Reporting Issuer – Participation Fee* for the year ended October 31, 2013;

   (ii) Annual Filings;

   (iii) the unaudited interim financial statements, MD&A and NI 52-109 certificates of the Company for the period ended January 31, 2014;

   (iv) the unaudited interim financial statements, MD&A and NI 52-109 certificates of the Company for the period ended April 30, 2014; and

   (v) the unaudited interim financial statements, MD&A and NI 52-109 certificates of the Company for the period ended July 31, 2014.

9. The Company has paid all outstanding activity, participation and late filing fees that are required to be paid.

10. The Company is not in default of any requirements under applicable securities legislation or the rules and regulations made pursuant thereto in any of the Reporting Jurisdictions, except for the existence of the Cease Trade Order, the BC Cease Trade Order and the Alberta Cease Trade Order.

11. Since the issuance of the Cease Trade Order, the Company announced on July 7, 2014 that Waterton Global Value, L.P. (**Waterton**) took full and unrestricted ownership of the Company's Nixon Fork Gold Mine and its U.S. subsidiary Mystery Creek Resources, Inc. (**MCRI**) as a result of the Company defaulting on the terms of its Credit Agreement with Waterton. The Company delivered all rights, debts, properties and obligations of MCRI to Waterton and Waterton accepted such as full and final satisfaction of the indebtedness. As part of the final settlement agreement, Waterton paid to the Company $250,000 in cash of which the Company is using the funds towards its audits and administrative work in connection with applications to have the cease trade orders lifted.

12. The Company has filed all outstanding continuous disclosure documents that are required to be filed in the Reporting Jurisdictions.

13. The Company's SEDAR issuer profile and SEDI issuer profile supplement are current and accurate.

14. The Company held its Annual General and Special Meeting on November 6, 2014. The management information circular as required by

Form 51-102FS *Information Circular* was filed on SEDAR on October 10, 2014.

15. Upon the revocation of the Cease Trade Order, the Company will issue a news release and concurrently file a material change report on SEDAR announcing the revocation of the Cease Trade Order.

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

AND UPON the Director being satisfied that it would not be prejudicial to the public interest to revoke the Cease Trade Order;

IT IS ORDERED pursuant to section 144 of the Act that the Cease Trade Order is revoked.

DATED at Toronto, Ontario on this 20th day of January, 2015.

"Sonny Randhawa"
Manager, Corporate Finance
Ontario Securities Commission

2.2.2 NexGen Financial Corporation – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the OBCA.

Statute Cited

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

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

AND

IN THE MATTER OF
NEXGEN FINANCIAL CORPORATION
(the "Applicant")

ORDER
(Subsection 1(6) of the OBCA)

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

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in the OBCA, and has an authorized capital consisting of an unlimited number of common shares (the "**Common Shares**").

2. The Applicant's head office is located at 36 Toronto Street, Suite 1070, M5C 2C5, Toronto, Ontario.

3. As of December 22, 2014, Natixis Global Asset Management, L.P. ("**Natixis**"), through its subsidiary 2438801 Ontario Inc., indirectly acquired 4,705,003 Common Shares pursuant to plan of arrangement, which represented 100% of the total outstanding Common Shares.

4. The Common Shares have been de-listed from the TSX Venture Exchange, effective as of the close of trading on December 24, 2014.

5. No securities of the Applicant, 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.

6. Pursuant to BC Instrument 11-502 *Voluntary Surrender of Reporting Issuer Status*, the British Columbia Securities Commission confirmed the Applicant's non-reporting issuer status in British Columbia effective February 9, 2015.

7. The Applicant is a reporting issuer, or the equivalent, in Alberta and Ontario (the "**Jurisdictions**") and is currently not in default of any of the applicable requirements under the legislation of the Jurisdictions.

8. On December 30, 2014 the Applicant made an application to the Ontario Securities Commission, as principal regulator on behalf of the securities regulatory authorities in the Jurisdictions, for a decision that the Applicant is not a reporting issuer in the Jurisdictions (the "**Reporting Issuer Relief Requested**").

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

10. Upon the granting of the Reporting Issuer Relief Requested, the Applicant will not be a reporting issuer or equivalent in any jurisdiction of Canada.

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

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

DATED at Toronto on this 20th day of January, 2015.

"Christopher Portner"
Ontario Securities Commission

"Anne Marie Ryan"
Ontario Securities Commission

2.2.3 Ground Wealth Inc. et al.

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

AND

IN THE MATTER OF
GROUND WEALTH INC., MICHELLE DUNK,
ADRION SMITH, JOEL WEBSTER, DOUGLAS DEBOER,
ARMADILLO ENERGY INC.,
ARMADILLO ENERGY, INC., and
ARMADILLO ENERGY, LLC
(aka ARMADILLO ENERGY LLC)

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and ADRION SMITH

ORDER

WHEREAS on February 1, 2013, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of Ground Wealth Inc. ("GWI") , Michelle Dunk ("Dunk"), Adrion Smith ("Smith"), Joel Webster ("Webster"), Douglas DeBoer ("DeBoer"), Armadillo Energy Inc. ("Armadillo Texas"), Armadillo Energy, Inc. ("Armadillo Nevada") and Armadillo Energy, LLC ("Armadillo Oklahoma") (collectively, the "Respondents");

AND WHEREAS on October 31, 2013, Staff of the Commission filed an Amended Statement of Allegations;

AND WHEREAS on October 31, 2013, Staff of the Commission filed an Amended Notice of Hearing;

AND WHEREAS Smith entered into a Settlement Agreement dated January 22, 2015 (the "Settlement Agreement"), in relation to the matters set out in the Amended Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated January 22, 2015, setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing and the Amended Statement of Allegations, and upon considering submissions from Smith and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED:

1. that the Settlement Agreement is hereby approved;

2. that, pursuant to s. 127(1)2 and s. 127(1)2.1 of the Act, trading and acquisition of any securities by Smith shall cease for a period of 8 years from the date of the approval of the Settlement Agreement, except that, following full payment of the administrative penalty and costs orders made against him as a result of this Settlement Agreement, Smith shall be permitted to trade and acquire securities through a registrant for personal purposes in his own account, provided that he is not engaging in or holding himself out as engaging in the business of trading in securities, and provided Smith first notifies the registrant of these conditions by delivering to the registrant a copy of this order;

3. that, pursuant to s. 127(1)6 of the Act, Smith is reprimanded;

4. that, pursuant to s. 127(1)8.5 of the Act, Smith is prohibited for a period of 8 years from becoming or acting as a registrant, an investment fund manager or a promoter;

5. that, pursuant to s. 127(1)8 Smith is prohibited for a period of 8 years from becoming or acting as a director or officer of any issuer;

6. that, pursuant to s. 127(1)8.2, 127(1)8.3 and 127(1)8.4 of the Act, Smith is prohibited for a period of 8 years from becoming or acting as an officer or director of a registrant or investment fund manager;

7. that, pursuant to s. 127(1)9 of the Act, Smith shall pay an administrative penalty of $50,000 for his breaches of Ontario securities law in this matter, to be allocated under section 3.4(2)(b) to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets;

8. that, pursuant to s. 127.1(1) of the Act, Smith shall pay $7,500 as investigation costs in this matter.

DATED at Toronto this 23rd day of January, 2015.

“Mary G. Condon”

2.2.4 Wealth Stewards Portfolio Management Inc. and Sushila Lucas – s. 8(4) of the Act and Rule 9.2 of the OSC Rules of Procedure

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

AND

IN THE MATTER OF
WEALTH STEWARDS PORTFOLIO MANAGEMENT INC. AND SUSHILA LUCAS

ORDER
(Subsection 8(4) of the Act and Rule 9.2 of the OSC Rules of Procedure)

WHEREAS Wealth Stewards Portfolio Management Inc. ("Wealth Stewards") is registered as an adviser in the category of portfolio manager and the majority of the accounts advised by Wealth Stewards are managed by an appropriately registered sub-adviser;

AND WHEREAS on June 13, 2014, a Director of the Compliance and Registrant Regulation branch of the Ontario Securities Commission (the "Commission") issued a decision with respect to the registrations of Wealth Stewards and Sushila Lucas ("Lucas") that:

(a) the registration of Wealth Stewards be suspended indefinitely;

(b) the registration of Lucas as ultimate designated person ("UDP") and chief compliance officer ("CCO") be suspended for a period of three years;

(c) the registration of Lucas as an advising representative be suspended for a period of six months;

(d) Lucas successfully complete the *Partners, Directors and Senior Officers Course* (the "PDO") before applying for reinstatement of registration as a UDP;

(e) Lucas successfully complete both the PDO and the *Chief Compliance Officers Qualifying Exam* before applying for reinstatement of registration as a CCO; and

(f) Lucas successfully complete the *Conduct and Practices Handbook Course* before applying for reinstatement as an advising representative

(the "Director's Decision");

AND WHEREAS on June 18, 2014, Wealth Stewards and Lucas (together the "Applicants") requested a hearing and review of the Director's Decision by the Commission pursuant to subsection 8(2) of the *Securities Act*, R.S.O. 1990, c.S.5, as amended (the "Act") (the "Hearing and Review") and pursuant to subsection 8(4) of the Act, the Applicants requested a stay of the Director's Decision pending the disposition of the Hearing and Review;

AND WHEREAS on June 23, 2014, on the consent of the parties, the Commission ordered that the Director's Decision be stayed until the conclusion of the Hearing and Review by the Commission, subject to the following conditions:

(1) the stay order shall continue in force until the parties have the opportunity at the Hearing and Review to address the issuance of a further stay order by the Panel presiding over the Hearing and Review, and shall continue in force until August 29, 2014 or upon further order of the Commission;

(2) the Applicants shall serve and file the record of the proceeding before the Director, any statement of fact and law and shall comply with Rule 14.5 of the OSC *Rules of Procedure* by August 19, 2014;

(3) Staff of the Commission shall deliver any record in response, any statement of fact and law and shall comply with Rule 14.5 by August 25, 2014;

(4) the Hearing and Review shall be heard on August 28 and 29, 2014;

(5) the Applicants shall post a link to the Director's Decision and this Order on the homepage of the Wealth Stewards website forthwith with a description of the links;

(6) the Applicants shall provide a copy of the Director's Decision and this Order to all existing clients;

(7) Wealth Stewards may state on its website and when providing the Director's Decision to clients that "the decision to suspend the registration of Wealth Stewards was stayed on terms pursuant to the decision of the Commission dated June 23, 2014. An application for a hearing and review of the Director's Decision under section 8 of the Act has been requested and is scheduled for August 28 and 29, 2014 before a panel of the Commission," and may not otherwise make any public statements on its website or in any press release that is inconsistent with the Director's Decision and/or this Order;

(8) the Applicants shall not accept any new clients in respect of Wealth Stewards' portfolio management business;

(9) the Applicants shall ensure that all currently sub-advised managed accounts continue to be sub-advised by an appropriately registered portfolio manager;

(10) any contact or communication between Wealth Stewards and its clients in respect of its portfolio management business must be made solely by Lucas, and any recommendations in respect of any managed accounts advised by Wealth Stewards must be made solely by Lucas; and

(11) until further order by the Commission, Wealth Stewards shall not permit Bruce Deck to withdraw any funds or otherwise receive any compensation whatsoever in respect of Wealth Stewards' portfolio management business accrued between the date of the Director's Decision and the date of the decision on the Hearing and Review

(the "Stay Order");

AND WHEREAS on July 31, 2014, the Applicants advised the Commission that they were pursuing a sale of the assets of Wealth Stewards and expected that an application pursuant to section 11.9 or 11.10 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") in respect of Wealth Stewards would be filed with the Commission by August 14, 2014 and, as a result, the Applicants sought an adjournment of the Hearing and Review to September 25 and 26, 2014;

AND WHEREAS on August 1, 2014, on the consent of the parties, the Commission made an order adjourning the Hearing and Review to September 25 and 26, 2014, extending the Stay Order to September 26, 2014 and extending the other timelines referred to in the Stay Order (the "August 1, 2014 Order");

AND WHEREAS on August 22, 2014, Wealth Stewards filed an application pursuant to section 11.10 of NI 31-103 in respect of a proposed sale of all outstanding shares of Wealth Stewards (the "Section 11.10 Application");

AND WHEREAS on September 12, 2014, the Applicants sought an adjournment of the Hearing and Review to November 6 and 7, 2014 and to an extension of the timelines set out at paragraphs (2) and (3) of the August 1, 2014 Order to allow additional time for the Director to consider the Section 11.10 Application and for the parties to engage in discussions regarding a possible settlement of the Hearing and Review;

AND WHEREAS on September 18, 2014, on the consent of the parties, the Commission made an order adjourning the Hearing and Review to November 6 and 7, 2014, extending the Stay Order to November 7, 2014 and extending the other timelines referred to in the Stay Order (the "September 18, 2014 Order");

AND WHEREAS on October 2, 2014, the Director approved the Section 11.10 Application by notifying Wealth Stewards in writing that the Director did not object to the proposed sale of Wealth Stewards;

AND WHEREAS on October 20, 2014, counsel for the Applicants advised Staff that they sought an adjournment of the Hearing and Review dates and an extension of the timelines set out at paragraphs (3) and (4) of the September 18, 2014 Order;

AND WHEREAS on October 28, 2014, counsel for the Applicants advised Staff that the commercial terms of the proposed sale of Wealth Stewards had been finalized with the purchaser but that additional time was required to complete the sale;

AND WHEREAS on October 31, 2014, Staff advised the Commission that the Applicants sought an adjournment of the Hearing and Review and an extension of the timelines set out at paragraphs (3) and (4) of the September 18, 2014 Order to allow the Applicants to complete the sale of Wealth Stewards and for the parties to engage in discussions regarding a possible settlement of the Hearing and Review;

AND WHEREAS Staff consented to the adjournment request and to an extension of the timelines found at paragraphs (3) and (4) of the September 18, 2014 Order to the dates set out below;

AND WHEREAS on November 5, 2014, the Commission made an order (the "November 5, 2014 Order") that:

(1) subject to the modifications to the Stay Order set out in the August 1, 2014 Order, the September 18, 2014 Order and herein, the Stay Order is extended until the parties have the opportunity at the Hearing and Review to address the issuance of a further stay order by the Panel presiding over the Hearing and Review, and in any event shall continue in force to no later than January 30, 2015;

(2) the Hearing and Review is adjourned to dates before January 30, 2015 to be scheduled with the Secretary's Office;

(3) paragraph (3) of the September 18 Order is deleted and replaced by the following:

> (a) The Applicants shall serve and file the record of the proceeding before the Director, any statement of fact and law and shall comply with Rule 14.5 of the OSC *Rules of Procedure* by January 9, 2015; and
>
> (b) Staff of the Commission shall deliver any record in response and any statement of fact and law, and shall comply with Rule 14.5, by January 16, 2015;

(4) paragraph (4) of the September 18, 2014 Order is deleted and replaced by the following:

> Wealth Stewards may state on its website and when providing the Director's Decision to clients that "the decision to suspend the registration of Wealth Stewards was stayed on terms pursuant to the decision of the Commission dated June 23, 2014. An application for a hearing and review of the Director's Decision under section 8 of the Act has been requested and will be scheduled for dates to be scheduled before January 30, 2015 before a panel of the Commission;" and

(5) Wealth Stewards may not otherwise make any public statements on its website or in any press release that is inconsistent with the Director's Decision, the Stay Order, the August 1, 2014 Order, the September 18, 2014 Order and/or this Order;

AND WHEREAS on December 3, 2014, the Applicants advised Staff that:

(a) they no longer intended to proceed with a sale of Wealth Stewards;

(b) Wealth Stewards applied for a voluntary surrender of its registration; and

(c) Wealth Stewards consented to a suspension of its registration;

AND WHEREAS on January 8, 2014, the Applicants advised Staff that they are winding-up the business of Wealth Stewards and advised Staff of the manner in which they propose to dispose of the remaining assets of Wealth Stewards, which includes a payment, on behalf of Deck, by Wealth Stewards of $153,212 to the Investment Industry Regulatory Organization of Canada (IIROC) to satisfy an outstanding fine owed by Deck to IIROC;

AND WHEREAS Staff do not object to the proposed disposition of the remaining assets of Wealth Stewards as proposed by the Applicants;

AND WHEREAS on January 8, 2014, the Applicants also advised Staff that they sought to withdraw their request for the Hearing and Review;

AND WHEREAS on January 22, 2015, the Applicants advised Staff that Lucas has not performed any registerable activity since December 30, 2014;

AND WHEREAS on January 22, 2015, Staff updated the Commission on the information Staff received from the Applicants referred to herein for the period December 3, 2014 to January 22, 2015;

AND WHEREAS the parties consent to an order vacating the Stay Order and the November 5, 2014 Order and to an order that the time periods specified in paragraphs (b) and (c) of the Director's Decision begin to run from January 1, 2015;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

(1) The Stay Order and the November 5, 2014 Order are hereby vacated; and

(2) The time periods specified at paragraphs (b) and (c) of the Director's Decision, as set out above, begin to run from January 1, 2015.

DATED at Toronto this 23rd day of January, 2015.

"Mary G. Condon"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions, Orders and Rulings

3.1.1 Ground Wealth Inc. et al.

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

AND

IN THE MATTER OF
GROUND WEALTH INC., MICHELLE DUNK, ADRION SMITH, JOEL WEBSTER,
DOUGLAS DEBOER, ARMADILLO ENERGY INC., ARMADILLO ENERGY, INC., and
ARMADILLO ENERGY, LLC (aka ARMADILLO ENERGY LLC)

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and ADRION SMITH

PART I – INTRODUCTION

1. By Amended Notice of Hearing dated October 31, 2013, the Ontario Securities Commission (the "Commission") announced that it proposed to hold a hearing, pursuant to sections 127 and 127.1 of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), to consider whether it is in the public interest to make orders, as specified therein, against Ground Wealth Inc. ("GWI") , Michelle Dunk ("Dunk"), Adrion Smith ("Smith"), Joel Webster ("Webster"), Douglas DeBoer ("DeBoer"), Armadillo Energy Inc. ("Armadillo Texas"), Armadillo Energy, Inc. ("Armadillo Nevada") and Armadillo Energy, LLC ("Armadillo Oklahoma") (collectively, the "Respondents"). The Amended Notice of Hearing was issued in connection with the allegations set out in the Amended Statement of Allegations of Staff of the Commission ("Staff") dated October 31, 2013.

2. On January 7, 2015, the Commission approved a Settlement Agreement between Staff and GWI, Dunk, DeBoer and Webster (the "January 7 Settlement"), and issued an order imposing sanctions on those respondents (the "Settled Respondents").

3. The Commission will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to section 127 of the Act, it is in the public interest for the Commission to approve this Settlement Agreement and to make certain orders in respect of Smith.

PART II – JOINT SETTLEMENT RECOMMENDATION

4. Staff agree to recommend settlement of the proceeding initiated by the Amended Notice of Hearing, dated October 31, 2013, against Smith (the "Proceeding") in accordance with the terms and conditions set out below. Smith consents to the making of an order in the form attached as Schedule "A," based on the facts set out below.

PART III – AGREED FACTS

5. Smith believes the facts set out in this agreement to be true and accurate.

6. Unless specifically stated to the contrary, the Agreed Facts set out in this Settlement Agreement concern events taking place from October 2010 through April 2011 (the "Material Time").

OVERVIEW

7. During the Material Time, without registration and without a prospectus, GWI traded and distributed partnership agreements that constituted securities to residents of Ontario and elsewhere in Canada (the "Partnership Agreements").

8. The Partnership Agreements were issued in the name of Armadillo Energy Inc. The Partnership Agreements entitled investors to the proceeds of the extraction and sale of oil from oil leases located in the State of Oklahoma, USA, and were securities as defined in the Act. The proceeds were to be paid monthly and were referred to as "Production Payments."

9. GWI sold approximately CDN $5.3 million in Partnership Agreements to more than 130 members of the public in Canada (the "Purchasers"; the "Purchaser Funds").

10. Approximately CDN $2.8 million of the Purchaser Funds were paid by 68 of the Purchasers who were Ontario residents.

11. GWI retained approximately 24% of the Purchaser Funds as a fee for the marketing and administration of the Partnership Agreements (the "GWI Marketing Fee").

12. No prospectus or preliminary prospectus was ever filed with the Commission in respect of the Partnership Agreements, nor was a prospectus receipt ever issued by the Director to qualify the sale of the Partnership Agreements. Other than Smith, who was not registered during the Material Time, none of the respondents has ever been registered with the Commission in any capacity.

13. The Partnership Agreements were not previously issued.

THE SETTLING RESPONDENT

Adrion Smith

14. Smith was a Director and the President of GWI during the Material Time and also identified himself as a "Managing Director" of the company.

15. Smith held and exercised co-signing authority with Dunk on bank accounts held by GWI in Ontario during the Material Time.

16. Smith was the 50% beneficial owner of GWI during the Material Time.

17. At different times between June 2008 and April 2010 Smith was registered with the Commission in the categories of Mutual Fund Dealer, Limited Market Dealer and Exempt Market Dealer with three different registrants.

THE SETTLED RESPONDENTS

Ground Wealth Inc.

18. GWI is a company incorporated under the laws of Ontario with its office in Cambridge, Ontario.

19. Dunk and Smith incorporated GWI, and during the Material Time were the only officers and directors of the company.

20. GWI has never been registered with the Commission in any capacity.

21. GWI's sole business during the Material Time was marketing the Partnership Agreements.

22. In the January 7 Settlement, GWI admitted to trading the Partnership Agreements without registration and distributing them without a prospectus, contrary to Ontario securities law and contrary to the public interest.

Michelle Dunk

23. Dunk was a resident of Ontario during the Material Time.

24. During the Material Time, Dunk was registered as a Director, the Vice-President, and the Secretary of GWI.

25. Dunk signed off on the majority of the completed Partnership Agreements as President and Chief Executive Officer of GWI.

26. Throughout the Material Time, Dunk was a co-signing authority with Smith on GWI's bank accounts in Ontario and exercised control over GWI's finances.

27. During the Material Time, Dunk was the other beneficial owner of GWI.

28. Dunk has never been registered with the Commission in any capacity.

29. In the January 7 Settlement, Dunk admitted to trading the Partnership Agreements without registration and distributing them without a prospectus, and that she acquiesced in GWI's breaches, all contrary to Ontario securities law and contrary to the public interest.

Douglas DeBoer

30. DeBoer was a resident of Ontario during the Material Time.

31. Some of the documents GWI and Armadillo provided to potential Purchasers for marketing purposes identified DeBoer as Armadillo Texas' Chief Financial Officer ("CFO") and Financial Director or Finance Director.

32. Although DeBoer was not formally registered as a director or officer of Armadillo during the Material Time, he acknowledges that he assisted in facilitating the business relationship between Armadillo (as defined below in paragraph 42) and GWI and that he acted in furtherance of the trades in the Partnership Agreements described herein.

33. DeBoer has never been registered with the Commission in any capacity.

34. In the January 7 Settlement, DeBoer admitted to acting in furtherance of trades in the Partnership Agreements without registration and acting in furtherance of the distribution of the Partnership Agreements without a prospectus, contrary to Ontario securities law and contrary to the public interest.

Joel Webster

35. At GWI, Webster held the titles of Sales Manager and Inside Sales Representative.

36. During part of the Material Time, Webster had signing authority for GWI's bank accounts in Ontario.

37. Webster has never been registered with the Commission in any capacity.

38. In the January 7 Settlement, Webster admitted to trading the Partnership Agreements without registration and distributing them without a prospectus, contrary to Ontario securities law and contrary to the public interest.

NON-SETTLING RESPONDENTS

The Armadillo Companies

39. Armadillo Texas is a company incorporated under the laws of the State of Texas.

40. Armadillo Nevada is a company incorporated under the laws of the State of Nevada.

41. Armadillo Oklahoma is a company incorporated under the laws of the State of Oklahoma.

42. The three Armadillo companies ("Armadillo") are engaged in the oil exploration and extraction business in Oklahoma and operated as a single enterprise during the Material Time.

43. Neither Armadillo Texas, Armadillo Nevada nor Armadillo Oklahoma has ever been registered with the Commission in any capacity.

The Partnership Agreements

44. GWI sold the Partnership Agreements in durations of seven, ten and fifteen years. There were also versions of the 10 and 15 years plans that included "reinvestment options." The terms of the Partnership Agreements were described in the Partnership Agreement itself, and in other documents, including materials entitled "Prospectus", "Corporate Review," and "Due Diligence Report," as well as a GWI corporate brochure (collectively, "the GWI Marketing Materials").

Acts in Furtherance of the Trading and Distribution of the Partnership Agreements

45. GWI marketed the Partnership Agreements through a group of contracted sales representatives (the "Sales Representatives").

46. The Sales Representatives were not registered with the Commission to trade in securities during the Material Time.

47. The Sales Representatives were managed and trained by Dunk, Webster and others.

48. Smith and others held meetings in which they trained the Sales Representatives and showed presentations on how to use spreadsheets and get sales leads, how to approach people and how to market themselves.

49. As part of the training of the Sales Representatives, during the Material Time, GWI held a retreat for the Sales Representatives at which presentations were made on sales training and motivational topics (the "GWI Retreat").

50. The Sales Representatives contacted friends, acquaintances and referrals for the purpose of selling the Partnership Agreements. They made presentations to prospective Purchasers in which they made use of the GWI Marketing Materials.

51. GWI hosted dinners at restaurants in the Guelph and Kitchener-Waterloo areas at which persons associated with GWI made marketing presentations to potential Purchasers (the "GWI Marketing Dinners").

52. At different times, Dunk, Webster and Smith attended the GWI Marketing Dinners.

53. Dunk and Webster made presentations to potential Purchasers about the Partnership Agreements at the GWI Marketing Dinners.

54. GWI flew prospective and existing Purchasers, including Ontario residents, together with Sales Representatives to the State of Oklahoma, where they received a tour of oil drilling operations. Dunk, Webster and Smith attended on such trips.

55. Dunk met with some of the prospective Purchasers who were being invited by the Sales Representatives to purchase Partnership Agreements. Some sales of Partnership Agreements were completed with the assistance of Dunk or Webster.

56. Webster supervised the completion of the Partnership Agreements with the Purchasers and also sold the Partnership Agreements himself.

57. Dunk and Webster both signed the completed Partnership Agreements on behalf of GWI.

58. After they had finalized their purchase of a Partnership Agreement, Purchasers were provided with a "Certificate of Ownership" (the "Armadillo Certificate").

59. Purchasers received their Armadillo Certificate from Armadillo together with a copy of their Partnership Agreement under cover of a letter welcoming them to Armadillo as "our partner" and signed by Paul Schuett ("Schuett"), who is named as the President of Armadillo Energy Inc. ("Armadillo Welcome Letter").

60. Smith engaged in the above acts in furtherance of trading for a business purpose, as defined in Ontario securities law.

Purchaser Funds

61. Upon purchasing a Partnership Agreement, Purchasers paid their funds directly to GWI.

62. GWI deposited the Purchaser Funds into its own accounts. After deducting the 24% GWI Marketing Fee, GWI remitted the remainder of the Purchaser Funds to Armadillo. In this way, GWI obtained approximately $1.3 million from the sale and distribution of the Partnership Agreements.

63. At different points during the Material Time, the cheques for the Production Payments were drawn on accounts in the names of Armadillo Texas, Armadillo Nevada and Armadillo Oklahoma.

64. Production Payment cheques were delivered to Purchasers by GWI on behalf of Armadillo together with a statement of the status of their holdings in the Partnership Agreements ("Armadillo Statement"). The Armadillo Statement was on GWI letterhead, but signed by Schuett.

65. Sales Representatives and GWI management who successfully sold Partnership Agreements to Purchasers were compensated by GWI in the amount of 5-12% of the value of each sale.

66. GWI's Marketing Materials did not disclose to Purchasers that commissions were paid on the sale of the Partnership Agreements.

Status of the Investment

67. During the Material Time Armadillo made Production Payments to the Purchasers totaling approximately CDN $1M.

68. In December 2012, Armadillo and GWI delivered a letter to Purchasers advising that the oil extraction rate had declined more quickly than predicted. The same letter advised Purchasers that the company would have to be "restructured" and that future Production Payments would "initially be at a reduced rate."

69. In December 2013, a UK company called Fortis Admin Ltd. ("Fortis") sent correspondence to purchasers advising that it had "acquired the oil field interests of Armadillo and was holding them in trust for those who had invested in Armadillo." Fortis advised investors that it had already received funds from the company contracted to extract and sell the oil owned by the Purchasers, and was holding the funds in trust pending determination of the exact amounts owing to the individual Purchasers.

70. Staff is not able to determine when or if further Production Payments may be forthcoming on the Partnership Agreements.

71. As of December 10, 2014, some Purchasers had not received payments since September 2012.

Misleading Staff

72. On November 29, 2012, Smith was interviewed concerning the sale and distribution of the Partnership Agreements by GWI, himself and others. The examination was compelled pursuant to a summons issued by the Commission.

73. During the compelled examination, Staff questioned Smith about a $20,000 cheque he had written to GWI and a further $20,000 cheque written to Smith less than a month later from a person Staff believed to have invested in GWI through Smith and who was listed by GWI as having purchased $20,000 in Partnership Agreements (the "Investor"). The memo line on the cheque to Smith was "GWI repayment / investment."

74. When asked about the transaction and his relationship to the Investor, Smith said he did not remember writing the cheque and did not know why he had written it. Smith misleadingly identified the Investor only as "a friend of mine" and failed to state that the Investor was in fact his wife.

75. When specifically asked if the Investor had invested in Armadillo, Smith falsely stated that "I don't know if she did or if she didn't." In fact, the $20,000 payment from the Investor to Smith was a repayment for an earlier investment in Armadillo that he had made on behalf of his wife through GWI.

PART IV – CONDUCT CONTRARY TO THE ACT AND CONTRARY TO THE PUBLIC INTEREST

76. By virtue of the securities-related conduct described above, Smith admits that:

(a) During the Material Time, Smith engaged in or held himself out as engaging in the business of trading in securities without being registered to do so, in circumstances in which no exemption was available, contrary to s. 25(1) of the Act;

(b) During the Material Time, Smith distributed securities without a preliminary prospectus or a prospectus having been filed and receipts having been issued for them by the Director and without an exemption from the prospectus requirement, contrary to s. 53(1) of the Act;

(c) During the Material Time, Smith, being a director and officer of GWI, did authorize, permit or acquiesce in the commission of the violations of sections 25 and 53 of the Act, as set out above, by GWI, contrary to section 129.2 of the Act; and,

(d) On November 29, 2012, Smith made statements to Staff that, in a material respect and at the time and in light of the circumstances under which they were made, were misleading or untrue or did not state facts that were required to be stated or that were necessary to make the statements no misleading, contrary to section 122(1)(a) of the Act.

77. Smith admits and acknowledges that he acted contrary to the public interest by contravening Ontario securities law as set out in paragraph 76 above.

PART V – RESPONDENTS' POSITION

78. Smith requests that the settlement hearing panel consider the following mitigating circumstances:

(a) Smith has advised Staff that he is presently without the means to satisfy the financial terms arising from this Settlement Agreement and has provided Staff with evidence in support of his financial position.

PART VI – TERMS OF SETTLEMENT

79. Smith agrees to the terms of settlement listed below.

80. The Commission will make an order, pursuant to subsection 127(1) of the Act, that:

(a) the Settlement Agreement is approved;

(b) trading and acquisition of any securities by Smith shall cease for a period of 8 years from the date of the approval of the Settlement Agreement, except that following full payment of the administrative penalty and costs orders made against him as a result of this Settlement Agreement, Smith shall be permitted to trade and acquire securities through a registrant for personal purposes in his own account, provided that he is not engaging in or holding himself out as engaging in the business of trading in securities, and provided Smith first notifies the registrant of these conditions by delivering to the registrant a copy of this order;

(c) Smith is reprimanded;

(d) Smith is prohibited for a period of 8 years from becoming or acting as a registrant, an investment fund manager or a promoter;

(e) Smith is prohibited for a period of 8 years from becoming or acting as a director or officer of any issuer, registrant or investment fund manager;

(f) Smith shall pay an administrative penalty of $50,000 for his breaches of Ontario securities law in this matter; and,

(g) Smith shall pay $7,500 as investigation costs in this matter.

81. Any amounts paid to the Commission under the administrative penalty or disgorgement order in this matter shall be allocated to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets, in accordance with subsection 3.4(2)(b) of the Act.

PART VII – STAFF COMMITMENT

82. If this Settlement Agreement is approved by the Commission, Staff will not initiate any other proceeding under the Act against any Smith in relation to the facts set out in Part III herein, subject to the provisions of paragraph 83, below.

83. If this Settlement Agreement is approved by the Commission, and at any subsequent time Smith fails to comply with any of the terms of the Settlement Agreement, Staff reserve the right to bring proceedings under Ontario securities law against Smith based on, but not limited to, the facts set out in Part III herein as well as the breach of the Settlement Agreement.

84. The Commission remains entitled to bring any proceedings necessary to recover any amounts Smith is ordered to pay as a result of any order imposed pursuant to this agreement.

PART VIII – PROCEDURE FOR APPROVAL OF SETTLEMENT

85. Approval of this Settlement Agreement will be sought at a hearing of the Commission scheduled on a date to be determined by the Secretary to the Commission, or such other date as may be agreed to by Staff and Smith for the scheduling of the hearing to consider the Settlement Agreement.

86. Staff and the Smith agree that this Settlement Agreement will constitute the entirety of the agreed facts to be submitted at the settlement hearing regarding Smith's conduct in this matter, unless the parties agree that further facts should be submitted at the settlement hearing.

87. If this Settlement Agreement is approved by the Commission, Smith agrees to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

88. If this Settlement Agreement is approved by the Commission, neither Staff nor Smith will make any public statement that is inconsistent with this Settlement Agreement or inconsistent with any additional agreed facts submitted at the settlement hearing.

89. Whether or not this Settlement Agreement is approved by the Commission, Smith agrees that he will not, in any proceeding, refer to or rely upon this Settlement Agreement or the settlement negotiations as the basis of any attack on the Commission's jurisdiction, alleged bias or appearance of bias, alleged unfairness or any other remedies or challenges that may otherwise be available.

PART IX – DISCLOSURE OF SETTLEMENT AGREEMENT

90. If, for any reason whatsoever, this Settlement Agreement is not approved by the Commission or the order attached as Schedule "A" is not made by the Commission:

(a) this Settlement Agreement and its terms, including all settlement negotiations between Staff and Smith leading up to its presentation at the settlement hearing, shall be without prejudice to Staff and Smith; and

(b) Staff and Smith shall be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations in the Amended Notice of Hearing and Amended Statement of Allegations of Staff, unaffected by the Settlement Agreement or the settlement discussions and negotiations.

91. The terms of this Settlement Agreement will be treated as confidential by all parties hereto, but such obligations of confidentiality shall terminate upon commencement of the public hearing. The terms of the Settlement Agreement will be treated as confidential forever if the Settlement Agreement is not approved for any reason whatsoever by the Commission, except with the written consent of Smith and Staff or as may be required by law.

PART X – EXECUTION OF SETTLEMENT AGREEMENT

(a) This Settlement Agreement may be signed in one or more counterparts, which together will constitute a binding agreement.

(b) A facsimile copy of any signature will be as effective as an original signature.

Dated this 22nd day of January, 2015.

STAFF OF THE ONTARIO SECURITIES COMMISSION

"Tom Atkinson"
Director, Enforcement Branch
Ontario Securities Commission

Signed in the presence of:

"Malinda Norman"
Witness:

"Adrion Smith"
Adrion Carlos Smith

Dated this 21st day of January, 2015

Schedule "A"

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

AND

IN THE MATTER OF
GROUND WEALTH INC., MICHELLE DUNK, ADRION SMITH, JOEL WEBSTER,
DOUGLAS DEBOER, ARMADILLO ENERGY INC., ARMADILLO ENERGY, INC.,
and ARMADILLO ENERGY, LLC (aka ARMADILLO ENERGY LLC)

AND

IN THE MATTER OF
A SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE ONTARIO SECURITIES COMMISSION
and ADRION SMITH

ORDER

WHEREAS on February 1, 2013, the Commission issued a Notice of Hearing pursuant to section 127 of the *Securities Act* (the "Act") in respect of Ground Wealth Inc. ("GWI") , Michelle Dunk ("Dunk"), Adrion Smith ("Smith"), Joel Webster ("Webster"), Douglas DeBoer ("DeBoer"), Armadillo Energy Inc. ("Armadillo Texas"), Armadillo Energy, Inc. ("Armadillo Nevada") and Armadillo Energy, LLC ("Armadillo Oklahoma") (collectively, the "Respondents");

AND WHEREAS on October 31, 2013, Staff of the Commission filed an Amended Statement of Allegations;

AND WHEREAS on October 31, 2013, Staff of the Commission filed an Amended Notice of Hearing;

AND WHEREAS Smith entered into a Settlement Agreement dated January 22, 2015 (the "Settlement Agreement"), in relation to the matters set out in the Amended Statement of Allegations;

AND WHEREAS the Commission issued a Notice of Hearing dated January 22, 2015, setting out that it proposed to consider the Settlement Agreement;

UPON reviewing the Settlement Agreement, the Notice of Hearing and the Amended Statement of Allegations, and upon considering submissions from the Respondents and from Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED:

1. that the Settlement Agreement is hereby approved;

2. that, pursuant to s. 127(1)2 and s. 127(1)2.1 of the Act, trading and acquisition of any securities by Smith shall cease for a period of 8 years from the date of the approval of the Settlement Agreement, except that, following full payment of the administrative penalty and costs orders made against him as a result of this Settlement Agreement, Smith shall be permitted to trade and acquire securities through a registrant for personal purposes in his own account, provided that he is not engaging in or holding himself out as engaging in the business of trading in securities, and provided Smith first notifies the registrant of these conditions by delivering to the registrant a copy of this order;

3. that, pursuant to s. 127(1)6 of the Act, Smith is reprimanded;

4. that, pursuant to s. 127(1)8.5 of the Act, Smith is prohibited for a period of 8 years from becoming or acting as a registrant, an investment fund manager or a promoter;

5. that, pursuant to s. 127(1)8 Smith is prohibited for a period of 8 years from becoming or acting as a director or officer of any issuer;

6. that, pursuant to s. 127(1)8.2, 127(1)8.3 and 127(1)8.4 of the Act, Smith is prohibited for a period of 8 years from becoming or acting as an officer or director of a registrant or investment fund manager;

7. that, pursuant to s. 127(1)9 of the Act, Smith shall pay an administrative penalty of $50,000 for his breaches of Ontario securities law in this matter, to be allocated under section 3.4(2)(b) to or for the benefit of third parties, or for use by the Commission for the purpose of educating investors or promoting or otherwise enhancing knowledge and information of persons regarding the operation of the securities and financial markets;

8. that, pursuant to s. 127.1(1) of the Act, Smith shall pay $7,500 as investigation costs in this matter.

DATED at Toronto this _____ day of January, 2015.

_____

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Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
Magnum Energy Inc.	09 January 2015	21 January 2015	21 January 2015	
BlackIce Enterprise Risk Management Inc.	09 January 2015	21 January 2015	21 January 2015	
Petaquilla Minerals Ltd.	09 January 2015	21 January 2015	21 January 2015	

4.2.1 Temporary, Permanent & Rescinding Management 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
Mahdia Gold Corp.	13 January 2015	26 January 2015	26 January 2015		

4.2.2 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
Mahdia Gold Corp.	13 January 2015	26 January 2015	26 January 2015		

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.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).

Chapter 8

Notice of Exempt Financings

REPORT OF TRADES ON FORM 45-106F1 AND 45-501F1

There are no Reports of Exempt Distribution on Forms 45-106F1 or 45-501F1 (Reports) in this Bulletin.

Reports filed on or after February 19, 2014 must be filed electronically.

As a result of the transition to mandated electronic filings, the OSC is considering the most effective manner to make data about filed Reports available to the public, including whether and how this information should be reflected in the Bulletin. In the meantime, Reports filed with the Commission continue to be available for public inspection during normal business hours.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Asanko Gold Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 26, 2015
NP 11-202 Receipt dated January 26, 2015
Offering Price and Description:
$39,996,000 - 19,800,000 Common Shares
Price: $2.02 per Offered Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
BMONESBITT BURNS INC.
CLARUS SECURITIES INC.
HAYWOOD SECURITIES INC.
RAYMOND JAMES LTD.
RBC DOMINION SECURITIES INC.
Promoter(s):
-
Project #2301430

Issuer Name:
Discovery Air Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 19, 2015
NP 11-202 Receipt dated January 20, 2015
Offering Price and Description:
$ * - 31,997,475 RIGHTS TO SUBSCRIBE FOR UP TO * COMMON SHARES
Price: $* per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2301079

Issuer Name:
Dundee Global Resource Class
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectus dated January 22, 2015
NP 11-202 Receipt dated January 23, 2015
Offering Price and Description:
Series A, D and F Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Goodman & Company, Investment Counsel Inc.
Project #2302131

Issuer Name:
Dynamic Conservative Yield Private Pool
Dynamic Conservative Yield Private Pool Class
Dynamic International Dividend Private Pool
Dynamic North American Dividend Private Pool
Dynamic Tactical Bond Private Pool
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated January 23, 2015
NP 11-202 Receipt dated January 26, 2015
Offering Price and Description:
Series F, FH, FT and O Units, and
Series F, FH and FT Shares
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P.
Project #2302272

Issuer Name:
Lydian International Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 21, 2015
NP 11-202 Receipt dated January 21, 2015
Offering Price and Description:
$16,500,000 - 30,000,000 Ordinary Shares
Price: $0.55 per Ordinary Share
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #2300675

Issuer Name:
Primero Mining Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 26, 2015
NP 11-202 Receipt dated January 26, 2015
Offering Price and Description:
US$75,000,000 - 5.75% Convertible Unsecured Subordinated Debentures
Price US$1,000 per Debenture
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
CANACCORD GENUITY CORP.
CIBC WORLD MARKETS INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2301448

Issuer Name:
Raging River Exploration Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated January 20, 2015
NP 11-202 Receipt dated January 20, 2015
Offering Price and Description:
$76,800,000 - 12,000,000 Common Shares
Price: $6.40 per Common Share
Underwriter(s) or Distributor(s):
PETERS & CO. LIMITED
FIRSTENERGY CAPITAL CORP.
DUNDEE SECURITIES LTD.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.
GMP SECURITIES L.P.
PARADIGM CAPITAL INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
CORMARK SECURITIES INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2301334

Issuer Name:
Richmont Mines Inc.
Principal Regulator - Quebec
Type and Date:
Preliminary Short Form Prospectus dated January 26, 2015
NP 11-202 Receipt dated January 26, 2015
Offering Price and Description:
$34,000,000 - 8,500,000 Common Shares
Price: $4.00 per Offered Share
Underwriter(s) or Distributor(s):
Macquarie Capital Markets Canada Ltd.
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
PI Financial Corp.
Promoter(s):
-
Project #2301581

Issuer Name:
1832 AM Canadian Preferred Share LP
1832 AM Global Completion LP
1832 AM North American Preferred Share LP
Scotia Global Low Volatility Equity LP
Scotia Total Return Bond LP
Scotia U.S. Dividend Growers LP
Scotia U.S. Low Volatility Equity LP
Type and Date:
Final Simplified Prospectuses dated January 16, 2015
Receipted on January 22, 2015
Offering Price and Description:
Series I Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
1832 Asset Management L.P
Project #2291126

Issuer Name:
Fairfax India Holdings Corporation
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 22, 2015
NP 11-202 Receipt dated January 23, 2015
Offering Price and Description:
US$500,000,000.00
(50,000,000 Subordinate Voting Shares)
Price: US$10.00 per Subordinate Voting Share
Minimum Purchase: 100 Subordinate Voting Shares
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Raymond James Ltd.
Cormark Securities Inc.
Dundee Securities Ltd.
GMP Securities L.P.
Manulife Securities Incorporated
Promoter(s):
Fairfax Financial Holdings Limited
Project #2284695

Issuer Name:
Interfor Corporation
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated January 20, 2015
NP 11-202 Receipt dated January 21, 2015
Offering Price and Description:
$60,300,000.00
$20.10 per Subscription Receipt
3,000,000 Subscription Receipts
each representing the right to receive one Common Share
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
RAYMOND JAMES LTD.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2298712

Issuer Name:
ShaMaran Petroleum Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment #1 dated January 19, 2015 to the Short Form Prospectus dated December 23, 2014
NP 11-202 Receipt dated January 23, 2015
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2270573

Issuer Name:
WPT Industrial Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated January 21, 2015
NP 11-202 Receipt dated January 21, 2015
Offering Price and Description:
US$40,500,000
3,750,000 Units
Price: US$10.80 per Unit
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
NATIONAL BANK FINANCIAL INC.
DESJARDINS SECURITIES INC.
TD SECURITIES INC.
GMP SECURITIES L.P.
SCOTIA CAPITAL INC.
Promoter(s):
-
Project #2298972

Issuer Name:
KWG Resources Inc.
Principal Jurisdiction - Quebec
Type and Date:
Preliminary Short Form Prospectus dated August 14, 2014
Amended and Restated Preliminary Short Form Prospectus dated November 13, 2014
Withdrawn on January 21, 2015
Offering Price and Description:
Minimum Offering $4,000,000 - Maximum Offering $10,000,000
Up to 50,000,000 Units
Price: 0.15 per Unit
and
Up to 50,000,000 Flow-Through Shares
Price: $0.05 per Flow-Through Share

Underwriter(s) or Distributor(s):
Secutor Capital Management Corporation
Promoter(s):
-
Project #2245835

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Amalgamation	Hub Capital Inc./Capital Hub Inc. and Interglobe Financial Services Corp. To form: Hub Capital Inc./Capital Hub Inc.	Mutual Fund Dealer and Exempt Market Dealer	January 1, 2015
Consent to Suspension (Pending Surrender)	Nottingham Consulting Ltd.	Exempt Market Dealer	January 23, 2015
Voluntary Surrender	Nottingham Consulting Ltd.	Exempt Market Dealer	January 26, 2015
Voluntary Surrender	Robert W. Baird & Co. Incorporated	Portfolio Manager	January 23, 2015
Voluntary Surrender	RDA Capital Inc.	Investment Fund Manager, Exempt Market Dealer	January 23, 2015
New Registration	Starvine Capital Corporation	Portfolio Manager	January 26, 2015
Firm Name Change	From: Mandeville Wealth Services Inc. To: Mandeville Wealth Services Inc./Services de Gestion de Patrimoine Mandeville Inc.	Mutual Fund Dealer and Exempt Market Dealer	January 22, 2015
Firm Name Change	From: Mandeville Private Client Inc. To: Mandeville Private Client Inc./ Services Aux Clients Prives Mandeville Inc.	Investment Dealer	January 22, 2015

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 IIROC – Notice of Re-Publication of Proposed Dark Rules Anti-Avoidance Provision

NOTICE OF RE-PUBLICATION OF PROPOSED DARK RULES ANTI-AVOIDANCE PROVISION

IIROC is re-publishing for public comment previously proposed amendments to the Universal Market Integrity Rules (UMIR). The proposed amendments would limit the ability of a Participant to execute a client order of 50 standard trading units or less on a foreign organized regulated market unless the order is entered on a market that displays order information or is executed at a "better price", as such term is defined in UMIR. The goal of the proposed amendments is to further the policy objective of pre-trade transparency and achieve consistency in the application of the requirement to obtain a "better price" under the Canadian dark liquidity framework. A copy of the IIROC Notice including the proposed amendments is published on our website at www.osc.gov.on.ca. The comment period ends on March 30, 2015.

13.2 Marketplaces

13.2.1 Lynx ATS – Notice of OSC Approval of Proposed Changes and Notice of Withdrawal of the Self-Trade Prevention Across Multiple Brokers

LYNX ATS

NOTICE OF OSC APPROVAL OF PROPOSED CHANGES AND
NOTICE OF WITHDRAWAL OF THE SELF-TRADE PREVENTION ACROSS MULTIPLE BROKERS

In accordance with the OSC's "Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto", a notice outlining and requesting feedback on the proposed changes was published in the OSC Bulletin on October 23, 2014 at (2014), 37 OSCB 9660. Two comment letters were received.

The OSC has approved the following proposed changes to Lynx's Form 21-101F2 (F2):

- Suppress self-trades from the consolidated tape;
- Enable decrement of orders;
- Cancel newest and oldest.

Withdrawn Proposed Changes

Lynx has withdrawn its proposed self-trades prevention across multiple brokers functionality.

13.2.2 TriAct Canada Marketplace LP – Notice of Withdrawal of the No Self Trade Feature for Orders Across Multiple Subscribers

TRIACT CANADA MARKETPLACE LP
(TriAct)

NOTICE OF WITHDRAWAL
OF THE NO SELF TRADE FEATURE FOR ORDERS ACROSS MULTIPLE SUBSCRIBERS

In accordance with OSC's "Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto", a notice outlining and requesting feedback on the proposed changes was published in the OSC Bulletin on September 25, 2014 at (2014), 37 OSCB 9035. No comment letters were received.

TriAct has withdrawn its proposed "No Self Trade feature for orders across multiple subscribers".

13.2.3 Omega ATS – Notice of OSC Approval of Proposed Changes and Notice of Withdrawal of the Self-Trade Prevention Across Multiple Brokers

OMEGA ATS

NOTICE OF OSC APPROVAL OF PROPOSED CHANGES AND NOTICE OF WITHDRAWAL OF THE SELF-TRADE PREVENTION ACROSS MULTIPLE BROKERS

In accordance with the OSC's "Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto", a notice outlining and requesting feedback on the proposed changes was published in the OSC Bulletin on October 23, 2014 at (2014), 37 OSCB 9657. Two comment letters were received.

The OSC has approved the following proposed changes to Omega's Form 21-101F2 (F2):

- Suppress self-trades from the consolidated tape;
- Enable decrement of orders;
- Cancel newest and oldest.

Withdrawn Proposed Changes

Omega has withdrawn its proposed self-trades prevention across multiple brokers functionality.

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