The Ontario Securities Commission

OSC Bulletin

December 22, 2016

Volume 39, Issue 51

(2016), 39 OSCB

The Ontario Securities Commission administers the
Securities Act of Ontario (R.S.O. 1990, c. S.5) and the
Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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Published under the authority of the Commission by:
Thomson Reuters
One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

416-609-3800 or 1-800-387-5164

The OSC Bulletin is published weekly by Thomson Reuters Canada, under the authority of the Ontario Securities Commission.

Subscriptions to the print Bulletin are available from Thomson Reuters Canada at the price of $868 per year. The eTable of Contents is available from $148 to $155. The CD-ROM is available from $1392 to $1489 and $314 to $336 for additional disks.

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440 grams	US – $5.41	Foreign – $18.50
860 grams	US – $6.61	Foreign – $10.60
1140 grams	US – $7.64	Foreign – $14.70

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ISSN 0226-9325

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Notices / News Releases

1.1 Notices

1.1.1 The Investment Funds Practitioner – December 2016

OSC

THE INVESTMENT FUNDS PRACTITIONER

From the Investment Funds and Structured Products Branch, Ontario Securities Commission

WHAT IS THE INVESTMENT FUNDS PRACTITIONER?

The Practitioner is an overview of recent issues arising from applications for discretionary relief, prospectuses, and continuous disclosure documents that investment funds file with the OSC. It is intended to assist investment fund managers and their staff or advisors who regularly prepare public disclosure documents and applications for exemptive relief on behalf of investment funds.

The Practitioner is also intended to make you more broadly aware of some of the issues we have raised in connection with our reviews of documents filed with us and how we have resolved them. We hope that fund managers and their advisors will find this information useful and that the Practitioner can serve as a useful resource when preparing applications and disclosure documents.

The information contained in the Practitioner is based on particular factual circumstances. Outcomes may differ as facts change or as regulatory approaches evolve. We will continue to assess each case on its own merits.

The Practitioner has been prepared by staff of the Investment Funds and Structured Products Branch and the views it expresses do not necessarily reflect the views of the Commission or the Canadian Securities Administrators.

REQUEST FOR FEEDBACK

This is the 18th edition of the Practitioner. Previous editions of the Practitioner are available on the OSC website www.osc.gov.on.ca under *Investment Funds & Structured Products* on the *Industry* tab. We welcome your feedback and any suggestions for topics that you would like us to cover in future editions. Please forward your comments by email to *investmentfunds@osc.gov.on.ca*.

CONTINUOUS DISCLOSURE

Portfolio Disclosure Practices of Exchange-Traded Funds

Staff have recently reviewed the practices of managers of exchange-traded mutual funds (ETFs) for disclosing the portfolio holdings of their ETFs. We have focused our review on instances where ETF managers disclose the daily portfolio holdings of their ETFs to authorized dealers, but not to the public.

Authorized dealers play a critical role in an ETF's liquidity. They are dealers who have entered into agreements with ETF managers that give them the ability to subscribe for securities in large blocks from the ETF at the net asset value per security calculated at the end of the day. Knowledge of the portfolio holdings of an ETF enables authorized dealers to assess whether there is a discrepancy between the market price of the ETF's securities and the underlying market value of the ETF's portfolio holdings (the underlying value) and to determine hedges for their positions. Where there is a divergence in these two values, authorized dealers carry out arbitrage trades that bring the market price of the ETF's securities closer to the ETF's underlying value. While investors who are not authorized dealers cannot engage in arbitrage trades with precise portfolio knowledge and the ability to transact directly with the ETF, the arbitrage activities generally help the ETF's securities to trade close to their underlying value with narrower bid-ask spreads.

Staff questioned whether disclosing an ETF's daily portfolio holdings to authorized dealers without concurrently disclosing the same information to the public creates a material information asymmetry between the authorized dealers and other investors, particularly retail investors. We focused on whether the information advantage that authorized dealers possess may make it possible for them to engage in unfair trading against other investors that is not consistent with market making activities to

provide liquidity. As part of our review, we met with ETF managers, the Investment Industry Regulatory Organization of Canada (IIROC), the Toronto Stock Exchange, and other market participants to discuss our concerns and to better understand ETF portfolio disclosure practices and their impact.

We found that most ETF managers are disclosing portfolio holdings to the public daily and that the issue of asymmetric information is confined to a comparatively small segment of ETFs that are actively managed, where the ETF managers consider portfolio holdings to be proprietary. This segment is, by our estimate, approximately 3% of the ETF market, comprising $3.5 billion in assets as of June 2016.

ETF managers submitted that entering into agreements with multiple authorized dealers for an ETF reduces the possibility of an authorized dealer unfairly benefitting from the portfolio holdings information, because competition for trades among the authorized dealers will narrow the quoted spread on the ETF's securities and bring the market price of the ETF's securities in line with their underlying value. We also heard submissions that ETF portfolio holdings information may be of limited use for retail investors, who are more concerned with the identity of the portfolio manager and the investment objectives, strategies and performance of the ETF.

Staff had extensive discussions with IIROC about the risks that may arise from the authorized dealers' possession of the portfolio holdings information of actively managed ETFs. IIROC currently conducts market surveillance and trading reviews of trades of all securities, including ETF securities. We understand that IIROC, as part of its Trading Conduct Compliance (TCC) reviews, will examine the appropriateness of supervisory controls an authorized dealer has implemented to monitor the use of portfolio holdings information.

Based on our review and discussions to date, we believe that access to actively managed ETFs affords additional choices to investors, and that any risks from asymmetric information can be limited by IIROC's oversight through its TCC reviews. Staff, along with IIROC, will continue to monitor these practices and other developments in the industry, including the introduction of platform trading for mutual funds by various exchanges, which may offer a new avenue for managers of actively managed ETFs to offer their products without the need to disclose daily portfolio holdings to authorized dealers. If the product landscape changes and we find any harm to investors or the public interest as a result of the current portfolio disclosure practices, staff will recommend appropriate regulatory action, including further action to regulate such practices, or any other remedy required by the circumstances.

Review of Scholarship Plans

Staff have started to review, on an issue-oriented basis, scholarship plans registered as Registered Education Savings Plans, to obtain further information on their general operational practices. The scope of our review concerns methods of allocating income earned, practices concerning accumulated income payments, disclosure practices, investment restrictions and the implementation of the key elements of the Undertaking[1] for those providers which have executed an Undertaking. Staff's review began in November 2016 with letters sent to all of the scholarship plan providers in Ontario.

Staff will communicate our findings from this review in a future communication, as appropriate.

INDEPENDENT REVIEW COMMITTEES (IRCs)

Consideration of Different Securityholder Interests

An investment fund manager's duty of care is set out in s. 116 of the *Securities Act* (Ontario). Members of an Independent Review Committee (IRC) have a similar duty with respect to conflict of interest matters referred to them by the investment fund manager. Section 3.9(1) of National Instrument 81-107 *Independent Review Committee for Investment Funds* imposes a fiduciary duty on a member of an IRC to (a) act honestly and in good faith, with a view to the best interests of the investment fund, and (b) exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in comparable circumstances.

To act in the best interests of the investment fund, IRC members should have a good undertstanding of the broad investor groups invested in the fund. Staff encourage IRC members to conduct their analyses of the issues presented by fund managers not only by considering the interest of the investment fund itself, but also the interests of the securityholders of the fund. While conducting these analyses the interests of the investors in the fund should not be considered at an individual level but rather, take into account the impact of the proposed action on different groups of securityholders invested in the fund. For example, the analysis could consider the impact of the proposed action on taxable versus non-taxable investors, on newer investors versus longer term investors in the fund, and on investors who purchased under a deferred sales charge versus investors who purchased on a front-end load basis.

[1] A discussion of the Undertaking is provided in the *The Investment Funds Practitioner* dated May 2013 under Scholarship Plans.

Staff remind IRC members of the need to balance and consider the varied interests of securityholders when determining whether a proposed action concerning a conflict of interest matter is in the best interests of the investment fund.

APPLICATIONS

Relief to Use Notice-and-Access Procedures for Securityholder Meetings

Staff have recently recommended exemptive relief from the requirement to deliver an information circular in connection with an investment fund securityholder meeting in order to deliver a "notice-and-access" document in connection with a notice-and-access procedure.[2] This relief allows an investment fund to deliver a notice-and-access document, which is a notice that provides basic information about the subject matter of the securityholder meeting, as well as instructions for how a securityholder can access the information circular online or request delivery of the information circular.

The terms of the relief are intended to be comparable to the notice-and-access procedure that non-investment fund reporting issuers are already permitted to use in connection with a securityholder meeting, under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (for communication with registered owners) or National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) (for communication with beneficial owners). Both NI 51-102 and NI 54-101 specifically exclude investment funds from using the notice-and-access procedures available under those instruments. Staff's recommendation of this relief recognizes that, in appropriate circumstances, the notice-and-access procedures can be adapted for an investment fund securityholder meeting. Staff are comfortable that, in certain situations, permitting the use of notice-and-access procedures will help to mitigate the costs of holding securityholder meetings without impacting the disclosure available to investors.

The terms of this relief have generally followed the same requirements for the use of notice-and-access procedures under NI 54-101 and NI 51-102, with slight modifications to reflect the nature of investment fund securityholder meetings. The terms of the relief also require that fund managers be cognizant of their fiduciary duty to the investment funds they manage in considering whether the use of notice-and-access procedures is appropriate in respect of a particular investment fund securityholder meeting.

Relief to Use Cleared Swaps

Staff have previously recommended exemptive relief to facilitate the use by mutual funds of over-the-counter (OTC) swaps that are subject to mandatory clearing under the *Dodd-Frank Wall Street Reform Act* or similar legislation in Europe. More recently, we have been asked to consider expanding this relief so that it also applies to swaps that are cleared on a voluntary basis, as well as those subject to mandatory clearing, provided the same procedures are used.[3] Staff have recommended granting this expanded relief because we are comfortable that the infrastructure for clearing derivatives offers appropriate safeguards and protections in the trading of OTC swaps. Accordingly, the policy rationale for granting such relief is not affected by whether or not the OTC swaps are subject to mandatory clearing or are cleared on a voluntary basis.

Although the recent relief is more expansive, the terms and conditions of the relief remain the same. Accordingly, filers who wish to apply for this relief for OTC swaps that are cleared on a voluntary basis should ensure that such swaps use the same clearing infrastructure as OTC swaps subject to mandatory clearing.

PROSPECTUSES

Scholarship Plans – Certificate of Annual Compliance with the Undertaking

In the May 2013 edition of the *Investment Funds Practitioner*, staff reported on our efforts to work with scholarship plan providers to consider the terms and conditions on which CSA staff would permit, by way of an Undertaking, scholarship plans to make limited investments of the income portion of the plans in equity securities, otherwise not contemplated by National Policy 15. This was in response to feedback that in the current low-interest rate environment, it has been difficult to obtain sufficient rates of return on plan investments that are currently limited to fixed income securities. To date, certain scholarship plan providers in Ontario have executed Undertakings which permit limited investments in equity securities.

Among the conditions of the Undertaking is that, on an annual basis, the manager will confirm the plans' compliance with the terms of the Undertaking by filing the Undertaking on SEDAR no later than the date of the final renewal prospectus for the plans. The Undertaking is to be filed as a public document on SEDAR and incorporated by reference into each plan's prospectus and the prospectus will state this fact. As an additional measure to certifying compliance, scholarship plan providers are reminded of

[2] See *Brandes Investment Partners & Co. et al.* dated December 5, 2016.

[3] See *In the Matter of RBC Global Asset Management Inc.* dated October 7, 2016 and also *In the Matter of Sun Life Global Investments Canada Inc.* dated May 10, 2016. In these decisions, the "cleared swaps" relief has also been granted for swaps cleared on a voluntary basis.

their obligation to also file an *Annual Certificate of Compliance with the terms of the Undertaking*. This certificate, to be executed by the manager's Chief Executive Officer, Chief Financial Officer and Chief Compliance Officer, should be filed with a copy of the original Undertaking when the plan provider files a final renewal prospectus.

Any questions regarding the certificate or its contents can be directed to staff.

REPORTS

Guidance on Mutual Fund Sales Practices

The Compliance and Registrant Regulation Branch of the Ontario Securities Commission has completed a focused review of mutual fund sponsored conferences organized and presented by investment fund managers to assess compliance with Part 5 of National Instrument 81-105 *Mutual Fund Sales Practices* (NI 81-105).

Based on the results of this focused review, we wish to provide the following guidance relating to the selection of representatives attending mutual fund sponsored conferences.

Paragraph 5.2(b) of NI 81-105 permits an investment fund manager to provide a non-monetary benefit to a representative of a participating dealer by allowing the representative to attend a conference or seminar that the investment fund manager has organized if the selection of the participating representatives is made exclusively by the participating dealer, uninfluenced by the investment fund manager.

Paragraph 7.3(2) of the companion policy to NI 81-105 clarifies that the identification of specific representatives of a participating dealer by an investment fund manager to that participating dealer does not constitute compliance with section 5.2 of NI 81-105. The requirement in paragraph 5.2(b) of NI 81-105 reflects the CSA's position that investment fund managers should generally be dealing with participating dealers, rather than individual dealing representatives, in connection with mutual fund sponsored conferences. This permits participating dealers to maintain better supervisory control over their representatives and reduces the potential conflicts that may arise between the duties owed to clients by representatives and the benefits provided by investment fund managers to those representatives.

To avoid non-compliance with the requirements of paragraph 5.2(b) of NI 81-105, investment fund managers should put a process in place that will require the investment fund manager to:

a) first, contact a participating dealer's head office requesting its involvement in the selection of representatives to attend the investment fund manager's mutual fund sponsored conference and request that the participating dealer distribute the mutual fund sponsored conference invitation to its representatives;

b) ensure the opportunity to attend the mutual fund sponsored conference is available to all representatives;

c) ensure the mutual fund sponsored conference is widely advertised (for example, in the advisor section of an investment fund manager's website and/or through widely known industry publications); and

d) ensure that attendance is filled in a manner that does not influence the selection of representatives (for example, attendance is filled on a first come first served basis).

Staff will continue to monitor compliance with these requirements going forward.

1.5 Notices from the Office of the Secretary

1.5.1 Welcome Place Inc. et al.

FOR IMMEDIATE RELEASE
December 15, 2016

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
WELCOME PLACE INC.,
DANIEL MAXSOOD
also known as MUHAMMAD M. KHAN,
TAO ZHANG and
TALAT ASHRAF

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

A copy of the Order and the Reasons and Decision dated December 14, 2016 are available at www.osc.gov.on.ca.

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GRACE KNAKOWSKI
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1.5.2 BMO Nesbitt Burns Inc. et al.

FOR IMMEDIATE RELEASE
December 15, 2016

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
BMO NESBITT BURNS INC.,
BMO PRIVATE INVESTMENT COUNSEL INC.,
BMO INVESTMENTS INC. AND
BMO INVESTORLINE INC.

TORONTO – Following a hearing held today, the Commission issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and BMO Nesbitt Burns Inc., BMO Private Investment Counsel Inc., BMO Investments Inc. and BMO InvestorLine Inc.

A copy of the Order dated December 15, 2016 and the Settlement Agreement dated December 9, 2016 are available at www.osc.gov.on.ca.

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1.5.3 Krishna Sammy

FOR IMMEDIATE RELEASE
December 16, 2016

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
A REQUEST FOR A HEARING AND REVIEW OF
THE DECISION OF A HEARING PANEL OF
THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA

AND

IN THE MATTER OF
KRISHNA SAMMY

TORONTO – The Commission issued an Order in the above named matter which provides that:

1. Sammy shall serve and file by no later than 4:30 p.m. on January 6, 2017:

   a. the affidavit referred to in the Application to Revoke or Vary ("the Affidavit"); and

   b. the complete Application Record for the Application for Hearing and Review, as required by Rule 14.3(2) of the Ontario Securities Commission *Rules of Procedure* (2014) 37 OSCB 4168;

2. cross-examinations on the Affidavit by IIROC Staff and Commission Staff, if any, shall be completed by February 7, 2017;

3. IIROC Staff and Commission Staff shall serve and file any affidavits in response by no later than 4:30 p.m. on February 15, 2017; and

4. the hearing with respect to the Application to Revoke or Vary shall take place on February 23, 2017 at 10:00 a.m.

A copy of the Order dated December 15, 2016 is available at www.osc.gov.on.ca.

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1.5.4 Saileshwar Rao Narayan et al.

FOR IMMEDIATE RELEASE
December 16, 2016

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
SAILESHWAR RAO NARAYAN,
PROSPERITY DEVELOPMENT GROUP LTD., and
PROSPERA MORTGAGE INVESTMENT CORPORATION

TORONTO – The Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above noted matter.

A copy of the Reasons and Decision and the Order dated December 15, 2016 are available at www.osc.gov.on.ca.

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1.5.5 MM Café Franchise Inc. et al.

FOR IMMEDIATE RELEASE
December 16, 2016

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LTD.,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

TORONTO – The Commission issued an Order in the above noted matter which provides that:

1. Staff shall deliver to the respondents copies of documents which it intends to produce or enter as evidence at the hearing on the merits (the "Hearing Briefs") by no later than March 3, 2017;

2. Each respondent shall deliver their Hearing Briefs to Staff and the other respondents by no later than March 17, 2017;

3. the final interlocutory appearance shall be held at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario, on March 27, 2017 at 9:30 a.m., or as soon thereafter as the hearing can be held; and

4. the hearing date scheduled for May 30, 2017 is vacated and the hearing days scheduled for April 27 and May 9, 2017 will be held in the afternoon only.

A copy of the Order dated December 15, 2016 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Invesco Canada Ltd. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement to obtain securityholder approval for fund merger and approval of fund merger under paragraph 5.5(1)(b) of NI 81-102 – merger to be undertaken in connection with changes to the Income Tax Act (Canada) which eliminated certain tax benefits associated with character conversion transactions – subject to conditions – required to send written notice at least 60 days before the effective date of the merger describing the merger.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.1(1)(f), 5.5(1)(b), 5.3, 5.6, 5.7, 19.1.

November 17, 2016

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
INVESCO CANADA LTD.
(the "Filer")

AND

IN THE MATTER OF
INVESCO INTACTIVE STRATEGIC CAPITAL YIELD PORTFOLIO CLASS
("Capital Yield Class")

AND

INVESCO INTACTIVE STRATEGIC YIELD PORTFOLIO
("Strategic Yield Portfolio", and collectively, the "Funds")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") for:

(i) exemptive relief from the requirement under section 5.1(1)(f) of National Instrument 81-102 – *Investment Funds* ("**NI 81-102**") to obtain prior securityholder approval of a proposed reorganization (the "**Proposed Transaction**") whereby securities of Series A, Series F, Series F4, Series F6, Series P, Series PF, Series

PT4, Series PT6, Series T4 and Series T6 of Capital Yield Class will be exchanged for the applicable corresponding securities of Strategic Yield Portfolio as described below (the "**Securityholder Relief**"); and

(ii) approval pursuant to paragraph 5.5(1)(b) and section 5.7 of NI 81-102 in connection with the Proposed Transaction (the "**Approval Application**").

Paragraphs (i) and (ii) are collectively referred to as the **Relief Sought**.

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

(i) the Ontario Securities Commission is the principal regulator for this application; and

(ii) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

Defined terms contained in NI 81-102, National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless they are defined in this decision.

Representations

This Decision is based on the following facts represented by the Filer on behalf of the Funds:

1. The Filer:

(a) is a corporation amalgamated under the laws of Ontario;

(b) is an indirect wholly-owned subsidiary of Invesco Ltd., a global investment manager;

(c) has its head office in Toronto, Ontario;

(d) is registered as an investment fund manager in Ontario; and

(e) is not in default of applicable securities legislation in any jurisdiction.

2. Strategic Yield Portfolio:

(a) is an open-end mutual fund trust established under the laws of Ontario;

(b) complies with NI 81-102, subject to any exemptions therefrom that may be available under applicable securities legislation or granted by securities regulatory authorities;

(c) has filed a simplified prospectus and annual information form prepared in accordance with NI 81-102 and National Instrument 81-101 – *Mutual Fund Prospectus Disclosure* ("**NI 81-101**");

(d) is a reporting issuer under the securities laws of each of the provinces and territories of Canada;

(e) is qualified for distribution in all provinces and territories of Canada; and

(f) is not in default of securities legislation in any province or territory of Canada.

3. Capital Yield Class:

(a) is an open-end mutual fund established as a class of a mutual fund corporation under the laws of Ontario;

(b) complies with NI 81-102, subject to any exemptions therefrom that may be available under applicable securities legislation or granted by securities regulatory authorities;

(c) is a reporting issuer under the securities laws of each of the provinces and territories of Canada;

(d) is no longer qualified for distribution in all provinces and territories of Canada, but has filed an annual information form in accordance with National Instrument 81-106 – *Investment Fund Continuous Disclosure* ("**NI 81-106**"); and

(e) is not in default of securities legislation in any province or territory of Canada.

The Proposed Transaction

4. Capital Yield Class was launched to provide tax-efficient exposure to the return profile of Strategic Yield Portfolio by investing in different types of securities and entering into forward contracts ("**Forwards**") with a counterparty. New rules in the *Income Tax Act* (Canada) (the "**Tax Act**") that affect the tax treatment of returns earned under "derivative forward agreements" have been enacted which will eliminate any favourable tax treatment enjoyed by Capital Yield Class.

5. Due to the changes in the Tax Act, the favourable tax treatment for forward contracts with respect to Capital Yield Class will expire in May 2017. Following that date, it will no longer be possible to provide the shareholders of Capital Yield Class with the exposure to the return profile of Strategic Yield Portfolio on a tax-advantaged basis. Given this change, and after considering the alternatives, the Filer has determined that the Proposed Transaction is in the best interests of investors.

6. The Proposed Transaction will be structured so that immediately after the close of business on the date of the Proposed Transaction (the "**Transaction Date**"), shareholders of the applicable series of Capital Yield Class will have their shares redeemed at the applicable net asset value per share in exchange for the same series of units of Strategic Yield Portfolio on a dollar-for-dollar basis. The value of the units of Strategic Yield Portfolio that are issued pursuant to the Proposed Transaction will be equal to the value of the shares of Capital Yield Class held by the securityholders at the close of business on the Transaction Date. Series T8, Series F8 and Series PT8 of Capital Yield Class will not be subject to the Proposed Transaction and will be terminated on the Transaction Date.

7. During the 30 days before the Transaction Date, the Forwards will be closed out and securities owned by Capital Yield Class will be sold to the counterparty for cash. Capital Yield Class will then concurrently subscribe for units of Strategic Yield Portfolio. By the Transaction Date, it is expected that Capital Yield Fund will only hold units of Strategic Yield Portfolio (as well as cash to manage redemption requests made prior to the Transaction Date).

8. The strategies of Capital Yield Class allow for the direct purchase of units of Strategic Yield Portfolio under certain circumstances (including a merger transaction), and therefore there is no need to amend the objectives or strategies of Capital Yield Class to account for this interim period.

9. Capital Yield Class will be using only cash to invest in Strategic Yield Portfolio as part of the Proposed Transaction. As such, there are no concerns about whether Strategic Yield Portfolio will receive assets that (a) may be acquired in compliance with NI 81-102, (b) are acceptable to the Filer (as manager) or sub-advisor of Strategic Yield Portfolio, and (c) are consistent with the fundamental investment objectives of Capital Yield Class.

10. The Filer will wind up Capital Yield Class as soon as reasonably possible following the Proposed Transaction.

11. The Filer has complied with the requirements to file a material change report in respect of the Proposed Transaction as required by Part 11 of NI 81-106. The Proposed Transaction does not constitute a material change for Strategic Yield Portfolio.

12. The Filer will pay for the costs and expenses associated with the Proposed Transaction and the Funds will not bear any of such costs and expenses. The Proposed Transaction will not impact the redemption fee schedules of any investors who receive units of Strategic Yield Portfolio following the Transaction Date.

13. Capital Yield Class has been closed to additional investments since June 2013. Following this closure, the Filer has determined that the costs associated with qualifying shares of Capital Yield Class under a prospectus were not justifiable, and instead the Filer filed an annual information form in accordance with NI 81-106.

14. The prospectus of Capital Yield Class provided for at least 60 days' notice to be given to shareholders for transactions such as the Proposed Transaction for each period in which Capital Yield Class was available for purchase. Shareholders of Capital Yield Class will be given at least 60 days' notice of the Proposed Transaction.

15. The Proposed Transaction has been approved by the independent review committee of the Funds (the "**IRC**").

16. Securityholders may redeem their securities of Capital Yield Class in advance of the Proposed Transaction should they wish to do so.

17. The Filer believes that a reasonable person would consider the fundamental investment objectives of the Capital Yield Class to be substantially similar to those of Strategic Yield Portfolio.

18. The management and advisory fees and trailing commissions of the applicable series of the Funds are identical, and no sales charges or redemption charges are applicable for investors following the Proposed Transaction. Accordingly, the Proposed Transaction will not impact the fees of Capital Yield Class investors. It is expected that following the Proposed Transaction, the cost of Strategic Yield Portfolio will be decreased due to the elimination of costs associated with the Forwards.

19. The valuation procedures of the Funds are substantially similar to each other as well. Each Fund is valued daily using the same methodology.

20. Under the Proposed Transaction, all optional services (pre-authorized chequing plans, systematic exchange plans and systematic withdrawal plans) other than the ability to purchase Series PT6 and Series T6 in U.S. dollars will continue to be available to securityholders, who will be automatically enrolled in such plans with respect to units of Strategic Yield Portfolio, unless they advise otherwise.

21. Due to the fact that:

    a. Capital Yield Class is a class of Invesco Corporate Class Inc. ("ICCI"), a mutual fund corporation for purposes of the Tax Act;

    b. Capital Yield Class distributes net realized capital gains to investors, if necessary, within 60 days of the year end of ICCI; and

    c. ICCI has sufficient capital loss carryforwards in respect of any net realized and unrealized capital gains of Capital Yield Class,

    the level of unrealized capital gains and the impact of the Proposed Transaction on securityholders from a capital gains tax perspective are collectively not expected to be significant and would be identical if the Filer had decided to terminate each series of Capital Yield Class rather than carry out the Proposed Transaction.

22. Securityholder approval of the Proposed Transaction is required under section 5.1(1)(f) of NI 81-102 because the Proposed Transaction does not satisfy all of the conditions referenced in section 5.3(2) of NI 81-102; namely, the requirement that the Proposed Transaction be a "qualified exchange" within the meaning of section 132.2 of the Tax Act or a tax-deferred transaction under subsection 85(1), 85.1(1), 86(1) or 87(1) of the Tax Act, as required under section 5.6(1)(b) of NI 81-102.

23. Similarly, approval of the principal regulator of the Proposed Transaction is required under section 5.5(1)(b) and section 5.7 of NI 81-102 because the Proposed Transaction does not meet the pre-approval requirement under section 5.6 of NI 81-102 noted above.

Decision

The principal regulator is satisfied that the test contained in the Legislation that provides the principal regulator with the jurisdiction to make the decision has been met.

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

(a) The Proposed Transaction is approved by the IRC of the Funds;

(b) The Filer sends the following to each securityholder of Capital Yield Class at least 60 days prior to the Transaction Date:

    a. A detailed notice that sets out the information necessary for the securityholder to understand the Proposed Transaction, including:

        i. A brief description of the Proposed Transaction and the Transaction Date;

        ii. A description of Strategic Yield Portfolio and any differences investors are expected to experience in holding securities of Strategic Yield Portfolio versus holding securities of Capital Yield Class;

iii. The IRC's determination regarding the Proposed Transaction;

iv. The tax consequences of the Proposed Transaction, the ability to switch to another corporate class fund managed by the Filer on a tax-deferred basis and the timelines under which this switch must be completed; and

v. A statement that securityholders may obtain, free of charge, the most recent annual and interim financial statements, the current simplified prospectus, annual information form and fund facts documents, and the most recent management report on fund performance of Strategic Yield Portfolio that have been made public by contacting the Applicant or through SEDAR; and

b. The fund facts document of the series of Strategic Yield Portfolio that the securityholder will hold after the completion of the Proposed Transaction.

"Vera Nunes"
Manager, Investment Funds & Structured Products Branch
Ontario Securities Commission

2.1.2 I.G. Investment Management, Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – fund family relief from the requirement to send a printed information circular to registered holders of the securities of an investment fund – relief subject to a number of conditions, including sending an explanatory document in lieu of the printed information circular and giving securityholders the option to request and obtain at no charge a printed information circular – notice-and-access for investment funds.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, s. 12.2(2)(a).

November 29, 2016

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

AND

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

AND

IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer, on behalf of existing and future investment funds that are or will be managed from time to time by the Filer or by an affiliate or successor of the Filer (the **Funds**), for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting an exemption from the requirement contained in paragraph 12.2(2)(a) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) for a person or company that solicits proxies, by or on behalf of management of a Fund, to send an information circular to each registered holder of securities of a Fund whose proxy is solicited, and instead allow a Fund to send a Notice-and-Access Document (as defined in condition 1 of this decision) using the Notice-and-Access Procedure (as defined in condition 2 of this decision) (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Quebec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Northwest Territories, Nunavut and Yukon; 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*, MI 11-102, National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Filer and the Funds

1. The head office of the Filer is located in Winnipeg, Manitoba.

2. The Filer is registered as an investment fund manager in Manitoba, Ontario, Quebec and Newfoundland and Labrador, as a portfolio manager in Manitoba, Ontario and Quebec and as an adviser under the *Commodity Futures Act* in Manitoba.

3. The Funds are, or will be, managed by the Filer or by an affiliate or successor of the Filer.

4. The Funds are, or will be, investment funds and are, or will be, reporting issuers in one or more of the jurisdictions of Canada.

5. Neither the Filer, nor any of the existing Funds, is in default of any of the requirements of securities legislation in any of the jurisdictions of Canada.

Meetings of Securityholders of the Funds

6. Pursuant to applicable legislation, the Filer must call a meeting of securityholders of one or more Funds from time to time to consider and vote on matters requiring securityholder approval.

7. In connection with a meeting, a Fund is required to comply with the requirements in NI 81-106 regarding the sending of proxies and information circulars to registered holders of its securities, which include a requirement that each person or company that solicits proxies by or on behalf of management of a Fund send, with the notice of meeting, to each registered holder of securities of a Fund whose proxy is solicited, an information circular, prepared in compliance with the requirements of Form 51-102F5 of NI 51-102, to securityholders of record who are entitled to receive notice of the meeting.

8. A Fund is also required to comply with NI 51-102 for communicating with registered holders of its securities, and to comply with NI 54-101 for communicating with beneficial owners of its securities.

Notice-and-Access Procedure – Corporate Finance Issuers

9. Section 9.1.1 of N I 5 1-102 permits, if certain conditions are met, a reporting issuer that is not an investment fund to use the notice-and-access procedure and send, instead of an information circular, a notice to each registered holder of its securities that contains certain specific information regarding the meeting and an explanation of the notice-and-access procedure.

10. Section 2.7.1 of NI 54-101 permits a reporting issuer that is not an investment fund to use a similar procedure to communicate with each beneficial owner of its securities.

Reasons supporting the Exemption Sought

11. A meeting of investment fund securityholders is substantively no different than a meeting of corporate finance securityholders. As a result, if the notice-and access procedure set forth in NI 51-102 and in N I 54-101 can be used by a corporate finance issuer for a meeting of its securityholders in order to send a notice-and-access document instead of an information circular, it would not be detrimental to the protection of investors to allow an investment fund to also use the Notice-and-Access Procedure to send a Notice-and-Access Document, instead of the information circular.

12. With the Exemption Sought, securityholders will maintain the same access to the same quality of disclosure material currently available. Without limiting the generality of the foregoing:

    (a) all securityholders of record entitled to receive an information circular will receive instructions on how to access the information circular and will be able to receive a printed copy, without charge, if they so desire; and

    (b) the conditions to the Exemption Sought mandate that the Notice-and-Access Document will be sent to securityholders sufficiently in advance of a meeting so that if a securityholder wishes to receive a printed copy of the information circular, there will be sufficient time for the Filer, directly or through the Filer's agent, to send the information circular.

13. With the Notice-and-Access Procedure, no securityholder will be deprived of their ability to access the information circular in his/her/its preferred manner of communication.

14. In accordance with the Filer's standard of care owed to the relevant Fund pursuant to applicable legislation, the Filer will only use the Notice-and-Access Procedure for a particular meeting where it has concluded it is appropriate and consistent with the purposes of notice-and-access (as described in the Companion Policy to NI 54-101) to do so, also taking into account the purpose of the meeting and whether the Fund would obtain a better participation rate by sending the information circular with the other proxy-related materials.

15. There are significant costs involved in the printing and delivery of the proxy-related materials, including information circulars, to securityholders in the Funds.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, in respect of each Fund or the Filer soliciting proxies by or on behalf of management of a Fund:

1. The registered holders or beneficial owners, as applicable, of securities of the Fund are sent a document that contains the following information and no other information (the **Notice-and-Access Document**):

    (a) the date, time and location of the meeting for which the proxy-related materials are being sent;

    (b) a description of each matter or group of related matters identified in the form of proxy to be voted on unless that information is already included in a Form 54-101F6 or Form 54-101F7 as applicable, that is being sent to the beneficial owner of securities of the Fund under condition (2)(c) of this decision;

    (c) the website addresses for SEDAR and the non-SEDAR website where the proxy-related materials are posted;

    (d) a reminder to review the information circular before voting;

    (e) an explanation of how to obtain a paper copy of the information circular and, if applicable, the financial statements;

    (f) a plain-language explanation of the Notice-and-Access Procedure that includes the following information :

        (i) the estimated date and time by which a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is to be received in order for the registered holder or beneficial owner, as applicable, to receive the paper copy in advance of any deadline for the submission of voting instruction s for the meeting ;

        (ii) an explanation of how the registered holders or the beneficial owners, as applicable, of securities of the Fund are to return voting instructions, including any deadline for return of those instructions;

        (iii) the sections of the information circular where disclosure regarding each matter or group of related matters identified in the Notice-and-Access Document can be found; and

        (iv) a toll-free telephone number the registered holders or the beneficial owners, as applicable, of securities of the Fund can call to get information about the Notice-and-Access Procedure.

2. The Filer, on behalf of the Fund, sends the Notice-and-Access Document in compliance with the following procedure (the **Notice-and-Access Procedure**), in addition to any and all other applicable requirements:

    (a) the proxy-related materials are sent a minimum of 30 days before a meeting and a maximum of 50 days before a meeting;

    (b) if the Fund sends proxy -related materials:

        (i) directly to a NOBO using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the financial statements, at least 30 days before the date of the meeting; and

(ii) indirectly to a beneficial owner using the Notice-and-Access Procedure, then the Fund must send the Notice-and-Access Document and, if applicable, any paper copies of information circulars and the financial statements to the proximate intermediary (A) at least 3 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent on by the proximate intermediary by first class mail, courier or the equivalent, or (B) at least 4 business days before the 30th day before the date of the meeting, in the case of proxy-related materials that are to be sent using any other type of prepaid mail;

(c) using the procedures referred to in section 2.9 or 2. 12 of NI 54-101, as applicable, the beneficial owner of securities of the Fund is sent, by prepaid mail, courier or the equivalent, the Notice-and-Access Document and a Form 54-101F6 or Form 54-101F7, as applicable;

(d) the Filer, on behalf of the Fund, files on SEDAR the notification of meeting and record dates on the same date that it sends the notification of meeting date and record date pursuant to subsection 2.2(1) of NI 54-101 (as such time may be abridged);

(e) public electronic access to the information circular and the Notice-and-Access Document is provided on or before the date that the Notice-and-Access Document is sent to registered holders or to beneficial owners, as applicable, of securities of the Fund in the following manner:

(i) the information circular and the Notice-and-Access Document are filed on SEDAR; and

(ii) the information circular and the Notice-and-Access Document are posted until the date that is one year from the date that the documents are posted, on a website of the Filer or the Fund;

(f) a toll-free telephone number is provided for use by the registered holders or beneficial owners, as applicable, of securities of the Fund to request a paper copy of the information circular and, if applicable, the financial statements of the Fund, at any time from the date that the Notice-and-Access Document is sent to the registered holders or the beneficial owners, as applicable, up to and including the date of the meeting, including any adjournment ;

(g) if a request for a paper copy of the information circular and, if applicable, the financial statements of the Fund, is received at the toll-free telephone number provided in the Notice-and-Access Document or by any other means, a paper copy of any such document requested is sent free of charge to the registered holder or beneficial owner, as applicable, at the address specified in the request in the following manner:

(i) in the case of a request received prior to the date of the meeting, within 3 business days after receiving the request, by first class mail, courier or the equivalent ; and

(ii) in the case of a request received on or after the date of the meeting, and within one year of the date the information circular is filed on SEDAR, within 10 calendar days after receiving the request, by prepaid mail, courier or the equivalent;

(h) a Notice-and-Access Document is only accompanied by:

(i) a form of proxy;

(ii) if applicable, the financial statements of the Fund to be presented at the meeting; and

(iii) if the meeting is to approve a reorganization of the Fund with a mutual fund, as contemplated by paragraph 5.1(1)(f) of NI 81-102 *Investment Funds*, the Fund Facts document for the continuing mutual fund ;

(i) a Notice-and-Access Document may only be combined in a single document with a form of proxy;

(j) if the Filer, directly or through the Filer's agent, receives a request for a copy of the information circular and if applicable, the financial statements of the Fund, using the toll-free telephone number referred to in the Notice-and-Access Document or by any other means, it must not do any of the following:

(i) ask for any information about the registered holder or beneficial owner, other than the name and address to which the information circular and, if applicable, the financial statements of the Fund are to be sent; and

(ii) disclose or use the name or address of the registered holder or beneficial owner for any purpose other than sending the information circular and, if applicable, the financial statements of the Fund ;

(k) the Filer, directly or through the Filer's agent, must not collect information that can be used to identify a person or company who has accessed the website address to which it posts the proxy-related materials pursuant to condition (2)(e)(ii) of this decision.

(l) in addition to the proxy-related materials posted on a website in the manner referred to in condition (2)(e)(ii) of this decision, the Filer must also post on the website the following documents:

(i) any disclosure document regarding the meeting that the Filer, on behalf of the Fund, has sent to registered holders or beneficial owners of securities of the Fund; and

(ii) any written communications the Filer, on behalf of the Fund, has made available to the public regarding each matter or group of matters to be voted on at the meeting, whether or not they were sent to registered holders or beneficial owners of securities of the Fund;

(m) materials that are posted on a website pursuant to condition (2)(e)(ii) of this decision must be posted in a manner and be in a format that permit an individual with a reasonable level of computer skill and knowledge to do all of the following easily:

(i) access, read and search the documents on the website; and

(ii) download and print the documents;

(n) despite subsection 2.1(b) of NI 54-101, if the Fund relies upon this Decision, it must set a record date for notice that is no fewer than 40 days before the date of the meeting;

(o) in addition to section 2.20 of N I 54-101, the Fund may only abridge the time prescribed in subsection 2.1(b), 2.2(1) or 2.5(1) of N I 54-101 if the Fund fixes the record date for notice to be at least 40 days before the date of the meeting and sends the notification of meeting and record dates at least 3 business days before the record date for notice;

(p) the notification of meeting date and record date sent pursuant to subsection 2.2(l)(b) of NI 54-101 shall specify that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this Decision;

(q) the Filer, on behalf of the Fund, provides disclosure in the information circular to the effect that the Fund is sending proxy-related materials to registered holders or beneficial owners, as applicable, of securities of the Fund using the Notice-and-Access Procedure pursuant to the terms of this Decision; and

(r) the Filer pays for delivery of the information circular and, if applicable, the financial statements of the Fund, to registered holders or to beneficial owners, as applicable, of securities of the Fund if a copy of such material is requested following receipt of the Notice-and-Access Document.

The Exemption Sought terminates on the coming into force of any legislation or regulation allowing an investment fund to use a notice-and-access procedure.

“Chris Besko”
Director, General Counsel

2.1.3 Arkema S.A.

Headnote

Dual application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – The offering involves the use of collective employee shareholding vehicles, each a fonds communs de placement d'entreprise (FCPE) – The issuer cannot rely on the employee exemption in section 2.24 of Regulation 45-106 respecting prospectus and registration exemptions as the securities are not being offered to Canadian employees directly by the issuer but rather through special purpose entities – Canadian participants will receive disclosure documents – The special purpose entities are subject to the supervision of the local securities regulator – Canadian employees will not be induced to participate in the offering by expectation of employment or continued employment – There is no market for the securities of the issuer in Canada – The number of Canadian participants and their share ownership are *de minimis* – Canadian employees will receive disclosure documents – The FCPEs are subject to the supervision of the French Autorité des marchés financiers – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act (Ontario), ss. 53, 74.
National Instrument 45-106 Prospectus and Registration Exemptions, s. 2.24.
National Instrument 31-103 Registration Requirements and Exemptions, s. 8.16.
National Instrument 45-102 Resale of Securities, s. 2.14.

TRANSLATION

March 18, 2014

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

AND

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

AND

IN THE MATTER OF
ARKEMA S.A.
(the "Filer")

DECISION

Background

The securities regulatory authority or regulator in each of the Filing Jurisdictions (the "**Decision Makers**") has received an application from the Filer for a decision under the securities legislation of the Filing Jurisdictions (the "**Legislation**") for:

1. an exemption from the prospectus requirements of the Legislation (the "**Prospectus Relief**") so that such requirements do not apply to

   (a) trades in:

      (i) units (the "**Principal Classic Units**") of an FCPE named Arkema Actionnariat International (the "**Principal Classic FCPE**"), which is a *fonds commun de placement d'entreprise* or "**FCPE**," a form of collective shareholding vehicle commonly used in France for the conservation of shares held by employee-investors; and

      (ii) units (together with the Principal Classic Units and Matching Units (as defined below), each and collectively, the "**Units**") of a temporary FCPE named Arkema Actionnariat International Relais 2014 (the "**Temporary Classic FCPE**"), which will merge with the Principal Classic FCPE following

completion of the Employee Share Offering (as defined below), as further described in paragraph 16 of the Representations;

made pursuant to the Employee Share Offering to or with Qualifying Employees (as defined below) resident in the Filing Jurisdictions (collectively, the "**Canadian Employees**", and Canadian Employees who subscribe for Units, the "**Canadian Participants**"); and

(b) trades of ordinary shares of the Filer (the "**Shares**") by the Principal Classic FCPE and/or the Temporary Classic FCPE to or with Canadian Participants (as defined below) upon the redemption of their Units as requested by Canadian Participants;

2. an exemption from the dealer registration requirements of the legislation (the "**Registration Relief**") so that such requirements do not apply to the Filer and the Canadian Affiliate (as defined below), the Temporary Classic FCPE, the Principal Classic FCPE and Amundi (the "**Management Company**") in respect of:

(a) trades in Units made pursuant to the Employee Share Offering to or with Canadian Employees; and

(b) trades in Shares by the Temporary Classic FCPE and/or the Principal Classic FCPE to or with Canadian Participants upon the redemption of their Units;

(the Prospectus Relief and the Registration Relief being collectively referred to as the "**Offering Relief**").

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions (for a dual application),

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

(b) 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 *Regulation 14-101 respecting Definitions*, *Regulation 45-102 respecting resale of securities*, *Regulation 45-106 respecting Prospectus and Registration Exemptions* and *Regulation 11-102 respecting Passport System* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation formed under the laws of France. It is not, and has no current intention of becoming, a reporting issuer under the Legislation or under the securities legislation of any other jurisdiction of Canada. The head office of the Filer is located in France and the Shares are listed on NYSE Euronext Paris. The Filer is not in default under the Legislation or under the securities legislation of any other jurisdiction of Canada.

2. The Filer carries on business in Canada through Arkema Canada Inc. (the "**Canadian Affiliate**" and, collectively with the Filer and other affiliates of the Filer, the "**Arkema Group**"). The Canadian Affiliate is not in default under the Legislation or under the securities legislation of any other jurisdiction of Canada.

3. The Canadian Affiliate is an indirect subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer under the Legislation or under the securities legislation of any other jurisdiction of Canada. The majority of the senior management of the Canadian Affiliate resides in Québec and the greatest number of Qualifying Employees of the Arkema Group in Canada resides in Québec.

4. As of the date hereof and after giving effect to the Employee Share Offering, Canadian residents do not and will not beneficially own (which term, for the purposes of this paragraph, is deemed to include all Shares held by the Principal Classic FCPE and the Temporary Classic FCPE on behalf of Canadian Participants) more than 10% of the Shares and do not and will not represent in number more than 10% of the total number of holders of the Shares as shown on the books of the Filer.

5. The Filer has established a global employee share offering for employees of the Arkema Group (the "**Employee Share Offering**"). The Employee Share Offering involves an offering of Shares to be subscribed through the Principal Classic FCPE via the Temporary Classic FCPE (the "**Classic Plan**").

6. Only persons who are employees of a member of the Arkema Group during the subscription period for the Employee Share Offering and who meet other employment criteria (the "**Qualifying Employees**") will be allowed to participate in the Employee Share Offering.

7. The Principal Classic FCPE and the Temporary Classic FCPE have been established for the purpose of implementing the Employee Share Offering. There is no current intention for either the Principal Classic FCPE or the Temporary Classic FCPE to become a reporting issuer under the Legislation or the securities legislation of any other jurisdiction of Canada.

8. As set forth above, each of the Temporary Classic FCPE and the Principal Classic FCPE is an FCPE (a *fonds commun de placement d'entreprise*), a shareholding vehicle commonly used in France for the conservation or custodianship of shares held by employee investors. A FCPE is a limited liability entity under French law. The Principal Classic FCPE and the Temporary Classic FCPE have been registered with the French Autorité des marchés financiers (the "**French AMF**") and approved by it.

9. Units (other than Matching Units as defined below) acquired in the Employee Share Offering by Canadian Participants will be subject to a hold period of approximately five years (the "**Lock-Up Period**"), subject to certain exceptions prescribed by French law and adopted under the Classic Plan in Canada (such as death, long-term disability, involuntary termination of employment or retirement).

10. The subscription price for Units under the Classic Plan will be the Canadian dollar equivalent equal to the average of the opening price of the Shares on NYSE Euronext Paris (expressed in Euros) on the 20 trading days preceding the date of fixing of the subscription price by the board of Directors of the Filer, less a 20% discount.

11. Subject to the approval of the board of directors of the Filer, for every five Shares purchased by a Canadian Participant under the Classic Plan (each, an "**Employee-Purchased Share**"), the Filer will issue, at no cost to a Canadian Participant, but subject to the vesting requirements described below, one additional Share (each a "**Matching Share**") up to a maximum of 20 Matching Shares per Canadian Participant.

12. The Temporary Classic FCPE will apply the cash received in respect of the Units to subscribe for Shares and Canadian Participants will receive Units in the Temporary Classic FCPE representing the subscription of such Shares. Any corresponding Matching Shares will be issued and delivered by the Filer to the Classic FCPE on behalf of the Canadian Participant once such Matching Shares vest as described below. In order to reflect this, new Units ("**Matching Units**") of the Classic FCPE (defined below) will be issued to the Canadian Participants.

13. The term "**Classic FCPE**" used herein means, prior to the Merger, the Temporary Classic FCPE and, following the Merger, the Principal Classic FCPE.

14. Matching Shares will vest once a Canadian Participant remains employed (subject to certain exceptions, such as death, permanent disability, retirement, termination without cause or if the Canadian Affiliate or its business is no longer part of the Arkema Group) within the Arkema Group for a continuous period of four years from the date that the Shares and Units pursuant to the Employee Share Offering are issued to the Temporary Classic FCPE and the Canadian Participants, respectively.

15. In the event of an early unwind resulting from the Canadian Participant exercising one of the exceptions to the Lock-Up Period and meeting the applicable criteria, a Canadian Participant may request the redemption of Units in the Classic FCPE in consideration for a cash payment equal to the then market value of the underlying Shares.

16. Initially, the Shares will be held in the Temporary Classic FCPE and the Canadian Participant will receive Units in the Temporary Classic FCPE. Following the completion of the Employee Share Offering, the Temporary Classic FCPE will be merged with the Principal Classic FCPE (subject to the approval of the supervisory board of the FCPEs and the French AMF). Units of the Temporary Classic FCPE held by Canadian Participants will be replaced with Units of the Principal Classic FCPE on a pro rata basis and the Shares subscribed for under the Employee Share Offering will be held in the Principal Classic FCPE (the "**Merger**").

17. Under the Classic Plan, at the end of the Lock-Up Period a Canadian Participant may:

    (a) request the redemption of Units in the Classic FCPE in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares, or

    (b) continue to hold Units in the Classic FCPE and request the redemption of those Units at a later date in consideration for the underlying Shares or a cash payment equal to the then market value of the Shares.

18. Matching Units are not subject to the Lock-Up Period. Following the issuance of Matching Units, a Canadian Participant may (i) request the redemption of Matching Units in consideration for the underlying shares or a cash payment equal to the then market value of the Matching Shares, or (ii) hold the Matching Units in the Classic FCPE and request the redemption of the Matching Units at a later date in consideration for the underlying Matching Shares or a cash payment equal to the then market value of the Matching Shares.

19. Dividends paid on the Shares held in the Classic FCPE will be contributed to the Classic FCPE and used to purchase additional Shares. To reflect this reinvestment, new Units (or fractions thereof) will be issued.

20. The portfolio of each of the Principal Classic FCPE and the Temporary Classic FCPE will consist almost entirely of Shares, but may, from time to time, include cash in respect of dividends paid on the Shares. From time to time, each portfolio may also include cash or cash equivalents that the Principal Classic FCPE and the Temporary Classic FCPE may hold pending investments in Shares or for the purpose of funding redemptions.

21. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. To the best of the Filer's knowledge, the Management Company is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of any other jurisdiction of Canada.

22. The Management Company's portfolio management activities in connection with the Employee Share Offering, the Principal Classic FCPE and the Temporary Classic FCPE are limited to subscribing for Shares and selling such Shares as necessary in order to fund redemption requests and investing available cash in cash equivalents.

23. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents as provided by the rules of each of the Principal Classic FCPE and the Temporary Classic FCPE. The Management Company's activities do not affect the underlying value of the Shares. To the best of the Filer's knowledge, the Management Company is not in default of the Legislation or the securities legislation of any other jurisdiction of Canada.

24. Shares issued in the Employee Share Offering will be deposited in the Classic FCPE through CACEIS Bank (the "**Depositary**"), a large French commercial bank subject to French banking legislation.

25. All management charges relating to the Classic FCPE will be paid from the assets of the Classic FCPE or by the Filer, as provided in the regulations of the Classic FCPE. The Management Company is obliged to act in the best interests of the Canadian Participants and is liable to them, jointly and severally with the Depositary, for any violation of the rules and regulations governing the Classic FCPE, any violation of the rules of the Classic FCPE, or for any self-dealing or negligence.

26. Participation in the Employee Share Offering is voluntary, and the Canadian Employees will not be induced to participate in the Employee Share Offering by expectation of employment or continued employment.

27. The total amount invested by a Canadian Employee in the Employee Share Offering cannot exceed 25% of his or her gross compensation for the 2013 calendar year. Amounts contributed by the Filer in respect of Matching Shares will not be factored into the maximum amount that a Canadian Employee may contribute. Furthermore, under the Employee Share Offering a Canadian Participant may not make a subscription for Units that represent more than 1,000 Shares.

28. None of the Filer, the Management Company, the Canadian Affiliate or any of their directors, officers, employees, agents or representatives will provide investment advice to the Canadian Employees with respect to an investment in the Shares or the Units.

29. The Canadian Employees will receive an information package in the French or English language, according to their preference, which will include a summary of the terms of the Employee Share Offering and a description of Canadian income tax consequences of subscribing to and holding Units of the Classic FCPE and requesting the redemption of such Units for cash or Shares at the end of the Lock-Up Period.

30. Canadian Employees may access the Filer's French *Document de référence* filed with the French AMF in respect of the Shares by visiting the website www.ake.com. Canadian Employees will also have access, through this website, to the continuous disclosure materials relating to the Filer that are furnished to holders of the Shares. Furthermore, Canadian Employees may also obtain a copy of the rules of the Temporary Classic FCPE and the Principal Classic FCPE (which are analogous to company by-laws) by visiting the website www.ake2014.com.

31. Canadian Participants will receive an initial statement of their holdings under the Classic Plan, together with an updated statement at least once per year.

32. There are approximately 68 Canadian Employees resident in the provinces of Ontario and Québec, who represent, in the aggregate, less than 1% of the total number of employees in the Arkema Group worldwide.

33. The Units will not be listed on any exchange.

Decision

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

The decision of the Decision Makers under the Legislation is that the Offering Relief is granted provided that the prospectus requirements of the Legislation will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this Decision, unless the following conditions are met:

(a) the issuer of the security:

(i) was not a reporting issuer in any jurisdiction of Canada at the distribution date, or

(ii) is not a reporting issuer in any jurisdiction of Canada at the date of the trade;

(b) at the distribution date, after giving effect to the issue of the security and any other securities of the same class or series that were issued at the same time as or as part of the same distribution as the security, residents of Canada:

(i) did not own directly or indirectly more than 10% of the outstanding securities of the class or series, and

(ii) did not represent in number more than 10% of the total number of owners directly or indirectly of securities of the class or series; and

(c) the first trade is made:

(i) through an exchange, or a market, outside of Canada, or

(ii) to a person or company outside of Canada.

“Gilles Leclerc”
Superintendent, Securities Markets

2.1.4 Montrusco Bolton Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption granted from conflict of interest trading prohibition in paragraph 13.5(2)(b)(iii) of NI 31-103 to permit In-Specie Transfers by separately Managed Accounts and Pooled Funds in Pooled Funds – Portfolio Manager of Managed Accounts is also portfolio manager of Pooled Funds and is therefore a "responsible person" – Relief subject to certain conditions.

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 13.5(2)(b)(iii).

November 25, 2016

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

AND

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

AND

IN THE MATTER OF
MONTRUSCO BOLTON INVESTMENTS INC.
(the Filer or MBI)

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**) granting an exemption from subparagraph 13.5(2)(b)(iii) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), which prohibit an adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as an adviser, from purchasing or selling a security from or to the investment portfolio of any investment fund for which a responsible person acts as an adviser, in order to permit *In-Specie* subscriptions and redemptions (each an ***In-Specie* Transfer** as further defined below) by:

(A) Pooled Funds in the other Pooled Funds; and

(B) Managed Accounts in the Pooled Funds;

(collectively, the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, New Brunswick and Nova Scotia (together with the Jurisdictions, are the **Filing Jurisdictions**); and

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

Interpretation

Terms defined in the Legislation, MI 11-102, National Instrument 14-101 *Definitions* and NI 31-103 have the same meanings if used in this decision unless otherwise defined. In this decision:

> **Pooled Fund** means an investment fund structured as a trust, a corporation or a partnership under the laws of Canada or of one of the provinces or territories of Canada and managed by MBI or managed in the future by MBI, that is not a reporting issuer, and whose units are sold pursuant to prospectus exemptions under applicable securities legislation, to which National Instrument 81-102 – *Investment Funds* (**NI 81-102**) does not apply.
>
> **Managed Account** means an account of a client of the Filer that is not a 'responsible person' as defined in NI 31-103, for which the Filer has discretionary authority to trade in securities for the account without requiring the client's express consent to the transaction.
>
> ***In-Specie* Transfer** means causing a Managed Account or a Pooled Fund to deliver portfolio securities to a Pooled Fund or Managed Account in respect of the purchase of securities of the Pooled Fund by the Managed Account or Pooled Fund, or to receive portfolio securities from the investment portfolio of a Pooled Fund or Managed Account in respect of a redemption of securities of the Pooled Fund by the Managed Account or Pooled Fund.

Representations

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

1. MBI is a corporation incorporated under the *Canada Business Corporations Act*. Its head office is in Montréal, Québec.

2. MBI is registered as an investment fund manager, a portfolio manager and an exempt market dealer in the Filing Jurisdictions, as well as registered derivatives portfolio manager in the Province of Québec and a commodity trading manager in the Province of Ontario.

3. Each Pooled Fund is, or will be, an investment fund structured as a trust, a corporation or a partnership under the laws of Canada or of one of the provinces or territories of Canada.

4. The Filer is, or will be, the investment fund manager of each of the Pooled Funds. The Filer or an affiliate of the Filer is, or will be, the portfolio manager of each of the Pooled Funds.

5. The Filer is, or will be, the portfolio manager of a Managed Account.

6. Natcan Trust Company acts as trustee, when applicable, and as custodian of each of the Pooled Funds, and is not an affiliate of the Filer.

7. Securities of each of the Pooled Funds are, or will be, distributed in the Filing Jurisdictions pursuant to exemptions from the prospectus requirement. Each of the Pooled Funds is not, or will not be, a reporting issuer in the Filing Jurisdictions.

8. The Filer is not in default of any requirements of securities legislation in the Filing Jurisdictions.

9. In its capacity as portfolio manager of a Pooled Fund, the Filer wishes to be able, in accordance with the investment objectives and investment restrictions of the Pooled Fund, to cause the Pooled Fund to invest in units or shares (the **Fund Securities**) of another Pooled Fund pursuant to an *In-Specie* Transfer. This will occur where, as part of its portfolio management, a Pooled Fund wishes to obtain exposure to certain investments or a category of asset classes held by the second Pooled Fund by investing in Fund Securities of the second Pooled Fund.

10. Similarly, the Filer wishes to be able to cause the Pooled Fund to redeem Fund Securities from the second Pooled Fund pursuant to an *In-Specie* Transfer.

11. The Filer offers discretionary portfolio management services to clients (the **Clients**) seeking wealth management or related services through Managed Accounts.

12. Pursuant to a written agreement (the **Discretionary Management Agreement**) entered into between each Client and the Filer, the Filer, as the portfolio manager of the Managed Account, makes investment decisions for each Managed Account and has full discretionary authority to trade in securities for each Managed Account without obtaining the specific consent or instructions of the Client to the trade.

13. The portfolio management services provided by the Filer, as the portfolio manager of the Managed Account, to each Client consist of the following:

    (a) each Client executes a Discretionary Management Agreement whereby the Client authorizes the portfolio manager to supervise, manage and direct purchases and sales in the Client's Managed Account, at the portfolio manager's full discretion on a continuing basis;

    (b) qualified employees of the portfolio manager perform investment research, securities selection and portfolio management functions with respect to all securities, investments, cash and cash equivalents and other assets in the Managed Account;

    (c) each Managed Account holds securities and other investments as selected by the portfolio manager in its sole discretion; and

    (d) the portfolio manager retains overall responsibility for the advice provided to its Clients and has a designated senior officer to oversee and supervise the Managed Account.

14. Investments in individual securities may not be appropriate for a Client in certain circumstances. Consequently, the Filer may, where authorized under the Discretionary Management Agreement, invest Client assets in securities of any one or more of the Pooled Funds in order to give its Clients the benefit of asset diversification and economies of scale through minimum commission charges on portfolio trades and generally to facilitate portfolio management.

15. The Filer wishes to have the ability to cause a Managed Account for which it acts as portfolio manager, to purchase and redeem Fund Securities of a Pooled Fund pursuant to *In-Specie* Transfers.

16. The Filer anticipates that purchases of Fund Securities pursuant to *In-Specie* Transfers will occur most commonly when the Managed Account is newly established and the portfolio manager of the Managed Account believes that the Client will be better served by holding securities of one or more Pooled Funds rather than continuing to directly hold individual securities.

17. The Filer anticipates that redemptions pursuant to *In-Specie* Transfers will typically occur following a redemption of Fund Securities where a Managed Account invested in a Pooled Fund has experienced a change in circumstances which results in the Managed Account being an ideal candidate for direct holdings of individual portfolio securities rather than Fund Securities.

18. Each Discretionary Management Agreement or other documentation will contain the authorization of the Client for the portfolio manager of the Managed Account to engage in *In-Specie* Transfers on behalf of the Managed Account.

19. No *In-Specie* Transfer will involve a Client that is a "responsible person" of the Filer, as that term is defined in subsection 13.5(1) of NI 31-103.

20. In respect of each *In-Specie* Transfer, the portfolio securities to be delivered will meet the investment criteria of the Pooled Fund or Managed Account, as applicable, acquiring the portfolio securities.

21. The Filer will receive no remuneration with respect to any *In-Specie* Transfer, and the only expenses which will be incurred by a Pooled Fund or a Managed Account for an *In-Specie* Transfer shall be nominal administrative charges levied by the custodian of the Pooled Funds or Managed Accounts for recording the trades and/or any commission charged by the dealer in executing the trade *In-Specie*.

22. The Filer, as the investment fund manager of the Pooled Funds, will value the securities transferred under an *In-Specie* Transfer on the same valuation day on which the purchase price or redemption price of the Fund Securities of a Pooled Fund is determined. With respect to the purchase of Fund Securities of a Pooled Fund, the securities transferred to a Pooled Fund under an *In-Specie* Transfer in satisfaction of the purchase price of those Fund Securities will be valued as if the securities were portfolio assets of the Pooled Fund, as contemplated by section 9.4(2)(b)(iii) of NI 81-102. With respect to the redemption of Fund Securities of a Pooled Fund, the securities transferred to a Managed Account or Pooled Fund in satisfaction of the redemption price of those Fund Securities will have a value equal to the amount at which those securities were valued in calculating the net asset value per security used to establish the redemption price of the Fund Securities of the Pooled Fund, as contemplated by section 10.4(3)(b) of NI 81-102.

23. Should any *In-Specie* Transfer contemplated specifically by the Exemption Sought, involve the transfer of an "illiquid asset" (as defined in NI 81-102) (the **Illiquid Portfolio Securities**), the Filer will obtain at least one quote for the asset from an independent arm's length purchaser or seller, immediately before effecting the *In-Specie* Transfer.

24. If any Illiquid Portfolio Securities are the subject of an *In-Specie* redemption, the Illiquid Portfolio Securities will be transferred on a basis that fairly represents the portfolio of the Pooled Fund. Pooled Funds generally invest in liquid securities. The Filer will not cause any Pooled Fund to accept an *In-Specie* subscription or pay out redemption proceeds *In-Specie* if, at the time of the proposed *In-Specie* Transfer, Illiquid Portfolio Securities represent more than an immaterial portion of the portfolio of the Pooled Fund. The valuation of any Illiquid Portfolio Securities which would be the subject of an *In-Specie* Transfer will be carried out according to the Filer's policies and procedures for the fair value of portfolio securities, including illiquid securities.

25. *In-Specie* Transfers will be subject to (i) compliance with the written policies and procedures of the Filer respecting *In-Specie* Transfers that are consistent with applicable securities legislation, and (ii) the oversight of the Compliance Department of the Filer to ensure that the transaction represents the business judgment of the Filer acting in its discretionary capacity with respect to the Pooled Fund and the Managed Account, uninfluenced by considerations other than the best interests of the Pooled Fund and Managed Account.

26. None of the portfolio securities which are the subject of each *In-Specie* Transfer will be securities of related issuers of the Filer.

27. *In-Specie* Transfers will enable the Filer to manage each asset class more effectively and to reduce the transaction costs of Clients and Pooled Funds. For example, *In-Specie* Transfers reduce market impact costs, which can be detrimental to Clients and/or Pooled Funds. *In-Specie* Transfers also allow a portfolio manager to retain within its control institutional-size blocks of portfolio securities that would otherwise need to be broken and re-assembled.

28. The Filer has determined that it would be in the interests of the Pooled Funds and the Managed Accounts to receive the Exemption Sought.

29. Since the Filer is, or will be, the portfolio manager of the Managed Accounts and the Pooled Funds, the Filer would be considered a "responsible person" within the meaning of NI 31-103, and would thus be prohibited from the above-described *In-Specie* Transfers in the absence of the Exemption Sought.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted provided that:

(a) in connection with the purchase of Fund Securities of a Pooled Fund by another Pooled Fund:

  (i) the other Pooled Fund would, at the time of payment, be permitted to purchase the portfolio securities;

  (ii) the portfolio securities are acceptable to the Filer, as portfolio manager of the other Pooled Fund issuing the units or shares, and consistent with the other Pooled Fund's investment objectives;

  (iii) the value of the portfolio securities is equal to the issue price of the Fund Securities of the other Pooled Fund issuing the units or shares, for which they are payment, valued as if the portfolio securities were portfolio assets of the other Pooled Fund;

  (iv) none of the portfolio securities which are the subject of the *In-Specie* Transfer are securities of related issuers of the Filer;

  (v) should any *In-Specie* Transfer involve the transfer of Illiquid Portfolio Securities, the Filer will obtain at least one quote for the asset from an independent arm's length purchaser or seller, immediately before effecting the *In-Specie* Transfer; and

  (vi) each Pooled Fund keeps written records of all *In-Specie* Transfers in each applicable financial year, reflecting details of the portfolio securities delivered by the Pooled Fund to another Pooled Fund, and the value assigned to such portfolio securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;

(b) in connection with the redemption of Fund Securities of a Pooled Fund by another Pooled Fund;

  (i) the portfolio securities are acceptable to the Filer, as portfolio manager of the Pooled Fund acquiring the portfolio securities, and consistent with the Pooled Fund's investment objectives;

(ii) the value of the portfolio securities is equal to the amount at which those portfolio securities were valued in calculating the net asset value per Fund Security used to establish the redemption price of the Fund Securities of the Pooled Fund;

(iii) none of the portfolio securities which are the subject of the *In-Specie* Transfer are securities of related issuers of the Filer;

(iv) should any *In-Specie* Transfer involve the transfer of Illiquid Portfolio Securities, the Filer will obtain at least one quote for the asset from an independent arm's length purchaser or seller, immediately before effecting the *In-Specie* Transfer; and

(v) if any Illiquid Portfolio Securities are the subject of an *In-Specie* redemption, the Illiquid Portfolio Securities will be transferred on a basis that fairly represents the portfolio of the Pooled Fund;

(vi) each Pooled Fund keeps written records of all *In-Specie* Transfers in each applicable financial year, reflecting details of the portfolio securities delivered by the Pooled Fund to another Pooled Fund, and the value assigned to such portfolio securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;

(c) in connection with the purchase of Fund Securities of a Pooled Fund by a Managed Account:

(i) the Filer, as portfolio manager of the Managed Account, obtains the prior written consent of the Client of the Managed Account before it engages in any *In-Specie* Transfer in connection with the purchase of Fund Securities of the Pooled Fund and such consent has not been revoked;

(ii) the Pooled Fund would, at the time of payment, be permitted to purchase the portfolio securities held by the Managed Account;

(iii) the portfolio securities are acceptable to the Filer, as portfolio manager of the Pooled Fund, and consistent with the Pooled Fund's investment objectives;

(iv) the value of the portfolio securities sold to the Pooled Fund by the Managed Account is equal to the issue price of the Fund Securities of the Pooled Fund for which they are payment, valued as if the portfolio securities were portfolio assets of that Pooled Fund;

(v) none of the portfolio securities which are the subject of the *In-Specie* Transfer are securities of related issuers of the Filer;

(vi) should any *In-Specie* Transfer involve the transfer of Illiquid Portfolio Securities, the Filer will obtain at least one quote for the asset from an independent arm's length purchaser or seller, immediately before effecting the *In-Specie* Transfer;

(vii) the Client of the Managed Account has not provided notice to terminate its Discretionary Management Agreement with the Filer;

(viii) the account statement next prepared for the Managed Account includes a note describing the portfolio securities delivered to the Pooled Fund and the value assigned to such portfolio securities; and

(ix) the Pooled Fund keeps written records of all *In-Specie* Transfers in each applicable financial year of the Pooled Fund, reflecting details of the portfolio securities delivered to the Pooled Fund and the value assigned to such portfolio securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place;

(d) in connection with the redemption of Fund Securities of a Pooled Fund by a Managed Account:

(i) the Filer, as portfolio manager of the Managed Account, obtains the prior written consent of the Client of the Managed Account before it engages in an *In-Specie* Transfer and such consent has not been revoked;

(ii) the portfolio securities are acceptable to the Filer, as portfolio manager of the Managed Account, and consistent with the Managed Account's investment objectives;

(iii) the value of the portfolio securities is equal to the amount at which those portfolio securities were valued in calculating the net asset value per Fund Security used to establish the redemption price of the Fund Securities;

(iv) the Client of the Managed Account has not provided notice to terminate its Discretionary Management Agreement with the Filer;

(v) none of the portfolio securities which are the subject of the *In-Specie* Transfer will be securities of related issuers of the Filer;

(vi) should any *In-Specie* Transfer involve the transfer of Illiquid Portfolio Securities, the Filer will obtain at least one quote for the asset from an independent arm's length purchaser or seller, immediately before effecting the *In-Specie* Transfer;

(vii) if any Illiquid Portfolio Securities are the subject of an *In-Specie* redemption, the Illiquid Portfolio Securities will be transferred on a basis that fairly represents the portfolio of the Pooled Fund;

(viii) the account statement next prepared for the Managed Account includes a note describing the portfolio securities delivered to the Managed Account and the value assigned to such portfolio securities;

(ix) the Pooled Fund keeps written records of each *In-Specie* Transfer in each applicable financial year of the Pooled Fund, reflecting details of the portfolio securities delivered by the Pooled Fund and the value assigned to such portfolio securities, for five years after the end of the financial year, the most recent two years in a reasonably accessible place; and

(e) the Filer does not receive any compensation in respect of any sale or redemption of Fund Securities of a Pooled Fund and, in respect of any delivery of portfolio securities further to an *In-Specie* Transfer; the only charges paid by the Pooled Fund or Managed Account, if any, is a nominal administrative charge levied by the custodian in recording the trade and/or any commission charged by the dealer executing the trade.

"Eric Stevenson"
Superintendent, Client Services and Distribution Oversight

2.1.5 Russell Investments Canada Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from paragraphs 2.5(2)(a) and 2.5(2)(c) of National Instrument 81-102 Investment Funds to permit each Fund to invest in ETFs up to 10 percent of its net asset value, in aggregate, in gold and other physical commodities – ETFs will be traded on a Canadian or U.S. stock exchange – subject to 10% exposure to physical commodities, in aggregate, and certain conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.5(2)(a, 2.5(2)(c), 19.1.

December 14, 2016

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
RUSSELL INVESTMENTS CANADA LIMITED
(The Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the existing and future mutual funds managed by the Filer that are subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**) and that are not money market funds as defined in NI 81-102 (the **Existing Funds** and the **Future Funds**, respectively, and together, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**):

(a) revoking and replacing the Previous Decision (as defined below); and

(b) exempting the Funds from the prohibitions in paragraphs 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit each Fund to invest in Commodity ETFs (as defined below),

(collectively, the **Exemption Sought**).

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

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

(b) the Filer has provided notice pursuant to section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) that the Exemption Sought is intended to be relied upon in all the other provinces and territories of Canada.

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of the Province of Ontario with its head office located in Toronto, Ontario.

2. The Filer is registered in each of the provinces and territories of Canada in the categories of investment fund manager, portfolio manager and exempt market dealer. The Filer also is registered in Ontario as a commodity trading manager and as a mutual fund dealer exempt from membership in the Mutual Funds Dealer Association of Canada. The Filer also is registered in Manitoba as an advisor (commodities).

3. The Filer is the investment fund manager of each Existing Fund and will be the investment fund manager of each Future Fund. The Filer is the portfolio adviser to, or will retain a portfolio manager to act as portfolio adviser to, each Existing Fund, and will be the portfolio adviser to, or will retain a portfolio manager to act as portfolio adviser to, each Future Fund.

4. The Filer is not in default of securities legislation in any of the provinces or territories of Canada.

The Funds

5. Each Existing Fund is, and each Future Fund will be:

   (a) an mutual fund established under the laws of Canada or the laws of a province or territory of Canada and not a money market fund;

   (b) a reporting issuer under the laws of some or all of the provinces or territories of Canada; and

   (c) subject to the requirements of NI 81-102.

6. Securities of each Existing Fund are, and securities of each Future Fund will be, qualified for distribution in some or all of the provinces or territories of Canada under a simplified prospectus, annual information form and fund facts prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and filed with and receipted by the securities regulators in the applicable provinces or territories of Canada.

7. The Existing Funds are not in default of securities legislation in any of the provinces or territories of Canada.

The Previous Decision

8. The Filer obtained a previous decision dated September 26, 2013 (the **Previous Decision**) exempting Russell Investments Real Assets (then called Russell Real Assets Portfolio) (the **Specified Fund**) from paragraphs 2.5(2)(a) and 2.5(2)(c) of NI 81-102 to permit the Specified Fund to invest in securities of exchange-traded funds (**ETFs**) traded on a stock exchange in Canada or the United States which hold, or obtain exposure to, one or more physical commodities (other than gold or silver) on an unlevered basis (**Commodity ETFs**).

9. Since the Previous Decision applies solely to the Specified Fund, the Filer requests that the Previous Decision be revoked and replaced by the Exemption Sought in order to permit each Fund to invest in Commodity ETFs on the terms contained in exemptive relief granted more recently to other mutual funds. In particular, the Exemption Sought will not impose a limit on a Fund's exposure to one commodity sector of 2.5% of the Fund's net asset value at the time of purchasing a Commodity ETF.

10. The Filer also obtained a previous decision dated June 28, 2011 which permits each Fund to invest in, among other matters:

    (a) ETFs that seek to provide daily results that replicate the daily performance of a specified widely-quoted market index (the ETF's **Underlying Index**) by a multiple of 200% or an inverse multiple of 200%;

    (b) ETFs that seek to provide daily results that replicate the daily performance of their Underlying Index by an inverse multiple of 100%;

(c) ETFs that seek to replicate the performance of gold or silver, or the value of a specified derivative the underlying interest of which is gold or silver on an unlevered basis; and

(d) ETFs that seek to provide daily results that replicate the daily performance of gold or silver or the value of a specified derivative the underlying interest of which is gold or silver on an unlevered basis, by a multiple of 200%,

(collectively, **Underlying ETFs**).

Commodity ETFs

11. Each Commodity ETF will be a mutual fund, and not a non-redeemable investment fund.

12. The assets of each Commodity ETF consist, or will consist, primarily of one or more physical commodities (other than gold or silver) or derivatives that have an underlying interest in such physical commodity or commodities. These physical commodities may include, but are not limited to, agriculture or livestock (such as soy meal, sugar, wheat, cotton, coffee and live cattle), energy (such as crude oil, gasoline, heating oil, gas oil and natural gas), precious metals other than gold or silver (such as platinum and palladium) and industrial metals (such as copper and aluminum).

13. The objective of each Commodity ETF is or will be, on an unlevered basis, to:

(a) reflect the price of the applicable physical commodity or commodities (less the Commodity ETF's expenses and liabilities), or

(b) track the performance of an index which is intended to reflect the changes in the market value of the physical commodity or commodities sector.

14. In addition to investing in securities of ETFs that are index participation units, the Funds propose to have the ability to invest in the Commodity ETFs.

15. The amount of the loss that can result from an investment by a Fund in a Commodity ETF will be limited to the amount invested by the Fund in securities of the Commodity ETF.

16. Each Existing Fund is, and each Future Fund will be, permitted, in accordance with its investment objectives and investment strategies, to invest in securities of Commodity ETFs.

17. The Exemption Sought is needed because:

(a) paragraph 2.5(2)(a) of NI 81-102 would prohibit a Fund from investing in securities of Commodity ETFs because the Commodity ETFs will not be subject to NI 81-101 and may not be subject to NI 81-102; and

(b) paragraph 2.5(2)(c) of NI 81-102 would prohibit a Fund from investing in securities of some Commodity ETFs because such Commodity ETFs will not be qualified for distribution in the local jurisdiction.

18. Any investment by a Fund in securities of a Commodity ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Fund.

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 the Fund in securities of a Commodity ETF is in accordance with the fundamental investment objective of the Fund;

(b) the securities of the Commodity ETF are traded on a stock exchange in Canada or the United States;

(c) the Fund will not purchase securities of a Commodity ETF if, immediately after the transaction, more than 10% of the net asset value of the Fund, taken at market value at the time of the transaction, would consist of securities of Commodity ETFs and Underlying ETFs;

(d) immediately after entering into a purchase, derivative or other transaction providing exposure to one or more physical commodities, the Fund's aggregate market value exposure (whether direct or indirect, including through Commodity ETFs) to all physical commodities (including gold) will not exceed 10% of the net asset value of the Fund, taken at market value at the time of the transaction; and

(e) the simplified prospectus of each Existing Fund discloses, or will disclose the next time it is renewed, and the simplified prospectus of each Future Fund discloses:

(i) in the investment strategy section:

(A) that the Fund has obtained relief to invest in Commodity ETFs;

(B) the extent to which the Fund may invest in Commodity ETFs;

(C) an explanation of each type of Commodity ETF; and

(D) that the Fund may indirectly invest in gold and other physical commodities; and

(ii) the risks associated with such investments and strategies.

"Darren McKall"
Manager
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.6 Counsel Portfolio Services Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Approval of mutual fund mergers – approval required because mergers do not meet the criteria for pre-approved reorganizations and transfer in National Instrument 81-102 – mergers are not a "qualifying exchange" or a tax-deferred transaction under the Income Tax Act (Canada) – securityholders of terminating funds provided with timely and adequate disclosure regarding mergers.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(b), 5.5(3), 5.6, 5.7.

December 14, 2016

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
COUNSEL PORTFOLIO SERVICES INC.
(the Filer)

AND

COUNSEL SHORT TERM FIXED INCOME CLASS,
COUNSEL U.S. VALUE CLASS,
COUNSEL U.S. GROWTH CLASS,
COUNSEL INTERNATIONAL VALUE CLASS,
COUNSEL INTERNATIONAL GROWTH CLASS, AND
COUNSEL GLOBAL SMALL CAP CLASS
(COLLECTIVELY, THE "TERMINATING FUNDS" AND INDIVIDUALLY, A "TERMINATING FUND")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Funds, for a decision under the securities legislation of the Jurisdiction (the **Legislation**) approving the proposed reorganization of each of the Terminating Funds with applicable Continuing Funds (each as defined below), pursuant to subsection 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Requested Relief**).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon.

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.

"Continuing Funds" means Counsel U.S. Value, Counsel U.S. Growth, Counsel International Value, Counsel International Growth, Counsel Global Small Cap, and Counsel Short Term Bond (collectively, the "Continuing Funds" and individually, a "Continuing Fund").

"Effective Date" means on or about January 13, 2017, the anticipated date of the Proposed Reorganization.

"Funds" means collectively, the Terminating Funds and the Continuing Funds.

"Proposed Reorganizations" means each of the proposed mergers of the Terminating Funds into the applicable Continuing Funds.

Representations

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

The Filer

1. The Filer is a corporation formed by articles of incorporation under the laws of Ontario with its head office in Mississauga, Ontario. The Filer is registered as a portfolio manager and investment fund manager in Ontario, and as an investment fund manager in Quebec and Newfoundland and Labrador.

2. The Filer is the manager of the Funds.

The Funds

3. The Terminating Funds are separate classes of securities of Counsel Portfolio Corporation, a mutual fund corporation governed under the laws of Ontario. The Continuing Funds are unit trusts established under the laws of Ontario. Each Terminating Fund invests solely in its corresponding Continuing Fund.

4. The Funds are each reporting issuers under the securities legislation of each province and territory of Canada, except Quebec. Neither the Filer nor the Funds are in default of securities legislation in any province or territory of Canada, as applicable.

5. Other than circumstances in which the securities regulatory authority of a province or territory of Canada has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established under NI 81-102.

6. Securities of the Terminating Funds were previously qualified for sale in each of the provinces and territories of Canada, except Quebec, under a simplified prospectus and annual information form each dated October 29, 2015, as amended. The distribution of securities of the Terminating Funds ceased on October 28, 2016.

7. The Continuing Funds are currently qualified for distribution under a simplified prospectus, annual information form and fund facts each dated October 29, 2016, as amended.

8. The net asset value for each class or series of the Funds, as applicable, is calculated on a daily basis in accordance with the Funds' valuation policy and as described in the foundation documents of the Terminating Funds and the offering documents of the Continuing Funds, as applicable.

The Proposed Reorganizations

9. Pursuant to the Proposed Reorganizations, securityholders of each of the Terminating Funds would become securityholders of the applicable Continuing Fund, as follows (each a "**Merger**" and collectively, the "**Mergers**"):

Terminating Fund	**Continuing Fund**
Counsel U.S. Value Class	Counsel U.S. Value
Counsel U.S. Growth Class	Counsel U.S. Growth
Counsel International Value Class	Counsel International Value
Counsel International Growth Class	Counsel International Growth
Counsel Global Small Cap Class	Counsel Global Small Cap
Counsel Short Term Fixed Income Class	Counsel Short Term Bond

10. Approval of the Proposed Reorganization is required because the Mergers will not be completed as a "qualifying exchange" or a tax-deferred transaction under the *Income Tax Act* (Canada) (the "**Tax Act**").

11. Except as noted above, the Proposed Reorganizations will otherwise comply with all other criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102.

12. The Proposed Reorganizations do not require approval of securityholders of the Continuing Funds as the Filer has determined that the Proposed Reorganizations do not constitute material changes to any of the Continuing Fund.

13. As required by National Instrument 81-107 *Independent Review Committee for Investment Funds*, the Independent Review Committee (**IRC**) has been appointed for the Funds. The Filer presented the terms of the Proposed Reorganizations to the IRC for a recommendation. The IRC reviewed the Proposed Reorganizations and provided a positive recommendation for each of the Proposed Reorganization, having determined that the Proposed Reorganizations, if implemented, would achieve a fair and reasonable result for each of the Funds and their respective securityholders.

14. A press release describing the Proposed Reorganizations was issued and the press release was filed on SEDAR on September 26, 2016. An associated material change report and amendments to the simplified prospectus and annual information form (including amendments thereto where applicable), as well as revised fund facts of the Terminating Funds, which give notice of the Proposed Reorganizations, were filed on SEDAR on September 30, 2016.

15. A notice of meeting, management information circular, proxy and fund facts of the applicable series of the Continuing Funds ("**Meeting Materials**") were mailed or otherwise made available to securityholders of the Terminating Funds on November 23, 2016 and were filed on SEDAR on November 30, 2016.

16. The Meeting Materials contain a description of the Proposed Reorganizations relevant to each securityholder, information about the Terminating Funds and the Continuing Funds and income tax considerations for securityholders of the Terminating Funds. The Meeting Materials also describe the various ways in which securityholders can obtain a copy of the simplified prospectus and annual information form of the Continuing Funds, as well as the most recent interim and annual financial statements and management reports of fund performance for the Continuing Funds, at no cost.

17. The Manager will pay for the costs of the proposed Mergers. These costs consist mainly of brokerage charges associated with the trades that occur both before and after the date of the proposed Mergers and legal, proxy solicitation, printing, mailing and regulatory fees. There are no charges payable by securityholders of the Terminating Funds who acquire securities of the corresponding Continuing Funds as a result of the Proposed Reorganization.

18. Securityholders of each of the Terminating Funds will be asked to approve the Proposed Reorganization associated with that Terminating Fund at a special meeting of securityholders scheduled to be held on or about December 16, 2016.

19. The Mergers will be effected on a taxable basis, which the Manager has determined will be in the overall best interests of the investors of the Terminating Funds and the Continuing Funds.

20. Following the implementation of the Proposed Reorganization, all systematic plans that were established with respect to the Terminating Funds will be re-established in the applicable Continuing Fund unless securityholders advise the Filer otherwise.

21. Securityholders may change or cancel any systematic plan at any time and securityholders of the Terminating Funds who wish to establish one or more systematic plans in respect of their holdings in the Continuing Fund may do so following the implementation of the Proposed Reorganizations.

Proposed Reorganization Steps

22. If the necessary approvals are obtained, the Filer will carry out the following steps to complete the Proposed Reorganizations:

    (a) Prior to effecting the Merger, if required, the Corporation will redeem any securities in the underlying Continuing Fund in which a Terminating Fund invests. As a result, the portfolios of some of the Terminating Funds may temporarily hold cash, money market instruments or investments that are not consistent with their investment objectives, and may not be fully invested in accordance with their investment objectives for a brief period of time prior to the Merger being effected.

(b) Each Terminating Fund may, prior to the Mergers, pay taxable dividends and/or capital gains dividends to its securityholders, but only to the extent required to manage the tax liability of the Corporation in a manner that the Board of Directors of the Corporation, in consultation with the Manager, determines to be fair and reasonable.

(c) The value of each Terminating Fund's portfolio and other assets will be determined at the close of business on the effective date of each applicable Merger in accordance with the constating documents of the applicable Terminating Fund.

(d) Each Continuing Fund will acquire the investment portfolio and other assets of the applicable Terminating Fund in exchange for securities of the Continuing Fund.

(e) Each Continuing Fund will not assume any liabilities of the applicable Terminating Fund and the Terminating Fund will retain sufficient assets to satisfy its estimated liabilities, if any, as of the effective date of the applicable Merger.

(f) The securities of each Continuing Fund received by the applicable Terminating Fund will have an aggregate net asset value equal to the value of the portfolio assets and other assets that the Continuing Fund is acquiring from the Terminating Fund, and the securities of the Continuing Fund will be issued at the applicable series net asset value per security as of the close of business on the effective date of the applicable Merger.

(g) Immediately thereafter, securities of each Continuing Fund received by the applicable Terminating Fund will be distributed to securityholders of the Terminating Fund, as proceeds of redemption of their securities in the Terminating Fund on a dollar-for-dollar and series by series basis.

(h) As soon as reasonably possible following each Merger, the Corporation will cancel the securities of the applicable Terminating Fund.

23. Securityholders in the Terminating Funds will continue to have the right to redeem or exchange their securities for securities of any other mutual fund of the Filer at any time up to the close of business on the business day before the Effective Date. Securityholders of the Terminating Fund that switch their securities for securities of other mutual funds of the Filer will not incur any charges other than switch fees, if applicable, as described in each Terminating Fund's simplified prospectus. Securityholders who redeem securities may be subject to redemption charges.

24. Following the implementation of the Proposed Reorganizations, the Continuing Funds will continue as publicly offered open-ended mutual funds offering securities in all provinces and territories in Canada, except Quebec.

25. Following the implementation of the Proposed Reorganizations, a press release and material change report announcing the results of the securityholder meetings in respect of the reorganization of the Terminating Funds will be issued and filed.

Proposed Reorganization Benefits

26. The Filer believes that the Proposed Reorganization is beneficial to securityholders of the Terminating Funds for the following reasons:

(a) The Terminating Funds were introduced as part of a corporate class structure which has generally not been supported by investors. One of the main benefits to a corporate class structure is the ability to switch amongst funds within the corporation without triggering a tax event. However, due to changes announced by the Canada Revenue Agency, the opportunity for tax deferred switching between corporate class funds will be terminated as of January 1, 2017. As a result, the Manager does not anticipate investor interest in the Terminating Funds to improve.

(b) As the Continuing Funds are substantially larger in assets, investors can be more assured of the Fund's long term viability.

(c) If the Mergers occur, holders of certain series of securities of the Terminating Funds will benefit from lower management fees and/or administration fees on the corresponding series of securities of the Continuing Funds received in the merger.

General

27. If the Proposed Reorganizations are approved, the reorganizations will be implemented after the close of business on the Effective Date. If the Proposed Reorganizations are not approved, Counsel expects to terminate the applicable Terminating Fund(s) in the first quarter of 2017.

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 Requested Relief is granted, provided that the Filer obtains the prior approval of the securityholders of the Terminating Funds for the Proposed Reorganizations at a special meeting held for that purpose.

"Raymond Chan"
Investment Funds and Structured Products Branch
Ontario Securities Commission

2.1.7 MD Financial Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from certain specified derivatives and custodial requirements to permit mutual funds to enter into swap transactions that are cleared through a clearing corporation as contemplated under U.S. and European requirements – decision treats cleared swaps similar to other cleared derivatives.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.7(1), 2.7(4), 6.1(1), 19.1.

December 15, 2016

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
MD FINANCIAL MANAGEMENT INC. (the Filer),
MD BOND FUND,
MD SHORT-TERM BOND FUND,
MDPIM CANADIAN BOND POOL,
MDPIM CANADIAN LONG TERM BOND POOL (the MD Funds),
the other existing mutual funds managed by the Filer that enter into Swaps (as defined below)
(together with the MD Funds, the Existing MD Funds) and
the future mutual funds managed by the Filer that enter into Swaps
(each, a Future MD Fund and, together with the Existing MD Funds, the Funds)

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 of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) exempting the Funds from:

(a) the following requirements to permit each Fund to enter into cleared Swaps as further described below:

(i) the requirement in subsection 2.7(1) of NI 81-102 that a mutual fund must not purchase an option or a debt-like security or enter into a swap or a forward contract unless, at the time of the transaction, the option, debt-like security, swap or contract has a designated rating or the equivalent debt of the counterparty, or of a person or company that has fully and unconditionally guaranteed the obligations of the counterparty in respect of the option, debt-like security, swap or contract, has a designated rating;

(ii) the requirement in subsection 2.7(4) of NI 81-102 that the mark-to-market value of the exposure of a mutual fund under its specified derivatives positions with any one counterparty other than an acceptable clearing corporation or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A to NI 81-102 shall not exceed, for a period of 30 days or more, 10 percent of the net asset value of the mutual fund; and

(b) the requirement in subsection 6.1(1) of NI 81-102 that all portfolio assets of an investment fund be held under the custodianship of one custodian to permit each Fund to deposit cash and other portfolio assets as margin directly with a Futures Commission Merchant (as defined below) and indirectly with a Clearing Corporation (as defined below) in connection with entering into the cleared Swaps, as further described below

(the **Requested Relief**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (each, an **Other Jurisdiction** and collectively with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in NI 81-102, National Instrument 14-101 *Definitions*, and MI 11-102 have the same meaning if used in this decision, unless otherwise defined. The following terms used in this decision have the following meanings:

CFTC means the U.S. Commodity Futures Trading Commission

Clearing Corporation means any clearing organization registered with the CFTC or central counterparty authorized by ESMA, as the case may be, that, in either case, is also permitted to operate in the Jurisdiction (being recognized or exempt from recognition in the Jurisdiction) or the Other Jurisdiction, as the case may be, where the Fund is located

Dodd-Frank means the Dodd-Frank Wall Street Reform and Consumer Protection Act

EMIR means the European Market Infrastructure Regulation

ESMA means the European Securities and Markets Authority

European Economic Area means all of the European Union countries and also Iceland, Liechtenstein and Norway

Futures Commission Merchant means any futures commission merchant that is registered with the CFTC and/or clearing member for purposes of EMIR, as applicable, and is a member of a Clearing Corporation

OTC means over-the-counter

Portfolio Advisor means each of the Filer, each affiliate of the Filer and each third party portfolio manager and sub-advisor retained from time to time by the Filer to manage the investment portfolio of one or more Funds

Swaps means the swaps that are, or will become, subject to a clearing determination or a clearing obligation issued by the CFTC or ESMA, as the case may be, including fixed-to-floating interest rate swaps, basis swaps, forward rate agreements in U.S. dollars, the Euro, Pounds Sterling or the Japanese Yen, overnight index swaps in U.S. dollars, the Euro and Pounds Sterling and untranched credit default swaps on certain North American indices (CDX.NA.IG and CDX.NA.HY) and European indices (iTraxx Europe, iTraxx Europe Crossover and iTraxx Europe HiVol) at various tenors

U.S. Person has the meaning attributed thereto by the CFTC

Representations

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

The Filer and the Funds

1. The Filer is the investment fund manager of the Existing MD Funds, and will be the investment fund manager of the Future MD Funds.

2. The Filer is registered as an investment fund manager, portfolio manager, and exempt market dealer in the Province of Ontario. The Filer is also registered as an investment fund manager and portfolio manager in the Provinces of Québec and Newfoundland and Labrador, and as a portfolio manager in each of the Provinces of British Columbia, Alberta,

Saskatchewan, Manitoba, Nova Scotia, New Brunswick and Prince Edward Island and in each of the Northwest Territories, Nunavut, and Yukon Territory. The head office of the Filer is in Ottawa, Ontario.

3. Manulife Asset Management Limited, Manulife Asset Management (US) LLC, Manulife Asset Management (Hong Kong) Limited, Franklin Templeton Investments Corp., and Franklin Advisers, Inc. are the portfolio managers of each of the MD Funds. Either the Filer, an affiliate of the Filer, or a third party portfolio manager is the portfolio manager or sub-advisor of the other Existing MD Funds and will be the portfolio manager or sub-advisor of the Future MD Funds.

4. Each Existing MD Fund is, and each Future MD Fund will be, a mutual fund created under the laws of the Province of Ontario, subject to the provisions of NI 81-102.

5. The securities of each Existing MD Fund are, and the securities of each Future MD Fund will be, qualified for distribution pursuant to a prospectus prepared and filed in accordance with the securities legislation of the Jurisdictions. Accordingly, each Existing MD Fund is, and each Future MD Fund will be, a reporting issuer or the equivalent in each Jurisdiction.

6. Neither the Filer nor any of the Existing MD Funds is in default of securities legislation in any Jurisdiction.

Cleared Swaps

7. The investment objective and investment strategies of each Existing MD Fund permit, and the investment objective and investment strategies of each Future MD Fund will permit, the Fund to enter into derivative transactions, including Swaps. The Portfolio Advisor for the Existing MD Funds considers Swaps to be an important investment tool to properly manage each Existing MD Fund's portfolio.

8. Dodd-Frank requires that certain OTC derivatives be cleared through a Futures Commission Merchant at a Clearing Corporation, as recognized by the CFTC. Generally, where one party to a Swap is a U.S. Person, that Swap must be cleared.

9. EMIR also requires that certain OTC derivatives be cleared through a central counterparty authorized to provide clearing services for purposes of EMIR. Generally, where one party to a Swap is a financial counterparty or a non-financial counterparty whose OTC derivative trading activity exceeds a certain threshold, in each case established in a state that is a participant in the European Economic Area, that Swap will be required to be cleared. The first clearing directive has been issued in respect of certain interest rate swaps and is being phased-in based on the category of both parties to the trade.

10. In order to benefit from both the pricing benefits and reduced trading costs that a Portfolio Advisor may be able to achieve through its trade execution practices for its advised investment funds and other accounts and from the reduced costs associated with cleared OTC derivatives as compared to other OTC trades, the Filer wishes to have the Funds enter into cleared Swaps.

11. In the absence of the Requested Relief, each Portfolio Advisor will need to structure the Swaps entered into by the Funds so as to avoid the clearing requirements of the CFTC and under EMIR, as applicable. The Filer respectfully submits that this would not be in the best interest of the Funds and their investors for a number of reasons, as set out below.

12. The Filer believes that it is in the best interests of the Funds and their investors to continue to be able to execute OTC derivatives with global counterparties, including U.S. and European swap dealers.

13. In its role as a fiduciary for the Funds, the Filer has determined that central clearing represents the best choice for the investors in the Funds to mitigate the legal, operational and back office risks faced by investors in the global swap markets.

14. Each Portfolio Advisor may use the same trade execution practices for all of its advised investment funds and other accounts, including the Funds. An example of these trade execution practices is block trading, where large numbers of securities are purchased or sold or large derivative trades are entered into on behalf of a number of investment funds and other accounts advised by one Portfolio Advisor. These practices include the use of cleared Swaps. If the Funds are unable to employ these trade execution practices, then each affected Portfolio Advisor will have to create separate trade execution practices only for the Funds and will have to execute trades for the Funds on a separate basis. This will increase the operational risk for the Funds, as separate execution procedures will need to be established and followed only for the Funds. In addition, the Funds will no longer be able to enjoy the possible price benefits and reduction in trading costs that a Portfolio Advisor may be able to achieve through a common practice for its advised investment funds and other accounts. In the Filer's opinion, best execution and maximum certainty can best be achieved through

common trade execution practices, which, in the case of OTC derivatives, involve the execution of Swaps on a cleared basis.

15. As a member of the G20 and a participant in the September 2009 commitment of G20 nations to improve transparency and mitigate risk in derivatives markets, Canada has expressly recognized the systemic benefits that clearing OTC derivatives offers to market participants, such as the Funds. The Filer respectfully submits that the Funds should be encouraged to comply with the robust clearing requirements established by the CFTC and under EMIR by granting them the Requested Relief.

16. The Requested Relief is analogous to the treatment currently afforded under NI 81-102 to other types of derivatives that are cleared, such as clearing corporation options, options on futures and standardized futures. This demonstrates that, from a policy perspective, the Requested Relief is consistent with the views of the Canadian securities authorities in respect of cleared derivative trades.

17. For the reasons provided above, the Filer submits that it would not be prejudicial to the public interest to grant the Requested Relief.

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 Requested Relief is granted provided that when any rules applicable to customer clearing of OTC derivatives enter into force, the Clearing Corporation is permitted to offer customer clearing of OTC derivatives in the Jurisdiction or the Other Jurisdiction, as the case may be, where the Fund is located and provided further that, in respect of the deposit of cash and other portfolio assets as margin:

(a) in Canada,

  (i) the Futures Commission Merchant is a member of a SRO that is a participating member of CIPF; and

  (ii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Fund as at the time of deposit; and

(b) outside of Canada,

  (i) the Futures Commission Merchant is a member of a Clearing Corporation and, as a result, is subject to a regulatory audit;

  (ii) the Futures Commission Merchant has a net worth, determined from its most recent audited financial statements that have been made public or from other publicly available financial information, in excess of the equivalent of $50 million; and

  (iii) the amount of margin deposited and maintained with the Futures Commission Merchant does not, when aggregated with the amount of margin already held by the Futures Commission Merchant, exceed 10 percent of the net asset value of the Fund as at the time of deposit.

This decision will terminate on the coming into force of any revisions to the provisions of NI 81-102 that address the clearing of OTC derivatives.

“Vera Nunes”
Manager, Investment Funds and Structured Products
Ontario Securities Commission

2.1.8 TD Asset Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from certain provisions of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations related to the Client Relationship Model Phase 2 (CRM2), namely sections 14.2, 14.2.1, 14.14.1, 14.14.2, 14.17 and 14.18 I – Registered adviser exempted from providing cost disclosure and performance reporting to certain institutional clients that do not meet the definition of permitted client but that are not individuals.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 14.2, 14.2.1, 14.14.1, 14.14.2, 14.17, 14.18 and 15.1.

December 15, 2016

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
TD ASSET MANAGEMENT INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) with regard to the Institutional Accredited Investors and Overflow Accounts described below, the Filer is exempt from the reporting requirements in sections 14.2, 14.2.1, 14.14.1, 14.14.2, 14.17 and 14.18 of NI 31-103 (the **CRM2 Reporting**) (the **Requested Relief**).

The principal regulator in the Jurisdiction has also received a request from the Filer for a decision that the Application and Schedule 1 of the Application and this decision be kept confidential and not be made public (the **Confidentiality Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (the **Passport Jurisdictions** and, together with Ontario, the **Jurisdictions**); and

(c) the decision of the principal regulator automatically results in an equivalent decision in the Passport Jurisdictions.

Interpretation

Terms defined in MI 11-102, National Instrument 14-101 *Definitions* and NI 31-103 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Filer

1. The Filer is a corporation governed by the laws of Ontario and is registered as a portfolio manager in each of the Jurisdictions. The Filer is also registered as an exempt market dealer in each of the Jurisdictions, as investment fund manager in Ontario, Quebec and Newfoundland and Labrador, and as commodity trading manager in Ontario.

2. The Filer's head office is located in Toronto, Ontario.

3. Other than in respect of CRM2 Reporting, the Filer is not in default of securities legislation in any jurisdiction of Canada.

4. The Filer is, inter alia, an institutional portfolio management firm servicing permitted clients and accredited investors, none of whom are individual retail clients.

CRM2 Reporting

5. Under NI 31-103, the Filer is required to provide CRM2 Reporting to clients. The CRM2 Reporting applies to all categories of registered dealer and registered adviser, with some application to investment fund managers.

6. CRM2 Reporting introduces performance reporting requirements and enhances existing cost disclosure requirements in NI 31-103, as well as introduces some new client statement requirements.

7. The CRM2 Reporting was subject to a phased implementation over a three-year period with the last implemented reports due to be delivered to clients in 2017.

8. The CRM2 Reporting includes certain exemptions for permitted clients that are not individuals.

The Institutional Accredited Investors

9. Certain of the Filer’s clients, listed in Schedule 1 attached to this decision, do not meet the definition of permitted client in section 1.1 of NI 31-103 but are also not individuals (the **Institutional Accredited Investors**).

10. The Filer considers these clients to be “institutional” clients because they meet other criteria common to institutional clients. In some cases, the Institutional Accredited Investors form part of a broader relationship with permitted clients of the Filer and/or affiliated entities of the Filer.

11. The remainder of the Filer’s clients are permitted clients who are not individuals (the **Existing Permitted Clients**).

12. Without the Requested Relief, the Filer must provide the Institutional Accredited Investors clients with CRM2 Reporting.

13. The Institutional Accredited Investors are listed in Schedule 1. The Filer has requested the Confidentiality Sought to protect the privacy of the Institutional Accredited Investors.

Overflow Accounts

14. Some of the Institutional Accredited Investors are associated with, or related to Existing Permitted Clients.

15. Certain of the Filer's Existing Permitted Clients may, from time to time, request that the Filer open new accounts for related entities that are similar to the Institutional Accredited Investors in that they are not individuals and do not qualify as permitted clients only because they fall short of the financial tests in the definition of permitted client in section 1.1 of NI 31-103 but otherwise have the characteristics of an institutional investor (an **Overflow Account**).

16. Without the Requested Relief, the Filer must provide the Overflow Accounts with the CRM2 Reporting.

17. The Institutional Accredited Investors and Overflow Accounts in aggregate do not exceed 2% of the Filer's total assets under management as at the date of this decision.

Current Reporting Provided to Institutional Accredited Investors

18. In common with the Existing Permitted Clients, the reporting required by each Institutional Accredited Investor is generated by the Filer's institutional reporting processes, which are tailored to meet specific client requirements.

19. In common with the Existing Permitted Clients, Institutional Accredited Investors often have detailed requirements with respect to the format, frequency or content of the account statements and performance reports they receive because of the reporting they have to do for their stakeholders including beneficiaries, auditors, governance committees, etc.

20. In common with the Existing Permitted Clients, Institutional Accredited Investors may also engage professional advisors, such as consultants, auditors or legal counsel, who may recommend specific reporting (form, frequency, tailored content etc.) which may, in some cases, differ from CRM2 Reporting.

21. In common with the Existing Permitted Clients, Institutional Accredited Investors require and receive reporting content that is highly detailed and transparent. The reporting is robust and comprehensive and may, in some cases, include more disclosure than what is required by CRM2 Reporting.

22. The Filer would incur significant costs and resource-strain to implement CRM2 Reporting for the Institutional Accredited Investors and Overflow Accounts who share the characteristics described above with permitted clients who are not individuals, in respect of whom there are existing exemptions from CRM2 Reporting.

23. Each Institutional Accredited Investor will be informed by the Filer that it will not receive the CRM2 Reporting that it would have been entitled to but for this decision and will receive an explanation of what is provided with CRM2 Reporting as compared to the current reporting it receives.

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 Requested Relief is granted provided that:

(a) the Institutional Accredited Investors and Overflow Accounts in aggregate do not exceed 2% of the Filer's total assets under management at the end of each fiscal year of the Filer;

(b) the Institutional Accredited Investors and any Overflow Accounts receive comprehensive account reporting from the Filer on an ongoing basis which is consistent with the reporting provided by the Filer to the Existing Permitted Clients;

(c) each Institutional Accredited Investor is informed that it will not receive the CRM2 Reporting that it would have been entitled to but for this decision;

(d) each Institutional Accredited Investor receives an explanation of what is provided with CRM2 Reporting as compared to the reporting it will receive; and

(e) if the Filer opens any new accounts for (i) clients that are not permitted clients, other than Overflow Accounts, or (ii) permitted clients that are individuals, it will provide CRM2 Reporting for those new accounts, unless it obtains other exemptive relief in respect of them.

Furthermore, the decision of the principal regulator is that the Confidentiality Sought is granted.

"Elizabeth King"
Deputy Director, Compliance and Registrant Regulation Branch
Ontario Securities Commission

2.1.9 B2Gold Corp. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuer and underwriter, acting as agent for the issuer, to enter into equity distribution agreement to make "at the market" (ATM) distributions of common shares over the facilities of a stock exchange – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreement on SEDAR – application for relief from prospectus delivery requirement – delivery of prospectus not practicable in circumstances of an ATM distribution – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – application for relief from certain prospectus form requirements – standard certification by issuer does not work in an ATM distribution since no other supplement to be filed in connection with ATM distribution – relief granted to permit modified forward-looking certificate language – relief granted on terms and conditions set out in decision document – decision will terminate 25 months after the issuance of a receipt for the shelf prospectus.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 71, 147.

Applicable Ontario Rules

National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1 and Item 20 of Form 44-101F1.
National Instrument 44-102 Shelf Distributions, s. 6.7, Part 9, s. 11.1.

Citation: 2016 BCSECCOM 291

July 29, 2016

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

AND

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

AND

IN THE MATTER OF
B2GOLD CORP. (the Issuer),
CANACCORD GENUITY CORP. (Canaccord),
CANACCORD GENUITY INC. (Canaccord USA),
HSBC SECURITIES (CANADA) INC. (HSBC Canada), and
HSBC SECURITIES (USA) INC. (HSBC USA)
(collectively, the Agents and, together with the Issuer, the Filers)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application (the Application) from the Filers for a decision under the securities legislation of the Jurisdictions (the Legislation) for the following relief (the Exemption Sought):

(a) that the requirement that a dealer, not acting as agent of the purchaser who receives an order or subscription for a security offered in a distribution to which the prospectus requirement applies, send or deliver to the purchaser or its agent the latest prospectus (including the applicable prospectus supplement) and any amendment to the prospectus (the Prospectus Delivery Requirement) does not apply to the Agents or any other registered investment dealer acting on behalf of the Agents as a

selling agent (a Selling Agent) in connection with the at-the-market distribution (the ATM Distribution) as defined in National Instrument 44-102 Shelf Distributions (NI 44-102) made by the Issuer pursuant to an equity distribution agreement to be entered into between the Issuer and the Agents (the Equity Distribution Agreement);

(b) that the requirements (collectively, the Prospectus Form Requirements) to include in a prospectus supplement:

(i) a forward-looking issuer certificate of the Issuer in the form specified in section 2.1 of Appendix A to NI 44-102; and

(ii) a forward-looking underwriter certificate in the form specified in section 2.2 of Appendix A to NI 44-102;

do not apply to a prospectus supplement (the Prospectus Supplement), to be filed in respect of the sale of common shares of the Issuer (the Common Shares) pursuant to ATM Distributions.

Furthermore, the Decision Makers have received a request from the Filers for a decision that the Application and this decision (the Confidential Material) be kept confidential and not made public until the earliest of (i) the date on which the Issuer and the Agents enter into the Equity Distribution Agreement, (ii) the date on which the Filers advise the Decision Maker that there is no longer any need for the Confidential Material to remain confidential; and (iii) the date that is 90 days after the date of this decision (the Confidentiality Relief).

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

(a) the British Columbia Securities Commission is the principal regulator for this Application;

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Manitoba, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador; 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

2 Terms defined in National Instrument 14-101 *Definitions* or MI 11-102 have the same meanings if used in this decision, unless otherwise defined herein.

Representations

3 This decision is based on the following facts represented by the Filers:

B2Gold Corp.

1. the Issuer was incorporated under the *Business Corporations Act* (British Columbia) on November 30, 2006; the Issuer is a Vancouver based mining company;

2. the Issuer is a reporting issuer or the equivalent under the securities legislation of each province of Canada and is not in default of any requirements under applicable securities legislation in any of the jurisdictions of Canada;

3. the Common Shares are listed on the TSX and the NYSE MKT LLC (the NYSE MKT);

4. the Issuer has filed a final base shelf prospectus dated January 11, 2016 (the Shelf Prospectus and, together with the Prospectus Supplement, the Prospectus);

The Agents

5. Canaccord is a corporation established under the laws of British Columbia; Canaccord is registered as an investment dealer under applicable securities legislation of each of the provinces of Canada;

6. Canaccord USA is a corporation established under the laws of Delaware; Canaccord USA is a broker-dealer registered with the SEC under the *Securities Exchange Act of 1934*, as amended (the 1934 Act);

7. HSBC Canada is a corporation established under the laws of Ontario; HSBC Canada is registered as an investment dealer under applicable securities legislation of each of the provinces of Canada;

8. HSBC USA is a corporation established under the laws of Delaware; HSBC USA is a broker-dealer registered with the SEC under the 1934 Act;

9. none of the Agents are in default of any requirements under applicable securities legislation in any of the jurisdictions of Canada;

Proposed ATM Distribution

10. the Filers propose to enter into the Equity Distribution Agreement relating to an ATM Distribution by the Issuer under the shelf prospectus procedures prescribed by Part 9 of NI 44-102;

11. prior to making an ATM Distribution, the Issuer will have filed in each of the provinces of Canada and the SEC in connection with the ATM Distribution the Prospectus Supplement; The Prospectus Supplement will describe the terms of the ATM Distribution, including the terms of the Equity Distribution Agreement and otherwise supplementing the disclosure in the Shelf Prospectus;

12. upon entering into the Equity Distribution Agreement, the Issuer will immediately:

    (a) issue and file a news release pursuant to section 3.2 of NI 44-102 indicating that the Shelf Prospectus and the Prospectus Supplement have been filed on SEDAR and disclosing where and how purchasers may obtain a copy; and

    (b) file the Equity Distribution Agreement on SEDAR;

13. the Equity Distribution Agreement will limit the number of Common Shares that the Issuer may issue and sell pursuant to any ATM Distribution thereunder to an amount not to exceed 10% of the aggregate market value of the outstanding Common Shares calculated in accordance with Section 9.2 of NI 44-102;

14. the Issuer will conduct ATM Distributions through the Agents, as underwriters, directly or through a Selling Agent, through the facilities of the TSX, the NYSE MKT, or any other "marketplace" (as defined in National Instrument 21-101 *Marketplace Operation*) in Canada or the United States (each a Marketplace);

15. the Agents will act as the sole underwriters on behalf of the Issuer in connection with the sale of the Common Shares on the TSX or any other Marketplace in Canada (a Canadian Marketplace) directly by the Agents or through one or more Selling Agents and will be the sole entities paid an underwriting fee or commission by the Issuer in connection with such sales; the Agents will sign an underwriter's certificate in the Prospectus Supplement;

16. the Agents will effect the ATM Distribution on a Canadian Marketplace either themselves or through one or more Selling Agents; if the sales are effected through a Selling Agent, the Selling Agent will be paid a seller's commission for effecting the trades on behalf of the Agent; a purchaser's rights and remedies under Canadian securities legislation against the Agents, as underwriters of an ATM Distribution, through a Canadian Marketplace will not be affected by a decision to effect the sale directly or through a Selling Agent;

17. the aggregate number of Common Shares sold on a Canadian Marketplace under the ATM Distribution on any trading day will not exceed 25% of the trading volume of the Common Shares on all Canadian Marketplaces on that day;

18. the Equity Distribution Agreement will provide that, at the time of each sale of Common Shares pursuant to an ATM Distribution, the Issuer will represent to the Agents that the Prospectus contains full, true and plain disclosure of all material facts relating to the Issuer and the Common Shares; the Issuer would therefore be unable to initiate sales under an ATM Distribution when it is in possession of undisclosed information that would constitute a material fact or a material change in respect of the Common Shares or the Issuer;

19. if, after the Issuer delivers a sell notice to the Agents, the sale of the Common Shares specified in the notice, taking into consideration prior sales, would constitute a material fact or material change, the Issuer would have to suspend sales under the Equity Distribution Agreement until either: (i) it had filed a material change

report or amended the Prospectus, or (ii) circumstances had changed so that the sales would no longer constitute a material fact or a material change;

20. in determining whether the sale of the number of Common Shares specified in a sell notice would constitute a material fact or a material change, the Issuer will take into account a number of factors, including: (i) the parameters of the sell notice including the number of Common Shares to be sold and any price or timing restrictions that the Issuer may impose with respect to the particular ATM Distribution; (ii) the percentage of the outstanding Common Shares that number represents; (iii) trading volume and volatility of the Common Shares; (iv) recent developments in the business, affairs and capital structure of the Issuer; and (v) prevailing market conditions generally;

21. in addition, the Agents will monitor closely the market's reaction to trades made under the ATM Distribution in order to evaluate the likely market impact of future trades; the Agents have experience and expertise in managing sell orders to limit downward pressure on trading prices; if any of the Agents have concerns as to whether a particular sell order placed by the Issuer may have a significant effect on the market price of the Common Shares, that Agent will recommend against effecting the trade at that time; it is in the interest of both the Issuer and the Agents to minimize the market impact of sales under the ATM Distribution;

Disclosure of Sales in Monthly Report and Interim Report

22. within seven calendar days after the end of each calendar month during which the Issuer conducts an ATM Distribution, the Issuer will disclose in a report filed on SEDAR the number and average selling price of the Common Shares distributed through a Canadian Marketplace under the ATM Distribution, and the commission and gross and net proceeds for such sales; furthermore, for each financial period in which the Issuer conducts an ATM Distribution, it will disclose in its annual and interim financial statements and related management discussion and analysis filed on SEDAR the number and average selling price of the Common Shares distributed pursuant to the ATM Distribution, and the commission and gross and net proceeds for such sales;

Prospectus Delivery Requirement

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

24. delivery of a prospectus is not practicable in the circumstances of an ATM Distribution as the Agents or any Selling Agent, as applicable, effecting the trade may not know the identity of the purchasers;

25. the Prospectus (together with all documents incorporated by reference therein) will be filed and readily available electronically via SEDAR to all purchasers under ATM Distributions. As stated in paragraph 12 above, the Issuer will issue a news release that specifies where and how copies of the Prospectus can be obtained;

26. the liability of an issuer or an underwriter (or others) for a misrepresentation in a prospectus pursuant to the civil liability provisions of the Legislation will not be affected by the grant of an exemption from the Prospectus Delivery Requirement because purchasers of securities offered by a prospectus during the period of distribution have a right of action for damages or rescission without regard to whether the purchaser relied on the misrepresentation or in fact received a copy of the prospectus;

Withdrawal Right and Rescission or Damages for Non-Delivery

27. pursuant to the Legislation, an agreement to purchase securities is not binding on the purchaser if a dealer receives, not later than midnight on the second day exclusive of Saturdays, Sundays and holidays, after receipt by the purchaser of the latest prospectus or any amendment to the prospectus, a notice in writing that the purchaser does not intend to be bound by the agreement of purchase (the Withdrawal Right);

28. pursuant to the Legislation, a purchaser of securities to whom a prospectus was required to be sent or delivered in compliance with the Prospectus Delivery Requirement, but was not so sent or delivered, has a right of action for rescission or damages against a dealer who did not comply with the Prospectus Delivery Requirement (the Right of Action for Non-Delivery);

29. neither the Withdrawal Right nor the Right of Action for Non-Delivery is workable in the context of an ATM Distribution because of the impracticability of delivering the Prospectus to a purchaser of Common Shares thereunder;

Prospectus Form Requirements

30. to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement will include the following issuer certificate:

> "This short form prospectus, as supplemented by the foregoing, together with the documents incorporated in the prospectus by reference as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus and this supplement, as required by the securities legislation of each of the provinces of Canada.";

31. also to reflect the fact that an ATM Distribution is a continuous distribution, the Prospectus Supplement will include the following underwriter certificate:

> "To the best of our knowledge, information and belief, the short form prospectus, as supplemented by the foregoing, together with the documents incorporated in the prospectus by reference as of the date of a particular distribution of securities offered by the prospectus, will, as of that date, constitute full, true and plain disclosure of all material facts relating to the securities offered by the prospectus, as required by the securities legislation of each province of Canada."

32. a different statement of purchasers' rights than that required by the Legislation is necessary in order to allow the Prospectus to accurately reflect the relief granted from the Prospectus Delivery Requirement. Accordingly, the Prospectus Supplement will state the following, with the date reference completed:

> "Securities legislation in certain of the provinces of Canada provide purchasers with the right to withdraw from an agreement to purchase securities and with remedies for rescission or, in some jurisdictions, revision of the price or damages if the prospectus, prospectus supplements relating to the securities purchased by a purchaser and any amendment are not delivered to the purchaser, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. However, purchasers of the Common Shares under an at-the-market distribution will not have any right to withdraw from an agreement to purchase the Common Shares and will not have remedies of rescission or, in some jurisdictions, revision of the price or damages for non-delivery of the prospectus because the prospectus, prospectus supplements relating to the Common Shares purchased by the purchaser and any amendment related to Common Shares purchased by such purchaser will not be delivered as permitted under a decision document dated ●, 2016 and granted pursuant to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.
>
> Securities legislation in certain of the provinces of Canada also provides purchasers with remedies for rescission or, in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to the securities purchased by a purchaser and any amendment contain a misrepresentation, provided that the remedies are exercised by the purchaser within the time limit prescribed by securities legislation. Any remedies under securities legislation in the jurisdictions that a purchaser of the Common Shares under an at-the-market distribution may have against us or the Agents for rescission, or in some jurisdictions, revision of the price, or damages if the prospectus, prospectus supplements relating to the securities purchased by a purchaser or any amendment contain a misrepresentation remain unaffected by the non-delivery of the prospectus and the decision referred to above.
>
> Purchasers should refer to the applicable provisions of the securities legislation and the decision document referred to above for the particulars of their rights or consult with a legal advisor.";

33. the Prospectus Supplement will disclose that, in respect of ATM Distributions under the Prospectus Supplement, the statement prescribed in paragraph 32 above supersedes the statement of purchaser's rights in the Shelf Prospectus; and

34. the Filers will not make a public announcement of their intention to conduct ATM Distributions prior to the execution of the Equity Distribution Agreement.

Decision

4 Each of the Decision Makers is satisfied that the exemptive relief application meets the test set out in the Legislation for the Decision Maker to make a decision.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that:

(a) the Issuer makes the disclosure described in sections 22, 30, 31, 32 and 33; and

(b) the Issuer complies with the representations in section 12, 14, 17, 18, 19 and the Agents comply with the representations in sections 14, 15, 16, 17 and 21.

This decision will terminate 25 months after the issuance of the receipt for the Shelf Prospectus.

The further decision of the Decision Makers is that the Confidentiality Relief is granted.

“Robert Kirwin”
Director, Corporate Finance
British Columbia Securities Commission

2.1.10 Stifel, Nicolaus & Company, Incorporated

Headnote

U.S. registered broker-dealer exempted from dealer registration under paragraph 25(1) of the Act in respect of certain trades in debt securities with permitted clients, as defined under NI 31-103, where the debt securities are i) debt securities of Canadian issuers and are denominated in a currency other than the Canadian dollar; or ii) debt securities of any issuer, including a Canadian issuer, and were originally offered primarily in a foreign jurisdiction outside Canada and a prospectus was not filed with a Canadian securities regulatory authority for the distribution – relief is subject to sunset clause – relief as contemplated by CSA Staff Notice 31-346 Guidance as to the Scope of the International Dealer Exemption in relation to Foreign-Currency Fixed Income Offerings by Canadian Issuers

Applicable Legislative Provisions

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.18.

December 16, 2016

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
STIFEL, NICOLAUS & COMPANY, INCORPORATED
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer (the **Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filer from the dealer registration requirement under the Legislation in respect of trades in debt securities, other than during the distribution of such securities, with permitted clients, as defined under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), where the debt securities are:

(a) debt securities of Canadian issuers and are denominated in a currency other than the Canadian dollar; or

(b) debt securities of any issuer, including a Canadian issuer, and were originally offered primarily in a foreign jurisdiction outside Canada and a prospectus was not filed with a Canadian securities regulatory authority for the distribution (the **Exemption Sought**).

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

(a) the Ontario Securities Commission (**OSC**) is the principal regulator for this Application, and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces of Canada (the **Passport Jurisdictions** and together with the Jurisdiction, the **Jurisdictions**).

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

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

1. The Filer is a corporation incorporated under the laws of the State of Missouri. The head office of the Filer is located in St. Louis, Missouri, United States of America.

2. The Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) and a member of the Financial Industry Regulatory Authority (**FINRA**), a self-regulatory organization. This registration subjects the Filer to requirements over regulatory capital, lending of money, extension of credit and provision of margin, financial reporting to the SEC and FINRA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer-members of the Investment Industry Regulatory Organization of Canada (**IIROC**) are subject.

3. The Filer provides a variety of capital raising, investment banking, market making, brokerage, and advisory services, including fixed income and equity sales and research, commodities trading, foreign exchange sales, emerging markets activities, securities lending and derivatives dealing for governments, corporate and financial institutions.

4. The Filer is currently relying on the "international dealer exemption" under section 8.18 of NI 31-103 (the **international dealer exemption**) in each of the Jurisdictions.

5. The Filer is in compliance in all material respects with U.S. securities laws. The Filer is not in default of Canadian securities laws.

6. The Filer wishes to trade in debt securities of Canadian issuers with permitted clients other than during such securities' distribution.

7. Subsection 8.18(2)(b) of NI 31-103 provides that, subject to subsections 8.18(3) and 8.18(4), the dealer registration requirement does not apply in respect of a trade in a debt security with a permitted client during the security's distribution, if the debt security is offered primarily in a foreign jurisdiction and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution. Subsection 8.18(2)(c) of NI 31-103 provides that, subject to subsections 8.18(3) and 8.18(4), the dealer registration requirement does not apply in respect of a trade in a debt security that is a foreign security with a permitted client, other than during the security's distribution.

8. The permitted activities under subsections 8.18(2) of NI 3-103 do not include a trade in a debt security of a Canadian issuer with a permitted client, other than during the security's distribution in the limited circumstances described above.

9. On September 1, 2016 the Staff of the Canadian Securities Administrators (**CSA Staff**) published CSA Staff Notice 31-346 *Guidance as to the Scope of the International Dealer Exemption in relation to Foreign-Currency Fixed Income Offerings by Canadian Issuers* (the **Staff Notice**).

10. CSA Staff stated in the Staff Notice that they did not believe there was a policy reason to limit the exemption in subsection 8.18(2) of NI 31-103 to trades that occur during the initial period of the securities' distribution or to conclude that an international dealer should be permitted to sell a debt security to a Canadian institutional investor but not be permitted to act for the institutional investor in connection with the resale of the security. CSA Staff further stated that they were prepared to recommend exemptive relief to permit international dealers to deal with institutional investors to facilitate resales of debt securities, subject to conditions the CSA consider appropriate.

11. Accordingly, the Filer is seeking exemptive relief as contemplated by the Staff Notice to permit the Filer to deal with Canadian permitted clients in connection with resales of debt securities that may be distributed to the permitted clients in reliance on the international dealer exemption in section 8.18 of NI 31-103.

12. It may be difficult at the time of a resale of a debt security to determine whether the debt security was originally offered as part of an offering that was made primarily in a foreign jurisdiction or whether a prospectus was filed in Canada in

connection with such offering. However, the Filer believes, based on its experience with foreign-currency-denominated fixed income offerings by Canadian issuers (**Canadian foreign-currency fixed income offerings**), that such offerings are generally made primarily outside of Canada. Accordingly, the Filer believes that the denomination of an offering of debt securities in a foreign currency will be a reasonable proxy for determining whether the offering was originally made primarily outside of Canada.

13. Similarly, the Filer believes, based on its experience with Canadian foreign-currency fixed income offerings, that, to the extent that debt securities that are the subject of such offerings are listed on a stock exchange, they will typically not be listed on a stock exchange situated in Canada. To the extent that foreign-currency-denominated debt securities of a Canadian issuer are listed on a stock exchange situated in Canada, investors will be required to trade such debt securities through an IIROC registered dealer.

14. The Filer is a "market participant" as defined under subsection 1(1) of the OSA. As a market participant, among other requirements, the Filer is required to comply with the record keeping and provision of information provisions under section 19 of the OSA, which include the requirement to keep such books, records and other documents (a) as are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others, (b) as may otherwise be required under Ontario securities law, and (c) as may reasonably be required to demonstrate compliance with Ontario securities laws, and to deliver such records to the OSC if required.

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 the Filer complies with the terms and conditions described in section 8.18 of NI 31-103 as if the Filer had made the trades in reliance on an exemption contained in section 8.18.

It is further the decision of the principal regulator that the Exemption Sought shall expire on the date that is the earlier of:

(a) the date on which amendments to the international dealer exemption in section 8.18 of NI 31-103 come into force that address the ability of international dealers to trade debt securities of Canadian issuers; and

(b) five years after the date of this decision.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"William Furlong"
Commissioner
Ontario Securities Commission

2.1.11 National Bank of Canada

Headnote

OSC Rule 91-507 – derivatives trade reporting obligations – applicant seeking extension of relief from requirements relating to the reporting of certain counterparty information – relief granted, subject to conditions, for a period of one year from the date of the decision.

Applicable Legislative Provisions

OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Parts 3 and 6.

December 16, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC, ONTARIO AND MANITOBA
(THE "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
NATIONAL BANK OF CANADA
(THE APPLICANT)

DECISION

Background

The securities regulatory authority or regulator in each Jurisdiction (each a "**Decision Maker**") has received an application from the Applicant for an order, in Québec pursuant to Section 86 and Section 111 of the *Derivatives Act*, CQLR, c. I-14.01, in Ontario, pursuant to Part 6 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, and in Manitoba pursuant to Part 6 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, varying decision n° 2014-EDERI-0003 dated December 17, 2014 (as varied by decision n° 2015-EDERI-0016 dated December 16, 2015, the "**Existing Relief Decision**"), which provides relief from the following derivatives data reporting requirements in relation to new and existing transactions under Chapter 3 of the Autorité des marchés financiers' Regulation 91-507 – *respecting Trade Repositories and Derivatives Data Reporting*, CQLR, c. I-14.01 and from equivalent provisions in Ontario under Part 3 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Manitoba under Part 3 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* (collectively, the "**Local Reporting Provisions**"):

(a) the requirement for a reporting counterparty to report, update, amend or supplement (collectively, "**Report**") the Legal Entity Identifier ("**LEI**") of a transaction counterparty where such Reporting could result in the reporting counterparty breaching laws applicable in the transaction counterparty's own jurisdiction that restrict or limit the disclosure of information relating to the transaction or to the counterparty or that require the transaction counterparty's consent to such disclosure in circumstances where such consent has not been obtained; and

(b) the requirement for a reporting counterparty to Report certain information (as more fully described below) related to or dependent on a transaction counterparty, which information has not been provided to the reporting counterparty by the transaction counterparty or has not otherwise been obtained by the reporting counterparty at the time of reporting.

The Existing Relief Decision ceases to be available after December 17, 2016 (the "**Sunset Provision**").

The Applicant has requested that the Existing Relief Decision be varied (collectively, the "**Variation Relief Sought**") so that the Sunset Provision in the Existing Relief Decision will be extended until December 18, 2017.

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

1. the Autorité des marchés financiers ("**AMF**") is the Principal Regulator for this application; and

2. the decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in Regulation 14-101 – *Definitions* and Regulation 11-102 – *Passport System* have the same meaning if used in this decision, unless otherwise defined.

For the purposes of this decision the following terms have the meanings provided in the Existing Relief Decision, which are restated below:

"Blocking Law" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would restrict or limit a subject person's disclosure of information relating to a Subject Transaction or to the counterparty of a Subject Transaction.

"Consent Requirement" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would require a counterparty to a Subject Transaction to consent to a subject person's disclosure of information relating to such Subject Transaction or counterparty.

"Trade Specific Requirement" means a requirement arising under a Blocking Law or in connection with a Consent Requirement that would require that steps be taken to comply therewith in connection with and at the time of a Subject Transaction, on a transaction by transaction basis.

Representations

This decision is based on the facts represented by the Applicant set out in the Existing Relief Decision as restated below:

1. the Applicant is a Canadian Schedule I bank under the *Bank Act*, with its head office located in Montréal, Québec;

2. the Applicant enters into derivatives transactions with multiple counterparties across Canada and around the world;

3. the Applicant is required to Report derivative transaction data in accordance with the applicable Local Reporting Provisions, as mandated by Guideline B-7 of the Office of the Superintendent of Financial Institutions ("**OSFI**");

4. on October 29, 2014, the Ontario Securities Commission and the Manitoba Securities Commission, and on October 30, 2014, the AMF, each published a press release (collectively, the "**Press Releases**") to among other things, provide guidance on the situation where a reporting counterparty may be required to Report a transaction counterparty's LEI despite the fact that such LEI has not been obtained by the transaction counterparty or provided by the transaction counterparty to a reporting counterparty;

5. to the extent that the Press Releases provide guidance in relation to compliance matters pertaining to a transaction counterparty's failure to obtain an LEI or to provide its LEI to the Applicant, the Applicant intends to reflect its understanding of such guidance in complying with the applicable Local Reporting Provisions;

6. the Applicant has established or procured internal technology, systems and procedures that the Applicant believes should enable it to give effect to the Local Reporting Provisions;

7. in order to comply with the Local Reporting Provisions applicable to a transaction, the Applicant may need to: (a) if required by applicable law, obtain a consent from the counterparty to enable the reporting counterparty to disclose information relating to the transaction or counterparty; and (b) receive certain counterparty-specific information, including the counterparty's LEI (or its equivalent), its broker's LEI (where applicable), or information sufficient to enable the Applicant to determine whether the counterparty is a local counterparty (collectively, in respect of a counterparty to a transaction, the "**Required Counterparty Feedback**"); and

8. the Applicant has engaged in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts and as a result has received Required Counterparty Feedback from a majority of its counterparties.

In addition to the restated facts, the Applicant has made the following representations:

9. the Applicant has continued to engage in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, the Applicant has not received Required Counterparty Feedback from all of its counterparties;

10. a failure to provide the Variation Relief Sought could result in inconsistent or disrupted reporting of derivatives data by the Applicant, or in the Applicant not entering into new derivatives transactions with affected transaction counterparties, all of which could have negative implications for the Applicant, the Canadian financial system and the broader Canadian economy;

11. if the Variation Relief Sought is granted, the Applicant will continue to have the opportunity to make diligent efforts to obtain Required Counterparty Feedback while avoiding such negative implications in respect of existing and prospective derivatives transactions other than to the extent contemplated in the proviso set forth in paragraph 3.(A) of this decision;

12. if the Variation Relief Sought is granted, the Applicant will continue to make diligent efforts to obtain the Required Counterparty Feedback from its counterparties;

13. the Applicant has complied with the requirements of the Existing Relief Decision; and

14. the Applicant is not in default of securities legislation in any jurisdiction.

Decision

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

The decision of the Principal Regulator is that the Variation Relief Sought is granted and it orders that, in respect of each transaction that is subject to Reporting in accordance with the applicable Local Reporting Provisions (in each case, a "**Subject Transaction**"), the Existing Relief Decision be varied in part, on the foregoing basis and restated as set forth below:

1. Relief related to Blocking Laws – The Applicant is exempted from the Reporting of creation data under Reporting requirements contained in sections 26, 27(a), 28, 31, 32, 34 and 35 of the applicable Local Reporting Provisions (the "**Reporting Provisions**") only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of a Subject Transaction, in the following circumstances:

   (A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Blocking Law; or

   (B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Blocking Law,

   provided that the Applicant:

   (i) either (x) reports an internal identifier code for its transaction counterparty or (y) if it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Blocking Law, reports that the LEI of the transaction counterparty is undisclosed;

   (ii) prepares and makes available in a timely manner to OSFI and in turn to the AMF (x) a list of all jurisdictions that it reasonably determines are subject to an applicable Blocking Law; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Blocking Law exists;

   (iii) makes diligent efforts to determine whether Blocking Laws exist in the jurisdiction where its transaction counterparty is located; and

   (iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to a Subject Transaction in reliance on the foregoing exemptions on a timely basis after any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which the Applicant becomes aware that any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

2. Relief Related to Consent Requirements – The Applicant is exempted from the Reporting of creation data under the Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of the Subject Transaction, in the following circumstances:

(A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Consent Requirement and that a required consent has not been provided by the transaction counterparty to the Applicant; or

(B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Consent Requirement,

provided that the Applicant:

(i) either (x) reports an internal identifier code for its transaction counterparty or (y) if the Applicant has all necessary processes in place to internally identify its transaction counterparty and it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Consent Requirement, reports that the LEI of the transaction counterparty is undisclosed;

(ii) prepares and makes available in a timely manner to OSFI and in turn to the AMF (x) a list of all jurisdictions that it reasonably determines are jurisdictions in which an applicable Consent Requirement exists; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Consent Requirement exists;

(iii) makes diligent efforts to obtain any required consent from the transaction counterparty, other than any consent that would arise in connection with a Trade Specific Requirement; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after all consents required to satisfy a Consent Requirement in relation to the Subject Transaction have been obtained by the Applicant,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the later of (x) the date on which the transaction counterparty has provided the Applicant with all such required consents and (y) the date on which the Applicant becomes aware that any previously applicable Consent Requirement no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

3. Required Counterparty Feedback – The Applicant is exempted from the Reporting of creation data under the applicable Local Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Jurisdiction of non-reporting counterparty" and "Broker/Clearing Intermediary" in respect of the Subject Transaction, in the following circumstances:

(A) Counterparty Status as a Local Counterparty – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty is a "local counterparty" under the Local Reporting Provisions of the Jurisdiction, provided that the Applicant Reports the Subject Transaction to the jurisdiction in which the Applicant has its principal place of business and, if reasonably practicable, makes diligent efforts to use the information from its own systems to Report the Subject Transaction in the transaction counterparty's jurisdiction, in each case if and to the extent it is reportable by the Applicant in such jurisdiction, and provided further that the foregoing exemption detailed in this paragraph 3.(A) shall not be available in respect of a Subject Transaction entered into by the Applicant on or after June 30, 2017 if the transaction counterparty is a person or company (a) that the Applicant determines (having made diligent efforts to use the information from its own systems) is organized under the laws of the Jurisdiction or has its head office or principal place of business in the Jurisdiction and (b) with whom the Applicant has no pre-existing contractual relationship relating to transacting in derivatives as of such date.

(B) Existence of a Guaranteed Affiliate – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty has an affiliate that is organized under the laws of the Jurisdiction or that has its head office or principal place of business in the Jurisdiction and that is responsible for the liabilities of the transaction counterparty (a "**Guaranteed Affiliate**"), provided that the Applicant otherwise reports the Subject Transaction on the basis that the transaction counterparty is not a Guaranteed Affiliate if the transaction counterparty is otherwise a "local counterparty" under the Local Reporting Provisions; or

(C) Broker LEI – if any applicable broker, who acts as an intermediary for the Applicant in respect of the Subject Transaction, without itself becoming a counterparty, has not provided its LEI to the Applicant, provided that the Applicant Reports the Subject Transaction on the basis that the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Broker/Clearing Intermediary" is undisclosed, until such time as such information has been provided to the Applicant,

provided that the Applicant:

(i) makes diligent efforts to prepare quarterly compliance reports regarding its efforts to obtain Required Counterparty Feedback, substantially in a form acceptable to OSFI, and in turn acceptable to the AMF;

(ii) makes such quarterly compliance reports available in a timely manner to OSFI and in turn to the AMF; and

(iii) makes diligent efforts, where required, to correct any reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after Required Counterparty Feedback has been obtained,

and provided further that the foregoing exemptions will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which previously unknown or unavailable Required Counterparty Feedback has been provided to the Applicant by the transaction counterparty.

4. Effectiveness of the Order – The exemptions provided pursuant to paragraphs 1, 2 and 3 shall cease to be available on December 18, 2017.

"Lise Estelle Brault"
Directrice principale de l'encadrement des dérivés
Autorité des marchés financiers

2.1.12 Royal Bank of Canada

Headnote

OSC Rule 91-507 – derivatives trade reporting obligations – applicant seeking extension of relief from requirements relating to the reporting of certain counterparty information – relief granted, subject to conditions, for a period of one year from the date of the decision.

Applicable Legislative Provisions

OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Parts 3 and 6.

December 16, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
QUÉBEC, ONTARIO AND MANITOBA
(THE "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
ROYAL BANK OF CANADA
(THE APPLICANT)

DECISION

Background

The securities regulatory authority or regulator in each Jurisdiction (each a "**Decision Maker**") has received an application from the Applicant for an order, in Québec pursuant to Section 86 and Section 111 of the *Derivatives Act*, CQLR, c. I-14.01, in Ontario, pursuant to Part 6 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, and in Manitoba pursuant to Part 6 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, varying decision n° 2014-EDERI-0002 dated December 17, 2014 (as varied by decision n° 2015-EDERI-0017 dated December 16, 2015, the "**Existing Relief Decision**"), which provides relief from the following derivatives data reporting requirements in relation to new and existing transactions under Chapter 3 of the Autorité des marchés financiers' Regulation 91-507 – *respecting Trade Repositories and Derivatives Data Reporting*, CQLR, c. I-14.01 and from equivalent provisions in Ontario under Part 3 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Manitoba under Part 3 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* (collectively, the "**Local Reporting Provisions**"):

(a) the requirement for a reporting counterparty to report, update, amend or supplement (collectively, "**Report**") the Legal Entity Identifier ("**LEI**") of a transaction counterparty where such Reporting could result in the reporting counterparty breaching laws applicable in the transaction counterparty's own jurisdiction that restrict or limit the disclosure of information relating to the transaction or to the counterparty or that require the transaction counterparty's consent to such disclosure in circumstances where such consent has not been obtained; and

(b) the requirement for a reporting counterparty to Report certain information (as more fully described below) related to or dependent on a transaction counterparty, which information has not been provided to the reporting counterparty by the transaction counterparty or has not otherwise been obtained by the reporting counterparty at the time of reporting.

The Existing Relief Decision ceases to be available after December 17, 2016 (the "**Sunset Provision**").

The Applicant has requested that the Existing Relief Decision be varied (collectively, the "**Variation Relief Sought**") so that the Sunset Provision in the Existing Relief Decision will be extended until December 18, 2017.

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

1. the Autorité des marchés financiers ("**AMF**") is the Principal Regulator for this application; and

2. the decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in Regulation 14-101 – *Definitions* and Regulation 11-102 – *Passport System* have the same meaning if used in this decision, unless otherwise defined.

For the purposes of this decision the following terms have the meanings provided in the Existing Relief Decision, which are restated below:

"Blocking Law" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would restrict or limit a subject person's disclosure of information relating to a Subject Transaction or to the counterparty of a Subject Transaction.

"Consent Requirement" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would require a counterparty to a Subject Transaction to consent to a subject person's disclosure of information relating to such Subject Transaction or counterparty.

"Trade Specific Requirement" means a requirement arising under a Blocking Law or in connection with a Consent Requirement that would require that steps be taken to comply therewith in connection with and at the time of a Subject Transaction, on a transaction by transaction basis.

Representations

This decision is based on the facts represented by the Applicant set out in the Existing Relief Decision as restated below:

1. the Applicant is a Canadian Schedule I bank under the *Bank Act*, with its head office located in Montréal, Québec, and its principal place of business and executive office in Toronto, Ontario;

2. the Applicant enters into derivatives transactions with multiple counterparties across Canada and around the world;

3. the Applicant is required to Report derivative transaction data in accordance with the applicable Local Reporting Provisions, as mandated by Guideline B-7 of the Office of the Superintendent of Financial Institutions ("**OSFI**");

4. while it is not specifically required by Guideline B-7, the Applicant believes that adhering to the Local Reporting Provisions in Manitoba is consistent with the principles of the G-20 OTC derivatives reforms, which have been supported by the Government of Canada;

5. on October 29, 2014, the Ontario Securities Commission (the "**OSC**") and the Manitoba Securities Commission, and on October 30, 2014, the AMF, each published a press release (collectively, the "**Press Releases**") to among other things, provide guidance on the situation where a reporting counterparty may be required to Report a transaction counterparty's LEI despite the fact that such LEI has not been obtained by the transaction counterparty or provided by the transaction counterparty to a reporting counterparty;

6. to the extent that the Press Releases provide guidance in relation to compliance matters pertaining to a transaction counterparty's failure to obtain an LEI or to provide its LEI to the Applicant, the Applicant intends to reflect its understanding of such guidance in complying with the applicable Local Reporting Provisions;

7. the Applicant has established or procured internal technology, systems and procedures that the Applicant believes should enable it to give effect to the Local Reporting Provisions;

8. in order to comply with the Local Reporting Provisions applicable to a transaction, the Applicant may need to: (a) if required by applicable law, obtain a consent from the counterparty to enable the reporting counterparty to disclose information relating to the transaction or counterparty; and (b) receive certain counterparty-specific information, including the counterparty's LEI (or its equivalent), its broker's LEI (where applicable), or information sufficient to enable the Applicant to determine whether the counterparty is a local counterparty (collectively, in respect of a counterparty to a transaction, the "**Required Counterparty Feedback**"); and

9. the Applicant has engaged in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts and as a result has received Required Counterparty Feedback from a majority of its counterparties.

In addition to the restated facts, the Applicant has made the following representations:

10. the Applicant has continued to engage in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, the Applicant has not received Required Counterparty Feedback from all of its counterparties;

11. a failure to provide the Variation Relief Sought could result in inconsistent or disrupted reporting of derivatives data by the Applicant, or in the Applicant not entering into new derivatives transactions with affected transaction counterparties, all of which could have negative implications for the Applicant, the Canadian financial system and the broader Canadian economy;

12. if the Variation Relief Sought is granted, the Applicant will continue to have the opportunity to make diligent efforts to obtain Required Counterparty Feedback while avoiding such negative implications in respect of existing and prospective derivatives transactions other than to the extent contemplated in the proviso set forth in paragraph 3.(A) of this decision;

13. if the Variation Relief Sought is granted, the Applicant will continue to make diligent efforts to obtain the Required Counterparty Feedback from its counterparties;

14. the Applicant has complied with the requirements of the Existing Relief Decision; and

15. the Applicant is not in default of securities legislation in any jurisdiction.

Decision

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

The decision of the Principal Regulator is that the Variation Relief Sought is granted and it orders that, in respect of each transaction that is subject to Reporting in accordance with the applicable Local Reporting Provisions (in each case, a "**Subject Transaction**"), the Existing Relief Decision be varied in part,on the foregoing basis and restated as set forth below:

1. Relief related to Blocking Laws – The Applicant is exempted from the Reporting of creation data under Reporting requirements contained in sections 26, 27(a), 28, 31, 32, 34 and 35 of the applicable Local Reporting Provisions (the "**Reporting Provisions**") only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of a Subject Transaction, in the following circumstances:

    (A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Blocking Law; or

    (B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Blocking Law,

    provided that the Applicant:

        (i) either (x) reports an internal identifier code for its transaction counterparty or (y) if it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Blocking Law, reports that the LEI of the transaction counterparty is undisclosed;

        (ii) prepares and makes available in a timely manner to OSFI and in turn to the AMF and the OSC (x) a list of all jurisdictions that it reasonably determines are subject to an applicable Blocking Law; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Blocking Law exists;

        (iii) makes diligent efforts to determine whether Blocking Laws exist in the jurisdiction where its transaction counterparty is located; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to a Subject Transaction in reliance on the foregoing exemptions on a timely basis after any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which the Applicant becomes aware that any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

2. Relief Related to Consent Requirements – The Applicant is exempted from the Reporting of creation data under the Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of the Subject Transaction, in the following circumstances:

(A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Consent Requirement and that a required consent has not been provided by the transaction counterparty to the Applicant; or

(B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Consent Requirement,

provided that the Applicant:

(i) either (x) reports an internal identifier code for its transaction counterparty or (y) if the Applicant has all necessary processes in place to internally identify its transaction counterparty and it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Consent Requirement, reports that the LEI of the transaction counterparty is undisclosed;

(ii) prepares and makes available in a timely manner to OSFI and in turn to the AMF and the OSC (x) a list of all jurisdictions that it reasonably determines are jurisdictions in which an applicable Consent Requirement exists; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Consent Requirement exists;

(iii) makes diligent efforts to obtain any required consent from the transaction counterparty, other than any consent that would arise in connection with a Trade Specific Requirement; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after all consents required to satisfy a Consent Requirement in relation to the Subject Transaction have been obtained by the Applicant,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the later of (x) the date on which the transaction counterparty has provided the Applicant with all such required consents and (y) the date on which the Applicant becomes aware that any previously applicable Consent Requirement no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

3. Required Counterparty Feedback – The Applicant is exempted from the Reporting of creation data under the applicable Local Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Jurisdiction of non-reporting counterparty" and "Broker/Clearing Intermediary" in respect of the Subject Transaction, in the following circumstances:

(A) Counterparty Status as a Local Counterparty – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty is a "local counterparty" under the Local Reporting Provisions of the Jurisdiction, provided that the Applicant Reports the Subject Transaction to the jurisdiction in which the Applicant has its principal place of business and, if reasonably practicable, makes diligent efforts to use the information from its own systems to Report the Subject Transaction in the transaction counterparty's jurisdiction, in each case if and to the extent it is reportable by the Applicant in such jurisdiction, and provided further that the foregoing exemption detailed in this paragraph 3.(A) shall not be available in respect of a Subject Transaction entered into by the

Applicant on or after June 30, 2017 if the transaction counterparty is a person or company (a) that the Applicant determines (having made diligent efforts to use the information from its own systems) is organized under the laws of the Jurisdiction or has its head office or principal place of business in the Jurisdiction and (b) with whom the Applicant has no pre-existing contractual relationship relating to transacting in derivatives as of such date.

(B) Existence of a Guaranteed Affiliate – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty has an affiliate that is organized under the laws of the Jurisdiction or that has its head office or principal place of business in the Jurisdiction and that is responsible for the liabilities of the transaction counterparty (a "**Guaranteed Affiliate**"), provided that the Applicant otherwise reports the Subject Transaction on the basis that the transaction counterparty is not a Guaranteed Affiliate if the transaction counterparty is otherwise a "local counterparty" under the Local Reporting Provisions; or

(C) Broker LEI – if any applicable broker, who acts as an intermediary for the Applicant in respect of the Subject Transaction, without itself becoming a counterparty, has not provided its LEI to the Applicant, provided that the Applicant Reports the Subject Transaction on the basis that the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Broker/Clearing Intermediary" is undisclosed, until such time as such information has been provided to the Applicant,

provided that the Applicant:

(i) makes diligent efforts to prepare quarterly compliance reports regarding its efforts to obtain Required Counterparty Feedback, substantially in a form acceptable to OSFI, and in turn acceptable to the AMF and the OSC;

(ii) makes such quarterly compliance reports available in a timely manner to OSFI and in turn to the AMF and the OSC; and

(iii) makes diligent efforts, where required, to correct any reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after Required Counterparty Feedback has been obtained,

and provided further that the foregoing exemptions will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which previously unknown or unavailable Required Counterparty Feedback has been provided to the Applicant by the transaction counterparty.

4. Effectiveness of the Order – The exemptions provided pursuant to paragraphs 1, 2 and 3 shall cease to be available on December 18, 2017.

"Lise Estelle Brault"
Directrice principale de l'encadrement des dérivés
Autorité des marchés financiers

2.1.13 The Bank of Nova Scotia

Headnote

OSC Rule 91-507 – derivatives trade reporting obligations – applicant seeking extension of relief from requirements relating to the reporting of certain counterparty information – relief granted, subject to conditions, for a period of one year from the date of the decision.

Applicable Legislative Provisions

OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Parts 3 and 6.

December 16, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, QUÉBEC AND MANITOBA
(THE "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
THE BANK OF NOVA SCOTIA
(THE APPLICANT)

DECISION

Background

The securities regulatory authority or regulator in each Jurisdiction (each a "**Decision Maker**") has received an application from the Applicant for an order, in Ontario, pursuant to Part 6 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, in Manitoba pursuant to Part 6 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Québec pursuant to Section 86 and Section 111 of the *Derivatives Act*, CQLR, c. I-14.01, varying the Director's decision dated December 17, 2014 (as varied on December 16, 2015, the "**Existing Relief Decision**"), which provides relief from the following derivatives data reporting requirements in relation to new and existing transactions under Part 3 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Manitoba under Part 3 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, and from equivalent provisions in Québec under Chapter 3 of the Autorité des marchés financiers' Regulation 91-507 – *respecting Trade Repositories and Derivatives Data Reporting*, CQLR, c. I-14.01 (collectively, the "**Local Reporting Provisions**"):

(a) the requirement for a reporting counterparty to report, update, amend or supplement (collectively, "**Report**") the Legal Entity Identifier ("**LEI**") of a transaction counterparty where such Reporting could result in the reporting counterparty breaching laws applicable in the transaction counterparty's own jurisdiction that restrict or limit the disclosure of information relating to the transaction or to the counterparty or that require the transaction counterparty's consent to such disclosure in circumstances where such consent has not been obtained; and

(b) the requirement for a reporting counterparty to Report certain information (as more fully described below) related to or dependent on a transaction counterparty, which information has not been provided to the reporting counterparty by the transaction counterparty or has not otherwise been obtained by the reporting counterparty at the time of reporting.

The Existing Relief Decision ceases to be available after December 17, 2016 (the "**Sunset Provision**").

The Applicant has requested that the Existing Relief Decision be varied (collectively, the "**Variation Relief Sought**") so that the Sunset Provision in the Existing Relief Decision will be extended until December 18, 2017.

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

1. the Ontario Securities Commission ("**OSC**") is the Principal Regulator for this application; and

2. the decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

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

For the purposes of this decision the following terms have the meanings provided in the Existing Relief Decision, which are restated below:

"Blocking Law" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would restrict or limit a subject person's disclosure of information relating to a Subject Transaction or to the counterparty of a Subject Transaction.

"Consent Requirement" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would require a counterparty to a Subject Transaction to consent to a subject person's disclosure of information relating to such Subject Transaction or counterparty.

"Trade Specific Requirement" means a requirement arising under a Blocking Law or in connection with a Consent Requirement that would require that steps be taken to comply therewith in connection with and at the time of a Subject Transaction, on a transaction by transaction basis.

Representations

This decision is based on the facts represented by the Applicant set out in the Existing Relief Decision as restated below:

1. the Applicant is a Canadian Schedule I bank under the *Bank Act*, with its head office located in Halifax, Nova Scotia, and its principal place of business and executive office in Toronto, Ontario;

2. the Applicant enters into derivatives transactions with multiple counterparties across Canada and around the world;

3. the Applicant is required to Report derivative transaction data in accordance with the applicable Local Reporting Provisions, as mandated by Guideline B-7 of the Office of the Superintendent of Financial Institutions ("**OSFI**");

4. while it is not specifically required by Guideline B-7, the Applicant believes that adhering to the Local Reporting Provisions in Québec and Manitoba is consistent with the principles of the G-20 OTC derivatives reforms, which have been supported by the Government of Canada;

5. on October 29, 2014, the OSC and the Manitoba Securities Commission, and on October 30, 2014, the Autorité des marchés financiers, each published a press release (collectively, the "**Press Releases**") to among other things, provide guidance on the situation where a reporting counterparty may be required to Report a transaction counterparty's LEI despite the fact that such LEI has not been obtained by the transaction counterparty or provided by the transaction counterparty to a reporting counterparty;

6. to the extent that the Press Releases provide guidance in relation to compliance matters pertaining to a transaction counterparty's failure to obtain an LEI or to provide its LEI to the Applicant, the Applicant intends to reflect its understanding of such guidance in complying with the applicable Local Reporting Provisions;

7. in order to comply with the Local Reporting Provisions applicable to a transaction, the Applicant may need to: (a) if required by applicable law, obtain a consent from the counterparty to enable the reporting counterparty to disclose information relating to the transaction or counterparty; and (b) receive certain counterparty-specific information, including the counterparty's LEI (or its equivalent), its broker's LEI (where applicable), or information sufficient to enable the Applicant to determine whether the counterparty is a local counterparty (collectively, in respect of a counterparty to a transaction, the "**Required Counterparty Feedback**"); and

8. the Applicant has engaged in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts and as a result has received Required Counterparty Feedback from a majority of its counterparties.

In addition to the restated facts, the Applicant has made the following representations:

9. the Applicant has established or procured internal technology, systems and procedures that the Applicant believes should enable it to give effect to the Local Reporting Provisions;

10. the Applicant has continued to engage in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, the Applicant has not received Required Counterparty Feedback from all of its counterparties;

11. a failure to provide the Variation Relief Sought could result in inconsistent or disrupted reporting of derivatives data by the Applicant, or in the Applicant not entering into new derivatives transactions with affected transaction counterparties, all of which could have negative implications for the Applicant, the Canadian financial system and the broader Canadian economy;

12. if the Variation Relief Sought is granted, the Applicant will continue to have the opportunity to make diligent efforts to obtain Required Counterparty Feedback while avoiding such negative implications in respect of existing and prospective derivatives transactions other than to the extent contemplated in the proviso set forth in paragraph 3.(A) of this decision;

13. if the Variation Relief Sought is granted, the Applicant will continue to make diligent efforts to obtain the Required Counterparty Feedback from its counterparties;

14. the Applicant has complied with the requirements of the Existing Relief Decision; and

15. the Applicant is not in default of securities legislation in any jurisdiction.

Decision

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

The decision of the Principal Regulator is that the Variation Relief Sought is granted and it orders that, in respect of each transaction that is subject to Reporting in accordance with the applicable Local Reporting Provisions (in each case, a "**Subject Transaction**"), the Existing Relief Decision be varied in part, on the foregoing basis and restated as set forth below:

1. Relief related to Blocking Laws – The Applicant is exempted from the Reporting of creation data under Reporting requirements contained in sections 26, 27(a), 28, 31, 32, 34 and 35 of the applicable Local Reporting Provisions (the "**Reporting Provisions**") only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of a Subject Transaction, in the following circumstances:

   (A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Blocking Law; or

   (B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Blocking Law,

   provided that the Applicant:

   (i) either (x) reports an internal identifier code for its transaction counterparty or (y) if it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Blocking Law, reports that the LEI of the transaction counterparty is undisclosed;

   (ii) prepares and makes available in a timely manner to OSFI and in turn to the OSC (x) a list of all jurisdictions that it reasonably determines are subject to an applicable Blocking Law; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Blocking Law exists;

   (iii) makes diligent efforts to determine whether Blocking Laws exist in the jurisdiction where its transaction counterparty is located; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to a Subject Transaction in reliance on the foregoing exemptions on a timely basis after any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which the Applicant becomes aware that any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

2. Relief Related to Consent Requirements – The Applicant is exempted from the Reporting of creation data under the Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of the Subject Transaction, in the following circumstances:

(A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Consent Requirement and that a required consent has not been provided by the transaction counterparty to the Applicant; or

(B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Consent Requirement,

provided that the Applicant:

(i) either (x) reports an internal identifier code for its transaction counterparty or (y) if the Applicant has all necessary processes in place to internally identify its transaction counterparty and it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Consent Requirement, reports that the LEI of the transaction counterparty is undisclosed;

(ii) prepares and makes available in a timely manner to OSFI and in turn to the OSC (x) a list of all jurisdictions that it reasonably determines are jurisdictions in which an applicable Consent Requirement exists; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Consent Requirement exists;

(iii) makes diligent efforts to obtain any required consent from the transaction counterparty, other than any consent that would arise in connection with a Trade Specific Requirement; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after all consents required to satisfy a Consent Requirement in relation to the Subject Transaction have been obtained by the Applicant,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the later of (x) the date on which the transaction counterparty has provided the Applicant with all such required consents and (y) the date on which the Applicant becomes aware that any previously applicable Consent Requirement no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

3. Required Counterparty Feedback – The Applicant is exempted from the Reporting of creation data under the applicable Local Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Jurisdiction of non-reporting counterparty" and "Broker/Clearing Intermediary" in respect of the Subject Transaction, in the following circumstances:

(A) Counterparty Status as a Local Counterparty – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty is a "local counterparty" under the Local Reporting Provisions of the Jurisdiction, provided that the Applicant Reports the Subject Transaction to the jurisdiction in which the Applicant has its principal place of business and, if reasonably practicable, makes diligent efforts to use the information from its own systems to Report the Subject Transaction in the transaction counterparty's jurisdiction, in each case if and to the extent it is reportable by the Applicant in such jurisdiction, and provided further that the foregoing exemption detailed in this paragraph 3.(A) shall not be available in respect of a Subject Transaction entered into by the

Applicant on or after June 30, 2017 if the transaction counterparty is a person or company (a) that the Applicant determines (having made diligent efforts to use the information from its own systems) is organized under the laws of the Jurisdiction or has its head office or principal place of business in the Jurisdiction and (b) with whom the Applicant has no pre-existing contractual relationship relating to transacting in derivatives as of such date.

(B) Existence of a Guaranteed Affiliate – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty has an affiliate that is organized under the laws of the Jurisdiction or that has its head office or principal place of business in the Jurisdiction and that is responsible for the liabilities of the transaction counterparty (a "**Guaranteed Affiliate**"), provided that the Applicant otherwise reports the Subject Transaction on the basis that the transaction counterparty is not a Guaranteed Affiliate if the transaction counterparty is otherwise a "local counterparty" under the Local Reporting Provisions; or

(C) Broker LEI – if any applicable broker, who acts as an intermediary for the Applicant in respect of the Subject Transaction, without itself becoming a counterparty, has not provided its LEI to the Applicant, provided that the Applicant Reports the Subject Transaction on the basis that the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Broker/Clearing Intermediary" is undisclosed, until such time as such information has been provided to the Applicant,

provided that the Applicant:

(i) makes diligent efforts to prepare quarterly compliance reports regarding its efforts to obtain Required Counterparty Feedback, substantially in a form acceptable to OSFI, and in turn acceptable to the OSC;

(ii) makes such quarterly compliance reports available in a timely manner to OSFI and in turn to the OSC; and

(iii) makes diligent efforts, where required, to correct any reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after Required Counterparty Feedback has been obtained,

and provided further that the foregoing exemptions will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which previously unknown or unavailable Required Counterparty Feedback has been provided to the Applicant by the transaction counterparty.

4. Effectiveness of the Order – The exemptions provided pursuant to paragraphs 1, 2 and 3 shall cease to be available on December 18, 2017.

"Kevin Fine"
Director
Ontario Securities Commission

2.1.14 Bank of Montreal

Headnote

OSC Rule 91-507 – derivatives trade reporting obligations – applicant seeking extension of relief from requirements relating to the reporting of certain counterparty information – relief granted, subject to conditions, for a period of one year from the date of the decision.

Applicable Legislative Provisions

OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Parts 3 and 6.

December 16, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, QUÉBEC AND MANITOBA
(THE "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
BANK OF MONTREAL
(THE APPLICANT)

DECISION

Background

The securities regulatory authority or regulator in each Jurisdiction (each a "**Decision Maker**") has received an application from the Applicant for an order, in Ontario, pursuant to Part 6 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, in Manitoba pursuant to Part 6 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Québec pursuant to Section 86 and Section 111 of the *Derivatives Act*, CQLR, c. I-14.01, varying the Director's decision dated December 17, 2014 (as varied on December 16, 2015, the "**Existing Relief Decision**"), which provides relief from the following derivatives data reporting requirements in relation to new and existing transactions under Part 3 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Manitoba under Part 3 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, and from equivalent provisions in Québec under Chapter 3 of the Autorité des marchés financiers' Regulation 91-507 – *respecting Trade Repositories and Derivatives Data Reporting*, CQLR, c. I-14.01 (collectively, the "**Local Reporting Provisions**"):

(a) the requirement for a reporting counterparty to report, update, amend or supplement (collectively, "**Report**") the Legal Entity Identifier ("**LEI**") of a transaction counterparty where such Reporting could result in the reporting counterparty breaching laws applicable in the transaction counterparty's own jurisdiction that restrict or limit the disclosure of information relating to the transaction or to the counterparty or that require the transaction counterparty's consent to such disclosure in circumstances where such consent has not been obtained; and

(b) the requirement for a reporting counterparty to Report certain information (as more fully described below) related to or dependent on a transaction counterparty, which information has not been provided to the reporting counterparty by the transaction counterparty or has not otherwise been obtained by the reporting counterparty at the time of reporting.

The Existing Relief Decision ceases to be available after December 17, 2016 (the "**Sunset Provision**").

The Applicant has requested that the Existing Relief Decision be varied (collectively, the "**Variation Relief Sought**") so that the Sunset Provision in the Existing Relief Decision will be extended until December 18, 2017.

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

1. the Ontario Securities Commission ("**OSC**") is the Principal Regulator for this application; and

2. the decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

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

For the purposes of this decision the following terms have the meanings provided in the Existing Relief Decision, which are restated below:

"Blocking Law" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would restrict or limit a subject person's disclosure of information relating to a Subject Transaction or to the counterparty of a Subject Transaction.

"Consent Requirement" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would require a counterparty to a Subject Transaction to consent to a subject person's disclosure of information relating to such Subject Transaction or counterparty.

"Trade Specific Requirement" means a requirement arising under a Blocking Law or in connection with a Consent Requirement that would require that steps be taken to comply therewith in connection with and at the time of a Subject Transaction, on a transaction by transaction basis.

Representations

This decision is based on the facts represented by the Applicant set out in the Existing Relief Decision as restated below:

1. the Applicant is a Canadian Schedule I bank under the *Bank Act*, with its head office located in Montréal, Québec, and its principal place of business and executive office in Toronto, Ontario;

2. the Applicant enters into derivatives transactions with multiple counterparties across Canada and around the world;

3. the Applicant is required to Report derivative transaction data in accordance with the applicable Local Reporting Provisions, as mandated by Guideline B-7 of the Office of the Superintendent of Financial Institutions ("**OSFI**");

4. while it is not specifically required by Guideline B-7, the Applicant believes that adhering to the Local Reporting Provisions in Québec and Manitoba is consistent with the principles of the G-20 OTC derivatives reforms, which have been supported by the Government of Canada;

5. on October 29, 2014, the OSC and the Manitoba Securities Commission, and on October 30, 2014, the Autorité des marchés financiers (the "**AMF**"), each published a press release (collectively, the "**Press Releases**") to among other things, provide guidance on the situation where a reporting counterparty may be required to Report a transaction counterparty's LEI despite the fact that such LEI has not been obtained by the transaction counterparty or provided by the transaction counterparty to a reporting counterparty;

6. to the extent that the Press Releases provide guidance in relation to compliance matters pertaining to a transaction counterparty's failure to obtain an LEI or to provide its LEI to the Applicant, the Applicant intends to reflect its understanding of such guidance in complying with the applicable Local Reporting Provisions;

7. the Applicant has established or procured internal technology, systems and procedures that the Applicant believes should enable it to give effect to the Local Reporting Provisions;

8. in order to comply with the Local Reporting Provisions applicable to a transaction, the Applicant may need to: (a) if required by applicable law, obtain a consent from the counterparty to enable the reporting counterparty to disclose information relating to the transaction or counterparty; and (b) receive certain counterparty-specific information, including the counterparty's LEI (or its equivalent), its broker's LEI (where applicable), or information sufficient to enable the Applicant to determine whether the counterparty is a local counterparty (collectively, in respect of a counterparty to a transaction, the "**Required Counterparty Feedback**"); and

9. the Applicant has engaged in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts and as a result has received Required Counterparty Feedback from a majority of its counterparties.

In addition to the restated facts, the Applicant has made the following representations:

10. the Applicant has continued to engage in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, the Applicant has not received Required Counterparty Feedback from all of its counterparties;

11. a failure to provide the Variation Relief Sought could result in inconsistent or disrupted reporting of derivatives data by the Applicant, or in the Applicant not entering into new derivatives transactions with affected transaction counterparties, all of which could have negative implications for the Applicant, the Canadian financial system and the broader Canadian economy;

12. if the Variation Relief Sought is granted, the Applicant will continue to have the opportunity to make diligent efforts to obtain Required Counterparty Feedback while avoiding such negative implications in respect of existing and prospective derivatives transactions other than to the extent contemplated in the proviso set forth in paragraph 3.(A) of this decision;

13. if the Variation Relief Sought is granted, the Applicant will continue to make diligent efforts to obtain the Required Counterparty Feedback from its counterparties;

14. the Applicant has complied with the requirements of the Existing Relief Decision; and

15. the Applicant is not in default of securities legislation in any jurisdiction.

Decision

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

The decision of the Principal Regulator is that the Variation Relief Sought is granted and it orders that, in respect of each transaction that is subject to Reporting in accordance with the applicable Local Reporting Provisions (in each case, a "**Subject Transaction**"), the Existing Relief Decision be varied in part, on the foregoing basis and restated as set forth below:

1. Relief related to Blocking Laws – The Applicant is exempted from the Reporting of creation data under Reporting requirements contained in sections 26, 27(a), 28, 31, 32, 34 and 35 of the applicable Local Reporting Provisions (the "**Reporting Provisions**") only to the extent that the Applicant would be required to report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of a Subject Transaction, in the following circumstances:

   (A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Blocking Law; or

   (B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Blocking Law,

   provided that the Applicant:

   (i) either (x) reports an internal identifier code for its transaction counterparty or (y) if it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Blocking Law, reports that the LEI of the transaction counterparty is undisclosed;

   (ii) prepares and makes available in a timely manner to OSFI and in turn to the OSC and the AMF (x) a list of all jurisdictions that it reasonably determines are subject to an applicable Blocking Law; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Blocking Law exists;

   (iii) makes diligent efforts to determine whether Blocking Laws exist in the jurisdiction where its transaction counterparty is located; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to a Subject Transaction in reliance on the foregoing exemptions on a timely basis after any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which the Applicant becomes aware that any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

2. Relief Related to Consent Requirements – The Applicant is exempted from the Reporting of creation data under the Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of the Subject Transaction, in the following circumstances:

(A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Consent Requirement and that a required consent has not been provided by the transaction counterparty to the Applicant; or

(B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Consent Requirement,

provided that the Applicant:

(i) either (x) reports an internal identifier code for its transaction counterparty or (y) if the Applicant has all necessary processes in place to internally identify its transaction counterparty and it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Consent Requirement, reports that the LEI of the transaction counterparty is undisclosed;

(ii) prepares and makes available in a timely manner to OSFI and in turn to the OSC and the AMF (x) a list of all jurisdictions that it reasonably determines are jurisdictions in which an applicable Consent Requirement exists; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Consent Requirement exists;

(iii) makes diligent efforts to obtain any required consent from the transaction counterparty, other than any consent that would arise in connection with a Trade Specific Requirement; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after all consents required to satisfy a Consent Requirement in relation to the Subject Transaction have been obtained by the Applicant,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the later of (x) the date on which the transaction counterparty has provided the Applicant with all such required consents and (y) the date on which the Applicant becomes aware that any previously applicable Consent Requirement no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

3. Required Counterparty Feedback – The Applicant is exempted from the Reporting of creation data under the applicable Local Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Jurisdiction of non-reporting counterparty" and "Broker/Clearing Intermediary" in respect of the Subject Transaction, in the following circumstances:

(A) Counterparty Status as a Local Counterparty – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty is a "local counterparty" under the Local Reporting Provisions of the Jurisdiction, provided that the Applicant Reports the Subject Transaction to the jurisdiction in which the Applicant has its principal place of business and, if reasonably practicable, makes diligent efforts to use the information from its own systems to Report the Subject Transaction in the transaction counterparty's jurisdiction, in each case if and to the extent it is reportable by the Applicant in such jurisdiction, and provided further that the foregoing exemption detailed in this paragraph 3.(A) shall not be available in respect of a Subject Transaction entered into by the

Applicant on or after June 30, 2017 if the transaction counterparty is a person or company (a) that the Applicant determines (having made diligent efforts to use the information from its own systems) is organized under the laws of the Jurisdiction or has its head office or principal place of business in the Jurisdiction and (b) with whom the Applicant has no pre-existing contractual relationship relating to transacting in derivatives as of such date.

(B) Existence of a Guaranteed Affiliate – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty has an affiliate that is organized under the laws of the Jurisdiction or that has its head office or principal place of business in the Jurisdiction and that is responsible for the liabilities of the transaction counterparty (a "**Guaranteed Affiliate**"), provided that the Applicant otherwise reports the Subject Transaction on the basis that the transaction counterparty is not a Guaranteed Affiliate if the transaction counterparty is otherwise a "local counterparty" under the Local Reporting Provisions; or

(C) Broker LEI – if any applicable broker, who acts as an intermediary for the Applicant in respect of the Subject Transaction, without itself becoming a counterparty, has not provided its LEI to the Applicant, provided that the Applicant Reports the Subject Transaction on the basis that the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Broker/Clearing Intermediary" is undisclosed, until such time as such information has been provided to the Applicant,

provided that the Applicant:

(i) makes diligent efforts to prepare quarterly compliance reports regarding its efforts to obtain Required Counterparty Feedback, substantially in a form acceptable to OSFI, and in turn acceptable to the OSC and the AMF;

(ii) makes such quarterly compliance reports available in a timely manner to OSFI and in turn to the OSC and the AMF; and

(iii) makes diligent efforts, where required, to correct any reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after Required Counterparty Feedback has been obtained,

and provided further that the foregoing exemptions will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which previously unknown or unavailable Required Counterparty Feedback has been provided to the Applicant by the transaction counterparty.

4. Effectiveness of the Order – The exemptions provided pursuant to paragraphs 1, 2 and 3 shall cease to be available on December 18, 2017.

"Kevin Fine"
Director
Ontario Securities Commission

2.1.15 The Toronto-Dominion Bank

Headnote

OSC Rule 91-507 – derivatives trade reporting obligations – applicant seeking extension of relief from requirements relating to the reporting of certain counterparty information – relief granted, subject to conditions, for a period of one year from the date of the decision.

Applicable Legislative Provisions

OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Parts 3 and 6.

December 16, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, QUÉBEC AND MANITOBA
(THE "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
THE TORONTO-DOMINION BANK
(THE APPLICANT)

DECISION

Background

The securities regulatory authority or regulator in each Jurisdiction (each a "**Decision Maker**") has received an application from the Applicant for an order, in Ontario, pursuant to Part 6 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, in Manitoba pursuant to Part 6 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Québec pursuant to Section 86 and Section 111 of the *Derivatives Act*, CQLR, c. I-14.01, varying the Director's decision dated December 17, 2014 (as varied on December 16, 2015, the "**Existing Relief Decision**"), which provides relief from the following derivatives data reporting requirements in relation to new and existing transactions under Part 3 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Manitoba under Part 3 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, and from equivalent provisions in Québec under Chapter 3 of the Autorité des marchés financiers' Regulation 91-507 – *respecting Trade Repositories and Derivatives Data Reporting*, CQLR, c. I-14.01 (collectively, the "**Local Reporting Provisions**"):

(a) the requirement for a reporting counterparty to report, update, amend or supplement (collectively, "**Report**") the Legal Entity Identifier ("**LEI**") of a transaction counterparty where such Reporting could result in the reporting counterparty breaching laws applicable in the transaction counterparty's own jurisdiction that restrict or limit the disclosure of information relating to the transaction or to the counterparty or that require the transaction counterparty's consent to such disclosure in circumstances where such consent has not been obtained; and

(b) the requirement for a reporting counterparty to Report certain information (as more fully described below) related to or dependent on a transaction counterparty, which information has not been provided to the reporting counterparty by the transaction counterparty or has not otherwise been obtained by the reporting counterparty at the time of reporting.

The Existing Relief Decision ceases to be available after December 17, 2016 (the "**Sunset Provision**").

The Applicant has requested that the Existing Relief Decision be varied (collectively, the "**Variation Relief Sought**") so that the Sunset Provision in the Existing Relief Decision will be extended until December 18, 2017.

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

1. the Ontario Securities Commission ("**OSC**") is the Principal Regulator for this application; and

2. the decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

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

For the purposes of this decision the following terms have the meanings provided in the Existing Relief Decision, which are restated below:

"Blocking Law" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would restrict or limit a subject person's disclosure of information relating to a Subject Transaction or to the counterparty of a Subject Transaction.

"Consent Requirement" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would require a counterparty to a Subject Transaction to consent to a subject person's disclosure of information relating to such Subject Transaction or counterparty.

"Trade Specific Requirement" means a requirement arising under a Blocking Law or in connection with a Consent Requirement that would require that steps be taken to comply therewith in connection with and at the time of a Subject Transaction, on a transaction by transaction basis.

Representations

This decision is based on the facts represented by the Applicant set out in the Existing Relief Decision as restated below:

1. the Applicant is a Canadian Schedule I bank under the *Bank Act*, with its head office located in Toronto, Ontario;

2. the Applicant enters into derivatives transactions with multiple counterparties across Canada and around the world;

3. the Applicant is required to Report derivative transaction data in accordance with the applicable Local Reporting Provisions, as mandated by Guideline B-7 of the Office of the Superintendent of Financial Institutions ("**OSFI**");

4. while it is not specifically required by Guideline B-7, the Applicant believes that adhering to the Local Reporting Provisions in Québec and Manitoba is consistent with the principles of the G-20 OTC derivatives reforms, which have been supported by the Government of Canada;

5. on October 29, 2014, the OSC and the Manitoba Securities Commission, and on October 30, 2014, the Autorité des marchés financiers, each published a press release (collectively, the "**Press Releases**") to among other things, provide guidance on the situation where a reporting counterparty may be required to Report a transaction counterparty's LEI despite the fact that such LEI has not been obtained by the transaction counterparty or provided by the transaction counterparty to a reporting counterparty;

6. to the extent that the Press Releases provide guidance in relation to compliance matters pertaining to a transaction counterparty's failure to obtain an LEI or to provide its LEI to the Applicant, the Applicant intends to reflect its understanding of such guidance in complying with the applicable Local Reporting Provisions;

7. the Applicant has established or procured internal technology, systems and procedures that the Applicant believes should enable it to give effect to the Local Reporting Provisions;

8. in order to comply with the Local Reporting Provisions applicable to a transaction, the Applicant may need to: (a) if required by applicable law, obtain a consent from the counterparty to enable the reporting counterparty to disclose information relating to the transaction or counterparty; and (b) receive certain counterparty-specific information, including the counterparty's LEI (or its equivalent), its broker's LEI (where applicable), or information sufficient to enable the Applicant to determine whether the counterparty is a local counterparty (collectively, in respect of a counterparty to a transaction, the "**Required Counterparty Feedback**"); and

9. the Applicant has engaged in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts and as a result has received Required Counterparty Feedback from a majority of its counterparties.

In addition to the restated facts, the Applicant has made the following representations:

10. the Applicant has continued to engage in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, the Applicant has not received Required Counterparty Feedback from all of its counterparties;

11. a failure to provide the Variation Relief Sought could result in inconsistent or disrupted reporting of derivatives data by the Applicant, or in the Applicant not entering into new derivatives transactions with affected transaction counterparties, all of which could have negative implications for the Applicant, the Canadian financial system and the broader Canadian economy;

12. if the Variation Relief Sought is granted, the Applicant will continue to have the opportunity to make diligent efforts to obtain Required Counterparty Feedback while avoiding such negative implications in respect of existing and prospective derivatives transactions other than to the extent contemplated in the proviso set forth in paragraph 3.(A) of this decision;

13. if the Variation Relief Sought is granted, the Applicant will continue to make diligent efforts to obtain the Required Counterparty Feedback from its counterparties;

14. the Applicant has complied with the requirements of the Existing Relief Decision; and

15. the Applicant is not in default of securities legislation in any jurisdiction.

Decision

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

The decision of the Principal Regulator is that the Variation Relief Sought is granted and it orders that, in respect of each transaction that is subject to Reporting in accordance with the applicable Local Reporting Provisions (in each case, a "**Subject Transaction**"), the Existing Relief Decision be varied in part, on the foregoing basis and restated as set forth below:

1. Relief related to Blocking Laws – The Applicant is exempted from the Reporting of creation data under Reporting requirements contained in sections 26, 27(a), 28, 31, 32, 34 and 35 of the applicable Local Reporting Provisions (the "**Reporting Provisions**") only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of a Subject Transaction, in the following circumstances:

   (A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Blocking Law; or

   (B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Blocking Law,

   provided that the Applicant:

   (i) either (x) reports an internal identifier code for its transaction counterparty or (y) if it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Blocking Law, reports that the LEI of the transaction counterparty is undisclosed;

   (ii) prepares and makes available in a timely manner to OSFI and in turn to the OSC (x) a list of all jurisdictions that it reasonably determines are subject to an applicable Blocking Law; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Blocking Law exists;

   (iii) makes diligent efforts to determine whether Blocking Laws exist in the jurisdiction where its transaction counterparty is located; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to a Subject Transaction in reliance on the foregoing exemptions on a timely basis after any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which the Applicant becomes aware that any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

2. Relief Related to Consent Requirements – The Applicant is exempted from the Reporting of creation data under the Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of the Subject Transaction, in the following circumstances:

(A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Consent Requirement and that a required consent has not been provided by the transaction counterparty to the Applicant; or

(B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Consent Requirement,

provided that the Applicant:

(i) either (x) reports an internal identifier code for its transaction counterparty or (y) if the Applicant has all necessary processes in place to internally identify its transaction counterparty and it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Consent Requirement, reports that the LEI of the transaction counterparty is undisclosed;

(ii) prepares and makes available in a timely manner to OSFI and in turn to the OSC (x) a list of all jurisdictions that it reasonably determines are jurisdictions in which an applicable Consent Requirement exists; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Consent Requirement exists;

(iii) makes diligent efforts to obtain any required consent from the transaction counterparty, other than any consent that would arise in connection with a Trade Specific Requirement; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after all consents required to satisfy a Consent Requirement in relation to the Subject Transaction have been obtained by the Applicant,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the later of (x) the date on which the transaction counterparty has provided the Applicant with all such required consents and (y) the date on which the Applicant becomes aware that any previously applicable Consent Requirement no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

3. Required Counterparty Feedback – The Applicant is exempted from the Reporting of creation data under the applicable Local Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Jurisdiction of non-reporting counterparty" and "Broker/Clearing Intermediary" in respect of the Subject Transaction, in the following circumstances:

(A) Counterparty Status as a Local Counterparty – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty is a "local counterparty" under the Local Reporting Provisions of the Jurisdiction, provided that the Applicant Reports the Subject Transaction to the jurisdiction in which the Applicant has its principal place of business and, if reasonably practicable, makes diligent efforts to use the information from its own systems to Report the Subject Transaction in the transaction counterparty's jurisdiction, in each case if and to the extent it is reportable by the Applicant in such jurisdiction, and provided further that the foregoing exemption detailed in this paragraph 3.(A) shall not be available in respect of a Subject Transaction entered into by the

Applicant on or after June 30, 2017 if the transaction counterparty is a person or company (a) that the Applicant determines (having made diligent efforts to use the information from its own systems) is organized under the laws of the Jurisdiction or has its head office or principal place of business in the Jurisdiction and (b) with whom the Applicant has no pre-existing contractual relationship relating to transacting in derivatives as of such date.

(B) Existence of a Guaranteed Affiliate – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty has an affiliate that is organized under the laws of the Jurisdiction or that has its head office or principal place of business in the Jurisdiction and that is responsible for the liabilities of the transaction counterparty (a "**Guaranteed Affiliate**"), provided that the Applicant otherwise reports the Subject Transaction on the basis that the transaction counterparty is not a Guaranteed Affiliate if the transaction counterparty is otherwise a "local counterparty" under the Local Reporting Provisions; or

(C) Broker LEI – if any applicable broker, who acts as an intermediary for the Applicant in respect of the Subject Transaction, without itself becoming a counterparty, has not provided its LEI to the Applicant, provided that the Applicant Reports the Subject Transaction on the basis that the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Broker/Clearing Intermediary" is undisclosed, until such time as such information has been provided to the Applicant,

provided that the Applicant:

(i) makes diligent efforts to prepare quarterly compliance reports regarding its efforts to obtain Required Counterparty Feedback, substantially in a form acceptable to OSFI, and in turn acceptable to the OSC;

(ii) makes such quarterly compliance reports available in a timely manner to OSFI and in turn to the OSC; and

(iii) makes diligent efforts, where required, to correct any reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after Required Counterparty Feedback has been obtained,

and provided further that the foregoing exemptions will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which previously unknown or unavailable Required Counterparty Feedback has been provided to the Applicant by the transaction counterparty.

4. Effectiveness of the Order – The exemptions provided pursuant to paragraphs 1, 2 and 3 shall cease to be available on December 18, 2017.

"Kevin Fine"
Director
Ontario Securities Commission

2.1.16 Canadian Imperial Bank of Commerce

Headnote

OSC Rule 91-507 – derivatives trade reporting obligations – applicant seeking extension of relief from requirements relating to the reporting of certain counterparty information – relief granted, subject to conditions, for a period of one year from the date of the decision.

Applicable Legislative Provisions

OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Parts 3 and 6.

December 16, 2016

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, QUÉBEC AND MANITOBA
(THE "JURISDICTIONS")

AND

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

AND

IN THE MATTER OF
CANADIAN IMPERIAL BANK OF COMMERCE
(THE APPLICANT)

DECISION

Background

The securities regulatory authority or regulator in each Jurisdiction (each a "**Decision Maker**") has received an application from the Applicant for an order, in Ontario, pursuant to Part 6 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, in Manitoba pursuant to Part 6 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Québec pursuant to Section 86 and Section 111 of the *Derivatives Act*, CQLR, c. I-14.01, varying the Director's decision dated December 17, 2014 (as varied on December 16, 2015, the "**Existing Relief Decision**"), which provides relief from the following derivatives data reporting requirements in relation to new and existing transactions under Part 3 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* and in Manitoba under Part 3 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, and from equivalent provisions in Québec under Chapter 3 of the Autorité des marchés financiers' Regulation 91-507 – *respecting Trade Repositories and Derivatives Data Reporting*, CQLR, c. I-14.01 (collectively, the "**Local Reporting Provisions**"):

(a) the requirement for a reporting counterparty to report, update, amend or supplement (collectively, "**Report**") the Legal Entity Identifier ("**LEI**") of a transaction counterparty where such Reporting could result in the reporting counterparty breaching laws applicable in the transaction counterparty's own jurisdiction that restrict or limit the disclosure of information relating to the transaction or to the counterparty or that require the transaction counterparty's consent to such disclosure in circumstances where such consent has not been obtained; and

(b) the requirement for a reporting counterparty to Report certain information (as more fully described below) related to or dependent on a transaction counterparty, which information has not been provided to the reporting counterparty by the transaction counterparty or has not otherwise been obtained by the reporting counterparty at the time of reporting.

The Existing Relief Decision ceases to be available after December 17, 2016 (the "**Sunset Provision**").

The Applicant has requested that the Existing Relief Decision be varied (collectively, the "**Variation Relief Sought**") so that the Sunset Provision in the Existing Relief Decision will be extended until December 18, 2017.

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

1. the Ontario Securities Commission ("**OSC**") is the Principal Regulator for this application; and

2. the decision is the decision of the Principal Regulator and evidences the decision of each other Decision Maker.

Interpretation

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

For the purposes of this decision the following terms have the meanings provided in the Existing Relief Decision, which are restated below:

"Blocking Law" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would restrict or limit a subject person's disclosure of information relating to a Subject Transaction or to the counterparty of a Subject Transaction.

"Consent Requirement" means any statute, law, enactment, rule, order, judgement, practice, guideline or decree that would require a counterparty to a Subject Transaction to consent to a subject person's disclosure of information relating to such Subject Transaction or counterparty.

"Trade Specific Requirement" means a requirement arising under a Blocking Law or in connection with a Consent Requirement that would require that steps be taken to comply therewith in connection with and at the time of a Subject Transaction, on a transaction by transaction basis.

Representations

This decision is based on the facts represented by the Applicant set out in the Existing Relief Decision as restated below:

1. the Applicant is a Canadian Schedule I bank under the *Bank Act*, with its head office located in Toronto, Ontario;

2. the Applicant enters into derivatives transactions with multiple counterparties across Canada and around the world;

3. the Applicant is required to Report derivative transaction data in accordance with the applicable Local Reporting Provisions, as mandated by Guideline B-7 of the Office of the Superintendent of Financial Institutions ("**OSFI**");

4. while it is not specifically required by Guideline B-7, the Applicant believes that adhering to the Local Reporting Provisions in Québec and Manitoba is consistent with the principles of the G-20 OTC derivatives reforms, which have been supported by the Government of Canada;

5. on October 29, 2014, the OSC and the Manitoba Securities Commission, and on October 30, 2014, the Autorité des marchés financiers, each published a press release (collectively, the "**Press Releases**") to among other things, provide guidance on the situation where a reporting counterparty may be required to Report a transaction counterparty's LEI despite the fact that such LEI has not been obtained by the transaction counterparty or provided by the transaction counterparty to a reporting counterparty;

6. to the extent that the Press Releases provide guidance in relation to compliance matters pertaining to a transaction counterparty's failure to obtain an LEI or to provide its LEI to the Applicant, the Applicant intends to reflect its understanding of such guidance in complying with the applicable Local Reporting Provisions;

7. the Applicant has established or procured internal technology, systems and procedures that the Applicant believes should enable it to give effect to the Local Reporting Provisions;

8. in order to comply with the Local Reporting Provisions applicable to a transaction, the Applicant may need to: (a) if required by applicable law, obtain a consent from the counterparty to enable the reporting counterparty to disclose information relating to the transaction or counterparty; and (b) receive certain counterparty-specific information, including the counterparty's LEI (or its equivalent), its broker's LEI (where applicable), or information sufficient to enable the Applicant to determine whether the counterparty is a local counterparty (collectively, in respect of a counterparty to a transaction, the "**Required Counterparty Feedback**"); and

9. the Applicant has engaged in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts and as a result has received Required Counterparty Feedback from a majority of its counterparties.

In addition to the restated facts, the Applicant has made the following representations:

10. the Applicant has continued to engage in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, the Applicant has not received Required Counterparty Feedback from all of its counterparties;

11. a failure to provide the Variation Relief Sought could result in inconsistent or disrupted reporting of derivatives data by the Applicant, or in the Applicant not entering into new derivatives transactions with affected transaction counterparties, all of which could have negative implications for the Applicant, the Canadian financial system and the broader Canadian economy;

12. if the Variation Relief Sought is granted, the Applicant will continue to have the opportunity to make diligent efforts to obtain Required Counterparty Feedback while avoiding such negative implications in respect of existing and prospective derivatives transactions other than to the extent contemplated in the proviso set forth in paragraph 3.(A) of this decision;

13. if the Variation Relief Sought is granted, the Applicant will continue to make diligent efforts to obtain the Required Counterparty Feedback from its counterparties;

14. the Applicant has complied with the requirements of the Existing Relief Decision; and

15. the Applicant is not in default of securities legislation in any jurisdiction.

Decision

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

The decision of the Principal Regulator is that the Variation Relief Sought is granted and it orders that, in respect of each transaction that is subject to Reporting in accordance with the applicable Local Reporting Provisions (in each case, a "**Subject Transaction**"), the Existing Relief Decision be varied in part, on the foregoing basis and restated as set forth below:

1. Relief related to Blocking Laws – The Applicant is exempted from the Reporting of creation data under Reporting requirements contained in sections 26, 27(a), 28, 31, 32, 34 and 35 of the applicable Local Reporting Provisions (the "**Reporting Provisions**") only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of a Subject Transaction, in the following circumstances:

    (A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Blocking Law; or

    (B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Blocking Law,

    provided that the Applicant:

        (i) either (x) reports an internal identifier code for its transaction counterparty or (y) if it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Blocking Law, reports that the LEI of the transaction counterparty is undisclosed;

        (ii) prepares and makes available in a timely manner to OSFI and in turn to the OSC (x) a list of all jurisdictions that it reasonably determines are subject to an applicable Blocking Law; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Blocking Law exists;

        (iii) makes diligent efforts to determine whether Blocking Laws exist in the jurisdiction where its transaction counterparty is located; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to a Subject Transaction in reliance on the foregoing exemptions on a timely basis after any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which the Applicant becomes aware that any previously applicable Blocking Law no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

2. Relief Related to Consent Requirements – The Applicant is exempted from the Reporting of creation data under the Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Identifier of non-reporting counterparty" in respect of the Subject Transaction, in the following circumstances:

(A) the Applicant determines that its transaction counterparty or the Subject Transaction is subject to a Consent Requirement and that a required consent has not been provided by the transaction counterparty to the Applicant; or

(B) the Applicant has yet to determine, or having used reasonable efforts has been unable to determine, if its transaction counterparty or the Subject Transaction is subject to a Consent Requirement,

provided that the Applicant:

(i) either (x) reports an internal identifier code for its transaction counterparty or (y) if the Applicant has all necessary processes in place to internally identify its transaction counterparty and it is not feasible or not practical for the Applicant to Report an internal identifier code for the transaction counterparty in compliance with the applicable Consent Requirement, reports that the LEI of the transaction counterparty is undisclosed;

(ii) prepares and makes available in a timely manner to OSFI and in turn to the OSC (x) a list of all jurisdictions that it reasonably determines are jurisdictions in which an applicable Consent Requirement exists; and (y) a list of jurisdictions in respect of which the Applicant has yet to determine, or using reasonable efforts has been unable to determine, if an applicable Consent Requirement exists;

(iii) makes diligent efforts to obtain any required consent from the transaction counterparty, other than any consent that would arise in connection with a Trade Specific Requirement; and

(iv) makes diligent efforts, where required, to correct any Reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after all consents required to satisfy a Consent Requirement in relation to the Subject Transaction have been obtained by the Applicant,

and provided further that the foregoing exemption will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the later of (x) the date on which the transaction counterparty has provided the Applicant with all such required consents and (y) the date on which the Applicant becomes aware that any previously applicable Consent Requirement no longer applies to limit or restrict the Applicant's disclosure of information relating to the Subject Transaction or the transaction counterparty.

3. Required Counterparty Feedback – The Applicant is exempted from the Reporting of creation data under the applicable Local Reporting Provisions only to the extent that the Applicant would be required to Report the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Jurisdiction of non-reporting counterparty" and "Broker/Clearing Intermediary" in respect of the Subject Transaction, in the following circumstances:

(A) Counterparty Status as a Local Counterparty – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty is a "local counterparty" under the Local Reporting Provisions of the Jurisdiction, provided that the Applicant Reports the Subject Transaction to the jurisdiction in which the Applicant has its principal place of business and, if reasonably practicable, makes diligent efforts to use the information from its own systems to Report the Subject Transaction in the transaction counterparty's jurisdiction, in each case if and to the extent it is reportable by the Applicant in such jurisdiction, and provided further that the foregoing exemption detailed in this paragraph 3.(A) shall not be available in respect of a Subject Transaction entered into by the

Applicant on or after June 30, 2017 if the transaction counterparty is a person or company (a) that the Applicant determines (having made diligent efforts to use the information from its own systems) is organized under the laws of the Jurisdiction or has its head office or principal place of business in the Jurisdiction and (b) with whom the Applicant has no pre-existing contractual relationship relating to transacting in derivatives as of such date.

(B) Existence of a Guaranteed Affiliate – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty has an affiliate that is organized under the laws of the Jurisdiction or that has its head office or principal place of business in the Jurisdiction and that is responsible for the liabilities of the transaction counterparty (a "**Guaranteed Affiliate**"), provided that the Applicant otherwise reports the Subject Transaction on the basis that the transaction counterparty is not a Guaranteed Affiliate if the transaction counterparty is otherwise a "local counterparty" under the Local Reporting Provisions; or

(C) Broker LEI – if any applicable broker, who acts as an intermediary for the Applicant in respect of the Subject Transaction, without itself becoming a counterparty, has not provided its LEI to the Applicant, provided that the Applicant Reports the Subject Transaction on the basis that the creation data contemplated in Appendix A of the applicable Local Reporting Provisions under "Broker/Clearing Intermediary" is undisclosed, until such time as such information has been provided to the Applicant,

provided that the Applicant:

(i) makes diligent efforts to prepare quarterly compliance reports regarding its efforts to obtain Required Counterparty Feedback, substantially in a form acceptable to OSFI, and in turn acceptable to the OSC;

(ii) makes such quarterly compliance reports available in a timely manner to OSFI and in turn to the OSC; and

(iii) makes diligent efforts, where required, to correct any reporting it has made in relation to the Subject Transaction in reliance on the foregoing exemptions on a timely basis after Required Counterparty Feedback has been obtained,

and provided further that the foregoing exemptions will continue to apply in respect of the Subject Transaction during a period of up to 3 months following the date on which previously unknown or unavailable Required Counterparty Feedback has been provided to the Applicant by the transaction counterparty.

4. Effectiveness of the Order – The exemptions provided pursuant to paragraphs 1, 2 and 3 shall cease to be available on December 18, 2017.

"Kevin Fine"
Director
Ontario Securities Commission

2.1.17 RBC Capital Markets, LLC and RBC Europe Limited

Headnote

U.S. registered broker-dealer and UK-based affiliate exempted from dealer registration under paragraph 25(1) of the Act in respect of certain trades in debt securities with permitted clients, as defined under NI 31-103, where the debt securities are i) debt securities of Canadian issuers and are denominated in a currency other than the Canadian dollar; or ii) debt securities of any issuer, including a Canadian issuer, and were originally offered primarily in a foreign jurisdiction outside Canada and a prospectus was not filed with a Canadian securities regulatory authority for the distribution – relief is subject to sunset clause – relief as contemplated by CSA Staff Notice 31-346 Guidance as to the Scope of the International Dealer Exemption in relation to Foreign-Currency Fixed Income Offerings by Canadian Issuers

Applicable Legislative Provisions

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.18.

December 16, 2016

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
RBC CAPITAL MARKETS, LLC AND
RBC EUROPE LIMITED
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers (the **Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filers from the dealer registration requirement under the Legislation in respect of trades in debt securities, other than during the distribution of such securities, with permitted clients, as defined under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), where the debt securities are

(a) debt securities of Canadian issuers and are denominated in a currency other than the Canadian dollar; or

(b) debt securities of any issuer, including a Canadian issuer, and were originally offered primarily in a foreign jurisdiction outside Canada and a prospectus was not filed with a Canadian securities regulatory authority for the distribution (the **Exemption Sought**).

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

(a) the Ontario Securities Commission (**OSC**) is the principal regulator for this Application, and

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces of Canada, and Yukon and the Northwest Territories (the **Passport Jurisdictions** and together with the Jurisdiction, the **Jurisdictions**).

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

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

1. RBC Capital Markets, LLC (**RBCCM**) is a limited liability company formed under the laws of the State of Minnesota. Its head office is located in New York, New York, United States of America (**U.S.**).

2. RBC Europe Limited (**RBCEL**) is a limited company formed under the laws of England and Wales. Its head office is located in London in the United Kingdom (**U.K.**).

3. RBCCM is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) and a member of the Financial Industry Regulatory Authority (**FINRA**), a self-regulatory organization.

4. RBCEL is authorised by the U.K. Prudential Regulation Authority (**PRA**) and regulated by the Financial Conduct Authority (**FCA**) and PRA.

5. RBCCM's registration and RBCEL's authorisation subject the Filers to requirements over regulatory capital, lending of money, extension of credit and provision of margin, financial reporting, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer-members of the Investment Industry Regulatory Organization of Canada (**IIROC**) are subject.

6. The Filers provide a variety of capital raising, investment banking, market making, brokerage, and advisory services, including fixed income and equity sales and research, securities lending and derivatives dealing for governments, corporate and financial institutions.

7. RBCCM is currently relying on the "international dealer exemption" under section 8.18 of NI 31-103 in each of the Jurisdictions. RBCEL is currently relying on the "international dealer exemption" under section 8.18 of NI 31-103 in Alberta, British Columbia, Ontario and Québec.

8. The Filers are in compliance in all material respects with U.S. and U.K. securities laws, as applicable. The Filers are not in default of Canadian securities laws.

9. The Filers wish to trade in debt securities of Canadian issuers with permitted clients other than during such securities' distribution.

10. Subsection 8.18(2)(b) of NI 31-103 provides that, subject to subsections 8.18(3) and 8.18(4), the dealer registration requirement does not apply in respect of a trade in a debt security with a permitted client during the security's distribution, if the debt security is offered primarily in a foreign jurisdiction and a prospectus has not been filed with a Canadian securities regulatory authority for the distribution. Subsection 8.18(2)(c) of NI 31-103 provides that, subject to subsections 8.18(3) and 8.18(4), the dealer registration requirement does not apply in respect of a trade in a debt security that is a foreign security with a permitted client, other than during the security's distribution.

11. The permitted activities under subsection 8.18(2) of NI 31-103 do not include a trade in a debt security of a Canadian issuer with a permitted client, other than during the security's distribution in the limited circumstances described above.

12. On September 1, 2016 the Staff of the Canadian Securities Administrators (**CSA Staff**) published CSA Staff Notice 31-346 *Guidance as to the Scope of the International Dealer Exemption in relation to Foreign-Currency Fixed Income Offerings by Canadian Issuers* (the **Staff Notice**).

13. CSA Staff stated in the Staff Notice that they did not believe there was a policy reason to limit the exemption in subsection 8.18(2) of NI 31-103 to trades that occur during the initial period of the securities' distribution or to conclude that an international dealer should be permitted to sell a debt security to a Canadian institutional investor but not be permitted to act for the institutional investor in connection with the resale of the security. CSA Staff further stated that

they were prepared to recommend exemptive relief to permit international dealers to deal with institutional investors to facilitate resales of debt securities, subject to conditions the CSA consider appropriate.

14. Accordingly, the Filers are seeking exemptive relief as contemplated by the Staff Notice to permit the Filers to deal with Canadian permitted clients in connection with resales of debt securities that may be distributed to the permitted clients in reliance on the international dealer exemption in section 8.18 of NI 31-103.

15. It may be difficult at the time of a resale of a debt security to determine whether the debt security was originally offered as part of an offering that was made primarily in a foreign jurisdiction or whether a prospectus was filed in Canada in connection with such offering. However, the Filers believe, based on their experience with foreign-currency-denominated fixed income offerings by Canadian issuers (Canadian foreign-currency fixed income offerings), that such offerings are generally made primarily outside of Canada. Accordingly, the Filers believe that the denomination of an offering of debt securities in a foreign currency will be a reasonable proxy for determining whether the offering was originally made primarily outside of Canada.

16. Similarly, the Filers believe, based on their experience with Canadian foreign-currency fixed income offerings, that, to the extent that debt securities that are the subject of such offerings are listed on a stock exchange, they will typically not be listed on a stock exchange situated in Canada. To the extent that foreign-currency-denominated debt securities of a Canadian issuer are listed on a stock exchange situated in Canada, investors will be required to trade such debt securities through an IIROC registered dealer.

17. The Filers are "market participants" as defined under subsection 1(1) of the OSA. As market participants, among other requirements, the Filers are required to comply with the record keeping and provision of information provisions under section 19 of the OSA, which include the requirement to keep such books, records and other documents (a) as are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others, (b) as may otherwise be required under Ontario securities law, and (c) as may reasonably be required to demonstrate compliance with Ontario securities laws, and to deliver such records to the OSC if required.

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 the Filers comply with the terms and conditions described in section 8.18 of NI 31-103 as if the Filers had made the trades in reliance on an exemption contained in section 8.18.

It is further the decision of the principal regulator that the Exemption Sought shall expire on the date that is the earlier of:

(a) the date on which amendments to the international dealer exemption in section 8.18 of NI 31-103 come into force that address the ability of international dealers to trade debt securities of Canadian issuers; and

(b) five years after the date of this decision.

"Edward P. Kerwin"
Vice-Chair or Commissioner
Ontario Securities Commission

"William Furlong"
Vice-Chair or Commissioner
Ontario Securities Commission

2.1.18 Merrill Lynch, Pierce, Fenner & Smith Incorporated and Merrill Lynch Professional Clearing Corp.

Headnote

U.S. registered broker dealer exempted from dealer registration under paragraph 25(1) of the Act for provision of prime brokerage services – relief limited to trades in Canadian securities for institutional permitted clients – relief is subject to sunset clause.

Applicable Legislative Provisions

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 74(1).

Instruments Cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.5, 8.18, 8.21.
National Instrument 81-102 Investment Funds.

December 16, 2016

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
MERRILL LYNCH, PIERCE, FENNER & SMITH INCORPORATED AND
MERRILL LYNCH PROFESSIONAL CLEARING CORP.
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers (the **Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Filers from dealer registration under section 25(1) of the *Securities Act* (Ontario) (the **Act**) in respect of Prime Services (as defined below) relating to securities of Canadian issuers and that are provided in Canada to Institutional Permitted Clients (as defined below) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission (**OSC**) is the principal regulator for this Application, and

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada in which the Filer relies on the exemption found in section 8.18 [*International dealer*] of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) other than the province of Alberta (the **Passport Jurisdictions** and together with the Jurisdiction, the **Jurisdictions**).

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.

For the purposes of this decision, the following term has the following meaning:

"Institutional Permitted Client" shall mean a "permitted client" as defined in section 1.1 of NI 31-103, except for: (a) an individual, (b) a person or company acting on behalf of a managed account of an individual, (c) a person or company referred to in paragraph (p) of that definition, unless that person or company qualifies as an Institutional Permitted Client under another paragraph of that definition, or (d) a person or company referred to in paragraph (q) of that definition unless that person or company has net assets of at least $100 million as shown on its most recently prepared financial statements or qualifies as an Institutional Permitted Client under another paragraph of that definition.

Representations

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

1. Each of the Filers is a corporation formed under the laws of the State of Delaware. Both of the Filers' head offices are located at One Bryant Park, New York, New York, 10036, United States of America (**U.S.**). Merrill Lynch Professional Clearing Corp. (**MLPro**) is a subsidiary of Merrill Lynch, Pierce, Fenner & Smith Incorporated (**MLPFS**). MLPFS is a wholly-owned subsidiary of Bank of America Corporation, held through its wholly-owned subsidiaries BAC North America Holding Company and NB Holdings Corporation.

2. Each of the Filers is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**) and is a member of the Financial Industry Regulatory Authority (**FINRA**). This registration and membership permits each of the Filers to provide Prime Services (as defined below) in the U.S.

3. MLPFS is a member of a number of major U.S. securities exchanges, including the New York Stock Exchange and NASDAQ. MLPFS is also a member of the Chicago Board Options Exchange, the MIAX Options Exchange, the International Securities Exchange, the BOX Options Exchange, and other principal U.S. commodity exchanges, and trades through affiliated or unaffiliated member firms on all other exchanges, including exchanges in Canada, France, Italy, Japan, Singapore, Spain, Taiwan, Mexico, Korea and the United Kingdom.

4. MLPro is a member of the New York Stock Exchange and NASDAQ. MLPro is also a member of the Chicago Board Options Exchange, MIAX Options Exchange, International Securities Exchange, BOX Options Exchange and other principal U.S. commodity exchanges, and trades through affiliated or unaffiliated member firms on all other exchanges, including exchanges in Canada, France, Italy, Japan, Singapore, Spain, Taiwan, Mexico, Korea and the United Kingdom.

5. MLPFS provides a variety of capital raising, investment banking, market making, brokerage, and advisory services, including fixed income and equity sales and research, commodities trading, emerging markets activities, securities lending and investment banking for governments, corporate and financial institutions. MLPFS also conducts proprietary trading activities.

6. MLPro provides Prime Services (as defined below) and third party securities clearing services.

7. MLPFS provides trade execution services and Prime Services (defined below) through two different business units and the two business units are separated by information barriers. MLPFS relies on section 8.18 [*International dealer*] of NI 31-103 to provide trade execution services in respect of "foreign securities" as defined in that section. MLPFS also relies on the exemptions found in section 8.5 [*Trades through or to a registered dealer*], in paragraphs (a), (b) and (f) of subsection 8.18(2) [*International dealer*], and in section 8.21 [*Specified debt*] of NI 31-103 to provide limited trade execution services in respect of securities of Canadian issuers.

8. MLPro does not provide trade execution services.

9. "Prime Services" provided by the Filers principally consists of the following: (a) settlement, clearing and custody of trades; (b) financing of long inventory; (c) securities borrowing and/or lending pursuant to a securities lending agreement or delivering securities on behalf of a client pursuant to a margin agreement, in each case, to facilitate client short sales; and (d) reporting of positions, margin and other balances and activity. For greater clarity, Prime Services do not include execution of trades in securities.

10. The Filers provide or wish to provide Prime Services in the Jurisdictions to Institutional Permitted Clients (the **Prime Services Clients**).

11. In the case of a Prime Services Client that is an investment fund subject to Part 6 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), the custodianship requirements in Part 6 of NI 81-102 would only permit the Filers to

provide the Prime Services to the investment fund as a sub-custodian of the investment fund in respect of portfolio assets held outside Canada.

12. MLPFS offers Prime Services to Institutional Permitted Clients for fixed income securities.

13. MLPro offers Prime Services to Institutional Permitted Clients for equities and other non-fixed income securities.

14. Prime Services Clients seek Prime Services from the Filers in order to separate the execution of a trade from the clearing, settlement, custody and financing of a trade. This allows the Prime Services Client to use many executing brokers, without maintaining an active, ongoing custody account with each executing broker. It also allows the Prime Services Client to consolidate settlement, clearing, custody and financing of securities in an account with the Filers.

15. The Filers' Prime Services Clients directly select their executing brokers. The Filers do not require their Prime Services Clients to use specific executing brokers through which Prime Services Clients must execute trades. Prime Services Clients send trade orders to the executing broker who carries out the trade. The executing broker will be an appropriately registered dealer or a person or company relying on an exemption from dealer registration that permits such executing broker to execute the trade for Prime Services Clients.

16. The Filers provide the Prime Services after the execution of the trade, but any commitment to provide financing or to lend or borrow securities in relation to a trade may be made prior to the execution of the trade. The executing broker will communicate trade details to a Prime Services Client and the applicable Filer or Filer's clearing agent, as applicable. A Prime Services Client will also communicate trade details to the applicable Filer. For trades executed on a Canadian marketplace, the applicable Filer will typically need to clear and settle the trades through a participant of the Canadian depository, clearing and settlement hub, CDS Clearing and Depository Services Inc.

17. The Filers exchange money or securities and hold the money or securities in an account for each Prime Services Client. If a Filer is clearing and settling the trade through a clearing agent, the Filer's clearing agent exchanges money or securities and holds the money or securities in an omnibus account for the Filer, which in turn maintains a record of the position held for the Prime Services Client on its books and records.

18. On or following settlement, the Filers provide the other Prime Services as set out in paragraph 9.

19. The Filers enter into written agreements with all of their Prime Services Clients for the provision of Prime Services.

20. On September 2, 2011, in CSA Staff Notice 31-327 *Broker-Dealer Registration in the Exempt Market Dealer Category*, the Canadian Securities Administrators (**CSA**) stated that they had concerns with firms applying for registration in and with firms registered in the category of exempt market dealer (**EMD**) who were carrying on brokerage activities, including trading listed securities. In light of these regulatory concerns, firms applying for registration were instead registered in the restricted dealer category with terms and conditions. The interim restricted dealer registrations were time limited and were intended to allow applicants to engage in limited activities while the CSA reviewed the activities of firms registered in the category of EMD and restricted dealer.

21. MLPFS was registered as an EMD in the provinces of Alberta, British Columbia, Ontario and Quebec and was subject to the requirements of NI 31-103. MLPro was registered as a restricted dealer in the provinces of Alberta, British Columbia, Ontario, and Québec, and its registration was subject to a sunset clause. As a restricted dealer, MLPro was subject to the requirements of NI 31-103.

22. On February 7, 2013, in CSA Staff Notice 31-333 *Follow-up to Broker-Dealer Registration in the Exempt Market Dealer Category*, the CSA stated that they would be publishing amendments to NI 31-103 that would prohibit exempt market dealers from trading in a security if the security is listed, quoted or traded on a marketplace and if the trade in the security does not require reliance on a further exemption from the prospectus requirement (the **Rule Amendments**). The CSA stated that restricted dealers conducting brokerage activities in accordance with the terms and conditions of their registration would have their registration and any related exemptive relief extended to the date the Rule Amendments came into effect.

23. The Rule Amendments came into effect on July 11, 2015. At that time, MLPFS agreed to surrender its EMD registration and MLPro's registration in the category of restricted dealer expired. Since the implementation of the Rule Amendments, only investment dealers that are dealer-members of the Investment Industry Regulatory Organization of Canada (**IIROC**) or firms relying on an applicable exemption from the dealer registration requirement are permitted to engage in trading in a security if the security is listed, quoted or traded on a marketplace and if the trade in the security does not require reliance on a further exemption from the prospectus requirement in the Jurisdictions.

24. MLPFS relies on the international dealer exemption under section 8.18 of NI 31-103 in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan to provide Prime Services in respect of "foreign securities" as defined in section 8.18 of NI 31-103.

25. MLPro relies on the international dealer exemption under section 8.18 of NI 31-103 in Alberta, British Columbia, Ontario and Québec to provide Prime Services in respect of "foreign securities" as defined in section 8.18 of NI 31-103.

26. The Filers are not registered under NI 31-103, are in the business of trading, and in the absence of the Exemption Sought, cannot provide the full range of Prime Services in the Jurisdictions in respect of securities of Canadian issuers without registration, except as permitted under section 8.5 [*Trades through or to a registered dealer*], under the exemptions found in paragraphs (a), (b) and (f) of subsection 8.18(2) [*International dealer*], and under section 8.21 [*Specified debt*] of NI 31-103.

27. The Filers are subject to regulatory capital requirements under the *Securities Exchange Act of 1934* (the **1934 Act**), specifically SEC Rule 15c3-1 *Net Capital Requirements for Brokers or Dealers* (**SEC Rule 15c3-1**) and SEC Rule 17a-5 *Reports to be Made by Certain Brokers and Dealers* (**SEC Rule 17a-5**). MLPFS has been approved by the SEC pursuant to SEC Rule 15c3-1 to use the alternative method of computing net capital contained in Appendix E to SEC Rule 15c3-1, and therefore files such supplemental and alternative reports as may be prescribed by the SEC. The Alternative Net Capital (**ANC**) method provides large broker-dealers meeting specified criteria, such as MLPFS, with an alternative to use mathematical models such as the value at risk model to calculate capital requirements for market and derivatives related credit risk. MLPFS, who uses the ANC method, must document and implement a comprehensive internal risk management system which addresses market, credit, liquidity, legal and operational risk at the firm.

28. SEC Rule 15c3-1 also requires the Filers to account for any guarantee of debt of a third party in calculating its excess net capital. In particular, in the event that the Filers provide a guarantee of any debt of a third party, it will be required to deduct the total amount of the guarantee in calculating its net capital. MLPro does not guarantee the debt of any third party. MLPFS guarantees the debt of MLPro.

29. SEC Rule 15c3-1 is designed to provide protections that are substantially similar to the protections provided by the capital formula requirements and specifically risk adjusted capital to which dealer members of IIROC are subject, and the Filers are in compliance with SEC Rule 15c3-1 and are in compliance in all material respects with SEC Rule 17a-5. If the Filers' net capital declines below the minimum amount required, the Filers are required to notify the SEC and FINRA pursuant to SEC Rule 17a-11 *Notification Provisions for Brokers and Dealers* (**SEC Rule 17a-11**). The SEC and FINRA have the responsibility to provide oversight over the Filers' compliance with SEC Rule 15c3-1 and SEC Rule 17a-5.

30. The Filers are required to prepare and file a financial report, which includes Form X-17a-5 (the **FOCUS Report**), which is the financial and operational report containing a net capital calculation, and a compliance report annually with the SEC and FINRA pursuant to SEC Rule 17a-5(d). The FOCUS Report provides a more comprehensive description of the business activities of the Filers, and more accurately reflects those activities including client lending activity, than would be provided by Form 31-103F1 *Calculation of Excess Working Capital* (**Form 31-103F1**). The net capital requirements computed using methods prescribed by SEC Rule 15c3-1 are based on all assets and liabilities on the books and records of a broker-dealer whereas Form 31-103F1 is a calculation of excess working capital, which is a computation based primarily on the current assets and current liabilities on the books and records of the dealer. The Filers are up-to-date in their respective submissions of annual reports under SEC Rule 17a-5(d), including the FOCUS Report.

31. The Filers are subject to regulations of the Board of Governors of the U.S.A. Federal Reserve Board (**FRB**), the SEC and FINRA regarding the lending of money, extension of credit and provision of margin to clients (the **U.S. Margin Regulations**) that provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which dealer members of IIROC are subject. In particular, the Filers are subject to the margin requirements imposed by the FRB, including Regulation T and under applicable SEC rules and under FINRA Rule 4210. The Filers are in compliance in all material respects with applicable U.S. Margin Regulations.

32. The Filers hold customer assets in accordance with Rule 15c3-3 of the 1934 Act, as amended (**SEC Rule 15c3-3**). Rule 15c3-3 requires the Filer to segregate and keep segregated all "fully-paid securities" and "excess margin securities" (as such terms are defined in Rule 15c3-3) of its customers from its proprietary assets. In addition to the segregation of customers' securities, SEC Rule 15c3-3 requires the Filers to deposit an amount of cash or qualified government securities determined in accordance with a reserve formula set forth in SEC Rule 15c3-3 in an account entitled "Special Reserve Account for the Exclusive Benefit of Customers" of such Filer at separate banks and/or custodians. The combination of segregated securities and cash reserve are designed to ensure that the Filers have

sufficient assets to cover all net equity claims of its customers and provide protections that are substantially similar to the protections provided by the requirements dealer members of IIROC are subject. If the Filers fail to make an appropriate deposit, the Filers are required to notify the SEC and FINRA pursuant to SEC Rule 15c3-3(i). The Filers are in material compliance with the possession and control requirements of SEC Rule 15c3-3.

33. The Filers are members of the Securities Investors Protection Corporation (**SIPC**) and, subject to the eligibility criteria of SIPC, Prime Services Clients' assets held by the Filers are insured by SIPC against loss due to insolvency.

34. Filers are in compliance in all material respects with U.S. securities laws. Subject to the matter to which the Exemption Sought relates, the Filers are not in default of securities legislation in any jurisdiction in Canada.

35. The Filers submit that the Exemption Sought would not be prejudicial to the public interest because:

    (a) the Filers are regulated as broker-dealers under the securities legislation of the U.S., and are subject to the requirements listed in paragraphs 26 to 31,

    (b) the availability of and access to Prime Services is important to Canadian institutional investors who are active participants in the international marketplace,

    (c) the Filers will provide Prime Services in the Jurisdictions only to Institutional Permitted Clients;

    (d) the OSC has entered into a memorandum of understanding with the SEC regarding mutual assistance in the supervision and oversight of regulated entities that operate on a cross-border basis in the U.S. and Canada; and

    (e) the OSC has entered into a memorandum of understanding with FINRA to provide a formal basis for the exchange of regulatory information and investigative assistance.

36. At the request of the Alberta Securities Commission, the Filer will not rely on subsection 4.7(1) of MI 11-102 to passport this decision into Alberta.

37. The Filers are "market participants" as defined under subsection 1(1) of the Act. As market participants, among other requirements, the Filers are required to comply with the record keeping and provision of information provisions under section 19 of the Act, which include the requirement to keep such books, records and other documents as are necessary for the proper recording of business transactions and financial affairs, and the transactions executed on behalf of others and to deliver such records to the OSC if required.

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 so long as each Filer:

(a) has its head office or principal place of business in the U.S.;

(b) is registered as a broker-dealer under the securities legislation of the U.S., which permits each Filer to provide the Prime Services in the U.S.;

(c) is a member of FINRA;

(d) is a member of SIPC;

(e) is subject to requirements over regulatory capital, lending of money, extension of credit and provision of margin, financial reporting to the SEC and FINRA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer members of IIROC are subject;

(f) limits its provision of Prime Services in the Jurisdictions in respect of securities of Canadian issuers to Institutional Permitted Clients;

(g) does not execute trades in securities of Canadian issuers with or for Prime Services Clients, except as permitted under applicable Canadian securities laws;

(h) does not require its Prime Services Clients to use specific executing brokers through which Prime Services Clients must execute trades;

(i) notifies the OSC of any regulatory action initiated after the date of this decision in respect of the Filer, or any predecessors or specified affiliates of the Filer, by completing and filing with the OSC Appendix "A" hereto within ten days of the commencement of any such action; provided that the Filer may also satisfy this condition by filing with the OSC within ten days of the date of this decision a notice making reference to and incorporating by reference the disclosure made by the Filer pursuant to U.S. federal securities laws that is identified in the FINRA BrokerCheck system, and any updates to such disclosure that may be made from time to time, and by providing notification, in a manner reasonably acceptable to the Director, of any filing of a Form BD 'Regulatory Action Disclosure Reporting Page';

(j) submits the financial report and compliance report as described in SEC Rule 17a-5(d) to the OSC on an annual basis, at the same time such reports are filed with the SEC and FINRA;

(k) submits audited financial statements to the OSC on an annual basis, within 90 days of the Filer's financial year end;

(l) submits to the OSC immediately a copy of any notice filed under SEC Rule 17a-11 or under SEC Rule 15c3-3(i) with the SEC and FINRA;

(m) complies with the filing and fee payment requirements applicable to a registrant under OSC Rule 13-502 Fees;

(n) files in an electronic and searchable format with the OSC such reports as to any or all of its trading activities in Canada as the OSC may, upon notice, require from time to time; and

(o) pays the increased compliance and case assessment costs of the principal regulator due to the Filer's location outside Ontario, including, as required, the reasonable cost of hiring a third party to perform a compliance review on behalf of the principal regulator.

This decision shall expire five years after the date hereof.

This decision may be amended by the OSC from time to time upon prior written notice to the Filers.

"Monica Kowal"
Vice-Chair
Ontario Securities Commission

"D. Grant Vingoe"
Vice-Chair
Ontario Securities Commission

APPENDIX "A"

NOTICE OF REGULATORY ACTION

1. Has the firm or any predecessors or specified affiliates of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

   Yes _____ No _____

   If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
(a)	Determined that the firm or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	___	___
(b)	Determined that the firm or any predecessors or specified affiliates of the firm made a false statement or omission?	___	___
(c)	Issued a warning or requested an undertaking by the firm or any predecessors or specified affiliates of the firm?	___	___
(d)	Suspended or terminated any registration, licensing or membership of the firm or any predecessors or specified affiliates of the firm?	___	___
(e)	Imposed terms or conditions on any registration or membership of the firm or predecessors or specified affiliates of the firm?	___	___
(f)	Conducted a proceeding or investigation involving the firm or any predecessors or specified affiliates of the firm?	___	___
(g)	Issued an order (other than an exemption order) or a sanction to the firm or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	___	___

   If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

   Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:
https://www.osc.gov.on.ca/filings

2.1.19 Chatham Asset Management, LLC

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions -National Instrument 62-104 Take-Over Bids, s. 6.1(1) – Filer exempt from the take-over bid requirements in Part 2 of NI 62-104 in connection with proposed normal course purchases of the variable voting shares of the Issuer, subject to conditions – Filer acquired large block of Issuer's variable voting shares in connection with Issuer's recapitalization transaction by way of plan of arrangement – Filer seeking flexibility to purchase additional variable voting shares in market and to provide liquidity in variable voting shares – Filer granted relief to acquire variable voting shares in normal course provided that such purchases satisfy the requirements of section 4.1 of NI 62-104, except that, for the purpose of calculating the 5% purchase limit, the variable voting shares acquired by the Filer pursuant to the Issuer's recapitalization will be excluded – Issuer advised of the application and Filer intends to seek waiver of Issuer's shareholder rights plan to make additional purchases of variable voting shares under the Order.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am.
National Instrument 62-104 Take-Over Bids, Part 2 and s. 6.1(1).

December 15, 2016

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
CHATHAM ASSET MANAGEMENT, LLC
(the "Filer")

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 of the principal regulator (the "**Legislation**") for an exemption (the "**Relief Sought**") from the take-over bid requirements under the Legislation in connection with certain normal course purchases in the market of variable voting shares (as defined below) of Postmedia Network Canada Corp. ("**Postmedia**") by the Filer and investment funds for which the Filer acts as manager, advisor or subadvisor (the "**Filer Funds**").

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

(a) the Ontario Securities Commission is the principal regulator for the Application; and

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Québec, Saskatchewan, Yukon Territory, Northwest Territories and Nunavut.

Interpretation

Defined terms contained in National Instrument 14-101 *Definitions* and MI 11-102 have the same meaning in this decision unless otherwise set forth herein.

Representations

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

1. The Filer is a privately held registered investment advisor registered under the U.S. *Investment Advisers Act of 1940*, as amended, that acts as manager, advisor or subadvisor to certain investment funds, including the Filer Funds.

2. The principal executive offices of the Filer and the Filer Funds are located in Chatham, New Jersey, USA.

3. Postmedia is a holding company incorporated under the federal laws of Canada, which conducts its news media business through its wholly-owned subsidiary, Postmedia Network Inc. ("**PNI**"). Postmedia's head and registered office is located at 365 Bloor Street East, 12th Floor, Toronto, Ontario.

4. Postmedia is a reporting issuer in each of the provinces and territories of Canada. Postmedia is authorized to issue an unlimited number of Class C voting shares (the "**Voting Shares**") and an unlimited number of Class NC variable voting shares (the "**Variable Voting Shares**"). The Variable Voting Shares are convertible into Voting Shares by Canadians on a one-for-one basis. The Voting Shares and Variable Voting Shares are listed on the Toronto Stock Exchange under the symbols PNC.A and PNC.B, respectively.

5. On October 5, 2016, Postmedia completed by way of a corporate plan of arrangement under the *Canada Business Corporations Act* a recapitalization transaction (the "**Recapitalization**"), by which all of the 12.50% senior secured notes due July 2018 (the "**Second Lien Notes**") issued by PNI, in the aggregate principal amount of approximately US$268.6 million, together with all interest accrued from and after July 15, 2016, were exchanged for Variable Voting Shares of Postmedia.

6. Upon completion of the Recapitalization, there were 93,717,199 outstanding shares of Postmedia, consisting of 93,676,563 Variable Voting Shares and 40,636 Voting Shares. Except as required by law, the Variable Voting Shares and the Voting Shares vote together as a single class, with the Variable Voting Shares limited to 49.9% of the votes.

7. Prior to the Recapitalization, the Filer Funds held approximately US$178,909,000 principal amount (plus accrued interest) of Second Lien Notes, but did not hold any shares in Postmedia.

8. Through the Recapitalization, the Filer Funds exchanged Second Lien Notes for 61,166,689 Variable Voting Shares (the "**Recapitalization Block**"). The Filer exercises control or direction over the investments of the Filer Funds, including the Recapitalization Block. The Recapitalization Block represents approximately 65% of the outstanding Variable Voting Shares of Postmedia and approximately 32% of the voting rights attached to all voting securities of Postmedia.

9. Neither the Filer nor the Filer Funds have acquired any Voting Shares or Variable Voting Shares subsequent to the Recapitalization.

10. As a result of its acquisition of the Recapitalization Block, the Filer exercises control or direction over more than 20% of the outstanding Variable Voting Shares. Any additional acquisitions of Variable Voting Shares by the Filer on either its own behalf or on behalf of the Filer Funds to which the legislation applies would constitute a take-over bid under the applicable provisions under the Legislation, unless an exemption is otherwise available.

11. Subject to applicable law and depending on the prices at which the Variable Voting Shares are trading, the Filer intends to acquire a limited number of additional Variable Voting Shares on behalf of the Filer Funds . If the Filer acquires voting rights that would give it 331/3% or more of the voting rights attached to all voting securities of Postmedia, Investment Canada Act approval may be required. The Filer does not intend to acquire additional Variable Voting Shares if such acquisition would result in 331/3% or more of the voting rights of Postmedia's voting securities being held by the Filer Funds.

12. As a result of its acquisition of the Recapitalization Block, the Filer is unable to acquire additional Variable Voting Shares through normal course purchases in the market pursuant to the take-over bid exemption in section 4.1 of National Instrument 62-104 – *Take-over Bids and Issuer Bids* (the "**Normal Course Purchase Exemption**") until 12 months after October 5, 2016, being the date when the Filer Funds acquired the Recapitalization Block. The Filer would like the flexibility to acquire on behalf of the Filer Funds additional Variable Voting Shares listed on the Toronto Stock Exchange during the 12 month period since the Filer Funds acquired the Recapitalization Block. The interest of the Filer in being able to acquire Variable Voting Shares is not to gain legal control of Postmedia but instead to preserve its ability to purchase Variable Voting Shares, depending on the prices at which the Variable Voting Shares are trading, and to provide liquidity to the market.

13. As part of the Recapitalization, Postmedia amended and restated its shareholder rights plan ("**SRP**"). The Filer, as a result of its purchases on behalf of the Filer Funds, is a "grandfathered person" under the SRP. Any additional purchases of Voting Shares or Variable Voting Shares by the Filer either on its own behalf or on behalf of the Filer Funds, including any purchases of Variable Voting Shares made under this Order, will trigger the SRP unless the application of the SRP is otherwise waived by Postmedia.

14. The Filer has advised Postmedia that it has made an application for the Relief Sought. The Filer intends to seek a waiver of the SRP from Postmedia to enable the Filer to acquire Variable Voting Shares pursuant to this Order and, to the Filer's knowledge, Postmedia will consider such waiver request. The Filer will not acquire Variable Voting Shares pursuant to this Order unless Postmedia has waived the application of the SRP in respect of such acquisitions.

15. Neither the Filer nor any of the Filer Funds will purchase Variable Voting Shares at any time when they have knowledge of any material fact or material change about Postmedia which has not been generally disclosed.

Decision

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

The decision of the principal regulator under the Legislation is that the Relief Sought is granted provided that the acquisitions of Variable Voting Shares by the Filer or the Filer Funds in the market comply with the Normal Course Purchase Exemption, except that, for the purpose of determining the number of Variable Voting Shares acquired by the Filer or the Filer Funds within the twelve-month period preceding the date of any such purchase of Variable Voting Shares in the market, the Recapitalization Block shall be excluded in the calculation of acquisitions of Variable Voting Shares otherwise made by the Filer or the Filer Funds within the previous twelve-month period.

Dated at Toronto this 15th day of December, 2016.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.1.20 Alignvest Acquisition Corporation

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted relief from certain restricted security requirements under National Instrument 41-101 General Prospectus Requirements, National Instrument 44-101 Short Form Prospectus Distributions, and National Instrument 51-102 Continuous Disclosure Obligations – relief granted subject to conditions.

OSC Rule 56-501 Restricted Shares – Issuer granted relief from certain restricted share requirements under OSC Rule 56-501 – relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 12.2, 12.3, 19.1.
Form 41-101F1 Information Required in a Prospectus, ss. 1.13, 10.6.
National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.
Form 44-101F1 Short Form Prospectus, ss. 1.12, 7.7.
National Instrument 51-102 Continuous Disclosure Obligations, Part 10 and s. 13.1.
OSC Rule 56-501 Restricted Shares, Parts 2 and 3, and s. 4.2.

December 20, 2016

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
ALIGNVEST ACQUISITION CORPORATION
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction (the "**Decision Maker**") has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") that the requirements under:

(a) Section 12.2 of National Instrument 41-101 *General Prospectus Requirements* ("**NI 41-101**"), relating to the use of restricted security terms, and sections 1.13 and 10.6 of Form 41-101F1 *Information Required in a Prospectus* ("**Form 41-101F1**") and sections 1.12 and 7.7 of Form 44-101F1 *Short Form Prospectus (*"**Form 44-101F1**") relating to restricted security disclosure shall not apply to the Common Shares (as defined below) (the "**Prospectus Disclosure Exemption**") in connection with: (i) a final non-offering prospectus (the "**Non-Offering Prospectus**"), and any amendments thereto, to be filed by the Filer in connection with the proposed Qualifying Transaction (as defined below); and (ii) prospectuses ("**Other Prospectuses**") that may be filed by the Filer under NI 41-101 or National Instrument 44-101 *Short Form Prospectus Distributions* ("**NI 44-101**"), including a prospectus filed under National Instrument 44-102 *Shelf Distributions*;

(b) Part 10 of National Instrument 51-102 *Continuous Disclosure Obligations* ("**NI 51-102**") relating to the use of restricted security terms and restricted security disclosure shall not apply to the Common Shares (the "**CD Disclosure Exemption**") in connection with: (i) a management information circular (the "**Circular**") that is being prepared in connection with an upcoming meeting of the Filer's shareholders to consider a plan of arrangement involving the Filer and Trilogy International Partners LLC ("**TIP LLC**") in connection with the proposed Qualifying Transaction; and (ii) continuous disclosure documents ("**Other CD Documents**") that may be filed by the Filer under NI 51-102;

(c) Section 12.3 of NI 41-101 relating to prospectus filing eligibility for distributions of restricted securities shall not apply to distributions of Common Shares (the "**Prospectus Eligibility Exemption**") in connection with Other Prospectuses;

(d) Part 2 of OSC Rule 56-501 *Restricted Shares* ("**OSC Rule 56-501**") relating to the use of restricted share terms and restricted share disclosure shall not apply to the Common Shares (the "**OSC Rule 56-501 Disclosure Exemption**") in connection with dealer and adviser documentation, rights offering circulars and offering memoranda ("**OSC Rule 56-501 Documents**") of the Filer; and

(e) Part 3 of OSC Rule 56-501 relating to the withdrawal of prospectus exemptions for distributions of restricted shares shall not apply to the distribution of the Class B Shares (as defined below), the Common Shares and the Special Voting Share (as defined below) (the "**OSC Rule 56-501 Withdrawal Exemption**") in connection with: (i) distributions of the Class B Shares, the Common Shares, and the Special Voting Share in connection with the proposed Qualifying Transaction; and (ii) stock distributions (as defined in OSC Rule 56-501) of the Filer.

The Prospectus Disclosure Exemption, the CD Disclosure Exemption, the Prospectus Eligibility Exemption, the OSC Rule 56-501 Disclosure Exemption and the OSC Rule 56-501 Withdrawal Exemption are collectively referred to as the "**Exemption Sought**".

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

(i) the Ontario Securities Commission is the principal regulator for this application; and

(ii) the Filer has provided notice that Section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, the Yukon Territory, Nunavut and the Northwest Territories (the "**Passport Jurisdictions**") (other than with respect to the OSC Rule 56-501 Disclosure Exemption and the OSC Rule 56-501 Withdrawal Exemption), which, pursuant to Section 8.2(2) of National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* ("**NP 11-202**") and Section 5.2(6) of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* ("**NP 11-203**"), also satisfies the notice requirement of Section 4.7(1)(c) of MI 11-102.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NP 11-202, NP 11-203, NI 41-101, NI 44-101, NI 51-102 and OSC Rule 56-501 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation incorporated under the *Business Corporations Act* (Ontario).

2. The Filer is a reporting issuer in all of the provinces and territories of Canada and is not in default in any material respect under applicable securities legislation in such jurisdictions.

3. The Filer is a "special purpose acquisition corporation" or "SPAC" under Part X of the Toronto Stock Exchange Company Manual ("**Part X**"), as varied by exemptive relief, having completed its SPAC initial public offering ("**IPO**") on June 24, 2015 pursuant to a final prospectus that was filed in each of the provinces and territories of Canada dated June 16, 2015.

4. The Filer's authorized share capital currently consists of shares of two classes: Class A Restricted Voting Shares, issued to investors in the Filer's initial public offering, and Class B Shares held by the Filer's founding shareholders (some of which were also qualified under the IPO prospectus). In addition, the Filer issued share purchase warrants as part of the IPO, each such warrant being exercisable, beginning 30 days after completion of a "qualifying acquisition" by the Filer, to acquire one Class B Share at a price of Cdn. $11.50 per share.

5. The Class A Restricted Voting Shares and share purchase warrants of the Filer are listed on the TSX under the symbols "AQX.A" and "AQX.WT", respectively. The Class B Shares of the Filer are not listed on the TSX or any other marketplace.

6. The Filer is pursuing a potential business combination transaction involving the direct or indirect acquisition by the Filer of all of the voting interests, and a significant economic equity interest, in TIP LLC (the "**Qualifying Transaction**").

7. The Qualifying Transaction is intended to constitute the Filer's "qualifying acquisition" under Part X.

8. TIP LLC is a limited liability company formed under Washington State law with its principal executive offices located in Bellevue, Washington, USA. TIP LLC provides wireless communication services through its two indirectly held operating subsidiaries (the "**Subsidiaries**") located in New Zealand (the "**New Zealand Subsidiary**") and Bolivia (the "**Bolivia Subsidiary**"), which Subsidiaries are both majority-owned by TIP LLC:

   (a) TIP LLC owns a majority interest of approximately 63% in the New Zealand Subsidiary. The minority shareholders, Tesbrit B.V., Hautaki Limited, KMCH Holdings Limited and individuals who are current or former employees of the New Zealand Subsidiary (collectively, the "**New Zealand Subsidiary Minority Shareholders**"), hold the remaining 37% interest in the New Zealand Subsidiary. TIP LLC and the New Zealand Subsidiary Minority Shareholders are parties to a shareholders agreement dated November 22, 2012, pursuant to which TIP LLC enjoys certain rights of first refusal with respect to ownership interests in the New Zealand Subsidiary. It is currently uncertain whether the interests of some or all of the New Zealand Subsidiary Minority Shareholders will be exchanged for shares of the Filer pursuant to the Qualifying Transaction, or remain in place in their current form, or a mix of the two.

   (b) TIP LLC also owns a majority interest of approximately 71.5% in the Bolivia Subsidiary. The minority shareholder, Cooperativa de Telecommunicaciones y Servicios de Cochabamba, Ltda. ("**COMTECO**"), which is a limited liability cooperative organized under the laws of the Republic of Bolivia, holds the remaining 28.5% interest in the Bolivia Subsidiary. TIP LLC (through a subsidiary) and COMTECO are parties to a shareholders agreement dated November 19, 2003, pursuant to which TIP LLC enjoys certain rights of first refusal with respect to ownership interests in the Bolivia Subsidiary. COMTECO is Bolivia's third largest cooperative fixed line telephone company with approximately 105,456 installed lines. It provides fixed telephony to Cochabamba, Aiquile, Mizque and Totora, and other services including cable TV and internet access. A telephony cooperative in Bolivia is similar to a rural, provincial telecommunications supplier with the primary business of providing land lines to the commercial and residential users in that province. It is currently anticipated that COMTECO's interests in the Bolivia Subsidiary will remain in place in their current form.

9. As part of its business plan, the Filer, through TIP LLC, intends to seek to acquire other international telecommunications businesses.

10. The Qualifying Transaction is proposed to be completed as a plan of arrangement pursuant to the provisions of section 182 of the *Business Corporations Act* (Ontario) on the terms set forth in a proposed plan of arrangement (the "**Plan of Arrangement**") and proposed arrangement agreement (the "**Arrangement Agreement**") (the "**Arrangement**").

11. The Arrangement Agreement provides that TIP LLC will issue certain TIP LLC Class C Units to the holders of the currently outstanding equity of TIP LLC.

12. Following the completion of the Qualifying Transaction and in accordance with and as part of the Plan of Arrangement, the Filer proposes to: (i) amend its share capital to create and issue a special voting share in the capital of the Filer (the "**Special Voting Share**") to a trustee who will hold such share on behalf of the TIP LLC Class C Unit holders for the purposes of enabling the TIP LLC Class C Unit holders to vote the same through a voting trust agreement, including in person or by proxy, as if they had redeemed their TIP LLC Class C Units in accordance with the terms thereof, and acquired Common Shares of the Filer and voted such shares as a holder thereof on any matter, question, proposal or proposition whatsoever that may properly come before the holders of the Common Shares of the Filer at any meeting of such holders or with respect to all written consents sought from such holders, all as described in the Plan of Arrangement and the TIP LLC Agreement, (ii) re-designate the Class B Shares of the Filer as common shares in the capital of the Filer (the "**Common Shares**") and remove the Class A Restricted Voting Shares from the share capital of the Filer and (iii) continue as a British Columbia corporation (from Ontario) and add constrained share provisions to its articles to enable the Filer to enforce certain mandatory provisions of New Zealand law that prevent a person from acquiring more than 25% of the voting securities of the Filer, as the indirect controlling shareholder of the New Zealand Subsidiary, without prior regulatory approval from the New Zealand Overseas Investment Office (the "**Foreign Ownership Restrictions**"), which are broadly similar to restrictions applicable to telecommunications businesses in Canada, or similar restrictions that may apply in other countries in future. As well, the name of the Filer will be changed to "Trilogy International Partners Inc.".

13. Under the Arrangement, non-redeemed Class A Restricted Voting Shares are converted into Class B Shares, which then become Common Shares of the Filer. Following completion of the Arrangement, the only issued and outstanding securities of the Filer will be the Common Shares and the Special Voting Share.

14. Each Common Share will entitle the holder to: (i) one vote at all meetings of shareholders of the Filer (except meetings at which only holders of a specified class of shares are entitled to vote), (ii) receive, subject to the rights of holders of another class of shares, any dividends declared by the Filer and (iii) receive, subject to the rights of the holders of another class of shares, the remaining property of the Filer on the liquidation, dissolution or winding up of the Filer, whether voluntary or involuntary.

15. Except as required by law or stock exchange rules or the charter of the Filer, the holder of the Special Voting Share shall be entitled to vote on all matters submitted to a meeting of, and attend all meetings of, the holders of Common Shares of the Filer, with both classes of shares voting together as if they were a single class. The Special Voting Share shall entitle the holder thereof, who is a trustee, to such number of votes as are equal to the number of Common Shares of the Filer for which the then outstanding Class C Units of TIP LLC would be redeemable as at the applicable record date. The trustee holding the Special Voting Share shall exercise the voting rights attached thereto in accordance with instructions received from registered Class C Unitholders of TIP LLC. To the extent that the holder of the Special Voting Share does not receive voting instructions from a holder of Class C Units of TIP LLC, votes shall not be cast in respect of such holder. The holder of the Special Voting Share is not entitled to any dividends.

16. At such time as there are no TIP LLC Class C Units outstanding, the Special Voting Share shall automatically be redeemed and cancelled for $1 to be paid to the trustee as the registered holder thereof.

17. The economic interests of the Class C Units in TIP LLC are designed to be pro rata to those of the Class B Units, which will be held entirely by the Filer and which will at closing (and at all times thereafter) be equal to the number of Common Shares of the Filer. In addition, each holder of Class C Units has its redemption rights, which give it the right to require TIP LLC to purchase each Class C unit it holds in consideration of the issuance to such holder of a single Common Share of the Filer or the payment to such holder of a cash amount equal to the value of a Common Share of the Filer. So long as any Class C Units are outstanding, the Filer will not pay a dividend on the Common Shares unless an equivalent (in the same or a different currency) distribution per Class C Unit is paid on the Class C Units, and vice versa. This will not prevent a dividend reinvestment plan whereby additional Class C Units and Common Shares of the Filer may be paid on the Class C Units and Common Shares of the Filer, respectively.

18. The interests in TIP LLC will be divided into and represented by an unlimited number of each of three classes of units (the "**TIP LLC Units**") as follows: (i) interests of the Filer and the member of TIP LLC designated by the holders of the Class A Units as the managing member (the "**Managing Member**"), which will be represented by TIP LLC Class B Units and TIP LLC Class A Units, respectively; and (ii) interests of the other TIP LLC members (collectively, with the Filer and the Managing Member, the "**TIP LLC Members**"), which will be represented by TIP LLC Class C Units. The TIP LLC Class C Units will be subdivided into Class C-1 Units, Class C-2 Units, and Class C-3 Units. The number of TIP LLC Class A Units, which will have nominal economic rights, shall equal the amount necessary to ensure that the TIP LLC Class A Units and the TIP LLC Class B Units (as determined pursuant to the following sentence) represent, in the aggregate, more than seventy-five percent (75%) of the issued and outstanding TIP LLC units. The number of TIP LLC Class B Units shall equal the number of Common Shares of the Filer outstanding as of the consummation of the Arrangement and at all times thereafter. Except under limited circumstances, only TIP LLC Members holding TIP LLC Class A Units shall have any voting rights under the Fifth Amended and Restated Limited Liability Company Agreement of TIP LLC, dated as of December 30, 2010, as amended (the "**TIP LLC Agreement**"). Only TIP LLC Members holding TIP LLC Class B Units or TIP LLC Class C Units will have economic rights, including dividend/distribution and liquidation rights, under the TIP LLC Agreement, and they will be pro rata as noted above.

19. Under the proposed Foreign Ownership Restrictions, the Filer could refuse to issue Common Shares to persons or register or otherwise recognize the transfer of Common Shares if the Filer's board of directors concludes that action would result in a contravention of any Foreign Ownership Restrictions. In addition, the Filer could remove voting rights attached to the Common Shares held by a contravening holder unless such holder remedies the breach of the Foreign Ownership Restrictions within a specified time (of not less than 30 days) after receiving notice thereof.

20. The Filer is seeking the Exemption Sought in respect of, among other things, references to the Common Shares of the Filer in the Filings.

21. Subsection 12.2 of NI 41-101 requires that an issuer must not refer to a security in a prospectus by a term or a defined term that includes the word "common" unless the security is an equity security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are not less, per security, than the voting rights attached to any other outstanding security of the issuer. Subsection 12.1(c) of NI 41-101 provides that Part 12 of NI 41-101 does not apply to securities that are subject to a restriction, imposed by any law governing the issuer, on the level of ownership of the securities by a person, company or combination of persons or companies, but only to the extent of the restriction.

22. Subsection 12.3 of NI 41-101 requires that an issuer must not file a prospectus under which restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities, are distributed unless: (a) the distribution has received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer, or (b) at the time of any restricted security reorganization related to the securities to be distributed (i) the restricted security reorganization received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer, (ii) the issuer was a reporting issuer in at least one jurisdiction, and (iii) no purposes or business reasons for the creation of restricted securities were disclosed that are inconsistent with the purpose of the distribution.

23. Pursuant to NI 51-102, a "restricted security" means an equity security of a reporting issuer if any of the following apply: (a) there is another class of securities of the reporting issuer that, to a reasonable person, appears to carry a greater number of votes per security relative to the equity security, (b) the conditions of the class of equity securities, the conditions attached to another class of securities of the reporting issuer, or the reporting issuer's constating documents have provisions that nullify or, to a reasonable person appear to significantly restrict the voting rights of the equity securities or (c) the reporting issuer has issued another class of equity securities that, to a reasonable person, appears to entitle the owners of securities of that other class to participate in the earnings or assets of the reporting issuer to a greater extent, on a per security basis, than the owners of the first class of equity securities.

24. Pursuant to NI 51-102, a "restricted voting security" means a restricted security that carries a right to vote subject to a restriction on the number or percentage of securities that may be voted by one or more persons or companies, unless the restriction is: (a) permitted or prescribed by statute and (b) applicable only to persons or companies that are not citizens or residents of Canada or that are otherwise considered as a result of any law applicable to the reporting issuer to be non-Canadian. The Foreign Ownership Restrictions do not meet these exclusions, although they are analogous to them.

25. Subsection 10.1 of NI 51-102 requires a reporting issuer that has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, to provide specific disclosure with respect to such securities in its information circular, a document required by NI 51-102 to be delivered upon request by a reporting issuer to any of its securityholders, an annual information form prepared by the reporting issuer as well as any other documents that it sends to its securityholders. Subsection 10.3(b) of NI 51-102 provides that subsection 10.1 of NI 51-102 does not apply to securities that are subject to a restriction, imposed by any law governing the reporting issuer, on the level of ownership of the securities by any person, company or combination of persons or companies, but only to the extent of the restriction.

26. Subsection 2.2 of OSC Rule 56-501 requires dealer and adviser documentation to include the appropriate restricted share term if restricted shares and the appropriate restricted share term or a code reference to restricted shares or the appropriate restricted share term are included in a trading record published by the Toronto Stock Exchange or other exchange listed in OSC Rule 56-501 or a trade reporting and quotation system operated by The Canadian Dealing Network Inc. Subsection 1.2(1)(c) of OSC Rule 56-501 provides that OSC Rule 56-501 does not apply to shares that are subject to a restriction, imposed by any law governing the issuer, on the level of ownership of the shares by a person, company or combination of persons or companies, but only to the extent of the restriction.

27. Subsection 2.3 of OSC Rule 56-501 requires that a rights offering circular or offering memorandum for a stock distribution prepared for a reporting issuer comply with certain requirements including, among others, the restricted shares may not be referred to by a term or a defined term that includes "common", "preference" or "preferred" and that such shares shall be referred to using a term or a defined term that includes the appropriate restricted share term.

28. Subsection 3.2 of OSC Rule 56-501 provides that the prospectus exemptions under Ontario securities law are not available for a stock distribution of securities of a reporting issuer or an issuer if the issuer will become a reporting issuer as a result of the stock distribution unless either the stock distribution received minority approval of shareholders or all the conditions set out in subsection 3.2(2) are satisfied and the information circular relating to the shareholders' meeting held to obtain such minority approval for the stock distribution included prescribed disclosure. Pursuant to subsection 4.2 of OSC Rule 56-501, the Director may determine that the Filer is exempt from Parts 2 and 3 of OSC Rule 56-501.

29. As the Special Voting Share will entitle the holder thereof to that number of votes equal to the number of outstanding TIP LLC Class C Units, it will technically represent a class of securities to which multiple votes is attached. The multiple votes attaching to the Special Voting Share would, absent the Exemption Sought, have the following consequences in respect of the technical status of the Common Shares: (i) pursuant to Subsection 12.2(1) of NI 41-101, the Filer would

be unable to use the word "common" to refer to the Common Shares in a prospectus because the Special Voting Share would represent a security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are more, per security, than the voting rights attached to the Common Shares, (ii) the Common Shares could be considered "restricted securities" pursuant to para. (a) of the definition of the term in NI 51-102 and the Filer would be required to provide the specific disclosure required by NI 51-102 in respect of the Common Shares because the Special Voting Share would represent another class of securities of the Filer that, to a reasonable person, appears to carry a greater number of votes per security relative to the Common Shares, and (iii) the Common Shares would be considered "restricted shares" pursuant to OSC Rule 56-501 and the Filer would be subject to the dealer and advisor documentary disclosure obligations and distribution restrictions of OSC Rule 56-501 because the Special Voting Share would represent a security to which is attached voting rights exercisable in all circumstances, irrespective of the number of percentage of shares owned, that are more, on a per share basis, than the voting rights attaching to the Common Shares of the Filer.

30. Following completion of the Arrangement, the Common Shares would be "restricted securities" as defined in NI 41-101, NI 51-102 and OSC Rule 56-501 solely as a result of the Special Voting Share and, if applicable, the Foreign Ownership Restrictions.

31. The Filer will make an application to the TSX for a decision that the Common Shares are exempt from Section 624 – *Restricted Securities* of the TSX Company Manual and confirmation that it may refer to its Common Shares as common shares (the "**TSX Relief**").

Decision

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

The decision of the Decision Maker under the Legislation is that the Exemption Sought is granted provided that:

(a) in connection with the Prospectus Disclosure Exemption as it applies to the Non-Offering Prospectus, the Non-Offering Prospectus includes disclosure consistent with representations 12-19, above;

(b) in connection with the CD Disclosure Exemption as it applies to the Circular, the Circular includes disclosure consistent with representations 12-19, above;

(c) in connection with the Prospectus Disclosure Exemption and the Prospectus Eligibility Exemption as they apply to the Other Prospectuses, at the time the Filer relies on the Exemption Sought:

  (i) the Arrangement has been completed;

  (ii) representations 12-19, above, continue to apply;

  (iii) the Filer has no restricted securities (as defined in section 1.1 of NI 41-101) issued and outstanding other than the Common Shares; and

  (iv) the TSX has granted the TSX Relief;

(d) in connection with the CD Disclosure Exemption as it applies to the Other CD Documents, at the time the Filer relies on the Exemption Sought:

  (i) the Arrangement has been completed;

  (ii) representations 12-19, above, continue to apply;

  (iii) the Filer has no restricted securities (as defined in subsection 1.1(1) of NI 51-102) issued and outstanding other than the Common Shares; and

  (iv) the TSX has granted the TSX Relief;

(e) in connection with the OSC Rule 56-501 Disclosure Exemption as it applies to the OSC Rule 56-501 Documents, at the time the Filer relies on the Exemption Sought:

  (i) the Arrangement has been completed;

(ii) representations 12-19, above, continue to apply;

(iii) the Filer has no restricted shares (as defined in section 1.1 of OSC Rule 56-501) issued and outstanding other than the Common Shares; and

(iv) the TSX has granted the TSX Relief; and

(f) in connection with the OSC Rule 56-501 Withdrawal Exemption, at the time the Filer relies on the Exemption Sought:

(i) the Arrangement has been completed;

(ii) representations 12-19, above, continue to apply;

(iii) the Filer has no restricted shares (as defined in section 1.1 of OSC Rule 56-501) issued and outstanding other than the Common Shares; and

(iv) the TSX has granted the TSX Relief.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.2 Orders

2.2.1 Gildan Activewear Inc. – s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Headnote

Section 6.1 of NI 62-104 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 – Issuer proposes to purchase, at a discounted purchase price, up to 292,500 of its common shares from one of its shareholders – due to the discounted purchase price, proposed purchases cannot be made through the TSX trading system – but for the fact that the proposed purchases cannot be made through the TSX trading system, the Issuer could otherwise acquire the subject shares in accordance with the TSX rules governing normal course issuer bids, in reliance on the issuer bid exemption in subsection 4.8(2) of NI 62-104 – the selling shareholder did not purchase the subject shares in anticipation or contemplation of resale to the Issuer and no common shares have been purchased by the selling shareholder for a minimum of 30 days prior to the date of the application seeking the requested relief in anticipation or contemplation of a sale of common shares by the selling shareholder to the Issuer – no adverse economic impact on, or prejudice to, the Issuer or other security holders – proposed purchases exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the Issuer not purchase, in the aggregate, more than one-third of the maximum number of shares to be purchased under its normal course issuer bid by way of off-exchange block purchases, and that the Issuer not make any proposed purchase unless it has first obtained written confirmation from the selling shareholder that between the date of the order and the date on which the proposed purchase is completed, the selling shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any common shares of the Issuer to re-establish its holdings of common shares which will have been reduced as a result of the sale of the subject shares pursuant to the proposed purchases.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
GILDAN ACTIVEWEAR INC.

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of Gildan Activewear Inc. (the "**Issuer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") exempting the Issuer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchases by the Issuer of up to 292,500 common shares of the Issuer (collectively, the "**Subject Shares**") in one or more tranches from The Royal Bank of Canada (the "**Selling Shareholder**");

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

AND UPON the Issuer (and the Selling Shareholder in respect of paragraphs 5, 6, 7, 8, 9, 10, 18, 29 and 30 as they relate to the Selling Shareholder) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Canada Business Corporations Act*.

2. The head and registered office of the Issuer is located at 600 de Maisonneuve Boulevard West, 33rd Floor, Montreal, Quebec, Canada H3A 3J2.

3. The Issuer is a reporting issuer in each of the provinces of Canada and the common shares of the Issuer (the "**Common Shares**") are listed for trading on the Toronto Stock Exchange (the "**TSX**") and the New York Stock Exchange (the "**NYSE**") under the symbol "GIL". The Issuer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized share capital of the Issuer consists of an unlimited number of (a) Common Shares, (b) First Preferred Shares and (c) Second Preferred Shares. As of October 31, 2016, 231,812,432 Common Shares were issued and outstanding and no First Preferred Shares or Second Preferred Shares were issued and outstanding.

5. The corporate headquarters of the Selling Shareholder is located in the Province of Ontario.

6. The Selling Shareholder does not, directly or indirectly, own more than 5% of the issued and outstanding Common Shares.

7. The Selling Shareholder is the beneficial owner of at least 292,500 Common Shares. All of the Subject Shares are held by the Selling Shareholder in the Province of Ontario. None of the Subject Shares were acquired by, or on behalf of, the Selling Shareholder in anticipation or contemplation of resale to the Issuer.

8. No Common Shares were purchased by, or on behalf of, the Selling Shareholder on or after October 17, 2016, being the date that was 30 days prior to the date of the Application, in anticipation or contemplation of a sale of Common Shares by the Selling Shareholder to the Issuer.

9. The Subject Shares are held by the Selling Shareholder in connection with arrangements to hedge client transactions in respect of the Common Shares. Between the date of this Order and the date on which a Proposed Purchase (as defined below) is to be completed, the Selling Shareholder will not purchase, have purchased on its behalf, or otherwise accumulate, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

10. The Selling Shareholder is at arm's length to the Issuer and is not an "insider" of the Issuer or an "associate" of an "insider" of the Issuer, or an "associate" or "affiliate" of the Issuer, as such terms are defined in the *Securities Act* (Ontario) (the "**Act**"). The Selling Shareholder is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

11. The Issuer announced on February 24, 2016 the initiation of a normal course issuer bid (the "**Normal Course Issuer Bid**") to purchase for cancellation up to 12,192,814 Common Shares, representing approximately 4.99% of the Issuer's issued and outstanding Common Shares as of the date specified in the Notice of Intention to Make a Normal Course Issuer Bid (the "**Notice**") which was submitted to and accepted by the TSX. The Notice specified that purchases made under the Normal Course Issuer Bid are to be conducted through the facilities of the TSX and the NYSE or alternative trading systems, if eligible, or by such other means as may be permitted by the TSX or a securities regulatory authority in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX NCIB Rules**"), including by private agreements pursuant to issuer bid exemption orders issued by securities regulatory authorities (each, an "**Off-Exchange Block Purchase**").

12. On February 26, 2016 the Commission issued an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements applicable to issuer bids then in effect in connection with the proposed purchases by the Issuer of up to 1,600,000 Common Shares from The Toronto Dominion Bank pursuant to private agreements (the "**TD Order**"). The Issuer has purchased 1,600,000 Common Shares under the TD Order.

13. On February 26, 2016 the Commission issued an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements applicable to issuer bids then in effect in connection with the proposed purchases by the Issuer of up to 450,000 Common Shares from The Bank of Nova Scotia pursuant to private agreements (the "**BNS Order**"). The Issuer has purchased 450,000 Common Shares under the BNS Order.

14. On February 26, 2016 the Commission issued an order pursuant to clause 104(2)(c) of the Act exempting the Issuer from the requirements applicable to issuer bids then in effect in connection with the proposed purchases by the Issuer of up to 1,975,000 Common Shares from the Bank of Montreal and/or BMO Nesbitt Burns Inc. pursuant to private agreements (the "**BMO Order**", and together with the TD Order and the BNS Order, the "**Existing Orders**"). The Issuer has purchased 1,975,000 Common Shares under the BMO Order.

15. The Issuer announced on July 27, 2016 the amendment of its Normal Course Issuer Bid (the "**Amended Normal Course Issuer Bid**"), increasing the maximum number of Common Shares that could be repurchased from 12,192,814 to 20,727,784 Common Shares, representing approximately 8.6% of the public float of Common Shares as of the date specified in the amended Notice of Intention to Make a Normal Course Issuer Bid (the "**Amended Notice**") which was submitted to and accepted by the TSX. No other terms of the Normal Course Issuer Bid were amended. The Amended Notice specifies that purchases made under the Amended Normal Course Issuer Bid are to be conducted through the facilities of the TSX and the NYSE or alternative trading systems, if eligible, or by such other means as may be permitted by the TSX or a securities regulatory authority in accordance with the TSX NCIB Rules, including by Off-Exchange Block Purchases.

16. As at October 31, 2016, the Issuer repurchased for cancellation a total of 12,192,814 Common Shares under the Amended Normal Course Issuer Bid, including 4,025,000 Common Shares pursuant to the Existing Orders.

17. The Issuer implemented an automatic share purchase plan ("**ASPP**") on March 24, 2016 to permit the Issuer to make purchases under its Normal Course Issuer Bid at such times when the Issuer would not be permitted to trade in the Common Shares, including during internal blackout periods (each such time, a "**Blackout Period**"). The ASPP was pre-cleared by the TSX and complies with the TSX NCIB Rules, applicable securities laws and this Order. Under the ASPP, at times it is not subject to blackout restrictions, the Issuer may, but is not required to, instruct the designated broker under the ASPP (the "**ASPP Broker**") to make purchases under its Normal Course Issuer Bid in accordance with the terms of the ASPP. Such purchases will be determined by the ASPP Broker in its sole discretion based on parameters established by the Issuer prior to any Blackout Period in accordance with TSX rules,

applicable securities laws (including this Order) and the terms of the agreement between the ASPP Broker and the Issuer. If the Issuer determines to instruct the ASPP Broker to make purchases under the ASPP during a particular Blackout Period, the Issuer will instruct the ASPP Broker not to conduct a block purchase (a "**Block Purchase**") in reliance on the block purchase exception in clause 629(l)7 of the TSX NCIB Rules in the calendar week in which the Issuer either (a) completes a Proposed Purchase, or (b) a Blackout Period ends and a new trading window of the Issuer opens.

18. The Issuer and the Selling Shareholder intend to enter into one or more agreements of purchase and sale (each, an "**Agreement**") pursuant to which the Issuer will agree to acquire some or all of the Subject Shares from the Selling Shareholder in one or more purchases, each of which will occur before February 25, 2017 (each such purchase, a "**Proposed Purchase**") for a purchase price (each such price, a "**Purchase Price**" in respect of such Proposed Purchase) that will be negotiated at arm's length between the Issuer and the Selling Shareholder. The Purchase Price will, in each case, be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of each Proposed Purchase.

19. The Subject Shares acquired under each Proposed Purchase will constitute a "block" as that term is defined in section 628 of the TSX NCIB Rules.

20. The purchase of any of the Subject Shares by the Issuer pursuant to an Agreement will constitute an "issuer bid" for the purposes of the Act, to which the applicable Issuer Bid Requirements would apply.

21. Because the Purchase Price will, in each case, be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of each Proposed Purchase, none of the Proposed Purchases can be made through the TSX trading system and, therefore, will not occur "through the facilities" of the TSX. As a result, the Issuer will be unable to acquire Subject Shares from the Selling Shareholder in reliance upon the exemption from the Issuer Bid Requirements that is available pursuant to subsection 4.8(2) of NI 62-104.

22. But for the fact that the Purchase Price will be at a discount to the prevailing market price and below the prevailing bid-ask price for the Common Shares on the TSX at the time of each Proposed Purchase, the Issuer could otherwise acquire the Subject Shares through the facilities of the TSX as a Block Purchase in accordance with the block purchase exception in clause 629(1)7 of the TSX NCIB Rules and the exemption from the Issuer Bid Requirements that is available pursuant to subsection 4.8(2) of NI 62-104.

23. The sale of any of the Subject Shares to the Issuer will not be a "distribution" (as defined in the Act).

24. For each Proposed Purchase, the Issuer will be able to acquire the applicable Subject Shares from the Selling Shareholder without the Issuer being subject to the dealer registration requirements of the Act.

25. Management of the Issuer is of the view that: (a) the Issuer will be able to purchase the Subject Shares at a lower price than the price at which it would otherwise be able to purchase Common Shares under the Amended Normal Course Issuer Bid in accordance with the TSX NCIB Rules and the exemption from the Issuer Bid Requirements available pursuant to subsection 4.8(2) of NI 62-104; and (b) the Proposed Purchases are an appropriate use of the Issuer's funds.

26. The purchase of Subject Shares will not adversely affect the Issuer or the rights of any of the Issuer's security holders and it will not materially affect control of the Issuer. To the knowledge of the Issuer, the Proposed Purchases will not prejudice the ability of other security holders of the Issuer to otherwise sell Common Shares in the open market at the then prevailing market price. The Proposed Purchases will be carried out at minimal cost to the Issuer.

27. To the best of the Issuer's knowledge, as of November 25, 2016, the "public float" for the Common Shares represented approximately 98% of all the issued and outstanding Common Shares for the purposes of the TSX NCIB Rules.

28. The Common Shares are "highly-liquid securities" within the meaning of section 1.1 of OSC Rule 48-501 *Trading during Distributions, Formal Bids and Share Exchange Transactions* and section 1.1 of the Universal Market Integrity Rules.

29. Other than the Purchase Price, no fee or other consideration will be paid by the Issuer in connection with the Proposed Purchases.

30. At the time that each Agreement is negotiated or entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Equity Trading Group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material

fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed.

31. The Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of the Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

32. The Issuer will not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate, more than one-third of the maximum number of Common Shares that the Issuer can purchase under the Amended Normal Course Issuer Bid, such one-third being equal to 6,909,261 Common Shares as of the date of this Order, taking into account, for greater certainty, the Subject Shares and the Common Shares which are the subject of the Existing Orders.

33. No Agreement will be negotiated or entered into during a Blackout Period. If a Blackout Period is in effect, the Issuer will not purchase Subject Shares pursuant to the Proposed Purchases until the later of (a) the end of such Blackout Period, and (b) the passage of two clear trading days from the date of the dissemination to the public of the Issuer's financial results and/or any and all "material changes" or any "material facts" (each as defined in the Act) in respect of the Issuer or the Common Shares relating to such Blackout Period.

34. Assuming completion of the purchase of the maximum number of Subject Shares, being 292,500 Common Shares, and taking into account the purchase of the maximum number of Common Shares under the Existing Orders, being 4,025,000 Common Shares, the Issuer will have purchased under the Normal Course Issuer Bid an aggregate of 4,317,500 Common Shares pursuant to Off-Exchange Block Purchases, representing approximately 20.8% of the maximum of 20,727,784 Common Shares authorized to be purchased under the Normal Course Issuer Bid.

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

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Issuer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

(a) the Proposed Purchases will be taken into account by the Issuer when calculating the maximum annual aggregate limit that is imposed upon the Issuer's Amended Normal Course Issuer Bid in accordance with the TSX NCIB Rules;

(b) the Issuer will refrain from conducting either a Block Purchase in accordance with the TSX NCIB Rules or another Off-Exchange Block Purchase during the calendar week in which it completes a Proposed Purchase and will not make any further purchases under the Amended Normal Course Issuer Bid for the remainder of the calendar day on which it completes a Proposed Purchase;

(c) the Purchase Price in respect of each Proposed Purchase will be at a discount to the last "independent trade" (as that term is used in paragraph 629(1)1 of the TSX NCIB Rules) of a board lot of Common Shares immediately prior to the execution of such Proposed Purchase;

(d) the Issuer will otherwise acquire any additional Common Shares pursuant to the Amended Normal Course Issuer Bid in accordance with the Amended Notice and the TSX NCIB Rules, including by means of open market transactions and by other means as may be permitted by the TSX, and, subject to condition (i) below, by Off-Exchange Block Purchases;

(e) immediately following each Proposed Purchase of Subject Shares from the Selling Shareholder, the Issuer will report the purchase of such Subject Shares to the TSX;

(f) at the time that each Agreement is negotiated or entered into by the Issuer and the Selling Shareholder and at the time of each Proposed Purchase, neither the Issuer, nor any member of the Equity Trading Group of the Selling Shareholder, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Issuer that has not been generally disclosed;

(g) in advance of the first Proposed Purchase, the Issuer will issue a press release disclosing (i) its intention to make the Proposed Purchases, and (ii) that information regarding each Proposed Purchase, including the number of Sub-

ject Shares purchased and the aggregate Purchase Price, will be available on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") following the completion of each Proposed Purchase;

(h) the Issuer will report information regarding each Proposed Purchase, including the number of Subject Shares purchased and the aggregate Purchase Price, on SEDAR before 5:00 p.m. (Toronto time) on the business day following such Proposed Purchase;

(i) the Issuer does not purchase, pursuant to Off-Exchange Block Purchases, in the aggregate more than one-third of the maximum number of Common Shares the Issuer can purchase under its Amended Normal Course Issuer Bid, such one-third being equal to, as of the date of this Order, 6,909,261 Common Shares; and

(j) the Issuer will not make any Proposed Purchase unless it has first obtained confirmation in writing from the Selling Shareholder that, between the date of this Order and the date on which a Proposed Purchase is to be completed, the Selling Shareholder has not purchased, had purchased on its behalf, or otherwise accumulated, any Common Shares to re-establish its holdings of Common Shares which will have been reduced as a result of the sale of Subject Shares pursuant to the Proposed Purchases.

Dated at Toronto this 30th day of November, 2016.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.2 Welcome Place Inc. et al. – ss. 127(1), 17(2.1)

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5, AS AMENDED

AND

IN THE MATTER OF
WELCOME PLACE INC.,
DANIEL MAXSOOD
also known as MUHAMMAD M. KHAN,
TAO ZHANG and
TALAT ASHRAF

ORDER
(Subsections 17(1) and (2.1) of the Securities Act)

WHEREAS:

1. on May 22, 2013, the Ontario Securities Commission (the "Commission") made an Order pursuant to subsection 11(1)(a) of the *Securities Act*, RSO 1990 c S.5, as amended (the "*Act*") appointing certain members of Commission Staff ("Staff") to investigate and to inquire into the matters described therein with respect to Welcome Place Inc. ("Welcome Place"), Daniel Maxsood ("Maxsood"), Tao Zhang ("Zhang") and Talat Ashraf ("Ashraf") (collectively, the "Respondents");

2. as part of its investigation, Staff obtained investors lists and promissory notes from Maxsood pursuant to section 13 of the *Act*. Staff also obtained promissory notes from investors, banking records and copies of payment instructions pursuant to section 13 of the Act (collectively, the "Requested Records");

3. on July 2 and 9, 2013, the Commission issued seven freeze directions in respect of a number of bank accounts belonging to Welcome Place, Maxsood and Zhang which resulted in a total of approximately $662,869 being frozen (the "Frozen Funds", "Freeze Directions");

4. on July 9, 2013, the Commission issued a Certificate of Direction to the Land Registrar of Halton with respect to a property owned by Zhang, located at 3322 Raspberry Bush Trail, Oakville, Ontario;

5. on October 16, 2013, the Superior Court of Justice continued the Freeze Directions and the Certificate of Direction;

6. on December 18, 2014, Staff commenced proceedings under section 127 of the *Act* against the Respondents for breaches of the Act, which related to a distribution of Welcome Place securities, including fraud;

7. on February 10, 2016, Staff and the Respondents entered into a Settlement Agreement (the "Settlement Agreement") in which the Respondents admitted to, among other things, committing fraud, unregistered trading and illegal distributions, and agreed to disgorge certain funds and pay administrative penalties, in addition to providing written consent that the Frozen Funds be paid to the Commission in partial satisfaction of the disgorgement amounts owed by Maxsood and Welcome Place;

8. on February 10, 2016, Maxsood paid $382,000 to the Commission in partial satisfaction of disgorgement amounts owed by him and Welcome Place;

9. on February 11, 2016, the Commission approved the Settlement Agreement;

10. on February 22, 2016, the Superior Court of Justice issued an order revoking the Freeze Directions and ordered the Frozen Funds be paid to the Commission in partial satisfaction of the disgorgement order;

11. the Commission received a total of $932,881.74 pursuant to the Settlement Agreement (the "Funds");

12. the Commission has approved that the Funds be allocated to investors of Welcome Place and that the distribution be carried out by the Ministry of the Attorney General's Civil Remedies for Illicit Activities Office ("CRIA");

13. CRIA requires the Requested Records to obtain a forfeiture order and in order to distribute the Funds to the Welcome Place investors;

14. Staff have requested an Order under subsections 17(1) and (2.1) of the Act authorizing the disclosure of the Requested Records to CRIA without notice and without an opportunity to be heard; and

15. the Commission considers it to be in the public interest to make this Order;

IT IS HEREBY ORDERED that:

1. Staff's application proceed by way of written hearing is granted;

2. pursuant to subsections 17(1) Staff is authorized to disclose to CRIA the Requested Records; and

3. Such disclosure is authorized to be made without notice and without an opportunity to be heard pursuant to subsection 17(2.1) of the *Act*.

DATED at Toronto, this 14th day of December, 2016.

"Alan J. Lenczner"

2.2.3 Krishna Sammy

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
A REQUEST FOR A HEARING AND REVIEW OF
THE DECISION OF A HEARING PANEL OF
THE INVESTMENT INDUSTRY REGULATORY
ORGANIZATION OF CANADA

AND

IN THE MATTER OF
KRISHNA SAMMY

ORDER

WHEREAS on December 15, 2016, the Ontario Securities Commission ("Commission") held a first appearance at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario with respect to an application by Krishna Sammy ("Sammy") for an order pursuant to section 144 of the *Securities Act*, RSO 1990, c S.5, revoking or varying the order of the Commission dated October 28, 2016 (the "Application to Revoke or Vary"), which dismissed his Application for a Hearing and Review of the decision of a Hearing Panel of the Investment Industry Regulatory Organization of Canada ("IIROC") dated January 22, 2016 (the "Application for Hearing and Review");

ON HEARING the submissions of counsel for Sammy, IIROC Staff and Commission Staff;

IT IS ORDERED that:

1. Sammy shall serve and file by no later than 4:30 p.m. on January 6, 2017:

   a. the affidavit referred to in the Application to Revoke or Vary ("the Affidavit"); and

   b. the complete Application Record for the Application for Hearing and Review, as required by Rule 14.3(2) of the Ontario Securities Commission Rules of Procedure (2014) 37 OSCB 4168;

2. cross-examinations on the Affidavit by IIROC Staff and Commission Staff, if any, shall be completed by February 7, 2017;

3. IIROC Staff and Commission Staff shall serve and file any affidavits in response by no later than 4:30 p.m. on February 15, 2017; and

4. the hearing with respect to the Application to Revoke or Vary shall take place on February 23, 2017 at 10:00 a.m.

DATED at Toronto, this 15th day of December 2016.

“Timothy Moseley”

2.2.4 Saileshwar Rao Narayan et al. – ss. 127(1), 127(10)

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
SAILESHWAR RAO NARAYAN,
PROSPERITY DEVELOPMENT GROUP LTD., and
PROSPERA MORTGAGE INVESTMENT CORPORATION

ORDER
(Subsections 127(1) and 127(10) of the Securities Act)

WHEREAS:

1. On September 29, 2016, Staff ("Staff') of the Ontario Securities Commission (the "Commission") filed a Statement of Allegations, in which Staff seeks an order against Saileshwar Rao Narayan ("Narayan"), Prosperity Development Group Ltd. ("Prosperity Development") and Prospera Mortgage Investment Corporation ("Prospera Mortgage", and collectively, the "Respondents"), pursuant to subsections 127(1) and 127(10) of the *Securities Act*;

2. On September 30, 2016, the Commission issued a Notice of Hearing in respect of that Statement of Allegations, setting October 31, 2016 as the date of the hearing;

3. On October 31, 2016, the Commission issued an order continuing the proceeding by way of a written hearing;

4. On November 3, 2016, Staff filed written submissions, brief of authorities, a hearing brief and an affidavit of service;

5. The Respondents did not file any submissions although properly served;

6. The Respondents are subject to an order dated August 11, 2016, made by the Alberta Securities Commission (the "ASC Order"), that imposed sanctions, conditions, restrictions or requirements upon them within the meaning of paragraph 4 of subsection 127(10) of the Act; and

7. The Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED:

against Narayan that:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Narayan shall cease permanently, except that this order does not preclude him from trading in securities through a registrant (who has first been given a copy of the ASC Order and a copy of this Order) in:

   1. registered retirement savings plans, registered retirement income funds, or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Narayan's benefit;

   2. one other account for Narayan's benefit; or

   3. both, provided that:

      A. the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

      B. Narayan does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Narayan is prohibited permanently, except that this order does not preclude him from purchasing securities through a registrant (who has first been given a copy of the ASC Order and a copy of this Order) in:

1. registered retirement savings plans, registered retirement income funds, or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Narayan's benefit;

2. one other account for Narayan's benefit; or

3. both, provided that:

A. the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

B. Narayan does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

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

iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Narayan resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;

v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Narayan is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Narayan is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter;

against Prosperity Development that:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of Prosperity Development shall cease permanently;

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

iii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Prosperity Development is prohibited permanently; and

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

against Prospera Mortgage that:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of Prospera Mortgage shall cease permanently;

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

iii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Prospera Mortgage is prohibited permanently; and

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

DATED at Toronto this 15th day of December, 2016.

“Alan Lenczner”

2.2.5 MM Café Franchise Inc. et al. – s. 127

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
MM CAFÉ FRANCHISE INC.,
TECHOCAN INTERNATIONAL CO. LTD.,
1727350 ONTARIO LTD.,
MARIANNE GODWIN,
DAVE GARNET CRAIG and
HAIYAN (HELEN) GAO JORDAN

ORDER
(Section 127 of the Securities Act)

WHEREAS

1. on March 23, 2016, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c. S.5 (the "Act") in relation to a Statement of Allegations filed by Staff of the Commission ("Staff") on March 23, 2016, to consider whether it is in the public interest to make certain orders against MM Café Franchise Inc. ("MMCF"), DCL Healthcare Properties Inc. ("DCL"), Culturalite Media Inc. ("Culturalite"), Café Enterprise Toronto Inc. ("CET"), Techocan International Co. Ltd. ("Techocan"), 1727350 Ontario Ltd. ("1727350"), Marianne Godwin ("Godwin"), Dave Garnet Craig ("Craig"), Frank DeLuca ("DeLuca"), Elaine Concepcion ("Concepcion") and Haiyan (Helen) Gao Jordan ("Jordan");

2. the Notice of Hearing set April 21, 2016 as the hearing date in this matter;

3. on April 29, 2016, Staff filed with the Commission an Amended Statement of Allegations;

4. on July 26, 2016, Staff filed with the Commission:

   (a) a Notice of Withdrawal withdrawing the allegations against DCL, Culturalite, CET, DeLuca and Concepcion; and

   (b) an Amended Amended Statement of Allegations withdrawing certain allegations against Jordan;

5. on September 13, 2016, Staff and the remaining respondents submitted that there may be facts that are not in dispute, and the parties indicated they will make best efforts to prepare an Agreed Statement of Facts prior to the next appearance with a view to advancing the proceeding in an effective and efficient manner;

6. on November 14, 2016, the Commission ordered, among other things, that the hearing on the merits shall commence on April 19, 2017 at 10:00 a.m. and continue thereafter on April 20, 21, 27 and 28, May 1, 3, 4, 5, 8, 9, 10, 23, 24, 26, 30 and 31 and June 1 and 2, 2017;

7. on December 15, 2016, counsel for Staff, Jordan, Techocan, 1727350 and Godwin and Craig appearing for himself, all appeared before the Commission and made submissions and no one appeared on behalf of MMCF;

8. the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that:

1. Staff shall deliver to the respondents copies of documents which it intends to produce or enter as evidence at the hearing on the merits (the "Hearing Briefs") by no later than March 3, 2017;

2. Each respondent shall deliver their Hearing Briefs to Staff and the other respondents by no later than March 17, 2017;

3. the final interlocutory appearance shall be held at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario, on March 27, 2017 at 9:30 a.m., or as soon thereafter as the hearing can be held; and

4. the hearing date scheduled for May 30, 2017 is vacated and the hearing days scheduled for April 27 and May 9, 2017 will be held in the afternoon only.

DATED at Toronto this 15th day of December, 2016

"Janet Leiper"

2.3 Orders with Related Settlement Agreements

2.3.1 BMO Nesbitt Burns Inc. et al. – ss. 127(1), 127(2)

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
BMO NESBITT BURNS INC.,
BMO PRIVATE INVESTMENT COUNSEL INC.,
BMO INVESTMENTS INC. AND
BMO INVESTORLINE INC.

ORDER
(Subsections 127(1) and 127(2) of the Securities Act)

WHEREAS:

1. On December 12, 2016, the Ontario Securities Commission (the "**Commission**") issued a Notice of Hearing in relation to the Statement of Allegations filed by Staff of the Commission ("**Commission Staff**") on December 12, 2016 with respect to BMO Nesbitt Burns Inc., BMO Private Investment Counsel Inc., BMO Investments Inc. and BMO InvestorLine Inc. (the "**BMO Registrants**");

2. The Notice of Hearing gave notice that on December 15, 2016, the Commission would hold a hearing to consider whether it is in the public interest to approve a settlement agreement between Commission Staff and the BMO Registrants dated December 9, 2016 (the "**Settlement Agreement**");

3. In the Statement of Allegations, Commission Staff alleged that there were inadequacies in the BMO Registrants' systems of controls and supervision which formed part of their compliance systems (the "**Control and Supervision Inadequacies**") which resulted in certain clients of the BMO Registrants paying, directly or indirectly, excess fees that were not detected or corrected by the BMO Registrants in a timely manner;

4. Commission Staff do not allege, and have found no evidence of dishonest conduct by the BMO Registrants;

5. Commission Staff are satisfied that the BMO Registrants discovered and promptly self-reported the Control and Supervision Inadequacies to Commission Staff;

6. Commission Staff are satisfied that during their investigation of the Control and Supervision Inadequacies, the BMO Registrants provided prompt, detailed and candid cooperation to Commission Staff;

7. Commission Staff are satisfied that the BMO Registrants had formulated an intention to pay appropriate compensation to clients and former clients when they self-reported the Control and Supervision Inadequacies to Commission Staff;

8. As part of the Settlement Agreement, the BMO Registrants undertake to:

   (a) pay appropriate compensation to eligible clients and former clients who were harmed by the Control and Supervision Inadequacies (the "**Affected Clients**") in accordance with a plan submitted by the BMO Registrants to Commission Staff and to report to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission (the "**OSC Manager**") in accordance with the plan;

   (b) make a voluntary payment of $90,000 to reimburse the Commission for costs incurred or to be incurred by it, in accordance with subsection 3.4(2)(a) of the *Securities Act* (the "**Act**"); and

   (c) make a further voluntary payment of $2,100,000, to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act

   (the "**Undertaking**");

9. The Commission has received the voluntary payments totalling $2,190,000 in escrow pending approval of the Settlement Agreement;

10. The Commission reviewed the Settlement Agreement, the Notice of Hearing and the Statement of Allegations and heard submissions from counsel for the BMO Registrants and from Commission Staff; and

11. The Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT:

(a) Pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved; and

(b) Pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:

(i) within 90 days of receiving comments from Commission Staff regarding the procedures, controls and supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the "**Enhanced Control and Supervision Procedures**"), the BMO Registrants shall provide to the OSC Manager revised written policies and procedures (the "**Revised Policies and Procedures**") that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Commission Staff with regard to the BMO Registrants' policies and procedures to establish the Enhanced Control and Supervision Procedures (the "**Remaining Issues**");

(ii) thereafter, the BMO Registrants shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;

(iii) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Commission Staff (the "**Confirmation Date**"), the BMO Registrants shall submit a letter (the "**Attestation Letter**"), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the BMO Registrants, to the OSC Manager, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by the BMO Registrants for the 6 month period commencing from the Confirmation Date;

(iv) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

(v) the BMO Registrants shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;

(vi) any of the BMO Registrants or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above;

(vii) the BMO Registrants shall comply with the Undertaking; and

(viii) the voluntary payment referred to in recital 8(c) above is designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act.

DATED at Toronto, Ontario this 15th day of December, 2016.

"Timothy Moseley"

"Garnet Fenn"

"William Furlong"

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

AND

**IN THE MATTER OF
BMO NESBITT BURNS INC.,
BMO PRIVATE INVESTMENT COUNSEL INC.,
BMO INVESTMENTS INC. and
BMO INVESTORLINE INC.**

**SETTLEMENT AGREEMENT BETWEEN
STAFF OF THE COMMISSION AND
BMO NESBITT BURNS INC.,
BMO PRIVATE INVESTMENT COUNSEL INC.,
BMO INVESTMENTS INC. AND
BMO INVESTORLINE INC.**

PART I – INTRODUCTION

1. The Ontario Securities Commission (the "Commission") will issue a Notice of Hearing to announce that it will hold a hearing to consider whether, pursuant to subsections 127(1) and (2) of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act"), it is in the public interest for the Commission to make certain orders in respect of BMO Nesbitt Burns Inc., BMO Private Investment Counsel Inc., BMO Investments Inc. and BMO InvestorLine Inc. (collectively, the "BMO Registrants").

2. BMO Nesbitt Burns Inc. ("BMO NB") is a corporation amalgamated pursuant to the laws of Canada and is an indirect subsidiary of the Bank of Montreal ("BMO"), a diversified financial services provider. BMO NB is a member of the Investment Industry Regulatory Organization of Canada ("IIROC") and is registered with the Commission as an investment dealer, investment fund manager and futures commission merchant. The matters described below with regard to BMO NB pertain only to the Private Client Division business unit within it that provides advice to retail clients.

3. BMO Private Investment Counsel Inc. ("BPIC") is a corporation incorporated pursuant to the laws of Canada and is an indirect subsidiary of BMO. BPIC is registered with the Commission as an investment fund manager, portfolio manager and exempt market dealer.

4. BMO Investments Inc. ("BMO II") is a corporation amalgamated pursuant to the laws of Canada. It is an indirect subsidiary of BMO and part of its wealth management businesses. BMO II is a member of the Mutual Fund Dealers Association of Canada ("MFDA") and is registered with the Commission as an investment fund manager and mutual fund dealer.

5. BMO InvestorLine Inc. ("BMO IL") is a corporation incorporated pursuant to the laws of Canada and is an indirect subsidiary of BMO. BMO IL is a member of IIROC and is registered with the Commission as an investment dealer.

6. Commencing in early February 2015, the BMO Registrants promptly self-reported to Staff of the Commission ("Commission Staff") the matters described in Part III below. During Commission Staff's investigation of these matters, the BMO Registrants provided prompt, detailed and candid co-operation to Commission Staff.

7. As summarized at paragraph 14 below and more fully described in Part III below, it is Commission Staff's position that there were inadequacies in the BMO Registrants' systems of controls and supervision which formed part of their compliance systems (the "Control and Supervision Inadequacies") which resulted in certain clients paying, directly or indirectly, excess fees that were not detected or corrected by the BMO Registrants in a timely manner.

PART II – JOINT SETTLEMENT RECOMMENDATION

8. Commission Staff and the BMO Registrants have agreed to a settlement of the proceeding initiated in respect of the BMO Registrants by Notice of Hearing dated December 12, 2016 (the "Proceeding") based on the terms and conditions set out in this settlement agreement (the "Settlement Agreement"). Commission Staff have consulted with IIROC Staff and MFDA Staff in relation to the underlying facts which are the subject matter of this Settlement Agreement.

9. Pursuant to this Settlement Agreement, Commission Staff agree to recommend to the Commission that the Proceeding be resolved and disposed of in accordance with the terms and conditions contained herein.

10. It is Commission Staff's position that:

a) the statement of facts set out by Commission Staff in Part III below, which is based on an investigation carried out by Commission Staff following the self-reporting by the BMO Registrants, is supported by the evidence reviewed by Commission Staff and the conclusions contained in Part III are reasonable; and

b) it is in the public interest for the Commission to approve this Settlement Agreement, having regard to the following considerations:

(i) Commission Staff's allegations are that each of the BMO Registrants failed to establish, maintain and apply procedures to establish controls and supervision:

A. sufficient to provide reasonable assurance that the BMO Registrants, and each individual acting on behalf of the BMO Registrants, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

B. that were reasonably likely to identify the non-compliance described in A. above at an early stage that would have allowed the BMO Registrants to correct the non-compliant conduct in a timely manner;

(ii) Commission Staff do not allege, and have found no evidence of dishonest conduct by the BMO Registrants;

(iii) the BMO Registrants discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;

(iv) during the investigation of the Control and Supervision Inadequacies following the self-reporting by the BMO Registrants, the BMO Registrants provided prompt, detailed and candid co-operation to Commission Staff;

(v) the BMO Registrants had formulated an intention to pay appropriate compensation to clients and former clients when they self-reported the Control and Supervision Inadequacies to Commission Staff. As part of this Settlement Agreement, the BMO Registrants have co-operated with Commission Staff with a view to providing appropriate compensation to clients and former clients who were harmed by any of the Control and Supervision Inadequacies (the "Affected Clients");

(vi) as part of this Settlement Agreement, the BMO Registrants have agreed to pay appropriate compensation to the Affected Clients, in accordance with a plan submitted by the BMO Registrants to Commission Staff and presented to the Commission (the "Compensation Plan"). As at the date of this Settlement Agreement, the BMO Registrants anticipate paying compensation to Affected Clients of $49,885,661 in the aggregate in respect of the Control and Supervision Inadequacies;

(vii) the Compensation Plan prescribes, among other things:

A. the detailed methodology to be used for determining the compensation to be paid to the Affected Clients, including the time value of money in respect of any monies owed by the BMO Registrants to the Affected Clients;

B. the approach to be taken with regard to contacting and making payments to the Affected Clients;

C. the timing to complete the various steps included in the Compensation Plan;

D. a $25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately $109,900 as compared to the $49,885,661 in compensation to be paid), which aggregate *de minimis* amount will be donated to the Canadian Foundation for Economic Education;

E. the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the BMO Registrants are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each BMO Registrant will use reasonable efforts to locate any Affected Clients who are

entitled to payment of $200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the BMO Registrant determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than $400, the BMO Registrant shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to Affected Clients who cannot be located by December 31, 2018 will be donated to the Canadian Foundation for Economic Education;

F. the resolution of client inquiries through an escalation process; and

G. regular reporting to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission ("OSC Manager") detailing the BMO Registrants' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries;

(viii) at the request of Commission Staff, each of the BMO Registrants conducted an extensive review of their other businesses that are subject to the Act and are operating in Canada to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees, or indirectly paying excess fees on mutual funds managed by BMO II. Based on this review, the BMO Registrants have advised Commission Staff that there are no instances other than those Control and Supervision Inadequacies described herein;

(ix) the BMO Registrants either have already taken or are taking corrective action including implementing additional controls and supervision to address the Control and Supervision Inadequacies, by establishing procedures and implementing controls, supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the "Enhanced Control and Supervision Procedures") and, as part of this Settlement Agreement, the BMO Registrants are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures;

(x) the BMO Registrants have agreed to make a voluntary payment of $2,100,000 to the Commission to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act;

(xi) the BMO Registrants have agreed to make a further voluntary payment of $90,000 to reimburse the Commission for costs incurred or to be incurred in accordance with subsection 3.4(2)(a) of the Act;

(xii) the total agreed voluntary payment of $2,190,000 will be paid by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission; and

(xiii) the terms of this Settlement Agreement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the BMO Registrants will emphasize to the marketplace that Commission Staff expect registrants to have compliance procedures with appropriate controls and supervision in place which:

A. provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

B. are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

11. The BMO Registrants neither admit nor deny the accuracy of the facts or the conclusions of Commission Staff as set out in Part III of this Settlement Agreement.

12. The BMO Registrants agree to this Settlement Agreement and to the making of an order in the form attached as Schedule "A".

PART III – COMMISSION STAFF'S STATEMENT OF FACTS AND CONCLUSIONS

A. Overview

13. Commencing in early February 2015, the BMO Registrants self-reported the Control and Supervision Inadequacies to Commission Staff. Some of the BMO Registrants' clients have fee-based accounts and are charged a fee for investment management services received in respect of assets held in the accounts (the "Fee-Based Accounts"). The investment management fee is based on the client's assets under management or assets under administration (the "Account Fee"). Further, some of the BMO Registrants' clients may not always have been advised of the existence of, and their eligibility to invest in, or convert their higher Management Expense Ratio ("MER") series of an MER Differential Fund (as defined below) into the lower MER series of the same fund.

14. The Control and Supervision Inadequacies are summarized below:

    1) for some BMO NB clients with Fee-Based Accounts, certain investment products (including but not limited to mutual funds, principal protected notes and principal at risk notes, collectively, the "Investment Products") and structured investment products (including but not limited to exchange traded funds and closed ended funds, collectively, the "Structured Investment Products") with embedded trailer fees held in Fee-Based Accounts were incorrectly included in Account Fee calculations, resulting in some clients paying excess fees during the period January 1, 2008 to April 30, 2016;

    2) for some BPIC clients with Fee-Based Accounts, certain Investment Products and Structured Investment Products with embedded trailer fees were transferred into their BPIC Fee-Based Accounts and were incorrectly included in Account Fee calculations, resulting in some clients paying excess fees during the period January 1, 2008 to June 30, 2016;

    3) for some BMO IL clients with Fee-Based Accounts, certain Investment Products and Structured Investment Products with embedded trailer fees held in Fee-Based Accounts were incorrectly included in Account Fee calculations, resulting in some clients paying excess fees during the period September 10, 2012 to March 31, 2016 (collectively (1), (2) and (3) are defined as the "Asset Management Fee Issue");

    4) some clients of BMO II were not advised that they qualified for a lower MER series of an MER Differential Fund (as defined below) and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund during the period April 1, 2012 to June 30, 2015;

    5) some clients of BMO NB were not advised that they qualified for a lower MER series of an MER Differential Fund and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund during the period January 1, 2008 to October 31, 2016;

    6) some clients of BPIC were not advised that they qualified for a lower MER series of an MER Differential Fund when they transferred certain mutual funds into their BPIC accounts and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund during the period January 1, 2008 to October 31, 2016; and

    7) some clients of BMO IL were not advised that they qualified for a lower MER series of an MER Differential Fund and indirectly paid excess fees when they invested in the higher MER series of the same mutual fund during the period September 10, 2012 to July 22, 2016 (collectively (4), (5), (6) and (7) are defined as the "Lower MER Issue").

15. These Control and Supervision Inadequacies continued undetected for an extended period of time. The BMO Registrants discovered the Control and Supervision Inadequacies following inquiries made and/or reviews conducted by the relevant BMO Registrants.

16. As set out in greater detail below in the section entitled "Mitigating Factors", the BMO Registrants have taken and are taking several remedial steps in order to correct the Control and Supervision Inadequacies.

17. The BMO Registrants have engaged an independent third party to (i) validate the BMO Registrants' identification of the Affected Clients, the methodology used by the BMO Registrants to calculate the compensation amounts and the results of those calculations for the Asset Management Fee Issue and (ii) identify the Affected Clients, and calculate and validate the compensation amounts for the Lower MER Issue.

B. The Control and Supervision Inadequacies

1) Excess Account Fees Paid by some clients of BMO NB

18. For some clients of BMO NB who have Fee-Based Accounts, assets held in a Fee-Based Account included certain Investment Products and Structured Investment Products with embedded trailer fees paid by the issuer to BMO NB.

19. As part of its review relating to this matter, BMO NB identified certain Investment Products and Structured Investment Products during the period January 1, 2008 to April 30, 2016 that were incorrectly included in the calculation of the Account Fee in some Fee-Based Accounts and, as a result, some BMO NB clients were charged excess Account Fees. Specifically,

    a) it was determined that BMO NB did not have adequate systems of internal controls and supervision in place to ensure that all Investment Products and Structured Investment Products with an embedded trailer fee were excluded consistently from the calculation of the Account Fee;

    b) it was determined that BMO NB's internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and

    c) BMO NB took immediate steps to ensure that all Investment Products and Structured Investment Products with an embedded trailer fee will be classified correctly and excluded consistently from the calculation of the Account Fee on a going forward basis.

20. Upon identification of the issue described above, BMO NB took steps to determine the extent of the problem and how to compensate Affected Clients. BMO NB retained an independent third party to validate BMO NB's identification of the Affected Clients, the methodology BMO NB used to calculate the compensation amounts to be paid to the Affected Clients and the results of those calculations for the excess Account Fees charged. Having taken the steps described above, BMO NB self-reported this Control and Supervision Inadequacy to Commission Staff.

21. BMO NB has determined that, as a result of this Control and Supervision Inadequacy, approximately 39,613 client accounts were charged excess Account Fees during the period January 1, 2008 to April 30, 2016.

22. BMO NB has agreed to compensate the Affected Clients who held these Investment Products and Structured Investment Products, which paid an embedded trailer fee, in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that BMO NB pay to the Affected Clients:

    a) the excess Account Fee;

    b) an amount representing the applicable sales tax charged on the excess Account Fee; and

    c) an additional amount in respect of the excess Account Fee calculated from the time the excess Account Fee was charged to November 30, 2016, based on a simple rate of 5% per annum calculated monthly (the "Opportunity Cost").

23. Where Account Fees were undercharged to the client, the benefit of those undercharges will not be set off against any compensation amounts paid to the client. The undercharges will also not otherwise be charged to Affected Clients or any other clients.

24. As at the date of this Settlement Agreement, BMO NB has determined that the total amount to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the Opportunity Cost, is $39,258,681.

2) Excess Account Fees Paid by some clients of BPIC

25. For some clients of BPIC who have Fee-Based Accounts, certain Investment Products and Structured Investment Products with embedded trailer fees paid by the issuer to BPIC were transferred into their BPIC Fee-Based Accounts.

26. As part of its review relating to this matter, BPIC identified certain Investment Products and Structured Investment Products during the period January 1, 2008 to June 30, 2016 that were incorrectly included in the calculation of the Account Fee in some Fee-Based Accounts and, as a result, some BPIC clients were charged excess Account Fees. Specifically,

a) it was determined that BPIC did not have adequate systems of internal controls and supervision in place to ensure that all Investment Products and Structured Investment Products with an embedded trailer fee were excluded consistently from the calculation of the Account Fee;

b) it was determined that BPIC's internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and

c) BPIC took appropriate steps to ensure that the incorrectly classified Investment Products and Structured Investment Products with an embedded trailer fee will be classified correctly and excluded consistently from the calculation of the Account Fee on a going forward basis.

27. Upon identification of the issue described above, BPIC took steps to determine the extent of the problem and how to compensate Affected Clients. BPIC retained an independent third party to validate BPIC's identification of the Affected Clients, the methodology BPIC used to calculate the compensation amounts to be paid to the Affected Clients and the results of those calculations for the excess Account Fees charged. Having taken the steps described above, BPIC self-reported this Control and Supervision Inadequacy to Commission Staff.

28. BPIC has determined that, as a result of this Control and Supervision Inadequacy, approximately 6,519 client accounts were charged excess Account Fees during the period January 1, 2008 to June 30, 2016.

29. BPIC has agreed to compensate the Affected Clients who held these Investment Products and Structured Investment Products, which paid an embedded trailer fee, in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that BPIC pay to the Affected Clients:

a) the excess Account Fee;

b) an amount representing the applicable sales tax charged on the excess Account Fee; and

c) the Opportunity Cost.

30. As at the date of this Settlement Agreement, BPIC has determined that the total amount to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the Opportunity Cost, is $4,744,650.

3) Excess Account Fees Paid by some clients of BMO IL

31. For some clients of BMO IL who have Fee-Based Accounts, assets held in a Fee-Based Account included certain Investment Products and Structured Investment Products with embedded trailer fees paid to BMO IL.

32. As part of its review relating to this matter, BMO IL identified certain Investment Products and Structured Investment Products during the period September 10, 2012 to March 31, 2016 that were incorrectly included in the calculation of the Account Fee in some Fee-Based Accounts and, as a result, some BMO IL clients were charged excess Account Fees. Specifically,

a) it was determined that BMO IL did not have adequate systems of internal controls and supervision in place to ensure that all Investment Products and Structured Investment Products with an embedded trailer fee were excluded consistently from the calculation of the Account Fee;

b) it was determined that BMO IL's internal controls failed to detect this Control and Supervision Inadequacy in a timely manner; and

c) BMO IL took immediate steps to ensure that the incorrectly classified Investment Products and Structured Investment Products with an embedded trailer fee will be classified correctly and excluded consistently from the calculation of the Account Fee on a going forward basis.

33. Upon identification of the issue described above, BMO IL took steps to determine the extent of the problem and how to compensate Affected Clients. BMO IL retained an independent third party to validate BMO IL's identification of the Affected Clients, the methodology BMO IL used to calculate the compensation amounts to be paid to the Affected Clients and the results of those calculations for the excess Account Fees charged. Having taken the steps described above, BMO IL self-reported this Control and Supervision Inadequacy to Commission Staff.

34. BMO IL has determined that, as a result of this Control and Supervision Inadequacy, approximately 176 client accounts were charged excess Account Fees during the period September 10, 2012 to March 31, 2016.

35. BMO IL has agreed to compensate the Affected Clients who held these Investment Products and Structured Investment Products, which paid an embedded trailer fee, in their Fee-Based Accounts during the relevant period in accordance with the Compensation Plan, which requires that BMO IL pay to the Affected Clients:

    a) the excess Account Fee;

    b) an amount representing the applicable sales tax charged on the excess Account Fee; and

    c) the Opportunity Cost.

36. Where Account Fees were undercharged to the client, the benefit of those undercharges will not be set off against any compensation amounts paid to the clients. The undercharges will also not otherwise be charged to Affected Clients or any other clients.

37. As at the date of this Settlement Agreement, BMO IL has determined that the total amount to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the Opportunity Cost, is $7,236.

Excess Management Fees Paid by Some Clients of BMO II, BMO NB, BPIC and BMO IL Due to Lower MER Issue

38. BMO II offers a number of mutual funds (each a "BMO Fund") that are available in different series. For certain of these BMO Funds, there are two series of the same mutual fund which differ in that the MER of one series is lower than the MER of the other series (the "MER Differential Funds"). The lower MER series of these MER Differential Funds are available to clients who meet certain eligibility criteria. In particular:

    a) clients who met a minimum $250,000 investment threshold were eligible for a lower MER series of BMO Funds that feature this series (the "Series H"), which had an MER that was generally 19 to 37 basis points lower than the other series available for the same mutual fund;

    b) clients who invested a minimum of $150,000 were eligible for a lower MER series of the BMO Money Market Fund (the "Series M"), which had an MER that was generally 65 basis points lower than the other series available for the same mutual fund;

    c) clients who invested a minimum of $50,000 were eligible for a lower MER series of BMO Funds that feature this series (the "Series CLS"), which had an MER that was generally 67 basis points lower than the other series available for the same mutual fund; and

    d) clients of BMO NB were eligible to purchase the lower MER "NB" series of BMO Funds that include a NB series (the "Series NB") without having to meet a threshold, which had an MER that was generally 2 to 57 basis points lower than the other series.

39. The MER Differential Funds were launched between November 2008 and December 13, 2013, except for the CLS Series, which were launched prior to January 1, 2008.

40. The BMO Registrants conducted a review of the MER Differential Funds for the period commencing January 1, 2008 and determined that certain client accounts at each of BMO II, BMO NB, BPIC and BMO IL invested in an MER Differential Fund that appeared to qualify for the lower MER series of an MER Differential Fund were not invested in that series and therefore, the holders of those client accounts did not benefit from its lower MER.

41. Upon identification of the issues above, particulars of which follow below, BMO II, BMO NB, BPIC and BMO IL initiated inquiries to determine the extent of the problem, devise mechanisms to prevent clients from continuing to buy or hold the higher MER series, and assess how to compensate Affected Clients. The mechanisms implemented included the termination or capping of certain series.

4) Excess Management Fees Paid by Some Clients of BMO II

42. During the period April 1, 2012 to June 30, 2015, BMO II clients who invested in MER Differential Funds may not always have been advised of the existence of, and their eligibility to either invest in, or convert their higher MER series of an MER Differential Fund to the lower MER series of the same fund. Specifically:

    a) it was determined that BMO II did not have adequate systems of internal controls and supervision in place to ensure that when a purchase, or transfer-in of an investment in an MER Differential Fund, alone or combined with existing holdings of the MER Differential Fund, exceeded the minimum investment threshold required to

qualify for the lower MER series of the same mutual fund, the client was advised consistently that a lower MER series of the same mutual fund was available to the client;

b) it was determined that BMO II's internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and

c) BMO II has taken immediate steps to obtain authorization prior to the date of this Settlement Agreement to switch Affected Clients who continue to hold eligible securities of a higher MER series of an MER Differential Fund to the lower MER series of the same fund. BMO II has also implemented appropriate enhancements to its processes to identify clients on a go forward basis who become eligible for the lower MER series of an MER Differential Fund and to request client authorization to switch to the lower MER series shortly after becoming eligible for the lower MER series, and in each case trade confirmations and Fund Facts are provided, where applicable, with respect to the lower MER series.

43. Upon identification of the issue above, BMO II took steps to determine the extent of the problem and how to compensate Affected Clients, and engaged an independent third party to identify the Affected Clients and to calculate and validate the compensation amounts to be paid to Affected Clients who may not have been advised of the opportunity to purchase the lower MER series of an MER Differential Fund when they were eligible to do so either at the time of purchase of the higher MER series, when their holdings increased to equal or exceed the minimum investment threshold for the lower MER series, or following the transfer-in of units of the fund, as applicable.

44. BMO II has determined that approximately 748 client accounts ought to have been invested in the lower MER series of an MER Differential Fund but were not from April 1, 2012 to June 30, 2015.

45. In accordance with the Compensation Plan, in respect of those client accounts, BMO II will pay Affected Clients:

a) an amount representing the difference in the return that the Affected Client would have received on any securities held by the client of an MER Differential Fund had the Affected Client been invested in the lower MER series of that mutual fund in a timely manner upon becoming eligible to invest in the lower MER series held in that mutual fund (the "Difference in Return"); and

b) an additional amount in respect of the Difference in Return from the date of the sale, conversion, transfer or disposition of any higher MER series of an MER Differential Fund for any period up to November 30, 2016, based on a simple interest rate of 5% per annum calculated monthly, except in respect of the BMO Money Market Fund where the rate is based upon an annual rate equal to the average returns of the BMO Money Market Fund from 2013 to 2015, not compounded, and calculated monthly (the "MER Opportunity Cost").

46. On this basis, BMO II has determined that the total amounts to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the MER Opportunity Cost, is $648,837.

5) Excess Management Fees Paid by Some Clients of BMO NB

47. During the period January 1, 2008 to October 31, 2016, BMO NB clients invested in MER Differential Funds may not always have been advised of the existence of, and their eligibility to either invest in, or convert their higher MER series of an MER Differential Fund into, the lower MER series of the same fund. Specifically:

a) it was determined that BMO NB did not have adequate systems of internal controls and supervision in place to ensure that when a purchase, or transfer-in of an investment in an MER Differential Fund, alone or combined with existing holdings of the MER Differential Fund, exceeded the minimum investment threshold required to qualify for the lower MER series of the same mutual fund, the client was advised consistently that a lower MER series of the same mutual fund was available to the client;

b) it was determined that BMO NB's internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and

c) BMO NB has taken immediate steps to obtain authorization prior to the date of this Settlement Agreement to switch Affected Clients who continue to hold eligible securities of a higher MER series of an MER Differential Fund to the lower MER series of the same fund. BMO NB has also implemented appropriate enhancements to its processes to identify clients on a go forward basis who become eligible for the lower MER series of an MER Differential Fund and to request client authorization to the switch to the lower MER series shortly after becoming eligible for the lower MER series, and in each case trade confirmations and Fund Facts are provided, where applicable, with respect to the lower MER series.

48. Upon identification of the issue above, BMO NB took steps to determine the extent of the problem and how to compensate Affected Clients, and engaged an independent third party to identify the Affected Clients and to calculate and validate the compensation amounts to be paid to Affected Clients who may not have been advised of the opportunity to purchase the lower MER series of an MER Differential Fund when they were eligible to do so either at the time of purchase of the higher MER series, when their holdings increased to equal or exceed the minimum investment threshold for the lower MER series, or following the transfer-in of units of the fund to the account, as applicable.

49. BMO NB has determined that approximately 13,196 client accounts ought to have been invested in the lower MER series of an MER Differential Fund but were not from January 1, 2008 to October 31, 2016.

50. In accordance with the Compensation Plan, in respect of those client accounts, BMO NB will pay Affected Clients:

    a) the Difference in Return; and

    b) the MER Opportunity Cost.

51. On this basis, BMO NB has determined that the total amounts to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the MER Opportunity Cost, is $5,185,923.

6) Excess Management Fees Paid by Some Clients of BPIC

52. During the period January 1, 2008 to October 31, 2016, BPIC clients, when transferring units of an MER Differential Fund into their BPIC account, may not always have been advised of the existence of, and their eligibility to either invest in, or convert their higher MER series in an MER Differential Fund into, the lower MER series of the same fund. Specifically:

    a) it was determined that BPIC did not have adequate systems of internal controls and supervision in place to ensure that when a purchase, or transfer-in of an investment in an MER Differential Fund, alone or combined with existing holdings of the MER Differential Fund, exceeded the minimum investment threshold required to qualify for the lower MER series of the same mutual fund, the client was advised consistently that a lower MER series of the same mutual fund was available to the client;

    b) it was determined that BPIC's internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and

    c) BPIC has taken immediate steps to obtain authorization prior to the date of this Settlement Agreement to switch Affected Clients who continue to hold eligible securities of a higher MER series of an MER Differential Fund to the lower MER series of the same fund. BPIC has also implemented appropriate enhancements to its processes to identify clients on a go forward basis who become eligible for the lower MER series of an MER Differential Fund and to request client authorization to the switch to the lower MER series shortly after becoming eligible for the lower MER series, and in each case trade confirmations and Fund Facts are provided, where applicable, with respect to the lower MER series.

53. Upon identification of the issue above, BPIC took steps to determine the extent of the problem and how to compensate Affected Clients, and engaged an independent third party to identify the Affected Clients and to calculate and validate the compensation amounts to be paid to Affected Clients who may not have been advised of the opportunity to purchase the lower MER series of an MER Differential Fund when they were eligible to do so either at the time of purchase of the higher MER series, when their holdings increased to equal or exceed the minimum investment threshold for the lower MER series, or following the transfer-in of units of the fund to the account, as applicable.

54. BPIC has determined that approximately 134 client accounts ought to have been invested in the lower MER series of an MER Differential Fund but were not from January 1, 2008 to October 31, 2016.

55. In accordance with the Compensation Plan, in respect of those client accounts, BPIC will pay Affected Clients:

    a) the Difference in Return; and

    b) the MER Opportunity Cost.

56. On this basis, BPIC has determined that the total amounts to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the MER Opportunity Cost, is $40,075.

7) Excess Management Fees Paid by Some Clients of BMO IL

57. During the period September 10, 2012 to July 22, 2016, BMO IL clients invested in MER Differential Funds may not always have been advised of the existence of, and their eligibility to either invest in, or convert their higher MER series of an MER Differential Fund into, the lower MER series of the same fund. Specifically:

    a) it was determined that BMO IL did not have adequate systems of internal controls and supervision in place to ensure that when a purchase, or transfer-in of an investment in an MER Differential Fund, alone or combined with existing holdings of the MER Differential Fund, exceeded the minimum investment threshold required to qualify for the lower MER series of the same mutual fund, the client was advised consistently that a lower MER series of the same mutual fund was available to the client;

    b) it was determined that BMO IL's internal controls failed to identify this Control and Supervision Inadequacy in a timely manner; and

    c) BMO IL has taken immediate steps to obtain authorization prior to the date of this Settlement Agreement to switch Affected Clients who continue to hold eligible securities of a higher MER series of an MER Differential Fund to the lower MER series of the same fund. BMO IL has also implemented appropriate enhancements to its processes to identify clients on a go forward basis who become eligible for the lower MER series of an MER Differential Fund and to request client authorization to the switch to the lower MER series shortly after becoming eligible for the lower MER series, and in each case trade confirmations and Fund Facts are provided, where applicable, with respect to the lower MER series.

58. Upon identification of the issue above, BMO IL took steps to determine the extent of the problem and how to compensate Affected Clients, and engaged an independent third party to identify the Affected Clients and to calculate and validate the compensation amounts to be paid to Affected Clients who may not have been advised of the opportunity to purchase the lower MER series of an MER Differential Fund when they were eligible to do so either at the time of purchase of the higher MER series, when their holdings increased to equal or exceed the minimum investment threshold for the lower MER series, or following the transfer-in of units of the fund to the account, as applicable.

59. BMO IL has determined that approximately 7 client accounts ought to have been invested in the lower MER series of an MER Differential Fund but were not from September 10, 2012 to July 22, 2016.

60. In accordance with the Compensation Plan, in respect of those client accounts, BMO IL will pay Affected Clients:

    a) the Difference in Return; and

    b) the MER Opportunity Cost.

61. On this basis, BMO IL has determined that the total amounts to be paid to these Affected Clients pursuant to the Compensation Plan, inclusive of the MER Opportunity Cost, is $259.

C. Breaches of Ontario Securities Law

62. In respect of the Control and Supervision Inadequacies, the BMO Registrants failed to establish, maintain and apply procedures to establish controls and supervision:

    a) sufficient to provide reasonable assurance that the BMO Registrants, and each individual acting on behalf of the BMO Registrants, complied with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

    b) that were reasonably likely to identify the non-compliance described in (a) above at an early stage and that would have allowed the BMO Registrants to correct the non-compliant conduct in a timely manner.

63. As a result, these instances of Control and Supervision Inadequacies constituted a breach of section 11.1 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. In addition, the failures in the BMO Registrants' systems of controls and supervision associated with the Control and Supervision Inadequacies were contrary to the public interest.

D. Mitigating Factors

64. Commission Staff do not allege, and have found no evidence of dishonest conduct by the BMO Registrants.

65. The BMO Registrants discovered and self-reported the Control and Supervision Inadequacies to Commission Staff.

66. During the investigation of the Control and Supervision Inadequacies by Commission Staff following the self-reporting by the BMO Registrants, the BMO Registrants provided prompt, detailed and candid cooperation to Commission Staff.

67. The BMO Registrants formulated an intention to pay appropriate compensation to Affected Clients in connection with their self-reporting of the Control and Supervision Inadequacies to Commission Staff and, thereafter, the BMO Registrants co-operated with Commission Staff with a view to providing appropriate compensation to the Affected Clients who were harmed by any of the Control and Supervision Inadequacies.

68. As part of this Settlement Agreement, the BMO Registrants have agreed to pay appropriate compensation to the Affected Clients, in accordance with the Compensation Plan. As at the date of this Settlement Agreement, the BMO Registrants anticipate paying compensation to Affected Clients of approximately $49,885,661 in the aggregate in respect of the Control and Supervision Inadequacies.

69. The Compensation Plan prescribes, among other things:

a) the detailed methodology to be used for determining the compensation to be paid to the Affected Clients, including the time value of money owed by the BMO Registrants to the Affected Clients;

b) the approach to be taken with regard to contacting and making payments to the Affected Clients;

c) the timing to complete the various steps included in the Compensation Plan;

d) a $25 *de minimis* exception (the aggregate of such *de minimis* amounts as at the date of this Settlement Agreement is approximately $109,900 as compared to $49,885,661 in compensation to be paid), which aggregate *de minimis* amount will be donated to the Canadian Foundation for Economic Education;

e) the approach to be taken to any remaining funds that are not paid out to Affected Clients after the steps included in the Compensation Plan have been fully implemented. In that regard, the Compensation Plan provides that if the BMO Registrants are not able to contact any former Affected Clients, notwithstanding the steps described in the Compensation Plan, each BMO Registrant will use reasonable efforts to locate any Affected Clients who are entitled to payment of $200 or more including directory searches, internet searches, and the employment of third parties to assist in the search. If the BMO Registrant determines that a client is deceased but does not know the identity of the personal representative of the client's estate, and the estate is entitled to more than $400, the BMO Registrant shall make reasonable efforts to identify the personal representative of the deceased client. Subject to any applicable unclaimed property legislation, any amounts remaining undistributed to non-located Affected Clients on December 31, 2018 will be donated to the Canadian Foundation for Economic Education;

f) the resolution of client inquiries through an escalation process; and

g) regular reporting to the OSC Manager detailing the BMO Registrants' progress with respect to the implementation of the Compensation Plan, including with regard to the resolution of client inquiries.

70. At the request of Commission Staff, each of the BMO Registrants conducted an extensive review of their other businesses that are subject to the Act and are operating in Canada to identify whether there were any other instances of inadequacies in their systems of controls and supervision leading to clients directly paying excess fees, or indirectly paying excess fees on mutual funds managed by BMO II. Based on this review, the BMO Registrants have advised Commission Staff that there are no other instances other than those Control and Supervision Inadequacies described herein.

71. The BMO Registrants have taken and are taking corrective action including implementing the Enhanced Control and Supervision Procedures and, as part of this Settlement Agreement, the BMO Registrants are required to report to the OSC Manager on the development and implementation of the Enhanced Control and Supervision Procedures.

72. The BMO Registrants have agreed to make voluntary payments totaling $2,190,000, as described in paragraphs 10(b)(x) and 10(b)(xi) above.

73. BMO Registrants will pay the total agreed voluntary payment of $2,190,000 by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement, which payment is conditional upon approval of this Settlement Agreement by the Commission.

74. The terms of settlement are appropriate in all the circumstances, including mitigating factors and the principles of general and specific deterrence. Commission Staff are of the view that the voluntary payments referred to above in addition to the amounts to be paid as compensation to Affected Clients by the BMO Registrants will emphasize to the marketplace that Commission Staff expect registrants to have compliance systems with appropriate controls and supervision in place which:

a) provide reasonable assurance that registrants, and each individual acting on behalf of registrants, are complying with securities legislation, including the requirement to deal fairly with clients with regard to fees; and

b) are reasonably likely to allow registrants to identify and correct non-compliance with securities legislation in a timely manner.

E. The BMO Registrants' Undertaking

75. By signing this Settlement Agreement, the BMO Registrants undertake to:

a) pay compensation to the Affected Clients in accordance with the Compensation Plan and to report to the OSC Manager in accordance with the Compensation Plan;

b) make the voluntary payments referred to in paragraphs 10(b)(x) and 10(b)(xi) above (the "Undertaking").

PART IV – TERMS OF SETTLEMENT

76. The BMO Registrants agree to the terms of settlement listed below and consent to the Order in substantially the form attached hereto, that provides that:

a) pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;

b) pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:

(i) within 90 days of receiving comments from Commission Staff regarding the Enhanced Control and Supervision Procedures, the BMO Registrants shall provide to the OSC Manager revised written policies and procedures (the "Revised Policies and Procedures") that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Commission Staff with regard to the BMO Registrants' policies and procedures to establish the Enhanced Control and Supervision Procedures (the "Remaining Issues");

(ii) thereafter, the BMO Registrants shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;

(iii) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Commission Staff (the "Confirmation Date"), the BMO Registrants shall submit a letter (the "Attestation Letter"), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the BMO Registrants, to the OSC Manager, expressing their opinion on whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by the BMO Registrant for the 6 month period commencing from the Confirmation Date;

(iv) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

(v) the BMO Registrants shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;

(vi) any of the BMO Registrants or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above; and

(vii) the BMO Registrants shall comply with the Undertaking.

77. The BMO Registrants agree to make the voluntary payments described in subparagraph 75(b) by wire transfer before the commencement of the hearing before the Commission to approve this Settlement Agreement.

PART V – COMMISSION STAFF COMMITMENT

78. If the Commission approves this Settlement Agreement, Commission Staff will not commence any proceeding under Ontario securities law in relation to the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement, subject to the provisions of paragraph 79 below and except with respect to paragraph 70 above, and nothing in this Settlement Agreement shall be interpreted as limiting Commission Staff's ability to commence proceedings against the BMO Registrants in relation to any control and supervision inadequacies leading to clients paying excess fees other than in respect of the matters described herein.

79. If the Commission approves this Settlement Agreement and any of the BMO Registrants fails to comply with any of the terms of this Settlement Agreement, Commission Staff may bring proceedings under Ontario securities law against the BMO Registrants. These proceedings may be based on, but are not limited to, the Commission Staff's Statement of Facts and Conclusions set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

PART VI – PROCEDURE FOR APPROVAL OF SETTLEMENT

80. The parties will seek approval of this Settlement Agreement at a public hearing before the Commission scheduled for December 15, 2016, or on another date agreed to by Commission Staff and the BMO Registrants according to the procedures set out in this Settlement Agreement and the Commission's Rules of Procedure.

81. Commission Staff and the BMO Registrants agree that this Settlement Agreement will form all of the evidence that will be submitted at the settlement hearing on the BMO Registrants' conduct, unless the parties agree that additional evidence should be submitted at the settlement hearing.

82. If the Commission approves this Settlement Agreement, the BMO Registrants agree to waive all rights to a full hearing, judicial review or appeal of this matter under the Act.

83. If the Commission approves this Settlement Agreement, the BMO Registrants will not make any public statement that is inconsistent with this Settlement Agreement or with any additional evidence submitted at the settlement hearing. In addition, the BMO Registrants agree that they will not make any public statement that there is no factual basis for this Settlement Agreement. Nothing in this paragraph affects the BMO Registrants' testimonial obligations or the right to take legal or factual positions in other reviews or legal proceedings in which the Commission and/or Commission Staff is not a party or in which any provincial or territorial securities regulatory authority in Canada and/or its Commission Staff is not a party ("Other Proceedings") or to make public statements in connection with Other Proceedings.

84. The BMO Registrants will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission's jurisdiction, alleged bias, alleged unfairness, or any other remedies or challenges that may otherwise be available.

PART VII – DISCLOSURE OF SETTLEMENT AGREEMENT

85. If the Commission does not approve this Settlement Agreement or does not make the order attached as Schedule "A" to this Settlement Agreement:

a) this Settlement Agreement and all discussions and negotiations between Commission Staff and the BMO Registrants before the settlement hearing takes place will be without prejudice to Commission Staff and the BMO Registrants; and

b) Commission Staff and the BMO Registrants will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing of the allegations contained in the Statement of Allegations. Any proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

86. The parties will keep the terms of this Settlement Agreement confidential until the commencement of the public hearing to obtain approval of this Settlement Agreement by the Commission. The obligation to keep this Settlement Agreement confidential shall cease upon the commencement of the public settlement hearing. If, for whatever reason, the Commission does not approve this Settlement Agreement, the terms of this Settlement Agreement remain confidential indefinitely, unless Commission Staff and the BMO Registrants otherwise agree or if required by law.

PART VIII – EXECUTION OF SETTLEMENT AGREEMENT

87. This agreement may be signed in one or more counterparts which, together, constitute a binding agreement.

88. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

Dated this 9th day of December, 2016.

BMO NESBITT BURNS INC.

"Julie Ouellon-Wente"
Witness

Per: "Charyl Galpin"
Charyl Galpin
Executive Vice-President & Managing Director,
Head of BMO Nesbitt Burns

"Julie Ouellon-Wente"
Witness

Per: "Bruce Ferman"
Bruce Ferman
Senior Vice President & Managing Director

BMO INVESTMENTS INC.

"Julie Ouellon-Wente"
Witness

Per: "Kevin Gopaul"
Kevin Gopaul
Chief Executive Officer

"Julie Ouellon-Wente"
Witness

Per: "Ross Kappele"
Ross Kappele
Executive Vice President &
Head of Retail Distribution

BMO INVESTORLINE INC.

"Julie Ouellon-Wente"
Witness

Per: "Charyl Galpin"
Charyl Galpin
President

"Julie Ouellon-Wente"
Witness

Per: "Neil Puddicombe"
Neil Puddicombe
Corporate Secretary

BMO PRIVATE INVESTMENT COUNSEL INC.

"Julie Ouellon-Wente"
Witness

Per: "Myra Cridland"
Myra Cridland
Director and Chair

"Julie Ouellon-Wente"
Witness

Per: "Anthony Bennett"
Anthony Bennett
President & Chief Executive Officer

Commission Staff:

Per: "Jeff Kehoe"
Jeff Kehoe
Director, Enforcement Branch

SCHEDULE A

**IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5**

AND

**IN THE MATTER OF
BMO NESBITT BURNS INC.,
BMO PRIVATE INVESTMENT COUNSEL INC.,
BMO INVESTMENTS INC. AND
BMO INVESTORLINE INC.**

**ORDER
(Subsections 127(1) and 127(2) of the Securities Act)**

WHEREAS:

1. on December 12, 2016, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing in relation to the Statement of Allegations filed by Staff of the Commission ("Commission Staff") on December 12, 2016 with respect to BMO Nesbitt Burns Inc., BMO Private Investment Counsel Inc., BMO Investments Inc. and BMO InvestorLine Inc. (the "BMO Registrants");

2. the Notice of Hearing gave notice that on December 15, 2016, the Commission would hold a hearing to consider whether it is in the public interest to approve a settlement agreement between Commission Staff and the BMO Registrants dated December 9, 2016 (the "Settlement Agreement");

3. in the Statement of Allegations, Commission Staff alleged that there were inadequacies in the BMO Registrants' systems of controls and supervision which formed part of their compliance systems (the "Control and Supervision Inadequacies") which resulted in certain clients of the BMO Registrants paying, directly or indirectly, excess fees that were not detected or corrected by the BMO Registrants in a timely manner;

4. Commission Staff do not allege, and have found no evidence of dishonest conduct by the BMO Registrants;

5. Commission Staff are satisfied that the BMO Registrants discovered and self-reported the Control and Supervision Inadequacies to Commission Staff;

6. Commission Staff are satisfied that during their investigation of the Control and Supervision Inadequacies, the BMO Registrants provided prompt, detailed and candid cooperation to Commission Staff;

7. Commission Staff are satisfied that the BMO Registrants had formulated an intention to pay appropriate compensation to clients and former clients when they self-reported the Control and Supervision Inadequacies to Commission Staff;

8. as part of the Settlement Agreement, the BMO Registrants undertake to:

   (a) pay appropriate compensation to eligible clients and former clients who were harmed by the Control and Supervision Inadequacies (the "Affected Clients") in accordance with a plan submitted by the BMO Registrants to Commission Staff (the "Compensation Plan") and to report to a manager or deputy director in the Compliance and Registrant Regulation Branch of the Commission (the "OSC Manager") in accordance with the Compensation Plan;

   (b) make a voluntary payment of $90,000 to reimburse the Commission for costs incurred or to be incurred by it, in accordance with subsection 3.4(2)(a) of the Securities Act (the "Act"); and

   (c) make a further voluntary payment of $2,100,000, to be designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act

   (the "Undertaking");

9. the Commission has received the voluntary payments totalling $2,190,000 in escrow pending approval of the Settlement Agreement;

10. the Commission reviewed the Settlement Agreement, the Notice of Hearing and the Statement of Allegations and heard submissions from counsel for the BMO Registrants and from Commission Staff; and

11. the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT:

(a) pursuant to subsection 127(1) of the Act, the Settlement Agreement is approved;

(b) pursuant to subsection 127(2) of the Act, the approval of the Settlement Agreement is subject to the following terms and conditions:

(i) within 90 days of receiving comments from Commission Staff regarding the procedures, controls and supervisory and monitoring systems designed to prevent the re-occurrence of the Control and Supervision Inadequacies in the future (the "Enhanced Control and Supervision Procedures"), the BMO Registrants shall provide to the OSC Manager revised written policies and procedures (the "Revised Policies and Procedures") that, to the satisfaction of the OSC Manager, are responsive to any remaining issues raised by Commission Staff with regard to the BMO Registrants' policies and procedures to establish the Enhanced Control and Supervision Procedures (the "Remaining Issues");

(ii) thereafter, the BMO Registrants shall make such further modifications to their Revised Policies and Procedures as are required to ensure that the Revised Policies and Procedures address any Remaining Issues to the satisfaction of the OSC Manager;

(iii) within 8 months of receiving confirmation from the OSC Manager that the Revised Policies and Procedures satisfy the Remaining Issues raised by Commission Staff (the "Confirmation Date"), the BMO Registrants shall submit a letter (the "Attestation Letter"), signed by the Ultimate Designated Person and the Chief Compliance Officer for each of the BMO Registrants, to the OSC Manager, expressing their opinion as to whether the Enhanced Control and Supervision Procedures were adequately followed, administered and enforced by the BMO Registrant for the 6 month period commencing from the Confirmation Date;

(iv) the Attestation Letter shall be accompanied by a report which provides a description of the testing performed to support the conclusions contained in the Attestation Letter;

(v) the BMO Registrants shall submit such additional reports as may be requested by the OSC Manager for the purpose of satisfying the OSC Manager that the opinion expressed in the Attestation Letter described in subparagraph (b)(iii) above is valid;

(vi) any of the BMO Registrants or Commission Staff may apply to the Commission for directions in respect of any issues that may arise with regard to the implementation of subparagraphs (b)(i) to (v) above; and

(vii) the BMO Registrants shall comply with the Undertaking; and

(c) the voluntary payment referred to in recital 8(c) above is designated for allocation or use by the Commission in accordance with paragraphs (b)(i) or (ii) of subsection 3.4(2) of the Act.

DATED at Toronto, Ontario this 15th day of December, 2016

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Welcome Place Inc. et al.

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
WELCOME PLACE INC.,
DANIEL MAXSOOD also known as MUHAMMAD M. KHAN,
TAO ZHANG and TALAT AASHRAF

REASONS AND DECISION

Hearing:	In writing		
Decision:	December 14, 2016		
Panel:	Alan Lenczner	–	Commissioner and Chair of the Panel
Submissions:	Jennifer M. Lynch Thomas Ng	–	For Staff of the Commission

REASONS AND DECISION

[1] Enforcement Staff of the Commission ("Staff") apply for Orders that:

(a) The application is to be heard in writing;

(b) Pursuant to subsection 17(1) of the *Securities Act* (the "*Act*"), Staff are authorized to provide investor lists, promissory notes, banking records and copies of payment instruments to the Ministry of the Attorney General; and

(c) Such disclosure is authorized to be made without notice and without an opportunity to be heard pursuant to subsection 17(2.1) of the *Act*.

[2] The Respondents settled the allegations against them on February 10, 2016 by admitting that they had engaged in fraud vis-à-vis investors, conducted unregistered trading and illegal distributions and made prohibited representations. They agreed to disgorge $2,967,901.52 to the Commission on a joint and several basis representing just over 50% of the approximately $5.25 million raised from some 90 investors.

[3] The Commission has collected $932,881.74 pursuant to the Settlement Agreement. The Vice-Chairs of the Commission have directed that the entire amount collected be allocated to investors and that the distribution be carried out by the Ministry of the Attorney General's Civil Remedies for Illicit Activities Office ("CRIA").

[4] There can be no doubt that it is in the public interest that the recovered funds be distributed to the investors and that for maximum efficiency the distribution be undertaken by CRIA, an office with both a mandate and expertise to effect such distributions. The documents requested by Staff to be disclosed to CRIA are of a nature and character so as to permit CRIA to run a claims process and distribute the funds.

[5] Subsection 17(2.1) of the *Act* authorizes disclosure of the items under subsection 17(1) to any entity referred to in paragraph 1, 3, 4 or 5 of section 153, without notice or an opportunity to be heard if it is in the public interest to do so. In the context of the circumstances of this matter, I find it is in the public interest to make such disclosure. Most of the investor contact information was obtained from the principal fraudster Maxsood and principal of Welcome Place who

obtained the investor contact information by reason of his fraudulent activity. Some of the requested records were provided by the investors themselves. The investors will have no reasonable objection to their information being provided to CRIA, as it will only be used to effect a distribution of funds to them.

[6] For the reasons set out above, I will issue an order that provides as follows:

(a) The application is to be heard in writing;

(b) Pursuant to subsection 17(1) of the *Act*, Staff are authorized to provide investor lists, promissory notes, banking records and copies of payment instruments to the Ministry of the Attorney General; and

(c) Such disclosure is authorized to be made without notice and without an opportunity to be heard pursuant to subsection 17(2.1) of the *Act*.

Dated at Toronto this 14th day of December, 2016.

"Alan J. Lenczner"

3.1.2 Saileshwar Rao Narayan et al.

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5

AND

IN THE MATTER OF
SAILESHWAR RAO NARAYAN,
PROSPERITY DEVELOPMENT GROUP LTD., and
PROSPERA MORTGAGE INVESTMENT CORPORATION

REASONS AND DECISION

Hearing:	In writing		
Decision:	December 15, 2016		
Panel:	Alan Lenczner	–	Commissioner and Chair of the Panel
Submissions by:	Malinda Norman	–	For Staff of the Commission
			No one made submissions on behalf of Saileshwar Rao Narayan, Prosperity Development Group Ltd., and Prospera Mortgage Investment Corporation

REASONS AND DECISION

[1] Enforcement Staff of the Ontario Securities Commission ("Staff") seek orders pursuant to subsection 127(1) of the *Securities Act*[1] against Saileshwar Rao Narayan, Prosperity Development Group Ltd., and Prospera Mortgage Investment Corporation. Staff relies on paragraph 4 of subsection 127(10) of the Act, seeking to reciprocate orders of the Alberta Securities Commission (ASC) dated August 11, 2016 made against these respondents.

[2] A copy of the ASC Decision dated August 11, 2016 is attached to these Reasons as Appendix I. The ASC Decision contains a full description of the factual misconduct and breaches of the Alberta Securities Act[2] perpetrated by the respondents.

[3] There can be no doubt that, were the respondents to engage in the same conduct in Ontario, they would be in flagrant breach of several provisions of the Act and guilty of fraud. The ASC noted the loss to the public and found that Narayan raised over $5,800,000 from the public of which approximately $1,800,000 was seized, leaving a shortfall of $4,000,000.

[4] Staff has requested that the hearing to reciprocate the ASC Decision in Ontario be conducted by way of a written hearing. I am satisfied that the respondents have been served with the requisite materials and, not having made any response pursuant to the Order from this Commission dated October 31, 2016, it is appropriate that I determine this matter on a written record.

[5] I have reviewed the analysis and considerations of sanctions addressed by the ASC, including mitigating factors with respect to Respondents' admissions and cooperation with ASC Staff, and conclude that they are well reasoned and equally appropriate had the conduct occurred in Ontario and involved breaches of the Ontario *Securities Act*.

[6] Regrettably, Canada does not have one securities act with pan-Canadian jurisdiction. It thus behooves the Ontario Securities Commission to review and to determine whether statutory breaches and egregious conduct in another province are contrary to the public interest and should be sanctioned. This multiplication of effort, although necessary to protect the investing public and to enhance the integrity of the capital markets, is inefficient, a waste of resources and costs unnecessary monies. It is to be hoped that the Legislature of Ontario will amend the Act to permit, as in Alberta and other provinces, reciprocating orders by simple registration.

[7] In making an order in the public interest, I am guided by the purposes of the Act and Supreme Court of Canada's guidance that public interest orders are neither remedial nor punitive, but protective and preventive, intended to be exercised to prevent likely future harm to Ontario's capital markets. I find that it is necessary to limit the respondents'

1 RSO 1990, c S.5.
2 RSA 2000, c S-4.

participation in Ontario's capital markets to protect Ontario investors and Ontario's capital markets from similar misconduct by the respondents. Accordingly, I find that it is in the public interest in this matter to issue the orders as requested by Staff which are similar as those imposed by the ASC.

[8] I will therefore issue the following order:

against Narayan that:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Narayan shall cease permanently, except that this order does not preclude him from trading in securities through a registrant (who has first been given a copy of the ASC Order and a copy of this Order) in:

1. registered retirement savings plans, registered retirement income funds, or tax-free savings accounts (as defined in the *Income Tax Act (*Canada)) or locked-in retirement accounts for Narayan's benefit;

2. one other account for Narayan's benefit; or

3. both, provided that:

A. the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

B. Narayan does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Narayan is prohibited permanently, except that this order does not preclude him from purchasing securities through a registrant (who has first been given a copy of the ASC Order and a copy of this Order) in:

1. registered retirement savings plans, registered retirement income funds, or tax-free savings accounts (as defined in the Income Tax Act (Canada)) or locked-in retirement accounts for Narayan's benefit;

2. one other account for Narayan's benefit; or

3. both, provided that:

A. the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer; and

B. Narayan does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question;

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

iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Narayan resign any positions that he holds as a director or officer of any issuer, registrant or investment fund manager;

v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Narayan is prohibited permanently from becoming or acting as a director or officer of any issuer, registrant or investment fund manager; and

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Narayan is prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter;

against Prosperity Development that:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of Prosperity Development shall cease permanently;

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

iii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Prosperity Development is prohibited permanently; and

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

against Prospera Mortgage that:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of Prospera Mortgage shall cease permanently;

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

iii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Prospera Mortgage is prohibited permanently; and

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

DATED at Toronto this 15th day of December, 2016.

"Alan Lenczner"

APPENDIX 1

ALBERTA SECURITIES COMMISSION

DECISION

Citation: Re Narayan, 2016 ABASC 228

August 11, 2016

SAILESHWAR RAO NARAYAN,
PROSPERITY DEVELOPMENT GROUP LTD.,
PROSPERA MORTGAGE INVESTMENT CORPORATION, AND
PROSPERA MANAGEMENT CORP.

Panel:	Bradley G. Nemetz, QC Dr. Ian Beddis Fred Snell, FCA		
Representation:	Natasha Noel	–	for Commission Staff
	Craig Leggatt	–	for the Respondents
Submissions Completed:	March 9, 2016		
Decision:	August 11, 2016		

TABLE OF CONTENTS

I. INTRODUCTION

[1] Mr. Saileshwar Narayan (**Narayan**) is the principal behind Prospera Mortgage Investment Corporation (**Prospera Mortgage**), Prosperity Development Group Ltd. (**Prosperity Development**), and Prospera Management Corp. (**Prospera Management**, and, together with Narayan, Prospera Mortgage and Prosperity Development, the **Respondents**).

[2] Narayan used Prospera Mortgage and Prosperity Development to raise over $5,800,000 from the public. Contrary to the stated use of funds, Prospera Mortgage did not acquire mortgages as security for loans with the $2,343,000 raised from investors. Prosperity Developments' project never advanced beyond lending $845,000 (from the over $3,400,000

raised from the public) to a numbered company controlled by Narayan's brother and receiving in return a mortgage which appears, due to postponement to subsequent mortgages, to have no value.

[3] Narayan used Prospera Management to provide management services for Prospera Mortgage and Prosperity Development, and Prospera Management was the recipient, either directly or indirectly, of a great deal of investor money raised by these two companies.

[4] When the Alberta Securities Commission (**ASC**) intervened it was able to freeze only approximately $1,795,000 of funds raised. The investors have lost approximately $4,000,000.

[5] Staff of the ASC (**Staff**) alleges that in excess of $1,000,000 of investor money went to Narayan, his wife and family, much of it to support their lavish lifestyles.

[6] The Respondents admitted to the various breaches of Alberta securities laws ranging from the illegal distribution of securities, acting as a dealer without the required registration, engaging in a course of conduct that perpetrated a fraud on investors, breaching undertakings given to the ASC, and making prohibited representation, and misleading statements to investors. Narayan admitted that he was an officer and director of the respondent corporations (**Corporate Respondents**) and that he authorized the breaches of Alberta securities laws by the Corporate Respondents.

[7] Staff asked for various orders permanently prohibiting Narayan, Prospera Mortgage, and Prosperity Development, from participating in the capital market and sought against Narayan a disgorgement order of $1,100,000, an administrative penalty of $350,000, and a cost award of $109,161.68.

[8] Mr. Leggatt, counsel for the Respondents, took no issue with the Respondents' liability for securities laws violations as charged, but submitted that the panel should only prohibit Narayan from participating in the capital markets for 10 years, limit the disgorgement order to $800,000, and limit the administrative penalty to between $100,000 and $200,000. He also submitted that costs be significantly less than Staff requested.

[9] For the reasons set out we find sufficient evidence to sustain the alleged securities laws violations advanced by Staff. In consequence, we order an array of permanent capital market bans against each of Narayan, Prospera Mortgage, and Prosperity Development. We also order that Narayan pay a total of $1,275,951 comprising an administrative penalty of $300,000, a disgorgement order of $880,951, and a cost award of $95,000.

II. FACTS

[10] The background facts set out above come from a combination of admissions, agreed exhibits, testimony of a retired ASC investigative accountant, testimony of the wife of one of the investors, and the testimony of Narayan.

[11] Narayan was 42 years old at the time of our hearing. He has a diploma in business from NAIT and worked for a mining company for approximately a year. Thereafter he sold life insurance from 2002 until 2005. He was a registered mutual fund salesman for two and a half months in 2005. He was sanctioned by the Alberta Life Insurance Council for acting “in a dishonest or untrustworthy manner” in misleading clients, and he was suspended for 30 days and ordered to pay a penalty of $7,500.

[12] In 2008, Prospera Management was incorporated followed by Prospera Mortgage in 2010 and Prosperity Development in 2012.

A. Prospera Mortgage

[13] Narayan began raising money from the public by selling preferred shares of Prospera Mortgage in 2010. Reliance was had to the offering memorandum exception pursuant to section 2.9 of National Instrument 45-106 (**OM Exemption**), and an offering memorandum was filed with the ASC on November 17, 2010. That document explained that Prospera Mortgage's business was to provide mortgage financing to developers and owners of real estate in Alberta and British Columbia, and that the company intended “to pay out all of its net income and net realized capital gains as dividends” so as to avoid income tax obligations. The offering memorandum identified Prospera International Corporation (a company of which Narayan was director) as the manager, although Narayan testified that Prospera Management was used instead. The manager was to receive an annual management fee equal to 2.5% of the assets under management, and in return it was responsible for “the out of pocket expenses and disbursements” incurred in the management of Prospera Mortgage.

[14] A second offering memorandum, filed with the ASC on June 23, 2011, was rejected by the ASC. In October 2011, Prospera Mortgage agreed to discontinue distributing securities in reliance on the OM Exemption until it had filed an

offering memorandum that complied with Alberta securities laws. Narayan, in his capacity as director of Prospera Mortgage, signed an undertaking (**Undertaking**) to this effect.

[15] Prospera Mortgage did not file any subsequent compliant offering memorandum with the ASC. Contrary to the Undertaking, Prospera Mortgage continued to distribute securities, purporting to rely on the OM Exemption. In so doing, Prospera Mortgage raised $778,769 between November 2011 and January 2012.

[16] Further, in connection with the sale of the preferred shares of Prospera Mortgage, investors were provided with a "Financial Guarantee" that purported to guarantee repayment of the principal amounts advanced by investors. Attempts by at least one investor to collect on this guarantee were futile and Narayan testified that, following his inquiries, he determined that the guarantee was "a bogus piece of paper".

[17] Since June 2010, Prospera Mortgage raised $2,343,000 from investors, with investor money deposited into accounts controlled by Prospera Mortgage and Prospera Management. Neither Prospera Mortgage nor Narayan were registered with the ASC in any capacity throughout the relevant time. On June 1, 2012, the Executive Director issued a cease trade order pursuant to section 33.1 of the *Securities Act* (Alberta) (the **Act**), prohibiting the trading in or purchasing of Prospera Mortgage securities, which remains in effect. Prospera Mortgage's bank account was frozen by the ASC on June 15, 2012, with approximately $245,000 remaining in its account. Prospera Management's bank account was frozen by the ASC on June 26, 2012, with approximately $450,000 remaining in its account. Prospera Mortgage and Prospera Management do not have sufficient assets to repay investors' principal.

[18] The only mortgage Prospera Mortgage ever owned was a $120,000 mortgage given by a "very disgruntled employee that was [Narayan's] business partner", to secure repayment of money that Narayan had lent her "over the years". This mortgage did not qualify as the type of mortgage investment described in Prospera Mortgage's offering memoranda.

[19] Other than the funds seized, and apart from the funds misdirected by Narayan to his own personal use, his family's use and the use of another director, the balance of the funds were, by and large, used to further the raising of money from investors. Narayan also admitted that some investors were repaid from monies raised from other investors – one aspect of the operation that constituted a Ponzi-like scheme.

[20] When questioned about why there was little to no activity to identify mortgages for investment purposes, Narayan testified:

> Q What was your role at Prospera Mortgage? What were you doing? There was no mortgages, so what were you doing?
>
> A I was recruiting, promoting the business, trying to grow the business.
>
> Q How were you trying to do that?
>
> A By finding salespeople, by trying to raise investor funds.
>
> Q Were you looking for investment opportunities in mortgages?
>
> A Yes.
>
> Q Okay. So why were there never mortgages placed?
>
> A Just lack of my stupidity, I guess. I was trying to grow the business, and I was spending so much money on marketing, promotions, things of that nature, that just, you know, I just – I wasn't checking what I was doing.

[21] In short Narayan devoted his time to raising money from investors to spend on either raising more money from investors or for his own personal use. He spent little, if any, time seeking mortgage investment opportunities and invested none of the funds in mortgages. Prospera Mortgage was essentially a vehicle for Narayan to raise money from the public for his personal use.

B. Prosperity Development

[22] Beginning in the spring of 2012, Narayan began raising money for a different purpose – to develop a recreational vehicle park next to Pine Lake, Alberta. For this purpose, he used Prosperity Development.

[23] Between April 12 and May 23, 2012, Prosperity Development raised over $3,400,000 (approximately $2,500,000 from Alberta investors) using the offering memorandum exemption. The securities offered were unsecured bonds of Prosperity Development. Its offering memorandum explained that the money raised would be used to acquire and develop identified land in Pine Lake under a purchase agreement whereby $5,000 was the deposit and $845,000 was the balance of the purchase price. The $845,000 was not to be paid until after "the Corporation [Prosperity Development] receives confirmation of re-zoning and development approval from the County of Red Deer". The development was to comprise between 150 – 200 recreational vehicle lots with services such as electricity, roads, paths, and a convenience store. The offering memorandum also provided that the purchase agreement would be terminated if Prosperity Development did not obtain rezoning of the land and a development permit.

[24] Contrary to the offering memorandum, the land was purchased by a numbered company owned by Narayan's brother, using $845,000 of Prosperity Development's investors' money, at a time when no applications for zoning approval and no development approvals had been sought or obtained.

[25] At the time that the money was lent to Narayan's brother's number company, no mortgage was registered against the Pine Lake property to protect the $845,000 advanced. In August 2012, Prosperity Development filed a caveat against the Pine Lake property, claiming an "unregistered mortgage". Subsequent to that registration, three mortgages totaling $900,000 were registered against the title to the Pine Lake property, and Prosperity Development's caveat was postponed to each of those mortgages.

[26] In June 2012, the ASC issued freeze orders against Prosperity Development's bank accounts followed by freeze orders against Narayan and Prospera Mortgage's bank accounts. By June 26, 2012, only approximately $1,100,000 remained in Prosperity Development's bank accounts.

[27] On June 27, 2012, an interim cease trading order was issued against Narayan and Prosperity Development.

[28] None of the investors received any return of their principal investment and it is unlikely, even with the money that remains frozen, that the investors will receive any significant return of their investment monies.

[29] Before turning to findings on violations of securities laws and our analysis and ruling on the sanctions that flow from those violations, we will address Narayan's use of the investors' money.

C. Narayan's Use of Funds

[30] As stated above, much of the money raised by Prospera Mortgage and Prosperity Development was recycled to raise more funds. However, Narayan admitted that at least $800,000 of investor money was improperly diverted to his personal use. Staff asserted that a total of $1,132,496 was improperly diverted and sought a disgorgement order of $1,100,000.

[31] An appreciation of the use of funds and the lifestyle of Narayan that was supported by investor money can be gained from the following examples.

(a) He paid his wife $170,000 for alleged advances she made to set up Prospera Mortgage and to repay her for helping him fund a failed hotel investment in the Dominican Republic.

(b) He purchased or rented very expensive BMW and Audi motor vehicles.

(c) He allowed his co-director to purchase a watch which cost in excess of $21,000.

(d) He alone or with his wife took personal pleasure trips to such diverse locations as Texas, Las Vegas, Seattle, Paris, London, California, Italy, and Mexico.

(e) On one day in Milan, while on a holiday with his wife, Narayan charged in excess of $12,000 to a Visa account. On the following day he charged more than $11,000. These were charged to Visa accounts in his name which was paid for by the companies. When totalled the expenditures on the Italian trip exceeded $30,000.

D. Investor Evidence

[32] Narayan's lifestyle can be contrasted with the evidence from one of the families whose investment money he was spending.

[33] One investor testified about $41,500 invested by her husband in Prospera Mortgage. These, like many of the funds raised, were RRSP funds. Her husband's funds came from his pulp and paper workers' pension, and he was investing them at a time when he was gravely ill waiting for a kidney transplant. The result of their experience with the Respondents has been upset, anguish, and a loss of confidence in the exempt market.

[34] Other investors who submitted evidence noted that they now had increased distrust of the investment market. One family now only invest in guaranteed investment certificates. Another investor submitted a witness impact statement that indicated that he had to work an additional fourteen months to make up the losses to his retirement fund.

III. FINDINGS OF CONTRAVENTION OF SECURITIES LAWS

[35] The Notice of Hearing alleged breaches of securities laws and sought orders under section 198 (Cease Trading and other Order), section 199 (Administrative Penalty), and section 202 (Costs) of the Act.

[36] As against Prospera Mortgage it alleged failing to comply with a written undertaking to the Executive Director, illegally distributing securities, acting as a dealer without registration, making prohibited representations, and engaging in a course of conduct that perpetrated a fraud. As against Prosperity Development it alleged making misleading or untrue statements and engaging in a course of conduct that perpetrated a fraud. It also alleged that Prospera Management engaged in a course of conduct that perpetrated a fraud, that Narayan engaged in a course of conduct that perpetrated a fraud, and that Narayan, as officer or director (or both), authorized, permitted or acquiesced in the breaches of Prospera Mortgage and Prosperity Development.

[37] At the outset of the hearing, we received into evidence a Statement of Admissions, signed by each of the Respondents, containing numerous admissions in relation to the allegations. We also received into evidence a copy of the Notice of Hearing, which had been signed by Narayan on behalf of himself and the Corporate Respondents, that admitted “all of the allegations contained” in the Notice of Hearing. Counsel for the Respondents took no issue with the Respondents' liability for securities laws violations as alleged and admitted.

[38] On the basis of the evidence presented to us and the admissions, we find:

(a) Prospera Mortgage breached:

(i) section 75(1) of the Act by acting as a dealer without the required registration;

(ii) section 92(1) of the Act by making prohibited representations to investors;

(iii) section 93.2 of the Act by failing to comply with a written undertaking given to the Executive Director;

(iv) section 110(1) of the Act by engaging in the distribution of securities without having filed a preliminary prospectus or a prospectus with the Executive Director and receiving a receipt for same, and without an exemption from this requirement;

(b) Prospera Mortgage, Narayan, and Prospera Management breached section 93(b) by engaging or participating in an act, practice or course of conduct relating to Prospera Mortgage securities that they knew or ought to have known perpetrated a fraud on Prospera Mortgage investors;

(c) Prosperity Development breached section 92(4.1) by making statements to investors that it knew or reasonably ought to have known, in material respects, were misleading or untrue, or did not state facts that were required to be stated or necessary to make the statements not misleading;

(d) Prosperity Development and Narayan breached section 93(b) by engaging or participating in an act, practice or course of conduct relating to Prosperity Development securities that they knew or ought to have known perpetrated a fraud on Prosperity Development investors; and;

(e) Narayan in his capacity as director, officer, or both, of Prospera Mortgage and Prosperity Development authorized, permitted or acquiesced to the breaches of the Act by those entities.

IV. ANALYSIS AND FINDINGS ON ORDERS FOR SANCTION AND COSTS

[39] We received evidence addressing sanctions, followed by submissions from Staff and counsel for the Respondents.

[40] In their submissions, Staff sought permanent market access bans against Narayan, Prospera Mortgage, and Prosperity Development. Staff also sought against Narayan an administrative penalty of $350,000, a “disgorgement” order of

$1,100,000, and a cost-recovery order of $109,161.68. Staff referred the panel to five decisions: *Re Schmidt*, 2013 ABASC 320, *Re Zeiben*, 2014 ABASC 412, *Re Ontario Ltd.*, 2015 LNONOSC 108, *Re Cloutier*, 2014 ABASC 170, and *Re Reeves*, 2011 ABASC 107.

[41] Counsel for the Respondents agreed that the applicable law was set out in the cases cited by Staff but submitted that the panel should only impose bans against Narayan of ten years, limit the disgorgement order to $800,000, and limit the administrative penalty between $100,000 and $200,000. He also submitted that costs be significantly less than the amount sought by Staff

V. SANCTIONS – APPLICATION OF PRINCIPLES AND FACTORS

[42] From the cases it can be seen that the ASC's powers under sections 198 and 199 of the Act are to be exercised prospectively in the public interest, with a view to protecting investors and the capital market from future harm.

[43] Staff referred to a non-exclusive list of factors to be considered by the panel taken from *Zeiben*. They are as follows:

(a) the seriousness of the findings against the respondents and the respondents' recognition of that seriousness;

(b) characteristics of the respondents, including capital market experience and activity and any prior sanctions;

(c) any benefits received by the respondents and any harm to which investors or the capital market generally were exposed by the misconduct found;

(d) the risk to investors and the capital market if the respondents were to continue to operate unimpeded in the capital market or if others were to emulate the respondents' conduct;

(e) decisions or outcomes in other matters; and

(f) any mitigating considerations.

(a) The seriousness of the findings against the respondents and the respondents' recognition of that seriousness

[44] The Respondents' conduct has resulted in serious findings against the Respondents. Narayan and the Corporate Respondents admit and we find that they engaged in misrepresentation in raising the money and fraud in the use of the money raised. Narayan's actions, as the directing mind of the Corporate Respondents, are attributable to them. He signed an undertaking on behalf of Prospera Mortgage to stop soliciting funds which was promptly breached. The Respondents spent much of the money raised from investors to either raise more money or support Narayan's lavish lifestyle. Narayan provided no substantive evidence that either he or Prospera Mortgage took any substantive steps to seek out or apply investors' money for the purpose for which it was raised, investing in mortgages. Seemingly, the efforts of the Respondents were principally focused on raising the initial money, raising more money, and spending what was left on Narayan and his family. In making this statement, we include the forwarding of $845,000 to his brother's numbered company in clear violation of the representations made to investors that those funds would be advanced only after it was re-zoned and developmental approvals had been obtained. Even then the funds were to be used to acquire the land, not to lend money to his brother's numbered company to allow that company to acquire the land.

[45] As for Narayan's recognition of the seriousness of his behaviour, we observed, contrary to the assertion of his counsel, little if any contrition, apology, recognition of the harm that he caused to investors or recognition for the damages caused to the capital market.

(b) Characteristics of the respondents, including capital market experience and activity and any prior sanctions

[46] Narayan had experience selling life insurance and was registered for a short period of time as a mutual fund salesman. From this we gather that he conceived that he could make money raising funds from the public and this led to his incorporation and use of Prospera Mortgage and Prosperity Development. We have no evidence that he had any expertise in mortgage investments or in property development.

[47] He was sanctioned for misleading individuals in the sale of life insurance products. As we have found, he carried this lack of candour into the sale of securities.

(c) Benefits received by the respondents and any harm to which investors or the capital market generally were exposed by the misconduct found

[48] The loss to the public is clear. Narayan raised over $5,800,000 from the public of which approximately $1,800,000 was seized, leaving a shortfall of approximately $4,000,000.

[49] One investor was sold the investment by members of her church and this has led to her distancing herself from her church. Another investor had to work an additional fourteen months to top up his retirement savings. A third investor lost his union pension at a time when he was gravely ill. All had their confidence in the exempt market undermined. We are certain that other vulnerable investors had similar experiences.

[50] As to the benefit received by Narayan, his companies, and his family, the evidence demonstrates a lavish lifestyle with little effort expended beyond raising more money from the public to support his lifestyle. Narayan admitted that at least $800,000 of the money raised went to his personal use. Evidence supported this admission including Prospera Mortgage banking records indicating that a significant portion of the $2,300,000 raised went to Narayan and his wife. Prospera Mortgage's investors will recover little, if any, of their money.

[51] With respect to Prosperity Development, banking records show that, out of nearly $3,500,000 raised $845,000 was advanced to purchase the Pine Lake property which was subsequently mortgaged. Approximately $1,100,000 was frozen by the ASC leaving over $1,500,000 of investor money unaccounted for. This is a large amount, especially given that Prosperity Development did not start raising money until April 2012 and its bank accounts were frozen in June of 2012.

(d) Risk to investors and the capital market if the respondents were to continue to operate unimpeded in the capital market or if others were to emulate the respondents' conduct

[52] Given Narayan's dishonesty in raising and spending investors' money, his prior sanction by another regulator for his dishonesty, and his breach of the written undertaking, we are of the opinion that he has little, if any, regard for truth when it comes to separating people from their money. There is nothing more fundamental to the protection of the investor public than telling the truth when raising funds.

(e) Decisions or outcomes in other matters

[53] In the cases cited to us, the administrative penalties range from $200,000 in *Schmidt*, through $250,000 in both *Zeiben* and *Ontario*, $650,000 in *Reeves*, to $1,000,000 in *Cloutier*.

[54] Staff suggested an administrative penalty of $350,000. Counsel for the Respondent argued for an administrative penalty in the range of $100,000 and $200,000 based upon Schmidt.

[55] The respondents in *Schmidt* raised $5,000,000 of which $700,000 was used for improper purposes. He was 77 years old and had a prior history of violating securities laws. He was found to have made misleading statements in the documents used to raise money for oil and gas drilling but, unlike our case, the company in *Schmidt* had oil and gas operations. Further, as the company had oil and gas assets, the loss to investors was not known.

[56] We view the Respondents' behaviour as more egregious. Prospera Mortgage and Narayan did not pursue Prospera Mortgage's business objectives. Narayan, through Prospera Mortgage, knowingly violated the management agreement, diverted money to himself and breached a written undertaking given to the Executive Director to cease raising money on behalf of Prospera Mortgage. With respect to Prosperity Development, Narayan authorized the advance of $845,000 to his brother's numbered company, in clear violation of the offering memorandum.

[57] We are also of the opinion that Narayan's behaviour is, in some respects, worse than the behaviour found in *Zeiben*. Zeiben received only modest sums from his improper activities. He, in fact, tried to acquire businesses in furtherance of the purposes for which the money was raised. Zeiben did not sell his stock to make a quick profit, but instead sought business opportunities for his company. Zeiben also believed that Alberta securities laws did not apply to his company, a Nevada public company trading on the Frankfurt exchange.

[58] Narayan, and the Corporate Respondents through him, knew the securities laws that applied to them. He made no attempt to carry out Prospera Mortgage's business plan and instead improperly used investor money for his personal benefit, in clear violation of the terms under which the money was raised. He authorized Prospera Mortgage's violation of a written undertaking given to the Executive Director.

[59] We will not further discuss the cases cited to us beyond observing that they demonstrate a wide range of administrative penalties that vary according to the specific contraventions of securities laws, the severity of the conduct, the benefit to

the respondents and the harm to the capital market. The administrative penalty we assign in this case falls within the range of sanctions in other cases.

Mitigating considerations

[60] The Respondents admitted to the various breaches of the Act, co-operated with the investigation, and assisted in the presentation of the case by agreeing to numerous exhibits. These are mitigating factors that count in their favour. Narayan also agreed that at least $800,000 improperly went to his own use, placing a lower limit on the money misappropriated for which Staff sought repayment.

[61] Contrary to the submissions of his counsel, we find little else in the Respondents' behaviour that counts as mitigation. Beyond the admissions made, Narayan showed no contrition or empathy for the investors whose money he took. He did not apologize for his conduct and its impact on investors and the capital market. At best, he said that he hoped to make a success of Prosperity Development so that he could repay investors for Prospera Mortgage's complete failure.

VI. CONCLUSION – SANCTIONS

A. Capital Market Bans

[62] First addressing capital market bans against Prospera Mortgage and Prosperity Development, Staff requested permanent bans under sections 198(1)(a), 198(1)(b), 198(1)(c), and 198(1)(c.1) of the Act. Counsel for the Respondents did not oppose those requests. We find that permanent orders under those sections are appropriate to prevent the companies from further accessing the capital market.

[63] Turning to Narayan, Staff sought a permanent ban on his participation in the capital market, including his participation as a director or officer. Counsel for Narayan submitted that ten-year bans would be a sufficiently lengthy term, yet allow Narayan an opportunity to rehabilitate himself. The panel raised the prospect of allowing Narayan to avail himself of an opportunity to invest his own money using an RRSP.

[64] The panel notes Narayan's training and education, his background as a life insurance and mutual fund salesman, including his sanction for misrepresentation, his egregious behaviour in the raising of investment money for Prospera Mortgage and Prosperity Development, his misappropriating that money, and his lack of remorse for his actions. We conclude that a permanent ban, subject to a limited relaxation to allow for personal investment, is necessary to prevent Narayan from repeating his behaviour.

B. Administrative Penalty

[65] As to the administrative penalty, we focus on the public interest by protecting investors and the capital market from future harm. We consider both specific and general deterrence. Having banned Narayan permanently from participating in the capital market, the focus of the administrative penalty is primarily its general deterrent value.

[66] In considering the general deterrence, we take into account the fact that we will be making an order that Narayan is liable for payment of a large amount of the money that he improperly applied to his lifestyle and paid to family members. However, the return of misappropriated money is not a sufficient deterrent to prevent others from raising money by breaking securities laws. If promoters who raise money by breaches of securities laws only risk returning money taken, there is little downside to taking that risk.

[67] Given the extensive violations of securities laws present in this case, the amount of money raised and lost, and the degree of deliberation and planning associated with Narayan's raising of investor money, the panel is of the opinion that a significant administrative penalty is required to send a message that such violations of securities laws are serious and will result in serious personal and financial consequences.

[68] In these circumstances, the panel is of the opinion, that an administrative penalty of $300,000 will meet the needs of a general deterrent by sending a warning to others planning to raise money from the public about the dangers and consequences of fraud, misrepresentation, and failure to follow Alberta securities laws.

C. Disgorgement

[69] If a person or company has not complied with Alberta securities laws, an ASC panel may order that the person or company pay to the ASC “any amounts obtained or payments or losses avoided as a result of the non-compliance”. Such an order is commonly referred to as a disgorgement order. Staff have the initial burden of proving, on a balance of probabilities, the amounts obtained by a respondent as a result of non-compliance with the Act, with the burden then shifting to the respondent, whose non-compliance resulted in money being wrongfully obtained, to disprove the

reasonableness of those amounts (*Re Planned Legacies Ltd.*, 2011 ABASC 278 at para.72; and *Re Arbour Energy Inc.*, 2012 ABASC 416 at para. 37).

[70] Staff sought a disgorgement order against Narayan based on the conversion of Prospera Mortgage investor money from the Prospera Mortgage and Prospera Management accounts to Narayan's personal use. The gist of the fraud allegation against Narayan, and his admission of fraudulent conduct, was the conversion of Prospera Mortgage investor money to his personal use. Narayan's counsel conceded that Staff had "established the evidentiary basis for a disgorgement order". We consider a disgorgement order against Narayan to be appropriate in the circumstances.

[71] At issue is the amount of such disgorgement order. Staff sought disgorgement of $1,100,000. Narayan's counsel pointed to the admission that "at least $800,000 of the monies raised ... went to Narayan's own personal use", submitting that we "should not impose an amount greater than the number that was used for the purpose of the ... settlement agreement". In our view, that admission, referencing "at least" $800,000, acknowledges a floor, not a ceiling, on the amount of investor money converted to Narayan's personal use.

[72] Staff categorized amounts alleged to have been obtained by Narayan and others as follows: (a) amounts transferred directly to Narayan's personal bank account; (b) payments made on Narayan's personal credit cards; (c) payments made to Narayan's spouse; (d) payments relating to properties owned by Narayan or his spouse; (e) cash withdrawals and Interac payments; and (f) payments related to vehicles.

[73] Narayan's counsel generally objected to several items included in Staff's calculations. He submitted that the evidence indicated "many expenses" – on Narayan's personal credit cards and otherwise – may not have been appropriate expenditures but were not for Narayan's personal use or benefit. Narayan's counsel also submitted that, in deciding an appropriate disgorgement amount, the economic impact on Narayan of all monetary orders made against him should be considered.

[74] Turning to Staff's categories, Staff's evidence indicated transfers totalling $366,845 to Narayan's personal bank account from the Prospera Mortgage and Prospera Management accounts holding Prospera Mortgage investor money. Staff also indicated but did not quantify, commingling of Prosperity Development investor money with Prospera Mortgage investor money in the Prospera Management account, commencing, we are satisfied, in April 2012. In our view, transfers of Prospera Mortgage investor money to Narayan's personal bank account were, on their face given the account type, for his personal use. We find the amount of those transfers proved by Staff to the requisite standard to be $349,645 ($366,845 less transfers after commingling of money). Narayan testified about some of those transfers to his personal bank account, but we heard nothing from him disproving the reasonableness of the amount proved by Staff. Indeed, certain of Narayan's testimony supported our conclusion that transfers to his personal bank account were for his personal use. For instance, he characterized some of the money he took as salary, but admitted that he "shouldn't have done" so. He also explained that he "borrowed" money from Prospera Mortgage but did not repay it, and that he took a separate shareholder loan from Prospera Management "to pay some bills". Therefore, concerning transfers of Prospera Mortgage investor money to Narayan's personal bank account, we find that $349,645 was obtained by Narayan as a result of his non-compliance with Alberta securities laws.

[75] Staff's evidence indicated that the Prospera Management account holding Prospera Mortgage investor money made payments totalling at least $379,150 on Narayan's five personal credit cards, at least $336,850 of this paid prior to the commingling of Prosperity Development investor money with Prospera Mortgage investor money. In our view, charges on personal credit cards are, on their face given the card type, personal expenditures, with payments on those cards being to the cardholder's personal benefit. That said, Staff conceded that the statements for two of Narayan's personal credit cards were "much more indicative of business charges", indicating that they were not seeking disgorgement of Prospera Management account payments on those cards. Such payments (prior to commingling of investor money) totalled $51,600. We thus are satisfied that Staff have proved on a balance of probabilities that Prospera Mortgage investor money was used to pay charges totalling at least $285,250 ($336,850 less $51,600) on three of Narayan's personal credit cards, and that these charges were personal expenditures. Narayan testified about credit card charges, sometimes in general terms, but we heard nothing from him sufficing to disprove the reasonableness of the amount proved by Staff. Indeed, he admitted that numerous credit card charges were personal expenditures (including charges for the previously-mentioned trips for himself and his spouse). Therefore, concerning Prospera Management account payment on Narayan's personal credit cards, we find that at least $285,250 was obtained by Narayan as a result of his non-compliance with Alberta securities laws.

[76] Staff's evidence showed Narayan's spouse received payments totalling $186,000 from the Prospera Mortgage and Prospera Management accounts. This total excludes payments made after Prosperity Development investor money was commingled with Prospera Mortgage investor money in the Prospera Management account. Narayan testified that $172,000 of this total constituted repayment of money lent to him by his spouse; the associated cheques in evidence were signed by Narayan. About the balance, Narayan testified that the electronic transfers to his spouse from Prospera Management were for "money that I was going to take for myself personally, and I was just giving it to her", apparently

in an attempt to shield money from tax authorities. The evidence was, and we find, that Prospera Mortgage investor money totalling $186,000 was paid to Narayan's spouse. Narayan's testimony that money lent by his spouse was for business purposes was not, in itself, persuasive, given that the $172,000 was lent to him, not the businesses in question. We are also satisfied, and thus find, that the conversion of the $186,000 was to Narayan's personal use, albeit indirectly. We therefore find that that $186,000 was obtained by Narayan as a result of his non-compliance with Alberta securities laws.

[77] Staff's evidence showed that payments totalling $23,655 relating to properties owned by Narayan or his spouse were made from the Prospera Management account holding Prospera Mortgage investor money. We accept Narayan's testimony that a condominium unit owned by his spouse was used by the Corporate Respondents for office space, and it follows that payments relating to that unit were not to Narayan's personal benefit. However, concerning three payments totalling $11,859 relating to a condominium unit owned by Narayan, no business purpose for that unit was claimed or proved; we accordingly find that those payments of Prospera Mortgage investor money were to his personal benefit. We therefore find that that $11,859 was obtained by Narayan as a result of his non-compliance with Alberta securities laws.

[78] Staff's evidence indicated cash withdrawals totalling $100,609 from the Prospera Mortgage and Prospera Management accounts. We note that certain of the withdrawals occurred after Prosperity Development investor money was commingled with Prospera Mortgage investor money in the Prospera Management account. In any event, with one exception, we received no specifics about the withdrawals, and are therefore unable to determine whether the Prospera Mortgage investor money withdrawn was converted to Narayan's personal use. The referenced exception involves a certified cheque used by a Prospera Mortgage director to purchase an expensive watch. Although we find disconcerting the use to which that withdrawn money was put, particularly given Narayan's admission that he "agreed to" it, we cannot consider that money to have been converted to Narayan's personal use.

[79] Concerning Interac purchases on the Prospera Management account prior to the commingling of Prosperity Development investor money with Prospera Mortgage investor money, Narayan testified that "possibly a few" of those were "personal purchases" but suggested that the "big amounts" were for company events. The evidence overall does not suffice to prove that any such purchases were for Narayan's personal use.

[80] Finally, Staff's evidence showed that payments totalling $99,622 relating to vehicles used by Narayan and other personnel were made from the Prospera Mortgage and Prospera Management accounts holding Prospera Mortgage investor money. Narayan testified that those vehicles were used for business purposes, which we accept for all but the leased luxury vehicle exclusively used by Narayan. For the excepted vehicle, we find that lease payments beginning in August 2010 totalling $48,197 were to Narayan's personal benefit. This total excludes payments made after Prosperity Development investor money was commingled with Prospera Mortgage investor money in the Prospera Management account. That $48,197 of Prospera Mortgage investor money was, we find, converted to Narayan's personal use, and thus obtained by Narayan as a result of his non-compliance with Alberta securities laws.

[81] In summary, we conclude, our findings having been constrained, necessarily, by the pleadings, admissions, submissions and evidence, that $880,951 was obtained by Narayan as a result of his non-compliance with Alberta laws. We therefore conclude that an order under section 198(1)(i) of the Act should be made against Narayan in the amount of $880,951.

VII. COSTS

[82] Cost recovery orders can be made against any respondent who contravened Alberta securities laws, largely to ensure that at least some expenses associated with an enforcement proceeding are not indirectly borne by the industry at large who abide by the rules. Such orders also provide the ASC with a means of encouraging procedural efficiencies in enforcement proceedings.

[83] Staff submitted a bill of costs totaling $109,161.68, which included recovery of time spent by investigation staff in the amount of $22,662.50, recovery of time for legal staff in the amount of $64,537.50, and disbursements of $21,961.68. It should be noted that these amounts do not cover all of the ASC expenses such as overhead, use of space, and compensation for ASC members participating in the hearing process.

[84] Counsel for the Respondents submitted that, in civil proceedings, only approximately 25 per cent of the real costs are typically awarded to the successful party. In addition, he took exception to some amounts claimed on the bill of costs such as $.25 a page for photocopying and some travel costs.

[85] Costs recoverable in civil proceedings have no bearing upon costs recoverable in ASC proceedings. Costs in civil proceedings are set in part to reflect a policy decision that it is contrary to the administration of justice to saddle the unsuccessful party with all of the costs incurred by the successful party. That policy is founded upon the principle that

there should not be too high a barrier to submitting civil disputes to court for resolution and on the fear that placing too high a cost would benefit wealthy litigants to the detriment of litigants of more modest means.

[86] Staff provided us the *Reeves* decision. We note in *Reeves* that some credit was given the respondent for cooperation in the process beyond the direct savings to the respondent by not causing Staff to incur more expenses which they could in turn claim back against the respondent. In this regard, we note that the Respondents cooperated with the investigation and entered into various admissions (including the facts set out in the Notice of Hearing, agreeing to the entry of exhibits, which in the case of the victim impact statements eliminated the need for those investors to testify).

[87] In all the circumstances, we set the cost award at $95,000.

VIII. ORDERS

[88] As against Narayan, we order:

(a) under sections 198(1)(b) and (c) of the Act, he cease trading in or purchasing securities or derivatives, and all of the exemptions contained in Alberta securities laws do not apply to him, permanently, except that these orders do not preclude him from trading in or purchasing securities through a registrant (who has first been given a copy of this decision) in:

(i) registered retirement savings plans, registered retirement income funds, or tax-free savings accounts (as defined in the *Income Tax Act* (Canada)) or locked-in retirement accounts for Narayan's benefit;

(ii) one other account for Narayan's benefit; or

(iii) both, provided that:

(A) the securities are listed and posted for trading on the Toronto Stock Exchange, the New York Stock Exchange, or NASDAQ (or their successor exchanges) or are issued by a mutual fund that is a reporting issuer and;

(B) Narayan does not own legally or beneficially more than 1% of the outstanding securities of the class or series of the class in question.

(b) under section 198(1)(c.1), he is prohibited from engaging in investor relations activities, permanently;

(c) under sections 198(1)(d) and (e), he resign all positions he holds as a director or officer of any issuer, registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system, and he is prohibited from becoming or acting as a director or officer (or both) of any issuer (or other person or company that is authorized to issue securities), registrant, investment fund manager, recognized exchange, recognized self-regulatory organization, recognized clearing agency, recognized trade repository or recognized quotation and trade reporting system, permanently;

(d) under section 198(1)(e.2), he is prohibited from becoming or acting as a registrant, investment fund manager or promoter, permanently;

(e) under section 198(1)(e.3), he is prohibited from acting in a management or consultative capacity in connection with activities in the securities market, permanently;

(f) under section 198(1)(i), he pay to the ASC $880,951 obtained as a result of his non-compliance with Alberta securities laws;

(g) under section 199, he pay an administrative penalty of $300,000; and

(h) under section 202, he pay $95,000 of the costs of the investigation and hearing.

[89] In respect of Prospera Mortgage, we order that, with permanent effect:

(a) under section 198(1)(a) of the Act, all trading in or purchasing of securities of Prospera Mortgage cease;

(b) under section 198(1)(b), Prospera Mortgage cease trading in or purchasing securities or derivatives;

(c) under section 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to Prospera Mortgage; and

(d) under section 198(1)(c.1), Prospera Mortgage is prohibited from engaging in investor relations activities.

[90] In respect of Prosperity Development, we order that, with permanent effect:

(a) under section 198(1)(a) of the Act, all trading in or purchasing of securities of Prosperity Development cease;

(b) under section 198(1)(a), Prosperity Development cease trading in or purchasing securities or derivatives;

(c) under section 198(1)(c), all of the exemptions contained in Alberta securities laws do not apply to Prosperity Development; and

(d) under section 198(1)(c.1), Prosperity Development is prohibited from engaging in investor relations activities.

[91] According to its terms, the interim cease trading order expires with the issuance of this decision.

[92] This proceeding is concluded.

August 11, 2016

For the Commission:

“Bradley G. Nemetz, QC”

“Dr. Ian Beddis”

“Fred Snell, FCA”

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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

THERE IS NOTHING TO REPORT THIS WEEK.

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation

THERE IS NOTHING TO REPORT THIS WEEK.

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

THERE IS NOTHING TO REPORT THIS WEEK.

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
AlarmForce Industries Inc.	19 September 2016	30 September 2016	30 September 2016		
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		
Starrex International Ltd.	30 December 2015	11 January 2016	11 January 2016		

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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 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Crombie Real Estate Investment Trust
Principal Regulator – Nova Scotia
Type and Date:
Preliminary Base Shelf Prospectus dated December 13, 2016
NP 11-202 Preliminary Receipt dated December 13, 2016
Offering Price and Description:
$1,000,000,000.00 – Units, Debt Securities, Warrants, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2565702

Issuer Name:
Dividend 15 Split Corp. II
Principal Regulator – Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated December 14, 2016 amending and restating the Preliminary Short Form Prospectus dated December 13, 2016
NP 11-202 Preliminary Receipt dated December 15, 2016
Offering Price and Description:
Offering: $40,075,000.00 – 2,290,000 Preferred Shares and 2,290,000 Class A Shares
Prices: $10.00 per Preferred Share and $7.50 per Class A Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
TD Securities Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Raymond James Ltd.
Desjardins Securities Inc.
Echelon Wealth Partners Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
-
Project #2565684

Issuer Name:
Exchange Income Corporation
Principal Regulator – Manitoba
Type and Date:
Preliminary Short Form Prospectus dated December 16, 2016
NP 11-202 Preliminary Receipt dated December 16, 2016
Offering Price and Description:
$85,027,350.00 – 2,003,000 Common Shares
Price: $42.45 Per Common Share
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
Laurentian Bank Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Raymond James Ltd.
Altacorp Capital Inc.
Canaccord Genuity Corp.
MacQuarie Capital Markets Canada Ltd.
Promoter(s):
-
Project #2565563

Issuer Name:
GreenSpace Brands Inc. (formerly Aumento IV Capital Corporation)
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 16, 2016
NP 11-202 Preliminary Receipt dated December 19, 2016
Offering Price and Description:
$4,350,000.00 – 3,625,000 Subscription Receipts
Price: $1.20 per Subscription Receipt
Underwriter(s) or Distributor(s):
Beacon Securities Limited
Cormark Securities Inc.
Canaccord Genuity Corp.
Altacorp Capital Inc.
Promoter(s):
Matthew von Teichman
Project #2565569

Issuer Name:
Maple Leaf Short Duration 2017 Flow-Through Limited Partnership – National Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated December 16, 2016
Received on December 16, 2016
Offering Price and Description:
Maximum Offering: $10,000,000.00 – 400,000Maple Leaf Short Duration 2017 Flow -Through Limited Partnership – National Class Units
Minimum Offering: $2,500,000.00 – 100,000Maple Leaf Short Duration 2017 Flow -Through Limited Partnership – National Class Units
Price per Unit: $25.00
Minimum Purchase: $5,000 (200 Units)
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Naitonal Bank Financial Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Manulife Securities Incorporated
Raymond James Ltd.
Industrial Alliance Securities Inc.
Laurentian Bank Securities Inc.
Echelon Wealth Partners Inc.
Promoter(s):
Maple Leaf Short Duration Holdings Ltd.
Maple Leaf Short Duration 2017 Flow-Through Management Corp.
Project #2567014

Issuer Name:
Maple Leaf Short Duration 2017 Flow-Through Limited Partnership – Quebec Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated December 16, 2016
Received on December 16, 2016
Offering Price and Description:
Maximum Offering: $10,000,000.00 – 400,000Maple Leaf Short Duration 2017 Flow -Through Limited Partnership – Quebec Class Units
Minimum Offering: $2,500,000.00 – 100,000Maple Leaf Short Duration 2017 Flow -Through Limited Partnership – Quebec Class Units
Price per Unit: $25.00
Minimum Purchase: $5,000 (200 Units)
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Naitonal Bank Financial Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Manulife Securities Incorporated
Raymond James Ltd.
Industrial Alliance Securities Inc.
Laurentian Bank Securities Inc.
Echelon Wealth Partners Inc.
Promoter(s):
Maple Leaf Short Duration Holdings Ltd.
Maple Leaf Short Duration 2017 Flow-Through Management Corp.
Project #2567017

Issuer Name:
Morguard Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated December 14, 2016
NP 11-202 Preliminary Receipt dated December 14, 2016
Offering Price and Description:
$175,000,000.00 – 4.50% Convertible Unsecured Subordinated Debentures due December 31, 2021
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
HSBC Securities (Canada) Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #2564831

Issuer Name:
PrairieSky Royalty Ltd.
Principal Regulator – Alberta
Type and Date:
Preliminary Short Form Prospectus dated December 16, 2016
NP 11-202 Preliminary Receipt dated December 16, 2016
Offering Price and Description:
$251,200,000.00 – 8,000,000 Common Shares
Price: $31.40 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Peters & Co. Limited
GMP Securities L.P.
Altacorp Capital Inc.
Dundee Capital Partners
MacQuarie Capital Markets Canada Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #2566188

Issuer Name:
RYU Apparel Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated December 15, 2016
NP 11-202 Preliminary Receipt dated December 16, 2016
Offering Price and Description:
Up to $* – Up to * Common Shares
Price: $0.15 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #2566827

Issuer Name:
407 International Inc.
Principal Regulator – Ontario
Type and Date:
Final Short Form Shelf Prospectus dated December 13, 2016
NP 11-202 Receipt dated December 13, 2016
Offering Price and Description:
$1,800,000,000.00 – Medium-Term Notes (Secured)
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
CIBC WORLD MARKETS INC.
CASGRAIN & COMPANY LIMITED
NATIONAL BANK FINANCIAL INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
Promoter(s):
-
Project #2558444

Issuer Name:
Allied Properties Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated December 15, 2016
NP 11-202 Receipt dated December 16, 2016
Offering Price and Description:
$1,000,000,000.00 – Debt Securities Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2564629

Issuer Name:
American Hotel Income Properties REIT LP
Principal Regulator – British Columbia
Type and Date:
Final Short Form Prospectus dated December 16, 2016
NP 11-202 Receipt dated December 16, 2016
Offering Price and Description:
9,810,000 Units
Price: Cdn$10.20 per Offered Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
National Bank Financial Inc.
TD Securities Inc.
Canaccord Genuity Corp.
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
Haywood Securities Inc.
Industrial Alliance Securities Inc.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #2563813

Issuer Name:
Baylin Technologies Inc.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated December 15, 2016
NP 11-202 Receipt dated December 16, 2016
Offering Price and Description:
$5,000,550.00 – 2,703,000 Common Shares at a price of $1.85 per Common Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Raymond James Ltd.
Promoter(s):
-
Project #2555534

Issuer Name:
Brookfield Infrastructure Finance Limited
Brookfield Infrastructure Finance Pty Ltd
Brookfield Infrastructure Finance ULC
Brookfield Infrastructure Finance LLC
Principal Regulator – Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated December 16, 2016
NP 11-202 Receipt dated December 16, 2016
Offering Price and Description:
C$2,000,000,000.00 – Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2564712,2564713,2564709,2564711

Issuer Name:
B.E.S.T. Total Return Fund Inc.
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated December 16, 2016
NP 11-202 Receipt dated December 19, 2016
Offering Price and Description:
Class A shares @ net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2554169

Issuer Name:
Canopy Growth Corporation
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated December 16, 2016
NP 11-202 Receipt dated December 16, 2016
Offering Price and Description:
$60,017,200.00 -5,662,000 Common Shares, at a price of $10.60 per Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Dundee Securities Ltd.
Cormark Securities Inc.
PI Financial Corp.
Canaccord Genuity Corp.
Promoter(s):
Bruce Linton
Project #2563805

Issuer Name:
Firm Capital Mortgage Investment Corporation
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated December 13, 2016
NP 11-202 Receipt dated December 13, 2016
Offering Price and Description:
$22,500,000.00 – 5.20% Convertible Unsecured Subordinated Debentures, at a price of $1,000 per Debenture
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
TD Securities Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
Echelon Wealth Partners Inc.
GMP Securities L.P.
Desjardins Securities Inc.
Dundee Securities Ltd.
Promoter(s):
-
Project #2561429

Issuer Name:
First Avenue Dividend Growers Class
Redwood Emerging Markets Dividend Fund
Redwood Global Total Return Bond Portfolio
Redwood Pension Class
Redwood U.S. Preferred Share Fund
Redwood Unconstrained Bond Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectuses dated December 14, 2016
NP 11-202 Receipt dated December 19, 2016
Offering Price and Description:
A, F, A USD, F USD, I, PHP and ETF securities @ Net Asset Value
Underwriter(s) or Distributor(s):
Redwood Asset Management Inc.
Promoter(s):
Redwood Asset Management Inc.
Project #2548888

Issuer Name:
ShawCor Ltd.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated December 16, 2016
NP 11-202 Receipt dated December 16, 2016
Offering Price and Description:
$150,060,000.00 – 4,575,000 Common Shares, at a price of $32.80 per Common Share
Underwriter(s) or Distributor(s):
TD Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
AltaCorp Capital Inc.
Cormark Securities Inc.
BMO Nesbitt Burns Inc.
HSBC Securities (Canada) Inc.
Industrial Alliance Securities Inc.
J.P. Morgan Securities Canada Inc.
RBC Dominion Securities Inc.
Promoter(s):
-
Project #2564442

Issuer Name:
The Toronto-Dominion Bank
Principal Regulator – Ontario
Type and Date:
Final Short Form Base Shelf Prospectus dated December 13, 2016
NP 11-202 Receipt dated December 15, 2016
Offering Price and Description:
Debt Securities (subordinated indebtedness)
Common Shares
Class A First Preferred Shares
Warrants to Purchase Preferred Shares
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2563429

Issuer Name:
TransCanada Corporation
Principal Regulator – Alberta
Type and Date:
Final Short Form Base Shelf Prospectus dated December 16, 2016
NP 11-202 Receipt dated December 16, 2016
Offering Price and Description:
Common Shares
First Preferred Shares
Second Preferred Shares
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2564681

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Baring North America LLC	Exempt Market Dealer and Investment Fund Manager	December 13, 2016
Change in Registration Category	Norrep Capital Management Ltd.	From: Exempt Market Dealer, Investment Fund Manager and Portfolio Manager To: Investment Fund Manager and Portfolio Manager	December 15, 2016
Voluntary Surrender	Gyrus Investment Management Inc.	Portfolio Manager	December 13, 2016
Amalgamation	Aston Hill Capital Markets Inc. and Aston Hill Asset Management Inc. To form: Aston Hill Asset Management Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	December 1, 2016
Name Change	From: Aston Hill Asset Management Inc. To: LOGiQ Asset Management Ltd.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	December 7, 2016
Change in Registration Category	Jones Collombin Investment Counsel Inc.	From: Investment Fund Manager, Portfolio Manager and Exempt Market Dealer To: Investment Fund Manager and Portfolio Manager	December 19, 2016

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Liquidnet Canada Inc. – Targeted invitation functionality for trading of equity securities – Extension of comment period

LIQUIDNET CANADA INC.

EXTENSION OF COMMENT PERIOD

On December 1, 2016, OSC staff published a Notice of Proposed Change and Request for Commnet from Liquidnet Canada Inc. (Liquidnet), which related to the introduction of a trading functionality that would allow Liquidnet's marketplace participants to send and receive invitations to trade (Liquidnet Notice). The Liquidnet Notice is available at http://www.osc.gov.on.ca/en/Marketplaces_ats_liquidnet_index.htm. At the same time, OSC staff published a staff notice seeking answers on a number of specific questions (OSC Staff Notice and, together with the Liquidnet Notice, the Notices). The OSC Staff Notice is available at http://www.osc.gov.on.ca/documents/en/Marketplaces/ats_20161124_sn_liquidnet-proposed-changes.pdf. The Notices were published for a 30 day comment period ending on December 26, 2016.

We are extending the comment period to January 9, 2017, in order to provide additional time for the public to consider the notices. Comments should be submitted in the manner set out in the Notices.

13.2.2 TSX Inc. – TSX International Board – Notice of Proposed Amendments and Request for Comments

TSX INC.

NOTICE OF PROPOSED AMENDMENTS AND REQUEST FOR COMMENTS

TSX Inc. ("TSX") is publishing this Notice of Proposed Amendments in accordance with the "Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto".

Market participants are invited to provide comments on the proposed changes. Comments should be in writing and delivered by January 31, 2017 to:

Carina Kwan
Legal Counsel, Regulatory Affairs (Equity Trading)
TMX Group
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Email: marketregulation@osc.gov.on.ca

Comments will be made publicly available unless confidentiality is requested. Upon completion of the review by Commission staff, and in the absence of any regulatory concerns, a notice will be published to confirm Commission approval.

Background

TSX is planning to introduce a separate board of TSX (the "TSX International Board") that will post for trading certain US-listed securities in Canadian dollars ("CAD"). Initially, TSX will likely post for trading securities included in the S&P 500 index, which TSX believes represents a universe of symbols likely to be the most traded by Canadian investors. These will be enabled for trading on a phased basis, starting with approximately 30-50 symbols. Other liquid US-listed securities may also be enabled for trading based on customer demand.

The posting of US-listed securities for trading on the TSX International Board is intended to:

- increase the accessibility of these securities to Canadian investors; and
- introduce additional client trading opportunities and general efficiencies for Participating Organizations.

TSX is proposing changes to the TSX Rule Book (the "Proposed Amendments") and to certain TSX marketplace functionality (collectively, the "Proposed Changes") to accommodate trading of US-listed securities on the TSX International Board. Such US-listed securities will not be listed by TSX, but will only be posted for trading similar to how a Canadian ATS posts TSX-listed securities for trading today. Further, the US-listed securities that are posted for trading on the TSX International Board will also always exclude those that are or become interlisted on an exchange in Canada.

Proposed Changes

The following table outlines the key features of the TSX International Board. As US-listed securities are intended to trade and clear through existing TSX and CDS infrastructure and processes, the trading functionality of the TSX International Board will generally mirror the functionality for trading in TSX-listed securities on TSX with limited exceptions. This approach was adopted to minimize impact to, and maximize potential take-up by, investors and market participants.

Access	• No new or separate eligibility criteria. No new agreements to sign. • No new connections required to access trading in US-listed securities as all trading will be conducted on the existing TSX trading infrastructure, and more specifically, on the same trading platform. • TSX Participating Organizations (and their clients) will automatically have access to trading in US-listed securities so long as they have acknowledged receipt of certain disclosure required to be made under s. 5.9 of National Instrument 21-101 *Marketplace Operation* ("NI 21-101"). If acknowledgement of receipt is not obtained, securities law will preclude TSX from allowing the TSX Participating Organization to trade the US-listed securities.
Eligible Securities	• Only securities listed on a US exchange that are not also listed by a Canadian recognized exchange will be eligible for trading. • Initially, TSX will likely post for trading securities that are constituents of the S&P 500 index (serving as a proxy for liquid securities). These will be enabled on a phased-in basis – starting with 30 to 50 of the most actively traded securities. • Only CDS-eligible securities will be enabled for trading. • TSX will post US-listed securities for trading using the symbol assigned to the security by the US listing exchange, except in the case where the symbol root is already in use by a Canadian-listed issuer. In those cases, TSX will designate a unique symbol to be applied. All US-listed securities enabled for trading for the day will be identified in the morning symbol status message. A file including symbols for all enabled US-listed securities will also be made available each day.
Trading Functionality	• Not a new trading destination. Same destination tag as applicable for TSX. • Orders are to be entered with a price denominated in CAD. Orders will therefore be posted, displayed and traded in CAD. • Standard TSX trading functionality applies, subject to the following exceptions: o Trading in US-listed securities will be disabled on US holidays when US markets are closed but Canadian markets are open. o No opening auction, MBF session or closing auction. o No special trading sessions. Continuous trading only between the hours of 9:30 a.m. and 4:00 p.m. • Note: Resting GTC/GTD orders at end of each day will be carried forward to the following day as is currently the case for TSX-listed securities. o Pre-open session will be available from 7:00 a.m. to 9:30 a.m. during which time only cancellations of resting GTC/GTD orders are permitted. No new orders or amendments to resting GTC/GTD permitted until after 9:30 a.m. o No formal market making program • Odd lot dealers will be assigned to manage auto-execution of odd lots at the Protected National Best Bid or Offer for US-listed securities. An odd lot book will be maintained in the same manner as is currently applicable for odd lots on TSX-listed securities. o No cross interference (broker preferencing will continue to apply). o No special settlement terms orders. o No support for the non-resident designation. • TSX will apply its existing volatility control mechanisms.

	• TSX will apply halts imposed by a US listing exchange or US regulator, and will similarly lift a halt when it has been lifted in the US.
Data	• No new real-time data feeds. • Real-time order and trade data regarding US-listed securities will be disseminated through the existing real-time data feed products for TSX-listed securities.
Clearing and Settlement	• Only US-listed securities that are CDS-eligible will be permitted to trade on the TSX International Board. • As all executed trades in US-listed securities will be between TSX Participating Organizations and for securities that are CDS-eligible, they will clear and settle through the same CDS infrastructure and processes applicable to trades in TSX-listed securities. • Where cross-border inventory transfers are necessary to settle a position between TSX Participating Organizations within CDS, these can be facilitated through CDS' existing cross-border movement service (i.e., book-entry transfer of position in US security; no exchange or conversion of asset).
Depository	• The US-listed securities to be traded on the TSX International Board are the same as those that would otherwise trade in the US. • The custodial position for the US-listed securities will continue to be maintained at the Depository Trust & Clearing Corporation ("DTCC"). o Current processes relating to entitlement payments and tax processing for US-listed securities will apply. o There will be no requirement for a Canadian transfer/tax withholding agent as DTCC will act in such capacity as they do currently for US-listed securities held in client accounts at TSX Participating Organizations. • Dealers that do not currently offer clients the ability to hold US-listed securities may need to establish processes to manage US dollar denominated entitlement payments.

To implement the above, the following changes to the TSX Rule Book (TSX Rules) are also necessary:

1. Expansion of the security types that can be traded on TSX to include US-listed securities (not listed by a Canadian recognized exchange);

2. Modification of the existing opening rules to differentiate the opening mechanism applicable to TSX-listed securities from that which will apply to US-listed securities;

3. Introduction of an odd lot program applicable only to trading in US-listed securities; and

4. Other changes necessary to accommodate the introduction of trading in US-listed securities on TSX.

Please see **Appendix A** for a blackline of the Proposed Amendments. The Proposed Amendments and their rationale are outlined in more detail below.

Details and Rationale

1. Expansion of the security types that can be traded on TSX to include US-listed securities (not listed by a Canadian recognized exchange)

Although TSX currently has the option to post for trading securities that are not listed by TSX, this is limited to securities that are listed by another recognized exchange in Canada. The Proposed Amendments would expand this limitation to allow for the trading of securities listed on a US exchange.

Currently, many Canadian investors already buy and sell US-listed securities on US marketplaces through their Canadian registered IIROC dealers and their network of US intermediaries for trading and clearing. By permitting marketplace participants to trade US securities directly on the TSX International Board, Canadians will have increased optionality, flexibility and

accessibility to trade such securities. In particular, allowing for the trading of US securities on the TSX International Board will introduce efficiencies for investors that wish to trade US-listed securities from their CAD-denominated account, reducing the need to open and fund a US dollar account and lowering overall foreign exchange ("FX") costs for investors. It will also provide increased trading options for investors that already trade US-listed securities, and increased transparency to investors regarding the impact of currency changes on the value of US-listed securities held in their CAD-denominated account.

Marketplace participants will also benefit from the ability to provide additional trading opportunities for clients while experiencing reduced frictions in the clearing and settlement process. Smaller dealers may particularly benefit to the extent that offering trading in US-listed securities to their clients necessitates costly and complex southbound trading and clearing relationships. TSX also expects that the introduction of trading in US-listed securities on TSX will facilitate new 'market making' opportunities by firms that can post quality prices in US-listed securities based on their experience in cross-broker trading.

See the Proposed Amendments in Appendix A to Rule 4-1201 to allow for the trading of US-listed securities on TSX.

2. Opening mechanism for US-listed securities on TSX

All TSX-listed securities are currently eligible to trade in the opening call auction. TSX does not intend to provide an opening call auction for US-listed securities as TSX has observed that opening mechanisms operated by marketplaces other than the listing exchange have not typically provided beneficial results in terms of liquidity and pricing. Therefore, TSX proposes that a 'shotgun' approach similar to the approach to the opening of trading on TSX Alpha Exchange is more appropriate for US-listed securities. This involves the direct transition from the pre-open state to continuous trading at the opening time for the exchange. As noted earlier, orders carried forward from the prior day to the pre-open session can be cancelled during the pre-open but cannot be modified. New orders will also not be accepted during the pre-open.

See the Proposed Amendments in Appendix A to TSX Rules 4-701 and 4-702 that will limit the application of the current TSX opening mechanism to TSX-listed securities. New Rule 4-703 is also being proposed to introduce a separate opening mechanism for US-listed securities.

US-listed securities will also not be eligible to trade in the existing Market on Close facility operated by TSX. No rule change is necessary to accommodate this.

3. Introduction of separate odd lot program applicable to US-listed securities

Currently, TSX assigns market makers to TSX-listed securities whose market making responsibilities include the auto-execution of odd lots that are executable at the contra-side of the Protected National Best Bid or Offer. TSX does not currently assign market makers to perform only the odd lot responsibilities.

TSX does not currently intend to assign market makers to US-listed securities for traditional market making functions and, instead, plans to offer liquidity provision incentives that will be applicable to a broader set of trading participants than if the current market making program was applied to US-listeds. TSX is currently considering what liquidity provision incentives will be offered and anticipates that the liquidity provision incentives may take the form of trading fee discounts, additional rebates, or a combination of both.

In the absence of a market making program, odd lots must still be executed. TSX notes that a common method for executing odd lots on a market with no assigned market makers is to assign a party as an "Odd Lot Dealer" that will be responsible for auto-executing marketable odd lot orders, and to maintain a separate odd lot book for non-marketable orders. The odd lot program on TSX Alpha Exchange is an example of this. TSX proposes to introduce a separate odd lot dealer program for US-listed securities on TSX that is similar to the TSX Alpha Exchange program.

See the Proposed Amendments in Appendix A that introduces new TSX Rules 4-609 to 4-611 to reflect the creation of a separate "OLS Odd Lot Dealer" program.

4. Other necessary changes to TSX Rules

A number of other changes to the TSX Rules will be necessary to accommodate the trading of US-listed securities on the TSX International Board. These are summarized as follows:

- US-listed securities will not be made available for trading during the post-close extended trading session, referred to as the 'Special Trading Session' in the TSX Rules. (TSX Rule 4-901)

- Removal of references to 'listed' securities where the TSX Rules would otherwise apply to any security posted for trading on TSX. (TSX Rules 4-1103, 5-203 and 5-302)

- There will be no cross interference on TSX for trades in US-listed securities. TSX notes that TSX Alpha Exchange also does not currently provide for cross interference. (TSX Rule 4-802)

- Relevant dates for the application of corporate actions and entitlements, including dates for ex-dividend trading, will be the same as those determined by the listing exchange for the security. Accordingly, US-listed securities will trade on an ex-dividend basis on TSX if and when it is trading on an ex-dividend basis in the US. (TSX Rule 4-407(3))

Expected Date of Implementation

The Proposed Changes are expected to become effective in Q2 2017.

Expected Impact

As described above, the Proposed Changes are expected to increase the accessibility of US-listed securities to Canadian investors and introduce additional trading opportunities and efficiencies when trading US-listed securities.

In support of TSX's public interest mandate, TSX will apply various mechanisms to help increase transparency, minimize confusion and avoid negative outcomes for investors. For example, to help facilitate increased transparency for investors, TSX will provide links on its website to the SEC's EDGAR filing page for each issuer whose securities are posted for trading on the TSX International Board. Transparency of order and trade data will be achieved through dissemination of order and trade data through the existing TSX real-time market data feeds.

TSX will also apply its existing volatility parameters and will seek to apply halts when imposed by a US listing venue or US regulator. This will help avoid negative outcomes for investors and promote confidence.

Expected Impact of Proposed Changes on the Exchange's Compliance with Ontario Securities Law

The Proposed Changes will not impact TSX's compliance with Ontario securities law and in particular the requirements for fair access and maintenance of fair and orderly markets. TSX notes that once US-listed securities are posted on the TSX International Board, all TSX Participating Organizations will automatically have access to trading US-listed securities in the same manner as they currently access trading on TSX for TSX-listed securities, except to the extent that access is not permitted under securities law because the TSX Participating Organization has not acknowledged receipt of certain required disclosure. Further, because the trading functionality for US-listed securities will generally mirror the current functionality for trading in TSX-listed securities (including interlisted securities), TSX is of the view that the Proposed Changes will not negatively impact the maintenance of fair and orderly markets.

NI 21-101 currently contemplates that a marketplace may trade "foreign-exchange traded securities" [1] and contains certain requirements in that regard. TSX will comply with all of the related foreign-exchange traded security requirements when trading US-listed securities, including providing TSX Participating Organizations with the risk disclosure required by section 5.9 of NI 21-101. TSX will obtain the requisite acknowledgement of receipt from a TSX Participation Organization before providing it with access to trading in the enabled US-listed securities.

As it relates to compliance with regulatory requirements by TSX Participating Organizations, TSX notes that the Order Protection Rules ("OPR") under National Instrument 23-101 *Trading Rules* will not apply on the basis that OPR does not apply to 'foreign exchange-traded securities'.[2] To the extent that more than one Canadian marketplace is displaying orders on the same US-listed securities, it is our understanding that these orders will therefore not be protected from being traded-through. TSX will, however, apply its OPR trade-through prevention mechanisms in the same way as it does currently for TSX-listed securities so that these will provide consistent outcomes for dealer routers and algos should another Canadian marketplace trade the same symbols.

It is our understanding that all UMIR requirements not otherwise specifically limited to 'listed securities' will also apply.[3] This would mean that core UMIR requirements such as those relating to abusive trading (including manipulative and deceptive trading), front-running, client/principal trading, trading supervision obligations, and dark price improvement will continue to apply. Best execution obligations will also continue to apply, and TSX expects that it will apply in the same way as is applicable for

1 Under NI 21-101, "foreign exchange-traded security" is defined as:

a security that is listed on an exchange, or quoted on a quotation and trade reporting system, outside of Canada that is regulated by an ordinary member of the International Organization of Securities Commissions and is not listed on an exchange or quoted on a quotation and trade reporting system in Canada.

2 See above.

3 "Listed securities" under UMIR are essentially securities that are listed on a Canadian recognized exchange, and include interlisted securities. It therefore does not include US-listed securities that are not also listed on a Canadian recognized exchange.

trading on an unprotected market. Dealers should also consult IIROC's proposed amendments to its best execution obligations which would propose to apply similar policies and procedures obligations to the trading of US-listed securities[4] on a Canadian marketplace as it does for Canadian-listed securities.

Despite the foregoing, it is our understanding that dealers are not expressly obligated to trade the US-listed securities on the TSX International Board given that OPR will not impose any obligation to respect the displayed price, and because dealers will continue to be allowed to trade these securities other than on a Canadian marketplace pursuant to the 'Unlisted or Non-Quoted Security' exception under subsection 2(a) of UMIR 6.4 *Trades to be on a Marketplace*. TSX also understands that the continued application of this off-marketplace trading exception also means that order exposure requirements under UMIR 6.3 do not apply.

Estimated Time Required by Members and Service Vendors to Modify Their Own Systems after Implementation of the Proposed Changes

The introduction of the Proposed Changes is being implemented in a way that leverages existing TMX trading and clearing infrastructure in order to minimize impact on dealers and vendors.

Dealers and vendors choosing to take advantage of trading in US-listed securities on the TSX International Board may need to consider changes to incorporate these into trading input systems and routing logic. However, TSX expects dealers will likely handle orders in US-listed securities in a manner that is similar to how they currently treat interlisted securities, other than for any differences that arise due to the fact that OPR will not apply and there will be no obligation under UMIR 6.4 to trade these on the TSX International Board.

Dealers that do not currently provide clients the ability to trade US-listed securities via a CAD-denominated account may need to implement processes to manage entitlement payments where it is necessary for those payments to be converted and reflected in the CAD-denominated account that is holding the US-listed securities. In these cases, the dealer may be able to rely on its clearing broker or custodian to help facilitate the related entitlements processing and currency conversion process.

To aid with adoption of the Proposed Changes, detailed specifications will be made available shortly after the publication of this notice for comment, as will testing facilities. This will provide dealers and vendors with sufficient time to implement and test any changes. This will also provide significantly more time than is otherwise typically afforded or required when a marketplace makes changes to trading functionality.

Do the Proposed Changes Currently Exist in Other Markets or Jurisdictions

SIX Swiss Exchange currently offers trading in foreign listed securities via its 'Sponsored Foreign Shares Segment', through which it offers Swiss franc denominated trading in over 500 international blue chip companies. Foreign securities admitted for trading on SIX Swiss must be sponsored by one of two currently approved sponsors who are primarily responsible for making two-sided markets in the sponsored foreign-listed securities posted for trading on SIX Swiss Exchange.

TSX notes that the Ontario Securities Commission ("OSC") had previously allowed a Canadian marketplace to post for trading securities listed on NYSE, Nasdaq and NYSE MKT (formerly AMEX) when OSC staff completed its review of related marketplace changes on Omega ATS[5,6] and when the OSC approved the launch of Lynx ATS.[7,8] The US-listed securities to be made available for trading on Omega and Lynx were similarly to be posted in CAD and limited to US-listed securities that were CDS-eligible.

4 As reflected through the definition of 'foreign exchange-traded security'.

5 Omega ATS notice of proposed changes available at: http://www.osc.gov.on.ca/en/Marketplaces_ats_20100903_rfc-omega.htm.

6 OSC staff notice of completion of review of Omega ATS changes available at: http://www.osc.gov.on.ca/en/Marketplaces_ats_20101203_noc-review-pro-changes.htm.

7 Lynx ATS notice of initial operations report available at: http://www.osc.gov.on.ca/en/Marketplaces_ats_20130418_rfc-lynx-initial-operations-rpt.htm.

8 OSC notice of approval of Lynx ATS initial operations report available at: http://www.osc.gov.on.ca/en/Marketplaces_ats_20130920_lynx-notice-completion-review.htm.

APPENDIX A

BLACKLINE OF AMENDMENTS TO TSX RULE BOOK

PART 1 – INTERPRETATION

Rule 1-101 Definitions (Amended)

(2) In all Exchange Requirements, unless the subject matter or context otherwise requires:

"**eligible foreign exchange-traded security**" means a foreign exchange-traded security as defined in National Instrument 21-101 – Marketplace Operation which has been posted for trading on the Exchange.

Added (●, 2017)

"**odd lot**" means any amount less than a board lot.

Added (●, 2017)

"**OLS Odd Lot Dealer**" means a Participating Organization assigned by the Exchange to maintain the odd lot market in one or more other-listed securities pursuant to Division 6 of Part 4 of these Rules.

Added (●, 2017)

"**OLS Odd Lot Trader**" means the Approved Trader(s) assigned by an OLS Odd Lot Dealer to fulfill its responsibilities as the OLS Odd Lot Dealer for an other-listed security.

Added (●, 2017)

"**other-listed security**" means a security listed by another exchange that is posted for trading on the Exchange.

Added (●, 2017)

"**Opening Eligible Securities**" means securities in respect of which opening trades may be executed at the calculated opening price as designated by the Exchange.

Added (●, 2017)

"**opening time**" means the time fixed by the Board for the opening of Sessions of trading in ~~listed~~ securities.

Amended (●, 2017)

"**security**" when used to describe a security that trades on the Exchange means:

(a) a listed security (as such term is defined herein); and

(b) a security that is posted for trading on the Exchange, but not listed by the Exchange (including an other-listed security as such term is defined herein).

~~Added (February 24, 2012)~~ **Amended (●, 2017)**

PART 4 – TRADING OF SECURITIES

DIVISION 4 – GENERAL TRADING RULES

Rule 4-407 Advantage goes with Securities Sold

(1) Except as provided in Rule 4-407(2) and (3), in all trades of securities on the Exchange, all entitlements to receive dividends or any other distribution made or right given to holders of that security shall pass with the security and shall belong to the purchaser, unless otherwise provided by the Exchange or the parties to the trade by mutual agreement.

(2) In all sales of bonds and debentures on the Exchange, all accrued interest shall belong to the seller unless otherwise provided by the Exchange or parties to the trade by mutual agreement.

(3) In all trades of other-listed securities on the Exchange, all entitlements to receive dividends or any other distribution made or right given to holders of that security shall pass with the security and shall belong to the purchaser, unless otherwise provided by the exchange which has listed the security or the parties to the trade by mutual agreement.

(4) ~~(3)~~ Claims for dividends, rights or any other benefits to be distributed to holders of record of these securities on a certain date shall be made in accordance with the procedures established by the Clearing Corporation.

(5) ~~(4)~~ If subscription rights attaching to securities are not claimed by the persons entitled to those rights at least twenty-four hours before the expiration of the time within which trading in respect of such rights may take place on the Exchange, a Participating Organization holding such rights may, in its discretion, sell or exercise all or any part of such rights, and shall account for such sale or exercise to the person or persons entitled to such rights, but in no case shall a Participating Organization be liable for any loss arising through failure to sell or exercise any unclaimed rights.

Amended (February 24, 2012 and ●, 2017)

DIVISION 6 – MARKET MAKERS AND OLS ODD LOT DEALERS

Rule 4-609 Appointment of OLS Odd Lot Dealers

(1) The Exchange may assign an other-listed security to an OLS Odd Lot Dealer.

Added (●, 2017)

Policy 4-609 Appointment of OLS Odd Lot Dealers

(1) The method of assigning and/or reassigning other-listed securities to an OLS Odd Lot Dealer will be determined by the Exchange.

(2) Each OLS Odd Lot Dealer may be assigned and maintain a number of other-listed securities in their odd lot inventory.

(3) If an OLS Odd Lot Dealer is requested by the Exchange to withdraw from the pool of OLS Odd Lot Dealers, the Exchange will provide the OLS Odd Lot Dealer with no less than 6 months' notice before the Exchange reassigns the odd lot inventory to another OLS Odd Lot Dealer or to a new Participating Organization.

Added (●, 2017)

Rule 4-610 Responsibilities of OLS Odd Lot Dealers

(1) Where the Exchange assigns an other-listed security to an OLS Odd Lot Dealer, the OLS Odd Lot Dealer will be responsible for guaranteeing fills at the CBBO for:

(a) incoming tradeable odd lots and the odd lot portion of mixed lots; and

(b) booked odd lots which become tradeable due to a change in the CBBO.

Added (●, 2017)

Policy 4-610 Responsibilities of OLS Odd Lot Dealers

(1) OLS Odd Lot Dealers shall maintain an odd lot market at the CBBO for immediately tradeable incoming odd lots. Booked odd lots which become tradeable due to a change in the CBBO will execute at the CBBO.

(2) Inventory of securities traded in odd lots is considered the property and the responsibility of the OLS Odd Lot Dealer.

(3) The OLS Odd Lot Dealer may assign one or more of its own Approved Trader employee(s) as its OLS Odd Lot Trader(s). The OLS Odd Lot Dealer may assign the performance of their responsibilities for trading in their assigned other-listed securities to electronic access clients. (The UMIR exemptions applicable to "marketplace trading obligations" only apply with respect to the OLS Odd Lot Dealer's odd lot activities.)

Added (●, 2017)

Rule 4-611 OLS Odd Lot Dealers Leaving Securities of Responsibility

(1) An OLS Odd Lot Dealer intending to relinquish one or more of its assigned other-listed securities shall provide the Exchange with at least 60 days' prior notice in such form as may be required by the Exchange, unless such notice period or part thereof is waived by the Exchange.

Added (●, 2017)

DIVISION 7 – OPENING

Rule 4-701 Execution of Trades at the Opening for Opening Eligible Securities

(1) Subject to Rule 4-702, ~~securities~~Opening Eligible Securities shall open for trading at the opening time, and any opening trades shall be at the calculated opening price.

Amended (February 24, 2012 and **●, 2017)**

(2) The following orders shall be completely filled at the opening:

(a) market orders and better-priced limit orders; and

(b) MBF orders.

(c) **Repealed (October 15, 2012)**

(d) **Repealed (October 15, 2012)**

Amended (October 15, 2012)

(3) The following orders are eligible to participate in the opening but are not guaranteed to be filled:

(a) **Repealed (August 7, 2001)**

(b) limit orders at the opening price.

(c) **Repealed (October 15, 2012)**

Amended (October 15, 2012)

(4) Unless otherwise provided, trades shall be allocated among orders at the opening price in the following manner and sequence:

(a) trades shall be allocated to orders guaranteed a fill pursuant to Rule 4-701(2) then;

(b) all possible crosses shall be executed; then

(c) **Repealed (August 7, 2001)**

(d) to limit orders at the opening price according to time priority.

(5) **Repealed (August 7, 2001)**

(6) **Repealed (August 7, 2001)**

(7) Orders at the opening price that are not completely filled at the opening shall remain in the Book, at the opening price.

Rule 4-702 Delayed Openings for Opening Eligible Securities (Amended)

(1) ~~A security~~An Opening Eligible Security shall not open for trading if, at the opening time:

(a) orders that are guaranteed to be filled pursuant to Rule 4-701 cannot be completely filled by offsetting orders; or

(b) the COP exceeds price volatility parameters set by the Exchange.

(2) The Market Maker or Market Surveillance Official may delay the opening of ~~a security~~an Opening Eligible Security for trading on the Exchange if:

(a) the COP differs from the previous closing price for the security or from the anticipated opening price on any other recognized stock exchange where the security is listed by an amount greater than the greater of 5% of the previous closing price for the security and $0.05;

(b) the opening of another recognized exchange where the security is listed for trading has been delayed; or

(c) the COP is less than the permitted difference from the previous closing price for the security, but is otherwise unreasonable.

(3) Repeal proposed August 9, 2002 (pending regulatory approval)

(4) If the opening of the ~~security~~Opening Eligible Security is delayed, the Market Maker or Market Surveillance Official, as the case may be, shall open the security for trading according to Exchange Requirements.

Amended (February 24, 2012 and ●, 2017)

Rule 4-703 Securities that are not Opening Eligible Securities

(1) Subject to Rule 3-103, securities that are not Opening Eligible Securities shall open for trading at the opening time and shall trade in the Regular Session using the normal rules of priority and allocation.

Added (●, 2017)

DIVISION 8 – POST OPENING

Rule 4-802 Allocation of Trades (Amended)

(1) Subject to Rule 4-801(1) and Rule 4-801(2), an order that is entered for execution on the Exchange may execute without interference from any order in the Book if the order is:

(a) part of an internal cross;

(b) an unattributed order that is part of an intentional cross;

(c) part of an intentional cross entered by a Participating Organization in order to fill a client's Special Trading Session order;

(d) part of an exempt related security cross, provided that the order is exempt from interference only to the extent that there are no offsetting orders entered in the Book, at least one of which is an order entered by the same Participating Organization, which can fill both the client's order for the particular security, in whole or in part, and an equivalent volume of the client's order for the related security. Orders in the Book will only be considered to be offsetting orders if the related security spread on execution of the clients' orders against orders in the Book is equal to or more beneficial than the related security spread offered by the Participating Organization for the contingent cross arrangement;

(e) entered as part of a Specialty Price Cross; ~~or~~

(f) part of a Designated Trade; or

(g) an order to buy or sell eligible foreign exchange-traded securities that is part of a cross .

Amended January 13, 2012, ~~and~~ **November 16, 2015 and ●, 2017**

(2) Subject to subsection (1), an intentional cross executed on the Exchange will be subject to interference from orders in the Book from the same Participating Organization according to time priority, provided that such orders in the Book are attributed orders.

(3) Subject to Rule 4-801(1) and Rule 4-801(2), a tradeable order that is entered in the Book and is not a Bypass Order shall be executed on allocation in the following sequence:

(a) to offsetting orders entered in the Book by the Participating Organization that entered the tradeable order according to the time of entry of the offsetting order in the Book, provided that neither the tradeable order nor the offsetting order is an unattributed order; then

(b) to offsetting orders in the Book according to the time of entry of the offsetting order in the Book; then

(c) to the Market Maker if the tradeable order is disclosed and is eligible for a Minimum Guaranteed Fill.

(4) A tradeable order that is entered in the Book and is a Bypass Order shall execute against the disclosed portion of offsetting orders in the Book according to the price/time priority established in Rule 4-801.

Amended January 13, 2012 and November 16, 2015

Policy 4-802 Allocation of Trades

(4) ~~Oddlot Facility~~Odd lot Facilities

Market Makers ~~also~~and OLS Odd Lot Dealers guarantee incoming tradeable odd lots at the CBBO. The Market Maker's and OLS Odd Lot Dealer's responsibilities in regard to odd lots are the same as ~~its~~a Market Maker's responsibilities for MGF's. Participating Organizations are not permitted to: split larger orders from a single account into odd lots; enter multiple odd lots from a single account on a specific security on a given day; or enter the odd lot portion of a mixed lot order immediately prior to entering the board lot portion.

~~Oddlot~~Odd lot fills which occur in violation of the guidelines detailed above may be cancelled by the Exchange upon request by the Market Maker or OLS Odd Lot Dealer, as applicable. Notwithstanding the above, the Exchange may cancel any trades deemed to be improper use of the Odd Lot ~~facility~~facilities, or take such other action as the Exchange considers appropriate in the circumstances.

Amended February 24, 2012, ~~and~~ November 16, 2015, and ●, 2017

DIVISION 9 – SPECIAL TRADING SESSION

Rule 4-901 General Provisions (Amended)

(1) All securities, other than eligible foreign exchange-traded securities, shall be eligible for trading during the Special Trading Session, provided that a MOC Security shall not be eligible for trading until the completion of the Closing Call in respect of that MOC Security.

Amended (●, 2017)

(2) Except as otherwise provided, all transactions in the Special Trading Session shall be at the Last Sale Price for each security.

(3) Except as otherwise provided, the normal rules of priority and allocation, as applicable, and all other Exchange Requirements shall apply to the Special Trading Session.

Amended (February 24, 2012 and November 16, 2015)

DIVISION 11 – SPECIAL TERMS

Rule 4-1103 Exchange for Physicals and Contingent Option Trades

Orders which are conditional upon a simultaneous trade in a derivative on another exchange shall be special terms trades and shall be traded in accordance with the prescribed procedures and conditions.

Policy 4-1103 Exchange for Physicals and Contingent Option Trades

(1) Application

This Policy applies to each person who has been granted trading access to the Exchange and who seeks to enter an order on the Exchange for a security which is contingent upon the execution of one or more trades in an option on the Montreal Exchange or who seeks to exchange an index futures contract that is traded on the Exchange for the equivalent number of securities underlying the futures contract (including an equivalent number of index participation units) on a contingent basis.

(2) Procedure for Contingent Option Trade

If a person to whom this Policy applies seeks to enter an order on the Exchange for a security which is contingent upon the execution of one or more trades in an options market, the following rules shall apply:

(a) the trade in the security and the offsetting option trades must be for the same account;

(b) the option portion of the trade must be approved by a floor governor or other exchange official of the stock exchange on which the option is listed and such approval shall be evidenced by the initials of the governor or official on the options trade ticket;

(c) the options trade ticket shall be time stamped;

(d) the person shall telephone Trading and Client Services of the Exchange at (416) 947-4440 and provide the details of the contingent trade including the name of the person with trading access to the Exchange with whom the contingent trade has been made;

(e) the trade in the security must be within the existing market for the security on the Exchange at the time of the telephone call to Trading and Client Services;

(f) a copy of the options trade ticket as initialled by a floor governor or exchange official and time stamped shall be provided by facsimile transmission to Trading and Client Services at (416) 947-4280 within ten minutes following the time stamp on the ticket; and

(g) provided the trade has been made and reported in accordance with the above rules, the Exchange shall manually execute the trade in the security as a special terms trade with the marker “MS” effective as of the time stamped on the option trade ticket.

(3) Procedure for Exchange for Physicals

If a person to whom this Policy applies seeks to exchange a futures contract for the equivalent number of securities underlying the futures contract (including an equivalent number of units of the applicable Index Participation Fund or mutual fund), the following provisions shall apply:

(a) the trade in the security and the trade in the futures contract must be for the same account;

(b) the equities component may be made as a cross or as a trade between persons with trading access on the Exchange;

(c) the futures portion of the trade must be approved by a floor governor or other exchange official of the stock exchange on which the future is listed and such approval shall be evidenced by the initials of the governor or official on the futures trade ticket;

(d) the futures trade ticket shall be time stamped;

(e) the person shall telephone Trading and Client Services of the Exchange at (416) 947-4440 and provide the details of the exchange including the name of the person with trading access to the Exchange with whom the exchange has been made;

(f) the trade in the ~~listed~~ securities made during the Regular Session will be at the bid price of the ~~listed~~ securities on the Exchange at the time of the telephone call to Trading and Client Services and the trade in securities made after the end of the Regular Session will be at the last sale price of the securities on the Exchange provided that where the last sale price is outside of the closing quotes for any security the price for that security shall be the bid or offer which is closest to the last sale price;

Amended (●, 2017)

(g) a copy of the futures trade ticket as initialled by a floor governor or exchange official and time stamped shall be provided by facsimile transmission to Trading and Client Services at (416) 947-4280 within ten minutes following the time stamp on the ticket; and

provided the trade has been made and reported in accordance with the above rules, the Exchange shall manually execute the trade in the securities as a special terms trade with the marker "MS" effective as of the time stamped on the futures trade ticket.

Amended (February 24, 2012)

DIVISION 12 – TRADING OF SECURITIES NOT LISTED BY THE EXCHANGE

Rule 4-1201 Requirements

(1) The Exchange, in its discretion, may post for trading securities that are listed by another exchange ~~recognized in a jurisdiction in Canada~~.

(2) The Exchange may remove a posted security from trading at any time without prior notice.

(3) The Exchange will halt the trading of a posted security if:

(a) the security is subject to a regulatory halt; or

(b) the security is no longer listed by ~~a recognized~~an exchange or is suspended from trading by the ~~recognized~~ exchange.

~~Added (February 24, 2012)~~ **Amended (●, 2017)**

PART 5 – CLEARING AND SETTLEMENT OF TRADES IN SECURITIES

Rule 5-203 Certificates Not Good Delivery

Delivery of any of the following certificates shall be deemed not to be good delivery:

(a) a defaced or torn certificate;

(b) a certificate registered in the name of a firm or company that has made an assignment for the benefit of creditors or has been declared bankrupt;

(c) a certificate on which the form of power of attorney to transfer has been signed by:

(i) a trustee, or

(ii) an executor or administrator;

(d) a certificate with document attached;

(e) a certificate of a company maintaining share registers in Ontario and elsewhere that is registered only on a register located outside of Ontario and is therefore not transferable on the Ontario register except after transfer to the Ontario register;

(f) a certificate indicating that subsequent transfer by the purchaser is restricted in any way, unless the entire class of ~~listed~~ securities traded on the Exchange is subject to the same restriction or unless the trade was made subject to that restriction; or

Amended (●, 2017)

(g) a certificate not acceptable as good transfer by the transfer agent.

Rule 5-302 Special Provisions for Buy-Ins from Securities Loans and Other Failed Positions

In connection with a buy-in that is the result of a default pursuant to Rules 5-301(2) or (3), the following rules shall apply in addition to the provisions of Rule 5-301:

1. If the Participating Organization in default wishes to dispute the claim, the Participating Organization shall file a dispute in writing with the Exchange before 1:00 p.m. on the day that the Notice is effective and if the dispute is not resolved by agreement between the Participating Organizations or the buy-in is disapproved by a Market Surveillance Official, the dispute shall be determined by arbitration in accordance with Rule 2-308.

2. Where the Participating Organization in default delivers the securities subject to the Buy-In Notice prior to execution of the buy-in, the Participating Organization in default shall notify the Exchange and the buy-in will be cancelled upon confirmation by the Exchange of the delivery of the ~~listed~~ securities.

Amended (●, 2017)

3. The Participating Organization which has issued a Buy-In Notice may extend the buy-in by delivering a notice of extension in writing to the Exchange before 3:00 p.m. on the day the buy-in is to be executed.

4. Failure to settle a trade that is the result of a buy-in that is the result of a default in accordance with the terms of the buy-in, if not resolved by the Participating Organizations concerned, shall be resolved by cancellation of the buy-in contract and issuance of a further buy-in and, in such case, the Participating Organization selling to the original buy-in shall be liable for any loss or damage resulting from failure to deliver.

5. Following execution of a buy-in, the Participating Organization that issued the Buy-In Notice shall notify the Participating Organization in default in writing of the amount of the difference between the amount to be paid on the Exchange Contract closed out, and the amount paid on the buy-in, if any, and such difference shall be paid to the Participating Organization entitled to receive the same within 24 hours of receipt of such notice.

6. Where more than one buy-in has been arranged in connection with the same securities, the Market Surveillance Official may combine any number of the trades.

Amended (February 24, 2012)

APPENDIX B

CLEAN VERSION OF AMENDMENTS TO TSX RULE BOOK

PART 1 – INTERPRETATION

Rule 1-101 Definitions (Amended)

(2) In all Exchange Requirements, unless the subject matter or context otherwise requires:

"**eligible foreign exchange-traded security**" means a foreign exchange-traded security as defined in National Instrument 21-101 – Marketplace Operation which has been posted for trading on the Exchange.

Added (●, 2017)

"**odd lot**" means any amount less than a board lot.

Added (●, 2017)

"**OLS Odd Lot Dealer**" means a Participating Organization assigned by the Exchange to maintain the odd lot market in one or more other-listed securities pursuant to Division 6 of Part 4 of these Rules.

Added (●, 2017)

"**OLS Odd Lot Trader**" means the Approved Trader(s) assigned by an OLS Odd Lot Dealer to fulfill its responsibilities as the OLS Odd Lot Dealer for an other-listed security.

Added (●, 2017)

"**other-listed security**" means a security listed by another exchange that is posted for trading on the Exchange.

Added (●, 2017)

"**Opening Eligible Securities**" means securities in respect of which opening trades may be executed at the calculated opening price as designated by the Exchange.

Added (●, 2017)

"**opening time**" means the time fixed by the Board for the opening of Sessions of trading in securities.

Amended (●, 2017)

"**security**" when used to describe a security that trades on the Exchange means:

(a) a listed security (as such term is defined herein); and

(b) a security that is posted for trading on the Exchange, but not listed by the Exchange (including an other-listed security as such term is defined herein).

Amended (●, 2017)

PART 4 – TRADING OF SECURITIES

DIVISION 4 – GENERAL TRADING RULES

Rule 4-407 Advantage goes with Securities Sold

(1) Except as provided in Rule 4-407(2) and (3), in all trades of securities on the Exchange, all entitlements to receive dividends or any other distribution made or right given to holders of that security shall pass with the security and shall belong to the purchaser, unless otherwise provided by the Exchange or the parties to the trade by mutual agreement.

(2) In all sales of bonds and debentures on the Exchange, all accrued interest shall belong to the seller unless otherwise provided by the Exchange or parties to the trade by mutual agreement.

(3) In all trades of other-listed securities on the Exchange, all entitlements to receive dividends or any other distribution made or right given to holders of that security shall pass with the security and shall belong to the purchaser, unless otherwise provided by the exchange which has listed the security or the parties to the trade by mutual agreement.

(4) Claims for dividends, rights or any other benefits to be distributed to holders of record of these securities on a certain date shall be made in accordance with the procedures established by the Clearing Corporation.

(5) If subscription rights attaching to securities are not claimed by the persons entitled to those rights at least twenty-four hours before the expiration of the time within which trading in respect of such rights may take place on the Exchange, a Participating Organization holding such rights may, in its discretion, sell or exercise all or any part of such rights, and shall account for such sale or exercise to the person or persons entitled to such rights, but in no case shall a Participating Organization be liable for any loss arising through failure to sell or exercise any unclaimed rights.

Amended (February 24, 2012 and ●, 2017)

DIVISION 6 – MARKET MAKERS AND OLS ODD LOT DEALERS

Rule 4-609 Appointment of OLS Odd Lot Dealers

(1) The Exchange may assign an other-listed security to an OLS Odd Lot Dealer.

Added (●, 2017)

Policy 4-609 Appointment of OLS Odd Lot Dealers

(1) The method of assigning and/or reassigning other-listed securities to an OLS Odd Lot Dealer will be determined by the Exchange.

(2) Each OLS Odd Lot Dealer may be assigned and maintain a number of other-listed securities in their odd lot inventory.

(3) If an OLS Odd Lot Dealer is requested by the Exchange to withdraw from the pool of OLS Odd Lot Dealers, the Exchange will provide the OLS Odd Lot Dealer with no less than 6 months' notice before the Exchange reassigns the odd lot inventory to another OLS Odd Lot Dealer or to a new Participating Organization.

Added (●, 2017)

Rule 4-610 Responsibilities of OLS Odd Lot Dealers

(1) Where the Exchange assigns an other-listed security to an OLS Odd Lot Dealer, the OLS Odd Lot Dealer will be responsible for guaranteeing fills at the CBBO for:

(a) incoming tradeable odd lots and the odd lot portion of mixed lots; and

(b) booked odd lots which become tradeable due to a change in the CBBO.

Added (●, 2017)

Policy 4-610 Responsibilities of OLS Odd Lot Dealers

(1) OLS Odd Lot Dealers shall maintain an odd lot market at the CBBO for immediately tradeable incoming odd lots. Booked odd lots which become tradeable due to a change in the CBBO will execute at the CBBO.

(2) Inventory of securities traded in odd lots is considered the property and the responsibility of the OLS Odd Lot Dealer.

(3) The OLS Odd Lot Dealer may assign one or more of its own Approved Trader employee(s) as its OLS Odd Lot Trader(s). The OLS Odd Lot Dealer may assign the performance of their responsibilities for trading in their assigned other-listed securities to electronic access clients. (The UMIR exemptions applicable to "marketplace trading obligations" only apply with respect to the OLS Odd Lot Dealer's odd lot activities.)

Added (●, 2017)

Rule 4-611 OLS Odd Lot Dealers Leaving Securities of Responsibility

(1) An OLS Odd Lot Dealer intending to relinquish one or more of its assigned other-listed securities shall provide the Exchange with at least 60 days' prior notice in such form as may be required by the Exchange, unless such notice period or part thereof is waived by the Exchange.

Added (●, 2017)

DIVISION 7 – OPENING

Rule 4-701 Execution of Trades at the Opening for Opening Eligible Securities

(1) Subject to Rule 4-702, Opening Eligible Securities shall open for trading at the opening time, and any opening trades shall be at the calculated opening price.

Amended (February 24, 2012 and ●, 2017)

(2) The following orders shall be completely filled at the opening:

(a) market orders and better-priced limit orders; and

(b) MBF orders.

(c) **Repealed (October 15, 2012)**

(d) **Repealed (October 15, 2012)**

Amended (October 15, 2012)

(3) The following orders are eligible to participate in the opening but are not guaranteed to be filled:

(a) **Repealed (August 7, 2001)**

(b) limit orders at the opening price.

(c) **Repealed (October 15, 2012)**

Amended (October 15, 2012)

(4) Unless otherwise provided, trades shall be allocated among orders at the opening price in the following manner and sequence:

(a) trades shall be allocated to orders guaranteed a fill pursuant to Rule 4-701(2) then;

(b) all possible crosses shall be executed; then

(c) **Repealed (August 7, 2001)**

(d) to limit orders at the opening price according to time priority.

(5) **Repealed (August 7, 2001)**

(6) **Repealed (August 7, 2001)**

(7) Orders at the opening price that are not completely filled at the opening shall remain in the Book, at the opening price.

Rule 4-702 Delayed Openings for Opening Eligible Securities (Amended)

(1) An Opening Eligible Security shall not open for trading if, at the opening time:

(a) orders that are guaranteed to be filled pursuant to Rule 4-701 cannot be completely filled by offsetting orders; or

(b) the COP exceeds price volatility parameters set by the Exchange.

(2) The Market Maker or Market Surveillance Official may delay the opening of an Opening Eligible Security for trading on the Exchange if:

(a) the COP differs from the previous closing price for the security or from the anticipated opening price on any other recognized stock exchange where the security is listed by an amount greater than the greater of 5% of the previous closing price for the security and $0.05;

(b) the opening of another recognized exchange where the security is listed for trading has been delayed; or

(c) the COP is less than the permitted difference from the previous closing price for the security, but is otherwise unreasonable.

(3) **Repeal proposed August 9, 2002 (pending regulatory approval)**

(4) If the opening of the Opening Eligible Security is delayed, the Market Maker or Market Surveillance Official, as the case may be, shall open the security for trading according to Exchange Requirements.

Amended (February 24, 2012 and ●, 2017)

Rule 4-703 Securities that are not Opening Eligible Securities

(1) Subject to Rule 3-103, securities that are not Opening Eligible Securities shall open for trading at the opening time and shall trade in the Regular Session using the normal rules of priority and allocation.

Added (●, 2017)

DIVISION 8 – POST OPENING

Rule 4-802 Allocation of Trades (Amended)

(1) Subject to Rule 4-801(1) and Rule 4-801(2), an order that is entered for execution on the Exchange may execute without interference from any order in the Book if the order is:

(a) part of an internal cross;

(b) an unattributed order that is part of an intentional cross;

(c) part of an intentional cross entered by a Participating Organization in order to fill a client's Special Trading Session order;

(d) part of an exempt related security cross, provided that the order is exempt from interference only to the extent that there are no offsetting orders entered in the Book, at least one of which is an order entered by the same Participating Organization, which can fill both the client's order for the particular security, in whole or in part, and an equivalent volume of the client's order for the related security. Orders in the Book will only be considered to be offsetting orders if the related security spread on execution of the clients' orders against orders in the Book is equal to or more beneficial than the related security spread offered by the Participating Organization for the contingent cross arrangement;

(e) entered as part of a Specialty Price Cross;

(f) part of a Designated Trade; or

(g) an order to buy or sell eligible foreign exchange-traded securities that is part of a cross .

Amended January 13, 2012, November 16, 2015 and ●, 2017

(2) Subject to subsection (1), an intentional cross executed on the Exchange will be subject to interference from orders in the Book from the same Participating Organization according to time priority, provided that such orders in the Book are attributed orders.

(3) Subject to Rule 4-801(1) and Rule 4-801(2), a tradeable order that is entered in the Book and is not a Bypass Order shall be executed on allocation in the following sequence:

(a) to offsetting orders entered in the Book by the Participating Organization that entered the tradeable order according to the time of entry of the offsetting order in the Book, provided that neither the tradeable order nor the offsetting order is an unattributed order; then

(b) to offsetting orders in the Book according to the time of entry of the offsetting order in the Book; then

(c) to the Market Maker if the tradeable order is disclosed and is eligible for a Minimum Guaranteed Fill.

(4) A tradeable order that is entered in the Book and is a Bypass Order shall execute against the disclosed portion of offsetting orders in the Book according to the price/time priority established in Rule 4-801.

Amended January 13, 2012 and November 16, 2015

Policy 4-802 Allocation of Trades

(4) Odd lot Facilities

Market Makers and OLS Odd Lot Dealers guarantee incoming tradeable odd lots at the CBBO. The Market Maker's and OLS Odd Lot Dealer's responsibilities in regard to odd lots are the same as a Market Maker's responsibilities for MGF's. Participating Organizations are not permitted to: split larger orders from a single account into odd lots; enter multiple odd lots from a single account on a specific security on a given day; or enter the odd lot portion of a mixed lot order immediately prior to entering the board lot portion.

Odd lot fills which occur in violation of the guidelines detailed above may be cancelled by the Exchange upon request by the Market Maker or OLS Odd Lot Dealer, as applicable. Notwithstanding the above, the Exchange may cancel any trades deemed to be improper use of the Odd Lot facilities, or take such other action as the Exchange considers appropriate in the circumstances.

Amended February 24, 2012, November 16, 2015, and ●, 2017

DIVISION 9 – SPECIAL TRADING SESSION

Rule 4-901 General Provisions (Amended)

(1) All securities, other than eligible foreign exchange-traded securities, shall be eligible for trading during the Special Trading Session, provided that a MOC Security shall not be eligible for trading until the completion of the Closing Call in respect of that MOC Security.

Amended (●, 2017)

(2) Except as otherwise provided, all transactions in the Special Trading Session shall be at the Last Sale Price for each security.

(3) Except as otherwise provided, the normal rules of priority and allocation, as applicable, and all other Exchange Requirements shall apply to the Special Trading Session.

Amended (February 24, 2012 and November 16, 2015)

DIVISION 11 - SPECIAL TERMS

Rule 4-1103 Exchange for Physicals and Contingent Option Trades

Orders which are conditional upon a simultaneous trade in a derivative on another exchange shall be special terms trades and shall be traded in accordance with the prescribed procedures and conditions.

Policy 4-1103 Exchange for Physicals and Contingent Option Trades

(1) Application

This Policy applies to each person who has been granted trading access to the Exchange and who seeks to enter an order on the Exchange for a security which is contingent upon the execution of one or more trades in an option on the Montreal Exchange or who seeks to exchange an index futures contract that is traded on the Exchange for the equivalent number of securities underlying the futures contract (including an equivalent number of index participation units) on a contingent basis.

(2) Procedure for Contingent Option Trade

If a person to whom this Policy applies seeks to enter an order on the Exchange for a security which is contingent upon the execution of one or more trades in an options market, the following rules shall apply:

(a) the trade in the security and the offsetting option trades must be for the same account;

(b) the option portion of the trade must be approved by a floor governor or other exchange official of the stock exchange on which the option is listed and such approval shall be evidenced by the initials of the governor or official on the options trade ticket;

(c) the options trade ticket shall be time stamped;

(d) the person shall telephone Trading and Client Services of the Exchange at (416) 947-4440 and provide the details of the contingent trade including the name of the person with trading access to the Exchange with whom the contingent trade has been made;

(e) the trade in the security must be within the existing market for the security on the Exchange at the time of the telephone call to Trading and Client Services;

(f) a copy of the options trade ticket as initialled by a floor governor or exchange official and time stamped shall be provided by facsimile transmission to Trading and Client Services at (416) 947-4280 within ten minutes following the time stamp on the ticket; and

(g) provided the trade has been made and reported in accordance with the above rules, the Exchange shall manually execute the trade in the security as a special terms trade with the marker “MS” effective as of the time stamped on the option trade ticket.

(3) Procedure for Exchange for Physicals

If a person to whom this Policy applies seeks to exchange a futures contract for the equivalent number of securities underlying the futures contract (including an equivalent number of units of the applicable Index Participation Fund or mutual fund), the following provisions shall apply:

(a) the trade in the security and the trade in the futures contract must be for the same account;

(b) the equities component may be made as a cross or as a trade between persons with trading access on the Exchange;

(c) the futures portion of the trade must be approved by a floor governor or other exchange official of the stock exchange on which the future is listed and such approval shall be evidenced by the initials of the governor or official on the futures trade ticket;

(d) the futures trade ticket shall be time stamped;

(e) the person shall telephone Trading and Client Services of the Exchange at (416) 947-4440 and provide the details of the exchange including the name of the person with trading access to the Exchange with whom the exchange has been made;

(f) the trade in the securities made during the Regular Session will be at the bid price of the securities on the Exchange at the time of the telephone call to Trading and Client Services and the trade in securities made after the end of the Regular Session will be at the last sale price of the securities on the Exchange provided that where the last sale price is outside of the closing quotes for any security the price for that security shall be the bid or offer which is closest to the last sale price;

Amended (●, 2017)

(g) a copy of the futures trade ticket as initialled by a floor governor or exchange official and time stamped shall be provided by facsimile transmission to Trading and Client Services at (416) 947-4280 within ten minutes following the time stamp on the ticket; and

provided the trade has been made and reported in accordance with the above rules, the Exchange shall manually execute the trade in the securities as a special terms trade with the marker "MS" effective as of the time stamped on the futures trade ticket.

Amended (February 24, 2012)

DIVISION 12 – TRADING OF SECURITIES NOT LISTED BY THE EXCHANGE

Rule 4-1201 Requirements

(1) The Exchange, in its discretion, may post for trading securities that are listed by another exchange.

(2) The Exchange may remove a posted security from trading at any time without prior notice.

(3) The Exchange will halt the trading of a posted security if:

(a) the security is subject to a regulatory halt; or

(b) the security is no longer listed by an exchange or is suspended from trading by the exchange.

Amended (●, 2017)

PART 5 - CLEARING AND SETTLEMENT OF TRADES IN SECURITIES

Rule 5-203 Certificates Not Good Delivery

Delivery of any of the following certificates shall be deemed not to be good delivery:

(a) a defaced or torn certificate;

(b) a certificate registered in the name of a firm or company that has made an assignment for the benefit of creditors or has been declared bankrupt;

(c) a certificate on which the form of power of attorney to transfer has been signed by:

(i) a trustee, or

(ii) an executor or administrator;

(d) a certificate with document attached;

(e) a certificate of a company maintaining share registers in Ontario and elsewhere that is registered only on a register located outside of Ontario and is therefore not transferable on the Ontario register except after transfer to the Ontario register;

(f) a certificate indicating that subsequent transfer by the purchaser is restricted in any way, unless the entire class of securities traded on the Exchange is subject to the same restriction or unless the trade was made subject to that restriction; or

Amended (●, 2017)

(g) a certificate not acceptable as good transfer by the transfer agent.

Rule 5-302 Special Provisions for Buy-Ins from Securities Loans and Other Failed Positions

In connection with a buy-in that is the result of a default pursuant to Rules 5-301(2) or (3), the following rules shall apply in addition to the provisions of Rule 5-301:

1. If the Participating Organization in default wishes to dispute the claim, the Participating Organization shall file a dispute in writing with the Exchange before 1:00 p.m. on the day that the Notice is effective and if the dispute is not resolved by agreement between the Participating Organizations or the buy-in is disapproved by a Market Surveillance Official, the dispute shall be determined by arbitration in accordance with Rule 2-308.

2. Where the Participating Organization in default delivers the securities subject to the Buy-In Notice prior to execution of the buy-in, the Participating Organization in default shall notify the Exchange and the buy-in will be cancelled upon confirmation by the Exchange of the delivery of the securities.

Amended (●, 2017)

3. The Participating Organization which has issued a Buy-In Notice may extend the buy-in by delivering a notice of extension in writing to the Exchange before 3:00 p.m. on the day the buy-in is to be executed.

4. Failure to settle a trade that is the result of a buy-in that is the result of a default in accordance with the terms of the buy-in, if not resolved by the Participating Organizations concerned, shall be resolved by cancellation of the buy-in contract and issuance of a further buy-in and, in such case, the Participating Organization selling to the original buy-in shall be liable for any loss or damage resulting from failure to deliver.

5. Following execution of a buy-in, the Participating Organization that issued the Buy-In Notice shall notify the Participating Organization in default in writing of the amount of the difference between the amount to be paid on the Exchange Contract closed out, and the amount paid on the buy-in, if any, and such difference shall be paid to the Participating Organization entitled to receive the same within 24 hours of receipt of such notice.

6. Where more than one buy-in has been arranged in connection with the same securities, the Market Surveillance Official may combine any number of the trades.

Amended (February 24, 2012)

13.2.3 TSX – Housekeeping Amendments to the TSX Company Manual – Notice of Housekeeping Rule Amendments

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS

HOUSEKEEPING AMENDMENTS TO THE TSX COMPANY MANUAL

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "**Protocol**"), Toronto Stock Exchange ("TSX**")** has adopted, and the Ontario Securities Commission has approved, amendments (the "**Amendments**") to Part III and Part VI of the TSX Company Manual (the "**Manual**") as well as to Exhibit 1 of Reporting Form 3 – Change in Officers / Directors / Trustees ("**Form 3**"), Reporting Form 4 – Personal Information Form ("**PIF**"), Reporting Form 4B – Declaration ("**Declaration**"), and Reporting Form 12 – Notice of Intention To Make A Normal Course Issuer Bid ("**Form 12**"). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Reasons for the Amendments

The Amendments relate to non-public interest changes to (i) fix typographical errors or clarify provisions in Part III, Part VI and Form 12, and (ii) update and/or clarify language in Exhibit 1 of Form 3, the PIF and the Declaration.

Section / Document	Amendment	Rationale
Section 331 of the Manual	Delete references to Sections 637.4 – 637.11 and replace with reference to Section 612.	Sections 637.4 – 637.11 have been deleted from the Manual.
Section 346 of the Manual	Amend section to clarify that it is the listed issuer who must communicate TSX's conditional acceptance of a listing application to the securities commission.	Align Section 346 with applicable securities laws.
Section 607(i) of the Manual	Amend section to include footnote stating that the requirement for a minimum exercise price for warrants is applicable to any transaction where unlisted warrants are issuable.	Clarify that the requirements pertaining to the exercise price of warrants in the Manual continue to apply to all unlisted warrants regardless of the transaction type and not just to private placements, as may be inferred from its current location in the Manual.
Section 614 of the Manual	Amend section to clarify that (i) other than initial references in Section 614(c)(i), all references to the term "Rights Offering Documents" in Section 614 pertain to the final version of the applicable Rights Offering Document, and (ii) it is the listed issuer who must communicate TSX's acceptance of a rights offering to the securities commission if such right offering is conducted by way of a prospectus.	Clarify that it is the final Rights Offering Documents that are pertinent in Section 614 and align the Manual with applicable securities laws to require the listed issuer to notify the securities commissions of TSX's acceptance of a rights offering where such right offering is conducted by way of a prospectus.
Form 12	Delete reference to Section 629.1.	Section 629.1 has been deleted from the Manual.
Exhibit 1 of Form 3	Update the language in Exhibit 1 of Form 3, and clarify that electronic communication may not be secure.	Language is updated as a result of technological changes at TSX.
PIF	Update the language in Exhibit 2 of the PIF, clarify that electronic communication may not be secure, and clarify that only past and present residents of Canada need to complete Exhibit 1 of the PIF.	Language is updated as a result of technological changes at TSX and clarification of when Exhibit 1 must be completed.

Section / Document	Amendment	Rationale
Declaration	Update the language in Exhibit 2 of the Declaration, clarify that electronic communication may not be secure, and clarify that only past and present residents of Canada need to complete Exhibit 1 of the Declaration.	Language is updated as a result of technological changes at TSX and clarification of when Exhibit 1 must be completed.

Text of the Amendments

For the text of the Amendments, please see the TSX website at http://tmx.complinet.com/en/display/display.html?rbid=2072&element_id=1073.

Timing and Transition

The Amendments become effective on December 22, 2016. However, TSX will continue to accept PIFs, Declarations and Form 3s in the previous form until March 31, 2017, provided all of the required information, identification and notarization is provided. After March 31, 2017, the new PIF, Declaration and Form 3 will be required.

13.3 Clearing Agencies

13.3.1 CDS – Proposed Changes to CDS' schedule of fees regarding Entitlement and Corporate Action Events (E&CA) and ISIN Issuance and CDS Eligibility Services – Notice of Commission Approval

CDS

PROPOSED CHANGES TO CDS' SCHEDULE OF FEES REGARDING ENTITLEMENT AND CORPORATE ACTION EVENTS (E&CA) AND ISIN ISSUANCE AND CDS ELIGIBILITY SERVICES

NOTICE OF COMMISSION APPROVAL

A. Approval

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and CDS Clearing and Depository Services Inc. (CDS), the Commission approved certain fee amendments relating to the management of **Entitlement and Corporate Action Events (E&CA)** and **ISIN Issuance and CDS Eligibility Services**, together the CDS Issuer Services Fee Proposal (**ISP**), submitted by CDS on July 14, 2016. Staff of the Commission are publishing this notice of Commission approval.

On December 20, 2016, the Commission approved, (a) the ISP, and (b) additional adjustments proposed by CDS, attached at Appendix A, subject to the following terms and conditions:

(i) By March 31, 2017, CDS shall provide to the Commission a proposal and timeline for the implementation of a costing system or similar process that provides verifiable evidence of compliance with the prohibition on cross-subsidization between different CDS services and products and between entitlement and corporate action event categories (the "Process"). CDS shall commence utilizing the Process no later than December 31, 2017;

(ii) CDS shall provide the Commission with a development plan and implementation timeline for an Entitlement and Corporate Actions (E&CA) processing system that is satisfactory to staff by no later than December 31, 2017. Progress against the foregoing implementation plan and timeline shall be reported to, and monitored regularly by CDS' Board. CDS shall, at a minimum, provide the Commission with semi-annual updates against the plan and timeline, and any significant delays in implementation shall be reported immediately to the Commission, including the reason for the delay and CDS's proposed action plan to rectify such delay;

(iii) CDS shall provide the Commission with an audited statement of revenue and cost of the issuer fees on the delivery date of the analysis of condition (iv);

(iv) CDS shall provide documentation providing verifiable evidence of compliance with the prohibition on cross-subsidization and shall report its findings and conclusions to the Commission at the following times;

  i. by December 31, 2018, in respect of the requirements in Condition (i), above and,

  ii. by no later than one (1) year after the implementation of the E&CA processing system referred to in Condition (ii), above.

(v) CDS shall offer membership on the appropriate CDS user committees to representatives of the Issuer stakeholder group and CDS shall engage transfer agents on user committees as appropriate, within 60 days of final approval of the Issuer Service Fees; and

(vi) CDS shall assess the commercial viability of combining CDS's ISIN issuance and CDSX eligibility systems. The assessment shall take into account both the cost of combining the services and offsetting revenue from late fees – if any – that have been, or would have been, charged under the existing process. CDS shall provide a report of its conclusions and recommendations that is satisfactory to the Commission within six months of approval of the Issuer Service Fees.

The Commission's approval of CDS' fee amendments is pursuant to section 7.8 of its order recognizing CDS as a clearing agency under Ontario securities laws.

B. Background

CDS first submitted the ISP for Commission approval in November 2014 (November 2014 Proposal). CDS articulated the reasons for the ISP in its submission, which included requiring additional revenues to replace its existing E&CA system that is at its end of life and providing on-going systems maintenance. The November 2014 Proposal was published for comment on November 13, 2014[1] and 15 comment letters were received. Further details including comment letters can be found on the CDS website at http://www.cds.ca/resource/en/154. In addition to reviewing written submissions of commenters, in the spring of 2015 staff continued to meet with CDS and discuss and analyze the comments received.

In July 2016 CDS withdrew the November 2014 Proposal and submitted revised proposals (July 2016 Proposal), which were published for comment on July 14. 2016.[2] The key changes made by CDS related to the proposed E&CA fees included: (a) incorporating adjustments to address public concerns, and (b) reducing prices for two of the fees proposed. In response to the July 2016 Proposal, 18 comment letters were received. The majority of these commenters had also submitted comments on the November 2014 Proposal and their letters continued to reflect similar views as those put forward in response to the November 2014 Proposal. A list of commenters is attached at **Appendix B** and CDS' summary of public comments and responses is attached at **Appendix C**. Individual comment letters can be found on OSC website at http://www.osc.gov.on.ca/en/Marketplaces_cds_20161005_comments-received.htm

C. Principles and Approach to Reviewing Fees

As noted in the OSC staff notice of request for comment published with the July 2016 Proposal,[3] staff followed the approach outlined in Multilateral CSA Staff Notice 24-313 *CSA Staff's Review of Proposed Amendments to Fee Schedule of The Canadian Depository for Securities Limited (CDS Limited) and CDS Clearing and Depository Services Inc. (CDS Clearing) (collectively, CDS)* (Staff Notice) in its review of the July 2016 Proposal before making its recommendation to the Commission.

The Staff Notice articulates the key principles underlying the Commission's expectations about how CDS sets its fees. The key principles that CDS is expected to follow when setting fees include: fair access to its services; equitable allocation of fees and costs; commercially reasonable fee structure, on a non-discriminatory basis; and generation of sufficient revenues to remain economically viable. These key principles underlie the terms and conditions in the CDS Recognition Order. The Staff Notice also notes that while the Commission recognizes that CDS must have sufficient resources to provide clearing, settlement and depository services, given the centrality of its functions to the Canadian capital markets, it must do so in a fair, equitable and appropriate manner. The Staff Notice sets out a list of non-exhaustive factors that staff should consider when making their recommendation to the Commission. These factors are based not only on a consideration of the key principles upon which the Commission expects CDS to set its fees, but also specific criterion and factors within, or related to the terms and conditions, in the Recognition Order.

Staff considered all of these factors in making its recommendation to the Commission. In this instance however, given that other options exist for E&CA event processing, staff's review of ISP included benchmarking CDS' proposed fees against those other options, and a consideration of whether there are other options available to issuers to process E&CA events as well as the costs of those options. In particular, in addition to considering all public comments, findings from the following were considered by staff and the Commission when assessing whether there are other options: (a) the benchmarking study of Bruce Butterill and Associates commissioned by CDS,[4] (b) the benchmarking study by Market Structure Partners commissioned by staff,[5] and (c) an informal survey to a sample of market participants (including all public commenters).

D. Reasons for Recommendation of Approval

Staff recommended to the Commission that it approve the ISP together with the additional adjustments proposed by CDS considering the criteria set out in the Staff Notice based on the following key factors:

(i) The adjustments proposed by CDS following its November 2014 Proposal, in the form of grandfathering, waiving of certain fees for certain types of debt issues and transition periods, representing a significant cost reduction to issuers in the first three years of fee implementation;

(ii) The benchmarking conducted by CDS and staff suggest that (a) CDS' proposed E&CA fees are not out of line with practices of other central securities depositories (CSDs) who also charge issuers or their agents for E&CA processing, and (b) CDS' proposed fees are among the lowest relative to other CSDs; and

1 See http://www.osc.gov.on.ca/documents/en/Marketplaces/cds_20141113_rfc-amd-cds-fee-schedule.pdf.

2 See http://www.osc.gov.on.ca/en/Marketplaces_cds_20160714_rfc-fee-schedule.htm.

3 http://www.osc.gov.on.ca/en/Marketplaces_cds_20160714_rfc-fee-schedule.htm

4 http://www.cds.ca/resource/en/196

5 Posted on the OSC website at http://www.osc.gov.on.ca/en/47506.htm.

(iii) Based on staff's informal survey of the availability of other options to E&CA processing, respondents generally indicated that there are other options although they would be less efficient and more costly.

Certain public concerns were raised by participants including the following:

(i) The lack of clarity to the public over how CDS determined the different fees in ISP and how the fees relate to the underlying processes and costs, and the inability of the public to determine whether the proposed fees do not result in cross subsidization;

(ii) The lack of measures to assure CDS' commitment to replace the end of life E&CA systems with new revenues from ISP;

(iii) The continued appropriateness of the proposed E&CA fees subsequent to the implementation of the new E&CA system that would likely increase automation and reduce costs to CDS;

(iv) The appropriateness of the proposed late security eligibility request fee as it was not clear whether the late fees could be triggered due to inefficiency in existing CDS' processes that separate ISIN issuance from security eligibility; and

(v) The inability of issuers and other relevant stakeholders to provide input to CDS, which is different from participants who currently participate in CDS user committees to provide input to CDS on its services, risk management and pricing.

In order to address the public concerns, Staff recommended that the approval of the ISP and proposed CDS adjustments (described in Appendix A) be subject to terms and conditions outlined in section A of this notice.

The Commission agreed with staff's recommendation that the ISP together with CDS adjustments were fair, equitable and appropriate, and the approval with terms and conditions is consistent with the underlying expectations about how CDS sets its fees.

Questions on the content of this Notice may be referred to:

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APPENDIX A

Approved Schedule of ISP Fees to which discount will apply for 2017 (50%) & 2018 (25%) & Summary of Final CDS Adjustments

Exist'g Code		Current Fee Description	Proposed Fee Description	Exist'g Fee	Proposed Fee 2014	Proposed Fee July 2016 & Effect. 2019 (Δ if Appl)	Approved Fee Dec 2016	2017 Trans'n (50%)	2018 Trans'n (25%)	Change Description
N/A	4771	*No description*	Event management-MM interest and maturity	*No Fee*	$10		$10	$5	$7.50	Charge per event
N/A		*No Description*	Event Management-Serial Bond interest and maturity	*No Fee*			$25	$12.50	$18.75	Charge per event
N/A	4772	*No description*	Event management-NHA Interest	*No Fee*	$10		$10	$5	$7.50	Charge per event
N/A	4773	*No description*	Event management-NHA Maturity	*No Fee*	$20	$10	$10	$5	$7.50	Charge per event
N/A	4774	*No description*	Event management-Interest	*No Fee*	$100		$100	$50	$75	Charge per event
N/A	4775	*No description*	Event management-Maturity	*No Fee*	$150	$100	$100	$50	$75	Charge per event
N/A	4776	*No description*	Event management-Dividends	*No Fee*	$100		$100	$50	$75	Charge per event
N/A	4777	*No description*	Event management-Mandatory no option	*No Fee*	$250		$250	$125	$187.50	Charge per event
N/A	4778	*No description*	Event management-With choice	*No Fee*	$250		$250	$125	$187.50	Charge per event
~~*N/A*~~	~~N/A~~	~~*No description*~~	~~Event management-ETF~~	~~*No Fee*~~	~~$250~~		~~$250~~			~~Charge per event (e.g., Systematic Withdrawal Plans (SWP), Switches, and Pre-Authorized Cash Contribution plans (PACC))~~
N/A	4781	*No description*	Event management-Paying agent	*No Fee*	$50		$50	$25	$75	Charge per event where CDS manages payment release
N/A		*No description*	Event management-Depositary agent	*No Fee*	$100		$100	$50	$75	Charge per event where CDS manages the event as the depositary agent

NOTE: All fees are in Canadian Dollars

Summary of final CDS Adjustments:

The following is a complete list of adjustments (included in the July 2016 ISP proposal, as well as additional adjustments made by CDS and approved by the Commission):

(i) CDS will provide a 50% reduction of it E&CA fees in 2017 and a 25% in 2018, based on the approved fee schedule;

(ii) All debt instruments with E&CA event related activity prior to the effective date of the fees will not attract any E&CA fees (up to and including maturity);

(iii) CDS will offer issuers a prepayment option which a 20% discount will apply for instruments having a predictable payment stream (only for that period where such predictability is assured);

(iv) Agency fees will not be levied on discrete interest and maturity payments for municipal serial bonds. Agency fee will be only be applied once per year;

(v) CDS will invoice issuers directly and provide all required data to TAs to allow for accurate accounting.

APPENDIX B

List of Public Commenters

Aequitas NEO Exchange Inc.
Canadian ETF Association
Canadian Imperial Bank of Commerce
Canadian Securities Exchange*
Invesco
Lenczner Slaght on behalf of certain Municipalities' Ontario Financing Authority*
Province of British Columbia
Province of Manitoba
Province of New Brunswick
Province of Nova Scotia
Province of Prince Edward Island
Province of Quebec
Royal Bank of Canada
Securities Transfer Agent Association of Canada
TD Securities

* These commenters provided 2 comment letters.

APPENDIX C

CDS' Summary of Responses to Public Comments

Comment	CDS Response
1. Clarity of model, transparency and collaboration and consultation	
Commenters noted a lack of clarity in the proposal in general.	CDS has made every reasonable effort to solicit feedback with respect to Issuer Services, and has done so continuously since we initially published our Notice and Request for Comment in November of 2014. We have provided, on numerous occasions, both in published and publicly available documents and in the context of specific requests from stakeholders, further detailed examples, and clarification of the application of the fees to particular events and to particular securities.
Commenters expressed some confusion with respect to the descriptions of certain events (e.g., Mandatory with and without choice).	CDS has provided consistent information and, where requested, clarification with respect to these events and with respect to whether, and when, fees for event management would apply to certain securities.
Commenters felt that the process to implement the proposed fee changes was not collaborative	CDS has made staff available for consultation, further information, and clarification, on a continuous basis since the outset of the process. CDS contacted all parties who provided comments on the 2014 Notice. While it would be practically impossible to consult every single issuer, CDS has made every reasonable effort to ensure that all issuers were aware of the proposed fees and the fee approval process.
Commenters indicated that the proposed 20% fee reduction for up-front payment required more detailed process description.	CDS was explicit in the 2016 Notices that the 20% up-front fee discount will apply *only* to predictable payment streams and not to equities or securities with extendible or other features due to the lack of certainty with respect to the lifespan of the securities.
Commenters requested further detail with respect to the development of Event fees and more transparency about pricing models and methodology.	CDS has provided detailed background regarding the development of the fees themselves in the 2014 Notice, in our response to those comments (available here: http://www.cds.ca/resource/en/160), and in the 2016 Notices. In a competitive marketplace for entitlement and corporate action event management services, CDS is not in a position to publish an accounting of its confidential internal procedures, cost, and pricing models beyond that information which we have already provided. Where requested, this information has been provided to CDS's regulators on a confidential basis to assist in their review.
Commenters felt that the effective date (of fees) is arbitrary and speculative.	The effective date of the fees is based on the timeline of the regulatory review process and on notice periods (60 days) required by CDS's Participant Rules and the Book Entry Only Security Services Agreement.
2. Excessive nature of fees and disproportionate impact on certain groups	
Commenters highlighted what they felt was significant negative financial impact on individual issuers and on the marketplace as a whole.	CDS has made every effort to ensure that the proposed fees are fair, reasonable, and equitable in the context of the Canadian capital markets as a whole; the proposed fees do not impose undue financial burden on issuers or prevent access to CDS services or to the capital markets generally.
Serial debenture issuers cited what they felt was a disproportionate impact as a result of the structure of their securities.	CDS has modified its original – 2014 – proposal to account for the feedback from issuers of serial debentures and intends to waive all but one agency fee for each interest payment made on such securities. The proposed waiver will result in a single agency fee for a payment associated with multiple distributions related to a series of debentures issues in keeping with CDS's underlying principal of equal treatment for similar services, and addresses disproportionality concerns.

Comment	CDS Response
Commenters asserted that the proposed fees are higher than global peers/comparators.	CDS has provided multiple iterations of the global benchmarking which was undertaken during the development of the proposed fees. These benchmarks show that CDS is amongst the lowest-cost providers of Issuance and Entitlement and Corporate Action event management services worldwide. Pursuant to CDS's regulatory requirements, CDS has also completed a fee review study and provided this information to our regulators.
Commenters asserted that CDS does not provide value to Issuers, including both government and commercial issuers.	CDS disagrees. CDS has demonstrated the value of the services which it provides to issuers of all types of securities, and for which it is seeking only to be fairly compensated. Commenters have, in fact, noted the critical nature of CDS to the robust and efficient operation of the Canadian securities market, and must be willing to contribute to the system's ongoing viability. Requests for clarification of *marginal* value, however, are not a factor in the evaluation of the proposed fees. Issuers who continue to feel that CDS does not provide value to their operations and to their relationships with their investors have multiple commercial alternatives, including an array of transfer agents.
Commenters specifically referred to the difference between fees for processing of money-market securities entitlements and for the processing of longer term fixed income securities entitlements. ($10 vs $100)	CDS has consistently stated that the proposed fees were developed in consideration of the resources, time, and system capacity which CDS must dedicate to a particular process. Where a process is more automated, or involves activities *not* performed by CDS, the proposed fees are, consequently, lower. Where appropriate, issuers may wish to consider becoming a CDS Participant. Participation would facilitate collaboration with CDS to automate an issuer's entitlement and corporate action events in order to lower their prospective fees.
3. Fair and equitable pricing and difference between the stakeholder groups	
Commenters noted that CDS is in the process of renegotiating certain specific contracts with particular stakeholder groups at the expense of other groups.	The process of updating and harmonizing CDS's contractual documentation is unrelated to, and independent of, the fees, or the fee approval process.
Commenters asserted that "Grandfathering" should apply to all securities and "investment products".	As far as possible, CDS has balanced the dichotomous requirements of treating every issuer the same and the need to account for specific security types. Commenters have, for example, suggested both that government securities *should*, and *should not*, be treated in a different way, and asserted that the private sector is equally entitled to special treatment. Where appropriate, CDS incorporated feedback from several comments made with respect to the 2014 Notice in our most recent filings. CDS has agreed to grandfather fixed income securities deposited prior to the implementation of the new fees up to and including their maturity.
Commenters asserted that, in particular, concessions related to serial bond interest fees should apply to all constituencies.	CDS currently processes serial bond entitlements only for municipal issuers; If the industry were interested, however, CDS would be open to extending this service to other issuers who would like to issue debt in serial form. The addition of such a service offering would be subject to regulatory pre-approval pursuant to our oversight framework.
Commenters asserted that issuers should not have to pay for "largely" automated processes.	While many of CDS's processes are automated, even in the event that entitlements and corporate actions events were entirely processed automatically the proposed fees also defray system operating costs, which need also be covered.
Commenters questioned whether efforts to further automate entitlement and corporate actions event processing will result in future reduction of fees?	CDS is not in a position to speculate as to the net impact of automation efforts, and any such change would be effected through the transparent regulatory fee review process.

Comment	CDS Response
Commenters asserted that CDS is double charging Participants and Issuers for the same service.	CDS disagrees, and has consistently demonstrated that the services for which we currently charge our Participants (ledger adjustments and management, depository services) are *not* the same services (receipt and disbursement of entitlements, corporate actions event management, etc.) for which we are proposing to charge issuers.
Commenters noted that there is no need to insert an intermediary – CDS (in respect of payments on municipal securities) in the payment process	Issuers are able, in the current system, to engage the services of an agent, or use CDS as its agent, to make entitlements payments which CDS currently does at no charge to the Issuers.
Commenters asserted that the effect of the proposed fees is to reallocate costs from CDS Participants to the Issuers.	CDS disagrees, and has consistently stated that the proposed fees are intended to defray the approximately 50% deficit in the provision of entitlements and corporate action event management services.
Commenters suggested that CDS provide the proposed 50% discount for a period of 12 months.	CDS has agreed to discount the proposed fees at a rate of 50% for 2017 and 25% for 2018, which transition period allows for issuers' budgetary and other documentary constraints.
4. Regulatory oversight, public interest and competition law	
Commenters requested that Regulators undertake a "value-for-money" audit.	CDS is not a government agency or crown corporation. The requirements for prior regulatory approval of CDS fees do not include a value-for-money audit. CDS is required to complete a triennial benchmarking study for our core services. This study has been completed and has confirmed the relatively low cost of CDS's services.
Commenters asserted that issuers, as a stakeholder group, do not have representation on the board.	CDS's Board of Directors, the composition of which is mandated by our regulatory framework, is representative of our various stakeholders, includes independent directors and, further, some of the issuers who will be most impacted by the proposed fees do, in fact, sit on CDS's Board of Directors. CDS's Participant committees, including the Risk Advisory Committee, the Strategic Development Review Committee and its subcommittees, and the Legal Drafting Group, do not limit membership or participation. Subject to regulatory approval of amendments to the mandate of the Fee Committee, CDS is prepared to open the Participant Fee Committee to the issuer stakeholder group.
Commenters asserted that under-represented issuers must rely on Regulators to protect the "public interest".	CDS believes that the public interest includes the continued viability and security of CDS operations, and that the public interest is well protected by regulatory oversight of our operations. CDS would however, be amenable to extending an invitation to join CDS's Participant Fee Committee to a non-Participant representative of the issuer stakeholder group.
Several commenters asserted that CDS's dominant position must be checked against monopolistic pricing.	CDS disagrees. CDS is the licensed provider of ISIN/CUSIP numbers and is Canada's Central Securities Depository and National Numbering Agency, and we have accounted for that position in the proposed fees. We are not, however, the sole provider of entitlement and corporate action event management services, a fact acknowledged by several commenters. Finally, establishing reasonable and thoughtfully developed fees does not constitute monopolistic or predatory pricing.
Commenters assert that the imposition of the proposed fees amounted in government sector subsidizing private sector, which was in contravention of CDS's Recognition Orders.	CDS disagrees. Payment for services rendered to a government or one of its agencies does not amount to a subsidy, and fundamentally omits the benefits of the use of CDS's services which accrue to governments.
Commenters assert that the proposed fees will entice issuers to raise funds in other jurisdictions.	CDS has consistently demonstrated that the proposed fees are considerably less than those levied by CDS's closest comparators.

Comment	CDS Response
Commenters have suggested that the grandfathering should be contractually enshrined.	CDS's regulatory framework is sufficiently robust to ensure that CDS acts in the best interests of the marketplace and of our stakeholders. The fee schedule itself, once approved, will reflect the restriction as described in the 2016 Notices.
Commenters cite the need to protect the retail investor from increased costs.	CDS has made every reasonable effort to minimize the effects of the proposed fees on CDS stakeholders and the clients to whom they pass on fees, either directly or indirectly.
Commenters assert that CDS has not clarified whether the proposed fees are in respect of clearing and other core services.	For clarity, entitlement and corporate action event management services are not considered core services; they are ancillary services that are open to competition and that can be provided by other intermediaries.
Commenters assert that certain issuers (Exchange Traded Funds) have no choice but to deal with CDS.	While ETFs listed on TMX and other marketplaces must be cleared through CDS, ETF issuers are not required to process their entitlement and corporate action events through CDS if they choose to use a third party. ETF issuers can engage the services of their custodian or transfer agent to process events. CDS will set-up up, at no cost, SWP and SWITCH programs on existing ETF securities for 2017. Transactions, including those for DRIPs, will attract fees, subject to the discounts applicable for 2017 and 2018.
5. Special status of particular issuer stakeholder groups	
Commenters asserted that CDS accepts the municipal issuers' particular status amongst the issuers.	While CDS acknowledges that historical obligations to certain municipal issuers preclude CDS from charging fees in respect of outstanding securities, we do not accept municipalities as having a special status as a result. Such status would be contrary to the letter and spirit of CDS's recognition orders. CDS, has, in response to feedback from the municipalities, grandfathered existing municipal securities, consistent with the obligations noted above, and undertaken to apply agency fees only once per payment.
Commenters asserted that structured notes should be accorded particular treatment under the proposed fees, as the terms cannot be changed.	CDS has reviewed publicly available documentation for several structured note products, each of which contains language substantively similar to the following: *"AMENDMENTS TO THE NOTES: The terms of the Notes may be amended by the Bank without the consent of the Noteholders if, in the reasonable opinion of the Bank, the amendment would not materially and adversely affect the interests of the Noteholders."* Publicly available documentation also generally states that expenses of the offering will be borne by the issuer. Structured note issuers are contractually obligated to pay fees, where applicable.
Commenters asserted that ETF issuers should be accorded particular status and that fees for certain specific transactions (SWPs and Switches) should be subject to regulation.	CDS disagrees. The transactions to which the commenters refer are not corporate actions, are not subject to regulation, and are not addressed in the 2016 Notices.
6. Late fees/disincentive fees and industry standard timelines (change to include eligibility administration)	
Commenters asserted that issuers were not consulted with respect to Eligibility Request fee timelines.	CDS disagrees. In fact, based on consultation with both issuers and their agents subsequent to the 2014 Notice, CDS extended the timeline for the submission of eligibility requests; CDS now accepts requests until 12h00 ET on closing date minus 2. Longstanding time lines and service levels are described on the CDS website and highlighted on the request application - submission of complete requests must be made 2 full days prior to closing of a new issue. These timelines are more flexible than those of CDS's comparators in the United States and elsewhere. The introduction of a fee for late eligibility requests is intended to discourage such late requests and their associated costs and risks.

Comment	CDS Response
Commenters asserted that timelines do not account for market reality or market practice.	CDS disagrees. New issue trades are not impacted by the shortening of settlement cycles. In an industry document published by the CCMA, T+2 Asset List (as of July 14, 2016), identifies that "new issue transactions are not 'regular way' settlement today and are not expected to be subject to shortened settlement unless agreed to as 'special terms'", and will not be impacted by the move to T+2. Similarly, the US industry steering committee for T2 (UST2) refers to new issues as "when issued" settlements and notes no adjustments are required for T+2 as these trades are made conditionally since a security has been authorized but not yet issued and will continue to have settlement dates that are "days, weeks or months in the future".
Commenters asserted that delays are the responsibility of CDS.	CDS disagrees. While the majority of requests are received within prescribed timelines, when a Depository Eligibility request is received less than 48 hours before a closing, the result is a priority processing effort at substantial resource opportunity-cost and risk for CDS. The successful processing of these late requests inevitably delays other activities for which CDS is responsible, and the risk and consequences of any processing delays fall on CDS. Additional manual intervention is often required, since some automated processes can no longer be used. Requests for ISINs may be submitted well in advance of the new issue closing date and can be submitted with draft documents. The ISIN number is then available when the decision is made to bring the issue to market. CDS also offers the medium term note program which is characterized by a series of notes with maturities usually ranging from three to 10 years. Issuers or their agent can purchase a block of ISINs which are preassigned to the notes of their program and submit eligibility requests on a specific ISIN when the issuer chooses or when market conditions warrant. This allows issuers to have ISINs available and assist with meeting the eligibility deadlines.
Commenters asserted that the implementation of late fees assure increased revenue for CDS.	CDS has consistently stated that the late fees are being proposed in order to encourage timely delivery of documents to CDS, and are not proposed for the purpose of increasing revenue. The standard turnaround of 24 hours, introduced in 2009, for an ISIN request begins on receipt of the completed application and submission of appropriate documentation and may be longer if submitted after 4PM EST. This timeframe is similar, and in some cases shorter to other numbering agencies, such as CUSIP Global Services in the US, where express turnaround of one hour would also entail a surcharge over the regular fees and regular turnaround is approximately one to two business days. If issuers choose to shorten their settlement times for new issues then it is incumbent on the issuer or its agent to plan accordingly to ensure all information is provided to CDS within the timeframes to minimize their costs or account for additional late charges.
Commenters asserted that it is not appropriate for CDS to implement certificate disincentive fees.	CDS disagrees. Explanatory Note 3.3.6 of the CMPI-IOSCO Principles for Financial Market Infrastructures, to which CDS is required to conform, states, in part, that: "*In establishing risk-management policies, procedures, and systems, an FMI should provide incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the FMI*. There are several ways in which an FMI may provide incentives. *For example, an FMI could apply financial penalties* to participants that fail to settle securities in a timely manner or to repay intraday credit by the end of the operating day."
Commenters asserted that eligibility late fees are excessive.	CDS has consistently demonstrated that global comparators levy similar, if not higher, fees for late processing.

Comment	CDS Response
Commenters requested clarification with respect to CDS' treatment and acceptance of global certificates	CDS does not indicate any intent to stop accepting Global Certificates in the Notices. Fees for *definitive physical certificates* are already levied, and CDS consistently encourages issuers to discontinue issuance of definitive certificates; other alternatives exist, including BEO global certificates, uncertificated issues, or non-certificated inventory.
Commenters asserted that CDS should not have the right to deny eligibility for the depository.	CDS disagrees. Pursuant to the CMPI-IOSCO PFMIs, specifically Principal 11, a Central securities depository *must* have established criteria for eligibility and the ability to deny or revoke eligibility. Eligibility for deposit at CDS is based on compliance with established criteria contained in our Rules, Procedures and specific services Agreements, and issues are reviewed for compliance prior to being made eligible for deposit to CDS. Issuers are also expected to agree to certain obligations and if these obligations cannot be met or potentially introduce risk to CDS systems then the securities may not be made eligible for deposit to CDS or may be made ineligible (for breach of contract, for example).
Commenters suggested combining the issuance and eligibility processes for all securities.	CDS acknowledges the recommendation for specific enhancements to the ISIN issuance and eligibility processes, and will assess the value proposition, timing, costs, and resource requirements necessary for such an implementation. Impacts to issuers or issuers' agents processing flows would also need to be reviewed.
Commenters asserted that the proposed Eligibility Fee is excessive.	The eligibility fee covers the analytical, administrative, risks and system costs associated with making securities depository-eligible and is similar to fees charged by CDS's global peers. The process is a critical element in managing marketplace systemic risk. Requests for eligibility of securities are not straight-forward and cannot be differentiated between high-volume issuers and issuers who require more guidance. Structured notes, for example, have features and processing requirements that do not meet CDS standards and require extra review and mapping to ensure compliance without special handling by CDS (e.g., where rates required for entitlement payments are not available until payable date, where the CDS requirement is 2 days prior to payment date). Government securities are Book Entry Only (BEO) issues subject to additional restrictions, debt-limits, and regulation, and require additional documentation and additional resources (personnel & systems) dedicated to the eligibility review chain and event management process.
Commenters felt that the discrepancy between the $475 eligibility fee and the $20 money-market activation fee was unwarranted.	As described in detail in CDS's rules and procedures, the issuance of ISINs and eligibility processing of money market securities is significantly different from that for non-money market securities, and the risks and the resources assumed by CDS in respect of the former are far less than for the latter. Money market issuers are required to submit an application to determine if they qualify and if accepted are expected to perform all of the roles and tasks associated with processing a money market security and assume all of the obligations, representations and warranties with respect to such roles. CDS does not execute these processes; all of the processes are performed by CDS Participants. The setup and generation of ISINs, a service which CDS still provides, is automated only to the extent that the requestor and the security meet specific criteria. The proposed fee for Money-Market activations, therefore, reflects CDS's involvement, resources, time, and the risk we assume, all of which are less than in the case of a standard eligibility request.

Comment	CDS Response
Commenters asserted that a single eligibility fee amounts to cross-subsidization of CDS's services	CDS disagrees. Where there is a material difference in the actual processing of eligibility requests (e.g., Standard vs. Money-Market requests), the proposed fee reflects that difference.
Commenters asserted that event fees are excessive relative to administration fees.	CDS has based the proposed prices on the principles first stated in the 2014 Notice and repeated in the 2016 Notices; these fees are reasonable, fair, and equitable, and align remuneration with the service provided. One example provided was the cost of domestic/international wire payments. The commenter notes the $6-15 and $25-50 range per wire; this comparison omits the fact that an issuer will be required to issue *multiple* wires to multiple recipients (both domestic and international, as the case may be) rather than making a single payment to CDS. Where a security is more broadly held (i.e., by more than ten participants), the wire costs to the issuer immediately exceed those which CDS has proposed.

13.3.2 CDCC – Amendments to CDCC's Rules and Risk Manual Pertaining to CDOR and CORRA – Notice of Request for Comment

OSC STAFF NOTICE OF REQUEST FOR COMMENT

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

PROPOSED AMENDMENTS TO CDCC'S RULES AND RISK MANUAL TO REFLECT THE CHANGE OF ADMINISTRATOR, CALCULATION AGENT AND PUBLICATION AGENT OF CDOR AND CORRA RATES AND AMENDMENTS TO THE FINAL SETTLEMENT PRICE OF THE THREE-MONTH CANADIAN BANKERS' ACCEPTANCE, 30 DAY OVERNIGHT REPO RATE AND OVERNIGHT INDEX SWAP FUTURES CONTRACTS

The Ontario Securities Commission is publishing for public comment the amendments to the CDCC's Rules and Risk Manual. The purpose of the proposed amendments is to properly reflect the change of administrator, calculation agent and publication agent for the Canadian Dollar Offered Rate (CDOR) and for the Canadian Repo Rate Average (CORRA) in the Rules and Risk Manual.

The comment period ends January 23, 2017.

A copy of the CDCC Notice is published on our website at http://www.osc.gov.on.ca.

13.3.3 CDS – Technical Amendments to CDS Procedures – Change for Nasdaq CXD Bring-On – Notice of Effective Data

NOTICE OF EFFECTIVE DATE

TECHNICAL AMENDMENTS TO CDS PROCEDURES – CHANGE FOR NASDAQ CXD BRING-ON

The Ontario Securities Commission is publishing *Notice of Effective Date – Technical Amendments to CDS Procedures – Change for NASDAQ CXD bring-on*. The CDS procedure amendments were reviewed and approved by CDS's strategic development review committee (SDRC) on November 24, 2016.

A copy of the CDS notice is published on our website http://www.osc.gov.on.ca.

Chapter 25

Other Information

25.1 Consents

25.1.1 Santa Maria Petroleum Inc. – s. 4(b) of Ont. Reg. 289/00 made under the OBCA

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the British Columbia Business Corporations Act.

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF
R.R.O. 1990, REGULATION 289/00, AS AMENDED
(The "Regulation") MADE UNDER
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, c. B.16, AS AMENDED
(the "OBCA")

AND

IN THE MATTER OF
SANTA MARIA PETROLEUM INC.

CONSENT
(Subsection 4(b) of the Regulation)

UPON the application of Santa Maria Petroleum Inc. (the "**Applicant**") to the Ontario Securities Commission (the "**Commission**") requesting the consent of the Commission, pursuant to clause 4(b) of the Regulation, for the Applicant to continue into the Province of British Columbia (the "**Continuance**") pursuant to section 181 of the OBCA;

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the OBCA on October 15, 2004 as Newcastle Ventures Inc. Following several name changes to Southampton Ventures Inc. (February 11, 2005) and Quetzal Energy Ltd. (April 21, 2009), the Corporation is now known as Santa Maria Petroleum Inc. (June 7, 2012).

2. The Applicant's registered and head office is located at Waterfront Centre, 200 Burrard Street, Suite 1200, Vancouver, British Columbia V7X 1T2.

3. The authorized capital of the Corporation consists of unlimited number of common shares (the "**Common Shares**") of which 35,006,364 are issued and outstanding as at December 12, 2016.

4. The Common Shares of the Applicant are listed for trading on the NEX board of the TSX Venture Exchange (the "**TSX-V**") under the symbol "SMQ.H". The Applicant does not have any securities listed on any other exchange, except for the TSX-V.

5. The Applicant proposes to make an application to the Director under the OBCA pursuant to section 181 of the OBCA for authorization to continue into the Province of British Columbia under the *Business Corporations Act* (British Columbia) (the "**BCBCA**") under the name Kalytera Therapeutics, Inc. A name reservation has been granted by the Registrar of Companies, British Columbia for Kalytera Therapeutics, Inc. (NR 3690552).

6. Pursuant to clause 4(b) of the Regulation, where the corporation is an "offering corporation" (as the term is defined in the OBCA), the application for continuance must be accompanied by the consent of the Commission.

7. The Applicant is an offering corporation under the provisions of the OBCA and is a reporting issuer within the meaning of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "**Act**"). The Applicant is also a reporting issuer in the provinces of British Columbia and Alberta and will remain a reporting issuer in such jurisdictions after the Continuance.

8. The Applicant's current principal regulator is Alberta. After the Continuance, pursuant to Multilateral Instrument 11-102 *Passport System*, the Applicant's principal regulator will be British Columbia.

9. The Applicant is not in default of any provisions of the OBCA and Act, or any of the regulations or rules made under the OBCA and the Act or under the securities legislation of any other jurisdiction where it is a reporting issuer.

10. The Applicant is not a party to any proceeding or to the best of its knowledge, information and belief, any pending proceeding under the OBCA and the Act or under the securities legislation of any other jurisdiction where it is a reporting issuer.

11. A summary of the material provisions respecting the proposed Continuance was provided to the Applicant's shareholders in the management information circular of the Applicant dated November 11, 2016 (the "**Circular**") in respect of the Applicant's special meeting of shareholders held on December 12, 2016 (the "**Meeting**").

12. In accordance with the OBCA and the Act, the special resolution of shareholders to be obtained at the Meeting in connection with the proposed Continuance (the "**Continuance Resolution**") requires the approval of a minimum majority of 66 2/3% of the aggregate votes cast by shareholders present in person or by proxy at the Meeting.

13. The Applicant's shareholders had the right to dissent with respect to the proposed Continuance pursuant to section 185 of the OBCA, and the Circular disclosed full particulars of this right in accordance with applicable law.

14. The Continuance Resolution was approved at the Meeting by 99.99% of the votes cast by the shareholders of the Applicant in respect of the Continuance Resolution. None of the shareholders of the Applicant exercised dissent rights pursuant to section 185 of the OBCA.

15. The Applicant believes that having British Columbia company status is in the interest of the Applicant to be able to elect directors and conduct its affairs in accordance with the provisions of the BCBCA.

16. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the BCBCA.

DATED at Toronto, this 14th day of December, 2016.

"Monica Kowal"
Ontario Securities Commission

"Grant Vingoe"
Ontario Securities Commission

25.2 Exemptions

25.2.1 AlphaPro Management Inc. and Horizons Absolute Return Global Currency ETF – NI 41-101 General Prospectus Requirements, ss. 2.3(1.1), 19.1(2)

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from subsection 2.3(1.1) of NI 41-101 to file a final prospectus more than 90 days after receipt for the preliminary prospectus.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 2.3(1.1), 19.1(2).

December 15 , 2016

AlphaPro Management Inc.

Attention: Greg Sainsbury

Dear Sir:

Re: AlphaPro Management Inc. (the Filer)

Preliminary Long Form Prospectus dated October 6, 2016

Horizons Absolute Return Global Currency ETF (the Fund)

Exemptive Relief Application under Part 19 of National Instrument 41-101 *General Prospectus Requirements* (NI 41-101)

By letter dated December 5, 2016 (the Application), the Filer, as manager of the Fund, applied on behalf of the Fund to the Director of the Ontario Securities Commission (the Director) under section 19.1 of NI 41-101 for relief from the operation of subsection 2.3(1.1) of NI 41-101, which prohibits an issuer from filing a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus which relates to the final prospectus.

This letter confirms that, based on the information and representations made in the Application, and for the purposes described in the Application, the Director intends to grant the requested exemption to be evidenced by the issuance of a receipt for the Fund's final prospectus, subject to the condition that the final prospectus be filed by no later than **February 12, 2017**.

Yours very truly,

"Vera Nunes"
Manager, Investment Funds and
Structured Products Branch
Ontario Securities Commission

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