The Ontario Securities Commission

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1.1 Notices

1.1.1 CSA Staff Notice 11-334 Notice of Local Amendments and Changes in Certain Jurisdictions

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 11-334
Notice of Local Amendments and Changes in Certain Jurisdictions

January 19, 2017

From time to time, a local jurisdiction may amend a national or multilateral instrument or change a policy or companion policy that affects activity only in that jurisdiction. The CSA recognize that such a local amendment or change may nonetheless be of interest or importance beyond the local jurisdiction and CSA staff are issuing this Notice to identify amendments and changes implemented in Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan and Yukon. For public convenience, CSA members in other jurisdictions will update the text of the applicable material on their websites to reflect these local amendments and changes.

The local amendments and changes referred to in this notice include:

- Ontario changes to National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*, National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*, National Policy 11-205 *Process for Designation of Credit Rating Organizations in Multiple Jurisdictions* and an Ontario amendment to Form 45-106F1 *Report of Exempt Distribution*.

- Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon amendments to National Instrument 13-101 *System for Electronic Data Analysis and Retrieval (SEDAR)*.

- Alberta amendments to National Instrument 13-101 *System for Electronic Document Analysis and Retrieval (SEDAR)*, National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, National Instrument 45-102 *Resale of Securities*, Multilateral Instrument 45-108 *Crowdfunding* and National Instrument 58-101 *Disclosure of Corporate Governance Practices* and Alberta changes to Companion Policy 45-108 *Crowdfunding*.

- New Brunswick amendments to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* and National Instrument 45-106 *Prospectus Exemptions* and New Brunswick changes to Companion Policy 45-106 *Prospectus Exemptions*.

The local amendments and changes are summarized in Annexes A, B, C and D. The text of rule and policy consolidations on the websites of CSA members will be updated, as necessary, to reflect these local amendments and changes.

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ANNEX A

LOCAL AMENDMENTS AND CHANGES – ONTARIO

1. Section 8.1 of National Policy 11-202 Process for Prospectus Reviews in Multiple Jurisdictions is changed by adding the following after subsection 8.1(1):

(1.1) Despite subsection (1), in Ontario prefilings and waiver applications are submitted in accordance with Ontario Securities Commission Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*.

2. Section 5.5 of National Policy 11-203 Process for Exemptive Relieve Applications in Multiple Jurisdictions is changed by replacing "applications@osc.gov.on.ca***" with "***https://www.osc.gov.on.ca/filings***".***

3. Section 13 of National Policy 11-205 Process for Designation of Credit Rating Organizations in Multiple Jurisdictions is changed by replacing "applications@osc.gov.on.ca***" with "***https://www.osc.gov.on.ca/filings***".***

4. Schedule 1 of Form 45-106F1 is amended by adding the following below the heading "**f) Other information***" and before "***1. Is the purchaser a registrant? (Y/N)***":***

In Ontario, clauses (f)1. and (f)2. do not apply if one or more of the following apply:

(a) the issuer is a foreign public issuer;

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

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

The changes in items 1, 2 and 3 all became effective on February 19, 2014 and the amendment in item 4 became effective on July 29, 2016.

Blanket orders issued in all other CSA jurisdictions, except for Québec, have the same effect as the Ontario amendments noted in item 4. In Québec, no blanket order is required and this amendment has been made administratively and is reflected in the current Québec version of the form.[1]

[1] BC Instrument 45-537 (BC), Blanket Order 45-518 (AB), General Order 45-502 (SK), Blanket Order 45-504 (MB), Blanket Order No. 45-527 (NS), Blanket Order 45-510 (NB), Blanket Order Number 100 (NL), Blanket Order 45-512 (PE), Blanket Order 45-503 (NT), Superintendent order 2016/02 Y.S.A. (YK), Blanket Order 45-503 (NU).

ANNEX B

LOCAL AMENDMENTS – ALBERTA, MANITOBA, NEW BRUNSWICK, NEWFOUNDLAND AND LABRADOR, NOVA SCOTIA, NORTHWEST TERRITORIES, NUNAVUT, PRINCE EDWARD ISLAND, QUÉBEC, SASKATCHEWAN AND YUKON

1. Appendix A – Mandated Electronic Filings of National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by adding the following:

(a) to section I Mutual Fund Issuers:

D. Exempt Market Offerings and Disclosure

1.	Form 45-106F1 *Report of Exempt Distribution*	Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
2.	Material required to be filed or delivered under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*	Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
3.	Disclosure document delivered to subscribers under section 37.2 of the *Securities Regulation* (Québec)	Que

(b) to section II Other Issuers (Reporting/Non-reporting):

E. Exempt Market Offerings and Disclosure

1.	Form 45-106F1 *Report of Exempt Distribution*	Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
2.	Material required to be filed or delivered under section 2.9 of National Instrument 45-106 *Prospectus Exemptions*	Alta, Sask, Man, Que, NB, PEI, NS, Nfld, YK, NWT, NU
3.	Disclosure document delivered to subscribers under section 37.2 of the *Securities Regulation* (Québec)	Que
4.	Form 5 – *Start-up Crowdfunding – Report of Exempt Distribution* and offering document required to be filed or delivered under the start-up crowdfunding prospectus and registration exemptions	Sask, Man, Que, NB, NS
5.	Offering document, distribution materials, financial statements and notices required to be filed or delivered by an issuer under Multilateral Instrument 45-108 *Crowdfunding*	Sask, Man, Que, NB, NS

The amendments became effective in New Brunswick on May 23, 2016, in Saskatchewan on May 26, 2016 and in the other enumerated jurisdictions on May 24, 2016. Further amendments to section II.E are reflected in Annex C, below.

ANNEX C

LOCAL AMENDMENTS AND CHANGES – ALBERTA

1. Appendix A – Mandated Electronic Filings, section II Other Issuers (Reporting/Non-reporting), under E. Exempt Market Offerings and Disclosure of National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by replacing section 5. with the following:

5.	Offering document, distribution materials, financial statements and notices required to be filed or delivered by an issuer under Multilateral Instrument 45-108 *Crowdfunding*	Alta, Sask, Man, Que, NB, NS

2. Appendix A – Mandated Electronic Filings, section II Other Issuers (Reporting/Non-reporting), under E. Exempt Market Offerings and Disclosure of National Instrument 13-101 System for Electronic Document Analysis and Retrieval (SEDAR) is amended by adding the following:

6.	Offering document required to be filed or delivered under ASC Rule 45-517 *Prospectus Exemption for Start-up Businesses*	Alta

3. Section 10.1(1)(a) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by replacing "2.1 of the Schedule – Fees in Alta. Reg.115/95 – Securities Regulation***" with "***5 of ASC Rule 13-501 Fees***".***

4. Appendix D of National Instrument 45-102 Resale of Securities is amended

(a) by adding "1.***" before "***Except in Manitoba***"; and***

(***b***) ***by adding before "***Transitional and other Provisions" the following:

2. In Alberta, Ontario, Québec, New Brunswick, and Nova Scotia, the exemption from the prospectus requirement in section 5 [*Crowdfunding prospectus exemption*] of Multilateral Instrument 45-108 *Crowdfunding*.

The amendment in item 2 became effective on July 19, 2016, the amendments in items 1 and 4 became effective on October 31, 2016, and the amendments in item 3 became effective on December 1, 2016.

Related to items 1 and 4, Multilateral Instrument 45-108 *Crowdfunding* was adopted (along with all related Forms) as of October 31, 2016 in Alberta. The Alberta version of that Instrument includes the following amendments:

(a) the words "in Ontario" are replaced, wherever they occur, by the words "in Alberta and Ontario" in:

(i) the definition of "restricted dealer funding portal" in section 1,

(ii) paragraphs 5(1)(c) and (d),

(iii) subparagraphs 6(d)(iii) and (iv),

(iv) paragraphs 20(c) and (d),

(v) paragraph 26(e),

(vi) paragraphs 34(b) and (c),

(vii) paragraphs 36(c) and (d) and

(viii) subsection 44(3);

(b) section 41 is amended by:

(i) deleting the word "and" at the end of paragraph 41(a),

(ii) replacing the "." at the end of paragraph 41(b) with ", and", and

(iii) adding the following after paragraph 41(b):

(c) in Alberta, a distribution of securities made in reliance on Alberta Securities Commission Rule 45-517 *Prospectus Exemption for Start-up Businesses*, provided that the restricted dealer funding portal and a registered individual of the restricted dealer funding portal are in compliance with the terms, conditions, restrictions and requirements in this Instrument."

In addition, Companion Policy 45-108 *Crowdfunding* was adopted in Alberta, also as of October 31, 2016. (It had previously been adopted in SK, MB, ON, QC, NB and NS). The Alberta version of this Companion Policy includes the following changes:

(a) the words "in Ontario" are replaced, wherever they occur, by the words "in Alberta and Ontario" in:

(i) the second paragraph under the heading "(a) Restricted dealer funding portal" in Part 1,

(ii) subsection 5(1) under the heading "Investment Limits",

(iii) section 6 under the heading "Confirmation of investment limits", and

(iv) section 34;

(b) adding the following at the end of section 9:

In Alberta, a crowdfunding offering document has been designated as an offering memorandum and the rights available under the Securities Act (Alberta) apply. Refer to Alberta Securities Commission Designation Order Designation of a Crowdfunding Offering Document under Multilateral Instrument 45-108 Crowdfunding as an Offering Memorandum.

(c) adding the following immediately after the first sentence of the first paragraph of section 41:

In addition, in Alberta, a restricted dealer funding portal and a registered individual of the restricted dealer funding portal may act as an intermediary in connection with a distribution of securities under ASC Rule 45-517 Prospectus Exemption for Start-up Businesses.

(d) adding the following immediately after the first sentence of the second paragraph of section 41:

In Alberta, it also applies a distribution of securities under ASC Rule 45-517 Prospectus Exemption for Start-up Businesses.

Finally, effective December 31, 2016, Alberta implemented amendments to NI 58-101 *Disclosure of Corporate Governance Practices* (which had previously been implemented in MB, NB, NL, NWT, NS, NU, ON, QC, SK and YT). The amendments established, in Alberta, the disclosure requirements in Form 58-101F1 *Corporate Governance Disclosure* (captured in items 10 to 15 of that Form) with respect to the representation of women on the boards of directors and in executive officer positions of Alberta's non-venture issuers as well as with respect to the term or other mechanisms of board renewal for board directors. Further, to the extent that an issuer has not adopted the related mechanisms, policies, or targets, or does not consider the representation of women, it is required to disclose its reasons for not doing so.

ANNEX D

LOCAL AMENDMENTS – NEW BRUNSWICK

1. ***Subsection 8.12(3) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by adding "***New Brunswick,***" after "***Manitoba,***".***

2. ***Subsection 2.36(3) of National Instrument 45-106 Prospectus Exemptions is amended by adding "***New Brunswick,***" after "***Manitoba,***".***

3. ***Section 4.7 of Companion Policy 45-106 Prospectus Exemptions is amended by adding "***New Brunswick,***" after "***Manitoba,***".***

These amendments became effective on October 5, 2016.

1.1.2 Uranium308 Resources Inc. et al.

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

AND

IN THE MATTER OF
URANIUM308 RESOURCES INC., MICHAEL FRIEDMAN,
GEORGE SCHWARTZ, PETER ROBINSON and SHAFI KHAN

NOTICE OF WITHDRAWAL

WHEREAS:

1. On February 20, 2009, the Ontario Securities Commission (the "Commission") issued a temporary cease trade order pursuant to subsections 127(1) and 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering: that all trading in securities by Uranium308 Resources Inc. (“U308 Inc.”) shall cease and that all trading in Uranium308 Resources Inc. securities shall cease; that all trading in securities by Uranium308 Resources Plc. (“U308 Plc.”) shall cease and that all trading in Uranium308 Resources Plc. securities shall cease; that all trading in securities by Innovative Gifting Inc. (“IGI”) shall cease; and, that Michael Friedman (“Friedman”), Peter Robinson (“Robinson”), George Schwartz (“Schwartz”), and Alan Marsh Shuman (“Shuman”) cease trading in all securities (the “Temporary Order”);

2. On February 20, 2009, the Commission ordered that the Temporary Order shall expire on the 15th day after its making unless extended by order of the Commission;

3. On February 23, 2009 the Commission issued a Notice of Hearing to consider, among other things, the extension of the Temporary Order, to be held on March 6, 2009 at 10:00 a.m.;

4. The Notice of Hearing set out that the Hearing was to consider, inter alia, whether, in the opinion of the Commission, it was in the public interest, pursuant to subsections 127 (7) and (8) of the Act, to extend the Temporary Order until the conclusion of the hearing, or until such further time as considered necessary by the Commission;

5. On March 6, July 10, November 30, 2009 and on February 3, 2010, hearings were held before the Commission and the Commission ordered that the Temporary Order be extended;

6. On February 3, 2010, the Commission ordered that the Temporary Order be extended until March 8, 2010 and the hearing with respect to the matter be adjourned to March 5, 2010;

7. On March 2, 2010, the Commission issued a Notice of Hearing to consider, *inter alia*, whether to make orders, pursuant to sections 37, 127, and 127.1, against U308 Inc., Friedman, Schwartz, Robinson and Shafi Khan (“Khan”) (collectively the “Respondents”);

8. On March 2, 2010, Staff of the Commission issued a Statement of Allegations against the Respondents;

9. Staff served the Respondents with the Notice of Hearing dated March 2, 2010 and Staff’s Statement of Allegations dated March 2, 2010. Service by Staff was evidenced by the Affidavit of Service of Joanne Wadden, sworn on March 4, 2010, which was filed with the Commission;

10. On March 5, 2010, the Commission ordered that the Temporary Order be extended until April 13, 2010 and the hearing with respect to the matter be adjourned to April 12, 2010;

11. On March 5, 2010, counsel for Staff advised the Commission that Staff were not seeking to extend the Temporary Order against Shuman and the Commission did not extend the Temporary Order against Shuman;

12. On April 12, 2010, counsel for Staff, Khan, and counsel for Friedman appeared before the Commission. Counsel for Robinson was not present but he had provided information to counsel for Staff which was relayed to the Commission. Schwartz was also not present but he had provided information to counsel for Staff which was relayed to the Commission;

13. On April 12, 2010, counsel for Staff requested the extension of the Temporary Order as against U308 Inc., Friedman, Schwartz, Robinson, and U308 Plc.;

14. On April 12, 2010, counsel for Staff provided counsel for Friedman and Khan with Staff's initial disclosure in this matter. Counsel for Staff advised the Commission that Staff's initial disclosure was also prepared and available for the other respondents to pick up from Staff;

15. On April 12, 2010, the Commission was of the opinion that it was in the public interest to order that, pursuant to subsection 127(8) of the Act, the Temporary Order is extended as against U308 Inc., Friedman, Schwartz, Robinson, and U308 Plc. to July 2, 2010 and that the hearing with respect to the Notice of Hearing dated March 2, 2010 and with respect to the Temporary Order is adjourned to June 30, 2010, at 10:00 a.m. at which time a pre-hearing conference will be held;

16. On June 30, 2010, the Commission was of the opinion that it was in the public interest to order that, pursuant to subsection 127(8) of the Act, the Temporary Order is extended as against U308 Inc., Friedman, Schwartz, Robinson, and U308 Plc. until the completion of the hearing on the merits in this matter;

17. On June 30, 2010, the pre-hearing conference was commenced and the parties present made submissions to the Commission;

18. On June 30, 2010, the Commission adjourned the pre-hearing conference to continue on July 22, 2010 at 10:00 a.m.;

19. On July 22, 2010, the pre-hearing conference continued and Khan and Schwartz were present at the pre-hearing conference. A student-at-law with the office of counsel for Robinson was also present. Counsel for Friedman and U308 Inc. was not able to attend on July 22, 2010, but Staff advised the Commission of the reason for their non-attendance;

20. On July 22, 2010, the Commission was of the opinion that it was in the public interest to order that the hearing with respect to this matter is adjourned to August 30, 2010, at 10 a.m. at which time the pre-hearing conference would be continued;

21. On August 30, 2010, the pre-hearing conference continued and the following persons were in attendance: Khan; counsel for Robinson; and counsel for Friedman and U308 Inc. Schwartz was not able to attend but Staff advised the Commission of the reason for his non-attendance. The parties present made submissions to the Commission;

22. On August 30, 2010, the Commission was of the opinion that it was in the public interest to order that the hearing with respect to this matter is adjourned to October 12, 2010, at 2:30 p.m. at which time the pre-hearing conference would be continued;

23. On October 8, 2010, the Commission approved a Settlement Agreement entered into between Staff, U308 Inc. and Michael Friedman. On October 8, 2010, the Commission issued an order, pursuant to sections 37 and 127(1) of the Act, against U308 Inc. and Friedman;

24. On October 12, 2010, the pre-hearing conference continued and the following persons were in attendance: Khan; counsel for Robinson; and Schwartz. The parties present made submissions to the Commission;

25. The Commission ordered that the hearing on the merits with respect to this matter commence on April 4, 2011 at 10 a.m. and continue on April 6, 7, 11, 12, 13, 14, 15, 18 and 20, 2011 (the "Hearing Dates");

26. On November 5, 2010, the Commission approved a Settlement Agreement entered into between Staff and Robinson;

27. On December 13, 2010, Schwartz and Victor York ("York"), who is a respondent in a related proceeding before the Commission, *York Rio Resources Inc. et. al* (the "Applicants"), together brought a motion for dismissal or adjournment of the proceedings against them (the "Dismissal or Adjournment Motion");

28. The Dismissal or Adjournment Motion was denied by way of an endorsement of the Commission dated December 15, 2010;

29. On March 23, 2011, Staff laid charges pursuant to section 122 of the Act against Schwartz in the Ontario Court of Justice;

30. Pursuant to the Information regarding the charges laid against Schwartz, Schwartz is to make his first appearance in the Ontario Court of Justice in answer to these charges on April 11, 2011 at 9:00 a.m.;

31. By letter dated March 29, 2011, on consent of Schwartz and Khan, Staff requested that the Hearing Dates be vacated and that the hearing on the merits with respect to this matter be adjourned to dates to be fixed by the Office of the Secretary;

32. Staff submit that it is in the public interest to adjourn the Hearing Dates in light of the proceeding initiated by Staff under section 122 of the Act;

33. Staff advised the Commission that all the parties consented to the adjournment of the Hearing Dates;

34. On March 30, 2011, the Hearing Dates were vacated and the hearing on the merits was adjourned to dates to be provided by the Secretary's Office and agreed to by the parties;

35. On February 24, 2012, in the Ontario Court of Justice, Schwartz entered pleas of guilt to one count of breaching a cease trade order contrary to s. 122(1)(c) of the Act and one count of unregistered trading contrary to s. 25(1)(a) of the Act;

36. On March 29, 2012, Schwartz was sentenced to 90 days jail, to be followed by 12 months probation and ordered to perform 100 hours of community service.

37. On May 2, 2012, Schwartz filed a notice of appeal against conviction and sentence in the Superior Court of Justice;

38. On August 1, 2013, Schwartz's appeal against conviction and sentence was dismissed by the Superior Court of Justice;

39. Schwartz applied to the Court of Appeal for Ontario for leave to appeal the decision of the Superior Court of Justice dismissing his appeal against conviction and sentence;

40. On November 8, 2013, the Court of Appeal for Ontario dismissed Schwartz's leave application.

41. The March 2, 2010 Statement of Allegations remain outstanding against Khan;

TAKE NOTICE that Staff withdraw the allegations against Khan.

January 13, 2017

Staff of the Ontario Securities Commission
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Matthew Britton
Senior Litigation Counsel
416-593-8294

1.1.3 The Investment Funds Practitioner – December 2016 [Corrected]

[Editor's note: *The Investment Funds Practitioner* – December 2016 is being republished to correct the omission of footnote 1 on page 602 below.]

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.[1] 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[2] 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 understanding 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] ETFs may be broadly classified into "index" ETFs that track a transparent index or asset and "non-index" ETFs that do not. Within the "non-index" group, there are (a) "rules-based" ETFs: ETFs that generally hold a portfolio that is rebalanced periodically in accordance with a rules-based investment methodology, and (b) "actively managed" ETFs: ETFs that have discretion to invest without regard to any index or rules-based methodology.

[2] A discussion of the Undertaking is provided in *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.[3] 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.[4] 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

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

[4] 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.

1.1.4 CSA Multilateral Staff Notice 51-347 – Disclosure of cyber security risks and incidents

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Multilateral Staff Notice 51-347
Disclosure of cyber security risks and incidents

January 19, 2017

Introduction

Cyber security was identified as a priority area in the CSA 2016-2019 Business Plan. On September 27, 2016, the Canadian Securities Administrators (the **CSA**) published Staff Notice 11-332 *Cyber Security* (**Staff Notice 11-332**) in order to highlight the importance of cyber security risks for issuers, registrants and regulated entities and inform stakeholders about recent and upcoming CSA initiatives. With respect to issuers, Staff Notice 11-332 indicated that CSA members would examine the disclosure of some of the larger issuers to analyze what is being disclosed with respect to cyber security risk and cyber attacks.

Accordingly, CSA Staff recently reviewed the disclosure provided by the constituents of the S&P/TSX Composite Index regarding cyber security risk and cyber attacks. Staff from the British Columbia Securities Commission, the Ontario Securities Commission and the Autorité des marchés financiers (**staff** or **we**) are publishing this notice (the **Staff Notice**) to report the findings of our review and provide disclosure expectations for reporting issuers.

Staff in certain CSA jurisdictions have carried out cyber security disclosure reviews in the past, including as part of their work on the International Organization of Securities Commissions (**IOSCO**) report on cyber security in securities markets (the **IOSCO Report**).[1] This Staff Notice, however, presents the results of a review of issuers that is larger in scope. The review was undertaken as we are of the view that issuers in all industries may be exposed to cyber security risk, albeit in different ways.

Issue-oriented review

We reviewed the most recent annual filings of the 240 constituents of the S&P/TSX Composite Index[2], including issuers' annual information forms, management's discussion and analysis, management information circulars, as well as other filings such as material change reports and news releases.

The review focused on whether and how issuers had addressed cyber security issues in their risk factor disclosure, including whether the disclosure described potential impacts of a cyber attack on the issuer's business, what kind of material information could be exposed as a result, and who was responsible for the issuer's cyber security strategy. We also searched for disclosure about any previous cyber security incidents.

Risk factor disclosure

Disclosure of cyber security risk

In our review, we found that 146 of the 240 issuers, or 61%, addressed cyber security issues in their risk factor disclosure.

Issuers generally disclosed that their dependence on information technology systems renders them at risk for cyber security breaches. We note that issuers in a wide variety of industries acknowledged cyber security as a material risk to their business.

We also note that few issuers provided disclosure regarding their particular vulnerability to cyber security incidents. For example, some of those issuers identified the industry in which they operate, their ownership of specified assets, the nature of their operations or their status as government contractors, as factors increasing the likelihood that they could be targets of cyber surveillance or a cyber attack from cyber criminals, industrial competitors or government actors. Others disclosed that their information technology systems were based on legacy technology and operated with a minimal level of available support.

Some issuers also addressed the risk that third parties could expose them to cyber security issues. Third party security breaches, the inadequate levels of cyber security expertise and safeguards of third party partners, and the failure or ending of third party information technology services on which the issuer relies are among those risks.

1 IOSCO report on cyber security in securities markets http://www.iosco.org/library/pubdocs/pdf/IOSCOPD528.pdf

2 As at July 7, 2016.

Disclosure of potential impacts of a cyber security incident

Issuers that recognized the dependence of their business operations on information technology systems disclosed that disruptions due to cyber security incidents could adversely affect their business, results of operation and financial condition.

The following frequently identified potential impacts of a cyber security incident were common to a variety of issuers across different industries:

- compromising of confidential customer or employee information;
- unauthorized access to proprietary or sensitive information;
- destruction or corruption of data;
- lost revenues due to a disruption of activities, incurring of remediation costs;
- litigation, fines and liability for failure to comply with privacy and information security laws;
- regulatory investigations and heightened regulatory scrutiny;
- higher insurance premiums;
- reputational harm affecting customer and investor confidence;
- diminished competitive advantage and negative impacts on future opportunities;
- effectiveness of internal control over financial reporting.

Some industry and business-specific potential impacts identified by issuers included:

- operational delays, such as production downtimes or plant and utility outages;
- inability to manage the supply chain;
- inability to process customer transactions or otherwise service customers;
- disruptions to inventory management;
- loss of data from research and development activities; and
- devaluation of intellectual property.

Disclosure of governance and cyber security risk mitigation

We examined whether and whom issuers identified as being responsible for their cyber security strategy. We found that 31 issuers, or 20% of the issuers who had addressed cyber security in their disclosure, had identified a person, group or committee.

The audit committee was most often identified as being responsible for overseeing the issuer's cyber security risks, often in discussion with management. Some issuers indicated that a risk committee was responsible for overseeing and managing risks such as cyber security. The board of directors and management as a whole were also identified, while a few issuers identified the Chief Financial Officer or the head of information technology as being responsible for overseeing cyber security risks.

Some issuers disclosed that controls such as a disaster recovery plan and controls over unauthorized access have been put in place. Few issuers disclosed holding insurance against cyber security incidents, while some issuers also noted that they may be insufficiently covered for such incidents.

Staff guidance on risk factor disclosure

As a general principle, disclosure should focus on material and entity specific information, and avoid boilerplate language. While we acknowledge that exposure to cyber security risks may be common to all issuers in every industry, issuers should bear in mind that one of the purposes of risk factor disclosure is to allow the reader to distinguish one issuer from another, within the

same industry or across industries, in terms of the level of exposure, the level of preparedness and how the risk impacts the issuer.

As issuers are increasingly dependent on information technology to operate their business, and as cyber attacks are becoming more frequent and sophisticated, we expect that issuers will consider the ways in which, as well as the types of cyber attacks to which, they are likely to be exposed.

We recognize that all issuers may be exposed to a cyber attack. However, issuers in different industries may be subject to cyber security risk for reasons different than issuers in other industries, and may be exposed to varying degrees. For example, the vulnerability of a consumer-facing issuer is different than that of an issuer owning strategic intellectual property or operating infrastructure assets. The consequences of a cyber attack may also differ greatly between issuers.

As discussed in Staff Notice 11-332, CSA members expect issuers, to the extent that they have determined that cyber security risk is a material risk, to provide risk disclosure that is as detailed and entity specific as possible. Materiality in cases of a cyber security risk turns on an analysis of the probability that a breach will occur, and the anticipated magnitude of its effect.

Given that we expect issuers to disclose specific risks rather than generic risks common to all issuers, we expect issuers to tailor their disclosure of cyber security risk to their particular circumstances. However, we do not expect issuers to disclose details regarding their cyber security strategy or their vulnerability to cyber attacks that is of a sensitive nature or that could compromise their cyber security.

We expect issuers to consider the factors identified by IOSCO when preparing their disclosure. Issuers should consider the reasons they may be exposed to a cyber security breach, the source and nature of the risks, the potential consequences of a cyber security breach, the adequacy of preventative measures, as well as a consideration of prior material cyber security incidents and their effects on the issuer's cyber security risk. Issuers should also address how they mitigate the risk, including whether and to what extent the issuer maintains insurance covering cyber attacks, or reliance on third party experts for their cyber security strategy or to remediate prior or future cyber attacks. It is also relevant to disclose governance issues, including identifying a committee or person responsible for the issuer's cyber security and risk mitigation strategy. We refer issuers to Chapter 2 of the IOSCO Report.

Finally, we expect that issuers who are required to establish and maintain disclosure controls and procedures under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* apply such disclosure controls and procedures to detected cyber security incidents, in order to ensure these incidents are communicated to management and a decision regarding whether and what to report is made in a timely manner.

Cyber security incident disclosure

Although a few issuers addressed in their risk factor disclosure that they had been subject to cyber attacks in the past, no issuers in our sample disclosed such incidents as being material. Only one issuer in our sample had issued a press release following a data breach resulting in confidential information being accessed and disclosed; however, the issuer did not file a material change report in connection with this incident.

We note that certain issuers have disclosed in their continuous disclosure filings that they have been subject to cyber security breaches in the past, but that these incidents were not material.

Staff guidance on incident reporting

We understand that privacy or other legislation may require issuers to report or notify persons of cyber security breaches in certain circumstances, but such obligations are different than those provided by securities legislation.

In considering whether and when to disclose a cyber security incident, the issuer must determine whether it is a material fact or material change that requires disclosure in accordance with securities legislation. The issuer should refer to the guidance in National Policy 51-201 *Disclosure Standards* and may in addition refer to the provisions of Part 1(f) of Form 51-102F1 *Management's Discussion & Analysis* and Part 1(e) of Form 51-102F2 *Annual Information Form* of National Instrument 51-102 *Continuous Disclosure Obligations*.

We recognize that there is no bright-line test and that the quantitative or qualitative threshold at which a cyber security breach becomes material may vary between issuers and industries, depending on the circumstances of the issuer as well as on the type of incident and the extent of the consequences.

Materiality depends on the contextual analysis of the cyber security incident. While an isolated cyber attack may not be material, a series of or frequent minor incidents may become material in light of the level and type of disruption caused. The impact of a distributed denial-of-service attack or ransomware would differ from that of a cyber security breach aimed at obtaining client

information. The types of disclosure required, whether in the issuer's risk factor disclosure, financial reporting or incident reporting, depends on the circumstances of the incident.

Timing is an important factor in reporting material cyber security incidents. We understand that cyber security incidents may not be detected until much later than when they occurred, and the consequences of the incident may take time to fully assess. The determination of whether the incident is material is a dynamic process throughout the detection, assessment and remediation phases of a cyber security incident.

As indicated in Staff Notice 11-332, we expect issuers to address in any cyber attack remediation plan how materiality of an attack would be assessed to determine whether and what, as well as when and how, to disclose in the event of an attack. In the assessment, issuers should consider the impact on the company's operations and reputation, its customers, employees and investors. Where an issuer has determined a cyber security incident should be disclosed, it might be appropriate to consider and provide visibility as to the anticipated impact and costs of the incident.

Next Steps

Staff intends to continue reviewing disclosure of cyber security risks and incidents, monitor trends in disclosure and review the extent and timing of reporting of cyber security incidents.

Questions

Please refer your questions to any of the following:

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1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Thomas Arthur Williams et al. – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
THOMAS ARTHUR WILLIAMS,
GLOBAL WEALTH CREATION OPPORTUNITIES INC.,
GLOBAL WEALTH CREATION OPPORTUNITIES INC. (BELIZE),
GLOBAL WEALTH FINANCIAL INC.,
GLOBAL WEALTH CREATION STRATEGIES INC.,
CDN GLOBAL WEALTH CREATION CLUB RW-TW,
2002 CONCEPTS INC.,
SUSAN GRACE NEMETH,
RENEE MICHELLE PENKO,
IRENE G. BEILSTEIN and
DENNIS CARL WEIGEL

NOTICE OF HEARING
(Subsections 127(1) and 127(10) of the Securities Act)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the "Act"), at the offices of the Commission, 20 Queen Street West, 17th Floor, commencing on January 30, 2017 at 2:30 p.m., or as soon thereafter as the hearing can be held;

TO CONSIDER whether, pursuant to subsection 127(1) and paragraph 4 of subsection 127(10) of the Act, it is in the public interest for the Commission to make an order:

1. against Thomas Arthur Williams ("Williams") that:

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

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

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

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

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

    f. Williams be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

2. against Susan Grace Nemeth ("Nemeth") that:

    until the later of August 17, 2023, and the date on which the payments ordered against Nemeth in paragraphs 133(17) and 133(18) of the Order of the British Columbia Securities Commission dated August 17, 2016 (the "BCSC Order") have been made:

    a. trading in any securities or derivatives by Nemeth cease, pursuant to paragraph 2 of subsection 127(1) of the Act, except that:

i. she may trade securities through her own account through a registrant, provided that a copy of the BCSC Order, and a copy of the Order of the Commission in this proceeding, if granted, are provided to the registrant;

b. the acquisition of any securities by Nemeth be prohibited, pursuant to paragraph 2.1 of subsection 127(1) of the Act, except that:

i. she may purchase securities through her own account through a registrant, provided that a copy of the BCSC Order, and a copy of the Order of the Commission in this proceeding, if granted, are provided to the registrant;

c. any exemptions contained in Ontario securities law do not apply to Nemeth, pursuant to paragraph 3 of subsection 127(1) of the Act, except for those exemptions necessary to enable Nemeth to trade or purchase securities in her own account;

d. Nemeth resign any positions that she holds as a director or officer of any issuer or registrant, pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act;

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

f. Nemeth be prohibited from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

3. against Renee Michelle Penko ("Penko") that:

until the later of August 17, 2020, and the date on which the payments ordered against Penko in paragraphs 133(25) and 133(26) of the BCSC Order have been made:

a. trading in any securities or derivatives by Penko cease, pursuant to paragraph 2 of subsection 127(1) of the Act, except that:

i. she may trade securities:

1. through her own account through a registrant, provided that a copy of the BCSC Order, and a copy of the Order of the Commission in this proceeding, if granted, are provided to the registrant; and

2. in the course of her employment with a dealer registered under the applicable securities legislation, and only with or to the clients of that dealer;

b. the acquisition of any securities by Penko be prohibited, pursuant to paragraph 2.1 of subsection 127(1) of the Act, except that:

i. she may purchase securities:

1. through her own account through a registrant, provided that a copy of the BCSC Order, and a copy of the Order of the Commission in this proceeding, if granted, are provided to the registrant; and

2. in the course of her employment with a dealer registered under the applicable securities legislation, and only with or to the clients of that dealer;

c. any exemptions contained in Ontario securities law do not apply to Penko, pursuant to paragraph 3 of subsection 127(1) of the Act, except for those exemptions necessary to enable Penko to trade or purchase securities in her own account;

d. Penko resign any positions that she holds as a director or officer of any issuer or registrant, pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act;

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

f. Penko be prohibited from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act, except in connection with her employment with a dealer under the applicable securities legislation;

4. against Irene G. Beilstein ("Beilstein") that:

until the later of August 17, 2019, and the date on which the payments ordered against Nemeth in paragraphs 133(34) and 133(35) of the BCSC Order have been made:

a. trading in any securities or derivatives by Beilstein cease, pursuant to paragraph 2 of subsection 127(1) of the Act, except that:

i. she may trade securities through her own account through a registrant, provided that a copy of the BCSC Order, and a copy of the Order of the Commission in this proceeding, if granted, are provided to the registrant;

b. the acquisition of any securities by Beilstein be prohibited, pursuant to paragraph 2.1 of subsection 127(1) of the Act, except that:

i. she may purchase securities through her own account through a registrant, provided that a copy of the BCSC Order, and a copy of the Order of the Commission in this proceeding, if granted, are provided to the registrant;

c. any exemptions contained in Ontario securities law do not apply to Beilstein, pursuant to paragraph 3 of subsection 127(1) of the Act, except for those exemptions necessary to enable Beilstein to trade or purchase securities in her own account;

d. Beilstein resign any positions that she holds as a director or officer of any issuer or registrant, pursuant to paragraphs 7 and 8.1 of subsection 127(1) of the Act;

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

f. Beilstein be prohibited from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

5. against Dennis Carl Weigel ("Weigel") that:

until the later of August 17, 2017, and the date on which the payments ordered against Weigel in paragraphs 133(43) and 133(44) of the BCSC Order have been made:

a. trading in any securities or derivatives by Weigel cease, pursuant to paragraph 2 of subsection 127(1) of the Act, except that:

i. he may trade securities through his own account through a registrant, provided that a copy of the BCSC Order, and a copy of the Order of the Commission in this proceeding, if granted, are provided to the registrant;

b. the acquisition of any securities by Weigel be prohibited, pursuant to paragraph 2.1 of subsection 127(1) of the Act, except that:

i. he may purchase securities through his own account through a registrant, provided that a copy of the BCSC Order, and a copy of the Order of the Commission in this proceeding, if granted, are provided to the registrant;

c. any exemptions contained in Ontario securities law do not apply to Weigel, pursuant to paragraph 3 of subsection 127(1) of the Act, except for those exemptions necessary to enable Weigel to trade or purchase securities in his own account;

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

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

f. Weigel be prohibited from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

6. against each of Global Wealth Creation Opportunities Inc., Global Wealth Creation Opportunities Inc. (Belize), Global Wealth Financial Inc., Global Wealth Creation Strategies Inc., CDN Global Wealth Creation Club RW-TW and 2002 Concepts Inc. (collectively, the "Global Entities"):

a. trading in any securities of each of the Global Entities cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

b. trading in any securities or derivatives by each of the Global Entities cease permanently, pursuant to paragraph 2 of subsection 127(1) of the Act;

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

d. each of the Global Entities be prohibited permanently from becoming or acting as a registrant, investment fund manager or promoter, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

7. such other order or orders as the Commission considers appropriate.

BY REASON of the allegations set out in the Statement of Allegations of Staff of the Commission dated January 10, 2017, and by reason of the BCSC Order, and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that at the hearing on January 30, 2017 at 2:30 p.m., Staff will bring an application to proceed with the matter by written hearing, in accordance with Rule 11 of the Ontario Securities Commission *Rules of Procedure* (2014), 37 OSCB 4168 and section 5.1 of the *Statutory Powers Procedure Act*, RSO 1990, c S.22, and any party to the proceeding may make submissions in respect of the application to proceed by written hearing;

AND TAKE FURTHER NOTICE that any party to the proceeding may be represented by a representative at the hearing;

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place aforesaid, the hearing may proceed in the absence of the party and such party is not entitled to any further notice of the proceeding;

AND TAKE FURTHER NOTICE that the Notice of Hearing is also available in French on request, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français sur demande, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plut tôt possible et, dans tous les cas, au moins trente (30) jours avant l'audience si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

DATED at Toronto this 10th day of January, 2017.

"Grace Knakowski"
Secretary to the Commission

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

AND

IN THE MATTER OF
THOMAS ARTHUR WILLIAMS,
GLOBAL WEALTH CREATION OPPORTUNITIES INC.,
GLOBAL WEALTH CREATION OPPORTUNITIES INC. (BELIZE),
GLOBAL WEALTH FINANCIAL INC.,
GLOBAL WEALTH CREATION STRATEGIES INC.,
CDN GLOBAL WEALTH CREATION CLUB RW-TW,
2002 CONCEPTS INC.,
SUSAN GRACE NEMETH,
RENEE MICHELLE PENKO,
IRENE G. BEILSTEIN and
DENNIS CARL WEIGEL

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff of the Ontario Securities Commission ("Staff") allege:

I. OVERVIEW

1. Thomas Arthur Williams ("Williams"), Global Wealth Creation Opportunities Inc., Global Wealth Creation Opportunities Inc. (Belize), Global Wealth Financial Inc., Global Wealth Creation Strategies Inc., CDN Global Wealth Creation Club RW-TW and 2002 Concepts Inc. (collectively, the "Global Entities"), Susan Grace Nemeth ("Nemeth"), Renee Michelle Penko ("Penko"), Irene G. Beilstein ("Beilstein") and Dennis Carl Weigel ("Weigel") (collectively, the "Respondents") are subject to an order made by the British Columbia Securities Commission (the "BCSC") dated August 17, 2016 (the "BCSC Order") that imposes sanctions, conditions, restrictions or requirements upon them.

2. In its findings on liability dated January 14, 2016 (the "Findings"), a panel of the BCSC (the "BCSC Panel") found that each of the Respondents (except for 2002 Concepts Inc. ("2002 Concepts")) engaged in unregistered trading and illegal distribution.

3. The BCSC Panel further found that Williams and each of the Global Entities perpetrated a fraud, and that, as the sole directing mind of each company, Williams was liable for the Global Entities' contraventions of British Columbia securities law.

4. Staff are seeking an inter-jurisdictional enforcement order, pursuant to paragraph 4 of subsection 127(10) of the Ontario *Securities Act*, R.S.O. 1990, c. S.5 (the "Act").

II. THE BCSC PROCEEDINGS

The BCSC Findings

5. The conduct for which the Respondents were sanctioned took place between February 2007 to April 2010 (the "Material Time").

Individual Respondents

6. As of the date of the Findings, Williams was a resident of British Columbia. Williams was previously licensed by the Insurance Council of British Columbia from 1991 until the BCSC's proceedings commenced. Williams was previously registered in various capacities, at various times, under the British Columbia *Securities Act*, RSBC 1996, c. 418 (the "BC Act"). Williams was not registered in any capacity under the BC Act during the Material Time. During the Material Time, Williams was the sole directing mind of each of the Global Entities.

7. As of the date of the Findings, Nemeth was a resident of British Columbia. Nemeth was previously licenced by the Insurance Council of British Columbia. Nemeth was previously registered in various capacities, at various times, under the BC Act. Nemeth was not registered in any capacity under the BC Act during the Material Time.

8. As of the date of the Findings, Penko was a resident of British Columbia. Penko was not registered in any capacity under the BC Act during the Material Time.

9. As of the date of the Findings, Beilstein was a resident of British Columbia and has never been registered under the BC Act.

10. As of the date of the Findings, Weigel was a resident of British Columbia and has never been registered under the BC Act.

Corporate Respondents – Global Entities

11. Global Wealth Creation Opportunities Inc. ("Global Opportunities") was incorporated in British Columbia in February 2007. Global Opportunities has never been registered, and has never filed a prospectus, under the BC Act. Global Opportunities was dissolved in November 2011 for failure to file Annual Reports.

12. Global Wealth Creation Opportunities Inc. (Belize) ("Global Opportunities (Belize)") was incorporated in July 2007. Global Opportunities (Belize) has never been registered, and has never filed a prospectus, under the BC Act.

13. Global Wealth Financial Inc. ("Global Financial") was incorporated in British Columbia in October 2006. Global Financial has never been registered, and has never filed a prospectus, under the BC Act.

14. Global Wealth Creation Strategies Inc. ("Global Strategies") was incorporated in British Columbia in October 2006. Global Strategies has never been registered, and has never filed a prospectus, under the BC Act. Global Strategies was dissolved in April 2012 for failure to file Annual Reports.

15. CDN Global Wealth Creation Club RW-TW ("Global Club") is a general partnership registered with the British Columbia Registrar of Companies in May 2006. While Williams and his brother, Robert Laudy Williams (described further at paragraph 18 below) were the only partners shown on its registration, it was Williams who controlled Global Club. Global Club has never been registered, and has never filed a prospectus, under the BC Act.

16. 2002 Concepts was incorporated in British Columbia in February 2002. 2002 Concepts has never been registered, and has never filed a prospectus, under the BC Act. 2002 Concepts was dissolved in August 2008 for failure to file Annual Reports.

Other Respondents – BCSC Proceeding

17. Paul Finney, Christina Kiemel, Helena Yvonne Becker and Eric Clark were also named as respondents in the BCSC proceedings. The allegations with respect to each were either discontinued by the BCSC's Executive Director or dismissed by the BCSC Panel in the Findings.

18. Sharon Downing, Daniel Quo Ming Sam and Robert Laudy Williams were also named as respondents in the BCSC proceedings. Each of them settled with the BCSC on March 30, 2015, April 27, 2015 and May 7, 2015, respectively.

Background

19. A summary of the Respondents' conduct is as follows. Williams started promoting investments in the Global Entities in February 2007 and continued this activity to at least April 2010. In total, Williams and the Global Entities raised $11.7 million from 123 investors.

20. During the Material Time, investors lent money to differing Global Entities, under differing agreements (the "Global Scheme"):

    a. a Participation Agreement when money was lent to Global Club;

    b. an Agreement when money was lent to Global Opportunities;

    c. a Loan Agreement when money was lent to Global Opportunities Belize; and

    d. an Agreement when money was lent to Global Financial.

21. Although money was lent by the investors to different Global Entities under the terms of different agreements, investors were to receive consistent returns between the different Global Entities during the Material Time. Investors were promised monthly returns between 2% and 6% per month.

22. Investors were initially told that their funds were being invested, by the applicable Global Entity, in something called a "managed risk opportunity." Williams described managed risk opportunity to investors as the deposit of funds in a foreign financial institution, as security for further financial transactions by that institution. Williams advised investors that the funds were secure and would not be put at risk.

23. During the Material Time, Williams, through Global Strategies, hired Nemeth, Penko, Beilstein and Weigel as associates or "finders." All of the individual respondents, other than Williams, were finders and acted as intermediaries between investors and Williams. Williams and the finders persuaded investors to lend money to the Global Entities, and the finders earned commissions for doing so. The finders were instructed by Williams to refer to monies given by investors to the Global Entities as "loans" and not "investments."

24. Global Strategies did not issue securities to investors but did have investor funds flow through its accounts when commission payments were required to be made to the finders. 2002 Concepts Inc. did not issue securities to investors; however, its accounts were used to deposit investor funds.

25. While some investors received cash distributions on their investments as promised early on in the Global Scheme, all other investors received account statements showing that their accounts were credited with the promised returns. The Global Entities started missing payments to investors in mid to late 2009, and, ultimately, in the first half of 2010, the Global Scheme collapsed as investor demands for cash payments continued to be unmet.

26. The BCSC Panel found that no funds had ever been paid by the Global Entities to any entity consistent with what was described as the managed risk opportunity, and that no money was ever received by any Global Entity from investments. The Global Entities had no revenue other than investor loans, a fact that was never disclosed to investors.

27. The BCSC Panel further found that investor funds had not been invested in safe investments as represented, but instead were used to make payments to earlier investors, to pay commissions to Williams and the finders, and were sent by Williams to other entities that were controlled by individuals with a history of criminal or securities regulatory fraud.

28. The BCSC Panel found that most investors lost their investments in the Global Scheme, which the BCSC Panel characterized as a Ponzi scheme.

29. In its Findings, the BCSC Panel concluded that:

    a. Williams and each of the Global Entities perpetrated a fraud, contrary to section 57(b) of the BC Act with respect to an aggregate of $11.7 million of securities sold to 123 investors;

    b. each of the Global Entities (except for 2002 Concepts), Williams, Penko, Nemeth, Beilstein and Weigel engaged in illegal distribution and unregistered trading, contrary to sections 34 and 61 of the BC Act, with respect to the following distributions:

        - Williams and Global Strategies – $5.3 million to 101 investors for 156 investments;
        - Global Opportunities – $2,893,307 to 51 investors for 83 investments;
        - Global Opportunities (Belize) – $2,893,307 to 51 investors for 83 investments;
        - Global Financial – $25,000 to one investor;
        - Global Club – $244,000 to five investors for seven investments;
        - Penko – $1,171,003 to 22 investors for 31 investments;
        - Nemeth – $1,249,723 to 19 investors for 34 investments;
        - Beilstein – $170,500 to three investors for five investments;
        - Weigel – $40,000 to three investors; and

    c. Williams was liable under section 168.2 of the BC Act with respect to each of the Global Entities' contraventions of sections 57(b), 61 and 34 of the BC Act.

The BCSC Order

30. The BCSC Order imposed the following sanctions, conditions, restrictions or requirements:

a. upon Williams:

1. under section 161(1)(b) of the BC Act, that Williams permanently cease trading in, and is prohibited from purchasing, any securities;

2. under section 161(1)(c) of the BC Act, that all exemptions set out in the BC Act do not apply to Williams, on a permanent basis;

3. under section 161(1)(d)(i) of the BC Act, that Williams resign any position he holds as a director or officer of an issuer or registrant;

4. under section 161(1)(d)(ii) of the BC Act, that Williams is permanently prohibited from becoming or acting as a director or officer of any issuer or registrant;

5. under section 161(1)(d)(iii) of the BC Act, that Williams is permanently prohibited from becoming or acting as a registrant or promoter;

6. under section 161(1)(d)(iv) of the BC Act, that Williams is permanently prohibited from acting in a management or consultative capacity in connection with the activities in the securities market;

7. under section 161(1)(d)(v) of the BC Act, that Williams is permanently prohibited from engaging in investor relations activities;

8. under section 161(1)(g) of the BC Act, that Williams pay to the BCSC $6.8 million; and

9. under section 162 of the BC Act, that Williams pay to the BCSC an administrative penalty of $15 million;

b. against Nemeth:

10. under section 161(1)(b) of the BC Act, that Nemeth cease trading in, and is prohibited from purchasing, any securities, except through her own account through a registrant, provided that a copy of the BCSC Order is provided to the registrant;

11. under section 161(1)(c) of the BC Act, that all exemptions set out in the BC Act do not apply to Nemeth, except for those exemptions necessary to enable Nemeth to trade or purchase securities in her own account;

12. under section 161(1)(d)(ii) of the BC Act, that Nemeth is prohibited from becoming or acting as a director or officer of any issuer or registrant;

13. under section 161(1)(d)(iii) of the BC Act, that Nemeth is prohibited from becoming or acting as a registrant or promoter;

14. under section 161(1)(d)(iv) of the BC Act, that Nemeth is prohibited from acting in a management or consultative capacity in connection with the activities in the securities market;

15. under section 161(1)(d)(v) of the BC Act, that Nemeth is prohibited from engaging in investor relations activities;

until the later of seven years from the date of the BCSC Order and the date on which Nemeth's payments ordered under sections 161(1)(g) and 162 of the BC Act have been made;

16. under section 161(1)(d)(i) of the BC Act, that Nemeth resign any position she holds as a director or officer of any issuer or registrant,

17. under section 161(1)(g) of the BC Act, that Nemeth pay to the BCSC $162,500, and

18. under section 162 of the BC Act, that Nemeth pay to the BCSC an administrative penalty of $70,000;

c. against Penko:

19. under section 161(1)(b) of the BC Act, that Penko is prohibited from purchasing or trading in securities, except:

i) through her own account through a registrant, provided that a copy of the BCSC Order is provided to that registrant; and

ii) in the course of her employment with a dealer registered under the applicable securities legislation, and only with or to the clients of that dealer;

20. under section 161(1)(c) of the BC Act, that all exemptions set out in the BC Act do not apply to Penko, except for those exemptions necessary to enable Penko to trade or purchase securities in her own account;

21. under section 161(1)(d)(iv) of the BC Act, that [Penko] is prohibited from acting in a management or consultative capacity in connection with the activities in the securities market, except in connection with her employment with a dealer under the applicable securities legislation;

22. under section 161(1)(d)(v) of the BC Act, that Penko is prohibited from engaging in investor relations activities, except in connection with her employment with a dealer under the applicable securities legislation;

23. under section 161(1)(f) of the BC Act, that a condition of strict supervision of Penko's registrable activities is imposed, in the form attached as Schedule A to the BCSC Order;

until the later of four years from the date of the BCSC Order and the date on which Penko's payments ordered under sections 161(1)(g) and 162 of the BC Act have been made;

24. under section 161(1)(d)(i) of the BC Act, that Penko resign any position she holds as a director or officer of any issuer or registrant;

25. under section 161(1)(g) of the BC Act, that Penko pay to the BCSC $155,000; and

26. under section 162 of the BC Act, that Penko pay to the BCSC an administrative penalty of $40,000;

d. against Beilstein:

27. under section 161(1)(b) of the BC Act, that Beilstein cease trading in, and is prohibited from purchasing, any securities, except through her own account through a registrant, provided that a copy of the BCSC Order is provided to that registrant;

28. under section 161(1)(c) of the BC Act, that all exemptions set out in the BC Act do not apply to Beilstein, except for those exemptions necessary to enable Beilstein to trade or purchase securities in her own account;

29. under section 161(1)(d)(ii) of the BC Act, that Beilstein is prohibited from becoming or acting as a director or officer of any issuer or registrant;

30. under section 161(1)(d)(iii) of the BC Act, that Beilstein is prohibited from becoming or acting as a registrant or promoter;

31. under section 161(1)(d)(iv) of the BC Act, that Beilstein is prohibited from acting in a management or consultative capacity in connection with the activities in the securities market;

32. under section 161(1)(d)(v) of the BC Act, that Beilstein is prohibited from engaging in investor relations activities;

until the later of three years from the date of the BCSC Order and the date on which Beilstein's payments ordered under sections 161(1)(g) and 162 of the BC Act have been made;

33. under section 161(1)(d)(i) of the BC Act, that Beilstein resign any position she holds as a director or officer of any issuer or registrant;

34. under section 161(1)(g) of the BC Act, that Beilstein pay to the BCSC $22,000; and

35. under section 162 of the BC Act, that Beilstein pay to the BCSC an administrative penalty of $25,000;

e. against Weigel:

36. under section 161(1)(b) of the BC Act, that Weigel cease trading in, and is prohibited from purchasing, any securities, except through his own account through a registrant, provided that a copy of the BCSC Order is provided to that registrant;

37. under section 161(1)(c) of the BC Act, that all exemptions set out in the BC Act do not apply to Weigel, except for those exemptions necessary to enable Weigel to trade or purchase securities in his own account;

38. under section 161(1)(d)(ii) of the BC Act, that Weigel is prohibited from becoming or acting as a director or officer of any issuer or registrant;

39. under section 161(1)(d)(iii) of the BC Act, that Weigel is prohibited from becoming or acting as a registrant or promoter;

40. under section 161(1)(d)(iv) of the BC Act, that Weigel is prohibited from acting in a management or consultative capacity in connection with the activities in the securities market;

41. under section 161(1)(d)(v) of the BC Act, that Weigel is prohibited from engaging in investor relations activities;

until the later of one year from the date of the BCSC Order and the date on which his payments ordered under sections 161(1)(g) and 162 of the BC Act have been made,

42. under section 161(1)(d)(i) of the BC Act, that Weigel resign any position he holds as a director or officer of any issuer or registrant;

43. under section 161(1)(g) of the BC Act, that Weigel pay to the BCSC $5,200; and

44. under section 162 of the BC Act, that Weigel pay to the BCSC an administrative penalty of $5,000;

f. against each of the Global Entities:

45. under section 161(1)(b) of the BC Act, that each of the Global Entities permanently cease trading in, and is prohibited from purchasing, any securities;

46. under section 161(1)(c) of the BC Act, that all exemptions set out in the BC Act do not apply to each of the Global Entities, on a permanent basis;

47. under section 161(1)(d)(iv) of the BC Act, that each of the Global Entities is permanently prohibited from acting in a management or consultative capacity in connection with the activities in the securities market;

48. under section 161(1)(d)(v) of the BC Act, that each of the Global Entities is permanently prohibited from engaging in investor relations activities; and

49. under section 161(1)(g) of the BC Act, that each of the Global Entities pay to the BCSC $6.8 million;

Joint and Several Liability

50. With respect to the orders under section 161(1)(g) of the BC Act made against each Global Entity and Williams, they are each jointly and severally liable to pay to the BCSC $6.8 million.

III. JURISDICTION OF THE ONTARIO SECURITIES COMMISSION

31. The Respondents are subject to an order of the BCSC imposing sanctions, conditions, restrictions or requirements upon them.

32. Pursuant to paragraph 4 of subsection 127(10) of the Act, an order made by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, in any jurisdiction, that imposes sanctions, conditions, restrictions or requirements on a person or company may form the basis for an order in the public interest made under subsection 127(1) of the Act.

33. Staff allege that it is in the public interest to make an order against the Respondents.

34. Staff reserve the right to amend these allegations and to make such further and other allegations as Staff deem fit and the Commission may permit.

35. Staff request that this application be heard by way of a written hearing pursuant to Rules 2.6 and 11 of the Ontario Securities Commission Rules of Procedure.

DATED at Toronto, this 10th day of January, 2017.

1.5 Notices from the Office of the Secretary

1.5.1 Good Mining Exploration Inc.

FOR IMMEDIATE RELEASE
January 12, 2017

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

AND

IN THE MATTER OF
GOOD MINING EXPLORATION INC.

TORONTO – The Commission issued an Order in the above named matter which provides that pursuant to subsection 144(1) of the Act that the Cease Trade Order is revoked, on the condition that, pursuant to subsection 144(2) of the Act, the Filer shall, for a period of one year from the date of this order, provide the Disclosure Document to prospective purchasers of the Filer's securities in any distribution of the Filer's securities that is exempt from the prospectus requirement contained in section 53 of the Act.

A copy of the Order dated January 11, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.5.2 Steven J. Martel et al.

FOR IMMEDIATE RELEASE
January 12, 2017

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

AND

IN THE MATTER OF
STEVEN J. MARTEL,
MARTEL GROUP OF COMPANIES INC. and
8446997 CANADA INC.

TORONTO – The Commission issued an Order in the above named matter which provides that Martel's motion seeking a stay of proceedings shall be heard on April 27, 2017 at 10:00 a.m., or such other date as may be agreed to by the parties and set by the Office of the Secretary, and the parties shall adhere to the following timeline for the exchange of materials:

a) Martel shall serve and file an amended notice of motion accompanied by a motion record no later than February 6, 2017;

b) Staff shall serve and file a responding motion record no later than February 24, 2017;

c) cross-examinations on affidavits, if any, will be conducted during the week of March 6, 2017;

d) Martel shall serve and file a memorandum of fact and law no later than March 29, 2017;

e) Staff shall serve and file a responding memorandum of fact and law no later than April 13, 2017; and

f) Martel shall serve and file a reply memorandum of fact and law, if any, no later than April 20, 2017.

A copy of the Order dated January 11, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.5.3 Uranium308 Resources Inc. et al.

FOR IMMEDIATE RELEASE
January 13, 2017

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

AND

IN THE MATTER OF
URANIUM308 RESOURCES INC.,
MICHAEL FRIEDMAN,
GEORGE SCHWARTZ,
PETER ROBINSON and
SHAFI KHAN

TORONTO – Staff of the Ontario Securities Commission filed a Notice of Withdrawal against the Respondent, Shafi Khan as of January 13, 2017 in the above noted matter.

A copy of the Notice of Withdrawal dated January 13, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

OSC Contact Centre
416-593-8314
1-877-785-1555 (Toll Free)

1.5.4 Thomas Arthur Williams et al.

FOR IMMEDIATE RELEASE
January 13, 2017

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

AND

IN THE MATTER OF
THOMAS ARTHUR WILLIAMS,
GLOBAL WEALTH CREATION OPPORTUNITIES INC.,
GLOBAL WEALTH CREATION OPPORTUNITIES INC. (BELIZE), GLOBAL WEALTH FINANCIAL INC.,
GLOBAL WEALTH CREATION STRATEGIES INC.,
CDN GLOBAL WEALTH CREATION CLUB RW-TW,
2002 CONCEPTS INC., SUSAN GRACE NEMETH,
RENEE MICHELLE PENKO, IRENE G. BEILSTEIN
and DENNIS CARL WEIGEL

TORONTO – The Office of the Secretary issued a Notice of Hearing pursuant to Subsections 127(1) and 127(10) of the *Securities Act* setting the matter down to be heard on January 30, 2017 at 2:30 p.m. or as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated January 10, 2017 and Statement of Allegations of Staff of the Ontario Securities Commission dated January 10, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY

For media inquiries:

media_inquiries@osc.gov.on.ca

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416-593-8314
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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 BKC Capital Inc. and Sun Life Institutional Investments (Canada) Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions. Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. The Filers are affiliated entities and have valid business reasons for the individual to be registered with both firms. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1, 15.1.

January 12, 2017

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
BKC CAPITAL INC.
(BKC)

AND

SUN LIFE INSTITUTIONAL INVESTMENTS
(CANADA) INC.
(SLIIC, and together with BKC, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) for relief from the restriction under paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) (the **Dual-Registration Restriction**), pursuant to section 15.1 of NI 31-103, to permit Mr. Philip C. Gillin to be registered as an advising representative and as a dealing representative of each of BKC and SLIIC (the **Relief Sought**). Previous relief similar to the Relief Sought was granted to SLIIC (under its prior name of Sun Life Investment Management Inc.) in February 2014, though neither BKC nor Mr. Gillin was subject to that 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 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 by the Filers in each of the remaining provinces and territories of Canada (together with Ontario, 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. BKC is registered as a portfolio manager and exempt market dealer in each of the Jurisdictions and is also registered as an investment fund manager in each of Ontario, Québec and British Columbia.

2. SLIIC is registered as a portfolio manager, exempt market dealer and investment fund manager in each of the Jurisdictions and is also registered as a commodity trading manager in Ontario.

3. Sun Life Financial Inc. (**SLF**) is a publicly-listed company that trades on the Toronto, New York

and Philippine stock exchanges and wholly-owns, indirectly, each of the Filers. Since each of SLIIC and BKC is under SLF's common control, each is an affiliate of the other.

4. BKC acts as the investment fund manager, and portfolio manager of pooled funds (the BKC Pooled Funds) that invest indirectly in real estate-related assets, including equity securities of private issuers that hold real estate, real estate investment trusts and debt securities issued in connection with mortgages secured by real estate. It acts as exempt market dealer to sell securities of the BKC Pooled Funds, and of private issuers that invest in a portfolio of real estate assets, to Canadian pension plans, other institutional investors and to certain high net worth clients that qualify as "accredited investors" as defined in National Instrument 45-106 *Prospectus Exemptions* in each of the Jurisdictions.

5. SLIIC acts as the investment fund manager, portfolio manager and exempt market dealer of pooled funds (the **SLIIC Pooled Funds**) consisting of real estate assets, commercial mortgages, private fixed income assets and public bonds and derivatives, or a combination thereof, that are sold to institutional clients that qualify as "accredited investors" as defined in National Instrument 45-106 *Prospectus Exemptions* in each of the Jurisdictions.

6. Mr. Gillin is Senior Managing Director and Portfolio Manager, Canadian Property Investments at SLIIC. Mr. Gillin is also Senior Managing Director, Canadian Property Investments at The Sun Life Assurance Company of Canada, another affiliate of the Filers. As part of Mr. Gillin's duties, he is responsible for the portfolio management and monitoring of investments in certain of the SLIIC Pooled Funds.

7. Mr. Gillin has been registered as an advising representative (portfolio manager) and dealing representative (exempt market dealer) with SLIIC since March 7, 2014 in each of the Jurisdictions. Mr. Gillin's advising representative registration is restricted to (a) advising in respect of mortgages, mortgage-backed securities and securities that reflect an underlying investment in real property, and (b) advising in respect of investments in fixed income and money market assets that is incidental to portfolios consisting of securities referred to in (a). Mr. Gillin's dealing representative registration is restricted to marketing and selling the SLIIC Pooled Funds (or those of a successor, subsidiary, or person or company directly or indirectly controlled by the same person or company that controls SLIIC) to accredited investors (if the SLIIC Pooled Fund invests exclusively in mortgages, mortgage-backed securities and/or securities that reflect an underlying investment in real property) and to institutional permitted clients.

8. On September 1, 2015, BKC became an affiliate of SLIIC. One of the real estate-focused SLIIC Pooled Funds for which Mr. Gillin acted as portfolio manager has been divested of all third-party investors and closed to new subscriptions and it is contemplated that Mr. Gillin will act as portfolio manager to one or more of the BKC Pooled Funds. Mr. Gillin will also continue to act as a portfolio manager to certain of the SLIIC Pooled Funds.

9. As such, dual registration as an advising representative (portfolio manager) of each of SLIIC and BKC would allow Mr. Gillin to continue to advise the SLIIC Pooled Funds while also acting as a portfolio manager to one or more BKC Pooled Funds. Dual registration as a dealing representative (exempt market dealer) of each of SLIIC and BKC would allow Mr. Gillin to market and sell the relevant SLIIC Pooled Funds and BKC Pooled Funds. The terms and conditions on each of Mr. Gillin's advising and dealing representative registrations would be the same under his proposed registrations with BKC.

10. Mr. Gillin will be subject to supervision by, and the applicable compliance requirements of, both Filers.

11. Each of the Filers' Ultimate Designated Person will ensure, and each of the Filers' Chief Compliance Officer will monitor and assess, that Mr. Gillin has sufficient time and resources to adequately serve each Filer and its clients.

12. BKC is not in default of any requirement of securities legislation in any Jurisdiction. SLIIC is not in default of any requirement of securities, commodities or derivatives legislation in any Jurisdiction.

13. BKC and SLIIC are affiliates and accordingly the dual registration of Mr. Gillin will not give rise to the conflicts of interest present in a similar arrangement involving unrelated, arm's-length firms. The interests of the Filers are aligned, and as Mr. Gillin's role is to support the business activities and interests of the Sun Life Financial group of companies (including BKC and SLIIC), the potential for conflicts of interest is remote.

14. The Filers each have adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of Mr. Gillin and will be able to deal appropriately with any such conflicts. Further, if the Relief Sought is granted, the BKC Pooled Funds that Mr. Gillin advises will have different investment strategies than, and are not expected to compete for the same investments with, any SLIIC Pooled Funds that Mr. Gillin advises. This will further mitigate the risks of

conflicts of interest arising from Mr. Gillin's dual registration.

15. The Filers do not expect that the dual registration of Mr. Gillin will create significant additional work for him and are confident that Mr. Gillin will have sufficient time to adequately serve both firms and their clients.

16. The relationship between BKC and SLIIC, and the fact that Mr. Gillin is dually registered with both BKC and SLIIC, will be fully disclosed to clients of each of BKC and SLIIC that deal with Mr. Gillin. A disclosure document will be sent to Mr. Gillin's existing SLIIC clients, and current prospective clients, to inform them of his new registration with BKC and of the new BKC Pooled Fund for which Mr. Gillin will be co-portfolio manager. This disclosure will be sent once Mr. Gillin's registration with BKC has been approved. Disclosure regarding Mr. Gillin's dual employment will also be disclosed in the offering documentation for each of the SLIIC Pooled Funds and BKC Pooled Funds for which Mr. Gillin acts as an advising representative.

17. Mr. Gillin will act in the best interest of all clients of each Filer and will deal fairly, honestly and in good faith with these clients.

18. In the absence of the Relief Sought, the Filers would be prohibited by the Dual-Registration Restriction from permitting Mr. Gillin to be registered as an advising and dealing representative of each Filer, even though the Filers are affiliates and have controls and compliance procedures in place to deal with Mr. Gillin's advising and dealing activities.

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 representations described above in paragraphs 14, 15, 16 and 17 remain true.

"Marrianne Bridge"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

2.2 Orders

2.2.1 GoldON Resources Ltd. – s. 9.1 of MI 61-101 Protection of Minority Security Holders in Special Transactions and s. 6.1 of NI 62-104 Take-Over Bids and Issuer Bids

Headnote

Section 6.1 of NI 62-104 and section 9.1 of MI 61-101 – Issuer bid – relief from the requirements applicable to issuer bids in Part 2 of NI 62-104 and Part 3 of MI 61-101 – issuer proposes to acquire its own shares and receive other consideration in connection with a negotiated commercial agreement – issuer held an annual and special meeting of shareholders at which the transaction was submitted to, and approved by, 99.9% of minority shareholders – selling shareholder not receiving cash in exchange for subject shares – shares repurchased at a deemed value below the volume weighted average price for the 20 day period prior to announcement of the transaction – repurchase not designed to give preferential treatment to the selling shareholder – transaction is in the best interests of the issuer and its shareholders and will not adversely affect the financial position of the issuer or shareholders to whom the bid was not extended – share repurchase will not materially affect control of the issuer.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.
Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, Part 3 and s. 9.1.

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

AND

IN THE MATTER OF
GOLDON RESOURCES LTD.

ORDER
(Section 9.1 of Multilateral Instrument 61-101 and Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of GoldON Resources Ltd. (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**") and section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") exempting the Issuer from the requirements applicable to issuer bids in Part 2 of NI 62-104 and Part 3 of MI 61-101 (collectively, the "**Issuer Bid Requirements**") in respect of the proposed purchase by the Issuer of 1,170,544 common shares of the Issuer (the "**Subject Shares**") owned by Trelawney Mining and Exploration Inc. ("**Trelawney**");

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

AND UPON the Issuer (and Trelawney in respect of paragraphs 5, 6, 7, 9 and 15, as they relate to Trelawney) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Business Corporations Act* (British Columbia).

2. The head and registered office of the Issuer is located at 108 – 800 Kelly Road, Suite 416, Victoria, British Columbia, V9B 6J9.

3. The Issuer is a reporting issuer in the Provinces of British Columbia and Alberta and the common shares of the Issuer (the "Common Shares") are listed for trading on the TSX Venture Exchange (the "**TSXV**") under the symbol "GLD". 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 Common Shares. As of November 21, 2016, there were 10,074,913 Common Shares issued and outstanding.

5. The corporate headquarters of Trelawney are located in the Province of Ontario. Trelawney is a wholly-owned subsidiary of IAMGOLD Corp.

6. Trelawney is the beneficial owner of the Subject Shares, which, as of November 21, 2016, represented approximately 11.6% of the issued and outstanding Common Shares.

7. On September 28, 2016, the Issuer executed a definitive agreement (the "**Definitive Agreement**") with Trelawney, pursuant to which the Issuer would sell, and Trelawney would acquire, a 100% interest in the Issuer's Swayze Gold Project mining claims, which are located in the District of Sudbury in Northeastern Ontario and include the Chester, Mollie River and Neville-Potier claim blocks (the "**Swayze Gold Project**"), in exchange for:

   (a) $300,000 in cash;

   (b) forgiveness of a $125,000 promissory note issued by the Issuer to Trelawney;

   (c) the return of the Subject Shares to the Issuer for cancellation (the "**Share Repurchase**"); and

   (d) an additional $800,000, if a storage facility or pond of any nature is constructed on the Swayze Gold Project for the purpose of storage of tailings derived from Trelawney's Cote Gold Project (collectively, the "**Sale Transaction**").

8. Assuming completion of the Sale Transaction, 8,904,369 Common Shares would be issued and outstanding.

9. Trelawney is a "related party" of the Issuer as such term is defined in MI 61-101 by virtue of the fact that Trelawney owns 11.6% of the Issuer's Common Shares. Therefore, the Sale Transaction is a "related party transaction" as such term is defined in MI 61-101.

10. But for the fact that Trelawney is deemed not to deal at arm's length with the Issuer under MI 61-101 because of its ownership of the Subject Shares, the Issuer and Trelawney are otherwise arm's length from each other. None of Trelawney or its affiliates have any representatives on the board of directors of the Issuer, nor do they have the right to appoint any such representatives. The Issuer does not have any representatives on the board of directors of Trelawney or any of its affiliates, nor does it have the right to appoint any such representatives.

11. On October 6, 2016, the TSXV provided conditional acceptance to the Issuer for the Sale Transaction, subject to, among other conditions, requiring that the Issuer provide the TSXV with evidence of shareholders' approval of the Sale Transaction (together, the "**TSXV Conditions**").

12. In accordance with the requirements of MI 61-101 and TSXV Policy 5.9, and in satisfaction of the TSXV Conditions, the Issuer held an annual and special meeting of shareholders on November 8, 2016 (the "**Shareholder Meeting**") at which the Sale Transaction was submitted to a vote of shareholders, excluding the votes attached to Common Shares owned, or over which control or direction is exercised by, Trelawney (the "**Minority Shareholders**").

13. At the Shareholder Meeting, the Sale Transaction was approved by 99.9% of the Minority Shareholders that voted on the Sale Transaction.

14. The Share Repurchase by the Issuer pursuant to the Sale Transaction will constitute an "issuer bid" for the purposes of NI 62-104 and MI 61-101, to which the applicable Issuer Bid Requirements would apply. The Share Repurchase cannot be made in reliance upon exemptions from the Issuer Bid Requirements contained in Part 4 of NI 62-104 and section 3.4 of MI 61-101.

15. The Share Repurchase is an integral part of the Sale Transaction and Trelawney is not receiving any cash in exchange for the Subject Shares.

16. The Subject Shares are being returned to the Issuer for cancellation at a deemed value of less than $0.20 per share, which is at a discount to the 20-day volume weighted average price on the TSXV as at September 27, 2016, being the date before the execution of the Definitive Agreement.

17. As a result of the fact no shareholder other than Trelawney is a party to the Sale Transaction, it is impossible for the Issuer to offer to acquire Common Shares from all shareholders on the same terms and conditions as those contemplated by the Sale Transaction.

18. The terms of the Sale Transaction were not agreed to in order to give preferential treatment to Trelawney or to provide a method for the Issuer to purchase the Subject Shares, but rather to facilitate the sale of the Swayze Gold Project and realize the value of such interest for the benefit of the Issuer and its shareholders.

19. For the purposes of the Sale Transaction, all of the members of the board of directors of the Issuer are independent directors within the meaning of MI 61-101.

20. The board of directors of the Issuer unanimously resolved that:

    (a) the Sale Transaction is in the best interests of the Issuer and its shareholders;

    (b) the consideration deemed to be paid for the Subject Shares will not be greater than the market price, determined in accordance with section 1.11 of NI 62-104, of the Common Shares on the TSXV;

    (c) the acquisition of the Subject Shares will not adversely affect the financial position of the Issuer and, upon cancellation, it is expected to increase the value of the equity ownership positions of its other shareholders; and

    (d) the Share Repurchase will not materially affect control of the Issuer.

21. The shareholders of the Issuer not offered the opportunity to sell their shares to the Issuer under the proposed transaction are otherwise entitled to sell their shares into the market for cash proceeds.

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 and section 9.1 of MI 61-101 that the Issuer be exempt from the Issuer Bid Requirements in connection with the Share Repurchase, provided that the Issuer issue and file a press release on SEDAR disclosing that the Issuer has been granted exemptive relief from the Issuer Bid Requirements in connection with the Share Repurchase.

DATED at Toronto this 23rd day of December, 2016.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.2 Dollarama Inc. and Canadian Imperial Bank of Commerce – 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, pursuant to a repurchase program and at a discounted purchase price, up to a specified number of its common shares under its normal course issuer bid from a third party – the third party will abide by the requirements governing normal course issuer bids as though it was the issuer, subject to certain modifications, including that the third party will not make any purchases under the program pursuant to a pre-arranged trade – common shares delivered to the issuer for cancellation will be common shares from the third party's existing inventory – the third party will purchase common shares under the program on the same basis as if the Issuer had conducted the bid in reliance on the normal course issuer bid exemptions set out in securities legislation – no adverse economic impact on, or prejudice to, the Issuer or its security holders – acquisition of securities exempt from the requirements applicable to issuer bids in Part 2 of NI 62-104, subject to conditions, including that the number of common shares transferred by the third party from its existing inventory to the issuer for purchase under the program be equivalent to the number of common shares that the third party has purchased, or had purchased on its behalf, on Canadian markets.

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
DOLLARAMA INC. AND
CANADIAN IMPERIAL BANK OF COMMERCE

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of Dollarama Inc. (the "**Issuer**") and Canadian Imperial Bank of Commerce ("**CIBC**" and, together with the Issuer, the "**Filers**") 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 1,123,000 (the "**Program Maximum**") of the Issuer's common shares (the "**Common Shares**") from CIBC pursuant to a repurchase program (the "**Program**").

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

AND UPON the Issuer (and CIBC Entities (as defined below) in respect of paragraphs 5 to 8, inclusive, 19 to 22, inclusive, 25, 26, 28 to 33, inclusive, 35, 39, 41 and 42 as they relate to the CIBC Entities) having represented to the Commission that:

1. The Issuer is a corporation governed by the *Canada Business Corporations Act*.

2. The registered and head office of the Issuer is located at 5805 Royalmount Avenue, Montreal, Quebec, Canada, H4P 0A1.

3. The Issuer is a reporting issuer in each of the provinces and territories of Canada (the "**Jurisdictions**") and the Common Shares are listed for trading on the Toronto Stock Exchange (the "**TSX**") under the symbol "DOL". The Issuer is not in default of any requirement of the securities legislation of the Jurisdictions.

4. The authorized share capital of the Issuer consists of an unlimited number of Common Shares and an unlimited number of preferred shares issuable in series, of which 116,400,980 Common Shares and no preferred shares were issued and outstanding as of December 27, 2016.

5. CIBC is a full service Schedule 1 bank governed by the *Bank Act* (Canada). The corporate headquarters of CIBC are located in the Province of Ontario.

6. CIBC does not own, directly or indirectly, more than 5% of the issued and outstanding Common Shares.

7. CIBC is the beneficial owner of at least 1,123,000 Common Shares, none of which were acquired by, or on behalf of, CIBC in anticipation or contemplation of resale to the Issuer (such Common Shares over which CIBC has beneficial ownership, the "**Inventory Shares**"). All of the Inventory Shares are held by CIBC in the Province of Ontario. No Common Shares were purchased by, or on behalf of, CIBC on or after November 28, 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 CIBC to the Issuer.

8. CIBC 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**"). CIBC is an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus Exemptions*.

9. On June 8, 2016, the Issuer announced the renewal of its normal course issuer bid (the "**Normal Course Issuer Bid**") to purchase for cancellation, during the 12-month period beginning on June 17, 2016 and ending on June 16, 2017, up to 5,975,854 Common Shares, representing approximately 5.0% of the 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 specifies that purchases made under the Normal Course Issuer Bid are to be conducted through the facilities of the TSX or alternative trading systems, if eligible, or by such other means as may be permitted by the TSX in accordance with sections 628 to 629.3 of Part VI of the TSX Company Manual (the "**TSX NCIB Rules**") or a securities regulatory authority, including under automatic trading plans, and by private agreements under issuer bid exemption orders issued by securities regulatory authorities (each, an "**Off-Exchange Block Purchase**").

10. The Normal Course Issuer Bid is being conducted in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(2) of NI 62-104 (the "**Designated Exchange Exemption**").

11. The Normal Course Issuer Bid is also being conducted in the normal course on other permitted published markets (collectively, the "**Other Published Markets**") in reliance upon the exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (the "**Other Published Markets Exemption**", and together with the Designated Exchange Exemption, the "**Exemptions**").

12. Pursuant to the TSX NCIB Rules, the Issuer has appointed RBC Dominion Securities Inc. as its designated broker in respect of the Normal Course Issuer Bid (the "**Responsible Broker**").

13. On June 8, 2016, the Issuer also announced the renewal of its automatic share purchase plan ("**ASPP**") 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 regularly scheduled quarterly blackout periods and other internal blackout periods (each such time, a "**Blackout Period**"). The ASPP was pre-cleared by the TSX and complies with the TSX NCIB Rules and applicable securities laws. The ASPP will not be in effect during the Program Term.

14. The maximum number of Common Shares that the Issuer is permitted to repurchase under the Normal Course Issuer Bid will be reduced by the number of purchases under the ASPP, if any.

15. To the best of the Issuer's knowledge, as of December 19, 2016, the "public float" for the Common Shares represented approximately 92% of all the issued and outstanding Common Shares for purposes of the TSX NCIB Rules. 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* ("**OSC Rule 48-501**") and section 1.1 of the *Universal Market Integrity Rules* ("**UMIR**").

16. The Commission granted an order on December 23, 2016 pursuant to section 6.1 of NI 62-104 exempting the Issuer from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 150,000 Common Shares from The Bank of Nova Scotia, which was settled on January 4, 2017.

17. The Autorité des marchés financiers granted an order on December 28, 2016 pursuant to section 6.1 of NI 62-104 and section 263 of the *Securities Act* (Québec) exempting the Issuer from the Issuer Bid Requirements in connection with proposed purchases by the Issuer of up to 150,000 Common Shares from National Bank of Canada, which was settled on January 3, 2017.

18. As at the close of business on January 5, 2017, the Issuer had repurchased for cancellation a total of 3,580,522 Common Shares under the Normal Course Issuer Bid, of which 300,000 Common Shares were repurchased pursuant to Off-Exchange Block Purchases.

19. The Filers wish to participate in the Program during, and as a part of, the Normal Course Issuer Bid to enable the Issuer to purchase from CIBC, and for CIBC to sell to the Issuer, that number of Common Shares equal to the Program Maximum.

20. Pursuant to the terms of the Program Agreement, CIBC has retained CIBC WM to acquire Common Shares through the facilities of the TSX and on Other Published Markets in Canada (each, a "**Canadian Other Published Market**" and collectively with the TSX, the "**Canadian Markets**"). No Common Shares will be acquired under the Program on any Other Published Markets other than Canadian Other Published Markets.

21. The Program will be governed by, and conducted in accordance with, the terms and conditions of a Repurchase Program Agreement (the "**Program Agreement"**) that will be entered into among the Filers and CIBC World Markets Inc. ("**CIBC WM**", and together with CIBC, the "**CIBC Entities**") prior to the commencement of the Program and a copy of which will be delivered by the Filers to the Commission promptly thereafter.

22. The Program will begin at least two clear trading days after the issuance of the Press Release (as defined below) and will terminate on the earlier of June 16, 2017 and the date on which the Issuer will have purchased the Program Maximum from CIBC under the Program (the "**Program Term**"). Neither the Issuer nor any of the CIBC Entities may unilaterally terminate the Program Agreement during the Program Term, except in the case of an event of default by a party thereunder.

23. The Issuer will issue a press release that will have been pre-cleared by the TSX that describes the material features of the Program and discloses the Issuer's intention to participate in the Program during the Normal Course Issuer Bid (the "**Press Release**").

24. The Program Maximum is less than the number of Common Shares remaining that the Issuer is entitled to acquire under the Normal Course Issuer Bid, calculated as at the date of the Program Agreement.

25. CIBC WM is registered as an investment dealer under the securities legislation of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, Québec, Nova Scotia, New Brunswick, Newfoundland and Labrador, Prince Edward Island, Yukon, the Northwest Territories and Nunavut. It is also registered as a futures commission merchant under the Commodity Futures Act (Ontario), a derivatives dealer under the *Derivatives Act* (Québec) and a dealer (futures commission merchant) under *The Commodity Futures Act* (Manitoba). CIBC WM is a member of the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the Canadian Investor Protection Fund, a participating organization or member of the TSX, TSX Venture Exchange and Canadian Securities Exchange, and an approved participant of the Bourse de Montréal. The head office of CIBC WM is located in Toronto, Ontario.

26. The Program will be an "automatic securities purchase plan" as defined in National Instrument 55-104 *Insider Reporting Requirements and Exemptions* (as applied, *mutatis mutandis*, to purchases made by an issuer) and the CIBC Entities will conduct the Program in their sole discretion, in accordance with the irrevocable instructions established by the Issuer, and conveyed by the Issuer to the CIBC Entities, on the first day of the Program Term when the Issuer was not in a Blackout Period, in compliance with exchange and securities regulatory requirements applicable to automatic securities purchase plans. Such instructions will be the same instructions that the Issuer would have given to RBC Dominion Securities Inc., as its designated Responsible Broker, if the Issuer was conducting the Normal Course Issuer Bid in reliance on the Exemptions. The TSX has been advised of the Issuer's intention to enter into the Program and will be provided with a copy of the Program Agreement, and the Program will be pre-cleared by the TSX.

27. The Issuer will not give purchase instructions in respect of the Program to the CIBC Entities at any time that the Issuer is aware of Undisclosed Information (as defined below).

28. All Common Shares acquired for the purposes of the Program by CIBC WM on a day during the Program Term on which Canadian Markets are open for trading (each, a "**Trading Day**") must be acquired on Canadian Markets in accordance with the TSX NCIB Rules and any by-laws, rules, regulations or policies of any Canadian Markets upon which purchases are carried out (collectively, the "**NCIB Rules**") that would be applicable to the Issuer in connection with the Normal Course Issuer Bid, provided that:

    (a) the aggregate number of Common Shares to be acquired on Canadian Markets by CIBC WM on each Trading Day shall not exceed the maximum daily limit that is imposed upon the Normal Course Issuer Bid pursuant to the TSX NCIB Rules, determined with reference to an average daily trading volume that is based on the trading volume of the Common Shares on all Canadian Markets rather than being limited to the trading volume on the TSX only (the "**Modified Maximum Daily Limit**"), it being understood that the aggregate number of Common Shares to be acquired on the TSX by CIBC WM on each Trading Day will not exceed the maximum daily limit that is imposed on the Normal Course Issuer Bid pursuant to the TSX NCIB Rules; and

(b) notwithstanding the block purchase exception provided for in the TSX NCIB Rules, no purchases will be made by CIBC WM on any Canadian Markets pursuant to a pre-arranged trade.

29. The aggregate number of Common Shares acquired by CIBC WM in connection with the Program:

(a) shall not exceed the Program Maximum; and

(b) on Canadian Other Published Markets, shall not exceed that number of Common Shares remaining eligible for purchase by the Issuer pursuant to the Other Published Markets Exemption, calculated as at the date of the Program Agreement.

30. On every Trading Day, CIBC WM will purchase the Number of Common Shares. The "**Number of Common Shares**" will be no greater than the least of:

(a) the maximum number of Common Shares established in the instructions received by the CIBC Entities from the Issuer on the first day of the Program Term prior to the opening of trading on such day;

(b) the Program Maximum less the aggregate number of Common Shares previously purchased by CIBC WM under the Program;

(c) on a Trading Day where trading ceases on the TSX or some other event that would impair CIBC WM's ability to acquire Common Shares on Canadian Markets occurs (a "Market Disruption Event"), the number of Common Shares acquired by CIBC WM on such Trading Day up until the time of the Market Disruption Event; and

(d) the Modified Maximum Daily Limit.

31. The "**Discounted Price**" per Common Share will be equal to (i) the volume weighted average price of the Common Shares on the Canadian Markets on the Trading Day on which purchases were made for the period from 9:31 a.m. to 3:30 p.m. (Eastern time) (excluding blocks of 10,000 or more shares and any trade above the maximum price established in the instructions received by the CIBC Entities from the Issuer) less an agreed upon discount, or (ii) upon the occurrence of a Market Disruption Event, the volume weighted average price of the Common Shares on the Canadian Markets from 9:31 a.m. (Eastern time) up to the time the Market Disruption Event occurred (subject to the same exclusions) less an agreed upon discount.

32. CIBC will deliver to the Issuer that number of Inventory Shares equal to the number of Common Shares purchased by CIBC WM on a Trading Day under the Program on the second Trading Day thereafter, and the Issuer will pay CIBC a purchase price equal to the Discounted Price for each such Inventory Share. Each Inventory Share purchased by the Issuer under the Program will be cancelled upon delivery to the Issuer. The Common Shares delivered by CIBC to the Issuer will be from the Inventory Shares.

33. CIBC will not sell any Inventory Shares to the Issuer under the Program unless CIBC WM has purchased the equivalent number of Common Shares on Canadian Markets. The number of Common Shares that are purchased by CIBC WM on Canadian Markets on a Trading Day will be equal to the Number of Common Shares for such Trading Day. CIBC WM will provide the Issuer with a daily written report of CIBC WM's purchases, which report will indicate, *inter alia*, the aggregate number of Common Shares acquired, the Canadian Market on which such Common Shares were acquired, and the Modified Maximum Daily Limit.

34. During the Program Term, the Issuer will (a) not purchase any Common Shares (other than Inventory Shares purchased under the Program), and (b) prohibit the Responsible Broker and any other agent of the Issuer from acquiring any Common Shares on the Issuer's behalf.

35. All purchases of Common Shares under the Program will be made by CIBC WM and neither of the CIBC Entities will engage in any hedging activity in connection with the conduct of the Program.

36. The Issuer will report its purchases of Common Shares under the Program to the TSX in accordance with the TSX NCIB Rules. In addition, immediately following the completion of the Program, the Issuer will: (a) report the total number of Common Shares acquired under the Program to the TSX and the Commission; and (b) file a notice on the System for Electronic Document Analysis and Retrieval (SEDAR) disclosing the number of Common Shares acquired under the Program and the aggregate dollar amount paid for such Common Shares.

37. The Issuer is of the view that (a) it will be able to purchase Common Shares from CIBC at a lower price than the price at which it would be able to purchase an equivalent quantity of Common Shares under the Normal Course Issuer Bid in

reliance on the Exemptions, and (b) the purchase of Common Shares pursuant to the Program is in the best interests of the Issuer and constitutes an appropriate use of the Issuer's funds.

38. The entering into of the Program Agreement, the purchase of Common Shares by CIBC WM in connection with the Program, and the sale of Inventory Shares by CIBC to the Issuer 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.

39. The sale of Inventory Shares to the Issuer by CIBC will not be a “distribution” (as defined in the Act).

40. The Issuer will be able to acquire the Inventory Shares from CIBC without the Issuer being subject to the dealer registration requirements of the Act.

41. At the time that the Issuer and the CIBC Entities enter into the Program Agreement, neither the Issuer, nor any member of the Equity Derivatives Trading Group of CIBC, nor any personnel of either of the CIBC Entities that negotiated the Program Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Program Agreement and sell the Inventory Shares, will be aware of any “material change” or “material fact” (each as defined in the Act) with respect to the Issuer or the Common Shares that has not been generally disclosed (the “**Undisclosed Information**”).

42. Each of the CIBC Entities:

(a) has policies and procedures in place to ensure that the Program will be conducted in accordance with, among other things, the Program Agreement and this Order, and to preclude those persons responsible for administering the Program from acquiring any Undisclosed Information during the conduct of the Program; and

(b) will, prior to entering into the Program Agreement, (i) ensure that its systems are capable of adhering to, and performing in accordance with, the requirements of the Program and this Order, and (ii) provide all necessary training and take all necessary actions to ensure that the persons administering and executing the purchases under the Program are aware of, and understand the terms of the Program Agreement and this Order.

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 respect of the purchase of Inventory Shares from CIBC pursuant to the Program, provided that:

(a) at least two clear trading days prior to the commencement of the Program, the Issuer issues the Press Release?

(b) all purchases of Common Shares under the Program are made on Canadian Markets by CIBC WM, and are:

(i) made in accordance with the NCIB Rules applicable to the Normal Course Issuer Bid, as modified by paragraph 28 of this Order;

(ii) taken into account by the Issuer when calculating the maximum annual aggregate limits that are imposed upon the Normal Course Issuer Bid in accordance with the TSX NCIB Rules, with those Common Shares purchased on Canadian Other Published Markets being taken into account by the Issuer when calculating the maximum aggregate limits that are imposed upon the Issuer in accordance with the Other Published Markets Exemption;

(iii) marked with such designation as would be required by the applicable marketplace and UMIR for trades made by an agent of the Issuer; and

(iv) monitored by the CIBC Entities on a continual basis for the purposes of ensuring compliance with the terms of this Order, NCIB Rules, and applicable securities law;

(c) during the Program Term, (i) the Issuer does not purchase any Common Shares (other than Inventory Shares purchased under the Program), and (ii) no Common Shares are purchased on behalf of the Issuer by the Responsible Broker or any other agent of the Issuer;

(d) the number of Inventory Shares transferred by CIBC to the Issuer for purchase under the Program in respect of a particular Trading Day is equivalent to the number of Common Shares purchased by CIBC WM on Canadian Markets in respect of the Trading Day;

(e) no hedging activity is engaged in by the CIBC Entities in connection with the conduct of the Program;

(f) at the time that the Program Agreement is entered into by the Filers and CIBC WM:

(i) the Common Shares are "highly liquid securities", as that term is defined in section 1.1 of OSC Rule 48-501 and section 1.1 of UMIR; and

(ii) none of the Issuer, any member of the Equity Derivatives Trading Group of CIBC, or any personnel of either of the CIBC Entities that negotiated the Program Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Program Agreement and sell the Inventory Shares, was aware of any Undisclosed Information;

(g) no purchase instructions in respect of the Program are given by the Issuer to CIBC WM at any time that the Issuer is aware of Undisclosed Information;

(h) the CIBC Entities maintain records of all purchases of Common Shares that are made by CIBC WM pursuant to the Program, which will be available to the Commission and IIROC upon request; and

(i) in addition to reporting its purchases of Common Shares under the Program to the TSX in accordance with the TSX NCIB Rules, immediately following the completion of the Program, the Issuer will: (i) report the total number of Common Shares acquired under the Program to the TSX and the Commission, and (ii) file a notice on SEDAR disclosing the number of Common Shares acquired under the Program and the aggregate dollar amount paid for such Common Shares.

DATED at Toronto, Ontario, this 10th day of January, 2017.

"Naizam Kanji"
Director, Office of Mergers & Acquisitions
Ontario Securities Commission

2.2.3 Good Mining Exploration Inc. – s. 144

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, c S.5
(the Act)

AND

IN THE MATTER OF
GOOD MINING EXPLORATION INC.

ORDER
(Section 144 of the Act)

WHEREAS:

1. the securities of Good Mining Exploration Inc. (the **Filer**) are subject to a cease trade order dated June 22, 2015, issued by the Ontario Securities Commission (the **Commission**) pursuant to paragraph 2 of subsection 127(1) of the Act (the **Cease Trade Order**) directing that all trading in securities of the Filer cease until further order by the Commission;

2. the Cease Trade Order was made on the basis that the Filer was in default of certain filing requirements under Ontario securities law as described in the Cease Trade Order;

3. the Filer has applied to the Commission pursuant to section 144 of the Act for a revocation of the Cease Trade Order (the **Application**);

4. the Filer has represented to the Commission as follows:

    a. the Filer was incorporated on October 5, 2012, under the *Business Corporations Act* (Ontario). The Filer's registered office is located at 4655 Line 10 North, Coldwater, Ontario, L0K 1E0;

    b. the Filer is a mining company and an issuer in Ontario but is not a reporting issuer or the equivalent in any Canadian jurisdiction or an issuer whose securities trade on a recognized exchange;

    c. the authorized capital of the Filer is comprised of an unlimited number of common shares and an unlimited number of Class A, Class B and Class C preference shares of which 88,822,386 common shares, 750,000 Class A preference shares, 4,000,000 Class B preference shares and 200,000 Class C preference shares are issued and outstanding as of the date hereof. The Filer has no other securities (including debt securities) issued and outstanding;

    d. the Cease Trade Order was issued as a result of the Filer's failure to file a technical report prepared by an independent qualified person, as such term is defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (**NI 43-101**), with respect to certain mineral resource estimates that the Filer made available to the public by posting them on its website beginning on November 5, 2014, and other mineral estimates made available on November 18, December 8 and December 22, 2014, and May 5 and 12, 2015 (collectively the **Press Releases**), as required by subsection 4.2(5)(a)(iii) and sections 5.1 and 5.3 of NI 43-101 (the **Default**). The Filer is not subject to any other cease trade orders;

    e. subsequent to the Press Releases being made, the Filer discovered that the results disclosed in the Press Releases were invalid. As a result, the Filer does not have reliable assay results that would be required in order to prepare and file a technical report and thereby remedy the Default;

    f. the Filer has removed the Press Releases from its website and has issued corrective disclosure by way of a press release posted on its website on July 6, 2016 and mailed to each of its shareholders;

    g. the Filer, on issuance of this order, will post a press release on its website with respect to the revocation of the Cease Trade Order and will mail such press release to each of its shareholders; and

5. the Filer has filed in this proceeding a draft disclosure document, which is attached to this order as Schedule "A", and intends, given the particular circumstances that led to the imposition of the Cease Trade Order, to provide disclosure

substantially in that form, together with any necessary updates (the **Disclosure Document**) to prospective purchasers of the Filer's securities;

AND UPON reviewing the Application and Disclosure Document, and being advised by Staff of the Commission that it consents to this order;

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

IT IS ORDERED pursuant to subsection 144(1) of the Act that the Cease Trade Order is revoked, on the condition that, pursuant to subsection 144(2) of the Act, the Filer shall, for a period of one year from the date of this order, provide the Disclosure Document to prospective purchasers of the Filer's securities in any distribution of the Filer's securities that is exempt from the prospectus requirement contained in section 53 of the Act.

DATED this 11th day of January, 2017

“Timothy Moseley”

Schedule "A"

DRAFT – PRESS RELEASE

Revised 2017-01-08

[Note to Draft: For Distribution to Existing Shareholders, for Publication on GMEI's website and to be provided in respect of any new distribution of GMEI's securities.]

Good Mining Exploration Inc. Announces Revocation of OSC Cease Trade Order and Future Plans

Coldwater, ON – Good Mining Exploration Inc. ("**GMEI**" or the "**Company**") announces that the cease trade order (the "**CTO**") issued by the Ontario Securities Commission (the "**OSC**") on June 22, 2015 was revoked effective **, 2017.

Revocation of OSC Cease Trade Order

The OSC issued the CTO because the Company failed to file a technical report prepared by an independent qualified person, within 45 days of disclosure of information, as such term is defined in National Instrument 43-101 *Standards of Disclosure for Mineral Projects* ("**NI 43-101**"), with respect to certain mineral resource estimates that the Company made available to the public by posting them on its website beginning on November 5, 2014 and other mineral estimates made available on November 18, December 8 and 22, 2014 and May 5 and 12, 2015, as required by subsection 4.2(5)(a)(iii) and sections 5.1 and 5.3 of NI 43-101;

The Company was unable to file a technical report within the mandated timeline because it became aware that the assay results previously certified by the independent lab that processed the samples from its exploration program, which constituted all of the data required in the technical report under NI 43-101, were revoked by the laboratory due to lab error prior to the technical report being completed. The Company has filed a legal claim in the Ontario Superior Court of Justice against the laboratory for negligence and breach of contract.

The Company posted a News Release in its website on July 5, 2016 retracting the previous mineral estimates and advising that the above noted previously reported results had been issued based on certified results that were subsequently revoked by the testing laboratory due to their errors.

An independent geologist J-P Paiement of SGS Canada Inc., who is a "qualified person" as defined in NI 43-101, confirmed that there was no economic basis for reprocessing the cores from the CanRee area of the GMEI Bow-Mac Property.

Future Plans

After the revocation of the assays by ELRFS, GMEI began to focus on potential gold prospects in the Golden Target area of its property that were observed in the three drill holes obtained in 2014 under a permit approved by Ministry of Northern Development and Mines ("**MNDM**") and First Nations. Under that permit GMEI drilled 3 exploratory drill holes within the Golden Target area of the Bow-Mac project property.

In 2015 the Company hired Joel Scodnick, P. Geo, who is a "qualified person" as defined in NI 43-101, and who has significant experience working in the region, as its geologist. Mr. Scodnick was laid off in 2016, pending the revocation of the CTO and the Company being able to raise capital going forward.

Under a further permit approved by MNDM and First Nations in 2015, in the summer or 2015, Mr. Scodnick supervised the drilling of three additional holes in the Golden Target area focusing on gold exploration. In addition, Mr. Scodnick together in consultation with Shaun Parent, J-P Paiement, Jerry Grant (all professional geologists) worked toward gold exploration in the Golden Target area conducting further field grid mapping, chip sampling, VLF survey, prospecting and geologic research. Based on the foregoing work new gold exploration targets in the Golden Target area of the GMEI Bow-Mac Property have been identified.

Based on the above noted work, in December 2015 Mr. Scodnick on behalf of GMEI, with the backing of the local First Nations groups, submitted a further Exploration Permit Application with the MNDM. The permit was approved by the MNDM in January 2016.

Mr. Scodnick, together with SGS Canada, have confirmed that the exploration program based toward gold is designed to investigate some magnetic anomalies, and the anomalous sampling, and to determine if GMEI holds a "property of merit". The additional permitted exploration program will be conditional upon raising exploration funds on a private placement basis.

"Frank Dusome"

2.2.4 Steven J. Martel et al. – s. 127

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

AND

**IN THE MATTER OF
STEVEN J. MARTEL,
MARTEL GROUP OF COMPANIES INC. and
8446997 CANADA INC.**

**ORDER
(Section 127 of the Securities Act)**

WHEREAS:

1. On March 29, 2016, Staff of the Ontario Securities Commission filed a Statement of Allegations and the Commission issued a Notice of Hearing in respect of that Statement of Allegations, setting April 15, 2016 as the hearing date;

2. On April 15, 2016, Staff of the Commission and an agent for a respondent, Steven J. Martel ("**Martel**"), attended the hearing. The Commission adjourned the matter to a Second Appearance on August 10, 2016 and ordered a schedule for delivery of Staff's disclosures, witness lists and information regarding experts;

3. On August 10, 2016, Staff and counsel for Martel attended the Second Appearance and requested the scheduling of a pre-hearing conference. The Commission ordered that the matter be adjourned to a prehearing conference on September 27, 2016;

4. On September 27, 2016, Staff and counsel for Martel attended a pre-hearing conference and requested the scheduling of a further pre-hearing conference and a Third Appearance. The Commission issued an Order (the "**September 2016 Order**"), adjourning this matter to a further pre-hearing conference on November 4, 2016, scheduling the Third Appearance for December 12, 2016, and ordering delivery of the respondents' witness lists, witness summaries and information regarding experts by no later than 30 days before the date of the Third Appearance;

5. On October 31, 2016, counsel for Martel requested amendments to the schedule set in the September 2016 Order and Staff consented;

6. On November 2, 2016, the Commission issued an Order vacating the pre-hearing conference scheduled for November 4, 2016, vacating the Third Appearance scheduled for December 12, 2016, adjourning this matter to a further pre-hearing conference on December 12, 2016 and adjourning the respondents' other obligations arising out of the September 2016 Order pending the rescheduling of the Third Appearance;

7. On December 8, 2016, counsel for Martel and counsel for Staff agreed to request an adjournment of the pre-hearing conference scheduled for December 12, 2016. The Commission issued an Order, vacating the pre-hearing conference scheduled for December 12, 2016 and adjourning this matter to a further pre-hearing conference on January 11, 2017; and

8. On January 11, 2017, Staff and counsel for Martel attended a pre-hearing conference and Martel requested the scheduling of a motion seeking a stay of proceedings;

IT IS ORDERED that:

1. Martel's motion seeking a stay of proceedings shall be heard on April 27, 2017 at 10:00 a.m., or such other date as may be agreed to by the parties and set by the Office of the Secretary, and the parties shall adhere to the following timeline for the exchange of materials:

   a) Martel shall serve and file an amended notice of motion accompanied by a motion record no later than February 6, 2017;

   b) Staff shall serve and file a responding motion record no later than February 24, 2017;

   c) cross-examinations on affidavits, if any, will be conducted during the week of March 6, 2017;

   d) Martel shall serve and file a memorandum of fact and law no later than March 29, 2017;

   e) Staff shall serve and file a responding memorandum of fact and law no later than April 13, 2017; and

   f) Martel shall serve and file a reply memorandum of fact and law, if any, no later than April 20, 2017.

DATED at Toronto, this 11th day of January, 2017.

"D. Grant Vingoe"

2.2.5 The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. – s. 144

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

AND

IN THE MATTER OF
THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED
AND
CDS CLEARING AND DEPOSITORY SERVICES INC.

VARIATION ORDER
(Section 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated July 4, 2012, as varied and restated on December 21, 2012 and as varied on December 7, 2012, May 1, 2013, June 25, 2013, June 24, 2014, January 27, 2015, and March 27, 2015, pursuant to section 21.2 of the Act continuing the recognition of The Canadian Depository for Securities Limited (**CDS Ltd.**) and CDS Clearing and Depository Services Inc. (**CDS Clearing**) (collectively, CDS**)** as clearing agencies (the **Recognition Order**);

AND WHEREAS CDS Clearing intends to amalgamate with its wholly-owned subsidiary, CDS Securities Management Solutions, Inc. (**CDS SMS**) pursuant to section 184(1) of the *Canada Business Corporations Act* on or about January 1, 2017, and the amalgamated company will be known as CDS Clearing (the **Amalgamation**);

AND WHEREAS CDS has filed an application (**Application**) with the Commission to vary the Recognition Order pursuant to section 144 of the Act to (i) remove term and condition #24 in the Recognition Order relating to CDS SMS and to (ii) add the current CDS SMS fee schedule into Appendix "C" to Schedule "B" of the Recognition Order; with the objective of reflecting the Amalgamation;

AND WHEREAS CDS has represented that the Amalgamation does not result in any new, appreciable, or material risks to, and will have no impact on, CDSX, the clearing, settlement, and depository operations of CDS Clearing, or on CDS Clearing's internal control process and environment;

AND WHEREAS no changes have been made to the fees in the current CDS SMS fee schedule or the CDS Clearing fees in Appendix "C" to Schedule "B" of the Recognition Order in the context of this Application;

AND WHEREAS the Commission has determined based on the Application and representations made by CDS that it is not prejudicial to the public interest to vary the Recognition Order to (i) remove term and condition #24 in the Recognition Order relating to CDS SMS and to (ii) add the current CDS SMS fee schedule into Appendix "C" to Schedule "B" of the Recognition Order; with the objective of reflecting the Amalgamation;

IT IS HEREBY ORDERED that pursuant to section 144 of the Act:

(i) the following term and condition #24 of Schedule B of the Recognition Order be removed:

24 FEES

24.1 CDS Clearing shall cause CDS Securities Management Solutions Inc. to provide the Commission with a schedule of fees for all the products or services offered by CDS Securities Management Solutions that is in effect within 30 days of the effective date of this order.

24.2 CDS Clearing shall cause CDS Securities Management Solutions Inc. to obtain prior Commission approval in accordance with the procedure for a material rule as set out in the rule protocol attached as Appendix "A" to this Schedule, as amended from time to time, before implementing any amendments to the fees in the schedule filed pursuant to paragraph 24.1 above and any new fees.

(ii) the current CDS SMS fee Schedule, attached hereto as Appendix "A be added to Appendix "C" to Schedule "B" of the Recognition Order;

DATED at Toronto this 20th day of December, 2016, effective upon the completion of the Amalgamation.

"Janet Leiper"

"Timothy Moseley"

2.4 Rulings

2.4.1 Foresters Investment Management Company, Inc. – s. 74

Headnote

Application to the Ontario Securities Commission for a ruling pursuant to subsection 74(1) of the Securities Act (Ontario) (the Act) for a ruling that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act. The Applicant will provide advice to an affiliated insurance company in Ontario for so long as such affiliate remains an affiliate of the Applicant.

Applicable Legislative Provisions

Securities Act, R.S.O., c. S.5, as am., ss. 25(3), 74(1).

January 13, 2017

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

AND

IN THE MATTER OF
FORESTERS INVESTMENT MANAGEMENT COMPANY, INC.

RULING
(SECTION 74 OF THE ACT)

UPON the application (the **Application**) by Foresters Investment Management Company, Inc. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for a ruling pursuant to subsection 74(1) of the Act that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act;

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

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

1. The Applicant is a corporation organized under the laws of the State of New York. The Applicant is registered as an investment adviser with the United States Securities and Exchange Commission pursuant to the *Investment Advisers Act of 1940*. The Applicant does not have an office or employees in Canada.

2. The Applicant currently provides investment advice to funds in the United States which are registered as investment companies under the *Investment Company Act of 1940*, including both mutual funds and funds which serve as the underlying investment options for variable annuity contracts and life insurance policies offered by participating insurance companies, including Foresters Life Insurance and Annuity Company. The Applicant also manages its own investment portfolio, the profit sharing plan of Foresters Financial Services, Inc. and the general account of Foresters Life Insurance and Annuity Company, both of which are affiliates of the Applicant formed and operating in the United States.

3. The Applicant is an indirect wholly-owned subsidiary of The Independent Order of Foresters (**IOF**), a fraternal benefit society organized under the federal laws of Canada. IOF is an international financial services provider and on an enterprise basis has more than three million customers and members in Canada, the United States, and the United Kingdom. IOF, directly or through its subsidiaries, provides life insurance, savings, retirement and investment solutions. IOF, as a fraternal benefit society, is subject to Part XII of the *Insurance Companies Act* and as per its letters patent is authorized to sell life and disability insurance. IOF is also a licensed insurer in all provinces and territories of Canada in which it offers life insurance. The head office of IOF is located in Toronto, Ontario.

4. The Applicant is in compliance in all material respects with U.S. securities law. Neither the Applicant nor IOF is in default of any requirements of securities legislation in Ontario.

5. Employees of IOF currently provide investment advice and portfolio management services with respect to certain portions of IOF's assets and there is no requirement for such individuals to be registered as advisers under the Act

where these individuals provide investment advice to their corporate employers with respect to the portfolio assets of such corporate employers.

6. IOF, however, intends to move to a different model in the future whereby the Applicant would provide investment advice and portfolio management services to IOF in respect of certain of its assets. It is also intended that Foresters Asset Management Inc., an indirect wholly-owned subsidiary of IOF and a registered portfolio manager in Ontario, will be providing investment advice and portfolio management services with respect to certain portions of IOF's assets.

7. The Applicant is not registered as an adviser in Canada and cannot rely on the international adviser exemption set out in National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) because the Applicant may provide advice on securities of Canadian issuers that is not incidental to the advice it will provide on a "foreign security" (as defined in section 8.26(2) of NI 31-103).

8. IOF is a "permitted client" as defined in NI 31-103.

9. The assets held by IOF and managed by the Applicant would be owned by IOF. There are no external stakeholders (such as, for example, holders of variable annuity contracts or segregated funds/separate accounts for policyholders) that have a direct interest in the investment performance of such portfolios.

10. Accordingly, there are no stakeholders in Ontario or elsewhere other than IOF that will be directly affected by the results of the investment advice and portfolio management services to be provided by the Applicant.

AND WHEREAS section 74 of the Act provides that a ruling may be made by the Commission that a person or company is not subject to section 25 of the Act, subject to such terms and conditions as the Commission considers necessary, where the Commission is satisfied that to do so would not be prejudicial to the public interest;

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

IT IS RULED, pursuant to section 74 of the Act, that the Applicant is exempt from the adviser registration requirements of subsection 25(3) of the Act in respect of advice it provides to affiliates in Ontario, provided that:

(a) the Applicant provides investment advice and portfolio management services in Ontario only to its affiliates that (i) are licensed or otherwise duly permitted or authorized to carry on the business of an insurance company in Canada or a branch of a foreign insurance company in Canada, or (ii) are holding companies that have as their principal business activity to hold securities of one or more affiliates that are each licensed or otherwise duly permitted or authorized to carry on business as an insurance company in Canada; and

(b) with respect to any particular affiliate described in paragraph (a), the investment advice and portfolio management services are provided only as long as that affiliate remains (i) an "affiliate" of the Applicant, as defined in the Act, and (ii) a "permitted client" as defined in NI 31-103.

January 13, 2017

"Tim Moseley"
Commissioner
Ontario Securities Commission

"William Furlong"
Commissioner
Ontario Securities Commission

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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
Alliance Growers Corp.	January 5, 2017	January 13, 2017
Namaste Technologies Inc.	January 5, 2017	January 10, 2017

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 5

Rules and Policies

5.1.1 National Instrument 94-101 Mandatory Central Counterparty Clearing of Derivatives and Related Companion Policy

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of
National Instrument 94-101
Mandatory Central Counterparty Clearing of Derivatives
and
Related Companion Policy

January 19, 2017

Introduction

We, the Canadian Securities Administrators (**CSA** or **we**), are adopting:

- National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **Instrument**), including:
  - Form 94-101F1 *Intragroup Exemption*
  - Form 94-101F2 *Derivatives Clearing Services*
- Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the **CP**)

(together, the **National Instrument**).

In some jurisdictions, government ministerial approvals are required for the implementation of the Instrument. Provided all necessary approvals are obtained, the National Instrument will come into force on **April 4, 2017**.

This Instrument is part of the ongoing implementation of Canada's commitments in relation to global OTC derivatives markets reforms stemming from the G20 commitments of 2009 in response to the financial crisis.[1]

The CSA Derivatives Committee (the **Committee**) has consulted and collaborated with the Bank of Canada, the Office of the Superintendent of Financial Institutions (Canada), the Department of Finance Canada, and market participants on the determination of certain classes of OTC derivatives as mandatory clearable derivatives. The Committee also continues to contribute to and follow international regulatory developments. In particular, members of the Committee work with international regulators and bodies such as the International Organization of Securities Commissions and the OTC Derivatives Regulators' Group in the development of international standards and regulatory practices.

Although a significant market in Canada, the Canadian OTC derivatives market comprises a relatively small share of the global market, and a substantial portion of derivatives entered into by Canadian market participants involve foreign counterparties. The CSA endeavours to develop rules for the Canadian market that are aligned with international practices to ensure that Canadian market participants have access to the international market and are regulated in accordance with international principles.

We would like to draw your attention to another publication: CSA Notice of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions,* which is being published concurrently with this Notice. This publication and the National Instrument both relate to central counterparty clearing.

[1] The G20 agreement states that all standardized OTC derivative contracts should be cleared through central counterparties.

Substance and Purpose

The purpose of the Instrument is to impose mandatory central counterparty clearing of certain standardized OTC derivatives in order to reduce counterparty risk in the derivatives market and increase financial stability.

The Instrument is divided into two areas: (i) mandatory central counterparty clearing for certain derivatives by certain counterparties (including exemptions), and (ii) the determination of derivatives subject to mandatory central counterparty clearing (each a mandatory clearable derivative).

Background and Summary of Written Comments Received by the CSA

The CSA published Proposed National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* on February 24, 2016 (the **Proposed National Instrument**), inviting public comment on all aspects of the Proposed National Instrument. Six comment letters were received. A list of those who submitted comments as well as a chart summarizing the comments received and the Committee's responses are attached as Annex A to this Notice. Copies of the comment letters can be found on the websites of the Alberta Securities Commission, Ontario Securities Commission and Autorité des marchés financiers.

Summary of Changes to the Proposed National Instrument

We reviewed the comments received and made changes to the Instrument in response. In particular, the Instrument now applies only to an affiliated entity of a clearing participant if the affiliated entity's month-end gross notional amount of outstanding OTC derivatives exceeds $1 000 000 000 excluding intragroup transactions. A transition period of 90 days following the date on which the affiliated entity first reaches this threshold was also added.

Considering the current scope of application of the Instrument, the availability of the intragroup exemption to entities that are unable to make consolidated financial statements, but that are prudentially supervised, such as cooperatives, is no longer necessary and, therefore, was deleted.

In addition, we received comments on the importance of providing substituted compliance with foreign rules. We have determined that the rules and regulations of the U.S. Commodity Futures Trading Commission and the European Parliament regarding mandatory central counterparty clearing are substantially equivalent, on an outcomes-based approach, to the requirements in the Instrument. As such, counterparties established in a foreign jurisdiction but for whom a local counterparty is responsible for all or substantially all their liabilities may comply with such equivalent foreign rules when submitting their mandatory clearable derivatives to a clearing agency. The other requirements under the Instrument, however, still apply.

Also, a 6-month transition period, as of the effective date, is provided to market participants that are not clearing participants, but are subject to the Instrument, to set up clearing relationships.

Finally, we have simplified the information required in Form 94-101F1. A single form per group, containing each pairing of counterparties availing of the intragroup exemption, must now be sent to the regulator or securities regulatory authority.

We intend to reassess the scope of the Instrument when more market participants reasonably have access to clearing services for OTC derivatives.

Summary of the Instrument

a) Mandatory central counterparty clearing and exemptions

The Instrument provides that a local counterparty to a transaction in a mandatory clearable derivative must submit that derivative for clearing to a regulated clearing agency when both itself and the other counterparty are one or more of the following:

(i) a participant subscribing to the services of a regulated clearing agency for a mandatory clearable derivative;

(ii) an affiliated entity of a participant described in (i) if it has an aggregate gross notional amount exceeding $1 billion in outstanding OTC derivatives, excluding intragroup transactions ;

(iii) a local counterparty that, together with its local affiliated entities, has an aggregate gross notional amount exceeding $500 billion in outstanding OTC derivatives, excluding intragroup transactions.

A non-application section lists counterparties which are not subject to the Instrument. Two exemptions are also provided in the Instrument for some transactions. Subject to certain conditions, the Instrument exempts mandatory clearable derivatives between affiliated entities that have consolidated financial statements. A counterparty relying on this intragroup exemption must

deliver a Form 94-101F1 to the regulator or securities regulatory authority identifying the other counterparty and the basis for relying on the exemption.

Subject to certain conditions, the Instrument also exempts mandatory clearable derivatives that result from a multilateral portfolio compression exercise.

A counterparty relying on either exemption must keep records to demonstrate its eligibility for the exemption.

b) Determination of mandatory clearable derivatives

We have determined certain classes of interest rate derivatives (**IRD**) denominated in U.S. dollars (**USD**), euros (**EUR**), British pounds (**GBP**) and Canadian dollars (**CAD**) as mandatory clearable derivatives (collectively, the **Determination**). In making the Determination, we have considered factors including:

- information on OTC derivatives cleared by regulated clearing agencies,
- markets of importance to Canadian financial stability, and
- foreign central clearing mandates.

Regulated clearing agencies have notified the Committee of all the OTC derivatives or classes of OTC derivatives for which they provide clearing services. For each of these derivatives or classes of derivatives, the Committee has assessed whether it is suitable for mandatory central clearing by examining the criteria set out in the CP.

We have also considered publicly available data, derivatives data reported pursuant to local derivatives data reporting rules[2] and foreign regulators' proposals, including their analysis of the standardization and risk profile of the mandatory clearable derivatives and the liquidity and characteristics of their market.

International harmonization is also an important factor considered by the Committee when making a determination on whether a type or class of derivatives should be a mandatory clearable derivative. In the absence of broadly harmonized requirements, there may be potential for regulatory arbitrage or other distortions in market participants' choices as to where to conduct business or book trades.

The following list of mandatory clearable derivatives for all jurisdictions of Canada is included in the Instrument as Appendix A.

Interest Rate Swaps

Type	Floating index	Settlement currency	Maturity	Settlement Currency Type	Optionality	Notional type
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable

[2] Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting (Québec); Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*; and Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* .

Type	Floating index	Settlement currency	Maturity	Settlement Currency Type	Optionality	Notional type
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant or variable
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant or variable
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant or variable
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant or variable

Forward Rate Agreements

Type	Floating index	Settlement currency	Maturity	Settlement Currency Type	Optionality	Notional type
Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant or variable

In particular, IRD represent more than 80% of the aggregate gross notional amount in outstanding OTC derivatives reported in Ontario and Québec. Among the types of IRD traded, single currency interest rate swaps (**IRS**) are most relevant. IRD are also highly standardized, thus posing minimal operational concerns for clearing unlike more complex and exotic products. There is also sufficient liquidity for clearing in IRD. IRD are not only traded by local participants, but also by local branches and affiliates of foreign participants. Furthermore, the majority of local counterparties that are subject to the Instrument have already begun clearing IRS on regulated clearing agencies.

The Determination is harmonized across Canada and, to the greatest extent possible, with international practices. Certain classes of IRD denominated in USD, GBP, EUR and CAD are already mandated to be cleared in the United States, in Australia, and in Europe.

Although the European Parliament has not determined CAD IRS as mandatory clearable derivatives under its regulation, local counterparties complying with European laws under the substituted compliance provision of the Instrument must clear CAD IRS.

Anticipated Costs and Benefits of the Instrument

We believe that the impact of the Instrument, including anticipated compliance costs for market participants, is proportional to the benefits we seek to achieve. The G20 has agreed that requiring standardized and sufficiently liquid OTC derivatives to be cleared through central counterparties will result in more effective management of counterparty credit risk through multilateral netting of derivatives positions and mutualisation of losses through a default fund. As such, central counterparty clearing of the derivatives included in the Determination contributes to greater stability of our financial markets and reduced systemic risk.

We recognize that counterparties may incur additional costs in order to comply with the Instrument due to the increase in derivatives that are centrally cleared. However, we note that the G20 has also committed to imposing margin requirements on OTC derivatives that are not centrally cleared; the related costs may well exceed the costs associated with clearing OTC derivatives. The intragroup and multilateral portfolio compression exemptions in the Instrument will help mitigate the costs borne by counterparties as a result of the Instrument.

Moreover, the narrow scope of application of the Instrument will provide relief for certain categories of market participants. We will continue to monitor trade repository data to assess the characteristics of the markets for OTC derivatives mandated to be cleared to inform whether the $500 billion threshold for a local counterparty and its local affiliated entities to be subject to mandatory clearing should be lowered and, if so, whether carve-outs might be appropriate for certain types of entities.

Local Matters

The scope of derivatives subject to the Instrument in each local jurisdiction is set out in the applicable local product determination rule, i.e., Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*, Regulation 91-506 respecting Derivatives Determination (**Regulation 91-506**) and Multilateral Instrument 91-101 *Derivatives: Product Determination* (collectively, the **Product Determination Rules**).

Concurrently with the publication of this Notice, the Autorité des marchés financiers is publishing consequential amendments in respect of the National Instrument to Regulation 91-506.

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex A – Comments Summary and CSA Responses;
- Annex B – National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*; and
- Annex C – Companion Policy 94-101 *Mandatory Central Counterparty Clearing of Derivatives*.

Questions

Please refer your questions to any of the following:

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ANNEX A

COMMENT SUMMARY AND CSA RESPONSES

Section Reference	Issue/Comment	Response
General comment: Personal property security legislation	A commenter argued that provincial personal property security laws in the common law provinces should be amended to allow the perfection of security interests in cash collateral by way of control.	No change. We note that federal bankruptcy and provincial personal property security legislation are outside of the jurisdiction of the provincial securities regulatory authorities. The Committee is seeking to implement requirements which protect customer collateral, to the extent possible, under existing Canadian federal and provincial legal frameworks.
Subsection 3(1) – General comments	Several commenters expressed strong support for the narrowing of the scope of the National Instrument to only the largest participants in the OTC market. One commenter recommended that the CSA continue to monitor the data and, once participants have easier access to clearing, a lower threshold may be possible.	No change. The scope of application addresses concerns of market participants regarding access to clearing. The Committee intends to reassess this scope when more market participants reasonably have access to clearing services for OTC derivatives.
Subsection 3(1) – Counterparties subject to mandatory central counterparty clearing	Two commenters expressed concern with respect to the identification of counterparties under paragraphs 3(1)(b) and (c). The commenters requested the addition of a requirement for local counterparties entering into mandatory clearable derivatives to notify their counterparties if they satisfy the requirements under paragraph 3(1)(a), (b) or (c). They further suggested that the Committee expressly provide that counterparties can rely on self-declaration, or lack of a self-declaration if one is not received by the trade date, in determining whether subsection 3(1) of the National Instrument applies to a mandatory clearable derivative. Since the pricing of a trade will vary depending on whether it will be cleared, the National Instrument should also expressly provide that such reliance on self-declaration, or lack thereof, remains in effect for the entire term of the trade. Any change in status should only apply to trades entered into after the change in status is disclosed to the relevant counterparty.	Change made. Guidance has been added in the CP to explain that we are flexible as to how market participants declare their status to each other. We provided guidance that a counterparty in scope must solicit confirmation from its counterparty where there is a reasonable basis to believe that the counterparty may be near or above any of the thresholds in paragraph 3(1)(b) or (c).
	Two commenters recommended that the scope of counterparties included under paragraph 3(1)(b) be narrowed considering that the National Instrument would result in additional operational burden and cost for smaller affiliates of clearing participants, some of whom may be end-users. They recommended excluding an affiliate of a clearing participant with *de minimis* trading activity.	Change made. The Instrument now applies only to affiliated entities of clearing participants if the affiliated entity's month-end gross notional amount under all outstanding OTC derivatives is above $ 1 000 000 000. The Instrument now also provides a 90-day transition period for an affiliated entity of a clearing participant after the date on which it first exceeds this threshold in order to prepare for clearing.
	A commenter asked for the Committee to confirm that the Instrument would not apply to a local counterparty that has foreign affiliated entities that are participants of clearing	No change. An entity affiliated with a clearing participant of a regulated clearing agency is subject to mandatory central counterparty clearing if it is entering into a mandatory

Section Reference	Issue/Comment	Response
	agencies or clearing houses that are not regulated in Canada. Specifically, the commenter sought confirmation that the clearing requirement would not apply unless both (i) the clearing agency of which the foreign affiliated entity is a clearing participant is a "regulated clearing agency"; and (ii) the products that the foreign affiliate clears are "specified derivatives" (as defined in MI 91-101).	clearable derivative. The Committee intends to respect the Product Determination Rules in making product determinations.
Subsection 3(5) – Substituted compliance for some local counterparties	One commenter fully supported the substituted compliance provisions under subsection 3(5) of the National Instrument, which would allow a foreign affiliate to clear a mandatory clearable derivative pursuant to comparable foreign rules. As well, this commenter fully supported that, at a minimum, the U.S. *Dodd-Frank Wall Street Reform and Consumer Protection Act* ("Dodd-Frank") and *Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories* ("EMIR") be listed in Appendix B to the National Instrument as foreign rules which are comparable to the National Instrument.	Change made. Appendix B includes laws and regulations from the U.S. Commodity Futures Trading Commission (the "CFTC") and European Securities and Markets Authority ("ESMA") regarding mandatory central counterparty clearing.
Section 7 – Intragroup exemption	A commenter expressed concern regarding what agreement is required between affiliated entities to satisfy the conditions of the intragroup exemption. The commenter requested clarification in the CP that a master agreement between the counterparties would satisfy the exemption. The commenter does not believe it is industry standard or practice to require transaction confirmations (and in some cases even a master agreement) between affiliated entities. As well, the commenter recommended amending the Form 94-101F1 to remove the transaction level requirement or add further clarification that the form only needs to be delivered once per pair of counterparties for it to cover all transactions between the pair.	Change made. Section 7 provides flexibility to accommodate different types of transaction agreements. The CP provides that an International Swaps and Derivatives Association ("ISDA") master agreement would be acceptable if it is dated and signed by the affiliated entities and comprises the material terms of the trading relationship between the affiliated entities for the mandatory clearable derivative. We have reduced the information required under Form 94-101F1, focusing on the relationship between the counterparties rather than on their transaction. All pairings of affiliated entities relying on the intragroup exemption may be included in one single form sent to the regulator or securities regulatory authority.
	One commenter sought clarification as to which one of the affiliated entities should agree to rely on the exemption.	No change. The agreement must be provided by a person authorized to agree on behalf of each counterparty.
	Two commenters felt that submitting the form directly to the regulator, rather than to a trade repository (which is the case under Dodd-Frank), is overly burdensome as this would require submission to multiple provincial regulators. They recommended that Form 94-101F1 be submitted to an approved trade repository.	No change. One Form 94-101F1 can be completed per group and sent to all appropriate regulators or securities regulatory authorities.

Section Reference	Issue/Comment	Response
Section 9 – Recordkeeping	A commenter requested clarification in the record keeping section of the CP regarding the use of the terms 'analysis' and 'appropriate legal documentation' in respect of records relating to the intragroup exemption.	No change. The CP provides that counterparties must keep records demonstrating that they meet the necessary criteria to rely on the intragroup exemption. Counterparties have flexibility as to what documentation would be required to show that they meet such criteria.
Former section 13 – Effective date	A commenter supported a simultaneous effective date for both the National Instrument and the determination of mandatory clearable derivatives since they are already required to be cleared by mandates of other jurisdictions. Another commenter suggested that the requirement to clear could come into effect simultaneously only for clearing participants described in paragraph 3(1)(a) of the National Instrument. For the other two categories of counterparties described in paragraphs 3(1)(b) and (c), the commenter recommended a transition period of 12 months from the time the Instrument becomes effective.	Change made. A transition period of 6 months after the Instrument is in force was included for market participants that are not clearing participants in order to set up clearing relationships.
Appendix A – Mandatory clearable derivatives: General Comments	Several commenters agree that the Determination is consistent with international standards and appropriate for Canadian markets.	No change. The mandatory clearable derivatives are also subject to clearing mandates in some foreign jurisdictions.
	Two commenters agreed that the characteristics used in Appendix A are considered adequate to define mandatory clearable derivatives.	No change. We appreciate the commenters' submissions.
	A commenter expressed that the CSA's approach to rule-making or amendments to the National Instrument would not be sufficiently agile to respond to market events that require swift regulatory actions, as consensus with multiple regulatory authorities (both provincial and federal) could be required to suspend or terminate a mandatory clearing mandate.	No change. Members of the CSA have the power to suspend or terminate mandatory central counterparty clearing through decisions such as blanket orders or discretionary relief.
	A commenter requested that the CSA make clear that NGX's clearing model would not cause market participants using the NGX clearing platform to be "participants" under the Instrument in the event NGX did offer clearing services for a derivative that could be subjected to mandatory clearing.	No change. All product determination analysis will take into consideration the CCPs offering clearing services in those products and the operational structures of such CCPs.
Appendix A – Mandatory clearable derivatives	A commenter noted that the stated maturity for Overnight Index Swaps ("OIS") in USD, EUR and GBP of 7 days to 30 years is inconsistent with the CFTC clearing requirements for OIS in USD, EUR and GBP, and recommended that the CSA change the maturity for these currencies to 7 days to 2 years.	Change made. The stated maturity has been aligned with the clearing mandates under foreign regulations. Accordingly, the maturity of OIS was changed to 7 days to 3 years for EUR, USD and GBP.

Section Reference	Issue/Comment	Response
	A commenter noted that if an interest rate swaption or extendible swap is entered into prior to the effective date of the Proposed National Instrument, even if the swaption is physically settled by entering into an IRS after this effective date or the extendible swap is extended after this effective date, mandatory clearing should not apply to the interest rate swap or extended swap as the cost of clearing the underlying swap may not have been reflected in the price of the swaption or extendible swap. On the other hand, if a cash-settled swaption is entered into before the effective date of the National Instrument, but is amended after the effective date to switch to physical settlement, mandatory clearing could apply to the interest rate swap entered into upon settlement of the swaption as this is a material change to the terms of the contract.	Change made. Clarifications are provided in the CP consistent with the approach taken by the U.S. CFTC such that mandatory central counterparty clearing only applies to swaps resulting from the exercise of a swaption entered into after the Instrument is in force unless the swaption is amended after the effective date. The same rationale would apply to the extension of an extendible swap entered into before the Instrument was in force.
	One commenter requested guidance with respect to swaps (listed in Appendix A to the Instrument) that a clearing agency cannot accept for clearing due to non-standard terms. One commenter asked for guidance regarding complex swaps (such as bespoke products, for example, an extendible swap which has an embedded optionality) and packaged transactions, similar to the approach taken under Dodd-Frank.	Change made. The CP has been changed to clarify that market participants need not disentangle a complex transaction in order to clear a component of that transaction which is a mandatory clearable derivative. For packaged transactions, if they contain a component that is a mandatory clearable derivative, that component should be cleared even if the balance of the packaged transaction is not cleared.
	Several commenters recommended, where a CAD IRS is entered into and one of the counterparties is not a local counterparty, delaying mandatory central counterparty clearing for such product until it becomes a subject to mandatory clearing under either EMIR or Dodd-Frank. One commenter stated that, without international harmonization requiring the clearing of CAD IRS, Canadian banks and counterparties would be negatively impacted if foreign counterparties withdraw from the market, thereby reducing the ability of Canadian banks and counterparties to hedge their risks. Another commenter recognized the importance of CAD IRS to the financial stability of the Canadian market.	No change. The CFTC has announced that CAD IRS is a mandatory clearable derivative under Dodd-Frank, effective 60 days following the date on which the Instrument enters into force. The National Instrument is harmonized on this point, thus limiting any potential for regulatory arbitrage.

List of Commenters

1. Canadian Advocacy Council
2. Canadian Commercial Energy Working Group
3. Canadian Market Infrastructure Committee
4. Canadian Bankers Association
5. International Energy Credit Association
6. LCH.Clearnet Group Limited

ANNEX B

NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

"local counterparty" means a counterparty to a derivative if, at the time of execution of the transaction, either of the following applies:

(a) the counterparty is a person or company, other than an individual, to which one or more of the following apply:

(i) the person or company is organized under the laws of the local jurisdiction;

(ii) the head office of the person or company is in the local jurisdiction;

(iii) the principal place of business of the person or company is in the local jurisdiction;

(b) the counterparty is an affiliated entity of a person or company referred to in paragraph (a) and the person or company is liable for all or substantially all the liabilities of the counterparty;

"mandatory clearable derivative" means a derivative within a class of derivatives listed in Appendix A;

"participant" means a person or company that has entered into an agreement with a regulated clearing agency to access the services of the regulated clearing agency and is bound by the regulated clearing agency's rules and procedures;

"regulated clearing agency" means,

(a) in Alberta, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, a person or company recognized or exempted from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada,

(b) in British Columbia, Manitoba and Ontario, a person or company recognized or exempted from recognition as a clearing agency in the local jurisdiction, and

(c) in Québec, a person recognized or exempted from recognition as a clearing house;

"transaction" means any of the following:

(a) entering into a derivative or making a material amendment to, assigning, selling or otherwise acquiring or disposing of a derivative;

(b) the novation of a derivative, other than a novation with a clearing agency or clearing house.

(2) In this Instrument, a person or company is an affiliated entity of another person or company if one of them controls the other or each of them is controlled by the same person or company.

(3) In this Instrument, a person or company (the first party) is considered to control another person or company (the second party) if any of the following apply:

(a) the first party beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party unless the first party holds the voting securities only to secure an obligation;

(b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;

(c) the second party is a limited partnership and the general partner of the limited partnership is the first party;

(d) the second party is a trust and a trustee of the trust is the first party.

(4) In this Instrument, in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, "derivative" means a "specified derivative" as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Application

2. This Instrument applies to,

(a) in Manitoba,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security,

(b) in Ontario,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security, and

(c) in Québec, a derivative specified in section 1.2 of Regulation 91-506 respecting derivatives determination, other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(4) of this Instrument. This text box does not form part of this Instrument and has no official status.

PART 2
MANDATORY CENTRAL COUNTERPARTY CLEARING

Duty to submit for clearing

3. (1) A local counterparty to a transaction in a mandatory clearable derivative must submit, or cause to be submitted, the mandatory clearable derivative for clearing to a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, if one or more of the following applies to each counterparty:

(a) the counterparty

(i) is a participant of a regulated clearing agency that offers clearing services in respect of the mandatory clearable derivative, and

(ii) subscribes to clearing services for the class of derivatives to which the mandatory clearable derivative belongs;

(b) the counterparty

(i) is an affiliated entity of a participant referred to in paragraph (a), and

(ii) has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives exceeding $1 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies;

(c) the counterparty

(i) is a local counterparty in any jurisdiction of Canada, other than a counterparty to which paragraph (b) applies, and

(ii) has had, at any time after the date on which this Instrument comes into force, a month-end gross notional amount under all outstanding derivatives, combined with each affiliated entity that is a local counterparty in any jurisdiction of Canada, exceeding $500 000 000 000 excluding derivatives to which paragraph 7(1)(a) applies.

(2) Unless paragraph (1)(a) applies, a local counterparty to which paragraph (1)(b) or (1)(c) applies is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency if the transaction in the mandatory clearable derivative was executed before the 90th day after the end of the month in which the month-end gross notional amount first exceeded the amount specified in subparagraph (1)(b)(ii) or (1)(c)(ii), as applicable.

(3) Unless subsection (2) applies, a local counterparty to which subsection (1) applies must submit a mandatory clearable derivative for clearing no later than

(a) the end of the day of execution if the transaction is executed during the business hours of the regulated clearing agency, or

(b) the end of the next business day if the transaction is executed after the business hours of the regulated clearing agency.

(4) A local counterparty to which subsection (1) applies must submit the mandatory clearable derivative for clearing in accordance with the rules of the regulated clearing agency, as amended from time to time.

(5) A counterparty that is a local counterparty solely pursuant to paragraph (b) of the definition of "local counterparty" in section 1 is exempt from this section if the mandatory clearable derivative is submitted for clearing in accordance with the law of a foreign jurisdiction to which the counterparty is subject, set out in Appendix B.

Notice of rejection

4. If a regulated clearing agency rejects a mandatory clearable derivative submitted for clearing, the regulated clearing agency must immediately notify each local counterparty to the mandatory clearable derivative.

Public disclosure of clearable and mandatory clearable derivatives

5. A regulated clearing agency must do all of the following:

(a) publish a list of each derivative or class of derivatives for which the regulated clearing agency offers clearing services and state whether each derivative or class of derivatives is a mandatory clearable derivative;

(b) make the list accessible to the public at no cost on its website.

PART 3
EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Non-application

6. This Instrument does not apply to the following counterparties:

(a) the government of Canada, the government of a jurisdiction of Canada or the government of a foreign jurisdiction;

(b) a crown corporation for which the government of the jurisdiction where the crown corporation was constituted is liable for all or substantially all the liabilities;

(c) a person or company wholly owned by one or more governments referred to in paragraph (a) if the government or governments are liable for all or substantially all the liabilities of the person or company;

(d) the Bank of Canada or a central bank of a foreign jurisdiction;

(e) the Bank for International Settlements;

(f) the International Monetary Fund.

Intragroup exemption

7. (1) A local counterparty is exempt from the application of section 3, with respect to a mandatory clearable derivative, if all of the following apply:

(a) the mandatory clearable derivative is between a counterparty and an affiliated entity of the counterparty if each of the counterparty and the affiliated entity are consolidated as part of the same audited consolidated financial statements prepared in accordance with "accounting principles" as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

(b) both counterparties to the mandatory clearable derivative agree to rely on this exemption;

(c) the mandatory clearable derivative is subject to a centralized risk management program reasonably designed to assist in monitoring and managing the risks associated with the derivative between the counterparties through evaluation, measurement and control procedures;

(d) there is a written agreement between the counterparties setting out the terms of the mandatory clearable derivative between the counterparties.

(2) No later than the 30th day after a local counterparty first relies on subsection (1) in respect of a mandatory clearable derivative with a counterparty, the local counterparty must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F1 *Intragroup Exemption*.

(3) No later than the 10th day after a local counterparty becomes aware that the information in a previously delivered Form 94-101F1 *Intragroup Exemption* is no longer accurate, the local counterparty must deliver or cause to be delivered electronically to the regulator or securities regulatory authority an amended Form 94-101F1 *Intragroup Exemption*.

Multilateral portfolio compression exemption

8. A local counterparty is exempt from the application of section 3, with respect to a mandatory clearable derivative resulting from a multilateral portfolio compression exercise, if all of the following apply:

(a) the mandatory clearable derivative is entered into as a result of more than 2 counterparties changing or terminating and replacing existing derivatives;

(b) the existing derivatives do not include a mandatory clearable derivative entered into after the effective date on which the class of derivatives became a mandatory clearable derivative;

(c) the existing derivatives were not cleared by a clearing agency or clearing house;

(d) the mandatory clearable derivative is entered into by the same counterparties as the existing derivatives;

(e) the multilateral portfolio compression exercise is conducted by an independent third-party.

Recordkeeping

9. (1) A local counterparty to a mandatory clearable derivative that relied on section 7 or 8 with respect to a mandatory clearable derivative must keep records demonstrating that the conditions referred to in those sections, as applicable, were satisfied.

(2) The records required to be maintained under subsection (1) must be kept in a safe location and in a durable form for a period of

(a) except in Manitoba, 7 years following the date on which the mandatory clearable derivative expires or is terminated, and

(b) in Manitoba, 8 years following the date on which the mandatory clearable derivative expires or is terminated.

PART 4
MANDATORY CLEARABLE DERIVATIVES

Submission of information on derivatives clearing services provided by a regulated clearing agency

10. No later than the 10th day after a regulated clearing agency first offers clearing services for a derivative or class of derivatives, the regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying the derivative or class of derivatives.

PART 5
EXEMPTION

Exemption

11. (1) The regulator or the securities regulatory authority may grant an exemption to this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 6
TRANSITION AND EFFECTIVE DATE

Transition – regulated clearing agency filing requirement

12. No later than May 4, 2017, a regulated clearing agency must deliver electronically to the regulator or securities regulatory authority a completed Form 94-101F2 *Derivatives Clearing Services*, identifying all derivatives or classes of derivatives for which it offers clearing services on April 4, 2017.

Transition – certain counterparties' submission for clearing

13. A counterparty specified in paragraphs 3(1)(b) or (c) to which paragraph (3)(1)(a) does not apply is not required to submit a mandatory clearable derivative for clearing to a regulated clearing agency until October 4, 2017.

Effective date

14. (1) This Instrument comes into force on April 4, 2017.

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after April 4, 2017, these regulations come into force on the day on which they are filed with the Registrar of Regulations.

APPENDIX A
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

MANDATORY CLEARABLE DERIVATIVES
(Section 1(1))

Interest Rate Swaps

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Fixed-to-float	CDOR	CAD	28 days to 30 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Fixed-to-float	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	USD	28 days to 50 years	Single currency	No	Constant or variable
Basis	EURIBOR	EUR	28 days to 50 years	Single currency	No	Constant or variable
Basis	LIBOR	GBP	28 days to 50 years	Single currency	No	Constant or variable
Overnight index swap	CORRA	CAD	7 days to 2 years	Single currency	No	Constant or variable
Overnight index swap	FedFunds	USD	7 days to 3 years	Single currency	No	Constant or variable
Overnight index swap	EONIA	EUR	7 days to 3 years	Single currency	No	Constant or variable
Overnight index swap	SONIA	GBP	7 days to 3 years	Single currency	No	Constant or variable

Forward Rate Agreements

Type	Floating index	Settlement currency	Maturity	Settlement currency type	Optionality	Notional type
Forward rate agreement	LIBOR	USD	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	EURIBOR	EUR	3 days to 3 years	Single currency	No	Constant or variable
Forward rate agreement	LIBOR	GBP	3 days to 3 years	Single currency	No	Constant or variable

APPENDIX B
TO
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE FOR SUBSTITUTED COMPLIANCE
(Subsection 3(5))

Foreign jurisdiction	Laws, regulations or instruments
European Union	Regulation (EU) No 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories
United States of America	Clearing Requirement and Related Rules, 17 C.F.R. pt. 50

FORM 94-101F1
INTRAGROUP EXEMPTION

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

Section 1 – Information on the entity delivering this Form

1. Provide the following information with respect to the entity delivering this Form:

Full legal name:
Name under which it conducts business, if different:

Head office
Address:
Mailing address (if different):
Telephone:
Website:

Contact employee
Name and title:
Telephone:
Email:

Other offices
Address:
Telephone:
Email:

Canadian counsel (if applicable)
Firm name:
Contact name:
Telephone:
Email:

2. In addition to providing the information required in item 1, if this Form is delivered for the purpose of reporting a name change on behalf of the entity referred to in item 1, provide the following information:

Previous full legal name:
Previous name under which the entity conducted business:

Section 2 – Combined notification on behalf of counterparties within the group to which the entity delivering this Form belongs

1. For the mandatory clearable derivatives to which this Form relates, provide all of the following information in the table below:

(a) the legal entity identifier of each counterparty in the same manner as required under the following instruments:

(i) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,

(ii) in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*,

(iii) in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, and

(iv) in Québec, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*;

(b) whether each counterparty is a local counterparty in a jurisdiction of Canada.

Pairs	LEI of counterparty 1	Jurisdiction(s) of Canada in which counterparty 1 is a local counterparty	LEI of counterparty 2	Jurisdiction(s) of Canada in which counterparty 2 is a local counterparty
1				

2. Describe the ownership and control structure of the counterparties identified in item 1.

Section 3 – Certification

I certify that I am authorized to deliver this Form on behalf of the entity delivering this Form and on behalf of the counterparties identified in Section 2 of this Form and that the information in this Form is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Print name of authorized person)

_____
(Print title of authorized person)

_____
(Signature of authorized person)

_____
(Email)

_____
(Phone number)

FORM 94-101F2
DERIVATIVES CLEARING SERVICES

Type of Filing: ☐ **INITIAL** ☐ **AMENDMENT**

Section 1 – Regulated clearing agency information

1. Full name of regulated clearing agency:

2. Contact information of person authorized to deliver this form

   Name and title:
   Telephone:
   Email:

Section 2 – Description of derivatives

1. Identify each derivative or class of derivatives for which the regulated clearing agency offers clearing services in respect of which a Form 94-101F2 has not previously been delivered.

2. For each derivative or class of derivatives referred to in item 1, describe all significant attributes of the derivative or class of derivatives including

   (a) the standard practices for managing life-cycle events associated with the derivative or class of derivatives, as defined in the following instruments:

      (i) in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*;

      (ii) in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;

      (iii) in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*;

      (iv) in Québec, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*,

   (b) the extent to which the transaction is confirmable electronically,

   (c) the degree of standardization of the contractual terms and operational processes,

   (d) the market for the derivative or class of derivatives, including its participants, and

   (e) the availability of pricing and liquidity of the derivative or class of derivatives within Canada and internationally.

3. Describe the impact of providing clearing services for each derivative or class of derivatives referred to in item 1 on the regulated clearing agency's risk management framework and financial resources, including the protection of the regulated clearing agency on the default of a participant and the effect of the default on the other participants.

4. Describe the impact, if any, on the regulated clearing agency's ability to comply with its regulatory obligations should the regulator or securities regulatory authority determine a derivative or class of derivatives referred to in item 1 to be a mandatory clearable derivative.

5. Describe the clearing services offered for each derivative or class of derivatives referred to in item 1.

6. If applicable, attach a copy of every notice the regulated clearing agency provided to its participants for consultation on the launch of the clearing service for a derivative or class of derivatives referred to in item 1 and a summary of concerns received in response to the notice.

Section 3 – Certification

CERTIFICATE OF REGULATED CLEARING AGENCY

I certify that I am authorized to deliver this form on behalf of the regulated clearing agency named below and that the information in this form is true and correct.

DATED at _____ this _____ day of _____, 20____

_____
(Print name of regulated clearing agency)

_____
(Print name of authorized person)

_____
(Print title of authorized person)

_____
(Signature of authorized person)

ANNEX C

COMPANION POLICY 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

GENERAL COMMENTS

Introduction

This Companion Policy sets out how the Canadian Securities Administrators (the "CSA" or "we") interpret or apply the provisions of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* ("NI 94-101" or the "Instrument") and related securities legislation.

The numbering of Parts and sections in this Companion Policy correspond to the numbering in NI 94-101. Any specific guidance on sections in NI 94-101 appears immediately after the section heading. If there is no guidance for a section, the numbering in this Companion Policy will skip to the next provision that does have guidance.

SPECIFIC COMMENTS

Unless defined in NI 94-101 or explained in this Companion Policy, terms used in NI 94-101 and in this Companion Policy have the meaning given to them in the securities legislation of the jurisdiction including National Instrument 14-101 *Definitions*.

In this Companion Policy, "Product Determination Rule" means,

> in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 91-101 *Derivatives: Product Determination*,
>
> in Manitoba, Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*,
>
> in Ontario, Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*, and
>
> in Québec, *Regulation 91-506 respecting Derivatives Determination*.

In this Companion Policy, "TR Instrument" means,

> in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, Multilateral Instrument 96-101 T*rade Repositories and Derivatives Data Reporting*,
>
> in Manitoba, Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*,
>
> in Ontario, Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, and
>
> in Québec, *Regulation 91-507 respecting Trade Repositories and Derivatives Data Reporting*.

PART 1
DEFINITIONS AND INTERPRETATION

Subsection 1(1) – Definition of "participant"

A "participant" of a regulated clearing agency is bound by the rules and procedures of the regulated clearing agency due to the contractual agreement with the regulated clearing agency.

Subsection 1(1) – Definition of "regulated clearing agency"

It is intended that only a "regulated clearing agency" that acts as a central counterparty for over-the-counter derivatives be subject to the Instrument. The purpose of paragraph (a) of this definition is to allow, for certain enumerated jurisdictions, a mandatory clearable derivative involving a local counterparty in one of the listed jurisdictions to be submitted to a clearing agency that is not yet recognized or exempted in the local jurisdiction, but that is recognized or exempted in another jurisdiction of Canada. Paragraph (a) does not supersede any provision of the securities legislation of a local jurisdiction with respect to any recognition requirements for a person or company that is carrying on the business of a clearing agency in the local jurisdiction.

Subsection 1(1) – Definition of "transaction"

The Instrument uses the term "transaction" rather than the term "trade" in part to reflect that "trade" is defined in the securities legislation of some jurisdictions as including the termination of a derivative. We do not think the termination of a derivative should trigger mandatory central counterparty clearing. Similarly, the definition of transaction in NI 94-101 excludes a novation resulting from the submission of a derivative to a clearing agency or clearing house as this is already a cleared transaction. Finally, the definition of "transaction" is not the same as the definition found in the TR Instrument as the latter does not include a material amendment since the TR Instrument expressly provides that an amendment must be reported.

In the definition of "transaction", the expression "material amendment" is used to determine whether there is a new transaction, considering that only new transactions will be subject to mandatory central counterparty clearing under NI 94-101. If a derivative that existed prior to the coming into force of NI 94-101 is materially amended after NI 94-101 is effective, that amendment will trigger the mandatory central counterparty clearing requirement, if applicable, as it would be considered a new transaction. A material amendment is one that changes information that would reasonably be expected to have a significant effect on the derivative's attributes, including its notional amount, the terms and conditions of the contract evidencing the derivative, the trading methods or the risks related to its use, but excluding information that is likely to have an effect on the market price or value of its underlying interest. We will consider several factors when determining whether a modification to an existing derivative is a material amendment. Examples of a modification to an existing derivative that would be a material amendment include any modification which would result in a significant change in the value of the derivative, differing cash flows, a change to the method of settlement or the creation of upfront payments.

PART 2
MANDATORY CENTRAL COUNTERPARTY CLEARING

Subsection 3(1) – Duty to submit for clearing

The duty to submit a mandatory clearable derivative for clearing to a regulated clearing agency only applies at the time the transaction is executed. If a derivative or class of derivatives is determined to be a mandatory clearable derivative after the date of execution of a transaction in that derivative or class of derivatives, we would not expect a local counterparty to submit the mandatory clearable derivative for clearing. Therefore, we would not expect a local counterparty to clear a mandatory clearable derivative entered into as a result of a counterparty exercising a swaption that was entered into before the effective date of the Instrument or the date on which the derivative became a mandatory clearable derivative. Similarly, we would not expect a local counterparty to clear an extendible swap that was entered into before the effective date of the Instrument or the date on which the derivative became a mandatory clearable derivative and extended in accordance with the terms of the contract after such date.

However, if after a derivative or class of derivatives is determined to be a mandatory clearable derivative, there is another transaction in that same derivative, including a material amendment to a previous transaction (as discussed in subsection 1(1) above), that derivative will be subject to the mandatory central counterparty clearing requirement.

Where a derivative is not subject to the mandatory central counterparty clearing requirement but the derivative is clearable through a regulated clearing agency, the counterparties have the option to submit the derivative for clearing at any time. For a complex swap with non-standard terms that regulated clearing agencies cannot accept for clearing, adherence to the Instrument would not require market participants to structure such derivative in a particular manner or disentangle the derivative in order to clear the component which is a mandatory clearable derivative if it serves legitimate business purposes. However, considering that it would not require disentangling, we would expect the component of a packaged transaction that is a mandatory clearable derivative to be cleared.

For a local counterparty that is not a participant of a regulated clearing agency, we have used the phrase "cause to be submitted" to refer to the local counterparty's obligation. In order to comply with subsection (1), a local counterparty would need to have arrangements in place with a participant for clearing services in advance of entering into a mandatory clearable derivative.

A transaction in a mandatory clearable derivative is required to be cleared when at least one of the counterparties is a local counterparty and one or more of paragraphs (a), (b) or (c) apply to both counterparties. For example, a local counterparty under any of paragraphs (a), (b) or (c) must clear a mandatory clearable derivative entered into with another local counterparty under any of paragraphs (a), (b) or (c). As a further example, a local counterparty under any of paragraphs (a), (b) or (c) must also clear a mandatory clearable derivative with a foreign counterparty under paragraphs (a) or (b). For instance, a local counterparty that is an affiliated entity of a foreign participant would be subject to mandatory central counterparty clearing for a mandatory clearable derivative with a foreign counterparty that is an affiliated entity of another foreign participant considering that there is one local counterparty to the transaction and both counterparties respect the criteria under paragraph (b).

A local counterparty that has had a month-end gross notional amount of outstanding derivatives exceeding the threshold in paragraphs (b) or (c), for any month following the entry into force of the Instrument, must clear all its subsequent transactions in a mandatory clearable derivative with another counterparty under one or more of paragraphs (a), (b), or (c).

The calculation of the gross notional amount outstanding under paragraphs (b) and (c) excludes derivatives with affiliated entities whose financial statements are prepared on a consolidated basis, which would be exempted under section 7 if they were mandatory clearable derivatives.

In addition, a local counterparty determines whether it exceeds the threshold in paragraph (c) by adding the gross notional amount of all outstanding derivatives of its affiliated entities that are also local counterparties, to its own.

A local counterparty that is a participant at a regulated clearing agency, but does not subscribe to clearing services for the class of derivatives to which the mandatory clearable derivative belongs would still be required to clear if it is subject to paragraph (c).

A local counterparty subject to mandatory central counterparty clearing that engages in a mandatory clearable derivative is responsible for determining whether the other counterparty is also subject to mandatory central counterparty clearing. To do so, the local counterparty may rely on the factual statements made by the other counterparty, provided that it does not have reasonable grounds to believe that such statements are false.

We would not expect that all the counterparties of a local counterparty provide their status as most counterparties would not be subject to the Instrument. However, a local counterparty cannot rely on the absence of a declaration from a counterparty to avoid the requirement to clear. Instead, when no information is provided by a counterparty, the local counterparty may use factual statements or available information to assess whether the mandatory clearable derivative is required to be cleared in accordance with the Instrument.

We would expect counterparties subject to the Instrument to exercise reasonable judgement in determining whether a person or company may be near or above the thresholds set out in paragraphs (b) and (c). We would expect a counterparty subject to the Instrument to solicit confirmation from its counterparty where there is reasonable basis to believe that the counterparty may be near or above any of the thresholds.

The status of a counterparty under this subsection should be determined before entering into a mandatory clearable derivative. We would not expect a local counterparty to clear a mandatory clearable derivative entered into after the Instrument came into effect, but before one of the counterparties was captured under one of paragraphs (a), (b) or (c) unless there is a material amendment to the derivative.

Subsection 3(2) – 90-day transition

This subsection provides that only transactions in mandatory clearable derivatives executed on or after the 90th day after the end of the month in which the local counterparty first exceeded the threshold are subject to subsection 3(1). We do not intend that transactions executed between the 1st day on which the local counterparty became subject to subsection 3(1) and the 90th day be back-loaded after the 90th day.

Subsection 3(3) – Submission to a regulated clearing agency

We would expect that a transaction subject to mandatory central counterparty clearing be submitted to a regulated clearing agency as soon as practicable, but no later than the end of the day on which the transaction was executed or if the transaction occurs after business hours of the regulated clearing agency, the next business day.

Subsection 3(5) – Substituted compliance

Substituted compliance is only available to a local counterparty that is a foreign affiliated entity of a counterparty organized under the laws of the local jurisdiction or with a head office or principal place of business in the local jurisdiction and that is responsible for all or substantially all the liabilities of the affiliated entity. The local counterparty would still be subject to the Instrument, but its mandatory clearable derivatives, as per the definition under the Instrument, may be cleared at a clearing agency pursuant to a foreign law listed in Appendix B if the counterparty is subject to and compliant with that foreign law.

Despite the ability to clear pursuant to a foreign law listed in Appendix B, the local counterparty is still required to fulfill the other requirements in the Instrument, as applicable. These include the retention period for the record keeping requirement and the submission of a completed Form 94-101F1 *Intragroup Exemption* to the regulator or securities regulatory authority in a jurisdiction of Canada when relying on an exemption regarding mandatory clearable derivatives entered into with an affiliated entity.

PART 3
EXEMPTIONS FROM MANDATORY CENTRAL COUNTERPARTY CLEARING

Section 6 – Non-application

A mandatory clearable derivative involving a counterparty that is an entity referred to in section 6 is not subject to the requirement under section 3 to submit a mandatory clearable derivative for clearing even if the other counterparty is otherwise subject to it.

The expression "government of a foreign jurisdiction" in paragraph (a) is interpreted as including sovereign and sub-sovereign governments.

Section 7 – Intragroup exemption

The Instrument does not require an outward-facing transaction in a mandatory clearable derivative entered into by a foreign counterparty that meets paragraph 3(1)(a) or (b) to be cleared in order for the foreign counterparty and its affiliated entity that is a local counterparty subject to the Instrument to rely on this exemption. However, we would expect a local counterparty to not abuse this exemption in order to evade mandatory central counterparty clearing. It would be considered evasion if the local counterparty uses a foreign affiliated entity or another member of its group to enter into a mandatory clearable derivative with a foreign counterparty that meets paragraph 3(1)(a) or (b) and then do a back-to-back transaction or enter into the same derivative relying on the intragroup exemption where the local counterparty would otherwise have been required to clear the mandatory clearable derivative if it had entered into it directly with the non-affiliated counterparty.

Subsection 7(1) – Requisite conditions for intragroup exemption

The intragroup exemption is based on the premise that the risk created by mandatory clearable derivatives entered into between counterparties in the same group is expected to be managed in a centralized manner to allow for the risk to be identified and managed appropriately.

This subsection sets out the conditions that must be met for the counterparties to use the intragroup exemption for a mandatory clearable derivative.

The expression "consolidated financial statements" in paragraph (a) is interpreted as financial statements in which the assets, liabilities, equity, income, expenses and cash flows of each of the counterparty and the affiliated entity are consolidated as part of a single economic entity.

Affiliated entities may rely on paragraph (a) for a mandatory clearable derivative as soon as they meet the criteria to consolidate their financial statements together. Indeed, we would not expect affiliated entities to wait until their next financial statements are produced to benefit from this exemption if they will be consolidated.

If the consolidated financial statements referred to in paragraph 7(1)(a) are not prepared in accordance with IFRS, Canadian GAAP or U.S. GAAP, we would expect that the consolidated financial statements be prepared in accordance with the generally accepted accounting principles of a foreign jurisdiction where one or more of the affiliated entities has a significant connection, such as where the head office or principal place of business of one or both of the affiliated entities, or their parent, is located.

Paragraph (c) refers to a system of risk management policies and procedures designed to monitor and manage the risks associated with a mandatory clearable derivative. We expect that such procedures would be regularly reviewed. We are of the view that counterparties relying on this exemption may structure their centralized risk management according to their unique needs, provided that the program reasonably monitors and manages risks associated with non-centrally cleared derivatives. We would expect that, for a risk management program to be considered centralized, the evaluation, measurement and control procedures would be applied by a counterparty to the mandatory clearable derivative or an affiliated entity of both counterparties to the derivative.

Paragraph (d) refers to the terms governing the trading relationship between the affiliated entities for the mandatory clearable derivative that is not cleared as a result of the intragroup exemption. We would expect that the written agreement be dated and signed by the affiliated entities. An ISDA master agreement, for instance, would be acceptable.

Subsection 7(2) – Submission of Form 94-101F1

Within 30 days after two affiliated entities first rely on the intragroup exemption in respect of a mandatory clearable derivative, a local counterparty must deliver, or cause to be delivered, to the regulator or securities regulatory authority a completed Form 94-101F1 *Intragroup Exemption* ("Form 94-101F1") to notify the regulator or securities regulatory authority that the exemption is being relied upon. The information provided in the Form 94-101F1 will aid the regulator or securities regulatory authority in better

understanding the legal and operational structure allowing counterparties to benefit from the intragroup exemption. The parent or the entity responsible to perform the centralized risk management for the affiliated entities using the intragroup exemption may deliver the completed Form 94-101F1 on behalf of the affiliated entities. For greater clarity, a completed Form 94-101F1 could be delivered for the group by including each pairing of counterparties that seek to rely on the intragroup exemption. One completed Form 94-101F1 is valid for every mandatory clearable derivative between any pair of counterparties listed on the completed Form 94-101F1 provided that the requirements set out in subsection (1) are complied with.

Subsection 7(3) – Amendments to Form 94-101F1

Examples of changes to the information provided that would require an amended Form 94-101F1 include: (i) a change in the control structure of one or more of the counterparties listed in Form 94-101F1, and (ii) the addition of a new local jurisdiction for a counterparty. This form may also be delivered by an agent.

Section 8 – Multilateral portfolio compression exemption

A multilateral portfolio compression exercise involves more than two counterparties who wholly change or terminate some or all of their existing derivatives submitted for inclusion in the exercise and replace those derivatives with, depending on the methodology employed, other derivatives whose combined notional amount, or some other measure of risk, is less than the combined notional amount, or some other measure of risk, of the derivatives replaced by the exercise.

The purpose of a multilateral portfolio compression exercise is to reduce operational or counterparty credit risk by reducing the number or notional amounts of outstanding derivatives between counterparties and the aggregate gross number or notional amounts of outstanding derivatives.

Under paragraph (c), the existing derivatives submitted for inclusion in the exercise were not cleared either because they did not include a mandatory clearable derivative or because they were entered into before the class of derivatives became a mandatory clearable derivative or because the counterparty was not subject to the Instrument.

We would expect a local counterparty involved in a multilateral portfolio compression exercise to comply with its credit risk tolerance levels. To do so, we expect a participant to the exercise to set its own counterparty, market and cash payment risk tolerance levels so that the exercise does not alter the risk profiles of each participant beyond a level acceptable to the participant. Consequently, we would expect existing derivatives that would be reasonably likely to significantly increase the risk exposure of the participant to not be included in the multilateral portfolio compression exercise in order for this exemption to be available.

We would generally expect that a mandatory clearable derivative resulting from the multilateral portfolio compression exercise would have the same material terms as the derivatives that were replaced with the exception of reducing the number or notional amount of outstanding derivatives.

Section 9 – Recordkeeping

We would generally expect that reasonable supporting documentation kept in accordance with section 9 would include complete records of any analysis undertaken by the local counterparty to demonstrate it satisfies the conditions necessary to rely on the intragroup exemption under section 7 or the multilateral portfolio compression exemption under section 8, as applicable.

A local counterparty subject to the mandatory central counterparty clearing requirement is responsible for determining whether, given the facts available, an exemption is available. Generally, we would expect a local counterparty relying on an exemption to retain all documents that show it properly relied on the exemption. It is not appropriate for a local counterparty to assume an exemption is available.

Counterparties using the intragroup exemption under section 7 should have appropriate legal documentation between them and detailed operational material outlining the risk management techniques used by the overall parent entity and its affiliated entities with respect to the mandatory clearable derivatives benefiting from the exemption.

PART 4
MANDATORY CLEARABLE DERIVATIVES

and

PART 6
TRANSITION AND EFFECTIVE DATE

Section 10 – Submission of Form 94-101F2 & Section 12 – Transition for the submission of Form 94-101F2

A regulated clearing agency must deliver a Form 94-101F2 *Derivatives Clearing Services* ("Form 94-101F2") to identify all derivatives for which it provides clearing services within 30 days of the coming into force of the Instrument pursuant to section 12. A new derivative or class of derivatives added to the offering of clearing services after the Instrument is in force is declared through a Form 94-101F2 within 10 days of the launch of such service pursuant to section 10.

Each regulator or securities regulatory authority has the power to determine by rule or otherwise which derivative or class of derivatives will be subject to mandatory central counterparty clearing. Furthermore, the CSA may consider the information required by Form 94-101F2 to determine whether a derivative or class of derivatives will be subject to mandatory central counterparty clearing.

In the course of determining whether a derivative or class of derivatives will be subject to mandatory central counterparty clearing, the factors we will consider include the following:

- the derivative is available to be cleared on a regulated clearing agency;
- the level of standardization of the derivative, such as the availability of electronic processing, the existence of master agreements, product definitions and short form confirmations;
- the effect of central clearing of the derivative on the mitigation of systemic risk, taking into account the size of the market for the derivative and the available resources of the regulated clearing agency to clear the derivative;
- whether mandating the derivative or class of derivatives to be cleared would bring undue risk to regulated clearing agencies;
- the outstanding notional amount of the counterparties transacting in the derivative or class of derivatives, the current liquidity in the market for the derivative or class of derivatives, the concentration of participants active in the market for the derivative or class of derivatives, and the availability of reliable and timely pricing data;
- the existence of third-party vendors providing pricing services;
- with regards to a regulated clearing agency, the existence of an appropriate rule framework, and the existence of capacity, operational expertise and resources, and credit support infrastructure to clear the derivative on terms that are consistent with the material terms and trading conventions on which the derivative is traded;
- whether a regulated clearing agency would be able to manage the risk of the additional derivatives that might be submitted due to the mandatory central counterparty clearing requirement determination;
- the effect on competition, taking into account appropriate fees and charges applied to clearing, and whether mandating clearing of the derivative could harm competition;
- alternative derivatives or clearing services co-existing in the same market;
- the public interest.

FORM 94-101F1
INTRAGROUP EXEMPTION

Submission of information on intragroup transactions by a local counterparty

In paragraph (a) of item 1 in section 2, we refer to information required under section 28 of the TR Instrument.

We intend to keep the forms delivered by or on behalf of a local counterparty under the Instrument confidential in accordance with the provisions of the applicable legislation. We are of the view that the forms generally contain proprietary information, and that the cost and potential risks of disclosure for the counterparties to an intragroup transaction outweigh the benefit of the principle requiring that forms be made available for public inspection.

While we intend for Form 94-101F1 and any amendments to it to be kept generally confidential, if the regulator or securities regulatory authority considers that it is in the public interest to do so, it may require the public disclosure of a summary of the information contained in such form, or amendments to it.

FORM 94-101F2
DERIVATIVES CLEARING SERVICES

Submission of information on clearing services of derivatives by the regulated clearing agency

Paragraphs (a), (b) and (c) of item 2 in section 2 address the potential for a derivative or class of derivatives to be a mandatory clearable derivative given its level of standardization in terms of market conventions, including legal documentation, processes and procedures, and whether pre- to post- transaction operations are carried out predominantly by electronic means. The standardization of economic terms is a key input in the determination process.

In paragraph (a) of item 2 in section 2, “life-cycle events” has the same meaning as in section 1 of the TR Instrument.

Paragraphs (d) and (e) of item 2 in section 2 provide details to assist in assessing the market characteristics such as the activity (volume and notional amount) of a particular derivative or class of derivatives, the nature and landscape of the market for that derivative or class of derivatives and the potential impact its determination as a mandatory clearable derivative could have on market participants, including the regulated clearing agency. Assessing whether a derivative or class of derivatives should be a mandatory clearable derivative may involve, in terms of liquidity and price availability, considerations that are different from, or in addition to, the considerations used by the regulator or securities regulatory authority in permitting a regulated clearing agency to offer clearing services for a derivative or class of derivatives. Stability in the availability of pricing information will also be an important factor considered in the determination process. Metrics, such as the total number of transactions and aggregate notional amounts and outstanding positions, can be used to justify the confidence and frequency with which the pricing of a derivative or class of derivatives is calculated. We expect that the data presented cover a reasonable period of time of no less than 6 months. Suggested information to be provided on the market includes:

- statistics regarding the percentage of activity of participants on their own behalf and for customers,
- average net and gross positions including the direction of positions (long or short), by type of market participant submitting mandatory clearable derivatives directly or indirectly, and
- average trading activity and concentration of trading activity among participants by type of market participant submitting mandatory clearable derivatives directly or indirectly to the regulated clearing agency.

5.1.2 National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions and Related Companion Policy

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice of
National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*
and
Related Companion Policy

January 19, 2017

Introduction

The Canadian Securities Administrators (the **CSA** or **we**), are adopting:

- National Instrument 94-102 D*erivatives: Customer Clearing and Protection of Customer Collateral and Positions* including:
  - Form 94-102F1 *Customer Collateral Report: Direct Intermediary*
  - Form 94-102F2 *Customer Collateral Report: Indirect Intermediary*
  - Form 94-102F3 *Customer Collateral Report: Regulated Clearing Agency*

(the **Instrument**), and

- Companion Policy 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the **CP**)

(together, the **National Instrument**).

In some jurisdictions, government ministerial approvals are required for the implementation of the Instrument. Provided all necessary approvals are obtained, the National Instrument will come into force on July 3, 2017.

The CSA Derivatives Committee (the **Committee**) has consulted and collaborated with the Bank of Canada, the Office of the Superintendent of Financial Institutions (Canada), the Department of Finance Canada and market participants on the National Instrument. The Committee also continues to contribute to and follow international regulatory developments. In particular, members of the Committee work with international regulators and bodies such as the International Organization of Securities Commissions and the OTC Derivatives Regulators' Group in the development of international standards and regulatory practices.

Although a significant market in Canada, the Canadian over-the-counter (**OTC**) derivatives market comprises a relatively small share of the global market, and a substantial portion of derivatives entered into by Canadian market participants involve foreign counterparties. The CSA endeavours to develop rules for the Canadian market that are aligned with international practices to ensure that Canadian market participants have access to the international market and are regulated in accordance with international principles.

We would like to draw your attention to another publication: CSA Notice of National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* which is being published concurrently with this Notice. This publication, and the National Instrument, relate to central counterparty clearing.

Substance and Purpose

The purpose of the Instrument is to ensure that the clearing of a local customer's OTC derivatives is carried out in a manner that protects the customer's positions and collateral and improves derivatives clearing agencies' resilience to default by a clearing

intermediary. For a more detailed explanation of customer clearing please see CSA Consultation Paper 91-404 *Derivatives: Segregation and Portability in OTC Derivatives Clearing*.[1]

The Instrument contains requirements for the treatment of customer collateral by clearing intermediaries providing clearing services to local customers and derivatives clearing agencies located in Canada or providing clearing services to local customers. The Instrument includes requirements relating to the segregation and use of customer collateral that are designed to protect customer collateral, particularly in the case of financial difficulties of a clearing intermediary. The Instrument also includes detailed recordkeeping, reporting and disclosure requirements intended to make customer collateral and positions readily identifiable. Finally, the Instrument contains requirements relating to the transfer or porting of customer collateral and positions intended to result, in the event of default or insolvency of a clearing intermediary, that customer collateral and positions can be transferred to one or more non-defaulting clearing intermediaries.

Background and Summary of Written Comments Received by the CSA

On January 16, 2014, the CSA published for comment CSA Notice 91-304 *Proposed Model Provincial Rule on Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the **Model Rule**). The Committee modified the Model Rule in response to public comments and on January 21, 2016, Proposed National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the **Proposed Instrument**) was published by CSA Notice for a 90-day comment period.

During the last comment period, we received submissions from six commenters on the Proposed Instrument. We thank all of the commenters for their input. We have carefully reviewed the comments received and revised the Proposed Instrument. The names of the commenters and a summary of their comments, together with our responses, are contained in Annex A of this Notice. Copies of the submissions on the Proposed Instrument can be found on the websites of the Alberta Securities Commission, Ontario Securities Commission[2] and Autorité des marchés financiers.[3]

Summary of the Instrument

The Instrument is divided into 11 Parts.

Part 1 of the Instrument sets out relevant definitions and specifies that the Instrument applies only to cleared OTC derivatives where a customer, regulated clearing agency or clearing intermediary has a specified nexus to a local jurisdiction.

Part 2 to Part 4 of the Instrument set out requirements applicable to clearing intermediaries with respect to treatment of customer collateral, recordkeeping and disclosure.

Part 2 of the Instrument sets out the manner in which a customer's collateral is to be treated by clearing intermediaries, including requirements in respect of the collection, holding and maintenance of customer collateral, the identification of excess margin as well as the segregation, use and investment of customer collateral. Part 2 also sets out requirements that a clearing intermediary must meet to provide clearing services to a local customer including appropriate risk management in respect of those services.

Under Part 3 of the Instrument, clearing intermediaries are required to keep and retain certain records and supporting documentation as well as keep adequate and appropriately updated books and records that facilitate the identification and protection of a customer's positions and collateral.

Part 4 of the Instrument sets out reporting and disclosure requirements for clearing intermediaries, including reporting required to be submitted to the regulator or the securities regulatory authority.

Part 5 to Part 7 of the Instrument are parallel to Part 2 to Part 4 of the Instrument and set out similar requirements as they apply to regulated clearing agencies.

Part 5 of the Instrument sets out how a customer's collateral is to be treated by regulated clearing agencies, including requirements in respect of the collection, holding and maintenance of customer collateral, the identification of excess margin as well as the segregation, use and investment of customer collateral.

[1] Available at http://www.osc.gov.on.ca/documents/en/Securities-Category9/csa_20120210_91-404_segregation-portability.pdf and http://www.lautorite.qc.ca/files//pdf/consultations/derives/2012fev10-91-404-cons-en.pdf.

[2] Available at http://www.osc.gov.on.ca/en/51109.htm.

[3] Available at http://www.lautorite.qc.ca/en/previous-consultations-derivatives-pro.html.

Under Part 6 of the Instrument, regulated clearing agencies are required to keep certain records and supporting documentation as well as keep adequate and appropriately updated books and records that facilitate the identification and protection of a customer's positions and collateral.

Part 7 of the Instrument sets out reporting and disclosure requirements for regulated clearing agencies, including reporting required to be submitted to the regulator or the securities regulatory authority.

Part 8 of the Instrument sets out the requirements for a regulated clearing agency to facilitate the transfer of a customer's positions and collateral in the context of a clearing intermediary's default or at the request of a customer. Part 8 also requires a clearing intermediary that provides clearing services to an indirect intermediary to have policies and procedures for transferring the positions and collateral of a customer of the indirect intermediary.

Under Part 9 of the Instrument, clearing intermediaries and regulated clearing agencies located outside Canada may be exempt from the Instrument if they comply with the requirements of comparable legislation of a foreign jurisdiction specified in Appendix A to the Instrument. Despite the exemption from the Instrument provided for in Part 9, clearing intermediaries and regulated clearing agencies that offer clearing services to local customers will remain subject to certain provisions under the Instrument, as specified in Appendix A to the Instrument.

Part 10 of the Instrument contains provisions authorizing the regulator or the securities regulatory authority, as the case may be, to grant an exemption from any provision of the Instrument.

Part 11 of the Instrument sets out the effective date for the Instrument.

Summary of Changes to the Proposed Instrument

(a) Non-application to OTC options on securities

We received comments noting that the Instrument would extend the application of segregation and portability requirements to options on securities in a manner that is inconsistent with other regulatory regimes internationally. In response to these comments, we determined that the Instrument will not apply to OTC options on securities. Under securities legislation in Canada, options on securities are subject to regulation as securities, or in Québec as derivatives.[4] Options on securities will continue to be regulated as securities, or in Québec as derivatives, under the existing securities legislation in Canada and remain subject to the investor protections included in these regimes. This is consistent with approaches employed in the United States and the European Union.

(b) Record retention

Changes have been made to the record retention provisions for clearing intermediaries and regulated clearing agencies to avoid duplicative retention of records. These changes were made in response to several comments received that pointed out how recordkeeping efficiencies could be incorporated into the Instrument.

For clearing intermediaries, different retention requirements apply to (i) records and documentation related to individual cleared derivatives and (ii) all other records and information collected for a customer. Records related to a cleared derivative are required to be retained for at least seven years after the expiration of the cleared derivative while customer profiles, account agreements or other general information collected from a customer at any time by a clearing intermediary providing clearing services for the customer must be kept for at least seven years after the date upon which the customer's last derivative that is cleared with the clearing intermediary expires or is terminated.

Regulated clearing agencies are now required to keep records only until the expiry or termination of the cleared derivative to which the record relates. Since clearing intermediaries are required to maintain records relating to a particular cleared derivative for at least seven years after the termination of the cleared derivative, this change to the Instrument avoids duplication of the records already maintained by clearing intermediaries.

(c) Transfer of collateral and positions upon default vs. business-as-usual

We received comments discussing the challenges associated with transferring a customer's positions and collateral in both non-default, or "business-as-usual", transfer scenarios and during the default of a direct intermediary. In particular, the commenters noted that in a default scenario, it is sometimes necessary to rely on negative consent from a customer (i.e., the customer's silence), where a customer has not provided instructions or it is not possible to transfer a customer's collateral and positions in

[4] See National Instrument 14-101 *Definitions* for a list of statues and other instruments comprising "securities legislation" across Canada. Available at http://www.osc.gov.on.ca/en/14882.htm and http://www.lautorite.qc.ca/files//pdf/reglementation/valeurs-mobilieres/14-101/2011-01-01/2011jan01-14-101-vadmin-en.pdf.

accordance with its instructions. We acknowledge there are differences between a transfer of a customer's positions and collateral upon default by a direct intermediary and a business-as-usual transfer upon request from the customer, and separate provisions for these scenarios have been included in the Instrument. The provision relating to the transfer of a customer's positions and collateral upon default by a direct intermediary provides additional flexibility to facilitate a transfer while taking into account any instructions that a customer may have provided in contemplation of a clearing intermediary's default.

(d) Substituted compliance

Currently, OTC derivatives clearing infrastructure and clearing service providers are largely concentrated outside of Canada. Therefore, it is likely that many local customers' cleared derivatives will involve foreign clearing infrastructure or clearing service providers. We received comments requesting exemptions from the Instrument where a clearing intermediary or regulated clearing agency complies with comparable laws of a foreign jurisdiction. As a result, we carefully considered the interaction of the Instrument with foreign customer clearing regimes that may also apply to a cleared derivative involving local customers. The Instrument provides for an exemption from the Instrument based on the concept of substituted compliance where a foreign clearing intermediary or regulated clearing agency in compliance with the comparable laws of the United States or the European Union is involved in clearing a local customer's cleared derivatives. However, despite a clearing intermediary or regulated clearing agency qualifying for the exemption from the Instrument by substituted compliance, certain provisions in the Instrument will still apply to foreign entities providing clearing services to local customers. These "residual provisions" include the retention of records, reporting on customer collateral to the customer and the regulator and the segregation of customer collateral from other property of the customer. The residual provisions that apply to a clearing intermediary or regulated clearing agency depend on the comparability of the applicable foreign laws, and therefore on whether the foreign entity complies with the laws of the United States or the European Union.

(e) Customer collateral reports – regulatory

We received comments regarding the information about customer collateral required to be reported to the regulator or securities regulatory authority. Commenters asked that the information reported by clearing intermediaries and regulated clearing agencies in Form 94-102F1, Form 94-102F2 and Form 94-102F3 pursuant to section 25 and section 43 of the Instrument be more closely harmonized with similar reporting requirements under the U.S. Commodity Futures Trading Commission's rules. In response to these comments, among other changes, information on customer collateral is now required on an aggregate basis, rather than on an individual customer basis.

Commenters also requested that reporting on customer collateral to the regulator or securities regulatory authority be included in the provisions for which an exemption based on substituted compliance is available. However, the information reported on Form 94-102F1, Form 94-102F2 and Form 94-102F3 is of importance to securities regulatory authorities. Consequently, section 25 and section 43 of the Instrument are not included in the exemption based on substituted compliance.

(f) International harmonization and miscellaneous drafting clarifications

There are a number of drafting changes throughout the Instrument to respond to comments from clearing agencies and clearing intermediaries that work to harmonize the Instrument with international regulatory regimes and more accurately reflect customer collateral and position segregation, recordkeeping and reporting practices.

Local Matters

The scope of derivatives subject to the Instrument in each local jurisdiction is set out in Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*,[5] Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*,[6] Québec *Regulation 91-506 respecting Derivatives Determination*[7] (**Québec Regulation 91-506**) and Multilateral Instrument 91-101 *Derivatives: Product Determination*.[8]

Concurrently with the publication of this Notice, the Autorité des marchés financiers is publishing consequential amendments in respect of the National Instrument to Regulation 91-506.

Anticipated Costs and Benefits

The Instrument is intended to facilitate development of the Canadian market for clearing customer OTC derivatives in a safe and efficient manner. It is intended to provide investor protection for local customers using clearing services that are equivalent to

5 Available at https://www.osc.gov.on.ca/en/SecuritiesLaw_91-506.htm.

6 Available at http://docs.mbsecurities.ca/msc/irp/en/item/101711/index.doc.

7 Available at http://www2.publicationsduquebec.gouv.qc.ca/dynamicSearch/telecharge.php?type=3&file=/I_14_01/I14_01R0_1_A.HTM.

8 Available at http://www.albertasecurities.com, http://www.bcsc.bc.ca, http://www.nbsc-cvmnb.ca, http://nssc.novascotia.ca and http://www.fcaa.gov.sk.ca/Securities%20Division.

the protections offered in major foreign markets and provide systemic benefits to the Canadian market. There will be compliance costs for clearing service providers that may increase the cost of clearing for market participants. The benefits to the Canadian market and to local customers from implementing the Instrument significantly outweigh the compliance costs to market participants. The major benefits and costs of the Instrument are described below.

(a) Benefits

The two major benefits of the Instrument are the reduction of systemic risk and the protection of customers and their assets when they clear OTC derivatives through clearing agencies.

(i) Mitigation of Systemic Risk

The Group of Twenty has agreed that requiring standardized and sufficiently liquid OTC derivatives to be cleared through central counterparties will result in more effective management of counterparty credit risk. The clearing of OTC derivatives may also contribute to greater stability of our financial markets and to a reduction in systemic risk. Along with mandatory central counterparty clearing, minimum capital requirements and margin requirements for non-centrally cleared derivatives may create additional incentives for central counterparty clearing.

The Instrument is designed to create a framework for customer clearing that promotes stability of the OTC derivatives market by facilitating, to the greatest extent possible, the porting of customers' positions and collateral. Portability of customers' positions and collateral is a key mechanism to ensure that in the event of a clearing intermediary default or insolvency, customers' positions are not terminated and their positions and collateral can be transferred to one or more non-defaulting clearing intermediaries. Portability can mitigate difficulties associated with stressed market conditions such as a market-wide reduction in liquidity and price dislocation, allow customers to maintain continuous clearing access and generally promotes efficient financial markets.

(ii) Customer Protection

The Instrument is aimed at significantly reducing the likelihood that customers will suffer major financial losses in the event of a clearing service provider's insolvency. In general, customer clearing offers risk mitigation benefits to customers. However, if a robust customer protection regime is not in effect, there can be risks in the clearing process, particularly if a clearing intermediary becomes insolvent. The Instrument provides customer protections that should significantly reduce the likelihood of a range of negative potential consequences, that could occur in the event of a clearing intermediary's insolvency, including:

- forced liquidation of positions;
- loss or inaccessibility of collateral;
- loss of hedge positions necessitating re-entry into the market at time of stress to re-establish positions; and
- market uncertainty.

The Instrument mitigates many of these risks to customers by establishing robust collateral and recordkeeping requirements. It requires a customer's positions to be collateralized at the regulated clearing agency and obligates the regulated clearing agency and clearing intermediaries to keep records that identify customers and their positions in order to facilitate porting.[9]

(b) Costs

Generally, any increased costs resulting from compliance with the Instrument stem from enhanced collateral protection and recordkeeping and reporting requirements for customer collateral and positions. Any costs associated with complying with the Instrument will be borne by clearing intermediaries and regulated clearing agencies and may be passed on to customers through higher initial margin or higher fees for cleared derivatives. There is also a possibility that clearing service providers may be dissuaded from entering or remaining in the Canadian market due to the costs of complying with the Instrument, which would reduce local customers' options for clearing service providers.

(i) Establishing Systems

Clearing intermediaries and regulated clearing agencies may incur up-front costs to develop or modify their recordkeeping and account structure systems in order to comply with the Instrument. However, once the systems are established, the incremental cost of on-going compliance should be less significant.

[9] The level of protection afforded by the Instrument is dependent on the Instrument's interaction with other foreign and domestic laws such as bankruptcy and insolvency laws and the *Payment Clearing and Settlement Act* (Canada) as well as provincial and territorial personal property security laws including as they apply to cash collateral.

(ii) Loss of Potential Revenue for Clearing Intermediaries and Clearing Agencies

The Instrument places restrictions on the use and investment of customer collateral held by clearing intermediaries and clearing agencies. Customer collateral may only be invested in liquid and low-risk instruments. The Instrument also requires a regulated clearing agency to collect initial margin from clearing intermediaries for each customer on a gross basis. Collecting gross margin promotes more effective porting of positions which benefits customers. However, this requirement means that less customer collateral will be held at and available for use by clearing intermediaries. These requirements limit the potential revenue that clearing intermediaries and clearing agencies may earn through the use and investment of their customers' collateral.

(iii) Market Access Issues

Currently, OTC derivatives clearing infrastructure and service providers are largely concentrated outside of Canada with the main clearing agencies and clearing intermediaries located in the United States and the European Union. Given the small size of the Canadian market, there is a risk that the costs of analyzing and complying with the Instrument may result in some market participants choosing not to offer customer clearing services in Canada which may limit local customers' access to OTC derivatives clearing services. However, as described above, the Instrument provides for an exemption for clearing intermediaries and regulated clearing agencies located in foreign jurisdictions based on substituted compliance with certain foreign laws. This exemption based on substituted compliance could significantly reduce compliance costs associated with the Instrument for providers of clearing services located in and complying with the laws of the foreign jurisdictions set out in Appendix A to the Instrument.

(c) Conclusion

Protection of customers' positions and collateral is the fundamental principle of the Instrument. It is the Committee's view that the impact of the Instrument, including anticipated compliance costs for market participants, is proportional to the benefits sought. The Instrument aims to provide a level of protection similar to that offered to customers in other jurisdictions with significant OTC derivatives markets. To achieve a balance of interests, the Instrument is designed to deliver a high level of protection to customers transacting in OTC derivatives and create a safer environment in the Canadian market for customers to clear OTC derivatives, while allowing clearing service providers a flexible and competitive market to operate in.

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex A – Summary of comments and CSA responses and list of commenters
- Annex B – National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*
- Annex C – Companion Policy 94-102CP *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*.

Questions

Please refer your questions to any of:

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ANNEX A

SUMMARY OF COMMENTS AND CSA RESPONSES ON PROPOSED NATIONAL INSTRUMENT 94-102
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

1. Section Reference	2. Summary of Issues/Comments	3. Response
GENERAL COMMENTS		
General Comments	Overall, commenters supported creating a domestic regime for the protection of customer positions and collateral to ensure that Canada's derivatives market functions efficiently and continues to maintain the confidence of market participants.	The Instrument addresses the need for a harmonized regime across Canada for the protection of customer positions and collateral. The Instrument furthers the aims of OTC derivatives reform set out by the Group of Twenty and supports the safe, effective and efficient function of Canada's OTC derivatives market.
	Support was expressed for substituted compliance in the Instrument. In particular, support was expressed for the revisions that facilitate the operation of different customer clearing models and including the laws of the United States and European Union for substituted compliance. Other commenters cautioned that without an effective substituted compliance regime, the Instrument may result in overlapping, duplicative and burdensome requirements.	Exemptions based on substituted compliance are available where market participants are subject to foreign laws that are substantially the same, on an outcomes basis, as the Instrument, based on a review of the foreign laws. The Instrument permits substituted compliance in specified circumstances and subject to certain conditions where a foreign clearing intermediary or regulated clearing agency clears a derivative and is in compliance with the foreign laws listed in Appendix A to the Instrument.
	Two commenters requested that orders exempting certain actions issued by foreign regulatory agencies be included in the substituted compliance approach used in the Instrument.	No change. To include exemptions made by foreign regulatory authorities in the substituted compliance approach under the Instrument would be an impermissible sub-delegation of a securities regulatory authority's legislative powers, as a foreign regulatory authority granting exemptions would be able to bypass the effect of the Instrument without the approval of the securities regulatory authority.
	One commenter requested that customer disclosure rules under the U.S. Commodity Futures Trading Commission (**CFTC**) regulations be deemed equivalent to the disclosure rules in the Instrument. Additionally, the commenter suggested that the Instrument be aligned with the customer disclosure rules and market practice evidenced by CFTC Rule 1.55(k) Disclosure and Default Disclosure, in particular with respect to sections 21, 22, 23, 26 and 27.	Change made. An exemption based on substituted compliance is available to clearing intermediaries that provide disclosure in accordance with CFTC and European Market Infrastructure Regulation (**EMIR**) disclosure requirements. Additionally, the examples of information to be included in the disclosure provided as guidance in the CP have been clarified.
	Two commenters requested clarification regarding whether equity options would be within the scope of the Instrument. It was noted that equity options have a specific margining process where initial margin is collected on a gross basis and there is no netting of opposite positions or resulting margin. The commenters suggest that the level of segregation required under the Proposed Instrument would adversely limit the margin	Change made. OTC options on securities are excluded from the scope of application of the Instrument.

1. Section Reference	2. Summary of Issues/Comments	3. Response
	efficiency investors are looking for when using OTC options in parallel with exchange-traded options and will impose a significant burden on equity options market participants that is not imposed in other foreign jurisdictions.	
	One commenter noted that requirements in the Instrument should be applied consistently across all jurisdictions of Canada and harmonized with international regulations.	No change. The Instrument will be consistently applied across Canadian jurisdictions and is largely harmonized with international regulations.
	One commenter noted that implementation of the Instrument will require significant technological, operational and rule changes for regulated clearing agencies and requested that appropriate timelines for compliance be provided in the Instrument.	Change made. The Instrument includes an implementation period to provide time for market participants to comply with the Instrument.
	Two commenters requested that reporting obligations in the Instrument be revised to minimize duplicative reporting requirements for foreign clearing agencies, such as by accepting the same reports provided to the CFTC or National Futures Association (with information regarding non-Canadian customers removed). One commenter requested that the reporting obligations of clearing agencies be limited to information related to collateral held by Canadian intermediaries.	Change made. An exemption based on substituted compliance is available to regulated clearing agencies that act in accordance with CFTC and EMIR recordkeeping and reporting requirements.
PART 1: DEFINITIONS, INTERPRETATION AND APPLICATION		
s. 1 – Definitions and interpretation		
General comments	One commenter requested that the definition of "cleared derivative" be modified to clarify the exclusion of exchange-traded derivatives from the scope of the definition of "cleared derivative" and from the scope of the Instrument as it applies to clearing agencies.	No change. Subsection 1(4) together with the application provisions in subsection 2(2) of the Instrument provide that the Instrument is limited only to the scope of derivatives set out in each local jurisdiction's derivatives product determination rule or regulation (the **Product Determination Rules**),[1] which exclude exchange-traded derivatives. Subsection 1(4) and Subsection 2(2) apply to the entirety of the Instrument, including the definitions of direct intermediary and indirect intermediary and the other application provisions in section 2. To provide a specific reference to the Product Determination Rules in the definition of "cleared derivative" would be redundant.
"clearing services"	One commenter suggested that the definition may be overly broad and capture activities which should not be regulated as clearing services, such as services provided by introducing brokers that do not hold customer collateral.	No change. The term "clearing services" is not defined in the Instrument. However, guidance applicable to that term is provided in the CP. With respect to intermediaries that provide clearing services, the Instrument applies only to clearing intermediaries that, according to the definitions in the Instrument, require, receive or hold customer collateral.

[1] Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination*; Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination*; Québec *Regulation 91-506 respecting Derivatives Determination*; and Multilateral Instrument 91-101 *Derivatives: Product Determination*.

1. Section Reference	2. Summary of Issues/Comments	3. Response
"customer"	One commenter noted that a clearing agency may have difficulty porting a customer's position and associated collateral where there are several intermediaries between the clearing agency and the customer that is the beneficial owner of the position. The commenter suggested that the definition of customer should be limited in scope to include only direct customers of a direct intermediary (i.e., a customer of a participant of the clearing agency).	No change. Customers that clear indirectly should benefit from the same protections as those that clear directly through a direct intermediary.
"customer collateral"	One commenter requested that the definition of customer collateral distinguish between collateral that is deposited to satisfy margin requirements (i.e., initial margin) and cash or other assets that are paid or deposited to settle the change in price of an open transaction over its settlement cycle (i.e., variation margin). The commenter requested clarification on whether customer initial margin and variation margin must be segregated from the initial margin and variation margin belonging to other customers as well as from house owned initial margin and variation margin.	No change. Initial margin and variation margin must be segregated from a clearing intermediary's house account. Customer collateral is permitted to be held in an omnibus account, provided that the customer collateral for each customer is accounted for separately.
PART 2: TREATMENT OF CUSTOMER COLLATERAL BY A CLEARING INTERMEDIARY		
s. 3 – Segregation of customer collateral – clearing intermediary		
General Comments	One commenter expressed concern regarding the risk associated with perfecting a secured interest in cash collateral posted by a customer to a clearing intermediary. While the commenter supported the changes made to the Instrument, which no longer requires customer collateral to be held in a segregated account linked to the customer's name, the commenter noted the importance of amending the personal property security legislation in Canada to permit perfection by control of a security interest in cash collateral held outside a securities account.	Amendments to the personal property securities legislation are outside the jurisdiction of the CSA. However, amendments were made to the Quebec Civil Code to address this issue and the Committee supports the amendments suggested by the commenter and harmonization of personal property securities legislation across Canada.
s. 5 – Excess margin – clearing intermediary		
General Comments	One commenter requested that the requirement for clearing service providers to identify and record each business day the value of excess margin under section 5 and section 31 be harmonized with the CFTC's regulations which only require Futures Commission Merchants (FCMs) to calculate excess margin across all customers rather than at the individual customer level.	No change. However, an exemption based on substituted compliance with CFTC and EMIR provisions is available for sections 5 and 31 of the Instrument.

1. Section Reference	2. Summary of Issues/Comments	3. Response
s. 7 – Investment of customer collateral – clearing intermediary		
General Comments	One commenter noted that United States laws do not require that a repurchase or reverse repurchase agreement in respect of customer collateral invested by a clearing intermediary or regulated clearing agency be confirmed in writing to the customer, contrary to section 7 or section 33, and that such a requirement may be onerous, considering that a customer bears no risk of loss on such agreement.	Change made. To harmonize with similar CFTC requirements, delivery of a written confirmation to the clearing intermediary, rather than to the customer, of the terms of a repurchase or resale transaction involving customer collateral is required in the Instrument. Additionally, the clearing intermediary must disclose to the customer in writing that its customer collateral may be invested or used by the clearing intermediary in accordance with section 7, including disclosure that any losses on the investment or use of the customer collateral will not be allocated to the customer.
PART 3: RECORDKEEPING BY A CLEARING INTERMEDIARY		
s. 12 – Retention of records – clearing intermediary		
General Comments	Commenters requested that the record time for record retention under section 12 and section 36 be reduced to five years.	No change. A seven-year retention period is common practice in Canada and is in line with timing requirements under the Limitations Act, 2002 (Ontario).
	Commenters requested that record retention be measured in relation to each individual transaction to harmonize with similar requirements under United States laws. Alternatively, the commenters suggested that recordkeeping requirements be considered for substituted compliance. Clarification of what was meant by keeping records in a readily accessible location was also requested.	Change made. Record retention has been revised to operate on an individual transaction basis. However, general account information must be maintained for at least seven years after the last date upon which a customer's last derivative that is cleared by the clearing intermediary expires or terminates.
s. 13 – Books and records – clearing intermediary		
General Comments	Commenters suggested that the information required to be recorded about customer collateral held by clearing intermediaries and regulated clearing agencies under section 13 and section 37 is too detailed for the customer segregation regime permitted by the Instrument. A concern was raised that requiring clearing intermediaries and regulated clearing agencies to identify specific items of collateral attributable to each customer may lead customers to believe specific items of collateral are individually segregated for their benefit. Commenters requested that the guidance be revised to only require recording of collateral value.	Change made. The Instrument requires a clearing intermediary or regulated clearing agency to record the value of the customer collateral received from or attributable to a customer.

1. Section Reference	2. Summary of Issues/Comments	3. Response
PART 4: REPORTING AND DISCLOSURE BY A CLEARING INTERMEDIARY		
s. 25 – Customer collateral report – regulatory		
General Comments	Two commenters suggested that the requirement for clearing intermediaries to report posted customer collateral on Forms 94-102F1 and 94-102F2 on an individual customer basis was more burdensome than similar requirements under the CFTC's rules, where reporting on posted customer collateral is only required on an aggregate basis. One commenter expressed its support for section 25 to be one of the sections listed in Appendix A for which substituted compliance is available for clearing intermediaries that are in compliance with analogous rules and regulations under the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (United States).	Change made. Forms 94-102F1 and 94-102F2 have been revised. A clearing intermediary is now required to report customer collateral on an aggregate basis for all customers, rather than on an individual customer basis. Additionally, a clearing intermediary is now required to report which permitted depositories hold customer collateral on its behalf but is not required to report on the value of customer collateral held at each permitted depository location. The reporting required under this section is of importance to Canadian securities regulatory authorities. Consequently, this section remains a residual requirement that is applicable even when substituted compliance is available.
s. 26 – Customer collateral report – customer		
s.26(1)(b)	Two commenters requested that paragraph 26(1)(b) and paragraph 44(b) be modified to remove references to asset type and quantity of customer collateral to address the concern raised about the level of detail required to be recorded about customer collateral held by clearing intermediaries and regulated clearing agencies under section 13 and section 37.	Change made. Consistent with the changes to sections 13 and 37, the Instrument requires a clearing intermediary or regulated clearing agency to record the value of the customer collateral received from or attributable to a customer.
PART 5: TREATMENT OF CUSTOMER COLLATERAL BY A REGULATED CLEARING AGENCY		
General Comments	Commenters suggested that portfolio margining and cross-margining of OTC derivatives with other products such as futures should be permitted under the Instrument because these practices confer commercial benefits for market participants without meaningfully increasing the risk of customer shortfalls in the event of a clearing intermediary's default.	No change. The Instrument prohibits the cross-margining of a customer's OTC cleared derivatives and futures positions. However, in some jurisdictions, customer protection requirements applicable to futures are equivalent to those applicable to OTC cleared derivatives; under such regimes, cross-margining may not represent a material risk to porting a customer's OTC cleared derivatives positions. Therefore, these factors will be taken into account when considering an application for discretionary relief from the prohibition on cross-margining or when making an equivalence determination of a foreign jurisdiction's regulatory requirements for the purpose of substituted compliance.
s. 28 – Collection of initial margin		
General Comments	One commenter noted that a clearing agency's rules do not prescribe the level of margin that its participants must request from its customers. Accordingly, it will not be possible for the clearing agency to monitor whether or not direct intermediaries are offsetting initial margin positions of its customers against one another.	No change. A regulated clearing agency is responsible for ensuring it receives initial margin on a gross basis from each customer.

1. Section Reference	2. Summary of Issues/Comments	3. Response
s. 30 – Holding of customer collateral – regulated clearing agency		
General Comments	One commenter requested the Instrument explicitly permit commingling and the use of omnibus accounts directly in section 30.	No change. We refer to the guidance in section 30 of the CP, which states that the customer collateral of multiple customers held by a regulated clearing agency may be commingled in an omnibus customer account if the customer collateral is segregated by each customer on a recordkeeping basis. Additionally, the recordkeeping obligations in the Instrument require the regulated clearing agency to identify the value of customer collateral held for each customer within an omnibus account.
s.30(2)	One commenter requested clarification on whether separate accounts are required for each type of customer collateral (e.g., initial margin, variation margin) as well as for any property of the customer held by the regulated clearing agency related to transactions outside of the scope of the Instrument (e.g., exchange-traded derivatives).	Change made. All types of customer collateral can be commingled in an omnibus account with the customer collateral of other customers. Additionally, guidance has been added to the CP clarifying that a regulated clearing agency is required to hold customer collateral relating to cleared derivatives separately from any other type of property that is not customer collateral, including any other property posted by a customer as collateral relating to another investment or financial instrument that is not a cleared derivative. For example, the customer collateral of a customer may be commingled in an omnibus account with the customer collateral of other customers but may not be commingled with collateral relating to a futures contract that belongs to the customer or another customer.
s. 32 – Use of customer collateral – regulated clearing agency		
General Comments	Commenters noted that section 32 prevents cross-margining of futures and OTC swaps and requested that cross-margining be permitted where a Canadian counterparty is interacting with a clearing agency in foreign jurisdictions where cross-margining is permitted. It was requested the Committee consider that clearing agencies would need to implement manual controls to prevent Canadian counterparties from accessing cross-margined offerings and that Canadian counterparties would be subject to significantly higher margin requirements if their futures and OTC swaps could not be commingled and cross-margined.	No change. The Instrument prohibits the cross-margining of a customer's OTC cleared derivatives and futures positions. However, in some jurisdictions, customer protection requirements applicable to futures are equivalent to those applicable to OTC cleared derivatives; under such regimes, cross-margining may not represent a material risk to porting a customer's OTC cleared derivatives positions. Therefore, these factors will be taken into account when considering an application for discretionary relief from the prohibition on cross-margining or when making an equivalence determination of a foreign jurisdiction's regulatory requirements for the purpose of substituted compliance.

1. Section Reference	2. Summary of Issues/Comments	3. Response
s. 33 – Investment of customer collateral – regulated clearing agency		
General Comments	One commenter requested that investment losses be borne solely by the clearing agency. The commenter noted that equivalent provisions in the CFTC regulations do not permit mutualisation of investment losses among clearing agency members and requested clarification on the risk management and policy reasons for permitting mutualisation of investment losses among clearing members.	No change. There is no requirement in section 7 or section 33 that losses be shared among clearing intermediaries.
PART 6: RECORDKEEPING BY A REGULATED CLEARING AGENCY		
s. 36 – Retention of records – regulated clearing agency		
General Comments	Clarification of the scope of records required to be retained by regulated clearing agencies was requested. The commenter suggested that the customer information collected by a clearing intermediary and shared with a regulated clearing agency under section 24 should be retained only by the clearing intermediary in accordance with section 12.	Change made. The Instrument does not require a regulated clearing agency to retain records related to a cleared derivative after the cleared derivative is terminated. Clearing intermediaries are required to maintain records related to customers and individual cleared derivatives for at least 7 years after termination; thus, it would be redundant for both clearing intermediaries and regulated clearing agencies to keep these records for an extended period after termination.
s. 37 – Books and records – regulated clearing agency		
General Comments	A concern was raised that requiring clearing intermediaries and regulated clearing agencies to identify specific items of collateral attributable to each customer may cause customers to believe specific items of collateral are individually segregated for their benefit.	Change made. The Instrument requires a regulated clearing agency to record the value of the customer collateral received from or attributable to a customer.
s. 38 – Separate records – regulated clearing agency		
s. 38(b)	One commenter noted that under United States laws, a derivatives clearing organization (DCO) must only record the value of customer collateral held by the DCO in satisfaction of its margin requirements and is not required to record the value of excess margin. The commenter requested that paragraph 38(b) not apply to non-Canadian clearing agencies subject to different regulatory requirements and which have built operation systems accordingly.	Change made. Section 31 of the Instrument has been revised and requires a regulated clearing agency to record the value of excess margin it holds for a clearing intermediary on behalf of its customers. Additionally, an exemption based on substituted compliance is available to regulated clearing agencies that act in accordance with CFTC or EMIR requirements.
s. 38(b)	One commenter requested that paragraph 38(b) be revised to clarify that clearing agencies are not required to distinguish the value of customer collateral on an individually segregated basis (i.e., it can be recorded within an omnibus customer account).	No change. Customer collateral can be held within an omnibus account but the value of customer collateral attributable to each customer must be recorded.

1. Section Reference	2. Summary of Issues/Comments	3. Response
s. 38(b) and (c)	One commenter requested that to align with the CFTC's approach to the treatment of non-US indirect intermediary's accounts, the Instrument should provide for substituted compliance for paragraphs 38(b) and (c) and clarify that paragraphs 38(b) and (c) apply only to a clearing intermediary in respect of local counterparties (not all of their customers).	Change made. An exemption based on substituted compliance is available to regulated clearing agencies that act in accordance with CFTC or EMIR requirements. Otherwise, section 2 of the Instrument provides that the requirements under the Instrument are applicable to a regulated clearing agency that has its head office or principal place of business in a foreign jurisdiction only in respect of clearing services provided for local customers (i.e., customers located or organized in Canada). Section 2 also provides that the requirements under the Instrument applicable to clearing intermediaries apply only in respect of clearing services provided to local customers.
PART 7: REPORTING AND DISCLOSURE BY A REGULATED CLEARING AGENCY		
s. 41 – Disclosure to direct intermediaries by regulated clearing agency		
General Comments	One commenter requested that for clearing agencies subject to United States laws, substituted compliance be available to permit reliance on the existing disclosures by clearing agencies under Part 39.37 of the CFTC's rules. Additionally, where a clearing agency has already made the disclosures required under the Instrument to a customer, the clearing agency should not be required to make the disclosures again after the Instrument comes into force.	Change made. Substituted compliance applies to clearing intermediaries that provide disclosure in accordance with CFTC and EMIR disclosure requirements. Additionally, the guidance in the CP providing examples of information to be included in the disclosure has been clarified. As stated in the Notice and in the CP, where a regulated clearing agency or clearing intermediary has previously delivered disclosure to its customers that meets the requirements of the Instrument prior to the entry into force of the Instrument, new disclosure will not need to be provided to those customers.
s. 43 – Customer collateral report – regulatory		
General Comments	One commenter suggested that the reporting requirements regarding customer collateral for regulated clearing agencies on Form 94-102F3 was more burdensome than similar requirements under the CFTC's rules.	Change made. Form 94-102F3 has been revised and a regulated clearing agency is now required to report customer collateral on an aggregate basis for all customers, rather than on an individual customer basis. Additionally, a regulated clearing agency is now required to report which permitted depositories hold customer collateral on its behalf but is not required to report on the value of customer collateral held at each permitted depository location. The reporting required under this section is of importance to Canadian securities regulatory authorities. Consequently, this section remains a residual requirement that is applicable even when substituted compliance is available.

1. Section Reference	2. Summary of Issues/Comments	3. Response
PART 8: TRANSFER OF POSITIONS		
s. 46 – Transfer of customer collateral and positions		
General Comments	One commenter noted that the contractual obligation between a clearing agency and its direct participant to comply with the rules of the clearing agency does not extend to a customer of the direct participant. Consequently, the clearing agency is not in a position to assess if the direct participant's customer has defaulted on its obligation.	Change made. The CP has been revised at section 24 to explain that the clearing intermediary would be responsible for providing information on customer default.
s. 46(1)	Two commenters requested that subsection 46(1) be modified to include "to the extent practicable" to address explicitly the challenges associated with discharging the obligations created by this provision.	Change made. Section 46 has been revised in the Instrument to address the challenges associated with the obligations created by the provision. These changes include specifying different requirements for transfers of a customer's positions and customer collateral in a default scenario or by request of the customer in a business-as-usual scenario.
s. 46(3)(a)	Two commenters suggested that paragraph 46(3)(a) be revised to reflect the fact that customer consent to transfer collateral and positions will not always be obtained in certain default scenarios which rely on negative consent.	Change made. Regulated clearing agencies are obligated to make reasonable efforts to ensure the transfer of a customer's collateral and positions is facilitated in accordance with the customer's instructions. Guidance on this point has been added to the CP.
PART 9: SUBSTITUTED COMPLIANCE		
General Comments	In making its conclusions regarding which provisions in the Instrument will benefit from substituted compliance, one commenter encouraged assessing foreign customer protection rules using an outcomes-based approach, such that foreign rules would qualify for substituted compliance where the same level of overall protection is achieved even if the foreign rules are not exactly the same as the requirements under the Instrument.	Change made. An outcomes-based approach was used to make the substituted compliance determinations included in the Instrument.
	Commenters requested that the Instrument permit substituted compliance on a holistic basis whereby the OTC derivatives customer clearing regimes of foreign jurisdictions would be recognized in their entirety. Where certain parts of a foreign jurisdiction's customer clearing regime are insufficient, it was suggested that additional conditions be imposed such that compliance with the Instrument is required for those particular provisions.	Change made. An outcomes-based approach was used to make the substituted compliance determinations included in the Instrument. On an outcomes basis, it was determined that certain provisions in the Instrument did not have equivalent provisions in the customer clearing regimes used in the foreign jurisdictions that we have reviewed. Accordingly, such "residual" provisions must be complied with by foreign clearing intermediaries and regulated clearing agencies providing clearing services for local customers even when benefitting from the exemption based on substituted compliance.

List of Commenters:

1. BMO Nesbitt Burns Inc.
2. The Canadian Advocacy Council for Canadian CFA Institute Societies
3. Canadian Market Infrastructure Committee
4. Chicago Mercantile Exchange Inc.
5. Futures Industry Association, Inc.
6. TMX Group Limited

ANNEX B

NATIONAL INSTRUMENT 94-102
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

PART 1
DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions and interpretation

1. (1) In this Instrument

"Canadian financial institution" has the meaning ascribed to it in National Instrument 45-106 *Prospectus Exemptions*;

"cleared derivative" means a derivative that is, directly or indirectly, submitted to and cleared by a clearing agency;

"clearing intermediary" means a direct intermediary or an indirect intermediary;

"customer" means a counterparty to a cleared derivative other than a clearing intermediary or a regulated clearing agency;

"customer collateral" means all cash, securities and other property if any of the following apply:

(a) the cash, securities or other property is received or held by a clearing intermediary or regulated clearing agency from, for or on behalf of a customer, and is intended to or does margin, guarantee, secure, settle or adjust a cleared derivative of the customer;

(b) the cash, securities or other property is posted on behalf of a customer by a clearing intermediary to satisfy the margin requirements arising from the customer's cleared derivatives;

"direct intermediary" means a person or company that

(a) with respect to a cleared derivative, is a participant of the regulated clearing agency at which the cleared derivative is cleared,

(b) directly provides clearing services for a customer in respect of a cleared derivative entered into by, for or on behalf of the customer, and

(c) requires, receives or holds collateral from, for or on behalf of the customer in providing clearing services;

"excess margin" means customer collateral in respect of a customer's cleared derivatives that

(a) is delivered to a regulated clearing agency or clearing intermediary from, for or on behalf of the customer, and

(b) has a value in excess of the amount required by the regulated clearing agency to clear and settle the cleared derivatives of the customer;

"indirect intermediary" means a person or company that

(a) indirectly provides clearing services for a customer in respect of a cleared derivative entered into by, for or on behalf of the customer, and

(b) requires, receives or holds collateral from, for or on behalf of the customer in providing clearing services;

"initial margin" means, in relation to a regulated clearing agency's margin system that manages credit exposures to its participants, collateral that is required by the regulated clearing agency to cover potential changes in the value of a customer's cleared derivatives over an appropriate close-out period in the event of a default;

"local customer" means a customer that, in respect of a local jurisdiction, is any of the following:

(a) an individual who is resident in the local jurisdiction;

(b) a person or company, other than an individual, to which any of the following apply:

(i) the person or company is organized under the laws of the local jurisdiction;

(ii) the head office of the person or company is in the local jurisdiction;

(iii) the principal place of business of the person or company is in the local jurisdiction;

"participant" means a person or company that has entered into an agreement with a regulated clearing agency to access the services of the regulated clearing agency and is bound by the regulated clearing agency's rules and procedures;

"permitted depository" means a person or company that is any of the following:

(a) a Canadian financial institution or Schedule III bank;

(b) a regulated clearing agency;

(c) the central bank of Canada or of a permitted jurisdiction;

(d) in Québec, a person recognized or exempt from recognition as a central securities depository under the *Securities Act* (Québec);

(e) a person or company

(i) whose head office or principal place of business is in a permitted jurisdiction,

(ii) that is a banking institution or trust company of a permitted jurisdiction, and

(iii) that has shareholders' equity, as reported in its most recent audited financial statements, of not less than the equivalent of $100 000 000;

(f) with respect to customer collateral that it receives from a customer or a clearing intermediary for which it provides clearing services, a registered investment dealer as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(g) with respect to customer collateral that it receives from a customer or a clearing intermediary for which it provides clearing services, a prudentially regulated entity

(i) whose head office or principal place of business is located outside of Canada, and

(ii) that is subject to and in compliance with the laws of a permitted jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral;

"permitted investment" means cash or a security or other financial instrument with minimal market and credit risk that is capable of being liquidated rapidly with minimal adverse price effect;

"permitted jurisdiction" means a foreign jurisdiction that is any of the following:

(a) a country where the head office or principal place of business of a Schedule III bank is located, and a political subdivision of that country;

(b) if a customer has provided express written consent to the clearing intermediary or the regulated clearing agency clearing a cleared derivative in a foreign currency, the country of origin of the foreign currency used to denominate the rights and obligations under the cleared derivative entered into by, for or on behalf of the customer, and a political subdivision of that country;

"position" means the economic interest of a counterparty in an outstanding cleared derivative at a point in time;

"prudentially regulated entity" means a person or company that is subject to and in compliance with the laws of a foreign jurisdiction that is a permitted jurisdiction under paragraph (a) of the definition of "permitted jurisdiction", relating to minimum capital requirements, financial soundness and risk management;

"qualifying central counterparty" means a person or company to which all of the following apply:

(a) it is recognized, exempt from recognition or otherwise registered or authorized to operate as a central counterparty in a jurisdiction of Canada or a foreign jurisdiction by a government or regulatory authority;

(b) it is subject to regulation that is consistent with the *Principles for market infrastructures* published by the Bank for International Settlements' Committee on Payments and Market Infrastructures and the International Organization of Securities Commissions in April 2012, as amended from time to time;

"regulated clearing agency" means

(a) in British Columbia, Manitoba and Ontario, a person or company recognized or exempt from recognition as a clearing agency in the local jurisdiction, and

(b) in Alberta, Newfoundland and Labrador, New Brunswick, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan and Yukon, a person or company recognized or exempt from recognition as a clearing agency or clearing house pursuant to the securities legislation of any jurisdiction of Canada;

"Schedule III bank" means an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);

"segregate" means to separately hold or separately account for a customer's positions or customer collateral.

(2) In this Instrument, a person or company is an affiliated entity of another person or company if one of them controls the other or each of them is controlled by the same person or company.

(3) In this Instrument, a person or company (the first party) is considered to control another person or company (the second party) if any of the following apply:

(a) the first party beneficially owns or directly or indirectly exercises control or direction over securities of the second party carrying votes which, if exercised, would entitle the first party to elect a majority of the directors of the second party, unless the first party holds the voting securities only to secure an obligation;

(b) the second party is a partnership, other than a limited partnership, and the first party holds more than 50% of the interests of the partnership;

(c) the second party is a limited partnership and the general partner of the limited partnership is the first party;

(d) the second party is a trust and the trustee of the trust is the first party.

(4) In this Instrument, in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and Yukon, "derivative" means a "specified derivative" as defined in Multilateral Instrument 91-101 *Derivatives: Product Determination*.

Application

2. (1) This Instrument does not apply to any of the following:

(a) a regulated clearing agency whose head office or principal place of business is in a foreign jurisdiction except with respect to a cleared derivative entered into by, for or on behalf of a local customer;

(b) a clearing intermediary that provides clearing services except with respect to a cleared derivative entered into by, for or on behalf of a local customer.

(2) This Instrument applies to

(a) in Manitoba,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Manitoba Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security,

(b) in Ontario,

(i) a derivative other than a contract or instrument that, for any purpose, is prescribed by any of sections 2, 4 and 5 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a derivative, and

(ii) a derivative that is otherwise a security and that, for any purpose, is prescribed by section 3 of Ontario Securities Commission Rule 91-506 *Derivatives: Product Determination* not to be a security, and

(c) in Québec, a derivative specified in section 1.2 of *Regulation 91-506 respecting derivatives determination*, other than a contract or instrument specified in section 2 of that regulation.

In each other local jurisdiction, this Instrument applies to a derivative as defined in subsection 1(4) of this Instrument. This text box does not form part of this Instrument and has no official status.

(3) Despite subsection (2), this Instrument does not apply to an option on a security.

(4) In British Columbia, Newfoundland and Labrador, the Northwest Territories, Nunavut, Prince Edward Island and Yukon, subsection (3) does not apply to a security that is a derivative as defined in subsection 1(4).

PART 2
TREATMENT OF CUSTOMER COLLATERAL BY A CLEARING INTERMEDIARY

Segregation of customer collateral – clearing intermediary

3. (1) A clearing intermediary must segregate a customer's positions and customer collateral from the positions and property of other persons or companies including the positions and property of the clearing intermediary.

(2) A clearing intermediary must segregate the positions and customer collateral of a customer of an indirect intermediary from the positions and property of the indirect intermediary.

Holding of customer collateral – clearing intermediary

4. A clearing intermediary must hold all customer collateral

(a) in one or more accounts at a permitted depository that are clearly identified as holding customer collateral, and

(b) in separate accounts from the property of all persons who are not customers.

Excess margin – clearing intermediary

5. A clearing intermediary must at least once each business day identify and record the value of excess margin it holds that is attributable to each customer for which the clearing intermediary provides clearing services.

Use of customer collateral – clearing intermediary

6. (1) A clearing intermediary must not use or permit the use of customer collateral except in accordance with this section and sections 7 and 8.

(2) A clearing intermediary must not use or permit the use of customer collateral of a customer except to do any of the following:

(a) margin, guarantee, secure, settle or adjust a cleared derivative of the customer;

(b) with respect to excess margin, guarantee, secure or extend the credit of the customer.

(3) Other than with respect to excess margin used in accordance with paragraph (2)(b), a clearing intermediary must not create or permit to exist any lien or other encumbrance on a cleared derivative of a customer or customer collateral in respect of the cleared derivative unless the lien or other encumbrance secures an obligation resulting from the cleared derivative in favour of any of the following:

(a) the customer;

(b) the regulated clearing agency or clearing intermediary responsible for clearing the cleared derivative.

Investment of customer collateral – clearing intermediary

7. (1) A clearing intermediary must not invest customer collateral or enter into an agreement for resale or repurchase of customer collateral except in accordance with subsections (2) and (3).

(2) A clearing intermediary may

(a) invest customer collateral in a permitted investment, and

(b) enter into an agreement for resale or repurchase of customer collateral if all of the following apply:

(i) the agreement is for the resale or repurchase of a permitted investment;

(ii) the agreement is in writing;

(iii) the term of the agreement is no more than one business day, or reversal of the transaction is possible on demand;

(iv) written confirmation specifying the terms of the agreement is delivered by the counterparty to the agreement to the clearing intermediary immediately on entering into the agreement;

(v) the agreement is not entered into with an affiliated entity of the clearing intermediary.

(3) A loss resulting from an investment or use of a customer's customer collateral in accordance with subsection (1) or subsection (2) by the clearing intermediary must be borne by the clearing intermediary making the investment and not by the customer.

Use of customer collateral – indirect intermediary default

8. (1) A clearing intermediary must not use customer collateral of a customer of an indirect intermediary for which the clearing intermediary provides clearing services to satisfy an obligation of the indirect intermediary.

(2) Despite subsection (1), a clearing intermediary may use the customer collateral of a customer to fully or partially satisfy an obligation of an indirect intermediary that arises or is accelerated as a consequence of the indirect intermediary's default only if the obligation is attributable to a cleared derivative of the customer.

Acting as a clearing intermediary

9. (1) A person or company must not act as a clearing intermediary for a customer unless the person or company is any of the following:

(a) a person or company that is subject to and is in compliance with the laws of a jurisdiction of Canada relating to minimum capital requirements, financial soundness and risk management;

(b) a person or company that is registered as a dealer under securities legislation in a local jurisdiction;

(c) a person or company that is

(i) a prudentially regulated entity, and

(ii) subject to and in compliance with the laws of a permitted jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral.

(2) A clearing intermediary must not provide clearing services for a customer unless the clearing services are provided in respect of derivatives that are cleared by a regulated clearing agency.

Risk management – clearing intermediary

10. A clearing intermediary that provides or proposes to provide clearing services for an indirect intermediary must adopt and implement rules, policies or procedures reasonably designed to

(a) identify, monitor and reasonably mitigate material risks arising from the provision of clearing services, and

(b) manage a default of the indirect intermediary.

Risk management – indirect intermediary

11. (1) An indirect intermediary must establish and implement rules, policies or procedures reasonably designed to identify, monitor and reasonably mitigate the material risks to the clearing intermediary or its customers arising from the provision of indirect clearing services for a customer.

(2) An indirect intermediary that receives clearing services from a clearing intermediary must provide the clearing intermediary with all information reasonably required to identify, monitor and reasonably mitigate any material risks arising from the provision of indirect clearing services for customers.

PART 3
RECORDKEEPING BY A CLEARING INTERMEDIARY

Retention of records – clearing intermediary

12. (1) A clearing intermediary must keep a record required under this Part and Part 4, and all supporting documentation,

(a) in a readily accessible and safe location and in a durable form,

(b) in the case of a record or supporting documentation that relates to a cleared derivative, for a period of 7 years following the date on which the cleared derivative expires or is terminated, and

(c) in any other case, for a period of 7 years following the date on which a customer's last cleared derivative that is cleared for or on behalf of the customer through the clearing intermediary expires or is terminated.

(2) Despite subsection (1), in Manitoba, with respect to a customer or clearing intermediary located in Manitoba, the time period applicable to records and supporting documentation kept pursuant to subsection (1) is 8 years.

Daily records – clearing intermediary

13. (1) A clearing intermediary that receives customer collateral must calculate and record all of the following at least once each business day in its records:

(a) for each customer, the amount of customer collateral it requires from, for or on behalf of the customer;

(b) the total amount of customer collateral it requires from, for or on behalf of all customers.

(2) For each indirect intermediary that a clearing intermediary provides clearing services for, the clearing intermediary must calculate and record all of the following at least once each business day in its records:

(a) the amount of customer collateral it requires from, for or on behalf of each customer of each indirect intermediary;

(b) the total amount of customer collateral it requires from, for or on behalf of all customers of each indirect intermediary.

(3) For each customer, a clearing intermediary must record all of the following in its records:

(a) each permitted depository at which it holds customer collateral of the customer;

(b) calculated at least once each business day, the current value of any customer collateral received from, for or on behalf of the customer, including all of the following:

(i) any accruals on the customer collateral creditable to the customer;

(ii) any gains or losses in respect of the customer collateral;

(iii) any charges accruing to the customer;

(iv) any distributions or transfers of the customer collateral.

Daily records – direct intermediary

14. For each customer, a direct intermediary must record all of the following at least once each business day in its records:

(a) the total amount of customer collateral required for the cleared derivatives of the customer by each regulated clearing agency;

(b) the total amount of the customer's excess margin held by the direct intermediary.

Daily records – indirect intermediary

15. For each customer, an indirect intermediary must record all of the following at least once each business day in its records:

(a) the total amount of collateral required for the cleared derivatives of the customer by each clearing intermediary through which the indirect intermediary clears;

(b) the sum of the amounts for the customer referred to in paragraph (a);

(c) the total amount of the customer's excess margin held by the indirect intermediary.

Identifying records – direct intermediary

16. A direct intermediary must keep records that, at any time, enable it to identify all of the following in its own accounts and in the accounts held with each regulated clearing agency through which it provides clearing services:

(a) the positions and property of the direct intermediary;

(b) the positions and value of customer collateral held for or on behalf of each of the direct intermediary's customers.

Identifying records – indirect intermediary

17. An indirect intermediary must keep records that, at any time, enable it to identify all of the following in its own accounts and in the accounts held with each clearing intermediary through which it provides clearing services:

(a) the positions and property of the indirect intermediary;

(b) the positions and value of customer collateral held for or on behalf of each of the indirect intermediary's customers.

Identifying records – multiple clearing intermediaries

18. A clearing intermediary that provides clearing services in respect of a cleared derivative for an indirect intermediary must keep records that, at any time, enable it and each of its indirect intermediaries to identify all of the following in the accounts held with the clearing intermediary:

(a) the positions and property of the indirect intermediary;

(b) the positions and value of customer collateral held for or on behalf of the indirect intermediary's customers.

Records of investment of customer collateral – clearing intermediary

19. A clearing intermediary that invests customer collateral must keep records of all of the following with respect to each investment of customer collateral:

(a) the date of the investment;

(b) the name of each person or company through which the investment was made;

(c) a daily market valuation of the investment, including any unrealized gain or loss on the investment and related supporting documentation;

(d) a description of each asset or instrument in which the investment was made;

(e) the identity of each permitted depository where each asset or instrument in which the investment was made is deposited;

(f) the date on which the investment was liquidated or otherwise disposed of and the realized gain or loss;

(g) the name of each person or company liquidating or disposing of the investment.

Records of currency conversion – clearing intermediary

20. A clearing intermediary must keep a record of each conversion of customer collateral from one currency to another.

PART 4
REPORTING AND DISCLOSURE BY A CLEARING INTERMEDIARY

Clearing intermediary delivery of disclosure by regulated clearing agency

21. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary must provide the customer, or an indirect intermediary for which it provides clearing services, with all of the following:

(a) the written disclosure provided under subsection 41(1) by each regulated clearing agency the direct intermediary uses to clear a cleared derivative for the customer or indirect intermediary;

(b) the investment guidelines and policy provided under subsection 45(1) by each regulated clearing agency that invests customer collateral attributable to the customer.

(2) After accepting the first cleared derivative from, for or on behalf of a customer, each time that the clearing intermediary receives written disclosure in accordance with subsection 41(2) or subsection 45(2) from a regulated clearing agency that invests customer collateral attributable to the customer, the clearing intermediary must provide the written disclosure to the customer, or indirect clearing intermediary for which it provides clearing services, within a reasonable period of time.

Disclosure to customer by clearing intermediary

22. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary must provide written disclosure to the customer describing the treatment of customer collateral not held at a regulated clearing agency, including the impact of relevant bankruptcy and insolvency laws, in the event of a default by the clearing intermediary.

(2) After accepting the first cleared derivative from, for or on behalf of a customer of, each time there is a change to the written disclosure referred to in subsection (1), the clearing intermediary must provide written disclosure to the customer, within a reasonable period of time, describing the change.

Disclosure to customer by indirect intermediary

23. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, an indirect intermediary must provide written disclosure to the customer including a description of all of the following:

(a) the material risks associated with receiving clearing services through an indirect intermediary;

(b) the rules, policies or procedures for transferring positions and customer collateral to another clearing intermediary or liquidating positions and customer collateral, in the event of the indirect intermediary's default.

(2) After accepting the first cleared derivative from, for or on behalf of a customer of, each time there is a change to the rules, policies or procedures referred to in paragraph (1)(b), the indirect intermediary must provide written disclosure to the customer, within a reasonable period of time, describing the change.

Customer information – clearing intermediary

24. (1) A direct intermediary must provide all of the following to a regulated clearing agency:

(a) before submitting to the regulated clearing agency the first cleared derivative for or on behalf of a customer of the direct intermediary, or of an indirect intermediary for which the direct intermediary provides clearing services, information sufficient to identify the customer and the customer's positions and customer collateral;

(b) at least once each business day after providing the information referred to in paragraph (a), information that identifies the customer's positions and the current value of the customer's customer collateral.

(2) An indirect intermediary must provide all of the following to a clearing intermediary through which it provides clearing services:

(a) before submitting to the clearing intermediary the first cleared derivative for or on behalf of a customer, information sufficient to identify the customer and the customer's positions and customer collateral;

(b) at least once each business day after providing the information referred to in paragraph (a), information that identifies the customer's positions and the current value of the customer's customer collateral.

Customer collateral report – regulatory

25. (1) A direct intermediary that receives customer collateral must electronically deliver to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F1 *Customer Collateral Report: Direct Intermediary*.

(2) An indirect intermediary that receives customer collateral must electronically deliver to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F2 *Customer Collateral Report: Indirect Intermediary*.

Customer collateral report – customer

26. (1) A clearing intermediary must make available to each customer from, for or on behalf of whom it receives customer collateral, a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of each position of the customer;

(b) the current value of customer collateral received from, for or on behalf of the customer that is held by the clearing intermediary or at a permitted depository;

(c) the current value of the customer collateral received from, for or on behalf of the customer that is posted with any of the following:

(i) a regulated clearing agency;

(ii) another clearing intermediary.

(2) A clearing intermediary must make available to each indirect intermediary from which it receives customer collateral a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of each position of each customer of the indirect intermediary;

(b) the current value of customer collateral received from the indirect intermediary for or on behalf of each customer of the indirect intermediary that is held by the clearing intermediary or at a permitted depository;

(c) the current value of the customer collateral received from the indirect intermediary for or on behalf of each customer of the indirect intermediary that is posted with any of the following:

(i) a regulated clearing agency;

(ii) another clearing intermediary.

Disclosure of investment of customer collateral

27. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a clearing intermediary that invests customer collateral must disclose in writing its investment guidelines and policy directly to the customer, or, if applicable, to the indirect intermediary that is providing clearing services to the customer.

(2) A clearing intermediary that invests customer collateral must within a reasonable period of time disclose in writing any change to the investment guidelines and policy referred to in subsection (1) directly to the customer or, if applicable, to the indirect intermediary that is providing clearing services to the customer.

PART 5
TREATMENT OF CUSTOMER COLLATERAL BY A REGULATED CLEARING AGENCY

Collection of initial margin

28. A regulated clearing agency must collect initial margin for each customer on a gross basis.

Segregation of customer collateral – regulated clearing agency

29. A regulated clearing agency must segregate a customer's positions and customer collateral from the positions and property of other persons or companies including the positions and property of the regulated clearing agency.

Holding of customer collateral – regulated clearing agency

30. A regulated clearing agency must hold all customer collateral

(a) in one or more accounts at a permitted depository that are clearly identified as holding customer collateral, and

(b) in separate accounts from all other property that is not customer collateral.

Excess margin – regulated clearing agency

31. A regulated clearing agency must at least once each business day identify and record the value of excess margin it holds for or on behalf of the customers of each clearing intermediary.

Use of customer collateral – regulated clearing agency

32. (1) A regulated clearing agency must not use or permit the use of customer collateral except in accordance with this section and sections 33 and 34.

(2) A regulated clearing agency must not use or permit the use of customer collateral of a customer except to do any of the following:

(a) margin, guarantee, secure, settle or adjust a cleared derivative of the customer;

(b) with respect to excess margin, guarantee, secure or extend the credit of the customer.

(3) Other than with respect to excess margin used in accordance with paragraph (2)(b), a regulated clearing agency must not create or permit to exist any lien or other encumbrance on a cleared derivative of a customer or customer collateral in respect of the cleared derivative unless the lien or other encumbrance secures an obligation resulting from the cleared derivative in favour of any of the following:

(a) the customer;

(b) the regulated clearing agency or a clearing intermediary responsible for clearing the cleared derivative.

Investment of customer collateral – regulated clearing agency

33. (1) A regulated clearing agency must not invest customer collateral or enter into an agreement for resale or repurchase of customer collateral except in accordance with subsections (2) and (3).

(2) A regulated clearing agency may

(a) invest customer collateral in a permitted investment, and

(b) enter into an agreement for resale or repurchase of customer collateral if all of the following apply:

(i) the agreement is for resale or repurchase of a permitted investment;

(ii) the agreement is in writing;

(iii) the term of the agreement is no more than one business day, or reversal of the transaction is possible on demand;

(iv) written confirmation specifying the terms of the agreement is delivered by the counterparty to the agreement to the regulated clearing agency immediately on entering into the agreement;

(v) the agreement is not entered into with an affiliated entity of the regulated clearing agency.

(3) A loss resulting from an investment or use of a customer's customer collateral in accordance with subsection (1) or subsection (2) by the regulated clearing agency must be borne by the regulated clearing agency making the investment or by a clearing intermediary that is a participant of the regulated clearing agency and not by any customer.

Use of customer collateral – clearing intermediary default

34. (1) A regulated clearing agency must not use customer collateral to satisfy an obligation of a clearing intermediary to which the regulated clearing agency provides clearing services.

(2) Despite subsection (1), a regulated clearing agency may use the customer collateral of a customer to fully or partially satisfy an obligation of a clearing intermediary that arises or is accelerated as a consequence of the clearing intermediary's default only if the obligation is attributable to a cleared derivative of the customer.

Risk management – NI 24-102 applies

35. Part 3 of National Instrument 24-102 *Clearing Agency Requirements* applies to a regulated clearing agency and, for that purpose, a reference in that instrument to a "recognized clearing agency" is to be read as a reference to a "regulated clearing agency".

PART 6
RECORDKEEPING BY A REGULATED CLEARING AGENCY

Retention of records – regulated clearing agency

36. A regulated clearing agency must keep a record required under this Part and Part 7, and all supporting documentation, in a readily accessible and safe location and in a durable form, until the date on which the cleared derivative that the record or supporting documentation relates to expires or is terminated.

Daily records – regulated clearing agency

37. (1) A regulated clearing agency that receives customer collateral must calculate and record all of the following at **least** once each business day in its records:

(a) for each customer, the amount of customer collateral it requires from, for or on behalf of the customer;

(b) the total amount of customer collateral it requires from, for or on behalf of all customers.

(2) A regulated clearing agency must record all of the following in its records:

(a) each permitted depository at which it holds customer collateral;

(b) calculated at least once each business day, the current value of the customer collateral received from, for or on behalf of the customers of each direct intermediary including all of the following:

(i) any accruals on the customer collateral creditable to the direct intermediary's customers;

(ii) any gains or losses in respect of the customer collateral;

(iii) any charges accruing to the direct intermediary's customers;

(iv) any distributions or transfers of the customer collateral.

Identifying records – regulated clearing agency

38. A regulated clearing agency must keep records that, at any time, enable it and each of its direct intermediaries to identify all of the following in the accounts held at the regulated clearing agency:

(a) the positions and property held for the direct intermediary;

(b) the positions and value of customer collateral held for or on behalf of the direct intermediary's customers;

(c) the positions and value of customer collateral held for or on behalf of customers of each indirect intermediary for which the direct intermediary provides clearing services.

Records of investment of customer collateral – regulated clearing agency

39. A regulated clearing agency that invests customer collateral must keep records of all of the following with respect to each investment of customer collateral:

(a) the date of the investment;

(b) the name of each person or company through which the investment was made;

(c) a daily market valuation of the investment, including any unrealized gain or loss on the investment and related supporting documentation;

(d) a description of each asset or instrument in which the investment was made;

(e) the identity of each permitted depository where each asset or instrument in which the investment is made is deposited;

(f) the date on which the investment was liquidated or otherwise disposed of and the realized gain or loss;

(g) the name of each person or company liquidating or disposing of the investment.

Records of currency conversion – regulated clearing agency

40. A regulated clearing agency must keep a record of each conversion of customer collateral from one currency to another.

PART 7
REPORTING AND DISCLOSURE BY A REGULATED CLEARING AGENCY

Disclosure to direct intermediaries by regulated clearing agency

41. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a regulated clearing agency must provide written disclosure to the direct intermediary through which the derivative is cleared including a description of all of the following:

(a) the rules, policies or procedures of the regulated clearing agency that govern the segregation and use of customer collateral and the transfer or liquidation of a cleared derivative of a customer in the event of a direct intermediary's default;

(b) the impact of laws, including bankruptcy and insolvency laws, on the customer, its positions and customer collateral in the event of a direct intermediary's default;

(c) the circumstances under which an interest or ownership rights in customer collateral may be enforced by the regulated clearing agency, the direct intermediary or the customer.

(2) After accepting the first cleared derivative from, for or on behalf of a customer, each time there is a change to the rules, policies or procedures referred to in paragraph (1)(a), the regulated clearing agency must provide written disclosure to the direct intermediary through which the derivative is cleared, within a reasonable period of time, describing the change.

Customer information – regulated clearing agency

42. A regulated clearing agency must have rules, policies or procedures reasonably designed to confirm that the information it receives from a direct intermediary in accordance with subsection 24(1) is complete and received in a timely manner.

Customer collateral report – regulatory

43. A regulated clearing agency that receives customer collateral must electronically deliver to the regulator or securities regulatory authority, within 10 business days of the end of each calendar month, a completed Form 94-102F3 *Customer Collateral Report: Regulated Clearing Agency*.

Customer collateral report – direct intermediary

44. A regulated clearing agency must make available to each direct intermediary from which it receives customer collateral a report, calculated and available on a daily basis, setting out all of the following:

(a) the current value of each position of each customer of the direct intermediary;

(b) the current value of customer collateral received from the direct intermediary for or on behalf of each customer of the direct intermediary that is held by the regulated clearing agency;

(c) the total current value of customer collateral received from the direct intermediary that is held at a permitted depository;

(d) the location of each permitted depository at which the customer collateral is held.

Disclosure of investment of customer collateral

45. (1) Before receiving the first cleared derivative from, for or on behalf of a customer, a regulated clearing agency that invests customer collateral must disclose in writing its investment guidelines and policy to the direct intermediary through which the derivative is cleared.

(2) A regulated clearing agency that invests customer collateral must within a reasonable period of time disclose in writing any change to the investment guidelines and policy referred to in subsection (1) to the direct intermediary through which the derivative is cleared.

PART 8
TRANSFER OF POSITIONS

Transfer of customer collateral and positions

46. (1) On default of a direct intermediary, a regulated clearing agency and the defaulting direct intermediary must do all of the following:

(a) facilitate a transfer of the defaulting direct intermediary's customers' positions and customer collateral, or their liquidation proceeds, from the defaulting direct intermediary to one or more non-defaulting direct intermediaries;

(b) make reasonable efforts to ensure the transfer is facilitated in accordance with the customer's instructions.

(2) At the request of a customer, a regulated clearing agency and a non-defaulting direct intermediary must facilitate a transfer of the customer's positions and customer collateral from the non-defaulting direct intermediary to one or more non-defaulting direct intermediaries if all of the following apply:

(a) the customer has consented to the transfer;

(b) the customer's account is not currently in default;

(c) the transferred positions will have appropriate margin at the receiving direct intermediary;

(d) any remaining positions will have appropriate margin at the transferring direct intermediary;

(e) the receiving direct intermediary has consented to the transfer.

Transfer from a clearing intermediary

47. A clearing intermediary that provides clearing services for an indirect intermediary must have rules, policies or procedures in respect of the portability and transfer of a customer's positions and customer collateral that include a reasonable mechanism for transferring the positions and customer collateral of the indirect intermediary's customers, in the event of a default by the indirect intermediary or at the request of the indirect intermediary's customer, to one or more non-defaulting clearing intermediaries.

PART 9
SUBSTITUTED COMPLIANCE

Substituted compliance

48. (1) A clearing intermediary whose head office or principal place of business is in a foreign jurisdiction is exempt from this Instrument in respect of a cleared derivative entered into by, for or on behalf of a local customer if all of the following apply:

(a) the cleared derivative is cleared for or on behalf of a local customer

(i) in a local jurisdiction other than British Columbia, Manitoba and Ontario by a qualifying central counterparty or a regulated clearing agency, and

(ii) in British Columbia, Manitoba and Ontario, by a regulated clearing agency;

(b) the clearing intermediary is all of the following:

(i) registered, licensed or otherwise authorized to perform the services of a clearing intermediary in a foreign jurisdiction listed in Appendix A;

(ii) in compliance with the laws of the foreign jurisdiction applicable to the clearing intermediary set out in Appendix A opposite the name of the foreign jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral.

(2) Despite subsection (1), a clearing intermediary relying on the exemption from the Instrument set out in subsection (1) that provides clearing services in respect of a cleared derivative entered into by, for or on behalf of a local customer must comply with the provisions of this Instrument set out in Appendix A opposite the name of the foreign jurisdiction referred to in paragraph (1)(b).

(3) A regulated clearing agency whose head office or principal place of business is in a foreign jurisdiction is exempt from this Instrument in respect of a cleared derivative entered into by, for or on behalf of a local customer if the regulated clearing agency complies with all of the following:

(a) the terms and conditions of any recognition or exemption decision made by any securities regulatory authority in respect of the regulated clearing agency;

(b) the laws of a foreign jurisdiction applicable to the regulated clearing agency set out in Appendix A opposite the name of the foreign jurisdiction relating to clearing services and the requiring, receiving and holding of customer collateral.

(4) Despite subsection (3), a regulated clearing agency relying on the exemption from the Instrument set out in subsection (3) that provides clearing services in respect of a cleared derivative entered into by, for or on behalf of a local customer must comply with the provisions of this Instrument set out in Appendix A opposite the name of the foreign jurisdiction referred to in paragraph (3)(b).

PART 10
EXEMPTIONS

Exemption – general

49. (1) The regulator or the securities regulatory authority may grant an exemption from this Instrument, in whole or in part, subject to such conditions or restrictions as may be imposed in the exemption.

(2) Despite subsection (1), in Ontario, only the regulator may grant an exemption.

(3) Except in Alberta and Ontario, an exemption referred to in subsection (1) is granted under the statute referred to in Appendix B of National Instrument 14-101 *Definitions* opposite the name of the local jurisdiction.

PART 11
EFFECTIVE DATE

Effective date

50. This Instrument comes into force on July 3, 2017.

APPENDIX A
TO
NATIONAL INSTRUMENT 94-102 DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER POSITIONS AND COLLATERAL

Substituted Compliance
(Section 48)

PART A
LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE TO CLEARING INTERMEDIARIES FOR SUBSTITUTED COMPLIANCE

Foreign Jurisdiction	**Laws, Regulations or Instruments**	**Provisions of this Instrument applicable to a clearing intermediary despite compliance with the foreign jurisdiction's laws, regulations or instruments**
European Union	Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 600/2014 of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. Commission Delegated Regulation (EU) 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP. Directive (EU) 39/2004 of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.	Subsection 6(2) Subsection 6(3) Section 12 Section 25 Section 26
United States of America	Commodity Futures Trading Commission, *General Regulations Under the Commodity Exchange Act*, 17 CFR pt 1. Commodity Futures Trading Commission, *Registration*, 17 CFR pt 3. Commodity Futures Trading Commission, *Cleared Swaps*, 17 CFR pt 22. Commodity Futures Trading Commission, *Bankruptcy Rules*, 17 CFR pt 190.	Section 12 Section 25 Section 26

PART B
LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS
APPLICABLE TO REGULATED CLEARING AGENCIES FOR SUBSTITUTED COMPLIANCE

Foreign Jurisdiction	Laws, Regulations or Instruments	Provisions of this Instrument applicable to a regulated clearing agency despite compliance with the foreign jurisdiction's laws, regulations or instruments
European Union	Regulation (EU) 648/2012 of the European Parliament and of the Council of 4 July 2012 on OTC derivatives, central counterparties and trade repositories, as amended by Regulation (EU) 600/2014 of 15 May 2014 on markets in financial instruments and amending Regulation (EU) No 648/2012. Commission Delegated Regulation (EU) 149/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on indirect clearing arrangements, the clearing obligation, the public register, access to a trading venue, non-financial counterparties, and risk mitigation techniques for OTC derivatives contracts not cleared by a CCP. Commission Delegated Regulation (EU) No 153/2013 of 19 December 2012 supplementing Regulation (EU) No 648/2012 of the European Parliament and of the Council with regard to regulatory technical standards on requirements for central counterparties, as amended by Commission Delegated Regulation (EU) 822/2016 of 21 April 2016 amending Delegated Regulation (EU) No 153/2013 as regards the time horizons for the liquidation period to be considered for the different classes of financial instruments. Directive (EU) 39/2004 of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC.	Section 28 Subsection 32(2) Subsection 32(3) Section 36 Section 43 Section 44
United States of America	Commodity Futures Trading Commission, *General Regulations Under the Commodity Exchange Act*, 17 CFR pt 1. Commodity Futures Trading Commission, *Cleared Swaps*, 17 CFR pt 22. Commodity Futures Trading Commission, *Derivatives Clearing Organizations*, 17 CFR pt 39. Commodity Futures Trading Commission, *Provisions Common to Registered Entities*, 17 CFR pt 40. Commodity Futures Trading Commission, *Swap Data Recordkeeping and Reporting Requirements*, 17 CFR pt 45.	Section 36 Section 43 Section 44

Foreign Jurisdiction	Laws, Regulations or Instruments	Provisions of this Instrument applicable to a regulated clearing agency despite compliance with the foreign jurisdiction's laws, regulations or instruments
	Commodity Futures Trading Commission, *Bankruptcy Rules*, 17 CFR pt 190.	

FORM 94-102F1
CUSTOMER COLLATERAL REPORT: DIRECT INTERMEDIARY

This Form 94-102F1 is to be completed by each direct intermediary in order to comply with its reporting obligations to the local securities regulator under subsection 25(1) of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "**Instrument**").

Type of Filing: ☐ INITIAL ☐ AMENDMENT[1]

Reporting Date[2]	DD/MM/YY
Reporting Period[3]	MM/YY

Reporting direct intermediary
[LEI][4]

Table A

Table A is to be completed by each direct intermediary that receives customer collateral from a customer in accordance with the Instrument. For calculations in Table A, include all customers that have posted customer collateral with the reporting direct intermediary.

A.	Total value of non-cash customer collateral posted with the direct intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted with the direct intermediary as of the last business day of the Reporting Period	Number of customers represented by the reported total value of customer collateral posted with the direct intermediary[5]

Table B

Table B is to be completed by each direct intermediary that receives customer collateral from an indirect intermediary in accordance with the Instrument. Complete a separate line for each indirect intermediary that has posted customer collateral with the reporting direct intermediary. Where an LEI is not available, please provide the complete legal name of the indirect intermediary.

B.	Indirect intermediary	Customer collateral	
		Total value of non-cash customer collateral posted with the direct intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted with the direct intermediary as of the last business day of the Reporting Period
1.	[LEI of any indirect intermediary that has posted customer collateral with the reporting direct intermediary]		

1 Please mark the form as "amendment" if the form is being resubmitted to correct or replace a form previously filed for a Reporting Period. Otherwise, please make the form as "initial".

2 The Reporting Date must be within 10 business days of the end of the Reporting Period.

3 The Reporting Period is the calendar month for which the form is submitted.

4 Where an LEI is not available, please provide the complete legal name of the reporting direct intermediary together with the complete address of its head office.

5 Please report the number of customers whose customer collateral was included in calculating the value reported in the second column of Table A.

Table C

Table C is to be completed by each direct intermediary that receives customer collateral from a customer or from an indirect intermediary in accordance with the Instrument. Complete a separate line for each location at which customer collateral is held by or for the reporting direct intermediary. Where an LEI is not available, please provide the complete legal and operating name(s) of the permitted depository.

C.	Permitted depository
1.	[LEI of reporting direct intermediary, if holding customer collateral itself]
2.	[LEI of any permitted depository holding customer collateral for the reporting direct intermediary]

Table D

Table D is to be completed by each direct intermediary that has posted customer collateral with a regulated clearing agency in accordance with the Instrument. Complete a separate line for each regulated clearing agency with which the reporting direct intermediary has posted customer collateral. Where an LEI is not available, please provide the complete legal and operating name(s) of the regulated clearing agency.

D.	Regulated clearing agency	Customer collateral	
		Total value of non-cash customer collateral posted with the regulated clearing agency as of the last business day of the Reporting Period	Total value of customer collateral posted with the regulated clearing agency as of the last business day of the Reporting Period
1.	[LEI of any regulated clearing agency with which the reporting direct intermediary has posted customer collateral]		

FORM 94-102F2
CUSTOMER COLLATERAL REPORT: INDIRECT INTERMEDIARY

This Form 94-102F2 is to be completed by each person or company that acts as an indirect intermediary in order to comply with its reporting obligations to the local securities regulator under subsection 25(2) of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "**Instrument**").

Type of Filing: ☐ INITIAL ☐ AMENDMENT[1]

Reporting Date[2]	DD/MM/YY
Reporting Period[3]	MM/YY

Reporting indirect intermediary
[LEI][4]

Table A

Table A is to be completed by each indirect intermediary that receives customer collateral from a customer in accordance with the Instrument. For calculations in Table A include all customers that have posted customer collateral with the reporting indirect intermediary.

	Total value of non-cash customer collateral posted with the indirect intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted with the indirect intermediary as of the last business day of the Reporting Period	Number of customers represented by the reported total value of customer collateral posted with the indirect intermediary[5]
A.			

Table B

Table B is to be completed by each indirect intermediary that receives customer collateral from a customer in accordance with the Instrument. Complete a separate line for each location at which customer collateral is held by or for the reporting indirect intermediary. Where an LEI is not available, please provide the complete legal and operating name(s) of the permitted depository.

B.	Permitted depository
1.	[Reporting indirect intermediary, if holding customer collateral itself]
2.	[Any permitted depository holding customer collateral for the reporting direct intermediary]

Table C

Table C is to be completed by each indirect intermediary that has posted customer collateral with a direct intermediary in accordance with the Instrument. Complete a separate line for each direct intermediary with which the reporting indirect intermediary has posted customer collateral. Where an LEI is not available, please provide the complete legal and operating name(s) of the direct intermediary.

1 Please mark the form as "amendment" if the form is being resubmitted to correct or replace a form previously filed for a Reporting Period. Otherwise, please make the form as "initial".

2 The Reporting Date must be within 10 business days of the end of the Reporting Period.

3 The Reporting Period is the calendar month for which the form is submitted. .

4 Where an LEI is not available, please provide the complete legal name of the reporting indirect intermediary together with the complete address of its head office.

5 Please report the number of customers whose customer collateral was included in calculating the value reported in the second column of Table A.

C.	Direct intermediary	Customer collateral	
		Total value of non-cash customer collateral posted with the direct intermediary as of the last business day of the Reporting Period	Total value of customer collateral posted with the direct intermediary as of the last business day of the Reporting Period
1.	[LEI of any direct intermediary with which the reporting indirect intermediary has posted customer collateral]		

FORM 94-102F3
CUSTOMER COLLATERAL REPORT: REGULATED CLEARING AGENCY

This Form 94-102F3 is to be completed by each regulated clearing agency in order to comply with its reporting obligations to the local securities regulator under section 43 of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "**Instrument**").

Type of Filing: ☐ INITIAL ☐ AMENDMENT[1]

Reporting Date[2]	DD/MM/YY
Reporting Period[3]	MM/YY

Reporting regulated clearing agency
[LEI][4]

Table A
Table A is to be completed by each regulated clearing agency that receives customer collateral from a direct intermediary in accordance with the Instrument. Complete a separate line for each direct intermediary that has posted customer collateral with the reporting regulated clearing agency. Where an LEI is not available, please provide the complete legal name of the direct intermediary.

A.	Direct intermediary	Customer collateral	
		Total value of non-cash customer collateral posted with the regulated clearing agency as of the last business day of the Reporting Period	Total value of customer collateral posted with the regulated clearing agency as of the last business day of the Reporting Period
1.	[LEI of any direct intermediary that has posted customer collateral with the reporting regulated clearing agency]		

Table B

Table B is to be completed by each regulated clearing agency that holds customer collateral in accordance with the Instrument. Complete a separate line for each location at which customer collateral is held by or for the reporting regulated clearing agency. Where an LEI is not available, please provide the complete legal and operating name(s) of the permitted depository.

B.	Permitted depository
1.	[LEI of reporting regulated clearing agency, if holding customer collateral itself]
2.	[LEI of any permitted depository holding customer collateral for the reporting regulated clearing agency]

1 Please mark the form as "amendment" if the form is being resubmitted to correct or replace a form previously filed for a Reporting Period. Otherwise, please make the form as "initial".

2 The Reporting Date must be within 10 business days of the end of the Reporting Period.

3 The Reporting Period is the calendar month for which the form is submitted.

4 Where an LEI is not available, please provide the complete legal name of the reporting regulated clearing agency together with the complete address of its head office.

ANNEX C

COMPANION POLICY 94-102
DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS

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PART 1
GENERAL COMMENTS

Introduction

This Companion Policy ("CP") sets out the views of the Canadian Securities Administrators (the "CSA" or "we") on various matters relating to National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* (the "Instrument") and related securities legislation.

Other than this Part, the numbering of Parts, sections, subsections, paragraphs and subparagraphs in this CP generally corresponds to the numbering in the Instrument. Any general guidance for a Part appears immediately after the Part's name. Any specific guidance on a section, subsection, paragraph or subparagraph in the Instrument follows any general guidance. If there is no guidance for a Part, section, subsection paragraph or subparagraph, the numbering in this CP will skip to the next provision that does have guidance.

Unless otherwise stated, any reference to a Part, section, subsection, paragraph, subparagraph or definition in this CP is a reference to the corresponding Part, section, subsection, paragraph, subparagraph or definition in the Instrument.

Definitions and interpretation

Unless defined in the Instrument, terms used in the Instrument and in this CP have the meaning given to them in securities legislation. including National Instrument 14-101 Definitions.

Interpretation of terms used in the Instrument and in this CP

A number of key terms are used in the Instrument and this CP, including the terms that follow.

- "Clearing services" refers to acts in furtherance of the clearing of a customer's derivatives. This includes, among other things: submitting the customer's derivatives and associated collateral to a regulated clearing agency for clearing; monitoring and maintaining collateral requirements from the regulated clearing agency on behalf of a customer, including those for initial and variation margin; monitoring and maintaining excess collateral; recording and monitoring cleared positions, collateral received and valuations of both; and monitoring credit and liquidity limits.

- Clearing services also include services provided from one clearing intermediary to another in furtherance of clearing a customer's derivatives. For example, a direct intermediary would be providing clearing services to an indirect intermediary where it accepts a customer's derivatives that were originally submitted by a customer to the indirect intermediary and submits it to a regulated clearing agency.

- "Global Legal Entity Identifier System" means the system for unique identification of parties to financial transactions developed by the Legal Entity Identifier Regulatory Oversight Committee.

- "Legal Entity Identifier Regulatory Oversight Committee" means the international working group established by the finance ministers and the central bank governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012.

- The term "lien" refers to a creditor's claim against property to secure repayment of a debt.

- "PFMI Report" means the April 2012 final report entitled *Principles for financial market infrastructures* published by the Bank for International Settlements' Committee on Payments and Market Infrastructure (formerly the Committee on Payment and Settlement Systems) and the Technical Committee of the International Organization of Securities Commissions, as amended from time to time.

Interpretation of terms defined in the Instrument

Section 1 – Definition of cleared derivative

A "cleared derivative" is submitted to and cleared by a clearing agency, either voluntarily or in accordance with the clearing requirement set out in National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*. The terms "directly" and "indirectly" refer to the chain of clearing intermediaries involved in a clearing a derivative. Where a customer interacts directly with a direct intermediary, the derivative would be considered to be directly submitted to and cleared by a clearing agency. Where an indirect intermediary submits a derivative to a direct intermediary for clearing on behalf of a customer, the derivative is considered to be cleared through the direct intermediary and indirectly submitted to the clearing agency.

Section 1 – Definition of customer

A direct intermediary is not a customer where it transacts with a clearing agency of which it is a participant. However, a person or company that acts as a direct intermediary can be a customer when clearing its own proprietary financial instruments through another direct intermediary of a clearing agency (or in Québec, a clearing house) where it is not itself a participant. An indirect intermediary is considered a clearing intermediary rather than a customer for a transaction in a cleared derivative where it is providing clearing services to a customer. However, a person or company acting as an indirect intermediary can be a customer to the extent that it is clearing its own proprietary financial instruments through another clearing intermediary. For certainty, there is always one and only one customer per clearing chain. The customer is the person or company entering into the derivative on its own behalf and accessing clearing services through one or more clearing intermediaries.

In a clearing chain that involves an indirect intermediary providing clearing services to a person or company, that person or company would be considered a customer of each clearing intermediary in the chain as well as of the clearing agency. For example, where a customer submits a derivative to an indirect intermediary, it would be a customer of both the indirect intermediary and the direct intermediary that submits the derivative to the clearing agency, as well as of the clearing agency. If there were multiple indirect intermediaries involved in clearing a derivative, the person or company would be considered a customer of each of these clearing intermediaries.

Section 1 – Definition of clearing intermediary

We expect that, subject to any available exemption, a clearing intermediary offering clearing services to a customer must register as a derivatives dealer when such requirement is in place. CSA Consultation Paper 91-407 *Derivatives: Registration* ("Consultation Paper 91-407") outlines the recommended business trigger for determining whether a person is in the business of trading derivatives.[1] These factors include intermediating transactions in derivatives and providing clearing services to third-parties. Please refer to Consultation Paper 91-407 for further details.

A person or company providing services in respect of a cleared derivative would be considered a clearing intermediary for the purposes of the Instrument if it requires, receives or holds collateral from, for or on behalf of a customer. Accordingly, an intermediary that does not receive, hold or transfer collateral from, for on behalf of a customer would not be subject to the requirements under the Instrument even if it facilitates some limited aspects of the relationship between a clearing intermediary and a customer with respect to cleared derivatives (e.g., organizing orders for derivatives).

[1] See subsection 6.1(b) of Consultation Paper 91-407.

Section 1 – Definition of customer collateral

With respect to "customer collateral", we wish to point out that although a customer may deliver certain collateral to a clearing intermediary, this specific collateral may not be the collateral delivered to the regulated clearing agency to satisfy the customer's margin requirements at the regulated clearing agency. A clearing intermediary may "upgrade" or "transform" the collateral delivered by the customer pursuant to their agreement. For example, a customer may deliver cash as collateral and, pursuant to their agreement, the clearing intermediary may deliver securities of an equivalent value to the regulated clearing agency. Any collateral that is transformed, upgraded or otherwise and delivered to the regulated clearing agency on behalf of a customer would be considered customer collateral. Generally, the original collateral delivered by the customer is no longer considered customer collateral once it has been transformed or upgraded and therefore is no longer subject to the requirements of the Instrument. The transformed or upgraded collateral exchanged for the customer's original collateral becomes the customer collateral that is subject to the Instrument and must be treated as customer collateral regardless of the number or type of transformations or upgrades it undergoes.

Paragraph (b) of the definition of "customer collateral" refers to a situation where a clearing intermediary submits its own property to satisfy the obligations of one or more customers to the regulated clearing agency. An example of this would be a direct intermediary providing its own property to meet an intra-day margin call by the regulated clearing agency. Where a clearing intermediary submits its own property on behalf of a customer, this property must be treated as customer collateral.

Section 1 – Definition of direct intermediary

A "direct intermediary" is a participant of the regulated clearing agency where a customer's derivative is submitted for clearing. A direct intermediary is responsible for submitting a customer's derivative to the regulated clearing agency and has obligations to the regulated clearing agency with respect to the derivative.

Section 1 – Definition of indirect intermediary

An "indirect intermediary" is a person or company that facilitates clearing on behalf of a customer but is not a participant of the regulated clearing agency where a customer's derivative is submitted. In order to clear its customer's derivative, the indirect intermediary would enter into an agreement with a direct intermediary (or another indirect intermediary that would in turn submit the derivative to a direct intermediary) that would submit the derivative to the regulated clearing agency to be cleared. This clearing relationship is often referred to as "indirect customer clearing".

It is possible that a person or company that is a direct intermediary at one regulated clearing agency could also act as an indirect intermediary in order to access another regulated clearing agency, of which it is not a participant. The classification as a direct intermediary or indirect intermediary is not exclusive. A clearing intermediary can be a direct intermediary for some derivatives and an indirect intermediary for others.

Section 1 – Definition of initial margin

The term "initial margin" refers to collateral required by a regulated clearing agency to cover potential future losses resulting from expected changes in the value of a cleared derivative over a pre-determined close-out period with a certain level of confidence.

Section 1 – Definition of participant

The term "participant" refers to a clearing intermediary that is a member of a regulated clearing agency.

Section 1 – Definition of permitted depository

A "permitted depository" is a person or company acceptable for holding customer collateral posted with a clearing intermediary or regulated clearing agency. A clearing intermediary that itself meets the requirements of the definition may hold customer collateral directly and is not required to use a third-party permitted depository.

In recognition of the international nature of the derivatives market, paragraph (e) of the definition permits a foreign bank or trust company with a minimum amount of reported shareholders' equity to act as a permitted depository and hold customer collateral, provided its head office or principal place of business is located in a permitted jurisdiction and it is regulated as a bank or trust company in the permitted jurisdiction. Paragraph (g) of the definition permits a prudentially regulated entity, other than a bank or trust company, whose head office or principal place of business is located outside of Canada, to act as a permitted depository for customer collateral it receives in connection with providing clearing services to a customer, provided that it is subject to and in compliance with the laws of a permitted jurisdiction relating to clearing services and customer collateral.

Section 1 – Definition of permitted investment

The term "permitted investment" sets out a principles-based approach to determining the types of instruments in which a clearing intermediary or regulated clearing agency may invest customer collateral, in accordance with the provisions of the Instrument. The term is intended to cover an investment in an instrument that is secured by, or is a claim on, high-quality obligors, and which allows for quick liquidation with little, if any, adverse price effect, for the purpose of mitigating market, credit and liquidity risk.

We expect that a clearing intermediary or regulated clearing agency that invests customer collateral in accordance with the Instrument would ensure such investment is:

- consistent with its overall risk-management strategy,
- fully disclosed to its customers,
- limited to instruments that are secured by, or are claims on, high-quality obligors, and
- able to be liquidated quickly with little, if any, adverse price effect.

We are also of the view that it would be inconsistent with the principles-based approach to permitted investments for a clearing intermediary or regulated clearing agency to invest customer collateral in its own securities or those of its affiliated entities.

Examples of instruments that would be considered permitted investments by the local securities regulatory authority include each of the following:

- debt securities issued by or guaranteed by the Government of Canada or the government of a province or territory of Canada;
- debt securities that are issued or guaranteed by a municipal corporation in Canada;
- certificates of deposit, that are not securities, issued by a bank listed in Schedule I, II or III to the *Bank Act* (Canada) ("Bank Act");[2]
- commercial paper fully guaranteed as to principal and interest by the Government of Canada;
- interests in money market mutual funds.

We are also of the view that foreign investments in high-quality obligors exhibiting the same conservative characteristics as the instruments listed above would be acceptable.

Section 1 – Definition of permitted jurisdiction

Paragraph (a) of the definition of "permitted jurisdiction" captures jurisdictions where foreign banks authorized under the Bank Act to carry on business in Canada, subject to supervision by the Office of the Superintendent of Financial Institutions ("OSFI"), are located.[3] The following countries and their political subdivisions are included: Belgium, France, Germany, Ireland, Japan, Netherlands, Singapore, Switzerland, United Kingdom (including Scotland) and the United States of America.

For paragraph (b) of the definition of "permitted jurisdiction," in the case of the euro, where the currency does not have a single "country of origin", the provision will be read to include all countries in the euro area[4] and countries using the euro under a monetary agreement with the European Union.[5]

Section 1 – Definition of qualifying central counterparty

2 *Bank Act* (SC 1991, c 46).

3 *Ibid.* at Part XII.1; For a list of authorized foreign banks regulated under the *Bank Act* and subject to OSFI supervision, see: Office of the Superintended of Financial Institutions, *Who We Regulate* (available: http://www.osfi-bsif.gc.ca/Eng/wt-ow/Pages/wwr-er.aspx?sc=1&gc=1#WWRLink11).

4 European Union, Economic and Financial Affairs, *What is the euro area?*, May 18, 2015, online: European Union (http://ec.europa.eu/economy_finance/euro/adoption/euro_area/index_en.htm).

5 European Union, Economic and Financial Affairs, *The euro outside the euro area*, April 9, 2014, online: European Union (http://ec.europa.eu/economy_finance/euro/world/outside_euro_area/index_en.htm).

The definition of "qualifying central counterparty" is based on the qualifying central counterparty standard set out in the July 2012 final report entitled *Capital requirements for bank exposures to central counterparties*[6] published by the Basel Committee on Banking Supervision ("BCBS"). The BCBS has further stated[7] that if a regulator of a central counterparty has provided a public statement that the central counterparty has the status of a qualifying central counterparty, then the central counterparty may be considered to be a qualifying central counterparty. We are similarly of the view that a local counterparty may rely on a public statement made by a regulator of a central counterparty that the central counterparty is a qualifying central counterparty. The qualifying central counterparty standard is also discussed in CSA Multilateral Staff Notice 24-311 *Qualifying Central Counterparties*.

Section 1 – Definition of segregate

While the term "segregate" means to separately hold or separately account for customer collateral or positions, consistent with the PFMI Report, accounting segregation is acceptable.

Section 2 – Application

The Instrument applies to all regulated clearing agencies regardless of location; however, under subsection 2(1), a regulated clearing agency whose head office or principal place of business is in a foreign jurisdiction is only required to comply with the provisions of the Instrument with respect to the cleared derivatives of local customers. The Instrument has broader application with respect to a regulated clearing agency located in a local jurisdiction; such a regulated clearing agency is subject to the requirements of the Instrument in respect of the cleared derivatives of all of its customers (whether they are local customers or not).

The Instrument applies, regardless of location, to a clearing intermediary that provides clearing services to a local customer, but only in respect of a local customer's cleared derivatives. For example, a clearing intermediary providing clearing services to a local customer would be subject to the requirements of the Instrument only as they relate to the local customer and the cleared derivatives of the local customer. The Instrument is not applicable to the clearing intermediary when providing clearing services to foreign customers.

Under subsection 2(3), regulated clearing agencies and clearing intermediaries that provide clearing services for over-the-counter ("OTC") options on securities, are not required to comply with the Instrument in respect of such OTC options. Options on securities, including OTC options on securities, are subject to existing securities legislation. For example, OTC options on securities are regulated as securities under the *Securities Act* (Ontario) and as derivatives under the *Derivatives Act* (Québec).[8]

PART 2
TREATMENT OF CUSTOMER COLLATERAL BY A CLEARING INTERMEDIARY

Part 2 contains requirements for the treatment of customer collateral by a clearing intermediary.

Section 3 – Segregation of customer collateral – clearing intermediary

Recognizing that methods for segregating customer collateral at the clearing intermediary level may differ depending on collateral and entity type, we are of the view that parties should have the benefit of flexibility in their collateral arrangements. However, the principle remains that notwithstanding the legal arrangement under which customer collateral is posted with a clearing intermediary, the clearing intermediary must treat customer collateral posted with it as belonging to customers. For example, consider a title transfer collateral arrangement where the title to a customer's property is posted as collateral and legal title is transferred to a clearing intermediary collecting the collateral. Despite the transfer of legal title from the customer to the clearing intermediary, the clearing intermediary must treat the property as customer collateral transferred by or on behalf of the customer relating to the customer's cleared derivatives.

Subsection 3(1) requires a clearing intermediary to segregate customer collateral from its own property, including from collateral advanced for a proprietary position. For example, a direct intermediary's proprietary positions (i.e., a house account) would be required to be held or accounted for separately from customer positions. Similarly, an indirect intermediary would be required to establish a separate account for its customers with its direct intermediary, so that the indirect intermediary's proprietary positions are held or accounted for separately from those of its customers. Records maintained by a clearing intermediary must make it clear that customer accounts are for the benefit of customers only.

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6 Basel Committee on Banking Supervision (BCBS), *Capital requirements for bank exposures to central counterparties*, July 2012, online: Bank for International Settlements (http://www.bis.org).

7 BCBS, Basel III counterparty credit risk and exposures to central counterparties – Frequently asked questions, updated December 2012, online: Bank for International Settlements (http://www.bis.org).

8 *Securities Act* (RSO 1990 c S.5) at s. 1(1), definition of "security"; *Derivatives Act* (RLRQ 2008 c I-14.01) at s. 3, definition of "derivative".

Section 4 – Holding of customer collateral – clearing intermediary

Customer collateral posted by a clearing intermediary and held at a permitted depository may be commingled in an omnibus account (i.e., all of the clearing intermediary's customers' customer collateral is held in one omnibus account) if each customer's customer collateral is segregated on a recordkeeping basis. Additionally, the recordkeeping obligations in the Instrument require a clearing intermediary to identify the positions and the value of the collateral held for each customer within an omnibus customer account.

We expect that a clearing intermediary that holds customer collateral at a permitted depository in accordance with the Instrument would take reasonable efforts to confirm that the permitted depository:

- qualifies as a permitted depository under the Instrument;
- has appropriate rules, policies and procedures, including robust accounting practices, to help ensure the integrity of the customer collateral and minimize and manage the risks associated with the safekeeping and transfer of the collateral;
- maintains securities in an immobilised or dematerialised form for their transfer by book entry;
- protects customer collateral against custody risk through appropriate rules and procedures consistent with its legal framework;
- employs a robust system that ensures segregation between the permitted depository's own property and the property of its participants and segregation among the property of participants, and where supported by the legal framework, supports operationally the segregation of property belonging to a participant's customers on the participant's books and facilitates the transfer of customer collateral;
- identifies, measures, monitors, and manages its risks from other activities that it may perform;
- facilitates prompt access to customer collateral, when required.

If a clearing intermediary is a permitted depository, as defined in the Instrument, it may hold customer collateral itself and is not required to hold customer collateral at a third party depository. For example, a Canadian financial institution that acts as a clearing intermediary would be permitted to hold customer collateral provided it did so in accordance with the requirements of the Instrument. Where a clearing intermediary deposits customer collateral with a permitted depository, the clearing intermediary is responsible for ensuring the permitted depository maintains appropriate books and records to ensure customer collateral can be attributed to each customer.

Section 5 – Excess margin – clearing intermediary

We would interpret the requirement that a clearing intermediary identify and record the value of excess margin as applying only to the excess margin that the clearing intermediary holds. For example, a direct intermediary would not be required to keep records of the excess margin required from a customer by an indirect intermediary to which it provides clearing services.

Section 6 – Use of customer collateral – clearing intermediary

Under subsection 6(2), the use of customer collateral attributable to one customer to satisfy the obligations of another customer is not permitted. Although customer collateral may be held in one omnibus account, such collateral is not available to satisfy customer obligations generally. Therefore, a clearing model that allows recourse to a non-defaulting customer's collateral, including any model that permits fellow customer risk, violates this provision and would not be permitted to be offered to customers. For certainty, fellow customer risk is found in a clearing model that allows the customer collateral of a non-defaulting customer to be used to settle the obligations of a defaulting customer. The pooling of customer collateral held by a clearing intermediary pursuant to applicable bankruptcy and insolvency laws would not be considered use of customer collateral by the clearing intermediary and is permitted where required by applicable laws.

Subsection 6(3) allows a clearing intermediary to place a lien on customer collateral where the lien arises in connection with a cleared derivative. This exception recognizes that certain clearing arrangements involve the granting of security interests in customer collateral. A clearing intermediary is prohibited from imposing or permitting a lien that is not expressly permitted by the instrument on customer collateral and should such an improper lien be placed on customer collateral, the clearing intermediary must take all reasonable steps to promptly address the improper lien. However, a lien over excess collateral is not restricted where the lien is imposed to secure or extend credit to the customer.

Section 7 – Investment of customer collateral – clearing intermediary

Subsection 7(3) provides that any loss resulting from a permitted investment of customer collateral must not be borne by the customer. This requirement relates only to investments made by a clearing intermediary using customer collateral, not to collateral provided by a customer. For example, if a customer provided government bonds as collateral, and those bonds lost market value, the clearing intermediary would not be required to bear those losses. Similarly, where a customer provided collateral to a clearing intermediary and it was transformed into government bonds to be used as customer collateral posted to a regulated clearing agency, the clearing intermediary would not be required to bear any loss in market value of the transformed customer collateral.

Although losses in the value of invested customer collateral are not to be allocated to a customer, we are of the view that parties should be free to contract for the allocation of gains resulting from a clearing intermediary's investment activities in accordance with the Instrument.

Section 8 – Use of customer collateral – indirect intermediary default

An example of when a clearing intermediary may apply customer collateral to settle the obligations of a defaulting indirect intermediary is when a customer's default causes the default of the indirect intermediary. In such case, a direct intermediary could use the defaulting customer's collateral to satisfy the indirect intermediary's obligations attributable to the customer's default.

Section 9 – Acting as a clearing intermediary

Paragraph 9(1)(a) applies to a clearing intermediary that is prudentially regulated in a local jurisdiction. Prudential regulation by an authority in Canada should ensure that a clearing intermediary is adequately capitalized and has sufficient liquidity such that it is financially sound and does not present a significant solvency risk to customers. In Canada, prudential regulation of federally regulated financial institutions is undertaken by OSFI. Other regulators that perform prudential oversight include certain provincial prudential market regulators, such as the Autorité des marchés financiers in Québec, or other local securities regulatory authorities when the proposed registration regime for over-the-counter derivatives ("OTC derivatives") is implemented.

Paragraph 9(1)(c) applies to a clearing intermediary that is prudentially regulated and is subject to and in compliance with laws relating to clearing services and customer collateral in a permitted jurisdiction. This would include, for example, a futures commission merchant registered with the U.S. Commodity Futures Trading Commission ("CFTC") that is authorized by the CFTC to provide clearing services for OTC derivatives.

The CSA Derivatives Committee is developing a registration regime that will apply to clearing intermediaries. Once in force, subject to any available exemptions, we anticipate that registration will be required for clearing intermediaries to offer clearing services to local customers.

For greater certainty, pursuant to the application provision in paragraph 2(1)(b), the requirement under subsection 9(2) only applies to cleared derivatives involving local customers. Other than in British Columbia, Manitoba and Ontario, a foreign clearing intermediary may use a qualifying central counterparty instead of a regulated clearing agency if the foreign clearing intermediary qualifies for the exemption provided for in subsection 48(1) and otherwise complies with the requirements in subsection 48(2).

Section 10 – Risk management – clearing intermediary

We expect that rules, policies and procedures designed to identify, monitor and reasonably mitigate material risks arising from offering clearing services to an indirect intermediary and management of a default by an indirect intermediary would include all of the following:

- following industry standard best practices for understanding an indirect intermediary's: (i) identity and corporate structure, (ii) financial resources (e.g., by establishing credit and liquidity limits), (iii) product knowledge (e.g., by establishing a list of the indirect intermediary's products allowed to be cleared) and (iv) technical infrastructure (e.g., establishing adequate operational capacity and communication links between the indirect intermediary and the clearing intermediary);

- measuring and monitoring the positions of each indirect intermediary including (i) the daily valuation of the indirect intermediary's positions and cash flow obligations and (ii) market risk resulting from those positions;

- a default management plan which describes the steps followed in the event of an indirect intermediary's default.

Section 11 – Risk management – indirect intermediary

We expect that rules, policies and procedures designed to identify, monitor and reasonably mitigate material risks arising from offering indirect clearing services to customers would include all of the following:

- following industry standard best practices for understanding a customer's: (i) identity and corporate structure, (ii) financial resources (e.g., by establishing credit and liquidity limits), (iii) product knowledge (e.g., by establishing a list of the customer's products allowed to be cleared) and (iv) technical infrastructure (e.g., establishing adequate operational capacity and communication links between the customer and the indirect intermediary);

- measuring and monitoring the positions of each customer including (i) the daily valuation of the customer's positions and cash flow obligations and (ii) market risk resulting from those positions.

PART 3
RECORDKEEPING BY A CLEARING INTERMEDIARY

Part 3 outlines the minimum recordkeeping requirements that apply to clearing intermediaries. The effectiveness of the customer protections required under the Instrument is predicated on accurate and thorough recordkeeping by clearing intermediaries.

Section 12 – Retention of records – clearing intermediary

The records and supporting documentation related to a particular cleared derivative required to be prepared pursuant to this Part and Part 4 must be retained for at least 7 years from the date the cleared derivative expires or is terminated.

Any customer profiles, account agreements or other general information collected from a customer at any time the clearing intermediary provides clearing services for the customer, including prior to the date upon which the customer enters into a cleared derivative, must be kept for at least 7 years after the date upon which the customer's last derivative that is cleared by the clearing intermediary expires or is terminated.

All records and supporting documentation must be kept in accordance with industry best practices for record retention in Canada including safety and durability standards.

In Manitoba, the statutory minimum record retention period is 8 years.

Section 13 – Daily records – clearing intermediary

We are of the view that accurate recordkeeping requires, at minimum, daily valuations of customer collateral using industry standard best practice methodologies.

With respect to records required to be kept under paragraph 13(3)(b):

- subparagraph (i) refers to any revenue generated by the customer collateral, including, for example, dividend pay-outs relating to securities and coupon payments relating to debt instruments;

- subparagraph (ii) refers to any changes in the value of property forming part of the customer collateral, including, for example, an increase or decrease in the value of a security;

- subparagraph (iii) refers to charges that have accrued, or may accrue, that are payable by a customer and have been agreed to be paid by the customer in respect of the clearing services provided to the customer; such charges may include, for example, transaction or currency exchange charges or charges relating to the settlement or termination of a cleared derivative.

Section 18 – Identifying records – multiple clearing intermediaries

Where a clearing intermediary allows a person or company to act as an indirect intermediary, the clearing intermediary assumes recordkeeping obligations relating to the indirect intermediary and its customers. The effect of paragraphs 18(a) and (b) together is to enable the indirect intermediary to easily identify its own positions and property, and the positions and collateral held for, or on behalf, of each of its customers.

Section 19 – Records of investment of customer collateral – clearing intermediary

The date of the investment required to be recorded under paragraph 19(a) includes both the trade date and the settlement date. We are of the view that the requirement in paragraph 19(d) would be fulfilled by providing a unique identifier from an industry-accepted identifying standard, such as an ISIN or CUSIP number or, if an identifier is not available, a plain language description of each instrument or asset.

Pursuant to paragraph 7(2)(a) of the instrument, each investment of customer collateral must be in a permitted investment.

Section 20 – Records of currency conversion – clearing intermediary

We expect that currency conversion trade records would include, at minimum, all of the following:

- the legal entity identifier ("LEI") of the customer or, if the customer is ineligible to obtain an LEI as determined by the Global Legal Entity Identifier System, the name of the customer;
- the date of the currency exchange;
- the amount and original currency of the funds to be exchanged;
- the exchange rate at which the currency exchange is made;
- the amount and new currency resulting from the exchange;
- the name of the institution which made the exchange or provided the exchange rate.

PART 4
REPORTING AND DISCLOSURE BY A CLEARING INTERMEDIARY

Part 4 outlines disclosure and reporting to be made by a clearing intermediary to customers, regulated clearing agencies and the local regulator or securities regulatory authority. Disclosure required to be provided to customers under this Part is not required on a transaction-by-transaction basis.

The written disclosure required under sections 21, 22, 23 and 27 is necessary only once upon the opening of each customer account, not prior to each cleared derivative transaction. If there are changes to the information contained in the disclosure a customer received, the customer must be promptly informed in writing of such changes. Where there are multiple clearing intermediaries, direct intermediaries and indirect intermediaries may provide disclosure either to a clearing intermediary closer in the clearing chain to the customer or directly to the customer. Written disclosure and notice of changes to such disclosure can be provided in electronic form by delivering copies of required materials or by providing links to online information to the customer or clearing intermediary.

Where clearing intermediaries are already engaged in cleared derivative transactions with regulated clearing agencies, other clearing intermediaries or customers before the Instrument comes into force, new written disclosure is not required to be delivered to customers if the written disclosure delivered prior to the Instrument coming into force meets the requirements for written disclosure set out in this Part. We acknowledge the confidential nature of the information reported to the local regulator or securities regulatory authority, and each regulator or securities regulatory authority intends to treat it as such, subject to applicable provisions of the legislation adopted by the local jurisdiction, including any applicable freedom of information and protection of privacy legislation. However, information may be shared with self-regulatory organizations or other relevant regulatory authorities.

Section 21 – Clearing intermediary delivery of disclosure by regulated clearing agency

Section 21 requires a clearing intermediary to provide disclosure, including investment guidelines and policies for investing customer collateral, received from a regulated clearing agency pursuant to sections 41 and 45 to its customer. Where there is a chain of clearing intermediaries, the direct intermediary may provide this disclosure to the indirect intermediary, which is then required to provide this disclosure to the customer. Both subsections 41(2) and 45(2) require a regulated clearing agency to disclose any changes to the information previously disclosed. A clearing intermediary is required to promptly send to its customers all of the information related to changes in the disclosure provided by a regulated clearing agency under sections 41 and 45.

Section 22 – Disclosure to customer by clearing intermediary

Customer collateral held at the clearing intermediary level may receive different treatment from customer collateral held at the regulated clearing agency in the event of a clearing intermediary's bankruptcy or insolvency. We expect that the disclosure required by this provision would provide customers with clear information on the treatment of their collateral in a default situation. For example, there may be situations where customer collateral held in a customer account maintained by a clearing intermediary would, pursuant to applicable bankruptcy laws, be combined with the property of other customers.

We expect that the information given in the written disclosure would assist customers in evaluating: (i) the level of protection provided, (ii) the manner in which segregation and the transfer of assets is achieved, including the method for determining the value at which customer positions will be transferred, and (iii) any risks or uncertainties associated with such arrangements.

Disclosure helps customers assess the related risks and conduct due diligence when entering into derivatives that are cleared at a regulated clearing agency through one or more clearing intermediaries. Examples of the information that we expect the disclosure would provide include all of the following:

- information about the clearing intermediary including its name, address and principal place of business and contact information;
- the bankruptcy and insolvency laws which apply to the clearing intermediary;
- any material risks which may impact the clearing intermediary's ability to transfer customer collateral and enforce rights in relation to customer collateral during a default, including an explanation of how such risks are material to the customer;
- a basic overview of the clearing intermediary's fund segregation and collateral management practices and policies;
- the process for recovering or transferring customer collateral should the clearing intermediary default;
- information regarding the proactive steps that a customer must take to protect its collateral;
- an explanation of the interaction of domestic and foreign laws applicable to customer collateral held by the clearing intermediary.

Section 23 – Disclosure to customer by indirect intermediary

In addition to the disclosure required under section 22, an indirect intermediary is required to disclose to its customers any additional material risks to a customer's positions and customer collateral that arise as a result of the indirect clearing relationship and an explanation of how such risks are material to the customer.

Section 24 – Customer information – clearing intermediary

In order to facilitate a timely transfer of collateral and positions in a default scenario, a regulated clearing agency should have sufficient information to identify each customer of a clearing intermediary and each customer's positions and customer collateral. Additionally, the obligation on a clearing intermediary under this section to provide information on the current value of its customers' positions and customer collateral includes indicating to the direct intermediary or regulated clearing agency, as applicable, where a customer is in default of its obligations.

We expect that identifying information required under this section would include the LEI of the customer or, if the customer is ineligible to obtain an LEI as determined by the Global Legal Entity Identifier System, the name or other identifier of the customer.

Section 25 – Customer collateral report – regulatory

Regular reporting on customer collateral deposits and holdings assists securities regulatory authorities in monitoring customer collateral arrangements and in developing and implementing rules to protect customer assets that are responsive to market practices. To that end, subsections 25(1) and 25(2) set out reporting requirements for direct intermediaries and indirect intermediaries, respectively, regarding customer collateral. A completed Form 94-102F1 or Form 94-102F2, as applicable, will provide the local securities regulatory authority with a snapshot of the value of collateral held or posted by each reporting clearing intermediary. In Ontario, Form 94-102F1 and Form 94-102F2 are required to be filed electronically through the Ontario

Securities Commission's Electronic Filing Portal. Please see OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission* for more information.[9]

Section 26 – Customer collateral report – customer

The customer collateral report required under this section could be made available to the customer or indirect intermediary through either direct electronic access available to the customer or indirect intermediary at any time or a daily report sent to the customer or indirect intermediary.

Section 27 – Disclosure of investment of customer collateral

We expect that the disclosure required under this section would include statements that customer collateral is permitted to be invested in accordance with section 7 of the Instrument and that any losses resulting from the clearing intermediary's investment of the customer collateral will not be borne or otherwise allocated to the customer.

We are of the view that the requirement to provide disclosure under subsection 27(1) and subsection 27(2) may be satisfied by directing a customer or, if applicable, the indirect intermediary to the disclosure on the clearing intermediary's website.

PART 5
TREATMENT OF COLLATERAL BY A REGULATED CLEARING AGENCY

Part 5 contains requirements for the treatment of customer collateral by regulated clearing agencies.

Section 28 – Collection of initial margin

The requirement that a regulated clearing agency collect initial margin on a gross basis for each customer means that a regulated clearing agency may not, and may not permit its direct intermediaries to, offset initial margin positions of different customers against one another. However, the initial margin collected from a customer may be determined by netting across the various cleared derivative positions of that customer. Further, a regulated clearing agency is not prohibited from collecting variation margin for cleared derivatives on a net basis from its direct intermediaries.

Margin requirements are determined by the regulated clearing agency in accordance with its rules, policies and procedures. For further discussion, please see National Instrument 24-102 *Clearing Agency Requirements* ("NI 24-102") for requirements applicable to clearing agency margin calculation.

Section 29 – Segregation of customer collateral – regulated clearing agency

Records maintained by the regulated clearing agency must make it clear that customer accounts are for the benefit of customers only.

We are of the view that parties should have the benefit of flexibility in their collateral arrangements. However, the principle remains that notwithstanding the legal arrangement under which customer collateral is posted with a regulated clearing agency, the regulated clearing agency must treat customer collateral posted with it as belonging to customers. For example, consider a title transfer collateral arrangement where the title to the customer's property is posted as collateral and legal title is transferred to a regulated clearing agency collecting the collateral. Despite the transfer of legal title from the customer (or clearing intermediary on behalf of the customer) to the regulated clearing agency, the regulated clearing agency must treat the property as customer collateral transferred by, for or on behalf of the customer relating to the customer's cleared derivatives.

Section 30 – Holding of customer collateral – regulated clearing agency

A regulated clearing agency is a permitted depository under the Instrument and may hold collateral itself if it offers depository services. Accordingly, a regulated clearing agency is not required to hold customer collateral at a third-party permitted depository.

The customer collateral of multiple customers may be commingled in an omnibus customer account if each customer's customer collateral is segregated on a recordkeeping basis. Additionally, the recordkeeping obligations in the Instrument require the regulated clearing agency to identify the positions and the value of the collateral held for each individual customer within an omnibus customer account.

[9] OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission*, online: Ontario Securities Commission (http://www.osc.gov.on.ca/en/SecuritiesLaw_11-501.htm).

We expect that a regulated clearing agency that holds customer collateral at a third-party permitted depository in accordance with the Instrument would take reasonable efforts to confirm that the permitted depository:

- qualifies as a permitted depository under the Instrument;
- has appropriate rules, policies and procedures, including robust accounting practices, to help ensure the integrity of the customer collateral and minimize and manage the risks associated with the safekeeping and transfer of the collateral;
- maintains securities in an immobilised or dematerialised form for their transfer by book entry;
- protects customer collateral against custody risk through appropriate rules and procedures consistent with its legal framework;
- employs a robust system that ensures segregation between the permitted depository's own property and the property of its participants and segregation among the property of participants, and where supported by the legal framework, supports operationally the segregation of property belonging to a participant's customers on the participant's books and facilitates the transfer of customer collateral;
- identifies, measures, monitors, and manages its risks from other activities that it may perform; and
- facilitates prompt access to customer collateral, when required.

Paragraph 30(b) requires a regulated clearing agency to hold customer collateral relating to cleared derivatives separately from any other type of property that is not customer collateral, including any other property posted by a customer as collateral relating to another investment or financial instrument that is not a cleared derivative. For example, the customer collateral of a customer may be commingled in an omnibus account with the customer collateral of another customer but may not be commingled with collateral belonging to the customer or any other customer relating to a futures contract.

Section 31 – Excess margin – regulated clearing agency

We would interpret the requirement that a regulated clearing agency identify and record the value of excess margin as applying only to the excess margin that the regulated clearing agency holds. For example, a regulated clearing agency would not be required to keep records relating to excess margin held by a clearing intermediary.

Section 32 – Use of customer collateral – regulated clearing agency

Under subsection 32(2), subject to an exception for excess collateral, regulated clearing agencies are only permitted to apply a customer's customer collateral to the cleared derivatives of that customer. Accordingly, the Instrument prohibits the cross-margining of a customer's cleared derivatives and futures positions. The reasoning for this is that the regulatory framework applicable to futures in certain jurisdictions, including Canada, may make customers more susceptible to shortfalls in the event of a clearing intermediary's insolvency and therefore cross-margining could undermine a customer's ability to port its cleared derivatives positions. However, in some jurisdictions, customer protection requirements applicable to futures are equivalent to those applicable to cleared derivatives. Under such regimes, cross-margining may not represent a material risk to porting a customer's positions in cleared derivatives. Therefore, when considering an application for discretionary relief from the prohibition on cross-margining or when making an equivalence determination of a foreign jurisdiction's regulatory requirements for the purpose of substituted compliance, the regulator or securities regulatory authority will take these factors into account.

Use of customer collateral attributable to one customer to satisfy the obligations of another customer is not permitted. Although customer collateral may be held in one omnibus account, such collateral is not available to satisfy customer obligations generally. Therefore, a clearing model that allows recourse to a non-defaulting customer's collateral, including any model that permits fellow customer risk, violates this provision and would not be permitted to be offered to customers. For certainty, fellow customer risk is found in a clearing model that allows the customer collateral of a non-defaulting customer to be used to settle the obligations of a defaulting customer. The pooling of customer collateral held by a regulated clearing agency pursuant to applicable bankruptcy and insolvency laws would not be considered use of customer collateral by the regulated clearing agency and is permitted where required by applicable laws.

Subsection 32(3) allows a regulated clearing agency to place a lien on customer collateral where the lien arises in connection with a cleared derivative. This exception recognizes that certain clearing arrangements involve the granting of security interests in customer collateral. A regulated clearing agency is prohibited from imposing or permitting a lien that is not expressly permitted by the Instrument on customer collateral and should such an improper lien be placed on customer collateral, the regulated clearing agency must take all reasonable steps to promptly address the improper lien. However, a lien over excess collateral is not restricted where the lien is imposed to secure or extend credit to the customer.

Section 33 – Investment of customer collateral – regulated clearing agency

Subsection 33(3) provides that any loss resulting from a permitted investment of customer collateral must not be borne by the customer. This requirement relates only to investments made by a regulated clearing agency using customer collateral, not to collateral provided by a customer. For example, if a customer provided government bonds as collateral, and those bonds lost market value, the regulated clearing agency would not be required to bear those loses. Similarly, where a customer provided collateral to a regulated clearing agency and it was transformed into government bonds to be used as customer collateral, the regulated clearing agency would not be required to bear any loss in market value of the transformed customer collateral.

Although losses in the value of invested customer collateral are not to be allocated to a customer, we are of the view that parties should be free to contract for the allocation of gains resulting from a regulated clearing agency's investment activities in accordance with the Instrument. Where a regulated clearing agency's rules provide for investment loss mutualisation and allocation to clearing intermediaries, this would not violate the requirement.

Section 34 – Use of customer collateral – clearing intermediary default

An example of when a regulated clearing agency may apply customer collateral to settle the obligations of a defaulting clearing intermediary is when a customer's default causes the default of the clearing intermediary, whether directly or through the default of an indirect intermediary. In such case, a regulated clearing agency could use the defaulting customer's collateral, including its customer collateral under the Instrument, to satisfy the clearing intermediary's obligations attributable to the customer's default.

Section 35 – Risk management –NI 24-102 applies

NI 24-102 applies to all regulated clearing agencies providing clearing services to local customers, including to clearing agencies that are exempt from recognition if they clear derivatives for customers.

PART 6
RECORDKEEPING BY A REGULATED CLEARING AGENCY

Part 6 outlines the minimum recordkeeping requirements that apply to regulated clearing agencies. The effectiveness of the customer protections required under the Instrument is predicated on accurate and thorough recordkeeping by regulated clearing agencies.

Section 36 – Retention of records – regulated clearing agency

All records prepared pursuant to this Part and Part 7 must be kept in accordance with industry best practices for record retention in Canada including safety and durability standards.

Since clearing intermediaries are required to maintain records and supporting documentation related to cleared derivatives of their customers for at least 7 years pursuant to section 12, it is not necessary for a regulated clearing agency to retain records after the related cleared derivatives expire or are terminated. It would be redundant for both clearing intermediaries and regulated clearing agencies to keep records for an extended period after expiry or termination of a cleared derivative or after the clearing relationship with a customer ends.

Section 37 – Daily records – regulated clearing agency

We are of the view that accurate recordkeeping requires, at minimum, daily valuations of customer collateral using industry standard best practice methodologies.

With respect to records required to be kept under paragraph 37(2)(b):

- subparagraph (i) refers to any revenue generated by the customer collateral, including, for example, dividend pay-outs relating to securities and coupon payments relating to debt instruments;
- subparagraph (ii) refers to any changes in the value of property forming part of the customer collateral, including, for example, an increase or decrease in the value of a security; and
- subparagraph (iii) refers to charges that have accrued, or may accrue, that are payable by a customer of a direct intermediary and have been agreed to be paid by the customer in respect of the clearing services provided to the customer; such charges may include, for example, transaction or currency exchange charges or charges relating to the settlement or termination of a cleared derivative.

Section 38 – Identifying records – regulated clearing agency

A regulated clearing agency has recordkeeping obligations relating to all customers for which it clears cleared derivatives. The recordkeeping requirement under section 38 extends to any customer collateral held in an account of the regulated clearing agency at a third-party permitted depository.

Paragraph (c) ensures that direct and indirect customers receive equal treatment. Direct intermediaries are required under section 18 to make this information available to indirect intermediaries to which they provide clearing services.

Section 39 – Records of investment of customer collateral – regulated clearing agency

The date of the investment required to be recorded under paragraph 39(a) includes both the trade date and the settlement date. We are of the view that the requirement in paragraph 39(d) would be fulfilled by providing a unique identifier from an industry-accepted identifying standard, such as an ISIN or CUSIP number or, if an identifier is not available, a plain language description of each instrument or asset.

Pursuant to paragraph 33(2)(a) of the instrument, each investment of customer collateral must be in a permitted investment.

Section 40 – Records of currency conversion – regulated clearing agency

We expect that currency conversion trade records would include, at minimum, all of the following:

- LEI of the customer or, if the customer is ineligible to obtain an LEI as determined by the Global Legal Entity Identifier System, the name of the customer;
- the date of the currency exchange;
- the amount and original currency of the funds to be exchanged;
- the exchange rate at which the currency exchange is made;
- the amount and new currency resulting from the exchange;
- the name of the institution which made the exchange or provided the exchange rate.

PART 7
REPORTING AND DISCLOSURE BY A REGULATED CLEARING AGENCY

Part 7 outlines certain disclosure and reporting to be made by a regulated clearing agency to customers, clearing intermediaries and the local regulator or securities regulatory authority. Disclosure required to be provided to customers under this Part is not required on a transaction-by-transaction basis.

The written disclosure required under sections 41 and 45 is necessary only once upon the opening of each customer account, not prior to each cleared derivative transaction. If there are changes to the information contained in the disclosure a customer received, the customer must be promptly informed in writing of such changes. Where there are multiple clearing intermediaries, a direct intermediary may provide disclosure either to a clearing intermediary closer in the clearing chain to the customer or directly to the customer. Written disclosure and notice of changes to such disclosure can be provided in electronic form by delivering copies of required materials or by providing links to online information to the customer or direct intermediary.

Where a regulated clearing agency is already providing clearing services before the Instrument comes into force, new written disclosure is not required to be delivered to customers if the written disclosure delivered prior to the Instrument coming into force meets the requirements for written disclosure set out in this Part.

We acknowledge the confidential nature of the information reported to the local regulator or securities regulatory authority, and each regulator or securities regulatory authority intends to treat it as such, subject to applicable provisions of the legislation adopted by the local jurisdiction, including any applicable freedom of information and protection of privacy legislation. However, information may be shared with self-regulatory organizations or other relevant regulatory authorities.

Section 41 – Disclosure to direct intermediaries by regulated clearing agency

We expect that the information given in the written disclosure would assist customers in evaluating: (i) the level of protection provided, (ii) the manner in which segregation and the transfer of assets is achieved, including the method for determining the value at which customer positions will be transferred, and (iii) any risks or uncertainties associated with such arrangements.

Disclosure helps customers assess the related risks and conduct due diligence when entering into derivatives that are cleared through a direct intermediary of the regulated clearing agency. Examples of the information that we expect the disclosure would provide include all of the following:

- information about the regulated clearing agency including its name, address and principal place of business and contact information;
- a basic overview of the regulated clearing agency's rules, policies and procedures concerning segregation and portability of customers' positions and customer collateral including an explanation of any legal or operational constraints that may impair the ability of the regulated clearing agency to segregate or transfer the positions and related customer collateral of a customer;
- which bankruptcy and insolvency laws apply to the regulated clearing agency and an analysis of applicable laws governing the regulated clearing agency's clearing services including whether the regulated clearing agency is described or named under the *Payment and Clearing Settlement Act* (Canada);[10]
- the regulated clearing agency's rule book;
- information on the regulated clearing agency's rules and procedures for defaults including the process for recovering or transferring customer collateral should a clearing intermediary default and the size and composition of the financial resource package available in the event of a clearing intermediary's default; and
- the interaction of domestic and foreign laws applicable to customer collateral held by the regulated clearing agency and any other information relevant to using the regulated clearing agency's clearing services.

The written disclosure required under subsection 41(1), is necessary only upon the opening of each customer account, or upon any change to the rules, policies or procedures of the regulated clearing agency, rather than prior to each cleared derivative transaction.

Section 42 – Customer information – regulated clearing agency

In order to facilitate a timely transfer of collateral and positions in a default scenario, we expect that a regulated clearing agency would receive complete and timely information from a direct intermediary under subsection 24(1) to identify each customer of a clearing intermediary, and the customer's positions and customer collateral.

Section 43 – Customer collateral report – regulatory

Regular reporting on customer collateral deposits and holdings assists securities regulatory authorities in monitoring customer collateral arrangements and in developing and implementing rules to protect customer assets that are responsive to market practices. To that end, section 43 sets out reporting requirements for regulated clearing agencies regarding customer collateral. A completed Form 94-102F3 will provide the local securities regulatory authority with a snapshot of the value of collateral held or posted by the regulated clearing agency. In Ontario, Form 94-102F3 is required to be filed electronically through the Ontario Securities Commission's Electronic Filing Portal. Please see OSC Rule 11-501 *Electronic Delivery of Documents to the Ontario Securities Commission for more information*.[11]

Section 44 – Customer collateral report – direct intermediary

The customer collateral report required under this section could be made available to a direct intermediary through either direct electronic access available to the direct intermediary at any time or a daily report sent to the direct intermediary.

Section 45 – Disclosure of investment of customer collateral

We expect that the disclosure required under this section would include statements that customer collateral is permitted to be invested in accordance with section 33 of the Instrument and that any losses resulting from the regulated clearing agency's investment of the customer collateral will not be borne or otherwise allocated to the customer. We are of the view that the requirements to provide disclosure under subsection 45(1) and subsection 45(2) may be satisfied by directing a customer to the disclosure on the regulated clearing agency's website.

[10] *Payment and Clearing Settlement Act* (SC 1996 c 6 sch).

[11] *Supra* note 9.

PART 8
TRANSFER OF POSITIONS

Part 8 provides for the transfer of customer collateral and positions from one clearing intermediary to another, either in a default scenario or upon request of the customer.

The efficient and complete transfer of customer collateral and related positions is important in both pre-default and post-default scenarios but is particularly critical during a clearing intermediary's default or when it is undergoing insolvency proceedings.

Section 46 – Transfer of customer collateral and positions

It is our expectation that customer collateral and positions be transferred as seamlessly as possible from the perspective of the customer. This means that we expect that a customer's positions would be maintained on identical economic terms as governed the positions immediately before the transfer. In effecting such a transfer, a regulated clearing agency is permitted to operationally close-out and re-book the positions, provided that the ultimate result is that the customer's positions are maintained on identical economic terms as governed immediately before the transfer.

The regulated clearing agency's ability to transfer customer collateral and related positions in a timely manner may depend on such factors as market conditions, sufficiency of information on the individual constituents, and the complexity or size of the customer's portfolio. We would therefore expect the regulated clearing agency to structure its arrangements for the transfer of customer collateral and positions in a way that makes it highly likely that they will be effectively transferred to one or more other direct intermediaries, taking into account all relevant circumstances. In order to achieve a high likelihood of transferability, the regulated clearing agency would need to have the ability to (i) identify the positions belonging to each customer, (ii) identify and assert the regulated clearing agency's rights to related customer collateral held by or through the regulated clearing agency, (iii) transfer positions and related customer collateral to one or more other direct intermediaries, (iv) identify potential direct intermediaries to accept the positions, (v) disclose relevant information to such direct intermediaries so that they can evaluate the counterparty credit and market risk associated with the customers and positions, respectively and (vi) carry out its default management procedures in an orderly manner. We expect that regulated clearing agency's policies and procedures would provide for the proper handling of customer collateral and related positions of customers of a defaulting direct intermediary.

We expect that operations, policies and procedure of clearing intermediaries and regulated clearing agencies be structured to ensure, to the greatest extent possible, that a default by a clearing intermediary does not affect the positions and collateral of the defaulting clearing intermediary's customers. Generally, default by a direct intermediary would occur when it does not, or is unable to, meet its obligations at a regulated clearing agency.

To ensure that a customer's positions and customer collateral are insulated from a direct intermediary's default, including any winding-up or restructuring proceeding of the defaulting direct intermediary, we expect that a regulated clearing agency would be structured, including by having the necessary rules and procedures in place, to effectively and promptly facilitate the transfer of customer collateral and positions to a direct intermediary that (i) is not in default, as that term is defined in the rules and procedures of the relevant regulated clearing agency and (ii) is not reasonably expected to default on its obligations at a regulated clearing agency as they come due.

Although we stress the importance of the transfer of a customer's positions and customer collateral in a default scenario, we acknowledge that there may be circumstances where the portability of all or a portion of a customer's positions is not possible. Where a regulated clearing agency is not able to transfer positions within a pre-defined transfer period specified in its operating rules, it may take all steps permitted by its rules to actively manage its risks in relation to those positions, including liquidating the customer collateral and positions of the defaulting direct intermediary's customers.

We expect that a direct intermediary would also have policies and procedures in place to facilitate the prompt transfer of customer collateral that it holds to one or more direct intermediaries in the event of its own default.

Where a transfer of customer collateral and positions is facilitated under subsection 46(1), the Instrument requires that reasonable efforts are made to ensure that the customer's instructions are followed with respect to the transfer of the customer's positions and customer collateral to a particular transferee direct intermediary. We are of the view that these instructions may be best obtained at the outset of a clearing relationship, and by allowing a customer to identify direct intermediaries to which it consents *a priori* to such a transfer. If there are circumstances where such instructions would not be obtained, or where a customer's prior instructions would not be followed, we expect those circumstances would be set out in the rules, policies or procedures of the regulated clearing agency. In a default scenario, where a customer has not provided instructions or the transfer of a customer's collateral and positions in accordance with its instructions is not possible, a regulated clearing agency or a direct intermediary may rely on the customer's negative consent (i.e., the customer's silence) in effecting a transfer.

Additionally, a regulated clearing agency or defaulting direct intermediary may promptly transfer the customer's positions and related customer collateral, as a single portfolio or in portions to one or more direct intermediaries.

A regulated clearing agency must have the necessary policies and procedures in place, to facilitate the transfer of the customer collateral and positions of a customer from one direct intermediary to another at the request of the customer. This is also known as a "business-as-usual transfer".

We expect that a customer be able to transfer its customer collateral and positions to another direct intermediary in the normal course of business. Subsection 46(2) requires that a regulated clearing agency be structured, including by having the necessary rules and procedures in place, to facilitate the transfer of customer collateral and related positions upon the customer's request to any one or more non-defaulting direct intermediaries, subject to any notice or other contractual requirements.

Where a business-as-usual transfer of a customer's positions and customer collateral is facilitated under subsection 46(2), we would expect that a regulated clearing agency would promptly transfer the customer's positions and related customer collateral as a single portfolio or in portions to one or more direct intermediaries, as requested by the customer.

A request from a customer to facilitate a business-as-usual transfer of the customer's positions and customer collateral to a particular transferee direct intermediary may also take the form of a consent to transfer obtained by the regulated clearing agency from the customer. When obtaining the consent of the receiving direct intermediary, we would expect the consent to contain information as to which positions and customer collateral are to be transferred.

Section 47 – Transfer from a clearing intermediary

We are of the view that customers of a clearing intermediary should benefit from protections and rights under the Instrument with respect to the transfer of their positions and customer collateral. To that end, in the event of the clearing intermediary's default, the clearing intermediary must be structured to promptly facilitate such a transfer, as a single portfolio or in portions as requested by the customer, to one or more non-defaulting clearing intermediaries.

PART 9
SUBSTITUTED COMPLIANCE

Section 48 – Substituted Compliance

Subsection 48(1) contemplates an exemption from the Instrument in the form of substituted compliance for foreign clearing intermediaries that are regulated under the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Instrument. Substituted compliance applies to the provisions of the Instrument where the clearing intermediary is in compliance with the laws of a foreign jurisdiction set out in Appendix A opposite the name of the foreign jurisdiction. The foreign jurisdictions specified for substituted compliance are determined on a jurisdiction by jurisdiction basis, and depend on a review of the laws and regulatory framework of the jurisdiction.

The exemption only applies where a clearing intermediary is in compliance with the requirements of the laws of the applicable foreign jurisdiction specified in Appendix A and does not incorporate any exemption or discretionary relief granted to a clearing intermediary in connection with the laws of the foreign jurisdiction. Where a clearing intermediary relies on an exemption or discretionary relief from the laws of a foreign jurisdiction set out in Appendix A, it will need to apply to the relevant securities regulatory authorities for similar exemptive or discretionary relief from the Instrument.

In respect of a local customer in a local jurisdiction other than British Columbia, Manitoba and Ontario, a clearing intermediary registered, licensed or otherwise permitted to act as a clearing intermediary in a jurisdiction set out in Appendix A may benefit from substituted compliance under subsection 48(1), if the clearing intermediary offers clearing services to local customers through either a clearing agency that is a qualifying central counterparty or a regulated clearing agency.

Subsection 48(3) contemplates an exemption from the Instrument in the form of substituted compliance for foreign regulated clearing agencies that are recognized or exempt from recognition by a Canadian securities regulatory authority and are in compliance with the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Instrument. Substituted compliance applies to the provisions of the Instrument where the regulated clearing agency is in compliance with the laws of a foreign jurisdiction set out in Appendix A opposite the name of the foreign jurisdiction.

The exemption only applies where a regulated clearing agency is in compliance with the requirements of the laws of the applicable foreign jurisdiction specified in Appendix A and does not incorporate any exemption or discretionary relief granted to a regulated clearing agency in connection with the laws of the foreign jurisdiction. Where a regulated clearing agency relies on an exemption or discretionary relief from the laws of a foreign jurisdiction set out in Appendix A, it will need to apply to the relevant securities regulatory authorities for similar exemptive or discretionary relief from the Instrument.

In accordance with subsections 48(2) and 48(4), the "residual" provisions listed in Appendix A must be complied with when providing clearing services for a local customer, even if a foreign clearing intermediary or foreign regulated clearing agency is in compliance with the laws of a foreign jurisdiction set out in Appendix A.

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:
Aritzia Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 12, 2017
NP 11-202 Preliminary Receipt dated January 12, 2017
Offering Price and Description:
$350,745,000.00 - 20,100,000 Subordinate Voting Shares
Price: $17.45 per Subordinate Voting Share
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Merrill Lynch Canada Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
Haywood Securities Inc.
Promoter(s):
-
Project #2572754

Issuer Name:
CanadaBis Capital Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated January 13, 2017
Received on January 13, 2017
Offering Price and Description:
Maximum Offering: $500,000.00 (5,000,000 common shares)
Minimum Offering: $250,000.00 (2,500,000 commonshares)
Price: $0.10 per Offered Share
Underwriter(s) or Distributor(s):
Richardson GMP Limited
Promoter(s):
Gregory H. Smith
Project #2573699

Issuer Name:
Cautivo Mining Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated January 11, 2017
NP 11-202 Preliminary Receipt dated January 13, 2017
Offering Price and Description:
Distribution of * Common Shares of Cautivo Mining Inc. as a Return of Capital and Distribution of Rights to Subscribe for up to * Common Shares of Cautivo Mining Inc.
Price: $* Per Share
Underwriter(s) or Distributor(s):
Dundee Capital Partners
Promoter(s):
Sierra Metals Inc.
Project #2573488

Issuer Name:
Cayenne Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated January 10, 2017
NP 11-202 Preliminary Receipt dated January 10, 2017
Offering Price and Description:
4,000,000 Common Shares
at a price of $0.10 per Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
Michael Dake
Project #2572646

Issuer Name:
Chemtrade Logistics Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated January 13, 2017
NP 11-202 Preliminary Receipt dated January 13, 2017
Offering Price and Description:
$400,030,000.00 - 21,800,000 Subscription Receipts, each representing the right to receive one trust unit
Price: $18.35 per Subscription Receipt
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Raymond James Ltd.
GMP Securities L.P.
Promoter(s):
-
Project #2572406

Issuer Name:
Exemplar U.S. High Yield Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 13, 2017 to Final Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated March 16, 2016
Received on January 16, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Arrow Capital Management Inc.
Project #2441463

Issuer Name:
FÉRIQUE Emerging Markets Fund
Principal Regulator - Quebec
Type and Date:
Amendment #1 dated January 10, 2017 to Final Simplified Prospectus dated October 21, 2016
Received on January 10, 2017
Offering Price and Description:
Series A @ Net Asset Value
Underwriter(s) or Distributor(s):
Services D'Investissement Ferique
Services d'investissment FÉRIQUE
Promoter(s):
Gestion Ferique
Project #2523908

Issuer Name:
Northern Dynasty Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated January 11, 2017
NP 11-202 Preliminary Receipt dated January 11, 2017
Offering Price and Description:
US$* - * Common Shares
Price: US$* per Offered Share
Underwriter(s) or Distributor(s):
Cantor Fitzgerald Canada Corporation
TD Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
CIBC World Markets Inc.
Haywood Securities Inc.
Promoter(s):
-
Project #2573081

Issuer Name:
Northern Dynasty Minerals Ltd.
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated January 12, 2017
NP 11-202 Preliminary Receipt dated January 12, 2017
Offering Price and Description:
US$32,560,000.00 - 17,600,000 Common Shares
Price: US$1.85 per Offered Share
Underwriter(s) or Distributor(s):
Cantor Fitzgerald Canada Corporation
TD Securities Inc.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
CIBC World Markets Inc.
Haywood Securities Inc.
Promoter(s):
-
Project #2573081

Issuer Name:
Superior Gold Inc.
Principal Regulator - Ontario
Type and Date:
Amendment and Restated Preliminary Prospectus dated January 9, 2017
NP 11-202 Preliminary Receipt dated January 12, 2017
Offering Price and Description:
$*-* Common Shares Issued from Treasury and 32,600,000 Common Shares Issuable on Deemed Exercise of Outstanding Special Warrants
Price: $* per Treasury Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Cormark Securities Inc.
Haywood Securities Inc.
TD Securities Inc.
Sprott Private Wealth LP
Promoter(s):
Christopher Bradbrook
Project #2570585

Issuer Name:
AGF Flex Asset Allocation Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated January 9, 2017 to Final Simplified Prospectus dated April 18, 2016
NP 11-202 Receipt dated January 12, 2017
Offering Price and Description:
Mutual Fund Series, Series F, Series O, Series Q and Series W Securities
Underwriter(s) or Distributor(s):
AGF Funds Inc.
Promoter(s):
-
Project #2455518

Issuer Name:
Barometer Disciplined Leadership Balanced Fund
Barometer Disciplined Leadership Equity Fund
Barometer Disciplined Leadership Tactical Income Growth Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 10, 2017
NP 11-202 Receipt dated January 13, 2017
Offering Price and Description:
Class A, F and I Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2557831

Issuer Name:
Canoe Premium Income Fund (formerly, Canoe Canadian Dividend Fund)
Principal Regulator - Alberta
Type and Date:
Amendment #1 dated December 22, 2016 to Final Simplified Prospectus dated June 23, 2016
NP 11-202 Receipt dated January 11, 2017
Offering Price and Description:
Series A, F and I @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Canoe Financial LP
Project #2482362

Issuer Name:
Cominar Real Estate Investment Trust
Principal Regulator - Quebec
Type and Date:
Final Shelf Prospectus dated January 10, 2017
NP 11-202 Receipt dated January 11, 2017
Offering Price and Description:
$1,000,000,000.00 - Units, Debt Securities, Warrants, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2568950

Issuer Name:
Dundee Acquisition Ltd.
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 12, 2017 to Final Long Form Prospectus dated November 25, 2016
NP 11-202 Receipt dated January 13, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Dundee Corporation
Project #2544312

Issuer Name:
Dynamic Active Canadian Dividend Fund
Dynamic Active Crossover Bond Fund
Dynamic Active Global Dividend Fund
Dynamic Active Preferred Shares Fund
Dynamic Active U.S. Dividend Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 11, 2017
NP 11-202 Receipt dated January 11, 2017
Offering Price and Description:
Series O Units
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
1832 Asset Management L.P.
Promoter(s):
1832 ASSET MANAGEMENT L.P.
Project #2554469

Issuer Name:
Dynamic Premium Bond Private Pool
Dynamic Premium Bond Private Pool Class
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated January 13, 2017
NP 11-202 Receipt dated January 13, 2017
Offering Price and Description:
Series F units and shares, Series I units and Series FT shares @ net asset value
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
Promoter(s):
-
Project #2565427

Issuer Name:
FÉRIQUE Emerging Markets Fund
Principal Regulator - Quebec
Type and Date:
Amendment #1 dated January 10, 2017 to Final Simplified Prospectus dated October 21, 2016
NP 11-202 Receipt dated January 13, 2017
Offering Price and Description:
Series A @ Net Asset Value
Underwriter(s) or Distributor(s):
Services D'Investissement Ferique
Services d'investissment FÉRIQUE
Promoter(s):
Gestion Ferique
Project #2523908

Issuer Name:
Horizons Absolute Return Global Currency ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 4, 2017
NP 11-202 Receipt dated January 11, 2017
Offering Price and Description:
Class E units and Advisor Class units @ net asset value
Underwriter(s) or Distributor(s):
-
Promoter(s):
AlphaPro Management Inc.
Project #2539715

Issuer Name:
Horizons China High Dividend Yield Index ETF
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated January 10, 2017
NP 11-202 Receipt dated January 13, 2017
Offering Price and Description:
Exchange traded securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2562996

Issuer Name:
Horizons Gold ETF
Horizons Silver ETF
Horizons Crude Oil ETF
Horizons Natural Gas ETF
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated January 1, 2017 to Final Long Form Prospectus dated July 7, 2016
NP 11-202 Receipt dated January 10, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
HORIZONS ETFs MANAGEMENT (CANADA) INC.
Project #2495615

Issuer Name:
Horizons Morningstar Hedge Fund Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated January 4, 2017 to Final Long Form Prospectus dated May 12, 2016
NP 11-202 Receipt dated January 11, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
ALPHAPRO MANAGEMENT INC.
Project #2467397

Issuer Name:
Norbord Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated January 11, 2017
NP 11-202 Receipt dated January 12, 2017
Offering Price and Description:
US$500,000,000.00 -Common Shares, Debt Securities, Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2569031

Issuer Name:
Redwood Floating Rate Preferred Fund (formerly Redwood Diversified Income Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #2 dated December 22, 2016 to Final Simplified Prospectus dated May 11, 2016
NP 11-202 Receipt dated January 10, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Redwood Asset Management Inc.
Promoter(s):
-
Project #2466746

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Profplan Capital Corporation	Exempt Market Dealer	January 11, 2017
Name Change	From: Bloom Burton & Co. Limited To: Bloom Burton Securities Inc.	Investment Dealer	January 2, 2017
Change in Registration Category	Baker Gilmore & Associates Inc.	From: Investment Fund Manager, Portfolio Manager and Commodity Trading Manager To: Investment Fund Manager, Portfolio Manager, Commodity Trading Manager and Exempt Market Dealer	January 12, 2017

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 MFDA – Amendments to MFDA Rule 2.3 (Power of Attorney/Limited Trading Authority/Discretionary Trading) – OSC Staff Notice of Commission Approval

OSC STAFF NOTICE OF COMMISSION APPROVAL

THE MUTUAL FUND DEALERS ASSOCIATION OF CANADA (MFDA)

AMENDMENTS TO MFDA RULE 2.3
(POWER OF ATTORNEY/LIMITED TRADING AUTHORITY/DISCRETIONARY TRADING)

The Ontario Securities Commission has approved the proposed amendments to MFDA Rule 2.3 and consequential amendments to MFDA Policy No. 2 (Minimum Standards for Account Supervision) and MFDA Policy No. 5 (Branch Review Requirements). The objectives of the amendments are to promote clarity and understanding among Members and Approved Persons of MFDA requirements with respect to the limited circumstances in which Approved Persons may act under powers of attorney or as trustees or executors for clients.

The proposed amendments to MFDA Rule 2.3, MFDA Policy No. 2 and MFDA Policy No. 5 were published for comment on March 10, 2016 for a 90-day period at (2016) 39 OSCB 2448. Five comment letters were received. A copy of the MFDA's summary of and responses to the comment letters, and a blacklined copy of the proposed amendments showing changes made to the version published for comment can be found at http://www.osc.gov.on.ca. The amendments are effective immediately.

In addition, the British Columbia Securities Commission, the Alberta Securities Commission, the Financial and Consumer Affairs Authority of Saskatchewan, the Financial and Consumer Services Commission of New Brunswick, the Manitoba Securities Commission, the Nova Scotia Securities Commission, and the Prince Edward Island Office of the Superintendent of Securities Office did not object to or approved the amendments.

13.3 Clearing Agencies

13.3.1 CDS – Material Amendments to CDS Procedures Relating to Transfer Agents – Notice of Approval

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED
AND
CDS CLEARING AND DEPOSITORY SERVICES INC.

NOTICE OF APPROVAL

MATERIAL AMENDMENTS TO CDS PROCEDURES RELATING TO TRANSFER AGENTS

Introduction

Pursuant to Appendix "A" of Schedule "B" of the CDS Recognition Order (RO) the Commission approved on December 22, 2016, amendments to the CDS Procedures ("CDS Transfer Agent Procedures") to implement new transfer agent (TA) standards. The Amendments were published for public comment in a Notice and Request for Comments on August 4, 2016.

Reasons for the Amendments

CDS is considered a systemically important Financial Market Infrastructure (FMI) in the Canada capital markets and therefore must adhere to the Principles for Financial Market Infrastructures (PFMIs), published in April 2012 by the Committee on Payments and Market Infrastructures of the International Organization of Securities Commissions (CPMI-IOSCO)[1].

Principle #17 of the PFMIs requires FMIs to identify sources of operational risk both internal and external and to mitigate the impact of risk through the use of systems, policies, procedures, and controls.

Because CDS provides direct access to its systems for TAs to effect depository activities related to securities under the TA's control, CDS needs to have the ability to impose certain standards to ensure that external parties that connect to CDS do not pose undue operational risks to CDS.

Summary of Comments

CDS received two (2) comment letters in response to the proposed TA standards in the Notice and Request for Comments. A summary of the comments submitted, together with CDS's response, is attached at **Appendix A**.

No changes have been made with respect to the Amendments outlined in the Notice and Request for Comments.

Effective Date

These procedures are effective following approval by all CDS' recognizing regulators.

[1] http://www.bis.org/cpmi/publ/d101a.pdf

APPENDIX A

SUMMARY OF COMMENTS AND RESPONSES

List of Commenters:

1. National Issuer Services Limited

2. Securities Transfer Agent Association of Canada (STAC)

Capitalized terms used and not otherwise defined shall have the meaning given in the Request for Comments published on the OSC website on August 4, 2016.

Notice and Request for Comment – Proposed CDS Transfer Agent Standards

Comment	CDS Response
A commenter requested that CDS provide details of how the proposed requirements measure against and mitigates the specific PFMI risks that have been identified.	CDS provided specific reference to PFMI 17 and to the reliance risk assumed by CDS in the Description of the Proposed Amendments and the Background section of the Notice. The proposed standards mitigate this reliance risk.
A commenter requested that CDS confirm that the exemptions proposed in the notice will not be modified or eliminated.	CDS cannot confirm that the exemption from certain requirement extended to existing CDS-approved transfer agents will not be modified or eliminated. While we have made accommodation for existing transfer agents, in the event that domestic or international regulation or guidance requires it, CDS must remain in a position to modify our standards.
A commenter noted that the requirement to obtain evidence of good standing from a regulator is outside of transfer agents' control.	CDS acknowledges the concern in respect of obtaining evidence of good standing from transfer agents' primary regulator; this requirement is, however, central to CDS's proposed standards, and is a requirement of each of CDS's Participants.
A commenter requested clarification regarding the requirement for a Financial Institution Bond.	Transfer agents are not regulated for prudential purposes. The Financial Institution Bond requirement, which is a part of the CDS Participant Agreement (and therefore not a new requirement for Limited Purpose Transfer Agent Participants) addresses the indirect operational and financial risks posed to CDS by our interaction with the transfer agent community. Unlike Rule 11.2.4, the intent of the FIB requirement (the requirements for which currently appear in the Participation Agreement) is to account for risks such as confirmation of erroneous deposits and late or missed entitlement payments.
A commenter requested clarification regarding the acceptability of audited financial statements of a transfer agent's parent entity.	CDS will consider, on a case-by-case basis, the situation in which audited financial statements are only available for a parent entity. We do not propose to change the proposed requirement at this time.
A commenter noted the absence of a proposed timeline for requiring existing CDS-approved transfer agents that are not trust companies to provide the annual third party verification, the FIB and annual audited financial statements.	CDS did not include a specific timeline in order to ensure that the implementation of the requirements, and the provision of appropriate documentation, did not unduly affect the operations of individual transfer agents. CDS will take account of individual entities' responses and requirements in determining any such timeline.

Comment	CDS Response
A commenter requested clarification as to whether being regulated by the Securities Exchange Commission (SEC) whose mandate includes supervision of transfer agents would be sufficient regulation of internal controls.	CDS will consider on a case by case basis whether regulation of a transfer agent outside of Canadian jurisdiction would constitute sufficient regulation of internal controls. CDS is not, however, in a position to make specific reference to particular jurisdictions or regulators.

13.3.2 The Canadian Depository for Securities Limited and CDS Clearing and Depository Services Inc. – Variation Order

THE CANADIAN DEPOSITORY FOR SECURITIES LIMITED
(CDS LTD.)

AND

CDS CLEARING AND DEPOSITORY SERVICES INC.
(CDS CLEARING)

VARIATION ORDER

The Ontario Securities Commission (Commission) issued an order pursuant to section 144 of the *Securities Act* (Ontario) on December 20, 2016 (Order) varying the current recognition order of CDS Ltd. and CDS Clearing (collectively, CDS) to reflect CDS Clearing's amalgamation with its wholly-owned subsidiary, CDS Securities Management Solutions, Inc. (Amalgamation). The Commission also approved pursuant to section 4.6 of Schedule "B" Terms and Conditions of the CDS's Recognition Order changes to CDS Clearing's constating documents due to the Amalgamation.

The Order is published in Chapter 2 of this Bulletin.

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Chapter 25

Other Information

25.1 Approvals

25.1.1 MD Financial Management Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager for approval to act as trustee of a pooled fund and future pooled funds to be managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

December 23, 2016

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, Ontario
M5H 4E3

Attention: Rebecca Cowdery / Roma Lotay

Dear Sirs/Mesdames:

Re: MD Financial Management Inc. (the "Applicant")

Application under paragraph 213(3)(b) of the Loan and Trust Corporations Act (Ontario) for approval to act as trustee

Application #2016/0622

Further to your application dated November 4, 2016 (the "**Application**") filed on behalf of the Applicant, and based on the facts set out in the Application and the representation by the Applicant that the assets of MDPIC GTAA Pool and any other future mutual fund trusts that the Applicant may manage from time to time, the securities of which will be offered pursuant to prospectus exemptions, will be held in the custody of a trust company incorporated and licensed or registered under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II or III of the *Bank Act* (Canada), or a qualified affiliate of such bank or trust company, the Ontario Securities Commission (the "**Commission**") makes the following order:

Pursuant to the authority conferred on the Commission in paragraph 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of MDPIC GTAA Pool and any other future mutual fund trusts which may be managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"AnneMarie Ryan"
Commissioner
Ontario Securities Commission

"Janet Leiper"
Commissioner
Ontario Securities Commission

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