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The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

416-593-8314 or Toll Free 1-877-785-1555

Contact Centre – Inquiries, Complaints:

Fax: 416-593-8122
TTY: 1-866-827-1295

Office of the Secretary:

Fax: 416-593-2318

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One Corporate Plaza
2075 Kennedy Road
Toronto, Ontario
M1T 3V4

Customer Relations
Toronto 1-416-609-3800
Elsewhere in Canada/U.S. 1-800-387-5164
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1.1 Notices

1.1.1 CSA Consultation Paper 51-404 Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

CSA Consultation Paper 51-404 *Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers* is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of the Consultation Paper.

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CSA Consultation Paper 51-404
Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers

April 6, 2017

PART 1 - Introduction

The current Canadian Securities Administrators (**CSA** or **we**) Business Plan identifies a review of the regulatory burden on reporting issuers as one of the CSA's key initiatives for 2016-2019.[1] Changes brought on by shifts in market conditions, investor demographics, technological innovation and globalization all have a real impact on reporting issuers. As capital markets evolve, our approach to regulation needs to reflect the realities of business for Canadian reporting issuers to remain competitive. Regulatory requirements and the associated compliance costs should be balanced against the significance of the regulatory objectives sought to be realized and the value provided by such regulatory requirements to investors and other stakeholders.

The purpose of this CSA Consultation Paper (the **Consultation Paper**) is to identify and consider areas of securities legislation applicable to non-investment fund reporting issuers[2] that could benefit from a reduction of undue regulatory burden, without compromising investor protection or the efficiency of the capital market. Part 2 of this Consultation Paper is focused on considering options to reduce the regulatory burden associated with both capital raising in the public markets (i.e., prospectus related requirements) and the ongoing costs of remaining a reporting issuer (i.e., continuous disclosure requirements).

Appendix A to this Consultation Paper provides a snapshot of the size and types of reporting issuers who operate in the public market. We note that the Consultation Paper focuses only on the various securities legislation requirements applicable to non-investment fund reporting issuers. Separately, the CSA are also considering ways to reduce regulatory burden in other areas of securities legislation, such as reducing the disclosure obligations for investment funds.

Through recent policy initiatives, the CSA have taken steps to support reporting issuers while maintaining investor protection. For example, we have:

- liberalized the prospectus marketing regime by increasing the range of permissible pre-marketing and marketing activities in connection with public offerings,
- introduced new exemptions for use by reporting issuers and amended or modified certain existing prospectus exemptions available to reporting issuers, and
- tailored disclosure and other requirements to alleviate certain requirements for venture issuers in the prospectus and continuous disclosure regimes.

Similarly, the CSA are currently:

- reviewing the current resale regime for prospectus-exempt securities to determine the extent to which the resale provisions continue to be relevant in today's markets and to assess the market impact of alternative regulatory approaches, and
- creating a new national filing system to replace the core CSA national systems.

[1] http://www.securities-administrators.ca/uploadedFiles/General/pdfs/CSA_Business_Plan_2016-2019.pdf

[2] In the main body of the Consultation Paper, reference to "reporting issuer(s)" means a "reporting issuer" as defined in securities legislation, other than investment funds. In Appendices A and B of this Consultation Paper, reference to "reporting issuer(s)" means a "reporting issuer" as defined in securities legislation.

Appendix B to this Consultation Paper briefly discusses and highlights the details of these regulatory initiatives.

While we have undertaken a number of policy initiatives to decrease regulatory burden for reporting issuers, the CSA recognize that there is more we can do to address other potential sources of regulatory burden for reporting issuers, while being mindful of the impact on investor protection. This Consultation Paper is the first step in this process. We are seeking feedback from market participants and stakeholders to identify specific areas of securities legislation where the regulatory burden on reporting issuers may be out of proportion to the regulatory objectives sought to be achieved. We will consider all comments received in assessing the scope and timing of any further work to reduce regulatory burden. However, while this Consultation Paper sets out a range of potential options and requests comments on these and any other options for consideration that we have not identified, we note that no definitive decisions have been made as to whether to move forward on any particular regulatory initiative.

Comments must be submitted in writing by July 7, 2017. We encourage commenters to provide comments on the full range of options identified in this Consultation Paper.

PART 2 – Potential options to reduce regulatory burden

We set out below some potential regulatory options which may reduce regulatory burden for reporting issuers:

2.1 Extending the application of streamlined rules to smaller reporting issuers

2.2 Reducing the regulatory burdens associated with the prospectus rules and offering process

(a) Reducing the audited financial statement requirements in an initial public offering (**IPO**) prospectus
(b) Streamlining other prospectus requirements
(c) Streamlining public offerings for reporting issuers
(d) Other potential areas

2.3 Reducing ongoing disclosure requirements

(a) Removing or modifying the criteria to file a business acquisition report (**BAR**)
(b) Reducing disclosure requirements in annual and interim filings
(c) Permitting semi-annual reporting

2.4 Eliminating overlap in regulatory requirements

2.5 Enhancing electronic delivery of documents

While this Consultation Paper discusses some initiatives relating to financial information required under securities legislation, we note that accounting standards for use by entities that prepare financial statements in accordance with Canadian generally accepted accounting principles (**GAAP**) are established by the Accounting Standards Board (**AcSB**), an independent body, and not by the CSA. The AcSB determines the contents of the CPA Canada Handbook – Accounting (the **Handbook**) and has approved the standards set out in Part I of the Handbook (i.e. International Financial Reporting Standards or **IFRS**) as accounting standards for publicly accountable enterprises.

In this Part, we set out a number of potential options for reducing regulatory burden for reporting issuers, including specific consultation questions to gauge the nature and scope of the issues to be addressed in each of these areas. We are also soliciting general feedback on which of these options should be prioritized (and, if so, the reasons why), whether such issues can be addressed in the short-term or medium-term, what the impact on investors may be, and any other areas of securities legislation which should also be considered.

General consultation questions

1. Of the potential options identified in Part 2:
   (a) Which meaningfully reduce the regulatory burden on reporting issuers while preserving investor protection?
   (b) Which should be prioritized and why?

2. Which of the issues identified in Part 2 could be addressed in the short-term or medium-term?

3. Are there any other options that are not identified in Part 2 which may offer opportunities to meaningfully reduce the regulatory burden on reporting issuers or others while preserving investor protection? If so, please explain the nature and extent of the issues in detail and whether these options should constitute a short-term or medium-term priority for the CSA.

2.1 Extending the application of streamlined rules to smaller reporting issuers

Under Canadian securities legislation, venture issuers are permitted to comply with continuous disclosure requirements that are generally less onerous than those imposed on other reporting issuers. For example, venture issuers have:[3]

- longer filing deadlines for annual and interim financial statements
- a higher threshold for significant acquisition reporting
- no requirement to file an annual information form (**AIF**)
- ability to file a quarterly highlights document to meet interim management's discussion and analysis (**MD&A**) requirements
- different corporate governance requirements
- reduced certification requirements

We currently distinguish venture issuers from non-venture issuers based on their exchange listings. A reporting issuer generally qualifies as a venture issuer as long as it does not have securities listed or quoted on what we consider senior securities exchanges or most foreign exchanges (a **Non-Venture Exchange**).[4] Some of the reasons for the current delineation between venture and non-venture issuers were stability and transparency.

We are considering ways to reduce reporting requirements for smaller reporting issuers based on a different metric. One option would be to adopt a size-based distinction. Under this option, a reporting

[3] For additional details, see Appendix B.

[4] For instance, National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) defines "venture issuer" as a reporting issuer that does not have any of its securities listed or quoted on any of the Toronto Stock Exchange (**TSX**), Aequitas NEO Exchange Inc., a U.S. marketplace, or a marketplace outside of Canada and the U.S. other than the Alternative Investment Market of the London Stock Exchange or the PLUS markets operated by PLUS Markets Group plc.

issuer's size could be measured, for example, by the size of its assets, revenue, market capitalization or a combination of criteria. A size-based distinction would allow smaller reporting issuers listed on senior securities exchanges to utilize the reduced regulatory requirements currently restricted to venture issuers.

For example, we note that the rules and regulations of the U.S. Securities and Exchange Commission (**SEC**) provide reduced reporting requirements for "smaller reporting companies". Smaller reporting companies provide less historical financial information, have longer filing deadlines and have reduced executive compensation and MD&A disclosure requirements. Smaller reporting companies are presently defined as registrant companies (which are analogous to Canadian reporting issuers) with less than US$75 million in common equity public float, or less than US$50 million in revenue in the case of companies without publicly traded equity. The SEC has recently proposed amendments that, if adopted, would expand the number of registrants that qualify as smaller reporting companies by increasing the criteria thresholds to less than US$250 million in common equity public float or US$100 million in revenue for registrant companies with zero public float.

Additionally, the U.S. *Jumpstart Our Business Startups Act* of 2012 introduced a new category of registrant: the emerging growth company (**EGC**). Most companies with annual revenue under US$1 billion qualify as an EGC and benefit from reduced regulatory and reporting requirements under the U.S. *Securities Exchange Act of 1934*.[5] The EGC status is time-limited. While the quantitative thresholds adopted by the SEC for the U.S. market would need to be adjusted to reflect the significantly smaller scale of the Canadian capital market and its reporting issuers, the general approach taken by the SEC might suggest options worth considering in the Canadian context.

With a median market capitalization of $112 million for reporting issuers listed on the TSX[6], a number of TSX-listed reporting issuers could likely benefit from reduced reporting requirements if we were to adopt a size-based distinction similar to the criteria for smaller reporting companies under the SEC rules.

Consultation questions

4. Would a size-based distinction between categories of reporting issuers be preferable to the current distinction based on exchange listing? Why or why not?

5. If we were to adopt a size-based distinction:

    (a) What metric or criteria should be used and why? What threshold would be appropriate and why?
    (b) What measures could be used to prevent reporting issuers from being required to report under different regimes from year to year?
    (c) What measures could be used to ensure that there is sufficient transparency to investors regarding the disclosure regime to which the reporting issuer is subject?
    (d) How could we assist investors in understanding the distinction made and the requirements applicable to each category of reporting issuer?

6. If the current distinction for venture issuers is maintained, should we extend certain less onerous venture issuer regulatory requirements to non-venture issuers? Which ones and why?[7]

[5] The modified requirements available to EGCs include reduced disclosure with respect to financial statements, MD&A, and executive compensation.
[6] http://www.tsx.com/listings/listing-with-us, as of March 31, 2017.
[7] See section 2.2 for a discussion on expanding the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers for IPO prospectuses.

2.2 Reducing the regulatory burdens associated with the prospectus rules and offering process

(a) Reducing the audited financial statement requirements in an IPO prospectus

The venture issuer regulation amendments introduced in 2015 reduced the number of years of financial information and related analysis required in a venture issuer IPO prospectus from three to two years. In addition, National Instrument 41-101 *General Prospectus Requirements* contains an exemption based on size from the requirement to audit the second and third most recently completed financial years.

We understand that an issuer may choose to list on a Non-Venture Exchange at the time of its IPO despite having relatively low revenues. We could consider allowing issuers that intend to list on a Non-Venture Exchange to present a reduced number of years of audited financial statements in their IPO prospectus if they have pre-IPO revenues under a certain threshold. Alternatively, we could allow all issuers to do so. These issuers could still be subject to the continuous disclosure requirements of a non-venture issuer post-IPO. However, it is unclear to us whether this would contribute to more efficient capital raising in the public market in isolation.

Consultation questions

7. Is it appropriate to extend the eligibility criteria for the provision of two years of financial statements to issuers that intend to become non-venture issuers? If so:

    (a) How would this amendment assist in efficient capital raising in the public market?
    (b) How would having less historical financial information on non-venture issuers impact investors?
    (c) Should we consider a threshold, such as pre-IPO revenues, in determining whether two years of financial statements are required? Why or why not?
    (d) If a threshold is appropriate, what threshold should be applied to determine whether two years of financial statements are required, and why?

8. How important is the ability to perform a three year trend analysis?

(b) Streamlining other prospectus requirements

In addition, there are other prospectus requirements that we can consider removing or modifying to reduce the issuer's preparation costs while still providing potential investors with clear, understandable and comprehensive disclosure necessary to make an informed investment decision. These options include:

- increasing BAR thresholds for non-venture issuers (also discussed in a continuous disclosure context below)
- removing the requirement for interim financial statements to be reviewed by an auditor
- removing the requirement to include pro forma financial statements for significant acquisitions
- tailoring disclosure requirements for non-IPO prospectuses to only focus on the following information: an overview of the issuer's business, key information regarding the issuer's management, disclosure of any conflicts of interest, a description of securities distributed and relevant rights, and the principal risks facing the business

Consultation questions

9. Should auditor review of interim financial statements continue to be required in a prospectus? Why or why not?

10. Should other prospectus disclosure requirements be removed or modified, and why?

(c) Streamlining public offerings for reporting issuers

The prospectus requirement, including the statutory rights investors receive under this regime, is a fundamental pillar of our current regulatory regime. Historically, the short form prospectus regime was designed to facilitate efficient capital raising for reporting issuers while providing investors with all of the protections of a prospectus, including statutory rights of withdrawal, rescission and damages, and the protections afforded by the statutory liability regime for the contents of the prospectus (i.e., the liability imposed by securities legislation on the reporting issuer, the underwriters, the board of directors, etc.).

(i) Short form prospectus offering system

We have heard from some stakeholders that the time and cost to prepare a short form prospectus may be impediments to capital raising.

We are considering whether to eliminate or modify existing short form prospectus disclosure requirements where such requirements are duplicative, are not providing potential investors with timely, relevant information or may be misaligned with current market practices. For example, risk factor disclosure in short form prospectuses may often seem repetitive or boilerplate and the required disclosure of price ranges and trading volumes is available on the website of the reporting issuer's trading market.

We could also consider whether to extend the short form prospectus offering system to additional reporting issuers not currently qualified to use it (i.e., re-examine the short form eligibility requirements).

Consultation questions

11. Is the current short form prospectus system achieving the appropriate balance (i.e., between facilitating efficient capital raising for reporting issuers and investor protection)? If not, please identify potential short form prospectus disclosure requirements which could be eliminated or modified in order to reduce regulatory burden on reporting issuers, without impacting investor protection, including providing specific reasons why such requirements are not necessary.

12. Should we extend the availability of the short form prospectus offering system to more reporting issuers? If so, please explain for which issuers, and why this would be appropriate.

(ii) Potential alternative prospectus model

We are also considering whether conditions are right to revisit the merits of a prospectus offering model for reporting issuers that is more closely linked to continuous disclosure.

In 2000, the CSA published for comment a concept proposal called Integrated Disclosure System (**IDS**).[8] This regime was designed to complement the existing prospectus regime. Under the IDS, reporting issuers were required to provide investors with more comprehensive and timely continuous disclosure by using an abbreviated offering document integrating the reporting issuer's disclosure base.

In 2002, the British Columbia Securities Commission also published for comment a proposal on, among other things, a system called Continuous Market Access (**CMA**).[9] This regime was designed to replace the existing prospectus regime. CMA provided reporting issuers with access to markets by disclosing the offering in a press release. No offering document was required, but reporting issuers were subject to an enhanced continuous disclosure regime and the obligation to disclose all material information about the reporting issuer.

The IDS and CMA proposals were intended to de-emphasize the traditional focus on primary market disclosure and put increased focus on a reporting issuer's continuous disclosure, in recognition of the fact that the majority of trading was taking place in the secondary rather than primary markets. They were also meant to provide reporting issuers with faster and more flexible access to public markets.
Ultimately, these proposals did not go forward and, instead, the CSA subsequently updated the short form prospectus system.

Differences between the securities legislation of the various CSA jurisdictions may have been an obstacle at the time the IDS and CMA were proposed. However, since the early 2000s, the CSA have implemented different rules to further develop the harmonized approach to securities legislation across the country, such as national disclosure rules, the passport regime and registration requirements. Also, all CSA jurisdictions have adopted a statutory secondary market liability regime, which did not exist at the time the IDS and CMA were proposed.

We are now considering if the conditions are right to amend the current prospectus offering regime for reporting issuers. The intention is that the disclosure provided to investors be more concise and focused than under the current short form prospectus regime. For example, in cases other than a significant acquisition or significant changes to the reporting issuer's business, the disclosure in a prospectus could be limited to relevant items concerning the offering and the offered securities, such as:

- a detailed description of the securities offered
- intended use of proceeds
- the plan of distribution
- consolidated capitalization
- earnings coverage
- material risk factors associated with the offering and the offered securities
- conflicts of interest, if any
- investors' statutory rights of withdrawal, damages and rescission

[8] *Canadian Securities Administrators Notice and Request for Comment 44-101, 51-401 – Concept Proposal for an Integrated Disclosure System*, Canadian Securities Administrators, January 28, 2000
[9] *New Proposals for Securities Regulation – A new way to regulate*, British Columbia Securities Commission, June 5, 2002

Under an alternative prospectus model, reporting issuers and dealers participating in an offering would assume liability for any misrepresentation in the reporting issuer's disclosure base and all written marketing communications pertaining to the offering or the securities offered.

Consultation questions

13. Are conditions right to propose a type of alternative prospectus model for reporting issuers? If an alternative prospectus model is utilized for reporting issuers:

    (a) What should the key features and disclosure requirements of any proposed alternative prospectus model be?
    (b) What types of investor protections should be included under such a model (for example, rights of rescission)?
    (c) Should an alternative offering model be made available to all reporting issuers? If not, what should the eligibility criteria be?

*(iii) Facilitating at-the-market (**ATM**) offerings*

An ATM offering is a continuous distribution by a reporting issuer of equity securities into a public trading market, such as the TSX, at prevailing market prices. ATM offerings are made through a registered securities dealer, typically acting on an agency basis. Distribution agreements governing ATM offerings usually provide reporting issuers with significant flexibility to establish parameters with respect to the timing, price and amount of securities to be sold during a specified period, subject to some limitations.

Part 9 of National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) establishes certain rules for ATM offerings under Canadian shelf prospectuses, including an upper limit on the market value of securities which may be distributed under an ATM offering,[10] and a prohibition against market stabilization activities in connection with such an offering. NI 44-102 does not establish a comprehensive framework for ATM offerings as it does not exempt ATM offerings from certain provisions of securities legislation applicable to all prospectus offerings, such as the prospectus delivery requirement and statutory rights of rescission and withdrawal. However, these are impracticable in the context of an ATM offering. Consequently, a reporting issuer wishing to conduct an ATM offering must obtain exemptive relief from these requirements. As a condition of granting the requested relief, exemptive relief granted by CSA members in connection with ATM offerings has typically limited the number of securities that may be sold under the ATM offering on any given trading day (as a percentage of the aggregate daily trading volume) and required monthly reports in respect of sales made through the ATM offering.

ATM offerings are well established in the United States, but much less common in Canada. A number of Canadian issuers have chosen to conduct ATM offerings exclusively in the United States, rather than in Canada. Some industry participants have observed that the limited number of ATM offerings in Canada may be partly attributable to regulatory burden associated with the requirement to obtain prior exemptive relief and the conditions typically imposed in connection with such relief. They have also suggested that some of the current restrictions on ATM offerings could be relaxed or eliminated without compromising necessary investor protection and the integrity of the capital markets. We are seeking feedback from

[10] The market value of equity securities distributed under an ATM offering may not exceed 10% of the aggregate market value of the reporting issuer's outstanding equity securities of the same class as the class of securities distributed, calculated in accordance with section 9.2 of NI 44-102 as of the last trading day of the month before the month in which the first trade under the ATM offering is made.

participants in the Canadian capital markets as to whether there are measures we should adopt to facilitate ATM offerings in Canada.

Consultation questions

14. What rule amendments or other measures could we adopt to further streamline the process for ATM offerings by reporting issuers? Are there any current limitations or requirements imposed on ATM offerings which we could modify or eliminate without compromising investor protection or the integrity of the capital markets?

15. Which elements of the exemptive relief granted for ATM offerings should be codified in securities legislation to further facilitate such offerings?

(d) Other potential areas

We are also considering other potential areas for reducing regulatory burden associated with capital raising, including:

- facilitating cross-border offerings
- further liberalizing the pre-marketing and marketing regime

Consultation questions

16. Are there rule amendments and/or processes we could adopt to further streamline the process for cross-border prospectus offerings, without compromising investor protection, by: (i) Canadian issuers and (ii) foreign issuers?

17. As noted in Appendix B, in 2013 a number of amendments were made to liberalize the pre-marketing/marketing regime in Canada. Are there rule amendments and/or processes we could adopt to further liberalize the prospectus pre-marketing and marketing regime in Canada, without compromising investor protection, for: (i) existing reporting issuers and (ii) issuers planning an IPO, and if so in what way?

2.3 Reducing ongoing disclosure requirements

(a) Removing or modifying the criteria to file a BAR

Currently, reporting issuers are required to file a BAR within 75 days after completion of an acquisition that meets the significance tests set out in Part 8 of NI 51-102. This requirement was introduced in 2004 to provide investors in the secondary market, on a relatively timely basis, the type of information currently required for primary market investors in a prospectus offering. Disclosure required in a BAR includes historical financial statements of the business acquired and, in the case of a BAR filed for a non-venture reporting issuer, pro forma financial statements.

In July 2011, the CSA requested comments on proposed National Instrument 51-103 *Ongoing Governance and Disclosure Requirements for Venture Issuers* (**NI 51-103**). In NI 51-103, the CSA proposed to increase the significance thresholds for acquisitions made by venture issuers from 40% to 100%. Although the CSA did not implement NI 51-103, it amended NI 51-102 in 2015 to increase the

significance thresholds for acquisitions made by venture issuers as proposed in NI-51-103. The increased significance thresholds reduced the instances when venture issuers must file a BAR. No increase of the significance tests for non-venture issuers was proposed at that time, as these changes were made in the context of rule amendments targeting venture issuers only.

Reporting issuers frequently apply for and are granted certain relief from the BAR requirements. We have heard from some stakeholders that the preparation of a BAR entails significant time and cost, and that the information necessary to comply with the BAR requirements may, in some instances, be difficult to obtain. Some of these stakeholders have also questioned the value of the disclosure BARs provide. In the July 2011 consultation on NI 51-103, a number of commenters had also indicated that they did not think pro forma financial statements provide useful information to investors. Other stakeholders have indicated that they continue to believe that there are situations where a BAR provides relevant information to investors seeking to make an investment decision.

We are now considering whether we should conduct a broader review of the BAR requirements. We could consider changes such as:

- removing the requirement to file a BAR entirely in certain circumstances
- removing one or more of the significance tests
- increasing the threshold applied to the three significance tests for non-venture issuers
- providing alternative tests based on specific industry criteria

Consultation questions

18. Does the BAR disclosure, in particular the financial statements of the business acquired and the pro forma financial statements, provide relevant and timely information for an investor to make an investment decision? In what situations does the BAR not provide relevant and timely information?

19. Are there certain BAR requirements that are more onerous or problematic than others?

20. If the BAR provides relevant and timely information to investors:

    (a) Are each of the current significance tests required to ensure that significant acquisitions are captured by the BAR requirements?
    (b) To what level could the significance thresholds be increased for non-venture issuers while still providing an investor with sufficient information with which to make an investment decision?
    (c) What alternative tests would be most relevant for a particular industry and why?
    (d) Do you think that the disclosure requirements for a significant acquisition under Item 14.2 of 51-102F5 (information circular) should be modified to align with those required in a BAR, instead of prospectus-level disclosure? Why or why not?

(b) Reducing disclosure requirements in annual and interim filings

We have heard from stakeholders that the volume of information included in annual and interim filings may obscure the focus on the key information needed by a reporting issuer's investors and analysts. We are considering whether there are ways in which we could refocus annual and interim filings on such key information. Possible options include:

- removing the discussion of prior period results from the MD&A
- removing the summary of quarterly results for the eight most recently completed quarters in the MD&A
- allowing all reporting issuers to meet interim MD&A requirements by preparing a "quarterly highlights" document (currently, this option is limited to venture issuers only)

Consultation questions

21. Are there disclosure requirements for annual and interim filing documents that are overly burdensome for reporting issuers to prepare? Would the removal of these requirements deprive investors of any relevant information required to make an investment decision? Why or why not?

22. Are there disclosure requirements for which we could provide more guidance or clarity? For example, we could clarify that discussion of only significant trends and risks is required, or that the filing of immaterial amendments to material contracts is not required under NI 51-102.

(c) Permitting semi-annual reporting

A key element proposed in NI 51-103 was the change from a quarterly financial reporting requirement to a semi-annual reporting requirement.[11] Although the CSA ultimately adopted some of the proposals within NI 51-103 as amendments to the existing regulatory regime for venture issuers, the CSA did not change the quarterly reporting requirement because of concerns expressed by certain commenters. These commenters thought the time period between financial reports would be too long and that the proposals might adversely affect the market perception of venture issuers, their governance, liquidity and comparability to more senior reporting issuers. Some of these commenters did not think that the requirement for interim financial reports was unduly burdensome or costly.

Although the CSA did not implement NI 51-103, it amended NI 51-102 in 2015 to allow venture issuers to replace interim MD&A with quarterly highlights.

There has been considerable discussion over the past several years with respect to perceived short-term focus among publicly-traded entities due to the current emphasis on quarterly financial results, and whether this trend is inconsistent with the creation of value by businesses over the long term. Some academic commentators and business leaders have suggested that quarterly reporting encourages reporting issuers to focus too heavily on short-term financial results, to the detriment of the reporting issuer's business over the longer-term. Others have questioned this analysis, and suggested that the elimination of quarterly reporting would deprive investors of timely financial disclosure, while doing little to push publicly-traded entities into better long-term decision making. We note that a semi-annual reporting model has been a long-established practice in the United Kingdom and Australia.[12] Given this ongoing debate, we are soliciting feedback from participants in the Canadian capital markets as to whether the time is right to revisit this issue.

We could provide the option to report on either a quarterly or semi-annual basis to all reporting issuers, or limit this option to smaller reporting issuers. Reporting issuers would still be required to comply with

[11] A semi-annual reporting requirement was also a key feature of CSA Multilateral Consultation Paper 51-403 *Tailoring Venture Issuer Regulation* on May 31, 2010 by the securities regulators in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan.

[12] In the United Kingdom, mandatory quarterly reporting was introduced in 2007. However, this requirement was abandoned in 2014 in favour of a semi-annual reporting requirement. UK reporting companies are still permitted to report on a quarterly basis.

material change reporting requirements and exchange listing requirements to disclose all material information.

Consultation questions

23. What are the benefits of quarterly reporting for reporting issuers? What are the potential problems, concerns or burdens associated with quarterly reporting?

24. Should semi-annual reporting be an option provided to reporting issuers and if so under what circumstances? Should this option be limited to smaller reporting issuers?

25. Would semi-annual reporting provide sufficiently frequent disclosure to investors and analysts who may prefer to receive more timely information?

26. Similar to venture issuers, should non-venture issuers have the option to replace interim MD&A with quarterly highlights?

2.4 Eliminating overlap in regulatory requirements

There are areas of similarity between the disclosure requirements of IFRS and Form 51-102F1 *Management's Discussion & Analysis*, such as:

- financial instruments
- critical accounting estimates
- change in accounting policies
- contractual obligations

Additionally, there is potential overlap in the disclosure requirements in the NI 51-102 forms. For instance, both the MD&A and the AIF require a form of discussion of the risks associated with the reporting issuer.

We are considering the removal of some or all of this overlap, or consolidating the requirements of the MD&A, AIF and financial statements into one document.

Consultation questions

27. Would modifying any of the above areas in the MD&A form requirements result in a loss of significant information to an investor? Why or why not?

28. Are there other areas where the MD&A form requirements overlap with existing IFRS requirements?

29. Should we consolidate the MD&A, AIF (if applicable) and financial statements into one document? Why or why not?

30. Are there other areas of overlap in continuous disclosure rules? Please indicate how we could remove overlap while ensuring that disclosure is complete, relevant, clear, and understandable for investors.

2.5 Enhancing electronic delivery of documents

National Policy 11-201 *Electronic Delivery of Documents* (**NP 11-201**) provides guidance to securities industry participants that want to use electronic delivery to fulfill delivery requirements in securities legislation. NP 11-201 applies to documents required to be delivered under securities legislation, including prospectuses, financial statements, and proxy-related materials that are delivered by securities industry participants or those acting on their behalf, such as transfer agents.

One area where we have facilitated the use of electronic delivery is in the introduction of "notice-and-access". In 2013, amendments were made to National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (**NI 54-101**) to give reporting issuers the option to use the "notice-and-access" method to post proxy-related materials on a website instead of having to mail materials to registered holders (under NI 51-102) and to beneficial owners (under NI 54-101). Under NI 51-102, notice-and-access may also be used to post annual financial statements and MD&A in lieu of sending such documents to all security holders.

Under the "notice-and-access" method, reporting issuers must deliver a printed notice and voting documents to beneficial owners who have not given their prior consent to delivery. Also, beneficial owners may request a paper copy of certain documents, such as information circulars, annual financial statements and MD&A, at no charge. Factors outside of securities legislation, such as the delivery requirements under business corporations legislation, electronic commerce legislation, investor preferences and market practice, may also impact a reporting issuer's obligation to print and deliver certain documents to beneficial owners or a reporting issuer's choice to use notice-and-access.

Despite these developments to facilitate electronic delivery of documents, we have heard from some market participants that reporting issuers continue to incur significant costs associated with printing and delivering various documents required under securities legislation.

Given the widespread use of Internet, social media and technology in communications generally, we are considering whether new methods of electronic delivery should be permitted to further reduce the use of paper to fulfill delivery requirements, thus reducing costs for reporting issuers, and promoting a more environmentally responsible approach to document delivery. At the same time, we acknowledge that not all investors are online or may prefer to receive their documents in paper format for other valid reasons.

Consultation questions

31. Are there any aspects of the guidance provided in NP 11-201 which are unclear or misaligned with market practice?

32. The following consultation questions pertain to the "notice-and-access" model under securities legislation and consideration of potential changes to this model:

    (a) Since the adoption of the "notice-and-access" amendments, what aspects of delivering paper copies represent a significant burden for issuers, if any? Are there a significant number of investors that continue to prefer paper delivery of proxy materials, financial statements and MD&A?

(b) Do you think it is appropriate for a reporting issuer to satisfy the delivery requirements under securities legislation by making proxy materials, financial statements and MD&A publicly available electronically without prior notice or consent and only deliver paper copies of these documents if an investor specifically requests paper delivery? If so, for which of the documents required to be delivered to beneficial owners should this option be made available?
(c) Would changes to the "notice-and-access" model as described in question (b) above pose a significant risk of undermining the protection of investors under securities legislation, even though an investor may request to receive paper copies?
(d) Are there other rule amendments that could be made in NI 54-101 or NI 51-102 to improve the current "notice-and-access" options available for reporting issuers?

33. Are there other ways electronic delivery of documents could be further enhanced through securities legislation?

PART 3 – Providing feedback

We invite interested parties to make written submissions on the consultation questions identified throughout this Consultation Paper. You must submit your comments in writing by July 7, 2017. If you are sending your comments by email, you should also send an electronic file containing the submissions in Microsoft Word.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission (New Brunswick)
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Securities Commission of Newfoundland and Labrador
Superintendent of Securities, Northwest Territories
Superintendent of Securities, Yukon
Superintendent of Securities, Nunavut

Deliver your comments only to the addresses below. Your comments will be distributed to the other participating CSA regulators.

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
Email: comments@osc.gov.on.ca

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22e étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
E-mail: consultation-en-cours@lautorite.qc.ca

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

PART 4 – Questions

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

Jo-Anne Matear Manager, Corporate Finance Ontario Securities Commission 416-593-2323 jmatear@osc.gov.on.ca	**Stephanie Tjon** Senior Legal Counsel, Corporate Finance Ontario Securities Commission 416-593-3655 stjon@osc.gov.on.ca
Tamara Driscoll Accountant, Corporate Finance Ontario Securities Commission 416-596-4292 tdriscoll@osc.gov.on.ca	**Mike Moretto** Manager, Corporate Disclosure British Columbia Securities Commission 604-899-6767 mmoretto@bcsc.bc.ca
Elliott Mak Senior Legal Counsel, Corporate Finance British Columbia Securities Commission 604-899-6501 emak@bcsc.bc.ca	**Cheryl McGillivray** Manager, Corporate Finance Alberta Securities Commission 403-297-3307 cheryl.mcgillivray@asc.ca
Anne-Marie Landry Senior Securities Analyst, Corporate Finance Alberta Securities Commission 403-297-7907 annemarie.landry@asc.ca	**Tim Robson** Senior Legal Counsel, Corporate Finance Alberta Securities Commission 403-355-6297 timothy.robson@asc.ca
Tony Herdzik Deputy Director, Corporate Finance Financial and Consumer Affairs Authority of Saskatchewan 306-787-5849 tony.herdzik@gov.sk.ca	**Patrick Weeks** Corporate Finance Analyst Manitoba Securities Commission 204-945-3326 patrick.weeks@gov.mb.ca
Valérie Dufour Analyst, Corporate Finance Autorité des marchés financiers 514-395-0337, ext. 4389 valerie.dufour@lautorite.qc.ca	**Marc-Olivier St-Jacques** Analyst, Corporate Finance Autorité des marchés financiers 514-395-0337, ext. 4424 marco.st-jacques@lautorite.qc.ca
Ella-Jane Loomis Senior Legal Counsel, Securities Financial and Consumer Services Commission (New Brunswick) 506-658-2602 ella-jane.loomis@fcnb.ca	**Kevin Redden** Director, Corporate Finance Nova Scotia Securities Commission 902-424-5343 kevin.redden@novascotia.ca

APPENDIX A
SNAPSHOT OF THE PUBLIC MARKET

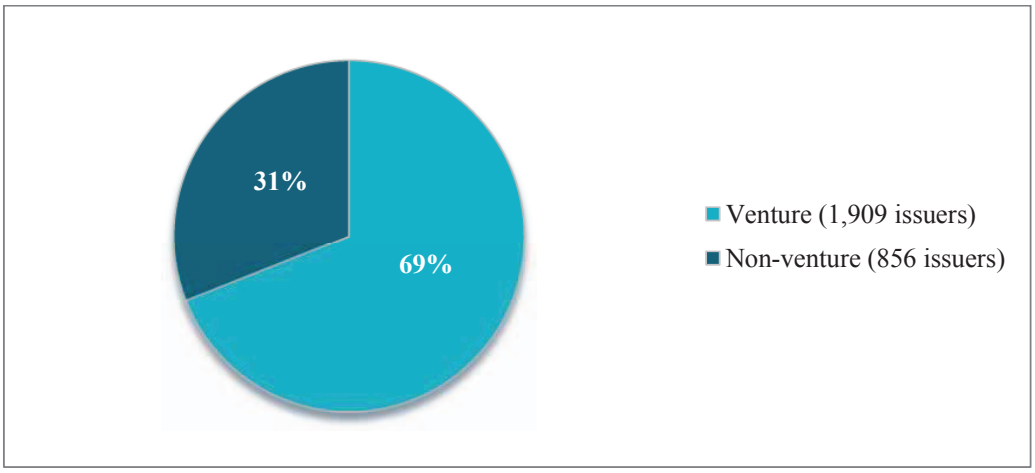
The following charts provide an overview (as of December 31, 2016) of:

- the market capitalization of reporting issuers by industry (both in terms of dollar values and by percentage of total market capitalization), and
- the composition of venture and non-venture issuers (by number of reporting issuers).

Market capitalization and number of reporting issuers, broken down by industry as at December 31, 2016

Industry [13]	Market cap ($ billions)	Market cap (% of total)	Number of reporting issuers	Number of reporting issuers (% of total)
Financial services	$809	31%	132	5%
Diversified industries	$556	21%	370	13%
Oil & Gas	$325	12%	247	9%
Mining	$280	11%	1,319	48%
Utilities & Pipelines	$228	8%	25	1%
Communications & Media	$179	7%	37	1%
Real estate	$96	4%	97	4%
Technology	$85	3%	252	9%
Clean Technology & Renewable Energy	$36	1%	108	4%
Life Sciences	$25	1%	160	6%
Forest Products & Paper	$23	1%	18	1%
TOTAL	**$2,642**		**2,765**	

Status of reporting issuers, as at December 31, 2016



[13] Source: TMX Market Intelligence Group Report for December 2016 and Canadian Securities Exchange (**CSE**) data provided by the CSE. Data excludes exchange-traded funds, closed-end funds, capital pool companies and special purpose acquisition corporations.

APPENDIX B
SUMMARY OF RECENT CSA POLICY INITIATIVES TO SUPPORT ISSUERS

New or modified prospectus exemptions

Modernization of the exempt market[14] regulatory regime has been a major priority for the CSA. In keeping with this, CSA members have undertaken a series of significant exempt market initiatives related to both introducing new prospectus exemptions and modifying or harmonizing existing ones.[15] The purpose of these policy initiatives was to facilitate greater access to capital through the exempt market for issuers, particularly for start-ups and small and medium-sized enterprises, while maintaining appropriate investor protection.

A number of the prospectus exemptions were specifically designed for use by reporting issuers, including:

- the existing security holder exemption (**ESH Exemption**),
- the rights offering prospectus exemption (**Rights Offering Exemption**), and
- the investment dealer exemption (**Investment Dealer Exemption**).

Other prospectus exemptions are available to both reporting issuers and non-reporting issuers seeking to raise capital:

- the crowdfunding exemption (**Crowdfunding Exemption**),
- the offering memorandum exemption (**OM Exemption**), and
- the friends, family and business associates exemption (**FFBA Exemption**).

ESH Exemption

The ESH Exemption allows reporting issuers listed on specified exchanges to raise funds from existing security holders holding equity securities subject to certain conditions. The ESH Exemption is a cost-effective tool to raise capital because there are no requirements to provide investors with information at the time of distribution except that the reporting issuer is required to issue a news release about the proposed sale of the securities and file any offering materials (other than the subscription agreement) with securities regulators on the same day it provides materials to investors.

Rights Offering Exemption

The CSA have streamlined the rights offering prospectus exemption for non-investment fund reporting issuers in order to reduce the time and cost associated with the use of this exemption. These amendments included:

- removing the current regulatory review process prior to the use of the exemption,
- increasing investor protection through the addition of civil liability for secondary market disclosure,

[14] References to the exempt market refer to securities sold in reliance on a prospectus exemption.
[15] See CSA Staff Notice 45-314 – *Updated List of Current CSA Exempt Market Initiatives*, published on January 28, 2016.

- introducing a user-friendly form of rights offering circular,
- introducing a new notice that reporting issuers must file on SEDAR and send to security holders informing them about how to access the rights offering circular electronically, and
- increasing the dilution limit from 25% to 100%.

Investment Dealer Exemption[16]

The Investment Dealer Exemption allows reporting issuers listed on a Canadian exchange to raise money by distributing securities to investors who have obtained suitability advice on the investment from an investment dealer. The reporting issuer must have filed all required periodic and timely disclosure documents and issue a news release with key information regarding the distribution, including the use of proceeds and disclosure of any material facts which have not generally been disclosed.

Crowdfunding Exemption[17]

The Crowdfunding Exemption[18] enables start-ups and small and medium enterprises in their early-stages of development to raise capital online from a large number of investors through a single registered funding portal. A limit on the total amount that can be raised is imposed on issuers and investors will be subject to investment limits as a means of limiting their exposure to a highly risky investment. Multilateral Instrument 45-108 - *Crowdfunding* (**MI 45-108**) is available to all issuers that are incorporated or organized in Canada, with their head office in Canada, a majority of their directors resident in Canada, and their principal operating subsidiary (if any) incorporated or organized in Canada or the USA. A crowdfunding offering document must be provided to investors and an issuer may also provide purchasers with a term sheet, video or other materials summarizing the information in the crowdfunding offering document.

OM Exemption

The OM Exemption was designed to facilitate capital-raising by allowing issuers to solicit investments from a wider range of investors than under other prospectus exemptions, provided that investors receive a disclosure document at the point of sale (an offering memorandum), as well as a risk acknowledgement form in respect of their initial investment. The offering memorandum has to be accompanied by audited financial statements; however the offering memorandum requires less disclosure relative to what is required to be included in a prospectus.

FFBA Exemption

The FFBA Exemption permits issuers to distribute securities to the issuer's directors, executive officers, control persons and founders as well as certain family members, close personal friends and close business associates of such persons, subject to a number of conditions. It was designed to allow early-stage issuers greater access to capital from their network of family, close personal friends and close business associates. There are no requirements to provide investors with information at the time of distribution and the exemption can be used without intermediary involvement.

[16] Alberta, British Columbia, Manitoba, New Brunswick and Saskatchewan have adopted the Investment Dealer Exemption.
[17] MI 45-108 was introduced in Ontario, Quebec, Manitoba, Nova Scotia and New Brunswick in January 2016, and was adopted in Alberta in October 2016 and by Saskatchewan in February 2017.
[18] British Columbia, Saskatchewan, Manitoba, Quebec, New Brunswick and Nova Scotia have introduced a start-up crowdfunding exemption to facilitate capital raising for start-up and early stage businesses. The start-up crowdfunding exemption is not available to reporting issuers.

Venture issuer regulation

In 2015, the CSA implemented targeted amendments to the continuous disclosure and prospectus requirements to streamline and tailor disclosure by venture issuers. These amendments were designed to focus disclosure of venture issuers on information that reflects the needs and expectations of venture issuer investors and eliminate disclosure obligations that may be less valuable to those investors, allowing management of venture issuers to focus on the growth of their business. Specifically, the amendments included:

Quarterly highlights	•allow venture issuers to meet the interim MD&A requirement by filing a "quarterly highlights" document
Executive compensation	•allow venture issuers to use a new tailored form of executive compensation disclosure, Form 51-102F6V *Statement of Executive Compensation - Venture Issuers*
Business acquisition reporting	•increase the significance threshold of an acquisition from 40% to 100% in determining whether an acquisition is significant for purposes of filing a BAR
IPO prospectus	•reduce the number of years of company history and audited financial statements required in a venture issuer IPO prospectus from three to two years
Corporate governance	•require venture issuers to have an audit committee of at least three members, the majority of whom cannot be executive officers, employees or control persons of the venture issuer or of an affiliate of the venture issuer

Pre-marketing and marketing amendments to prospectus rules

In 2013, the CSA adopted amendments to the prospectus rules and related policies which increased the range of permissible “pre-marketing” and “marketing” activities in connection with prospectus offerings by issuers other than investment funds. By helping to facilitate the prospectus offering process for issuers and investment dealers, these amendments sought to foster capital raising activities.

The purposes of the rule amendments and policy changes were to:

- ease certain regulatory burdens and restrictions that issuers and investment dealers faced in trying to successfully complete a prospectus offering, while at the same time providing protection to investors, and
- clarify certain matters in order to provide clear rules and a “level playing field” for market participants involved in a prospectus offering.

Among other things and subject to certain conditions, the amendments:

- expressly allow non-reporting issuers, through an investment dealer, to determine interest in a potential initial public offering by communicating with accredited investors,
- expressly allow investment dealers to use marketing materials and conduct road shows after the announcement of a bought deal, during the “waiting period”, and following the receipt of a final prospectus (subject to appropriate limitations designed to address investor protection concerns),

- specify when bought deals and bought deal syndicates can be enlarged (for reporting issuers relying on the "bought deal" exemption in Part 7 of National Instrument 44-101 *Short Form Prospectus Distributions*), and
- provide greater clarity regarding certain practices used in connection with bought deals.

Review of the resale regime

Securities that are distributed using prospectus exemptions are generally subject to resale restrictions in accordance with the resale provisions in National Instrument 45 102 – *Resale of Securities* (**NI 45-102**). NI 45-102 requires that an issuer be a reporting issuer for 4 months before securities can be freely traded (the **Seasoning Period**). Without this requirement, securities issued under a prospectus exemption could be resold in the public market with little or no public disclosure about the issuer. The resale provisions also include a requirement to hold securities for a specified period of time (the **Restricted Period**). Among other rationales, the Restricted Period is meant to allow sufficient time for the thorough dissemination and absorption in the marketplace of information about the issuer and the securities distributed under a prospectus exemption, and protect those purchasing in the secondary market. With a Restricted Period, securities cannot be sold other than pursuant to a further prospectus exemption until 4 months have elapsed since the distribution date. The Restricted Period may be indefinite if the issuer is not a reporting issuer.

The CSA are undertaking a review of the current resale regime for prospectus-exempt securities to determine the extent to which the resale provisions continue to be relevant in today's markets and to assess the market impact of alternative regulatory approaches.

National Systems Renewal Program (NSRP)

Through various service providers, CSA members operate a number of information technology systems which are widely used across all CSA jurisdictions. These include:

- the System for Electronic Document Analysis and Retrieval,
- the System for Electronic Disclosure by Insiders,
- the National Registration Database,
- the National Registration Search,
- the National Cease Trade Order Database, and
- the Disciplined List.

CSA members have initiated a program to replace these national systems with a single, intuitive and secure filing system for market participants and regulators.

1.1.2 OSC Staff Notice 11-739 (Revised) – Policy Reformulation Table of Concordance and List of New Instruments

OSC STAFF NOTICE 11-739 (REVISED)

POLICY REFORMULATION TABLE OF CONCORDANCE AND LIST OF NEW INSTRUMENTS

The following revisions have been made to the Table of Concordance and List of New Instruments. A full version of the Table of Concordance and List of New Instruments as of March 31, 2017 has been posted to the OSC Website at www.osc.gov.on.ca.

Table of Concordance

Item Key
The third digit of each instrument represents the following: 1-National/Multilateral Instrument; 2-National/Multilateral Policy; 3-CSA Notice; 4-CSA Concept Release; 5-Local Rule; 6-Local Policy; 7-Local Notice; 8-Implementing Instrument; 9-Miscellaneous

Reformulation

Instrument	Title	Status
	None	

New Instruments

Instrument	Title	Status
81-408	Consultation on the Option of Discontinuing Embedded Commissions	***Published for comment January 12, 2017 (Published on the OSC Website on January 10, 2017)***
11-739	Policy Reformulation Table of Concordance and List of New Instruments	***Published January 12, 2017***
45-322	Potential Concerns with the Structure of Rights Offerings	***Published January 12, 2017***
11-742	Securities Advisory Committee – Revised	***Published January 12, 2017***
11-334	Notice of Local Amendments and Changes in Certain Jurisdictions	***Published January 19, 2017***
51-347	Disclosure of cyber security risks and incidents	***Published January 19, 2017***
94-101	Mandatory Central Counterparty Clearing of Derivatives	***Commission approval published January 19, 2017***
94-102	Derivatives: Customer Clearing and Protection of Customer Collateral and Positions	***Commision approval published January 19, 2017***
54-305	Meeting Vote Reconciliation Process	***Published January 26, 2017***
23-101	Trading Rules – Amendments	***Commission approval published January 26, 2017***
23-317	Order Protection Rule: Market Share Threshold for the period April 1, 2017 to March 31, 2018	***Published February 2, 2017***
24-315	Update on Enhanced Segregation and Portability Initiatives for Clearing Agencies Serving the Domestic Futures Markets	***Published February 9, 2017***
13-502	Fees – Amendments	***Ministerial approval published February 16, 2017***
13-503	(Commodity Futures Act) Fees – Amendments	***Ministerial approval published February 16, 2017***

New Instruments

Instrument	Title	Status
81-102	Investment Funds – Amendments	***Ministerial approval published February 16, 2017***
81-101	Mutual Fund Prospectus Disclosure – Amendments	***Ministerial approval published February 16, 2017***
41-101	General Prospectus Requirements – Amendments	***Ministerial approval published February 16, 2017***
81-106	Investment Fund Continuous Disclosure – Amendments	***Ministerial approval published February 16, 2017***
51-348	Staff's Review of Social Media Used by Reporting Issuers	***Published March 9, 2017***
51-349	Report on the Review of Investment Entities and Guide for Disclosure Improvements	***Published March 16, 2017***
11-777	Statement of Priorities For Financial Year to End March 31, 2018	***Published for comment March 23, 2017***
11-778	Behavioural Insights – Key Concepts, Applications and Regulatory Considerations	***Published March 30, 2017***
23-101	Trading Rule – Amendments	***Ministerial approval published March 30, 2017***

For further information, contact:
Darlene Watson
Project Specialist
Ontario Securities Commission
416-593-8148

April 6, 2017

1.1.3 Notice of Ministerial Approval of NI 94-101 Mandatory Central Counterparty Clearing of Derivatives

NOTICE OF MINISTERIAL APPROVAL OF
NATIONAL INSTRUMENT 94-101
MANDATORY CENTRAL COUNTERPARTY CLEARING OF DERIVATIVES

April 6, 2017

National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives* (the National Instrument) has received Ministerial approval pursuant to section 143.3(3)(a) of the *Securities Act* (Ontario). The National Instrument was made by the Commission on January 19, 2017. Also on January 19, 2017, the Commission adopted Companion Policy 94-101 to the National Instrument.

The National Instrument was published in the Bulletin on January 19, 2017 (see (2017) 40 OSCB 645). The National Instrument is effective April 4, 2017. The text of the National Instrument and Companion Policy 94-101 are reproduced in Chapter 5 of this Bulletin.

1.2 Notices of Hearing

1.2.1 Eco Oro Minerals Corp. – ss. 21.7, 127

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

AND

IN THE MATTER OF
ECO ORO MINERALS CORP.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE

NOTICE OF HEARING
(Sections 21.7 and 127 of the Securities Act)

TAKE NOTICE that the Ontario Securities Commission will hold a hearing pursuant to sections 21.7 and 127 of the *Securities Act*, RSO 1990, c S.5, at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario, commencing on Wednesday, April 19, 2017 at 10:00 a.m., or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is to consider an application made by Courtenay Wolfe and Harrington Global Opportunities Fund Ltd. on March 27, 2017 in respect of the issuance of 10,600,000 common shares of Eco Oro Minerals Corp. to four shareholders on or about March 16, 2017, and for a hearing and review of the decision of the Toronto Stock Exchange made on March 10, 2017 that granted conditional approval for the share issuance.

DATED at Toronto, this 4th day of April, 2017.

"Grace Knakowski"
Secretary to the Commission

1.3 Notices of Hearing with Related Statements of Allegations

1.3.1 Sentry Investments Inc. and Sean Driscoll – ss. 127(1), 127.1

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

AND

IN THE MATTER OF
SENTRY INVESTMENTS INC. and
SEAN DRISCOLL

NOTICE OF HEARING
(Subsections 127(1) and 127.1 of the Securities Act)

TAKE NOTICE THAT the Ontario Securities Commission (the "Commission") will hold a hearing pursuant to subsections 127(1) and 127.1 of the *Securities Act*, RSO 1990, c S.5, at the offices of the Commission located at 20 Queen Street West, 17th Floor, on April 5, 2017 at 9:00 a.m. or as soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is for the Commission to consider whether it is in the public interest to approve the Settlement Agreement dated March 31, 2017, between Staff of the Commission, Sentry Investments Inc. and Sean Driscoll;

BY REASON OF the allegations set out in the Statement of Allegations dated March 31, 2017 and such additional allegations as counsel may advise and the Commission may permit;

AND TAKE FURTHER NOTICE that any party to the proceedings may be represented by 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 that 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 31st day of March, 2017.

"Grace Knakowski"
Secretary to the Commission

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

AND

IN THE MATTER OF
SENTRY INVESTMENTS INC. and
SEAN DRISCOLL

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

Staff ("Commission Staff") of the Ontario Securities Commission (the "Commission") make the following allegations:

I. The Respondents

1. Sentry Investments Inc. ("Sentry") is a mutual fund manager. Since December 8, 2008, Sentry has been registered with the Commission as a Mutual Fund Dealer, Portfolio Manager and Commodity Trading Manager. Sentry has been registered with the Commission as an Investment Fund Manager ("IFM") since December 17, 2010, and as an Exempt Market Dealer since April 19, 2013.

2. Sentry's investment fund products are distributed to investors by dealing representatives ("DRs") registered with third party dealers ("Participating Dealers").

3. Sean Driscoll ("Driscoll") was registered as Sentry's Ultimate Designated Person ("UDP") from January 29, 2013 to December 22, 2016.

II. Legislative Framework

4. IFMs are prohibited from making a payment of money or providing a non-monetary benefit to a DR in connection with the distribution of securities, except in certain permitted circumstances under Part 3 (which deals with Permitted Compensation) and Part 5 (which deals with Marketing and Educational Practices) of National Instrument 81-105 *Mutual Fund Sales Practices* ("NI 81-105"). In particular, subsection 2.1 of NI 81-105:

a. states, among other things, that no member of the organization of a mutual fund (the "Member") shall, in connection with the distribution of securities of the mutual fund make a payment of money to a DR, provide a non-monetary benefit to a DR or pay for or make reimbursement of a cost or expense incurred or to be incurred by a DR (subsection 2.1(1)); but

b. provides exceptions and allows a Member to pay for or make reimbursement of a cost or expense incurred or to be incurred by a DR, if permitted by Part 3 or 5 of NI 81-105 and allows a Member to provide a non-monetary benefit to a DR, if permitted by Part 5 of NI 81-105 (subsection 2.1(2)).

5. Pursuant to section 1.1 of NI 81-105, a Member includes an IFM.

6. Section 5.2 of NI 81-105 allows an IFM to provide a non-monetary benefit to a DR by allowing the DR to attend a conference organized and presented by the IFM (a "Mutual Fund Sponsored Conference") provided that the requirements of that section are met.

7. In addition, section 5.6 of NI 81-105 allows an IFM to provide DRs with non-monetary benefits of a promotional nature and of minimal value, and to engage in business promotion activities that result in a DR receiving a non-monetary benefit if, among other things, the provision of the benefits and activities is neither so extensive nor so frequent as to cause a reasonable person to question whether the provision of the benefits or activities improperly influence the investment advice given by the DR to his or her clients.

III. Respondents' Conduct

(a) The Mutual Fund Sponsored Conference in Beverley Hills

8. In September 2015, Sentry held a mutual fund conference in Beverly Hills, California (the "Sentry Conference"). Sentry did not comply with section 5.2 of NI 81-105 in relation to the Sentry Conference in the following respects:

a. The primary purpose of the Sentry Conference was not the provision of the educational information referred to in subsection 5.2(a) of NI 81-105;

b. Sentry, rather than the Participating Dealers, selected the DRs to attend the Sentry Conference contrary to subsection 5.2(b) of NI 81-105;

c. Sentry paid for some of the DRs' travel, accommodation and personal incidental expenses associated with the DRs' attendance at the Sentry Conference contrary to subsection 5.2(d) of NI 81-105; and

d. The costs relating to the organization and presentation of the Sentry Conference were not reasonable having regard to the purpose of the Sentry Conference contrary to subsection 5.2(e) of NI 81-105.

9. In addition, in connection with the Sentry Conference, Sentry provided gifts to DRs and their guests, non-monetary benefits to guests of the DRs while the DRs were attending the educational sessions at the Sentry Conference and monetary benefits to DRs and/or their guests in the form of gift certificates that did not comply with or were not permitted under NI 81-105.

(b) Sentry's Annual Spending on DRs

10. During the period January 2011 to September 30, 2016, Sentry provided non-monetary benefits to DRs that did not meet the requirements of section 5.6 of NI 81-105 in relation to Sentry's annual spending on DRs ("Annual DR Spending") including Sentry's spending on DRs on one-time events. Sentry also provided monetary benefits to DRs in the form of gift certificates that were not permitted under NI 81-105.

(c) Controls, Supervision and Books and Records relating to Sales Practices

11. During the period January 2011 to October 2016, Sentry failed to put in place an adequate record keeping system and adequate controls and supervision in relation to its sales practices. In addition, during the period January 2015 to September 30, 2015, Sentry failed to impose appropriate systems of controls and supervision to ensure that the Sentry Conference complied with Part 5 of NI 81-105.

12. During the period January 2011 to October 2016, Sentry failed to maintain adequate books and records in relation to its sales practices as were reasonably required to demonstrate Sentry's compliance with NI 81-105. In addition, in 2015, Sentry engaged in conduct that was contrary to the public interest and contrary to Sentry's obligation to maintain adequate books and records for the proper recording of its business transactions and financial affairs relating to its sales practices.

(d) Driscoll's Conduct

13. In each of April 2015 and April 2016, while he was the UDP of Sentry, Driscoll gave Montreal Grand Prix Formula 1 race tickets (the "Montreal F1 Tickets") to a DR which resulted in Sentry providing non-monetary benefits to the DR in breach of section 5.6 of NI 81-105.

IV. Breach of Ontario Securities Law and Conduct Contrary to the Public Interest

14. By engaging in the conduct described above, Sentry breached Ontario securities law and acted contrary to the public interest. In particular:

a. during the period August 2015 to September 2015, Sentry provided non-monetary benefits to DRs and/or their guests in connection with the Sentry Conference that did not meet the requirements of sections 5.2 and 5.6 of NI 81-105 and provided monetary benefits to DRs in the form of gift certificates that were not permitted under Part 3 of NI 81-105 resulting in Sentry providing non-monetary and monetary benefits in breach of section 2.1 of NI 81-105 and contrary to the public interest;

b. during the period January 2011 to September 30, 2016, Sentry provided non-monetary benefits to DRs in relation to its Annual DR Spending and in relation to its spending on DRs on one-time events (including in relation to the Montreal F1 Tickets) that did not meet the requirements of section 5.6 of NI 81-105 and provided monetary benefits to DRs in the form of gift certificates that were not permitted under Part 3 of NI 81-105 resulting in Sentry providing non-monetary and monetary benefits in breach of section 2.1 of NI 81-105 and contrary to the public interest;

c. during the period January 2011 to October 2016, Sentry failed to establish and maintain adequate systems of controls and supervision around its sales practices to ensure compliance with section 2.1 and Part 5 of NI 81-105 in breach of section 32(2) of the *Securities Act*, R.S.O. 1990, c. S-5, as amended (the "Act") and section

11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") and contrary to the public interest; and

d. during the period January 2011 to October 2016, in relation to its sales practices, Sentry failed to maintain adequate books, records and other documents as were reasonably required to demonstrate its compliance with NI 81-105 and for the proper recording of its business transactions and financial affairs in breach of paragraphs 1 and 3 of subsection 19(1) of the Act and contrary to the public interest.

15. During the period April 20, 2015 to September 12, 2016, in connection with the Montreal F1 Tickets, Driscoll,

a. failed to meet his obligations as the UDP of Sentry in breach of section 5.1 of NI 31-103 and contrary to the public interest;

b. as an officer and director of Sentry, did authorize, permit and/or acquiesce in Sentry's breach of section 2.1 of NI 81-105 pursuant to section 129.2 of the Act; and

c. as Sentry's UDP during the period April 20, 2015 to September 12, 2016, he acted contrary to the public interest in failing to disclose Sentry's breach of NI 81-105 through his giving of the Montreal F1 Tickets to a DR to Sentry's board of directors.

16. Commission Staff reserve the right to make such other allegations as Commission Staff may advise and the Commission may permit.

Dated at Toronto, this 31st day of March, 2017

1.5 Notices from the Office of the Secretary

1.5.1 Thomas Arthur Williams et al.

FOR IMMEDIATE RELEASE
March 30, 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 Commission issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above noted matter.

A copy of the Reasons and Decision and the Order dated March 29, 2017 are 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 Sentry Investments Inc. and Sean Driscoll

FOR IMMEDIATE RELEASE
March 31, 2017

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

AND

IN THE MATTER OF
SENTRY INVESTMENTS INC. and
SEAN DRISCOLL

TORONTO – The Office of the Secretary issued a Notice of Hearing for a hearing to consider whether it is in the public interest to approve a settlement agreement entered into by Staff of the Commission and Sentry Investments Inc. and Sean Driscoll in the above named matter.

The hearing will be held on April 5, 2017 at 9:00 a.m. on the 17th floor of the Commission's offices located at 20 Queen Street West, Toronto.

A copy of the Notice of Hearing dated March 31, 2017 and Statement of Allegations of Staff of the Ontario Securities Commission dated March 31, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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1.5.3 Eco Oro Minerals Corp.

FOR IMMEDIATE RELEASE
April 4, 2017

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

AND

IN THE MATTER OF
ECO ORO MINERALS CORP.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE

TORONTO – On April 4, 2017, the Commission issued a Notice of Hearing pursuant to sections 21.7 and 127 of the *Securities Act*, RSO 1990, c S.5 to consider an application filed by Courtenay Wolfe and Harrington Global Opportunities Fund Ltd. on March 27, 2017 in respect of the issuance of 10,600,000 common shares of Eco Oro Minerals Corp. to four shareholders on or about March 16, 2017, and for a hearing and review of the decision of the Toronto Stock Exchange made on March 10, 2017 that granted conditional approval for the share issuance.

The hearing will be held on April 19, 2017 at 10:00 a.m. at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario.

A copy of the Notice of Hearing dated April 4, 2017, the Order dated April 3, 2017 and the Application dated March 27, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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media_inquiries@osc.gov.on.ca

For investor inquiries:

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

Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Mackenzie Financial Corporation and IPC Investment Corporation

Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement in s.3.2.01(1) of NI 81-101 to deliver a fund facts document to investors who hold mutual fund securities of Series A and T6 that are only sold under the SCS option as at the Implementation Date, be automatically rollover to the Series SC and S6 of the Fund – Upon the automatic rollover, investors will benefit from lower management fees – Automatic switches between series of a fund triggering a distribution of securities attracting the requirement to deliver a fund facts – Relief granted from requirement to deliver a fund facts upon the automatic rollover subject to compliance with certain notification and prospectus disclosure requirements.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, s. 3.2.01(1).

March 27, 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
MACKENZIE FINANCIAL CORPORATION
(the Filer)

AND

IPC INVESTMENT CORPORATION
(the Representative Dealer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of Mackenzie North American Corporate Bond Fund (the **Fund**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirement in in subsection 3.2.01(1) of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) for a dealer to deliver or send the most recently filed fund facts document (**Fund Facts**) to a purchaser before a dealer accepts an instruction from a purchaser for the purchase of a security of a mutual fund (the **Pre-sale Fund Facts Delivery Requirement**) in respect of the purchases of Series SC or S6 securities of the Fund that are made pursuant to an Automatic Rollover (defined below) (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

The Filer

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

2. The Filer is registered as an investment fund manager, portfolio manager, exempt market dealer and commodity trading manager in Ontario. The Filer is also registered as a portfolio manager and exempt market dealer in the Other Jurisdictions and as an investment fund manager in Newfoundland and Labrador and Québec.

3. The Filer is the manager, promoter and portfolio manager of the Fund.

4. The head office of the Filer is located in Toronto, Ontario.

5. The head office of the Representative Dealer is located in Mississauga, Ontario.

6. The Filer is not in default of the securities legislation in any of the Jurisdictions.

7. The Representative Dealer is registered as a mutual fund dealer in the Jurisdictions and registered as an exempt market dealer in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Ontario and Saskatchewan.

The Fund

8. The Fund is an open-end mutual fund trust created under the laws of the Province of Ontario

9. The Fund is a reporting issuer under the laws of the Jurisdictions. The securities of the Fund have qualified for distribution pursuant to a simplified prospectus, Fund Facts and annual information form that have been prepared and filed in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**).

10. The units of the Fund are referred to herein, collectively, as the **Securities**. The Securities of the Fund are currently offered under simplified prospectus, Fund Facts and annual information form dated September 29, 2016.

11. The Fund currently offers Series A, D, DA, F, F6, FB, FB5, O, O6, PW, PWF, PWF8, PWX, PWX8 and T6 securities. The Filer may offer additional series in the future.

12. The Fund intends to offer Series PWFB, PWFB5, SC and S6 which will be qualified for distribution by way of an amendment to the simplified prospectus.

13. Series A and T6 securities of the Fund are offered under four different purchase options: the sales charge purchase option (**SCS option**), the low-load 2 purchase option (**LL2**), the low-load 3 purchase option (**LL3**), and the redemption charge purchase option (**RCS** and, together with LL3 and LL2, the **Deferred Sales Charge options**). Under the SCS option, investors may have to pay a negotiated commission to their dealer at the time they purchase securities, while under the Deferred Sale Charge options, no commission is paid by the investor at the time of purchase, but the investor will be required to pay a redemption fee if he or she redeems within a certain period of time from the date of purchase.

14. The Fund is not in default of securities legislation in any of the Jurisdictions.

Automatic Rollover

15. The Filer is filing an amendment on or around March 10, 2017 whereby it will launch Series SC and S6 on the Fund. Series SC and S6 will only available for purchase under the SCS option. On April 3, 2017 (the **Implementation Date**)

the Filer will do a one-time rollover and switch all Series A securities of the Fund held under the SCS option into Series SC of the Fund and all Series T6 securities of the Fund held under the SCS option into Series S6 of the Fund (the **Automatic Rollover**). As of the Implementation Date Series A and T6 securities of the Fund will only be available for purchase under the Deferred Sales Charge options.

16. Investors who previously held Series A and Series T6 securities purchased or held under the SCS option, which will be, on the Implementation Date, moved into Series SC and Series S6 securities, respectively, continue to hold securities of the same Fund with the same underlying pool of assets, the same investment objectives and investment strategies and the same valuation procedures and continue to have the same rights as securityholders as they did prior to the Automatic Rollover, except for the Series Differences (as defined below).

17. The only differences (the **Series Differences**) between Series A and Series SC securities of a Fund and between Series T6 and Series S6 securities of the same Fund after the Implementation Date, are that:

    (a) Series SC and Series S6 securities are available for purchase and are sold only under the SCS Option, while Series A and Series T6 securities are available for purchase and are sold only under the Deferred Sales Charge Options; and

    (b) the management fees for Series SC and Series S6 securities are lower than the respective management fees for Series A and Series T6 securities.

18. Implementation of the Automatic Rollover will have no adverse tax consequences on investors under current Canadian tax legislation.

19. The Automatic Rollover will entail (a) a redemption of the Series A and Series T6 securities of the Fund, immediately followed by a purchase of the Series SC and Series S6 securities, of the Fund. The purchase of Securities done as part of this Automatic Rollover will be a “distribution” under the *Securities Act* (Ontario), which triggers the Pre-Sale Fund Facts Delivery Requirement.

20. Pursuant to the Pre-Sale Fund Facts Delivery Requirement, a dealer is required to deliver the most recently filed Fund Facts of a series of a fund to an investor before the dealer accepts an instruction from the investor for the purchase of securities of that series of the fund.

21. While the Filer will initiate the trade done as part of the Automatic Rollover, the Filer does not propose to deliver the Fund Facts to investors in connection with the purchase of Securities made pursuant to an Automatic Rollover for the following reasons:

    (a) The investment of such investors will be in securities of the same Fund with the same underlying pool of assets;

    (b) the Series SC and Series S6 securities allow investors to benefit from a lower management fee; and

    (c) since the Series A and Series T6 securityholders would have received a simplified prospectus or Fund Facts disclosing the higher level of fees which applied to the Series A and Series T6 securities for which they initially subscribed, the investor would derive little benefit from receiving a further Fund Facts document for the Automatic Rollover.

22. The Automatic Rollover process is administrative in nature and is the only practical way to achieve the required result of moving investors from Series A and Series T6 to Series SC and Series S6 in order to allow them to benefit as soon as possible from lower fees. It would be impractical and time consuming to require each investor to request such a switch. In this scenario, there is a greater risk of investors not benefitting from the lower management fees available to investors in Series SC and Series S6 securities.

23. The simplified prospectus of the Fund includes disclosure that Series A and T6 securities of the Fund are only available for purchase under the Deferred Sales Charge options.

24. The Filer will deliver or will arrange for the delivery of trade confirmations to investors in connection with the trade done further to the Automatic Rollover. Furthermore, details of the changes in series of securities held will be reflected in the account statements sent to investors for the quarter in which the change occurred.

25. The Filer will communicate with dealers about the Automatic Rollover so that dealers will be equipped to appropriately notify existing Series A and Series T6 investors of the Fund of the changes applying to their Series A and Series T6 securities.

26. In the absence of the Exemption Sought, the Filer may not carry out the Automatic Rollover without compliance with the Pre-Sale Fund Facts Delivery Requirement.

Decision

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

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

1. For investors invested in the SCS option of Series A and Series T6 prior to the Implementation Date of the Automatic Rollover, the Filer will liaise with dealers to devise a notification plan for such investors regarding the Automatic Rollover that addresses the following:

    (a) that their Series A and Series T6 securities will be automatically rolled over on the Implementation Date to the Series SC or Series S6, as the case may be, of the same Fund;

    (b) that other than the Series Differences there are no other material differences between Series A and Series T6 and the Series SC and Series S6 securities of the same Fund;

    (c) that they will not receive the Fund Facts when they are automatically rolled over, but that

        (i) they may request the most recently filed Fund Facts for the relevant series by calling a specified toll-free number or by sending a request via email to a specified address;

        (ii) the most recently filed Fund Facts will be sent or delivered to them at no cost;

        (iii) the most recently filed Fund Facts may be found either on the SEDAR website or on the Filer's website; and

        (iv) they will not have the right to withdraw from an agreement of purchase and sale (a Withdrawal Right) in respect of a purchase of series SC or Series S6 securities made pursuant to the Automatic Rollover, but they will have the right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts.

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

2.1.2 Manulife Asset Management Limited et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted to exchange-traded mutual funds for continuous distribution of securities – relief to permit funds' prospectus to include a modified statement of investor rights – relief to permit funds' prospectus to not include an underwriter's certificate – relief from take-over bid requirements for normal course purchases of securities on the TSX – prospectus form and underwriting certificate relief granted subject to manager filing a prescribed summary document for each fund on SEDAR and other terms and conditions set out in decision document and subject to sunset clause tied to the implementation of rule amendments to create new ETF Facts document to replace summary document.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 59(1), 147.
National Instrument 41-101 General Prospectus Requirements, s. 19.1.
Form 41-101F2 Information Required in an Investment Fund Prospectus, Item 36.2.
National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

February 17, 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
MANULIFE ASSET MANAGEMENT LIMITED (the Filer),
MANULIFE MULTIFACTOR CANADIAN LARGE CAP INDEX ETF,
MANULIFE MULTIFACTOR U.S. LARGE CAP INDEX ETF,
MANULIFE MULTIFACTOR U.S. MID CAP INDEX ETF AND
MANULIFE MULTIFACTOR DEVELOPED INTERNATIONAL INDEX ETF (the Proposed ETFs)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of itself, the Proposed ETFs and such other exchange-traded mutual funds as may be established by the Filer or an affiliate of the Filer and managed by the Filer in the future (the **Future ETFs**, and together with the Proposed ETFs, the **ETFs**, each an **ETF**) for a decision under the securities legislation of the principal regulator (the **Legislation**) that:

(a) exempts the Filer and each ETF from the requirement to include a certificate of an underwriter in an ETF's prospectus (the **Underwriter's Certificate Requirement**);

(b) exempts the Filer and each ETF from the requirement to include in an ETF's prospectus the statement respecting purchasers' statutory rights of withdrawal and remedies of rescission or damages in substantially the form prescribed in item 36.2 of Form 41-101F2 *Information Required in an Investment Fund Prospectus* (the **Prospectus Form Requirement**); and

(c) exempts a person or company purchasing ETF Securities (as defined below) in the normal course through the facilities of the TSX or another Marketplace (as defined below) from the Take-Over Bid Requirements (as defined below)

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

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and National Instrument 81-102 *Investment Funds* (**NI 81-102**) have the same meaning if used in this decision, unless otherwise defined.

"Affiliate Dealer" means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the re-sale of Creation Units (as defined below) from time to time.

"Authorized Dealer" means a registered dealer that enters into an agreement with the Filer authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more ETFs on a continuous basis from time to time.

"Designated Broker" means a registered dealer that enters into an agreement with the ETFs to perform certain duties in relation to an ETF, including posting a liquid two-way market for the trading of the ETF Securities listed on the TSX or another Marketplace.

"ETF Facts" means a prescribed summary disclosure document required pursuant to the amendments to the Legislation effective after the date of this decision in respect of one or more classes or series of ETF Securities being distributed under a prospectus.

"ETF Security" means a listed security of an ETF.

"Marketplace" means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operation* that is located in Canada.

"Net Asset Value per ETF Security" means in relation to a particular ETF, the net asset value per ETF Security of a class or series of the ETF, as applicable.

"Other Dealer" means a registered dealer that acts as authorized dealer or designated broker to exchange-traded funds that are not managed by the Filer and that has received relief under a Prospectus Delivery Decision.

"Prescribed Number of ETF Securities" means the number of ETF Securities determined by the Filer from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

"Prospectus Delivery Decision" means a decision granting relief from the Prospectus Delivery Requirement to a Designated Broker, Authorized Dealer, Affiliate Dealer or Other Dealer dated August 24, 2015 or any subsequent decision granting similar relief to a Designated Broker, Authorized Dealer, Affiliate Dealer or Other Dealer.

"Prospectus Delivery Requirement" means the requirement that a dealer, not acting as agent of the purchaser, who receives an order or subscription for a security offered in a distribution to which the prospectus requirement of the Legislation applies, send or deliver to the purchaser or its agent, unless the dealer has previously done so, the latest prospectus and any amendment either before entering into an agreement of purchase and sale resulting from the order or subscription, or not later than midnight on the second business day after entering into that agreement.

"Securityholders" means beneficial and registered holders of ETF Securities.

"Summary Document" means a document, in respect of one or more classes or series of ETF Securities being distributed under a prospectus, prepared in accordance with Appendix A.

"Take-Over Bid Requirements" means the requirements applicable to take-over bids in Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*.

"TSX" means the Toronto Stock Exchange or any successor exchange to the TSX.

Representations

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

The Filer

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

2. The Filer is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador and as a portfolio manager in each of the Jurisdictions.

3. The Filer will be the investment fund manager of the ETFs and the initial portfolio manager of the Proposed ETFs. The Filer is not in default of any of its obligations under the securities legislation of any of the Jurisdictions.

The ETFs

4. Each ETF will be a mutual fund governed by the laws of the Province of Ontario and a reporting issuer under the laws of some or all of the Jurisdictions.

5. Each ETF will be subject to NI 81-102, subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities. Securityholders of each ETF will have the right to vote at a meeting of Securityholders of the ETF in respect of the matters prescribed by NI 81-102.

6. The ETF Securities will be listed on the TSX or another Marketplace.

7. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a prospectus prepared, filed and receipted in accordance with National Instrument 41-101 *General Prospectus Requirements* and other applicable securities legislation, subject to any exemptions that have been or may be granted by the applicable securities regulatory authorities.

8. A Prescribed Number of ETF Securities may generally only be subscribed for or purchased directly from the ETFs by Authorized Dealers or Designated Brokers and generally only on any trading day on the TSX or other Marketplace (a **Creation Unit**). Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the TSX or another Marketplace.

9. The Net Asset Value per ETF Security of each of the ETFs will be calculated each trading day on the TSX or other Marketplace and will be made available daily on the Filer's website.

10. In addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.

11. According to the Authorized Dealers and Designated Brokers, Creation Units will generally be commingled with other ETF Securities purchased by the Authorized Dealers, Designated Brokers and Affiliate Dealers in the secondary market. As such, it is not practicable for the Authorized Dealers, Designated Brokers or Affiliate Dealers to determine whether a particular re-sale of ETF Securities involves Creation Units or ETF Securities purchased in the secondary market.

12. Neither the Authorized Dealers nor the Designated Brokers will receive any fees or commissions in connection with the issuance of ETF Securities to them. The Filer may, at its discretion, charge an administration fee on the issuance of Creation Units to Authorized Dealers or Designated Brokers.

13. Designated Brokers perform certain other functions, which include standing in the market with a bid and ask price for ETF Securities for the purpose of maintaining liquidity for the ETF Securities.

14. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities generally may not be purchased directly from an ETF. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the TSX or another Marketplace. ETF Securities may also be issued directly to investors upon the reinvestment of distributions of income or capital gains.

Exemption from the Take-Over Bid Requirements

15. As equity securities that will trade on the TSX or another Marketplace, it is possible for a person or company to acquire such number of ETF Securities so as to trigger the application of the Take-Over Bid Requirements. However,

    a. it will not be possible for one or more Securityholders to exercise control or direction over an ETF as the constating documents of each ETF will provide that there can be no changes made to such ETF which do not have the support of the Filer;

    b. it will be difficult for the purchasers of ETF Securities or an ETF to monitor compliance with the Take-Over Bid Requirements because the number of outstanding ETF Securities will always be in flux as a result of the ongoing issuance and redemption of ETF Securities by each ETF; and

    c. the way in which ETF Securities will be priced deters anyone from either seeking to acquire control, or offering to pay a control premium for outstanding ETF Securities because pricing for each ETF Security will generally reflect the net asset value of the ETF Securities.

16. The application of the Take-Over Bid Requirements to the ETFs would have an adverse impact on the liquidity of the ETF Securities because they could cause the Designated Brokers and other large Securityholders to cease trading ETF Securities once the Securityholder has reached the prescribed threshold at which the Take-Over Bid Requirements would apply.

Exemption from the Underwriter's Certificate Requirement

17. The Authorized Dealers and Designated Brokers will not provide the same services in connection with a distribution of Creation Units as would typically be provided by an underwriter in a conventional underwriting.

18. The Filer will generally conduct its own marketing, advertising and promotion of the ETFs.

19. The Authorized Dealers and Designated Brokers (like similar authorized dealers and designated brokers) will not be involved in the preparation of an ETF's prospectus, will not perform any review or any independent due diligence of the contents of such prospectus and will not incur any marketing costs or receive any underwriting fees or commissions from the ETFs or the Filer in connection with the distribution of ETF Securities. The Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in ETF Securities.

Exemption from the Prospectus Form Requirement

20. Securities regulatory authorities have advised they take the view that the first re-sale of a Creation Unit on the TSX or another Marketplace will generally constitute a distribution of Creation Units under the Legislation and that the Authorized Dealers, Designated Brokers and Affiliate Dealers are subject to the Prospectus Delivery Requirement in connection with such re-sales. Re-sales of ETF Securities in the secondary market that are not Creation Units would not ordinarily constitute a distribution of such ETF Securities subject to the Prospectus Delivery Requirement.

21. Under the applicable Prospectus Delivery Decision, Authorized Dealers, Designated Brokers and Affiliate Dealers are exempt from the Prospectus Delivery Requirement in connection with the re-sale of Creation Units to investors on the TSX or another Marketplace. Under the applicable Prospectus Delivery Decision, Other Dealers are also exempt from the Prospectus Delivery Requirement in connection with the re-sale of creation units of other exchange-traded funds that are not managed by the Filer.

22. Each Prospectus Delivery Decision includes a condition that the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer undertakes that it will, unless it has previously done so, send or deliver to each purchaser of an ETF Security who is a customer of the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer, and to whom a trade confirmation is required under the applicable securities legislation to be sent or delivered by the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer in connection with the purchase, the latest Summary Document filed in respect of the ETF Security, not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after the purchase of the ETF Security.

23. The Filer will file with the applicable Jurisdictions on the System for Electronic Document Analysis and Retrieval (**SEDAR**) a Summary Document for each class or series of ETF Securities and will provide or make available to the applicable Authorized Dealers, Designated Brokers, Affiliate Dealers and Other Dealers the requisite number of copies of the Summary Document for the purpose of facilitating their compliance with the applicable Prospectus Delivery

Decision within the timeframe necessary to allow Authorized Dealers, Designated Brokers, Affiliate Dealers and Other Dealers to effect delivery of the Summary Document as contemplated in the applicable Prospectus Delivery Decision.

24. The Exemption Sought from the Prospectus Form Requirement is required to reflect the relief provided in each Prospectus Delivery Decision. Accordingly, the Filer will include language in each ETF's prospectus explaining the impact on a purchaser's statutory rights as a result of the Prospectus Delivery Decision in replacement of the language prescribed by the Prospectus Form Requirement.

Generally

25. The securities regulatory authorities have published final rule amendments that will require the Filer to file an ETF Facts in respect of each class or series of ETF Securities in connection with the filing of a prospectus. The requirement to file an ETF Facts in the prescribed form is expected to take effect on September 1, 2017 and supersede the requirement for the Filer to file a Summary Document under this decision. Since the introduction of the ETF Facts will be subject to a transition period, there may be a period of time where some ETFs have an ETF Facts while others have a Summary Document. If the Filer files an ETF Facts with respect to a class or series of ETF Securities, the Filer will use such ETF Facts instead of a Summary Document to satisfy its obligations under this decision with respect to any purchase of such class or series of ETF Securities that occurs after the filing of such ETF Facts.

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.

1. The decision of the principal regulator under the Legislation is that the Exemption Sought is granted in respect of the Underwriter's Certificate Requirement and the Prospectus Form Requirement, provided that the Filer will be in compliance with the following conditions:

   (a) The Filer files with the applicable Jurisdictions on SEDAR the Summary Document for each class or series of ETF Securities concurrently with the filing of the final prospectus for that ETF;

   (b) The Filer displays on its website in a manner that would be considered prominent to a reasonable investor the Summary Document for each class or series of ETF Securities for each ETF;

   (c) The Filer amends the Summary Document at the same time it files any amendments to an ETF's prospectus that affect the disclosure in the Summary Document and files the amended Summary Document with the applicable Jurisdictions on SEDAR and makes it available on its website in a manner that would be considered prominent to a reasonable investor;

   (d) The Filer provides or makes available to each Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer, the number of copies of the Summary Document of each ETF Security that the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer reasonably requests in support of compliance with its respective Prospectus Delivery Decision;

   (e) (i) Each ETF's prospectus, as the same may be amended from time to time, will incorporate the relevant Summary Document by reference;

   (ii) Each Proposed ETF's prospectus, pro forma prospectus or any amendment thereto will, and each Future ETF's preliminary prospectus, pro forma prospectus, prospectus or any amendment thereto, will contain the disclosure referred to in paragraph 24 above; and

   (iii) Each Proposed ETF's prospectus or pro forma prospectus will, and each Future ETF's preliminary prospectus, prospectus or pro forma prospectus will, disclose both the relief granted pursuant to the Exemption Sought and the Prospectus Delivery Decision under Item 34.1 of Form 41-101F2 *Information Required in an Investment Fund Prospectus*, as applicable;

   (f) The Filer obtains an executed acknowledgement from each Authorized Dealer, Designated Broker and Affiliate Dealer, and uses its best efforts to obtain an acknowledgment from each Other Dealer:

   (i) indicating such dealer's election, in connection with the re-sale of Creation Units on the TSX or another Marketplace, to send or deliver the Summary Document in accordance with a Prospectus Delivery Decision or, alternatively, to comply with the Prospectus Delivery Requirement; and

(ii) if the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer agrees to deliver the Summary Document in accordance with a Prospectus Delivery Decision:

A. an undertaking that the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer will attach or bind one ETF's Summary Document with another ETF's Summary Document only if the documents are being sent or delivered under the Prospectus Delivery Decision at the same time to an investor purchasing ETF Securities of each such ETF; and

B. confirming that the Authorized Dealer, Designated Broker, Affiliate Dealer or Other Dealer has in place written policies and procedures to ensure that it is in compliance with the conditions of the Prospectus Delivery Decision.

(g) The Filer will keep records of which Authorized Dealers, Designated Brokers, Affiliate Dealers and Other Dealers have provided it with an acknowledgement under a Prospectus Delivery Decision, and which intend to rely on and comply with the Prospectus Delivery Decision or intend to comply with the Prospectus Delivery Requirement;

(h) The Filer files with its principal regulator, to the attention of the Director, Investment Funds and Structured Products Branch, on or before January 31st in each calendar year, a certificate signed by its ultimate designated person certifying that, to the best of the knowledge of such person, after making due inquiry, the Filer has complied with the terms and conditions of this decision during the previous calendar year;

(i) If the Filer files an ETF Facts instead of a Summary Document with respect to a class or series of ETF Securities, the latest ETF Facts filed in respect of such class or series of ETF Securities must be substituted for the Summary Document in order to satisfy the foregoing conditions with respect to any purchase of such class or series of ETF Securities that occurs after the date of the filing of such ETF Facts;

(j) Conditions (a), (b), (c) and (e)(i) above do not apply to the Exemption Sought with respect to a class or series of an ETF Security if the Filer files an ETF Facts for such class or series of the ETF Security; and

(k) Conditions (d), (e)(ii), (e)(iii), (f), (g) and (h) above do not apply to an ETF with respect to the Exemption Sought after any new legislation or rule dealing with the Prospectus Delivery Decision takes effect and any applicable transition period has expired.

2. The Exemption Sought from the Prospectus Form Requirement, as it relates to one or more of the Jurisdictions, will terminate on the latest of: (i) the coming into force of any legislation or rule dealing with the Exemption Sought from the Prospectus Form Requirement, or (ii) the end date of any applicable transition period for any legislation or rule dealing with the Exemption Sought from the Prospectus Form Requirement.

3. The decision of the principal regulator under the Legislation is that the Exemption Sought in respect of the Take-Over Bid Requirements is granted.

As to the Exemption Sought in respect of the Underwriter's Certificate Requirement:

"Philip Anisman"
Commissioner
Ontario Securities Commission

"Frances Kordyback"
Commissioner
Ontario Securities Commission

As to the Exemption Sought in respect of the Prospectus Form Requirement and the Take-Over Bid Requirements:

"Raymond Chan"
Manager, Investment Funds and Structured Products
Ontario Securities Commission

APPENDIX A

CONTENTS OF SUMMARY DOCUMENT

General Instructions

1. *Items 1 to 10 represent the minimum disclosure required in a Summary Document for a fund. The inclusion of additional information is not precluded so long as the Summary Document does not exceed a total of four pages in length (two pages double-sided).*

2. *Terms defined in National Instrument 81-102 Investment Funds, National Instrument 81-105 Mutual Fund Sales Practices or National Instrument 81-106 Investment Fund Continuous Disclosure and used in this Summary Document have the meanings that they have in those national instruments.*

3. *Information in the Summary Document must be clear and concise and presented in plain language.*

4. *The format and presentation of information in the Summary Document is not prescribed but the information must be presented in a manner that assists in readability and comprehension.*

5. *The order of the Items outlined below is not prescribed, except for Items 1 and 2, which must be presented as the first 2 items in the Summary Document.*

6. *Each reference to a fund in this Appendix A refers to an ETF as defined in the decision above.*

Item 1 – Introduction

Include at the top of the first page a heading consisting of:

(a) the title “Summary Document”;

(b) the name of the manager of the fund;

(c) the name of the fund to which the Summary Document pertains; and

(d) the date of the document.

Item 2 – Cautionary Language

Include a statement in italics in substantially the following form:

“The following is a summary of the principal features of this fund. You can find more detailed information about the fund in the prospectus. The prospectus is available on [insert name of the manager of the fund] website at [insert manager of the fund website], or by contacting [insert name of the manager of the fund] at [insert manager of the fund’s email address], or by calling [insert telephone number of the manager of the fund].”

Item 3 – Fund Details

Include the following disclosure:

(a) ticker symbol;

(b) fund identification code(s);

(c) index ticker (as applicable);

(d) exchange;

(e) currency;

(f) inception date;

(g) RSP eligibility;

(h) DRIP eligibility;

(i) expected frequency and timing of distributions, and if applicable, the targeted amount for distributions;

(j) management expense ratio, if available; and

(k) portfolio manager, when the fund is actively managed.

Item 4 – Investment Objectives

Include a description of the fundamental nature of the fund, or the fundamental features of the fund that distinguishes it from other funds.

INSTRUCTIONS:

Include a description of what the fund primarily invests in, or intends to primarily invest in, such as:

(a) a description of the fund, including what the fund invests in, and if it is trying to replicate an index, the name of the index, and an overview of the nature of securities covered by the index or the purpose of the index; and

(b) the key investment strategies of the fund.

Item 5 – Investments of the Fund

1. Include a table disclosing:

(a) the top 10 positions held by the fund; and

(b) the percentage of net asset value of the fund represented by the top 10 positions.

2. Include at least one, and up to two, charts or tables that illustrate the investment mix of the fund's investment portfolio.

INSTRUCTIONS:

(a) The information required under this Item is intended to give a snapshot of the composition of the fund's investment portfolio. The information required to be disclosed under this Item must be as at a date within 60 days before the date of the Summary Document.

(b) The information required under Item 5(2) must show a breakdown of the fund's investment portfolio into appropriate subgroups and the percentage of the aggregate net asset value of the fund constituted by each subgroup. The names of the subgroups are not prescribed and can include security type, industry segment or geographic location. The fund should use the most appropriate categories given the nature of the fund. The choices made must be consistent with disclosure provided under "Summary of Investment Portfolio" in the fund's MRFP.

(c) For new funds where the information required to be disclosed under this Item is not available, provide a brief statement explaining why the required information is not available.

Item 6 – Risk

1. Include a statement in italics in substantially the following form:

"All investments involve risk. When you invest in the fund the value of your investment can go down as well as up. For a description of the specific risks of this fund, see the fund's prospectus."

2. If the cover page of the fund's prospectus contains text box risk disclosure, also include a description of those risk factors in the Summary Document.

Item 7 – Fund Expenses

1. Include an introduction using wording similar to the following:

"You don't pay these expenses directly. They affect you because they reduce the fund's returns."

2. Provide information about the expenses of the fund in the form of the following table:

	Annual rate (as a % of the fund's value)
Management expense ratio (MER) This is the total of the fund's management fee and operating expenses.	
Trading expense ratio (TER) These are the fund's trading costs.	
Fund expenses The amount included for fund expenses is the amount arrived at by adding the MER and the TER.	

3. If the information in (2) is unavailable because the fund is new including wording similar to the following:

"The fund's expenses are made up of the management fee, operating expenses and trading costs. The fund's annual management fee is [*]% of the fund's value. Because this fund is new, its operating expenses and trading costs are not yet available."

INSTRUCTIONS:

Use a bold font or other formatting to indicate that fund expenses is the total of all ongoing expenses set out in the chart and is not a separate expense charged to the fund.

Item 8 – Trailing Commissions

1. If the manager of the fund or another member of the fund's organization pays trailing commissions, include a brief description of these commissions.

2. The description of any trailing commission must include a statement in substantially the following words:

"The trailing commission is paid out of the management fee. The trailing commission is paid for as long as you own the fund."

Item 9 – Other Fees

1. Provide information about the amount of fees payable by an investor, other than those already described or payable by designated brokers and underwriters.

2. Include a statement using wording similar to the following:

"You may pay brokerage fees to your dealer when you purchase and sell units of the fund."

INSTRUCTIONS:

(a) Examples include any redemption charges, sales charges or other fees, if any, associated with buying and selling securities of the fund.

(b) Provide a brief description of each fee disclosing the amount to be paid as a percentage (or, if applicable, a fixed dollar amount) and state who charges the fee.

Item 10 – Statement of Rights

State in substantially the following words:

Under securities law in some provinces and territories, you have:

the right to cancel your purchase within 48 hours after you receive confirmation of the purchase, or

other rights and remedies if this document or the fund's prospectus contains a misrepresentation. You must act within the time limit set by the securities law in your province or territory.

For more information, see the securities law of your province or territory or ask a lawyer.

Item 11 – Past Performance

If the fund includes past performance:

1. Include an introduction using wording similar to the following:

   This section tells you how the fund has performed over the past [insert the lesser of 10 years or the number of completed calendar years] years. Returns are after expenses have been deducted. These expenses reduce the fund's returns.

   It's important to note that this doesn't tell you how the fund will perform in the future as past performance may not be repeated. Also, your actual after-tax return will depend on your personal tax situation.

2. Show the annual total return of the fund, in chronological order for the lesser of:

   (a) each of the 10 most recently completed calendar years; and

   (b) each of the completed calendar years in which the fund has been in existence and which the fund was a reporting issuer.

3. Show the:

   (a) final value, of a hypothetical $1,000 investment in the fund as at the end of the period that ends within 60 days before the date of the Summary Document and consists of the lesser of:

      (i) 10 years, or

      (ii) the time since inception of the fund,

      and

   (b) the annual compounded rate of return that would equate the initial $1,000 investment to the final value.

INSTRUCTIONS:

In responding to the requirements of this Item, a fund must comply with the relevant sections of Part 15 of National Instrument 81-102 Investment Funds as if those sections applied to a Summary Document.

Item 12 – Benchmark Information

If the Summary Document includes benchmark information, ensure this information is consistent with the fund's MRFP and presented in the same format as Item 11.

2.1.3 1832 Asset Management L.P.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to Fundata A+ Awards and relief from paragraphs 15.3(4)(c) to permit references to FundGrade Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the Fundata A+ Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(4)(c) and (f), 19.1.

March 27, 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
1832 ASSET MANAGEMENT L.P.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 – *Investment Funds* (**NI 81-102**), exempting all Funds (as defined below) from the requirements set out in paragraphs 15.3(4)(c) (in respect of both the FundGrade A+ Awards presented annually by Fundata Canada Inc. (**Fundata**) and the FundGrade Ratings) and 15.3(4)(f) (in respect of the FundGrade A+ Awards only) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

(a) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and

(b) the rating or ranking is to the same calendar month end that is:

i. not more than 45 days before the date of the appearance or use of the advertisement in which it is included; and

ii. not more than three months before the date of first publication of any other sales communication in which it is included to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds (collectively, the **Requested Relief**).

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

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

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

Interpretation

Unless otherwise defined herein, terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and National Instrument 81-102 *Investment Funds* (NI 81-102) have the same meaning in this decision. In addition, the following terms have the following meanings:

Act means the *Securities Act* (Ontario) as may be amended from time to time; and

Funds means the existing and future investment funds which are subject to NI 81-102 and for which the Filer or an affiliate of the Filer acts or will act as manager and/or advisor.

Representations

This decision is based on the following facts represented by the Filer in respect of the Filer and the Funds:

The Filer

1. The Filer is an Ontario limited partnership, which is wholly-owned, indirectly, by the Bank of Nova Scotia (**BNS**). The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned directly by BNS with its head office in Ontario.

2. The Filer is registered as: (i) a portfolio manager in all of the provinces of Canada and in the Northwest Territories and the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Québec, Newfoundland and Labrador and the Northwest Territories; and (iv) a commodity trading manager in Ontario.

3. The Filer or an affiliate of the Filer acts or will act as the manager and/or advisor of the Funds.

4. The Filer is not in default of securities legislation in any Jurisdiction.

The Funds

5. Each of the Funds is or will be established as an open-ended mutual fund trust, limited partnership or class of shares of a mutual fund corporation, in each case established or governed under the laws of the Province of Ontario or the laws of Canada.

6. Each of the Funds is or will be a “reporting issuer” (as defined in the Act) in one or more of the Jurisdictions. The securities of each Fund are or will be qualified for distribution in one or more of the Jurisdictions pursuant to a simplified prospectus and annual information form or, alternatively, pursuant to a prospectus that has been or will be prepared and filed in accordance with the securities legislation of each of the relevant Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

7. None of the existing Funds are in default of securities legislation in any Jurisdiction. FundGrade A+ Awards Program and FundGrade Ratings

8. Fundata is not a member of the organization of the Funds. Fundata is a leader in supplying mutual fund information, analytical tools, and commentary. Fundata’s fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

9. One of Fundata’s programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.

10. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk adjusted performance, measured by three well-known and widely-used metrics: the Sharpe Ratio; the Information Ratio; and the Sortino Ratio. The ratios are calculated for the two through ten year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the periodic rankings.

11. The FundGrade Ratings are letter grades for each fund and are determined each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A grade; the next 20% of funds earn a B grade; the next 40% of funds earn a C grade; the next 20% of funds receive a D grade; and the lowest 10% of funds receive an E grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A grade, a fund must show consistently high scores for all ratios across all time periods.

12. Fundata calculates a grade using only the retail series of each fund. Institutional series or fee-based series of any fund are not included in the calculation. A fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a fund, it is then applied to all related series of that fund.

13. At the end of each calendar year, Fundata calculates a "Fund GPA" for each fund based on the full year's performance. The Fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each Fund is divided by 12 to arrive at the Fund's GPA for the year. Any fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.

14. When a Fund is awarded a FundGrade A+ Award, Fundata will permit such Fund to make reference to the award in its sales communications.

15. The FundGrade Ratings fall within the definition of "performance data" under NI 81-102 as they constitute "a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund", given that the FundGrade Ratings are based on performance measures calculated by Fundata. The FundGrade A+ Awards may be considered to be "overall ratings or rankings" given that the awards are based on the FundGrade Ratings as described above. Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the Funds need to meet the applicable requirements of Part 15 of NI 81- 102.

16. Paragraph 15.3(4)(c) of NI 81-102 imposes a "matching" requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or "match", each period for which standard performance data is required to be given for the Fund, except for the period since the inception of the Fund (i.e. for one, three, five and ten year periods, as applicable).

17. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for a Fund to use FundGrade Ratings in sales communications.

18. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4) of NI 81-102. As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the "matching" requirement in subsection 15.3(4) of NI 81-102 because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) of NI 81-102 unavailable. Relief from subsection 15.3(4)(c) of NI 81-102 is, therefore, required in order for Funds to reference the FundGrade A+ Awards and the FundGrade Ratings in sales communications.

19. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award or the FundGrade Ratings to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

20. Because the evaluation of Funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a Fund receives FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March.

21. The Requested Relief is required in order for the FundGrade Ratings and the FundGrade A+ Awards to be referenced in sales communications relating to the Funds.

22. The Filer wishes to include, in sales communications of the Funds, references to the FundGrades Ratings and the FundGrade A+ Awards, where such Funds have been awarded a Fund Grade A+ Award.

23. The Filer submits that the Fund Grade A+ Awards and the FundGrade Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. The FundGrade A+ Awards and the FundGrade Ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of Fundata in fund analysis that alleviates any concern that references to them may be misleading and, therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the FundGrade A+ Awards and the FundGrade Ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

   (a) the name of the category for which the Fund has received the award or rating;

   (b) the number of investment funds in the category for the applicable period;

   (c) the name of the ranking entity, i.e., Fundata;

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Awards or the FundGrade Rating is based;

   (e) a statement that FundGrade Ratings are subjective to change every month;

   (f) in the case of a FundGrade A+ Award, a brief overview of the FundGrade A+ Awards;

   (g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award), a brief overview of the FundGrade Rating;

   (h) disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category); and

   (i) reference to Fundata's website (www.fundata.com) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings;

2. the FundGrade A+ Award being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the FundGrade A+ Awards and the Fund Grade Ratings being references are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.4 Mackenzie Financial Corporation et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from section 2.1(1) of National Instrument 81-102 – Investment Funds to permit mutual funds to invest more than 10 percent of net assets in debt securities issued by a foreign government or supranational agency, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1), 19.1.

March 22, 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
MACKENZIE FINANCIAL CORPORATION
(the Filer)

AND

IN THE MATTER OF
MACKENZIE GLOBAL CREDIT OPPORTUNITIES FUND AND
MACKENZIE GLOBAL INFLATION-LINKED FUND
(the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an amended application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption (the **Requested Relief**), pursuant to section 19.1 of National Instrument 81-102 *Mutual Funds* (**NI 81-102**) from subsection 2.1(1) of NI 81-102 (the **Concentration Restriction**) to permit each of the Funds to invest up to:

(a) 20% of its net asset value at the time of the transaction in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or fully guaranteed as to principal and interest, by supranational agencies or governments other than the government of Canada, the government of a jurisdiction in Canada, or the government of the United States of America, and are rated "AA" by Standard & Poor's Rating Services (Canada) (**S&P**) or its DRO affiliate (as defined in NI 81-102), or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates; and

(b) 35% of its net asset value at the time of the transaction in evidences of indebtedness of any one issuer if those securities are issued, or fully guaranteed as to principal and interest, by supranational agencies or governments other than the government of Canada, the government of a jurisdiction in Canada, or the government of the United States of America, and are rated "AAA" by S&P or its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates.

(such evidences of indebtedness are collectively referred to as **Foreign Government Securities**).

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

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

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

Interpretation

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

Representations

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

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

2. The Filer is registered as an investment fund manager, portfolio manager, exempt market dealer and commodity trading manager in Ontario. The Filer is also registered as a portfolio manager and exempt market dealer in all other Canadian provinces and territories and as an investment fund manager in Newfoundland and Labrador and Québec.

3. The Filer will be the manager, trustee and portfolio manager of Mackenzie Global Credit Opportunities Fund, and is the manager, trustee and portfolio manager of Mackenzie Global Inflation-Linked Fund.

4. Mackenzie Global Credit Opportunities Fund will be an open-ended mutual fund trust established under the laws of Ontario. Mackenzie Global Inflation-Linked Fund is an open-ended mutual fund trust established under the laws of Ontario.

5. Securities of the Funds are, or will be, offered by simplified prospectus filed in all of the provinces and territories in Canada and, accordingly, the Funds are, or will be, reporting issuers in one or more provinces and territories of Canada. A preliminary simplified prospectus was filed for Mackenzie Global Credit Opportunities Fund via SEDAR in all the provinces and territories on February 15, 2017.

6. Neither the Filer nor the Funds are in default of securities legislation in any jurisdiction of Canada.

7. The investment objectives of Mackenzie Global Credit Opportunities Fund are expected to be substantially as follows: “The Fund seeks to generate a high level of income with the potential for long-term capital growth by investing primarily in higher yielding corporate and government fixed income securities and instruments of issuers anywhere in the world.”

8. To achieve its investment objectives, Mackenzie Global Credit Opportunities Fund is expected to invest substantially all of its assets in global corporate and government fixed income securities. Although Mackenzie Global Credit Opportunities Fund aims to invest primarily in a diversified portfolio of fixed-income securities, depending on market conditions, its portfolio managers seek the discretion to gain exposure to any one issuer of Foreign Government Securities in excess of the Concentration Restriction.

9. The investment objectives of Mackenzie Global Inflation-Linked Fund are as follows: “The Fund seeks to provide investors with a steady flow of interest income with some focus on capital preservation. The Fund will seek to accomplish its objectives by investing primarily in global fixed-income securities which are indexed to inflation levels of countries anywhere in the world.”

10. To achieve its investment objectives, Mackenzie Global Inflation-Linked Fund invests substantially all of its assets in global corporate and government fixed income securities. Although Mackenzie Global Inflation-Linked Fund aims to invest primarily in a diversified portfolio of fixed-income securities, depending on market conditions, its portfolio managers seek the discretion to gain exposure to any one issuer of Foreign Government Securities in excess of the Concentration Restriction.

11. Section 2.1(1) of NI 81-102 prohibits the Funds from purchasing a security of an issuer, other than a “government security” as defined in NI 81-102, if, immediately after the purchase, more than 10% of the net asset value of the Fund, taken at market value at the time of the purchase, would be invested in securities of the issuer.

12. The Foreign Government Securities are not within the meaning of "government securities" as such term is defined in NI 81-102.

13. In Companion Policy 81-102CP (the "**Companion Policy**"), the Canadian Securities Administrators state their views on various matters relating to NI 81-102. Subsection 3.1(4) of the Companion Policy indicates that relief from paragraph 2.04(1)(a) of National Policy 39, which was replaced by the Concentration Restriction, has been provided to mutual funds generally under the following circumstances:

    a. the mutual fund has been permitted to invest up to 20% of its net asset value in evidences of indebtedness of any one issuer if those evidences of indebtedness are issued, or fully guaranteed as to principal and interest, by supranational agencies or governments other than the government of Canada, the government of a jurisdiction, or the government of the United States of America and are rated "AA" by S&P or its DRO affiliates, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates; and

    b. the mutual fund has been permitted to invest up to 35% of its net asset value in evidences of indebtedness of any one issuer, if those securities are issued, or fully guaranteed as to principal and interest, by supranational agencies or governments other than the government of Canada, the government of a jurisdiction, or the government of the United States of America and are rated "AAA" by S&P or its DRO affiliate, or have an equivalent rating by one or more other designated rating organizations or their DRO affiliates.

14. The simplified prospectuses of the Funds will disclose the risks associated with concentration of net assets of the Funds in securities of a limited number of issuers.

15. The Funds seek the Requested Relief to enhance their ability to pursue and achieve their investment objectives.

Decision

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

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

1. Paragraphs (a) and (b) of the Requested Relief cannot be combined for any one issuer;

2. Any security that may be purchased under the Requested Relief is traded on a mature and liquid market; and

3. The acquisition of the securities purchased pursuant to this Decision is consistent with the fundamental investment objectives of the Fund.

4. The simplified prospectuses of the Funds disclose the additional risks associated with the concentration of net asset value of the Funds in securities of fewer issuers, such as the potential additional exposure to the risk of default of the issuer in which the Funds have so invested and the risks, including foreign exchange risks, of investing in the country in which the issuer is located; and

5. The simplified prospectuses of the Funds will include a summary of the nature and terms of the Requested Relied under the investment strategies section along with the conditions imposed and the type of securities covered by this Decision.

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

2.1.5 Hewlett Packard Enterprise Company

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from dealer registration requirements in respect of first trade in shares made in connection with an employee stock purchase plan by a U.S. issuer – Relief from dealer registration requirements requested upon the first trade of shares through a plan administrator – The Filer cannot rely on the plan administrator exemption is subsection 8.16(3) of NI 31-103 Registration Requirements and Exemptions as the Filer is a reporting issuer in a Canadian jurisdiction – Canadian employees will receive disclosure documents from plan administrator – The plan administrator that executes first trade of shares is subject to the supervision of the U.S. Securities and Exchange Commission – Relief granted.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7 (1).
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions, s. 3.6(6).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.16.
National Instrument 45-102 Resale of Securities, ss. 2.6, 2.14.

March 28, 2017

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

AND

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

AND

IN THE MATTER OF
HEWLETT PACKARD ENTERPRISE COMPANY
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption (the **Exemption Sought**) from the dealer registration requirements contained in the Legislation so that such requirements do not apply to the Plan Administrators (as defined below) with respect to the first trade in shares of common stock of the Filer (**Common Shares**) issued upon the exercise or conversion of ESPP Awards and SIP Awards (as such terms are defined below) issued pursuant to the Hewlett Packard Enterprise Company 2015 Stock Incentive Plan (as may be amended from time to time) (the **SIP**) and the Hewlett Packard Enterprise Company 2015 Employee Stock Purchase Plan (as may be amended from time to time) (the **ESPP**), respectively.

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

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

(b) the Filer has provided notice that section 4.7(1) of *Regulation respecting Passport System* (**Regulation 11-102**) is intended to be relied upon in each of the other jurisdictions of Canada, other than Ontario; and

(c) the decision is the decision of the Principal Regulator and evidences the decision of the securities regulatory authority in Ontario.

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, *Regulation 45-102 respecting Resale of Securities*, *Regulation 45-106 respecting Prospectus Exemptions* and *Regulation 11-102 respecting Passport System* have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation incorporated under the laws of Delaware with principal executive offices in Palo Alto, California, U.S.A. The Filer is subject to the United States *Securities Exchange Act of 1934* (the **1934 Act**) and the rules, regulations and orders promulgated thereunder.

2. Prior to November 1, 2015, the Filer was a wholly owned subsidiary of HP Inc. (**HP**), a reporting issuer in Québec. On November 1, 2015, the Filer became a reporting issuer under the securities legislation of Québec by operation of law as a result of the distribution by HP of Filer Shares to HP's stockholders (**Spin-Off**). The Filer does not presently intend to become a reporting issuer under the securities legislation of any other jurisdiction in Canada.

3. The authorized share capital of the Filer consists of 9,600,000,000 Common Shares with a par value of U.S.$0.01 each and 300,000,000 shares of preferred stock with a par value of U.S.$0.01 each. As at August 31, 2016, there were 1,665,537,308 Common Shares and no shares of preferred stock issued and outstanding.

4. The Filer's Shares are listed on the New York Stock Exchange under the symbol "HPE". The Common Shares are not listed on any Canadian stock exchange and the Filer does not presently intend to list its shares on any Canadian stock exchange.

5. As of September 7, 2016, residents of Canada did not own, directly or indirectly, more than 10% of the outstanding Common Shares and did not represent in number more than 10% of the total number of owners, directly or indirect, of the Common Shares.

6. ESIT Canada Enterprise Services Co., ESIT Advanced Solutions Inc., Hewlett Packard Enterprise Canada Co. and Hewlett Packard Financial Services Canada Co. (collectively, the "**Canadian Affiliates**") are wholly-owned subsidiaries of the Filer. The Canadian Affiliates are not reporting issuers in Canada and do not presently intend to become reporting issuers under the securities legislation of any jurisdiction in Canada or to list their securities on any stock exchange in Canada. .

7. The Filer operates the SIP pursuant to which awards, including cash awards, stock awards, stock appreciation rights, options and converted awards (which were issued to satisfy automatic adjustment and conversion of certain awards over HP common stock issued prior to the Spin-Off) (**SIP Awards**) may be granted to eligible directors of the Filer and employees of the Filer or its affiliates, including the Canadian Affiliates (**SIP Participants**). Unless determined otherwise by the administrator of the SIP, SIP Awards granted under the SIP are non-transferable, other than by beneficiary designation, will or by the laws of descent or distribution.

8. The Filer operates the ESPP pursuant to which Common Shares may be purchased under the ESPP by various eligible employees of the Filer or its designated affiliates, including certain Canadian Affiliates (**ESPP Participants**). The ESPP is implemented by offering periods generally lasting for six months (each, an **Offering Period**). Each ESPP Participant who participates in the ESPP is automatically granted an option to purchase Common Shares (an **ESPP Award**). ESPP Awards are automatically exercised and Common Shares are purchased under the ESPP based on the ESPP Participant's contributions at the end of each Offering Period, unless the participant withdraws or terminates employment earlier. Generally, each ESPP Participant may elect to make contributions under the ESPP by payroll deduction of any amount up to, but not exceeding, 10% of his or her base earnings.

9. As of September 7, 2016, there were 1,299 SIP Participants in Canada holding approximately 2.0483% of the outstanding SIP Awards.

10. As of September 7, 2016, there were 428 ESPP Participants in Canada holding approximately 9.58% of the outstanding ESPP Awards granted to foreign ESPP Participants.

11. Participation in each of the SIP and ESPP (collectively, the **Plans**) is voluntary, and SIP Participants and ESPP Participants will not be granted SIP Awards or ESPP Awards, as the case may be, or be induced to exercise same by expectation of employment or appointment or continued employment or appointment with the Filer or any other affiliated entity of the Filer.

12. SIP Participants in Canada who are granted SIP Awards and ESPP Participants in Canada who are granted ESPP Awards will be provided with all the disclosure documentation that the Filer's employees resident in the United States who receive SIP Awards or ESPP Awards, respectively, are entitled to receive.

13. SIP Participants and ESPP Participants will also have access to the continuous disclosure materials relating to the Filer that are furnished to holders of the Common Shares, generally.

14. The Filer uses the services of a plan administrator (each a **Plan Administrator**) for each of the Plans. The Plan Administrator for the SIP is Merrill Lynch, Pierce, Fenner & Smith, Incorporated and for the ESPP is Fidelity Stock Plan Services, LLC. The Plan Administrator, among other things, assists in the recordkeeping of the Plans, facilitates the issuance of SIP Awards and ESPP Awards and their exercise or conversion. Trades in Common Shares acquired under the Plans will be effected through the respective Plan Administrator, each of which is registered under applicable U.S. securities legislation to trade in securities in the category of broker-dealer.

15. The Filer, its Canadian Affiliates and the Plan Administrators, including their employees, agents or representatives, do not provide investment advice. The Plan Administrators are responsible for inquiries from SIP Participants or EPSP Participants for the respective Plans, and their contact information will be included in the respective Plan documents.

16. There is no active trading market for the Common Shares in Canada and none is expected to develop, it is expected that any trades of the Common Shares by SIP Participants or ESPP Participants, their legal representatives or permitted transferees, or the Plan Administrators will be effected through the facilities of the NYSE or any market or exchange outside of Canada on which the Common Shares may be quoted or listed or to a person or company outside of Canada.

17. An exemption from the dealer registration requirement of the Legislation is not available in the Jurisdictions for the first trade of the Common Shares acquired pursuant to the SIP or the ESPP, including trades effected through the Plan Administrators. Such an exemption would be available in respect of trades made by a plan administrator pursuant to section 8.16(3) of *Regulation 31-103 respecting Registration Requirements, Exemptions and Ongoing Registration Obligations* but for the fact that the Filer is a reporting issuer in Québec.

18. Subject to the matter to which this decision relates, the Filer is not in default of any securities legislation in any jurisdiction of Canada.

Decision

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

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

(a) at the time of the issuance of the Common Shares upon the exercise or conversion of ESPP Awards and SIP Awards (the **Exercise Time**), the Filer is not a reporting issuer in any jurisdiction of Canada except Québec;

(b) at the Exercise Time, after giving effect to the issuance of the Common Shares and any other Common Shares that were issued at the same time as or as part of the same distribution, residents of Canada:

  (i) did not own directly or indirectly more than 10% of the outstanding Common Shares, and

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

(c) the trade is made:

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

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

"Eric Stevenson"
Superintendent, Client Services and Distribution Oversight

2.1.6 BMO Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the requirement in s.3.2(2), NI 81-101 to deliver a fund facts document to investors for subsequent purchases of mutual fund securities made pursuant to model portfolios, subject to certain conditions.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2(2), 6.1.

March 30, 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
BMO INVESTMENTS INC.
(the "Filer" and the "Dealer")

DECISION

Background

The principal regulator ("**Principal Regulator**") in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the "**Legislation**") for an exemption (the "**Exemption Sought**") from the requirement (the "**Fund Facts Delivery Requirement**") in the Legislation to send or deliver the most recently filed fund facts document (the "**Fund Facts**") in the manner as required under the Legislation in respect of purchases of securities of the Funds that are made in connection with Permitted Target Changes, and Rebalancing Activities executed with respect to a Model Portfolio (the "**Exemption Sought**") (each of the capitalized terms as defined below).

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon by the Filer in all the provinces and territories of Canada (together with Ontario, the "**Jurisdictions**") in respect of the Exemption Sought.

Interpretation

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

Representations

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

1. The Filer is a corporation governed by the laws of Canada. The Filer is registered as a mutual fund dealer or its equivalent in the Jurisdictions and is a member of the Mutual Fund Dealers Association of Canada. The Filer is also registered as an investment fund manager in Ontario, Quebec and Newfoundland & Labrador.

2. The head office of the Filer is located in Toronto, Ontario.

3. The Filer is the manager of mutual funds (the "**Existing Funds**"), each of which is subject to the requirements of National Instrument 81-102 *Investment Funds* ("**NI 81-102**"). The Filer may, in the future, become the manager of additional mutual funds (the "**Future Funds**") that are subject to the requirements of NI 81-102. The Existing Funds and Future Funds are referred to, collectively, as the "**Funds**" and, individually, as a "**Fund**".

4. The Funds are, or will be, reporting issuers in one or more of the Jurisdictions. Securities of the Funds are, or will be, qualified for sale pursuant to a simplified prospectus.

5. The Products (as defined below) may be purchased only through the Dealer.

6. The Filer and the Existing Funds are not in default of securities legislation in any Jurisdiction.

7. The Filer offers two model portfolio programs to investors ("**Investors**"): BMO Matchmaker Investment Service and BMO Intuition Investment Service (the "**Products**"). The Products are not managed accounts. The BMO Intuition Investment Service is provided to RESPs and the BMO Matchmaker Investment Service is provided to non-RESPs.

8. For the Products, the Filer has currently developed five model portfolios (together with model portfolios developed for the Products in the future, the "**Model Portfolios**"), four of which is comprised exclusively of securities of a selection of the Funds ("**Fund Selection**"). and one of which (the "**Savings Portfolio**") is comprised of the Funds and GICs There are Model Portfolios suitable for Investors with different tolerances for risk, from conservative, income-maintenance investing to aggressive growth investing. BMO Asset Management Inc. is the portfolio manager involved with the Model Portfolios.

9. Each Model Portfolio has its own unique allocation of equity and fixed income investments and some consist exclusively of equity investments (the "**Asset Classes**").

10. Exposure to the different Asset Classes in each Model Portfolio will be achieved using a list of Funds, each with a target percentage weighting and a target range ("**Target Allocation**") for determining when the Model Portfolio, other than the Savings Portfolio, will be rebalanced through a series of purchase and redemption trades (the "**Rebalancing Activities**") effected by the Filer on behalf of all Investors invested in the Funds through a Model Portfolio. The Model Portfolio will only be automatically rebalanced if the percentage weighting of at least one of the Funds in the Model Portfolio varies by more than its Target Allocation. Target Allocations are reviewed during the last month of each calendar quarter.

11. Under the Products, an Investor meets with his or her financial advisor (the "**Advisor**") who is a registered representative of the Dealer. The Advisor will determine the Investor's financial circumstances, investment knowledge, investment objectives, investment time horizon and their level of risk tolerance. The Advisor will then recommend a Model Portfolio that the Advisor considers to be suitable for the Investor based on the Investor's investment objectives, investment time horizon and risk tolerance. The Advisor reviews the proposed Model Portfolio with the Investor. Neither the Advisor nor the Investor may modify the Model Portfolios.

12. If the Investor decides to invest in a Model Portfolio, an account agreement (the "**Agreement**") is entered into between the Investor and the Filer that sets out, amongst other matters, the following:

    (a) **Model Portfolio** – The Investor authorizes the Filer to manage the Investor's investment with a view to ensuring that the Investor's account is managed in accordance with the agreed upon Model Portfolio based on the Asset Classes and the Target Allocation of the Asset Classes.

    (b) **Fund Facts** – The Investor receives the Fund Facts of the current Funds in a Model Portfolio (each a "**Current Fund**") at the time the Investor enters into the Agreement.

    (c) **Rebalancing Activities** – The Investor authorizes the Filer to make purchases or sales of investments in Funds in accordance with the Rebalancing Activities with a view to ensuring that the Investor's account is managed in accordance with the agreed upon Model Portfolio based on the Target Allocations. The Savings Portfolio will not conduct Rebalancing Activities.

    (d) **Target Allocation** – The Investor will authorize the Filer to use its discretion to change the Target Allocation, being the relative weightings of the Funds within an Asset Class ("**Permitted Target Changes**") of the Model Portfolio. The Filer will not change the target allocation of the Asset Classes.

(e) **Fund Selection** – The Investor authorizes the Filer to use its discretion to replace a Current Fund in a Model Portfolio either with another Current Fund or with another Fund (a "**New Fund**") when another Fund is considered by the Filer to be more appropriate ("**Fund Selection Changes**"). The Investor receives the Fund Facts for the New Fund(s) at the time of the Fund Selection Change with an explanatory notice.

(f) **Termination** – The Investor can terminate the Agreement at any time without any notice or fees payable.

The Fund Facts Delivery Requirement

13. The Fund Facts Delivery Requirement requires that a dealer not acting as agent of the Investor, unless it has previously done so, deliver to the Investor the Fund Facts most recently filed before the dealer accepts an instruction from the Investor for the purchase of securities of a Fund.

14. For Fund Selection Changes resulting in one or more New Funds being added to the Model Portfolio, there will be redemptions of securities of one or more Current Funds in the Model Portfolio and purchases of securities of one or more New Funds in the Model Portfolio. Such purchases trigger the Fund Facts Delivery Requirement for the New Fund(s) in the Model Portfolio. The Dealer will provide the Investor with the most recently filed Fund Facts for the New Fund(s) at the time of the Fund Selection Changes.

15. In the absence of the Exemption Sought, the Dealer is required to deliver the most recently filed Fund Facts in accordance with the Fund Facts Delivery Requirement in respect of purchases of securities of the Funds that are made in connection with Permitted Target Changes and Rebalancing Activities executed with respect to a Model Portfolio.

Decision

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

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

(a) each Investor in a Model Portfolio is sent or delivered a notice that states:

(i) subject to paragraph (b), and except as provided for in representation 14 above, the Investor will not receive the Fund Facts for the Funds in the Model Portfolio after the date of the notice, unless the Investor specifically requests it,

(ii) the Investor is entitled to receive upon request, at no cost to the Investor, the most recently filed Fund Facts for the Funds in the Model Portfolio by calling a specified toll-free number, or by sending a request by mail or e-mail to a specified address or e-mail address,

(iii) how to access the Fund Facts for the Funds in the Model Portfolio electronically,

(iv) the Investor will not have a right of withdrawal under the Legislation for Permitted Target Changes and Rebalancing Activities for the Funds in the Model Portfolio, but will continue to have a right of action if there is a misrepresentation in the prospectus or any document incorporated by reference into the prospectus, and

(v) the Investor may terminate the Agreement at any time;

(b) at least annually, the Investor will be advised in writing of how they can request the most recently filed Fund Facts;

(c) the most recently filed Fund Facts is sent or delivered to the Investor if the Investor requests it; and

(d) the Products may be purchased only through the Dealer.

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

2.1.7 Excel Funds Management Inc.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Mutual funds granted relief from ss.15.3(4)(c) and (f) of National Instrument 81-102 Investment Funds to permit references to Fundata A+ Awards and relief from s.15.3(4)(c) to permit references to FundGrade Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the Fundata A+ Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 15.3(4)(c) and (f), 19.1.

March 15, 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
EXCEL FUNDS MANAGEMENT INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of existing mutual funds and future mutual funds (each a **Fund** and collectively, the **Funds**) of which the Filer is or becomes the investment fund manager, pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), for exemptive relief (the **Requested Relief**) from the requirements set out in paragraphs 15.3(4)(c) (in respect of both the FundGrade A+ Awards presented annually by Fundata Canada Inc. (**Fundata**) and the FundGrade Ratings) and 15.3(4)(f) (in respect of the FundGrade A+ Awards only) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

(a) the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund;

(b) the rating or ranking is to the same calendar month end that is

  (i) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and

  (ii) not more than three months before the date of first publication of any other sales communication in which it is included;

in order to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

The Filer

1. The Filer is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, and its head office is located in Mississauga, Ontario.

2. The Filer is not in default of the securities legislation in any of the Jurisdictions.

3. The Filer acts or will act as the investment fund manager of the Funds.

The Funds

4. Each of the Funds is, or will be, a mutual fund established under the laws of Canada or a jurisdiction of Canada.

5. Securities of each of the Funds were, are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction.

6. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

7. None of the existing Funds are in default of the securities legislation in any of the Jurisdictions.

Fundata FundGrade A+ Awards Program

8. Fundata is a “mutual fund rating entity”, as that term is defined in NI 81-102. Fundata is a leader in supplying mutual fund information, analytical tools, and commentary. Fundata’s fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

9. One of Fundata’s programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.

10. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk-adjusted performance measured by three well-known and widely used metrics: the Sharpe Ratio, the Information Ratio, and the Sortino Ratio. The ratios are calculated for the two through ten-year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the yearly rankings.

11. The FundGrade Ratings are letter grades for each fund and are determined each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A Grade; the next 20% of funds earn a B Grade; the next 40% of funds earn a C Grade; the next 20% of funds receive a D Grade; and the lowest 10% of funds receive an E Grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A Grade, a Fund must show consistently high scores for all ratios across all time periods.

12. Fundata calculates a grade using only the retail series of each fund. Institutional series or fee-based series of any fund are not included in the calculation. A fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a fund, it is then applied to all related series of that fund.

13. At the end of each calendar year, Fundata calculates a "Fund GPA" for each fund based on the full year's performance. The Fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each fund is divided by 12 to arrive at the fund's GPA for the year. Any fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.

14. When a fund is awarded a FundGrade A+ Award, Fundata will permit such fund to make reference to the award in its sales communications.

15. The FundGrade Ratings fall within the definition of "performance data" under NI 81-102, as they constitute "a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund", given that the FundGrade Ratings are based on performance measures calculated by Fundata. The FundGrade A+ Awards may be considered to be "overall ratings or rankings", given that the awards are based on the FundGrade Ratings as described above. Therefore, references to FundGrade Ratings and FundGrade A+ Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

16. Paragraph 15.3(4)(c) of NI 81-102 imposes a "matching" requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or "match", each period for which standard performance data is required to be given for the fund, except for the period since the inception of the fund (i.e., for one, three, five and ten year periods, as applicable).

17. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years, and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten-year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for a Fund to use FundGrade Ratings in sales communications.

18. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4). As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the "matching" requirement in subsection 15.3(4) because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten-year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) unavailable. Relief from paragraph 15.3(4)(c) is, therefore, required in order for the Funds to reference the FundGrade A+ Awards in sales communications.

19. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

20. Because the evaluation of Funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a Fund receives a FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March. Relief from paragraph 15.3(4)(f) of NI 81-102 is required in order for the FundGrade A+ Awards to be referenced in sales communications relating to the Funds outside of the above periods.

21. The FundGrade A+ Awards and the FundGrade Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. The FundGrade A+ Awards and the FundGrade Ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of Fundata in fund analysis that alleviates any concern that references to them may be misleading and, therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to a Fund provided that:

1. The sales communication that refers to the FundGrade A+ Awards and the FundGrade Ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10-point type:

    (a) the name of the category for which the Fund has received the award or rating;

    (b) the number of mutual funds in the category for the applicable period;

    (c) the name of the ranking entity, i.e., Fundata;

    (d) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Awards or the FundGrade Rating is based;

    (e) a statement that FundGrade Ratings are subject to change every month;

    (f) in the case of a FundGrade A+ Award, a brief overview of the FundGrade A+ Awards;

    (g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award), a brief overview of the FundGrade Rating;

    (h) disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category); and

    (i) reference to Fundata's website (www.fundata.com) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings;

2. The FundGrade A+ Award being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. The FundGrade A+ Awards and the FundGrade Ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.8 Bloomberg Tradebook Canada Company

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Revocation of an order granted to Bloomberg Tradebook Canada Company (the "Applicant') dated April 28, 2005 that is no longer required as the Applicant is not operating a marketplace in the jurisdictions.

Instrument Cited

Securities Act, R.S.O. 1990, c. S.5, s. 144.
National Instrument 21-101 Marketplace Operation.

March 28, 2017

IN THE MATTER OF
NATIONAL INSTRUMENT 21-101
MARKETPLACE OPERATION (NI 21-101) AND
NATIONAL INSTRUMENT 23-101
TRADING RULES (NI 23-101)

AND

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO, BRITISH COLUMBIA, ALBERTA,
MANITOBA AND QUEBEC

AND

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

AND

IN THE MATTER OF
BLOOMBERG TRADEBOOK CANADA COMPANY
(the Filer)

AND

IN THE MATTER OF
BLOOMBERG TRADEBOOK CANADA COMPANY
MUTUAL RELIANCE REVIEW SYSTEM
DECISION DOCUMENT DATED APRIL 28, 2005

DECISION

Background

The local securities regulatory authority or regulator in each of the Jurisdictions (defined below) has received an application (the **Application**) on behalf of the Filer for a Decision (the **Decision**) revoking an order granted by the Ontario Securities Commission (the **OSC**) under the Mutual Reliance Review System, dated April 28, 2005 (the **2005 Order**).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

(a) the OSC is the principal regulator for the Application; and

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* is intended to be relied upon in the passport jurisdictions of British Columbia, Alberta, Manitoba and Quebec (the **Passport Jurisdictions** and together with Ontario, the **Jurisdictions**).

Interpretation

Terms defined in the securities legislation of Ontario and the Passport Jurisdictions, National Instrument 14-101 *Definitions*, NI 21-101 and NI 23-101 have the same meanings in this Decision. Certain other terms have the meanings given to them above or below.

"Bloomberg ALLQ" means the search engine offered by the Applicant to Permitted Users that may be used to search for quotations on and obtain access to trading in fixed-income securities that appear elsewhere on the BLOOMBERG PROFESSIONAL service.

"Bloomberg BondTrader System" means the electronic bulletin board system offered by the Applicant to Permitted Users that displays composite quotations in fixed-income securities.

"Bloomberg Fixed-Income Systems" means, collectively, Bloomberg ALLQ and Bloomberg BondTrader System.

"Customers" means Permitted Users that are customers of the Dealers and are enabled by the Dealers to use the Bloomberg Fixed-Income Systems, as applicable.

"Dealers" means brokers and investments dealers that are Permitted Users that may post quotations on Bloomberg ALLQ and provide trading access to Customers through the Bloomberg Fixed-Income Systems.

"Permitted Users" means brokers, investment dealers and institutional investors located in the Provinces of Ontario, British Columbia, Quebec, Manitoba and Alberta who are subscribers to the BLOOMBERG PROFESSIONAL service and who represent under contractual arrangements with the Applicant that they are an "Institutional Investor", as defined in the 2005 Order.

Representations

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

1. The Applicant is a Nova Scotia unlimited liability company incorporated on February 15, 2001 and is 100% owned by Bloomberg Canada LLC, a Delaware limited liability company, formed on February 1, 2001. Bloomberg Canada LLC is 100% owned by Bloomberg L.P., a Delaware U.S. limited partnership.

2. The Applicant is currently registered as an investment dealer in British Columbia, Alberta, Manitoba, New Brunswick, Nova Scotia, Ontario and Quebec and is a member of the Investment Industry Regulatory Organization of Canada.

3. The Applicant offers the Bloomberg Fixed-Income Systems to Permitted Users in Canada.

4. Effective after close of business on July 29, 2016, the Applicant eliminated equity securities marketplace functionality and therefore no longer offers an internal order-matching facility which constitutes an ATS under NI 21-101, as described in paragraph 3 of the 2005 Order.

5. Paragraph 4 of the 2005 Order indicates that the Bloomberg Fixed-Income Systems have an "inquiry" function that allows Customers to transmit a general and non-binding "Bid Wanted" or "Offer Wanted" notice to Dealers that have authorized the particular Customer. At the time of the 2005 Order, it was determined that this "inquiry" function would constitute an ATS under NI 21-101.

6. The Bloomberg Fixed-Income Systems continue to offer an "inquiry" function and other communication functions. However, orders sent through the Bloomberg Fixed-Income Systems are not executed in the systems. Also, there are not established, non-discretionary methods under which orders interact with each other in the Bloomberg Fixed-Income Systems. Therefore, the Bloomberg Fixed-Income Systems do not constitute an ATS under NI 21-101.

7. The Applicant does not offer any other functions that would constitute a marketplace under the securities legislation of the Jurisdictions.

8. The Applicant is not in default of securities legislation in any of the Jurisdictions.

Decision

The principal regulator is satisfied that the Decision meets the test set out in the legislation of the Jurisdictions for the principal regulator to make the Decision.

The Decision of the principal regulator is that the 2005 Order is revoked.

"Tracey Stern"
Manager
Ontario Securities Commission

2.1.9 Hewlett-Packard Enterprise Company

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Dual application for Exemptive Relief Applications – Application for relief from prospectus requirements for spin-off by a U.S. publicly traded company to investors by issuing shares of spun-off entity – Distribution not covered by legislative exemptions – There is no market for the securities of the issuer in Canada – SpinCo will become a U.S. publicly traded company – The number of Canadian participants and their share ownership are de minimis – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74.

TRANSLATION

March 31, 2017

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

AND

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

AND

IN THE MATTER OF
HEWLETT-PACKARD ENTERPRISE COMPANY
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption (the **Exemption Sought**) from the prospectus requirements contained in the Legislation in connection with the distribution (the **Spin-Off**) by the Filer of the shares of common stock of Everett SpinCo, Inc., a direct wholly-owned subsidiary of the Filer, by way of a dividend in specie to holders (**Filer Shareholders**) of shares of common stock of the Filer (**Filer Shares**) resident in Canada (**Filer Canadian Shareholders**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other jurisdictions of Canada, other than Ontario; and

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

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated in Delaware with principal executive offices in Palo Alto, CA, U.S.A. The Filer is a leading global provider of enterprise technology infrastructure, software services, consulting and support services and financial services related to information technology investment.

2. The Filer is a reporting issuer in Québec and is not a reporting issuer under the securities legislation of any other jurisdiction of Canada and, currently, has no intention of becoming a reporting issuer under the securities legislation of any other jurisdiction of Canada.

3. The authorized capital of the Filer consists of 9.6 billion Filer Shares and 300 million shares of preferred stock. As of January 24, 2017, there were approximately 1.664 billion Filer Shares issued and outstanding and no shares of preferred stock were issued and outstanding.

4. Filer Shares are listed on the New York Stock Exchange (the **NYSE**) and trade under the symbol "HPE". Filer Shares are not listed or posted for trading on any exchange or market in Canada and, currently, the Filer has no intention of listing or posting its securities on any exchange or market in Canada.

5. The Filer is subject to the 1934 Act and the rules, regulations and orders promulgated thereunder.

6. Based on a spreadsheet that breaks down the Filer's record holders by domicile from Wells Fargo Shareowner Services (the Filer's transfer agent), as of February 6, 2017, there were 991 registered Filer Canadian Shareholders (117 of whom are in Québec), representing approximately 1.46% of the registered holders of the Filer worldwide, holding approximately 368,806 Filer Shares (57,659 of which are held in Québec), representing approximately 0.02% of the outstanding Filer Shares as of such date. The Filer does not expect these numbers to have materially changed since that date.

7. Based on a "Geographic Analysis Report" of beneficial holders provided by Broadridge Financial Solutions, Inc. obtained by the Filer as of February 15, 2017, there were 15,224 beneficial Filer Canadian Shareholders (3,481 of whom are in Québec), representing approximately 2.43% of the beneficial holders of Filer Shares worldwide, holding approximately 39,374,266 Filer Shares (8,436,259 of which are held in Québec), representing approximately 2.12% of the outstanding Filer Shares. The Filer does not expect these numbers to have materially changed since that date.

8. Based on the information above, the number of registered and beneficial Filer Canadian Shareholders and the proportion of Filer Shares held by such shareholders is *de minimis*.

9. The Filer is proposing to spin-off its technology consulting, outsourcing and support services businesses into a newly formed company, Everett SpinCo, Inc. (**Newco**), through a series of transactions. These transactions are expected to result in the Spin-Off by the Filer, pro rata to its shareholders of all of the shares in the common stock of Newco (**Newco Shares**), which will be 100% of the Newco Shares outstanding immediately prior to such distribution. A wholly-owned subsidiary of Newco will immediately merge (the **Merger**) with Computer Sciences Corporation (**CSC**), with CSC being the surviving company and continuing as a subsidiary of Newco. As part of the Merger, each share of CSC common stock will be converted into the right to receive one share of Newco such that after the Merger approximately 50.1% of the outstanding shares of Newco are expected to be held by pre-Merger NewCo shareholders.

10. Newco is a Delaware corporation with principal executive offices in Palo Alto, CA, U.S.A. It is currently a wholly-owned subsidiary of the Filer that, at the time of the Spin-Off, will hold the Filer's global enterprise technology consulting, outsourcing and support services businesses. CSC is a Nevada corporation with principal executive offices in Tysons, Virginia, U.S.A., with its common stock listed and traded on the NYSE.

11. As of the date hereof, all of the issued and outstanding Newco Shares are held by the Filer, and no other shares or classes of stock of Newco are issued and outstanding.

12. Filer Shareholders will not be required to pay any consideration for the Newco Shares, or to exchange or surrender Filer Shares or take any other action to receive their Newco Shares. The Spin-Off and Merger will occur automatically and without any investment decision on the part of Filer Shareholders.

13. Following the Spin-Off, Newco will cease to be a subsidiary of the Filer and upon the Merger, CSC will be a subsidiary of Newco.

14. Newco has applied to have the Newco Shares listed on the NYSE. After the completion of the transactions, Newco is planning to have the Newco Shares listed and traded on the NYSE. Trading is scheduled to begin on the NYSE on April 3, 2017.

15. After the completion of the Spin-Off, the Filer is planning to continue to be listed and traded on the NYSE.

16. Newco is not a reporting issuer in any jurisdiction in Canada nor are its securities listed on any Canadian stock exchange. Pursuant to the Spin-Off, Newco will become a reporting issuer under the *Securities Act* (Québec) by operation of law. To the knowledge of the Filer, Newco has no intention of becoming a reporting issuer in any jurisdiction of Canada or to list its securities on any Canadian stock exchange after the completion of the Spin-Off.

17. The Spin-Off and Merger will be effected under the laws of the State of Delaware.

18. Because the Spin-Off will be effected by way of a dividend of Newco Shares to Filer Shareholders, no shareholder approval of the proposed transaction is required (or being sought) under Delaware law.

19. In connection with the Spin-Off, Newco has filed with the SEC an amended registration statement on Form 10 (**Amended Registration Statement**) under the 1933 Act detailing the proposed Spin-Off. Filer filed the Amended Registration Statement with the SEC on February 24, 2017.

20. After the SEC has completed its review of the Registration Statement, Filer Shareholders will receive a notice of Internet availability of an information statement (**Information Statement**) detailing the terms and conditions of the Spin-Off and forming part of the Registration Statement. All materials relating to the Spin-Off sent by or on behalf of the Filer and Newco in the United States (including a notice of Internet availability of the Information Statement) will be sent concurrently to Filer Canadian Shareholders.

21. The Information Statement will contain prospectus level disclosure about Newco as required to comply with the SEC requirements for Form 10.

22. Filer Canadian Shareholders will have the same rights and remedies in respect of the disclosure documentation received in connection with the Spin-Off that are available to Filer Shareholders in the United States.

23. Following the completion of the Spin-Off, Newco will be subject to the requirements of the 1934 Act and, if listed for trading on the NYSE, its rules and regulations.

24. Newco will send concurrently to holders of its shares in Canada the same disclosure materials required to be sent under applicable United States securities laws to holders of its shares in the United States.

25. There will be no active trading market for the Newco Shares in Canada following the Spin-Off and none is expected to develop. Consequently, it is expected that any resale of Newco Shares will occur through the facilities of the NYSE.

26. The distribution to Filer Canadian Shareholders of Newco Shares in connection with the Spin-Off would be exempt from the prospectus requirements pursuant to subsection 2.31(2) of NI 45-106 but for the fact that Newco will not be a reporting issuer at the time of the distribution under the securities legislation of any jurisdiction of Canada.

27. Neither the Filer nor Newco is in default of any securities legislation in any jurisdiction of Canada.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that the first trade in the Newco Shares acquired pursuant to the Spin-Off will be deemed to be a distribution unless the conditions in section 2.6 or subsection 2.14(1) of National Instrument 45-102 – *Resale of Securities* are satisfied.

"Lucie J. Roy"
Senior Director, Corporate Finance
Autorité des marchés financiers

2.1.10 Expo Event Holdco, Inc.

Headnote

Subsection 74(1) – Application for exemption from prospectus requirement in connection with first trade of shares of issuer through NYSE or to person or company outside of Canada – issuer not a reporting issuer in any jurisdiction in Canada – conditions of the exemption in section 2.14 of National Instrument 45-102 Resale of Securities not satisfied as indirect parent of issuer, holding majority of issuer's issued and outstanding shares, is a resident of Canada – relief restricted to securities acquired under private placement in Canada to be conducted concurrent with an initial public offering of the issuer in the United States – relief granted subject to conditions, including condition that, excluding shares held by the issuer's indirect parent, residents of Canada do not hold more than 10 percent of the issued and outstanding shares or represent more than 10 percent of the number of securityholders and condition that the first trade be made through an exchange or market outside of Canada or to a person or company outside of Canada.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1).
National Instrument 45-102 Resale of Securities, s. 2.14.

March 29, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

IN THE MATTER OF
EXPO EVENT HOLDCO, INC.
(the "Applicant")

DECISION

Background

The Ontario Securities Commission (the "**Commission**") has received an application from the Applicant for an exemption under Section 74(1) of the *Securities Act* (Ontario) (the "**Act**") from the prospectus requirement set forth in Section 53 of the Act in connection with the first trades of common shares of the Applicant (the "**Resale Requirement**") to be sold to investors (the "**Ontario Investors**") resident in the province of Ontario (the "**Jurisdiction**").

Interpretation

Terms defined in the Act and in National Instrument 14-101 *Definitions* have the same meaning if used in this ruling, unless otherwise defined.

Representations

This ruling is based on the following facts represented by the Applicant:

1. The Applicant was incorporated under the laws of the State of Delaware on April 26, 2013. The Applicant's principal and executive offices are located at 31910 Del Obispo Street, Suite 200, San Juan Capistrano, California 92675.

2. The Applicant's only active wholly-owned subsidiary is Emerald Expositions, LLC ("**Emerald Expositions**"), an entity formed under the laws of the state of Delaware with its principal and executive offices located in San Juan Capistrano. Emerald Expositions is a leading operator of large business-to-business trade shows in the United States. In connection with the Offering (as defined below), the Applicant intends to change its name to Emerald Expositions Events, Inc.

3. The Applicant is controlled by an affiliate of certain investment funds (the "**Foreign Affiliates**") managed by an affiliate of Onex Partners Manager LP ("**Onex LP**") and/or Onex Corporation ("**Onex**"). The Foreign Affiliates hold shares of common stock (the "**Common Shares**") in the capital of the Applicant.

4. The authorized capital of the Applicant currently consists of 700,000 Common Shares, of which 494,951 Common Shares are issued and outstanding. The Applicant's issued and outstanding Common Shares are owned by the Foreign Affiliates, management and certain directors and consultants of the Applicant. Onex, indirectly through the Foreign Affiliates, controls 99% of the outstanding Common Shares.

5. The Applicant is not a reporting issuer in any province or territory of Canada. The Applicant's securities are not listed or posted for trading on any exchange or market in Canada or outside of Canada. The Applicant has no present intention of listing its Common Shares on any Canadian stock exchange or of becoming a reporting issuer under any Canadian securities legislation.

6. Onex was incorporated under the *Business Corporations Act* (Ontario) on December 30, 1980. Onex's registered and principal office is located on the 49th Floor, 161 Bay Street, P.O. Box 700, Toronto, Ontario, Canada M5J 2S1. As at the date hereof, Onex had a market capitalization in excess of Cdn.$10.2 billion. Onex LP is a limited partnership formed under the laws of the State of Delaware. The limited partner of Onex LP is OMI Management U.S. Limited Partnership, a limited partnership formed under the laws of the State of Nevada, and the general partner of Onex LP is Onex Partners Manager GP ULC, a Nova Scotia entity. OMI Management U.S. Limited Partnership and Onex Partners Manager GP ULC are affiliates of Onex.

7. Onex is a reporting issuer or the equivalent under the securities legislation of each of the provinces and territories of Canada. The Applicant has been advised that, to the knowledge of Onex, Onex is not in default of any Canadian securities legislation.

8. While the exact number of Common Shares to be distributed has not yet been determined, the Applicant proposes to conduct an offering of Common Shares (the "**Offering**") consisting of a treasury offering of Common Shares by the Applicant and a secondary offering of Common Shares by the Foreign Affiliates. At the time of the Offering, it is expected that the authorized capital of the Applicant will be increased as a result of a stock split to be undertaken in connection with the Offering.

9. The Offering is being marketed primarily in the United States. The Applicant intends to apply to list the Common Shares for trading on the New York Stock Exchange (the "**NYSE**"), under the symbol "EEX".

10. As part of the Offering, the Applicant and the Foreign Affiliates intend to offer Common Shares (the "**Canadian Offering Shares**") to Ontario Investors in the Jurisdiction in reliance upon the accredited investor exemption from the prospectus and registration requirements found in Section 73.3 of the Act. It is anticipated that each Ontario Investor will also be a "permitted client" as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*. The Applicant and the Foreign Affiliates also intend to offer Common Shares in other international jurisdictions.

11. On the date that the Canadian Offering Shares are distributed to the Ontario Investors (the "**Distribution Date**"), after giving effect to the Offering, the Canadian Offering Shares will not constitute more than 10% of the **Public Float** (defined as the issued and outstanding Common Shares of the Applicant on the Distribution Date after giving effect to the Offering and deducting the Common Shares owned by the Foreign Affiliates).

12. Following completion of the Offering, it is expected that approximately 70-75% of the Common Shares will continue to be held by the Foreign Affiliates, management, and certain directors and consultants of the Applicant. The exact ownership levels will depend upon the ultimate size of the Offering.

13. The Foreign Affiliates will agree with the underwriters involved in the Offering not to transfer the Common Shares held by them following the Offering, for a period of 180 days, without their prior consent, subject to certain exceptions (the "**Lock-Up**").

14. In addition to the Lock-Up, the Common Shares held by the Foreign Affiliates will be subject to resale restrictions pursuant to the *Securities Act of 1933* and other applicable U.S. securities laws and the rules and regulations of the NYSE. These restrictions will prevent the Foreign Affiliates, in certain circumstances, from disposing of their Common Shares to the public without the benefit of a registration statement or an exemption from the registration requirements under U.S. securities laws.

15. Upon completion of the Offering, the Canadian Offering Shares will represent less than 10% of the issued and outstanding Common Shares. However, when aggregated with the Common Shares held by Onex, indirectly through the Foreign Affiliates, the total number of Common Shares held directly or indirectly by resident Canadians will exceed 10% of the issued and outstanding Common Shares.

16. On the Distribution Date, after giving effect to the Offering, residents of Canada will not represent in number more than 10% of the total number of owners, directly or indirectly, of Common Shares of the Applicant.

17. The Canadian Offering Shares will be distributed to Ontario Investors pursuant to the accredited investor exemption in Section 73.3 of the Act. In the absence of an order granting relief, the first trade in Canadian Offering Shares by any of the Ontario Investors will be deemed to be a distribution pursuant to National Instrument 45-102 *Resale of Securities* ("**NI 45-102**").

18. Subsection 2.14(1) of NI 45-102 provides an exemption from the prospectus requirement for the first trade in securities of a non-reporting issuer distributed under a prospectus exemption. Specifically, subsection 2.14(1) states that the prospectus requirement does not apply to the first trade of a security distributed under an exemption from the prospectus requirement if:

    (a) the issuer of the security:

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

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

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

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

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

    (c) the trade is made:

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

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

19. The prospectus exemption in subsection 2.14(1) of NI 45-102 will not be available to Ontario Investors with respect to their first trade in the Canadian Offering Shares, because on the Distribution Date Onex, a resident of Canada, will indirectly through the Foreign Affiliates own more than 10% of the outstanding Common Shares, preventing the condition in subparagraph (1)(b)(i) from being satisfied. Other than the condition in subparagraph 2.14(1)(b)(i), the conditions of subsection 2.14(1) would be satisfied to allow the first trade of the Canadian Offering Shares by the Ontario Investors in compliance with the prospectus exemption.

20. The Applicant's Canadian shareholder base is *de minimis* when Onex's indirect ownership is excluded. Prior to the Offering, the Applicant can confirm that residents of Canada, other than Onex, did not own, directly or indirectly, any Common Shares.

21. No market for the Common Shares exists in Canada and none is expected to develop as a result of or following the Offering. The Common Shares will be offered primarily outside of Canada with no more than 10% of the Public Float being held by the Ontario Investors immediately after giving effect to the Offering. The market for the Common Shares will be outside of Canada and primarily in the United States as a result of the NYSE listing. It is expected that any resale of Common Shares by the Ontario Investors will be effected through an exchange or market outside of Canada (including the facilities of the NYSE) or to a person or company outside of Canada.

22. The Applicant, in addition to having a *de minimis* Canadian shareholder base when Onex's indirect ownership is excluded, has a *de minimis* connection to Canada. The Applicant: (i) does not have any Canadian operating subsidiaries; (ii) has no assets in Canada; and (iii) derives less than 2.5% of its revenue from Canadian customers. At the time of the Offering, it is expected that all of the officers and management of the Applicant will be located in San Juan Capistrano, California. Currently, only one Canadian resident serves as both an officer and director of the Applicant. The balance of the directors and officers are not Canadian residents.

23. The Applicant will be subject to the reporting and disclosure obligations of the *Securities Exchange Act of 1934* and the NYSE rules and regulations. Holders of Canadian Offering Shares will receive copies of all shareholder materials

provided to all other holders of the Common Shares, in accordance with applicable law, and will also have general access to such materials on EDGAR.

24. The draft initial registration statement submitted to the SEC provides legends for sales in additional international jurisdictions to persons similar to accredited investors, including investors in the European Economic Area, United Kingdom, Switzerland, Dubai, Hong Kong, Singapore, Japan, Australia and France. It is expected that investors in those jurisdictions will be permitted to resell their Common Shares on the NYSE.

Decision

The Commission is satisfied that the decision meets the test set out in Section 74(1) of the Act.

The ruling of the Commission under Section 74(1) of the Act is that the first trades of the Canadian Offering Shares are exempt from the Resale Requirement provided that:

(a) on the Distribution Date, after giving effect to the Offering, the Canadian Offering Shares will not constitute more than 10% of the Public Float;

(b) on the Distribution Date, after giving effect to the Offering, residents of Canada will not represent in number more than 10% of the total number of owners, directly or indirectly, of the Common Shares of the Applicant;

(c) the Applicant:

(i) is not a reporting issuer in any jurisdiction of Canada at the Distribution Date; or

(ii) is not a reporting issuer in any jurisdiction of Canada at the date of such first trades; and

(d) such first trades are executed through an exchange or a market outside of Canada or to a person or company outside of Canada.

DATED at Toronto on this 29th day of March, 2017.

“Monica Kowal”
Vice-Chair
Ontario Securities Commission

“Grant Vingoe”
Vice-Chair
Ontario Securities Commission

2.1.11 OMERS Administration Corporation and OMERS Investment Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application by pension fund administrator and related entities for relief from dealer registration and prospectus requirements that may be applicable to certain trades in over-the-counter (OTC) derivatives with "permitted counterparties" – permitted counterparties will consist exclusively of persons or companies who are non-individual "permitted clients" as defined in Section 1.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – relief sought in Ontario and certain other jurisdictions as interim response to current regulatory uncertainty associated with OTC derivatives in Canada – filers intend to rely on comparable exemptions in orders or rules of general application in certain jurisdictions for trades with "qualified parties" and, in Quebec, the exemption under Quebec derivatives legislation for trades with "accredited counterparties" – relief granted subject to certain terms and conditions, including sunset provision of up to four years.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1), 74(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 1.1 ("permitted client").

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
OMERS ADMINISTRATION CORPORATION (OAC) AND
OMERS INVESTMENT MANAGEMENT INC.
(OIM, and, together with OAC, 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:

(i) an exemption from the prospectus requirement for OAC, OIM and special purpose vehicles established by OIM (the **Special Purpose Vehicles** and, together with OAC and OIM, **OMERS**), and

(ii) an exemption from the dealer registration requirement for OAC, the Special Purpose Vehicles and their respective directors, officers and employees,

in connection with trades in Derivative Contracts (as defined below) with Permitted Counterparties (as defined below), as are permitted by and as are carried out in accordance with the *Ontario Municipal Employees Retirement System Act, 2006*, R.S.O. 2006, c. 2, as amended from time to time (the **OMERS Act**) (the **Requested Relief**), subject to certain terms and conditions.

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 in Manitoba, New Brunswick (to the extent Local Rule 91-501 *Derivatives* does not apply), Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

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

The term **Permitted Counterparty** means a person or company that:

(a) is a "permitted client", as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*; and

(b) is not an individual.

Representations

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

The Filers

1. OAC (previously the Ontario Municipal Employees Retirement Board) is the administrator of the OMERS pension plans, which includes the OMERS Primary Pension Plan (the **Plan**). OAC was continued as a corporation without share capital under the OMERS Act. Its head office is in Toronto, Ontario. OAC is not registered in any capacity under the securities legislation of any jurisdiction.

2. OIM is an authorized subsidiary of OAC under subsection 35.1(3) of the OMERS Act. It was incorporated under Ontario law in 2009. Its head office is in Toronto, Ontario. OIM is registered as an exempt market dealer in British Columbia, Alberta, Manitoba, Ontario, Québec, and Newfoundland and Labrador.

3. OAC and the Plan are regulated by the OMERS Act, the *Pension Benefits Act* (Ontario) (the **PBA**) and the *Income Tax Act* (Canada) (the **ITA**), and are subject to supervision by the Financial Services Commission of Ontario (**FSCO**) as well as the Registered Plans Division of the Canada Revenue Agency (**CRA**). The regulatory oversight and supervision by FSCO is pursuant to the PBA and the regulatory supervision by the CRA is pursuant to the ITA. Pursuant to the PBA, the Plan pension fund investments are subject to a codified prudent person standard of care (section 22 of the PBA) and various quantitative and related party investment restrictions which are set out in the federal *Pension Benefits Standards Regulations, 1985* (the **federal investment regulations**). The federal investment regulations are incorporated into the PBA and are fully applicable to OAC and the Plan. The PBA also requires that OAC (as administrator of the Plan) establish and adhere to a written statement of investment policies and procedures (**SIP&P**). FSCO has under the PBA general authority to supervise and monitor the investment activities of a pension plan that is registered under the PBA including the Plan. Under the PBA, OAC (in its capacity as administrator of the Plan) is required, among other things, to certify annually its compliance with the PBA including the investment regulations thereunder. OAC and the Plan are also subject to various investment limitations imposed under the ITA including prohibitions against various types of investments relating to employers which participate in the Plan (Income Tax Regulation 8514) and strict limitations on borrowing money (Income Tax Regulation 8502(i)). Such limitations are enforced by the CRA and if not complied with would (like any other registered pension plan) jeopardize the registration of the Plan under the ITA.

4. The Plan was established in 1962 as the pension plan for employees of local governments (and various agencies of local governments) in Ontario. As of December 31, 2016 there were approximately 990 employers participating in the Plan. As an administrator of the Plan, OAC manages as part of the Plan a diversified portfolio of stocks and bonds, as well as real estate, infrastructure and private equity investments, holding more than $85.2 billion in net assets as of December 31, 2016.

5. The Ontario Municipal Employees Retirement System was created by the Ontario Government for the purpose of aggregating investment assets held in pension plans for the benefit of local government employees in order that they may be managed with a high level of investment expertise in a cost-effective manner. As administrator of those assets, OAC is not subject to registration under the Legislation for this purpose, but is subject to supervision and regulation under the PBA and the ITA. The investment by OAC of the Plan is also subject to common law fiduciary duties.

OMERS Services

6. There are two categories of investment powers provided under the OMERS Act; namely (i) the authority given to OAC to administer and invest the OMERS pension plans under sections 34(1) and 35(2)(a) (the **administrator powers**), and (ii) the provision of eligible services by authorized subsidiaries to enumerated categories of clients under sections 34(3) and 35.1 of the OMERS Act and the provision of services by OAC pursuant to section 35.2 of the OMERS Act

(the **third party services powers**). Former legislation governing OAC included the administrator powers and a limited third party services power (former section 29). Expanded third party services powers, including those that would permit OMERS to enter into the proposed Derivative Contracts (as defined below), were added through an amendment to the OMERS Act in 2009.

7. Under subsection 35.1(1) of the OMERS Act, in order to exercise the third party services powers OAC "may incorporate or cause to be incorporated and may make and maintain an investment in one or more corporations that, after the investment is made, are authorized subsidiaries of" OAC. Under subsection (3), "a corporation is an authorized subsidiary of OAC if:

(a) the corporation carries on business with a view to profit;

(b) the business of the corporation is limited to providing one or more eligible services to one or more persons or entities described in subsection (6); and

(c) [OAC] has beneficial ownership of shares of the corporation representing more than 50 per cent of the shareholders' equity of the corporation."

Subsection (5) provides that "each of the following is an eligible service if it is carried out in compliance with all applicable laws:

1. Providing advice to an administrator of a pension plan regarding the administration of the pension plan or the investment policies for the pension fund maintained to provide benefits in respect of that pension plan.

2. Providing advice to a client on investing in, holding, buying or selling securities or other assets.

3. Buying, selling, holding and managing investments for a client, with or without discretionary authority granted by the client to manage the client's investment portfolio.

4. Activities and services ancillary to the services listed in paragraphs 1 to 3, including,

   i. activities relating to the distribution or sale to clients of securities issued by an investment entity [incorporated, established, managed or operated by an authorized subsidiary of OAC for the purpose of providing eligible services], and

   ii. entering into derivative contracts in which the return is based in whole or in part of the performance of all or part of the pension fund maintained to provide benefits in respect of any of the OMERS pension plans or of any of pension fund's investments.

5. Providing administrative services to an administrator of a pension plan.

Clients to which eligible services may be provided, as specified in subsection (6) are:

1. OAC.

2. The administrator of a pension plan other than the OMERS pension plans, whether the pension plan is in or outside Canada.

3. The Government of Canada or the government of a province or territory of Canada or,

   i. a Crown corporation, Crown agency or wholly-owned entity of the Government of Canada or of the government of a province or territory of Canada, or

   ii. a corporation established by federal or provincial statute.

4. A municipal corporation or a municipal or public body performing a function of government in Canada.

5. A board, within the meaning of the *Education Act* (Ontario), or a school board or similar authority that operates under comparable legislation in another province of Canada.

6. A college of applied arts and technology established under the *Ontario Colleges of Applied Arts and Technology Act, 2002* (Ontario), a university that receives regular and ongoing operating funding from Ontario for purposes of post-secondary education or an educational institution in another province in Canada that receives regular and ongoing operating funding from the province.

7. An educational institution outside Canada.

8. An endowment fund for a university, college or educational institution referred to in paragraph 6 or 7.

9. A registered charity within the meaning of the *Income Tax Act* (Canada).

10. A national, federal, state, provincial, territorial or municipal government of or in any jurisdiction outside Canada or any entity owned or controlled by that government.

11. An investment entity authorized by the OMERS Act.

12. A client or class of clients prescribed by the regulations or that satisfies conditions prescribed by the regulations.

No regulations have been promulgated under the OMERS Act.

8. In furtherance of the third party services powers, subsection 35.2(2) of the OMERS Act authorizes OAC to "enter into agreements under which [its authorized subsidiaries] provide eligible services to clients".

Proposed Derivative Contracts

9. As permitted by the OMERS Act, OIM proposes, either directly or through a Special Purpose Vehicle (which it is permitted to establish under subsection 35.1(4) of the OMERS Act), to enter into derivative contracts with third party pension plan funds or other clients specified in subsection 35.1(6) of the OMERS Act (the **Derivative Contract Clients**), all of which will be Permitted Counterparties. In turn, OIM or the Special Purpose Vehicle, as applicable, will enter into derivative contracts with OAC that mirror the derivative contracts entered into with the Derivative Contract Clients (collectively, all derivative contracts in the proposed structure are referred to as the **Derivative Contracts**). The net result of the Derivative Contracts will be to provide Derivative Contract Clients with an annual return based on the reported performance of the Plan's total portfolio or on the performance of a particular subset of assets of the Plan. Paragraph 35.1(5)4.ii of the OMERS Act, as amended in 2009, expressly authorizes "entering into derivatives contracts in which the return is based in whole or in part on the performance of all or part of the pension fund maintained to provide benefits in respect of any of the OMERS pension plans or of any of the pension fund's investments".

10. Where a Special Purpose Vehicle is the counterparty to the Derivative Contracts, Derivative Contract Clients will purchase units of, or acquire interests in, the Special Purpose Vehicle. Paragraph 35.1(5)4.i of the OMERS Act authorizes the authorized subsidiary to engage in "activities relating to the distribution or sale to clients of securities issued by" a Special Purpose Vehicle.

11. OAC will provide a guarantee to Derivative Contract Clients in respect of any payment obligations of OIM or a Special Purpose Vehicle under the Derivative Contracts to Derivative Contract Clients.

12. OMERS will not offer or provide credit or margin to any of the Derivative Contract Clients.

13. Each Derivative Contract Client will acknowledge in the applicable Derivative Contract (or ancillary documentation) that it has not relied on any communications of OMERS as investment advice or as a recommendation to enter into the Derivative Contract.

14. Representatives of OAC and entities that manage OAC's private investment assets will participate in presentations to Derivative Contract Clients and prospective Derivative Contract Clients to provide information on the assets held by OAC and the investment processes used to manage those assets.

15. The Ontario government has facilitated these arrangements with Derivative Contract Clients that are Ontario pension funds by amending the Regulation under the PBA in 2011 to clarify that a Derivative Contract Client that is a pension fund is able to enter into such an arrangement for more than 10% of its assets without violating the diversification limitation imposed under the PBA on pension plans investing more than 10% of their assets in any one investment so long as not more than 10% of the total book value of the Derivative Contract Client is directly or indirectly invested in any one underlying asset, business or investment. This change to the Regulation under the PBA was in recognition of

the fact that the Plan itself is a regulated pension fund subject to the requirements of the PBA, including the diversification limitation imposed under the PBA.

Dealer Registration and Prospectus Exemptions

16. Under the Legislation a person or company that engages in or holds himself, herself or itself out as engaging in the business of trading in securities is subject to a requirement to register as a dealer. No person or company may trade in a security if the trade would be a distribution unless a preliminary prospectus and prospectus have been filed and receipts obtained.

17. It is unclear whether the dealer registration and prospectus requirements would apply in respect of the Derivative Contracts in provinces and territories other than those that have provided exemptive relief as referenced in the following paragraph due to the uncertainty of the extent to which over-the-counter derivative (**OTC Derivative**) transactions involve securities. In particular, OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts in Ontario* (**Notice 91-702**) characterizes certain contracts for difference, foreign exchange contracts and "similar" OTC Derivatives as securities as a result of being "investment contracts". Notice 91-702 states that it is not intended to address direct or intermediated trading between institutions and accordingly does not provide specific guidance with respect to the characterization of OTC Derivative transactions between OIM or a Special Purpose Vehicle and its counterparties.

18. The securities regulatory authority in each of British Columbia, Alberta, Saskatchewan, Nova Scotia and New Brunswick has made an order or rule of general application exempting OTC Derivative transactions that involve negotiated, bilateral contracts between sophisticated non-retail parties from the dealer registration and prospectus or other disclosure requirements. Such transactions similarly are exempt from the registration requirements of the *Derivatives Act* (Quebec).

19. The Filers seek the Requested Relief as an interim, harmonized solution to the uncertainty and fragmentation that currently characterizes the regulation of OTC Derivatives across Canada, pending the development of a uniform framework for the regulation of OTC Derivative transactions in all provinces and territories of Canada. Similar relief from the dealer registration and prospectus requirements in respect of trading in OTC Derivatives with Permitted Counterparties was granted to the Filers in *Re OMERS Administration Corporation and OMERS Investment Management Inc.* (2013) 36 OSCB 1424 and to Deutsche Bank AG, a bank listed in Schedule III to the *Bank Act* (Canada) and exempt from registration pursuant to subsection 35.1(1) of the Legislation, and DB Commodities Canada Ltd., an unregistered entity, in *Re Deutsche Bank AG and DB Commodities Canada Ltd.* (2011) 34 OSCB 10743. The Filers acknowledge that registration and prospectus requirements may be triggered for any or all of OAC, OIM and the Special Purpose Vehicles in connection with the Derivative Contracts under any such uniform framework to be developed for the regulation of OTC Derivative transactions.

20. Each of OIM and OAC is "market participant", and any Special Purpose Vehicle would become a "market participant" as a consequence of the making of this decision. For the purposes of the *Securities Act* (Ontario) (the **Act**), and as a market participant each of OAC and OIM and any Special Purpose Vehicle will be required by subsection 19(1) of the Act to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.

21. For the purposes of their compliance with subsection 19(1) of the Act, the books and records that OAC, OIM and any Special Purpose Vehicle will keep in connection with the Derivative Contracts will include books and records that

    (a) demonstrate the extent of their compliance with applicable requirements of securities legislation;

    (b) demonstrate compliance with their policies and procedures for establishing a system of controls and supervision sufficient to provide reasonable assurance that OAC, OIM and any Special Purpose Vehicle, and each individual acting on their behalf, comply with applicable securities legislation;

    (c) identify all Derivative Contracts conducted on their behalf and each of the Derivative Contract Clients, including the name and address of all parties to the transaction and its terms; and

    (d) for each Derivative Contract entered into, set out information corresponding to that which would be required to be included in an exempt distribution report for the transaction, if the transaction were entered into by OAC, OIM and any Special Purpose Vehicle in reliance upon the "accredited investor" prospectus exemption in section 2.3 of National Instrument 45-106 *Prospectus Exempt Distributions*.

Decision

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

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

(a) each Derivative Contract Client is a Permitted Counterparty;

(b) OMERS does not offer or provide any credit or margin to the Derivative Contract Clients; and

(c) the Requested Relief shall terminate on the date that is the earlier of:

(i) the date that is four years after the date of this decision; and

(ii) the coming into force in the Jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration and/or market conduct requirements applicable to market participants in connection with OTC Derivative transactions.

DATED at Toronto, Ontario, this 3rd day of April, 2017.

"Monica Kowal"
Vice Chair or Commissioner
Ontario Securities Commission

"Grant Vingoe"
Vice Chair or Commissioner
Ontario Securities Commission

2.1.12 NGAM Canada LP

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds managed by the Filer granted relief from paragraphs 15.3(4)(c) and (f) of NI 81-102 Investment Funds to permit references to FundGrade A+ Awards, FundGrade Ratings, Lipper Awards and Lipper Leader Ratings in sales communications – Relief subject to conditions requiring specified disclosure and the requirement that the FundGrade A+ Awards and Lipper Awards being referenced not have been awarded more than 365 days before the date of the sales communication.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss.15.3(4)(c) and (f), 19.1.

March 20, 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
NGAM CANADA LP
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 – *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in paragraphs 15.3(4)(c) (in respect of the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings) and 15.3(4)(f) (in respect of the FundGrade A+ Awards and Lipper Awards only) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

1. the rating or ranking is provided for each period for which standard performance data is required to be given, except the period since the inception of the mutual fund; and

2. the rating or ranking is to the same calendar month end that is:

   (a) not more than 45 days before the date of the appearance or use of the advertisement in which it is included, and

   (b) not more than three months before the date of first publication of any other sales communication in which it is included;

(together, the **Exemption Sought**), to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

Terms defined in National Instrument 14-101 – *Definitions*, NI 81-102 have the same meanings if used in this decision, unless otherwise defined.

Representations

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

The Filer and the Funds

1. The Filer is a limited partnership established under the laws of the Province of Ontario having its head office in Toronto, Ontario. The general partner of the Filer is NGAM Canada Limited, a corporation incorporated under the laws of the Province of Ontario.

2. The Filer is registered as an investment fund manager in Ontario, Quebec and Newfoundland and Labrador, an exempt market dealer in each of the Jurisdictions, and a portfolio manager and mutual fund dealer in Ontario.

3. The Filer manages the Funds, which are open-ended mutual funds, the securities of which are, or will be, qualified for distribution to investors in one or more of the Jurisdictions pursuant to various simplified prospectuses, as they may be amended or renewed from time to time.

4. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

5. The Filer and each of the Funds are not in default of securities legislation in any of the Jurisdictions.

FundGrade Ratings and FundGrade A+ Awards

6. The Filer wishes to include in sales communications of the Funds references to the FundGrade Ratings and references to the FundGrade A+ Awards where such Funds have been awarded a FundGrade A+ Award.

7. Fundata Canada Inc. (**Fundata**) is a “mutual fund rating entity” as that term is defined in NI 81-102. Fundata is a leader in supplying mutual fund information, analytical tools, and commentary. Fundata's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

8. One of Fundata's programs is the FundGrade A+ Awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to their peers. The FundGrade A+ Awards designate award-winning funds in most individual fund classifications for the previous calendar year, and the awards are announced in January of each year. The categories for fund classification used by Fundata are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to CIFSC), a Canadian organization that is independent of Fundata.

9. The FundGrade A+ Awards are based on a proprietary rating methodology developed by Fundata, the FundGrade Rating system. The FundGrade Rating system evaluates funds based on their risk adjusted performance, measured by three well-known and widely-used metrics: the Sharpe Ratio; the Information Ratio; and the Sortino Ratio. The ratios are calculated for the two through ten year time periods for each fund. When there is more than one eligible series of a fund, an average ratio is taken for each period. The ratios are ranked across all time periods and an overall score is calculated by equally weighting the yearly rankings.

10. The FundGrade Ratings are letter grades for each Fund and are determined each month. The FundGrade Ratings for each month are released on the seventh business day of the following month. The top 10% of funds earn an A Grade; the next 20% of funds earn a B Grade; the next 40% of funds earn a C Grade; the next 20% of funds receive a D Grade; and the lowest 10% of funds receive an E Grade. Because the overall score of a fund is calculated by equally weighting the periodic rankings, to receive an A Grade, a Fund must show consistently high scores for all ratios across all time periods.

11. Fundata calculates a grade using only the retail series of each Fund. Institutional series or fee-based series of any Fund are not included in the calculation. A Fund must have at least two years of history to be included in the calculation. Once a letter grade is calculated for a Fund, it is then applied to all related series of that Fund.

12. At the end of each calendar year, Fundata calculates a "Fund GPA" for each Fund based on the full year's performance. The Fund GPA is calculated by converting each month's FundGrade Rating letter grade into a numerical score. Each A is assigned a grade of 4.0; each B is assigned a grade of 3.0; each C is assigned a grade of 2.0; each D is assigned a grade of 1.0; and each E is assigned a grade of 0. The total of the grades for each Fund is divided by 12 to arrive at the Fund's GPA for the year. Any Fund earning a GPA of 3.5 or greater earns a FundGrade A+ Award.

13. When a Fund is awarded a FundGrade A+ Award, Fundata will permit such Fund to make reference to the award in its sales communications.

Lipper Leader Ratings and Lipper Awards

14. The Filer also wishes to include in sales communications of the Funds references to Lipper Leader Ratings (which are performance ratings or rankings for funds issued by Lipper and include the Lipper Leader Ratings for Consistent Return, Lipper Leader Ratings for Total Return and Lipper Leader Ratings for Preservation, which are described below) and Lipper Awards (as described below) where such Funds have been awarded a Lipper Award.

15. Lipper, Inc. (**Lipper**) is a "mutual fund rating entity" as that term is defined in NI 81-102. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

16. One of Lipper's programs is the Lipper awards program. This program recognizes funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently, the Lipper awards take place in approximately 13 countries.

17. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which were awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper designates award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

18. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (CIFSC) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

19. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

20. In Canada, the Lipper Leader Rating System includes Lipper Leader Ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader Ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader Ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

21. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the

highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

Sales Communication Disclosure

22. The FundGrade Ratings and Lipper Leader Ratings fall within the definition of "performance data" under NI 81-102 as they constitute "a rating, ranking, quotation, discussion or analysis regarding an aspect of the investment performance of an investment fund", given that the FundGrade Ratings and Lipper Leader Ratings are based on performance measures calculated by Fundata and Lipper, respectively. The FundGrade A+ Awards and Lipper Awards may be considered to be "overall ratings or rankings" given that the awards are based on the FundGrade Ratings and Lipper Leader Ratings, respectively, as described above. Therefore, references to FundGrade Ratings, FundGrade A+ Awards, Lipper Leader Ratings, and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

23. Paragraph 15.3(4)(c) of NI 81-102 imposes a "matching" requirement for performance ratings or rankings that are included in sales communications for mutual funds. If a performance rating or ranking is referred to in a sales communication, it must be provided for, or "match", each period for which standard performance data is required to be given for the fund, except for the period since the inception of the fund (i.e. for one, three, five and ten year periods, as applicable).

24. While FundGrade Ratings are based on calculations for a minimum of two years through to a maximum of ten years and the FundGrade A+ Awards are based on a yearly average of monthly FundGrade Ratings, specific ratings for the three, five and ten year periods within the two to ten year measurement period are not given. This means that a sales communication referencing FundGrade Ratings cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102. Relief from paragraph 15.3(4)(c) of NI 81-102 is, therefore, required in order for a Fund to use FundGrade Ratings in sales communications.

25. The exemption in subsection 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the FundGrade A+ Awards in sales communications for the Funds because it is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4). As noted above, sales communications referencing the FundGrade A+ Awards cannot comply with the "matching" requirement in subsection 15.3(4) because the underlying FundGrade Ratings are not available for the three, five and ten year periods within the two to ten year measurement period for the FundGrade Ratings, rendering the exemption in subsection 15.3(4.1) unavailable. Relief from subsection 15.3(4)(c) is, therefore also, required in order for Funds to reference the FundGrade A+ Awards in sales communications.

26. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. This paragraph provides that in order for a rating or ranking such as a FundGrade A+ Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

27. Because the evaluation of Funds for the FundGrade A+ Awards will be based on data aggregated until the end of December in any given year and the results will be published in January of the following year, by the time a Fund receives a FundGrade A+ Award in January, paragraph 15.3(4)(f) of NI 81-102 will only allow the FundGrade A+ Award to be used in an advertisement until the middle of February and in other sales communications until the end of March.

28. In Canada and elsewhere, Lipper Leader Ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader Rating cannot comply with the "matching" requirement contained in paragraph 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from paragraph 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader Ratings in sales communications.

29. In addition, a sales communication referencing the overall Lipper Leader Ratings and the Lipper Awards, which are based on the Lipper Leader Ratings, must disclose the corresponding Lipper Leader Rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader Ratings, sales communications referencing the overall Lipper Leader Ratings or Lipper Awards also cannot comply with the matching requirement contained in paragraph 15.3(4)(c) of NI 81-102.

30. The exemption in paragraph 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader Ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of

section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader Ratings or Lipper Awards cannot comply with the matching requirement in paragraph 15.3(4) because the underlying Lipper Leader Ratings are not available for the one year period, rendering the exemption in paragraph 15.3(4.1) unavailable. Relief from paragraph 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader Ratings and the Lipper Awards in sales communications.

31. Paragraph 15.3(4)(f) of NI 81-102 imposes certain restrictions on disclosure in sales communications. The section provides that in order for a rating or ranking such as a Lipper Award to be used in an advertisement, the advertisement must be published within 45 days of the calendar month end to which the rating or ranking applies. Further, in order for the rating or ranking to be used in any other sales communication, the rating or ranking must be published within three months of the calendar month end to which the rating or ranking applies.

32. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, paragraph 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

33. The Exemption Sought is required in order for the FundGrade Ratings, FundGrade A+ Awards, Lipper Leader Ratings, and Lipper Awards to be referenced in sales communications relating to the Funds.

34. The Filer submits that the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings provide important tools for investors, as they provide investors with context when evaluating investment choices. These awards and ratings provide an objective, transparent and quantitative measure of performance that is based on the expertise of FundGrade or Lipper, as applicable, in fund analysis that alleviates any concern that references to them may be misleading and therefore, contrary to paragraph 15.2(1)(a) of NI 81-102.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings to be referenced in sales communications relating to a Fund, provided that

1. the sales communication complies with Part 15 of NI 81-102, other than as set out herein, and contains the following disclosure in at least 10 point type:

    (a) the name of the category for which the Fund has received the award or rating;

    (b) the number of mutual funds in the category for the applicable period;

    (c) the name of the ranking entity, i.e., Fundata or Lipper;

    (d) the length of period and the ending date, or, the first day of the period and the ending date on which the FundGrade A+ Award, FundGrade Rating, Lipper Award or Lipper Leader Rating is based;

    (e) a statement that FundGrade Ratings or Lipper Leader Ratings are subject to change every month;

    (f) in the case of a FundGrade A+ Award or Lipper Award, a brief overview of the FundGrade A+ Award or Lipper Awards, as applicable;

    (g) in the case of a FundGrade Rating (other than FundGrade Ratings referenced in connection with a FundGrade A+ Award) or a Lipper Leader Rating (other than Lipper Leader Ratings referenced in connection with a Lipper Award), a brief overview of the FundGrade Rating or Lipper Leader Rating;

    (h) where Lipper Awards are referenced, the corresponding Lipper Leader Rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

    (i) where a Lipper Leader Rating is referenced, the Lipper Leader Ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

(j) disclosure of the meaning of the FundGrade Ratings from A to E (e.g., rating of A indicates a fund is in the top 10% of its category) or Lipper Leader Ratings from 1 to 5 (e.g., rating of 5 indicates a fund is in the top 20% of its category), as applicable; and

(k) reference to Fundata's website (www.fundata.com) for greater detail on the FundGrade A+ Awards and the FundGrade Ratings or reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader Ratings, which includes the rating methodology prepared by Lipper, as applicable;

2. the FundGrade A+ Award and Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the FundGrade A+ Awards, FundGrade Ratings, Lipper Awards, and Lipper Leader Ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.2 Orders

2.2.1 Danier Leather Inc. – s. 144

Headnote

Section 144 – application for partial revocation of cease trade order – issuer cease traded due to failure to file interim financial statements, management's discussion and analysis and certifications of the foregoing filings for the 26-week interim period ended December 25, 2015 – applicant has applied for a partial revocation of the cease trade order to permit the transfer of subordinate voting shares held by the applicant to a holding company also wholly owned and controlled by applicant – partial revocation granted subject to conditions.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127 and 144.

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

AND

IN THE MATTER OF
DANIER LEATHER INC.
("DANIER")

ORDER
(Section 144 of the Act)

WHEREAS the securities of Danier are subject to a cease trade order made by the Director (the "**Director**") of the Ontario Securities Commission (the "**Commission**") dated February 17, 2016 pursuant to paragraph 2 of subsection 127(1) and subsection 127(4.1) of the Act (together, the "**Cease Trade Order**"), ordering that trading in securities of Danier cease until the Cease Trade Order is revoked by the Director;

AND WHEREAS Mr. Jeffrey Wortsman (the "**Applicant**"), the beneficial owner of subordinate voting shares in the capital of Danier, has applied to the Commission pursuant to section 144 of the Act for a partial revocation of the Cease Trade Order to allow the transfer (the "**Transfer**") by the Applicant of his subordinate voting shares (the "**SVS**") to a holding company to be incorporated and wholly owned and controlled by the Applicant ("**Holdco**") (the "**Requested Relief**").

AND WHEREAS additional cease trade orders were issued by the Manitoba Securities Commission, the Autorité des marchés financiers and the British Columbia Securities Commission on February 24, 2016, March 3, 2016 and April 6, 2016, respectively (the "**Additional Cease Trade Orders**");

AND WHEREAS notwithstanding the Additional Cease Trade Orders, the Applicant has applied only to the Commission for a partial revocation of the Cease Trade Order;

AND UPON the Applicant having represented to the Commission that:

1. Danier is listed as being in default on the Commission's Reporting Issuers List, due to its failure to file (i) interim financial statements for the 26-week period ended December 25, 2015; (ii) management's discussion and analysis relating to the interim financial statements for the 26-week period ended December 25, 2015; and (iii) certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings*.

2. No jurisdiction of Canada, other than Ontario, Manitoba, Quebec and British Columbia, has issued a cease trade order against Danier's securities.

3. On March 21, 2016, Danier made a voluntary assignment in bankruptcy pursuant to the provisions of the *Bankruptcy and Insolvency Act* (Canada) ("**BIA**").

4. Danier is currently subject to proceedings before the Ontario Superior Court of Justice under the BIA (the "**BIA Proceedings**"). KSV Kofman Inc. (the "**Bankruptcy Trustee**") has been appointed as the trustee in the BIA Proceedings.

5. The Bankruptcy Trustee is aware that the Applicant has submitted an application to the Commission for the partial revocation of the Cease Trade Order. It has not raised any objections to the Transfer.

6. The Applicant is a resident of the City of Toronto and the Province of Ontario.

7. The Applicant is the beneficial owner of the SVS.

8. The Transfer will take place in Ontario.

9. The Cease Trade Order was issued by the Commission as a result of Danier's failure to file the continuous disclosure materials listed in Paragraph 1 above.

10. The Cease Trade Order prohibits all trading in the securities of Danier in Ontario, whether direct or indirect, until the Cease Trade Order is revoked by the Director.

11. The sole purpose of the Transfer is to allow the Applicant to more efficiently organize his tax affairs. There is no other benefit of the Transfer to the Applicant, Danier, the Bankruptcy Trustee, or any other securityholders of Danier.

12. The Applicant believes that the partial revocation of the Cease Trade Order is not prejudicial to the public interest.

13. The Applicant is seeking a partial revocation of the Cease Trade Order under section 144 of the Act to permit the Transfer.

14. The Applicant acknowledges that, following the Transfer, any trade in the securities of Danier held by Holdco is prohibited by the Cease Trade Order.

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

AND UPON the Director being satisfied that it is not prejudicial to the public interest to make an order for the partial revocation of the Cease Trade Order under section 144 of the Act;

IT IS HEREBY ORDERED pursuant to section 144 of the Act, that the Cease Trade Order be and is hereby partially revoked solely to permit the Transfer and acts in furtherance of the Transfer that are necessary for and are in connection with the Transfer and all other acts in furtherance of the Transfer that may be considered to fall within the definition of "trade" within the meaning of the Act, provided that prior to the completion of the Transfer, the Applicant will provide to the Commission a signed and dated acknowledgment, on his own behalf and on behalf of Holdco, clearly stating that the issuance of a partial revocation order does not guarantee the issuance of a full revocation order in the future.

DATED at Toronto, Ontario on this 22nd day of March, 2017.

"Winnie Sanjoto"
Manager, Corporate Finance

2.2.2 RBC Global Asset Management Inc. and BlueBay Asset Management LLP – ss. 78(1), 80 of the CFA

Headnote

Subsection 78(1) of the Commodity Futures Act (Ontario) – Order to revoke previous relief from paragraph 22(1)(b) of the CFA granted to sub-adviser headquartered in a foreign jurisdiction in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions.

Section 80 of the Commodity Futures Act (Ontario) – Relief from the adviser registration requirement of paragraph 22(1)(b) of the CFA granted to sub-adviser headquartered in a foreign jurisdiction in respect of advice regarding trades in commodity futures contracts and commodity futures options, subject to certain terms and conditions – Relief mirrors exemption available in section 8.26.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations made under the Securities Act (Ontario) – Relief is subject to a sunset clause.

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 1(1), 22(1)(b), 78(1), 80.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 25(3).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.26.1.
Ontario Securities Commission Rule 35-502 Non-Resident Advisers, s. 7.11.

Applicable Orders

In the Matter of RBC Global Asset Management Inc. and BBAML LLP (to be renamed BlueBay Asset Management LLP effective April 2, 2012), dated March 30, 2012, (2012) 35 OSCB 3926.

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(the CFA)

AND

IN THE MATTER OF
RBC GLOBAL ASSET MANAGEMENT INC. AND
BLUEBAY ASSET MANAGEMENT LLP

ORDER
(Subsection 78(1) and Section 80 of the CFA)

UPON the application (the **Application**) of RBC Global Asset Management Inc. (the **Principal Adviser**) and BlueBay Asset Management LLP (the **Sub-Adviser**) to the Ontario Securities Commission (the **Commission**) for an order (a) pursuant to subsection 78(1) of the CFA, revoking the exemption order granted by the Commission to the Sub-Adviser on March 30, 2012 (the **Previous Order**) and (b) pursuant to section 80 of the CFA, that the Sub-Adviser and any individuals engaging in, or holding themselves out as engaging in, the business of advising others when acting on behalf of the Sub-Adviser in respect of the Sub-Advisory Services (as defined below) (the **Representatives**) be exempt, for a specified period of time, from the adviser registration requirements of paragraph 22(1)(b) of the CFA when acting as a sub-adviser to the Principal Adviser in respect of the Clients (as defined below) regarding commodity futures contracts and commodity futures options (collectively, the **Contracts**) traded on commodity futures exchanges and cleared through clearing corporations;

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

AND UPON the Sub-Adviser and the Principal Adviser having represented to the Commission that:

1. The Principal Adviser is a corporation organized under the federal laws of Canada, with a head office in Toronto, Ontario.

2. The Principal Adviser is registered (i) as an adviser in the category of portfolio manager and exempt market dealer under the securities legislation in all provinces and territories of Canada; (ii) as an investment fund manager under the *Securities Act* (Ontario) and the securities legislation of Quebec, British Columbia and Newfoundland and Labrador; and (iii) as an adviser in the category of commodity trading manager under the CFA.

3. The Sub-Adviser is a limited liability partnership formed under the laws of England and Wales. The head office of the Sub-Adviser is located in London, England.

4. The Sub-Adviser is not a resident of any province or territory of Canada.

5. The Sub-Adviser is authorised and regulated in the United Kingdom by the Financial Conduct Authority and in the United States the Sub-Adviser is registered with the National Futures Association as a commodity pool operator and as a commodity trading advisor.

6. The Sub-Adviser engages in the business of an adviser in respect of Contracts in the United Kingdom. The Sub-Adviser is registered in a category of registration under the commodity futures or other applicable legislation of the United Kingdom that permits it to carry on the activities in the United Kingdom that registration as a commodity trading manager would permit it to carry on in Ontario. As such, the Sub-Adviser is permitted to carry on the Sub-Advisory Services (as defined below) in the United Kingdom.

7. The Sub-Adviser is not registered in any capacity under the securities legislation of Ontario or any other jurisdiction of Canada or under the CFA. However, the Sub-Adviser is relying on exemptions from registration in Ontario and other jurisdictions of Canada, including relying on the international adviser exemption in section 8.26 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) in Ontario.

8. The Sub-Adviser and the Principal Adviser are affiliates.

9. Neither the Principal Adviser nor the Sub-Adviser is in default of securities legislation, commodity futures legislation or derivatives legislation in any jurisdiction of Canada. The Sub-Adviser is in compliance in all material respects with securities laws, commodity futures laws and derivatives laws in the United Kingdom and the United States.

10. The Principal Adviser is, or will be, the investment fund manager of and/or provides, or will provide, discretionary portfolio management services in Ontario to (i) investment funds, the securities of which are qualified by prospectus for distribution to the public in Ontario and the other provinces and territories of Canada (the **Investment Funds**); (ii) pooled funds, the securities of which are sold on a private placement basis in Ontario and certain other provinces and territories of Canada pursuant to prospectus exemptions contained in National Instrument 45-106 *Prospectus Exemptions* (the **Pooled Funds**); (iii) managed accounts of clients who have entered into investment management agreements with the Principal Adviser (the **Managed Accounts**); and (iv) other Investment Funds, Pooled Funds and Managed Accounts that may be established in the future in respect of which the Principal Adviser will engage the Sub-Adviser to provide portfolio advisory services (the **Future Clients**) (each of the Investment Funds, Pooled Funds, Managed Accounts and Future Clients being referred to individually as a **Client** and collectively as the **Clients**).

11. Certain of the Clients may, as part of their investment program, invest in Contracts. The Principal Adviser acts, or will act, as a commodity trading manager in respect of such Clients.

12. In connection with the Principal Adviser acting as an adviser to Clients in respect of the purchase or sale of Contracts, the Principal Adviser, pursuant to a written agreement made between the Principal Adviser and the Sub-Adviser, has retained, or will retain, the Sub-Adviser to act as a sub-adviser to the Principal Adviser in respect of Contracts in which the Sub-Adviser has experience and expertise by exercising discretionary authority on behalf of the Principal Adviser, in respect of all or a portion of the assets of the investment portfolio of the respective Client, including discretionary authority to buy or sell Contracts for the Client (the **Sub-Advisory Services**), provided that:

    (a) in each case, the Contracts must be cleared through an "acceptable clearing corporation" (as defined in National Instrument 81-102 *Investment Funds*, or any successor thereto (**NI 81-102**)) or a clearing corporation that clears and settles transactions made on a futures exchange listed in Appendix A of NI 81-102; and

    (b) such investments are consistent with the investment objectives and strategies of the applicable Client.

13. Paragraph 22(1)(b) of the CFA prohibits a person or company from acting as an adviser unless the person or company is registered as an adviser under the CFA, or is registered as a representative or as a partner or an officer of a registered adviser and is acting on behalf of such registered adviser.

14. By providing the Sub-Advisory Services, the Sub-Adviser and its Representatives will be engaging in, or holding himself, herself or itself out as engaging in, the business of advising others in respect of Contracts and, in the absence of being granted the requested relief, would be required to register as an adviser under the CFA.

15. There is presently no rule or regulation under the CFA that provides an exemption from the adviser registration requirement in paragraph 22(1)(b) of the CFA that is similar to the exemption from the adviser registration requirement in subsection 25(3) of the OSA, which is provided under section 8.26.1 of NI 31-103.

16. The Sub-Adviser will only provide the Sub-Advisory Services as long as the Principal Adviser is, and remains, registered under the CFA as an adviser in the category of commodity trading manager.

17. The relationship among the Principal Adviser, the Sub-Adviser and any Client will be consistent with the requirements of section 8.26.1 of NI 31-103.

18. As would be required under section 8.26.1 of NI 31-103:

    (a) the obligations and duties of the Sub-Adviser are set out in a written agreement with the Principal Adviser; and

    (b) the Principal Adviser has entered, or will enter, into a written agreement with each Client, agreeing to be responsible for any loss that arises out of the failure of the Sub-Adviser:

        (i) to exercise the powers and discharge the duties of its office honestly, in good faith and in the best interests of the Principal Adviser and each Client; or

        (ii) to exercise the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances (together with (i), the **Assumed Obligations**).

19. The written agreement between the Principal Adviser and the Sub-Adviser sets out the obligations and duties of each party in connection with the Sub-Advisory Services and permits the Principal Adviser to exercise the degree of supervision and control it is required to exercise over the Sub-Adviser in respect of the Sub-Advisory Services.

20. The Principal Adviser will deliver to the Clients all required reports and statements under applicable securities, commodity futures and derivatives legislation.

21. The prospectus or other offering document (in either case, the **Offering Document**) of each Client that is an Investment Fund or a Pooled Fund and for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services includes, or will include, the following disclosure (the **Required Disclosure**):

    (a) a statement that the Principal Adviser is responsible for any loss that arises out of the failure of the Sub-Adviser to meet the Assumed Obligations; and

    (b) a statement that there may be difficulty in enforcing any legal rights against the Sub-Adviser (or any of its Representatives) because the Sub-Adviser is resident outside of Canada and all or substantially all of its assets are situated outside of Canada.

22. Prior to purchasing any securities of one or more of the Clients that are Investment Funds or Pooled Funds directly from the Principal Adviser, all investors in these Investment Funds or Pooled Funds who are Ontario residents will receive, or have received, the Required Disclosure in writing (which may be in the form of an Offering Document).

23. Each Client that is a Managed Account for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services will receive, or has received, the Required Disclosure in writing prior to the purchasing of any Contracts for such Client.

24. The Sub-Adviser obtained substantially similar relief in the Previous Order, pursuant to which the Sub-Adviser provided Sub-Advisory Services to the Principal Adviser in respect of the Clients.

25. The anticipated expiry of the five-year period set out in the sunset clause of the Previous Order has triggered the requested relief.

AND UPON being satisfied that it would not be prejudicial to the public interest for the Commission to grant the relief requested;

IT IS ORDERED, pursuant to subsection 78(1) of the CFA, that the Previous Order is revoked;

IT IS ORDERED, pursuant to section 80 of the CFA, that the Sub-Adviser and its Representatives are exempt from the adviser registration requirements in paragraph 22(1)(b) of the CFA when acting as a sub-adviser to the Principal Adviser in respect of the Sub-Advisory Services, provided that at the time that such activities are engaged in:

(a) the Principal Adviser is registered under the CFA as an adviser in the category of commodity trading manager;

(b) the Sub-Adviser's head office or principal place of business is in a jurisdiction outside of Canada;

(c) the Sub-Adviser is registered in a category of registration, or operates under an exemption from registration, under the commodity futures or other applicable legislation of the foreign jurisdiction in which its head office or principal place of business is located, that permits it to carry on the activities in that jurisdiction that registration as an adviser under the CFA would permit it to carry on in Ontario;

(d) the Sub-Adviser engages in the business of an adviser in respect of Contracts in the foreign jurisdiction in which its head office or principal place of business is located;

(e) the obligations and duties of the Sub-Adviser are set out in a written agreement with the Principal Adviser;

(f) the Principal Adviser has entered into a written agreement with each Client, agreeing to be responsible for any loss that arises out of any failure of the Sub-Adviser to meet the Assumed Obligations;

(g) the Offering Document of each Client that is an Investment Fund or a Pooled Fund and for which the Principal Adviser engages the Sub-Adviser to provide Sub-Advisory Services will include the Required Disclosure;

(h) prior to purchasing any securities of one or more of the Clients that are Investment Funds directly from the Principal Adviser, all investors in these Investment Funds or Pooled Funds who are Ontario residents will receive, or have received, the Required Disclosure in writing (which may be in the form of an Offering Document); and

(i) each Client that is a Managed Account Client for which the Principal Adviser engages the Sub-Adviser to provide the Sub-Advisory Services will receive, or has received, the Required Disclosure in writing prior to the purchasing of any Contracts for such Client; and

IT IS FURTHER ORDERED that this Order will terminate on the earliest of:

(a) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(b) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the ability of the Sub-Adviser to act as a sub-adviser to the Principal Adviser in respect of the Sub-Advisory Services; and

(c) five years after the date of this Order.

DATED at Toronto, Ontario, this 27th day of March, 2017.

"Anne Marie Ryan"
Commissioner
Ontario Securities Commission

"Philip Anisman"
Commissioner
Ontario Securities Commission

2.2.3 Thomas Arthur Williams et al.

**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**

ORDER

WHEREAS:

1. On January 10, 2017, Staff ("Staff") of the Ontario Securities Commission (the "Commission") filed a Statement of Allegations seeking an order against 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, 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"), pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the "Act");

2. On January 10, 2017, the Commission issued a Notice of Hearing in respect of that Statement of Allegations, setting January 30, 2017 as the date of the hearing;

3. At the hearing on January 30, 2017, the Commission granted Staff's application to continue the proceeding by way of a written hearing;

4. The Respondents are subject to an order made by the British Columbia Securities Commission dated August 17, 2016 (the "BCSC Order") that imposes sanctions, conditions, restrictions or requirements upon them, within the meaning of paragraph 4 of subsection 127(10) of the Act; and

5. The Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED:

(a) against Williams that:

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

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

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

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

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

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

(b) against Nemeth that:

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

1. 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, are provided to the registrant;

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

1. 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, are provided to the registrant;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Nemeth, except for those exemptions necessary to enable Nemeth to trade or purchase securities in her own account as contemplated by subclauses i. 1. and ii. 1. of paragraph (b) above;

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

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

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

vii. the sanctions listed in (b) i., ii., iii., v. and vi. shall apply 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 BCSC Order have been made;

(c) against Penko that:

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

1. she may trade securities:

a. 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, are provided to the registrant; and

b. 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;

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

1. she may purchase securities:

a. 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, are provided to the registrant; and

b. 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;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Penko, except for those exemptions necessary to enable Penko to trade or purchase securities in her own account as contemplated by subclauses i. 1. a. and ii. 1. a. of paragraph (c) above;

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

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

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Penko is prohibited from becoming or acting as a registrant, investment fund manager or promoter, except in connection with her employment with a dealer under the applicable securities legislation and under the condition of strict supervision of Penko's registerable activities on the same terms as Appendix A of the BCSC Order; and

vii. the sanctions listed in (c) i., ii., iii., v. and vi. shall apply 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;

(d) against Beilstein that:

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

1. 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, are provided to the registrant;

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

1. 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, are provided to the registrant;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Beilstein, except for those exemptions necessary to enable Beilstein to trade or purchase securities in her own account as contemplated by subclauses i. 1. and ii. 1. of paragraph (d) above;

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

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

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

vii. the sanctions listed in (d) i., ii., iii., v. and vi. shall apply until the later of August 17, 2019, and the date on which the payments ordered against Beilstein in paragraphs 133(34) and 133(35) of the BCSC Order have been made;

(e) against Weigel that:

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

1. 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, are provided to the registrant;

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

1. 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, are provided to the registrant;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Weigel, except for those exemptions necessary to enable Weigel to trade or purchase securities in his own account as contemplated by subclauses i. 1. and ii. 1. of paragraph (e) above;

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

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

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

vii. the sanctions listed in (e) i., ii., iii., v. and vi. shall apply 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;

(f) against each of the Global Entities:

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

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

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

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

DATED at Toronto this 29th day of March, 2017.

“Monica Kowal”

2.2.4 Automative Finco Corp. (formerly Ressources Minières Augyva Inc. / Augyva Mining Resources Inc.) – s. 1(11)(b)

Headnote

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer is already a reporting issuer in Alberta, British Columbia and Quebec – Issuer's securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in Alberta, British Columbia and Quebec are substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(11)(b).

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

AND

IN THE MATTER OF
AUTOMATIVE FINCO CORP.
(formerly RESSOURCES MINIÈRES AUGYVA INC. / AUGYVA MINING RESOURCES INC.)

ORDER
(clause 1(11)(b))

UPON the application of Automotive Finco Corp. (the **Applicant**) to the Ontario Securities Commission (the **Commission**) for an order pursuant to clause 1(11)(b) of the Act that, for the purposes of Ontario securities law, the Applicant is a reporting issuer;

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

AND UPON the Applicant representing to the Commission as follows:

1. The Applicant is a corporation incorporated under the *Canada Business Corporations Act* on December 5, 1986.

2. The head office and registered address of the Applicant is located at 10 King Street East, Suite 1202, Toronto, Ontario M5C 1C3.

3. The authorized share capital of the Applicant consists of an unlimited number of common shares with no par value (the **Common Shares**). The applicant has no other class of shares.

4. As of the date hereof, 18,503,849 Common Shares are issued and outstanding.

5. The Applicant has been a reporting issuer under the *Securities Act* (Quebec) (the **Quebec Act**) since July 17, 2000, the *Securities Act* (Alberta) (the **Alberta Act**) since January 20, 2002 and the *Securities Act* (British Columbia) (the **BC Act**) since November 29, 1999 and is not a reporting issuer or the equivalent in any jurisdiction in Canada other than Quebec, Alberta and British Columbia.

6. The continuous disclosure materials filed by the Applicant under the securities legislation in Quebec, Alberta and British Columbia are available on the System for Electronic Document Analysis and Retrieval (**SEDAR**).

7. The continuous disclosure materials filed by the Applicant under the requirements of the Quebec Act, BC Act and the Alberta Act are substantially the same as the continuous disclosure requirements under the Act.

8. The Common Shares are listed and posted for trading on the TSX Venture Exchange (the **TSXV**) under the symbol "AFCC". The Common Shares were first listed on the TSXV on October 1, 2001. The Applicant is in good standing under the rules, regulations and policies of the TSXV.

9. On March 3, 2017, the Applicant implemented a change of business transaction within the meaning of the policies of the TSXV, as a result of which, among other things, (i) it changed its name to Automotive Finco Corp. and consolidated its Common Shares on a ratio of 15 pre-consolidation Common Shares to 1 post-consolidation Common Share; (ii) it completed a private placement to AA Capital LP (**AA Capital**), an Ontario limited partnership, resulting in AA Capital becoming a new control person of the Applicant; and (iii) it entered into an administration agreement with a limited partnership (the **Partnership**) pursuant to which the Partnership will administer the general and administrative affairs of the Applicant.

10. Pursuant to the policies of the TSXV, a listed-issuer, which is not otherwise a reporting issuer in Ontario, must assess whether it has a 'significant connection to Ontario' (as defined in the policies of the TSXV) and, upon becoming aware that it has a significant connection to Ontario, promptly make a bona fide application to the Commission to be deemed to be a reporting issuer in Ontario.

11. The Applicant has determined that it has a significant connection to Ontario. In addition to the Applicant's head office and registered office being located in Ontario, the registered and beneficial shareholders of the Applicant who are resident in Ontario hold more than 10% of the total number of outstanding Common Shares. In addition, the Partnership that will administer the general and administrative affairs of the Applicant, including through the provision of the services of a Chief Executive Officer and the Chief Financial Officer and Corporate Secretary of the Corporation, exists under Ontario law (and the persons providing the services of Chief Executive Officer and Chief Financial Officer are located in Ontario).

12. The Applicant has determined that the Commission will be the Applicant's principal regulator once the Applicant becomes a reporting issuer in Ontario.

13. Neither the Applicant nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:

    (a) been the subject of any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;

    (b) entered into a settlement agreement with a Canadian securities regulatory authority; or

    (c) been the subject of any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.

14. Neither the Applicant nor any of its officers, directors, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:

    (a) any known ongoing or concluded investigations by:

        (i) a Canadian securities regulatory authority; or

        (ii) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

15. Neither any of the officers or directors of the Applicant, nor, to the knowledge of the Applicant or its officers and directors, any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:

    (a) any cease trade or similar orders, or orders that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or

    (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver manager or trustee, within the preceding 10 years.

16. As of the date hereof, the Applicant is not on the default list of the securities regulatory authority in any jurisdiction in Canada in which it is a reporting issuer, and the Applicant is not in default of any requirement of the Act, the Alberta Act, the BC Act or the Quebec Act.

AND UPON the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

IT IS ORDERED pursuant to clause 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

DATED this 3rd day of April, 2017.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.2.5 Eco Oro Minerals Corp. – Rules 3, 6, 11 and 14 of the OSC Rules of Practice

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

AND

IN THE MATTER OF
ECO ORO MINERALS CORP.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF A DECISION OF
THE TORONTO STOCK EXCHANGE

ORDER (Rules 3, 6, 11 and 14 of the Ontario Securities Commission Rules of Procedure)

WHEREAS:

1. on March 27, 2017, pursuant to sections 21.7 and 127 of the *Securities Act*, RSO 1990, c S.5 and section 161 of the *Securities Act*, RSBC 1996, c 418, Courtenay Wolfe and Harrington Global Opportunities Fund Ltd. (collectively, the "**Applicants**") filed a Notice of Application with each of the Ontario Securities Commission (the "**Commission**") and the British Columbia Securities Commission (the "**BCSC**", and together with the Commission, the "**Commissions**") for a joint hearing in respect of the issuance of 10,600,000 common shares (the "**Shares**") of Eco Oro Minerals Corp. ("**Eco Oro**") by Eco Oro to four shareholders of Eco Oro on or about March 16, 2017, and the decision of the Toronto Stock Exchange (the "**TSX**") on March 10, 2017 to grant conditional approval for the issuance of the Shares (the "**Application**");

2. on March 29, 2017, the Commissions held an electronic pre-hearing conference (the "**Pre-Hearing Conference**") to address scheduling matters with respect to the Application;

3. the Pre-Hearing Conference was attended by the Applicants, the TSX, Eco Oro, Staff of the Commission ("**Staff**"), Staff of the BCSC, and three prospective intervenors, namely Trexs Investments, LLC, Amber Capital LP and Paulson & Co. Inc.;

4. on March 30, 2017, the Applicants filed correspondence with the Commissions advising that they will not be proceeding with the relief sought from the BCSC;

5. the Commission is of the opinion that it is in the public interest to make this Order;

IT IS HEREBY ORDERED THAT:

1. the hearing of the Application (the "**Hearing**") shall commence at 10:00 a.m. on Wednesday, April 19, 2017 and continue on Thursday, April 20, 2017, commencing 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;

2. each of Trexs Investments, LLC, Amber Capital LP and Paulson & Co. Inc. shall serve and file materials for its respective motion for leave to intervene in the Application (the "**Intervenor Motions**") by no later than 5:00 p.m. on Monday, April 3, 2017;

3. the TSX shall serve and file the record of the TSX with respect to its decision to grant conditional approval for the issuance of the Shares by no later than 5:00 p.m. on Tuesday, April 4, 2017;

4. responding materials with respect to the Intervenor Motions shall be served and filed by no later than 5:00 p.m. on Wednesday, April 5, 2017;

5. in accordance with Rule 11.4 of the Ontario Securities Commission *Rules of Procedure* (2014), 37 OSCB 4168, and subsection 5.1(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22, the Intervenor Motions shall be heard by means of written hearings;

6. subject to any order of the Commission on the Intervenor Motions, notice of, and supporting materials for preliminary motions other than the Intervenor Motions, if any (the "**Preliminary Motions**"), shall be served and filed by no later than 5:00 p.m. on Thursday, April 6, 2017;

7. the Applicants shall serve and file the Applicants' full record, including the memorandum of fact and law and any sworn affidavits being relied upon, by no later than 5:00 p.m. on Friday, April 7, 2017;

8. subject to any order of the Commission on the Intervenor Motions, responding materials to the Preliminary Motions shall be served and filed by no later than 5:00 p.m. on Saturday, April 8, 2017;

9. the hearing of the Preliminary Motions, if any, shall commence at 10:00 a.m. on Monday, April 10, 2017, or such other date as may be agreed to by the parties and set by the Office of the Secretary;

10. responding materials for the Application, including the memorandum of fact and law and any sworn affidavits being relied upon by any parties other than the Applicants, shall be served and filed by no later than 5:00 p.m. on Thursday, April 13, 2017;

11. the Applicants' shall serve and file any reply materials being relied upon by no later than 5:00 p.m. on Monday, April 17, 2017; and

12. Staff's submissions shall be served and filed by no later than 5:00 p.m. on Tuesday, April 18, 2017.

DATED at Toronto, this 3rd day of April, 2017.

"D. Grant Vingoe"

"Monica Kowal"

"Frances Kordyback"

2.4 Rulings

2.4.1 J.P. Morgan Securities LLC – s. 38 of the CFA

Headnote

Application for a ruling pursuant to section 38 of the *Commodity Futures Act* granting relief from the dealer registration requirement set out in section 22 of the CFA in connection with acting as a clearing broker in Give-Up Transactions involving commodity futures contracts and options on commodity futures contracts on exchanges located in Canada (**Canadian Futures**) to, from or on behalf of Canadian institutional permitted clients (institutional investors) – relief limited to trades in Canadian futures for institutional permitted clients – relief subject to sunset clause.

Statutes Cited

Commodity Futures Act, R.S.O. 1990, c. C.20. as am., ss. 22, 38.

March 28, 2017

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, c. C.20, AS AMENDED
(the CFA)

AND

IN THE MATTER OF
J.P. MORGAN SECURITIES LLC
(the Filer)

RULING
(Section 38 of the CFA)

UPON the application (the **Application**) of the Filer to the Ontario Securities Commission (the **Commission**) for a ruling of the Commission, pursuant to section 38 of the CFA, that:

(a) the Filer is not subject to the dealer registration requirement set out in section 22 of the CFA in connection with providing Clearing Broker Services (as defined below) in Give-Up Transactions (as defined below) involving exchange-traded futures on exchanges located in Canada (**Canadian Futures**) to, from or on behalf of Institutional Permitted Clients (defined below) (the **Ruling**); and

(b) an Institutional Permitted Client is not subject to the dealer registration requirement in the CFA in connection with receiving Clearing Broker Services (as defined below) in Give-Up Transactions (as defined below) in Canadian Futures from the Filer pursuant to the Ruling;

AND WHEREAS for the purposes of the Ruling **"Institutional Permitted Client"** shall mean a "permitted client" as defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), except for:

(a) an individual,

(b) a person or company acting on behalf of a managed account of an individual,

(c) a person or company referred to in paragraph (p) of that definition, unless the person or company qualifies as an Institutional Permitted Client under another paragraph of that definition, or

(d) a person or company referred to in paragraph (q) of that definition unless that person or company has net assets of at least $100 million as shown on its most recently prepared financial statements or qualifies as an Institutional Permitted Client under another paragraph of that definition;

and provided further that, for the purposes of the definition of "Institutional Permitted Client", a reference in the definition of "permitted client" in section 1.1. of NI 31-103 to "securities legislation" shall be read as "securities legislation or Ontario commodity futures law, as applicable".

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

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

1. The Filer is a limited liability company formed under the laws of the State of Delaware. Its head office is located at 383 Madison Avenue, New York, NY 10179, U.S. It is an indirect wholly owned subsidiary of J.P. Morgan Broker-Dealer Holdings Inc., a Delaware corporation, and an indirect wholly owned subsidiary of JPMorgan Chase & Co. (**JPM Chase**), a Delaware corporation.

2. The Filer is registered as a broker-dealer with the U.S. Securities and Exchange Commission (**SEC**), a member of the U.S. Financial Industry Regulatory Authority (**FINRA**), a registered futures commission merchant (**FCM**) with the U.S. Commodity Futures Trading Commission (**CFTC**), and a member of the U.S. National Futures Association (**NFA**).

3. The Filer is a Direct Access Trading Participant of Ice Futures Canada. The Filer is a member of major international securities and commodity futures exchanges and clearing houses, including but not limited to the NASDAQ, the NYSE, the CME Group Exchanges (including the Chicago Mercantile Exchange, the Board of Trade of the City of Chicago, the Commodities Exchange, the New York Mercantile Exchange), ICE Clear U.S., ICE Futures Europe, ICE Clear Europe and the Options Clearing Corporation.

4. In connection with its securities trading and advising activities, the Filer relies on the "international dealer exemption" under section 8.18 of NI 31-103 and the "international adviser exemption" under section 8.26 of NI 31-103 in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan, and Yukon.

5. The Filer is not in default of securities or commodity futures legislation in any jurisdiction of Canada or under the CFA. The Filer is in compliance in all material respects with U.S. securities and commodity futures laws.

6. J.P. Morgan Securities Canada Inc. (**JPMSCI**) is an affiliate of the Filer. JPMSCI is registered as an investment dealer in each of the provinces of Canada, as a derivatives dealer in Quebec, and is a dealer member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

7. The Filer wishes to act as a clearing broker with respect to Canadian Futures in the context of Give-Up Transactions (defined below) with Institutional Permitted Clients.

8. A **Give-Up Transaction** is a purchase or sale of futures contracts by a client that has an existing relationship with a clearing broker, but wishes to use the trade execution services of one or more other executing brokers for the purpose of executing such purchases or sales (**Subject Transactions**) on one or more markets. Under these circumstances, the executing broker executes the Subject Transactions as directed by the client and "gives up" such trades to the clearing broker for clearing, settlement, record-keeping, bookkeeping, custody and other administrative functions (**Clearing Broker Services**). The service provided by the executing broker is limited to trade execution only.

9. In a Give-Up Transaction, the clearing broker will maintain an account for the client that is administered in accordance with the terms and conditions of the account documentation of the clearing broker that has been signed by the client. The clearing broker will handle record keeping and collateral for the client. The client will not sign clearing account documentation with the executing broker, nor will the executing broker typically receive monies, margin or collateral directly from the client. Although the executing broker is responsible for its own record-keeping, bookkeeping, custody and other administrative functions (**Account Services**) in respect of its own clients, it does not, subject to any applicable regulatory requirements that may otherwise apply, provide Account Services for execution-only clients. Such Account Services remain the responsibility of the clearing broker. The clearing broker will have the primary relationship with the client and is contractually responsible for trade and risk monitoring as well as reporting trade confirmations and sending out monthly statements.

10. In order to enter into a Give-Up Transaction, a client will enter into a tri-party agreement, known as a "give-up agreement" (**Give-Up Agreement**), between an executing broker, a clearing broker, and the client. The Filer, as clearing broker, will generally use the *International Uniform Brokerage Execution Services ("Give-Up") Agreement: Version 2008* (© Futures Industry Association, 2008), as may be revised from time to time, as the Give-Up Agreement entered into with Institutional Permitted Clients.

11. Each party to the Give-Up Agreement, including the Filer as clearing broker, will represent in the Give-Up Agreement that it will perform its obligations under the Give-Up Agreement in accordance with applicable laws, governmental, regulatory, self-regulatory, exchange or clearing house rules, regulations, interpretations, protocols and the customs and usages of the exchange or clearing house on which the transactions governed by the Give-Up Agreement are executed and cleared, as in force from time to time.

12. In Ontario, an Institutional Permitted Client would place orders for Canadian Futures for execution on Canadian futures exchanges with an Ontario-registered FCM, which would then be cleared locally on the applicable Canadian futures exchange by that Ontario-registered FCM (if qualified to do so) or another clearing member of the applicable Canadian futures exchange. The executed trades would be placed into a client omnibus account maintained by the Filer with the clearing member of the applicable Canadian futures exchange that locally clears the trades, and the executed trades would be booked by the Filer to the futures account of the Ontario client maintained with the Filer for trading on exchanges globally. In this arrangement, the Ontario-registered FCM would be responsible for all client-facing interactions relating to the execution of the Canadian Futures.

13. In the case of a Montréal Exchange-listed futures contract, a member of the Canadian Derivatives Clearing Corporation (**CDCC**) would clear the trade on the Filer's behalf. Therefore, trade execution would be done by an Ontario-registered FCM, the positions would be held at CDCC by a CDCC member (which could be, but would not necessarily have to be, the executing broker) and given up to the Filer at which the Ontario Institutional Permitted Client maintains a clearing account. The Filer would then carry the resulting positions in an account maintained on its books by the Institutional Permitted Client, and the Filer would call for and collect applicable margin from the Institutional Permitted Client. The Filer, in turn, would remit the required margin to the CDCC member that cleared the trades. That CDCC member would then make the required margin payment(s) to CDCC.

14. Similarly, for trades on ICE Futures Canada, a member of ICE Clear Canada (**Ice Clear**) would clear the trades on the Filer's behalf. Therefore, trade execution in this case would also be done by an Ontario-registered FCM, the positions would be held at ICE Clear by a clearing member of ICE Clear (which could be but would not necessarily have to be the executing broker) and given up to the applicable Filer for the clearing account maintained on such Filer's books for the Ontario-resident Institutional Permitted Client. The Filer would then call for and collect applicable margin from the Ontario-resident Institutional Permitted Client. The Filer, in turn, would remit the required margin to the ICE Clear member that cleared the trades. That ICE Clear member would then make the required margin payment(s) to ICE Clear.

15. In respect of holding client assets, in order to protect customers in the event of the insolvency or financial instability of the Filer, the Filer is required under U.S. law to ensure that customer securities and monies be separately accounted for, segregated at all times from the securities and monies of the Filer and custodied exclusively with such banks, trust companies, clearing organizations or other licensed futures brokers and intermediaries as may be approved for such purposes under the U.S. *Commodity Exchange Act* (**CEA**) and the rules promulgated by the CFTC thereunder (collectively, the **Approved Depositories**). The Filer is further required to obtain acknowledgements from any Approved Depository holding customer funds or securities related to U.S.-based transactions or accounts that such funds and securities are to be separately held on behalf of such customers, with no right of set-off against the Filer's obligations or debts.

16. As a U.S. registered broker-dealer and FCM, the Filer is subject to regulatory capital requirements under the CEA and *Securities Exchange Act of 1934* (the **1934 Act**), specifically CFTC Regulation 1.17 *Minimum Financial Requirements for Futures Commission Merchants and Introducing Brokers* (**CFTC Regulation 1.17**), SEC Rule 15c3-1 *Net Capital Requirements for Brokers or Dealers* (**SEC Rule 15c3-1**) and SEC Rule 17a-5 *Reports to be Made by Certain Brokers and Dealers* (**SEC Rule 17a-5**). The Filer has elected to compute the minimum capital requirement in accordance with the alternative net capital requirement as permitted by SEC Rule 15c3-1 and CFTC Regulation 1.17. The Alternative Net Capital (**ANC**) method provides large broker-dealer / FCMs meeting specified criteria with an alternative to use mathematical models such as the value at risk model to calculate capital requirements for market and derivatives related credit risk. Under the ANC method, the Filer must document and implement a comprehensive internal risk management system which addresses market, credit, liquidity, legal and operational risk at the firm.

17. SEC Rule 15c3-1 requires that the Filer account for any guarantee of debt of a third party in calculating its excess net capital when a loss is probable and the amount can be reasonably estimated. Accordingly, the Filer will, in the event that it provides a guarantee of any debt of a third party, take a deduction from net capital when both of the preceding conditions exist.

18. SEC Rule 15c3-1 and CFTC Regulation 1.17 are designed to provide protections that are substantially similar to the protections provided by the capital formula requirements and specifically risk adjusted capital to which dealer members of IIROC are subject. The Filer is in compliance with SEC Rule 15c3-1 and in compliance in all material respects with SEC Rule 17a-5. If the Filer's net capital declines below the minimum amount required, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 17a-11 *Notification Provisions for Brokers and Dealers* (**SEC Rule 17a-11**). The SEC and FINRA have the responsibility to provide oversight over the Filer's compliance with SEC Rule 15c3-1 and SEC Rule 17a-5.

19. The Filer is required to prepare and file a financial report, which includes Form X-17a-5 Financial and Operational Combined Uniform Single Report (the **FOCUS Report**), monthly with the CFTC, NFA, SEC and FINRA. The FOCUS

Report provides a more comprehensive description of the business activities of the Filer, and more accurately reflects those activities including client lending activity, than would be provided by Form 31-103F1 *Calculation of Excess Working Capital* (**Form 31-103F1**). The FOCUS Report provides a net capital calculation and a comprehensive description of the business activities of the Filer. The net capital requirements computed using methods prescribed by SEC Rule 15c3-1 are based on all assets and liabilities on the books and records of a broker-dealer whereas Form 31-103F1 is a calculation of excess working capital, which is a computation based primarily on the current assets and current liabilities on the books and records of the dealer. The Filer is up-to-date in its submission of annual reports under SEC Rule 17a-5(d), including the FOCUS Report.

20. The Filer is a member of the Securities Investors Protection Corporation (**SIPC**). Subject to the eligibility criteria of SIPC, client assets held by the Filer in connection with its activities as a broker-dealer are insured by SIPC against loss due to insolvency in accordance with the Securities Investor Protection Act of 1970. There is no SIPC or similar insurance protection in connection with activities undertaken as a U.S. registered FCM.

21. The Filer is subject to CFTC Regulation 30.7 regarding cash, securities and other collateral that are deposited with a FCM or are otherwise required to be held for the benefit of its customers to margin futures and options on futures contracts traded on non-U.S. boards of trade, including Canadian Futures (**30.7 Customer Funds**). Accounts used to hold 30.7 Customer Funds must be properly titled to make clear that the funds belong to, and are being held for the benefit of, the FCM's customers who are trading foreign (i.e. non-U.S.) futures and futures options.

22. 30.7 Customer Funds may not be commingled with the funds of any other person, including the carrying FCM, except that the carrying FCM may deposit its own funds into the account containing 30.7 Customer Funds in order to prevent the accounts of the customers from becoming under-margined. Each Approved Depository (except for a derivatives clearing organization with specified rules) is required to provide the depositing FCM with a written acknowledgment that the depository was informed that such funds held in the customer account belong to customers and are being held in accordance with the CEA and CFTC Regulations. Among other representations, the depository must acknowledge that it cannot use any portion of 30.7 Customer Funds to satisfy any obligations that the FCM may owe the depository. The types of investments permitted for 30.7 Funds are restricted by CFTC Regulation 30.7(h), which refers to the list of permitted investments set forth in CFTC Regulation 1.25. The FCM is required, on a daily basis, to compute and submit to regulatory authorities a statement of the amounts of 30.7 Customer Funds held by the FCM.

23. In the event of a FCM's bankruptcy, funds allocated to each account class (i.e., the customer segregated, 30.7 secured amount and cleared swaps customer account classes established pursuant to CFTC Regulations 1.20, 30.7 and 22.2, respectively) or readily traceable to an account class must be allocated solely to that customer account class. The U.S. Bankruptcy Code also provides that non-defaulting customers in an account class that has incurred a loss will share in any shortfall, pro rata. However, customers whose funds are held in another account class that has not incurred a loss will not be required to share in such shortfall.

24. The Filer holds customer assets in accordance with Rule 15c3-3 of the 1934 Act, as amended (**SEC Rule 15c3-3**). SEC Rule 15c3-3 requires the Filer to segregate and keep segregated all "fully-paid securities" and "excess margin securities" (as such terms are defined in SEC Rule 15c3-3) of its customers from its proprietary assets. In addition to the segregation of customers' securities, SEC Rule 15c3-3 requires the Filer to deposit an amount of cash or qualified government securities determined in accordance with a reserve formula set forth in SEC Rule 15c3-3 in an account entitled "Special Reserve Account for the Exclusive Benefit of Customers" of such Filer at separate banks and/or custodians. The combination of segregated securities and cash reserve are designed to ensure that the Filer has sufficient assets to cover all net equity claims of its customers and provide protections that are substantially similar to the protections provided by the requirements dealer members of IIROC are subject. If the Filer fails to make an appropriate deposit, the Filer is required to notify the SEC and FINRA pursuant to SEC Rule 15c3-3(i). The Filer is in material compliance with the possession and control requirements of SEC Rule 15c3-3.

25. The Filer is subject to regulations of the Board of Governors of the U.S.A. Federal Reserve Board (**FRB**), the SEC, and FINRA regarding the lending of money, extension of credit and provision of margin to clients (the **U.S. Margin Regulations**) that provide protections that are substantially similar to the protections provided by the requirements regarding the lending of money, extension of credit and provision of margin to clients to which dealer members of IIROC are subject. In particular, the Filer is subject to the margin requirements imposed by the FRB, including Regulation T, and under applicable SEC rules and under FINRA Rule 4210. The Filer is in material compliance with all applicable U.S. Margin Regulations.

26. Section 22 of the CFA provides that no person may trade in a commodity futures contract or a commodity futures option unless the person is registered as a dealer [*Futures Commission Merchant*], or as a representative of the dealer, or an exemption from the registration requirement is available. The Filer's activities in providing Clearing Broker Services in Give-Up Transactions involving Canadian Futures to, from or on behalf of Institutional Permitted Clients may constitute trading in Canadian Futures.

27. The Filer's activities in providing Clearing Broker Services in Give-Up Transactions involving Canadian Futures to, from or on behalf of Institutional Permitted Clients may also constitute trading in Canadian Futures by Institutional Permitted Clients. Institutional Permitted Clients may be unable to rely on the exemptions from the dealer registration requirement in the CFA because the Filer is not a registered dealer. Accordingly, the Filer is also seeking exemptive relief pursuant to the Ruling for Institutional Permitted Clients that receive Clearing Broker Services from the Filer.

28. The Filer believes that it would be beneficial to Institutional Permitted Clients in Ontario that trade in the international futures markets for the Filer to act as a clearing broker for both Canadian and non-Canadian futures for Institutional Permitted Clients because such an arrangement would enable Institutional Permitted Clients to benefit from significant efficiencies in collateral usage and consolidated reporting. Benefits would include single margin calls/payments, single wire transfer, ease of reconciliation, netting and cross product margining.

29. Clients may seek clearing services from the Filer in order to separate the execution of a trade from the clearing and settlement of a trade. This allows clients to use many executing brokers, without maintaining an active, ongoing clearing account with each executing broker. It also allows the client to consolidate the clearing and settlement of Canadian Futures in an account with a Filer.

30. The Filer does not dictate to its clients the executing brokers through which clients may execute trades. Clients are free to directly select their executing broker. Clients send orders to the executing broker who carries out the trade. The executing broker will be an appropriately registered dealer or a person or company relying on an exemption from dealer registration that permits it to execute the trade for clients.

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

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

IT IS RULED, pursuant to section 38 of the CFA, that the Filer is not subject to the dealer registration requirement set out in the CFA in connection with providing Clearing Broker Services in Give-Up Transactions involving Canadian Futures to, from or on behalf of Institutional Permitted Clients so long as the Filer:

(a) has its head office or principal place of business in the U.S.;

(b) is registered as a FCM with the CFTC and engages in the business of an FCM in the U.S., and is registered as a broker-dealer under the securities legislation of the U.S. and engages in the business of a broker-dealer in the U.S.;

(c) is a member firm of the NFA and FINRA;

(d) is a member of SIPC;

(e) is subject to requirements over regulatory capital, lending of money, extension of credit and provision of margin, financial reporting to the SEC and FINRA, and/or the CFTC and NFA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer members of IIROC are subject;

(f) limits its provision of Clearing Broker Services in respect of Give-Up Transactions involving Canadian Futures to Institutional Permitted Clients in Ontario;

(g) does not execute trades in Canadian Futures with or for Institutional Permitted Clients in Ontario, except as permitted under applicable Ontario securities or commodities futures laws;

(h) does not require its clients to use specific executing brokers through which clients may execute trades;

(i) notifies the OSC of any regulatory action initiated after the date of this decision in respect of the Filer, or any predecessors or specified affiliates of the Filer, by completing and filing with the OSC Appendix "B" hereto within ten days of the commencement of any such action; provided that the Filer may also satisfy this condition by filing with the OSC within ten days of the date of this decision a notice making reference to and

incorporating by reference the disclosure made by the Filer pursuant to U.S. federal securities laws that is identified in the FINRA BrokerCheck system, and any updates to such disclosure that may be made from time to time, and by providing notification, in a manner reasonably acceptable to the Director, of any filing of a Form BD 'Regulatory Action Disclosure Reporting Page';

(j) submits the financial report and compliance report as described in SEC Rule 17a-5(d) to the OSC on an annual basis, at the same time such reports are filed with the SEC and FINRA;

(k) submits audited financial statements to the OSC on an annual basis, within 90 days of the Filer's financial year end;

(l) submits to the OSC immediately a copy of any notice filed under SEC Rule 17a-11 or under SEC Rule 15c3-3(i) with the SEC and FINRA;

(m) complies with the filing and fee payment requirements applicable to a registrant under OSC Rule 13-502 *Fees*; provided that, if the Filer does not rely on the international dealer exemption in section 8.18 of NI 31-103 (the **IDE**), by December 31st of each year, the Filer pays a participation fee based on its specified Ontario revenues for its previous financial year in compliance with the requirements of Part 3 and section 6.4 of OSC Rule 13-502 *Fees* as if the Filer relied on the IDE;

(n) files in an electronic and searchable format with the OSC such reports as to any or all of its trading activities in Canada as the OSC may, upon notice, require from time to time;

(o) pays the increased compliance and case assessment costs of the OSC due to the Filer's location outside Ontario, including, as required, the reasonable cost of hiring a third party to perform a compliance review on behalf of the OSC;

(p) has provided to each Institutional Permitted Client the following disclosure in writing:

(i) a statement that the Filer is not registered in Ontario to trade in Canadian Futures as principal or agent;

(ii) a statement that the Filer's head office or principal place of business is located in New York, New York, U.S.;

(iii) a statement that all or substantially all of the Filer's assets may be situated outside of Canada;

(iv) a statement that there may be difficulty enforcing legal rights against the Filer because of the above; and

(v) the name and address of the Filer's agent for service of process in Ontario; and

(q) has submitted to the Commission a completed *Submission to Jurisdiction and Appointment of Agent for Service* in the form attached as Appendix "A" hereto.

This Decision will terminate on the earliest of:

(i) the expiry of any transition period as may be provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as may be provided by law, after the coming into force of any amendment to Ontario commodity futures law (as defined in the CFA) or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA or the trading restrictions in the CFA; and

(iii) five years after the date of this Decision.

AND IT IS FURTHER RULED, pursuant to section 38 of the CFA, that an Institutional Permitted Client is not subject to the dealer registration requirement in the CFA in connection with trades in Canadian Futures when receiving Clearing Broker Services in Give-Up Transactions where the Filer acts in connection with trades in Canadian Futures on behalf of the Institutional Permitted Client from the Filer pursuant to the above ruling.

"Grant Vingoe"
Vice-Chair
Ontario Securities Commission

"Monica Kowal"
Vice-Chair
Ontario Securities Commission

APPENDIX "A"

SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE

INTERNATIONAL DEALER OR INTERNATIONAL ADVISER EXEMPTED FROM REGISTRATION UNDER THE COMMODITY FUTURES ACT, ONTARIO

1. Name of person or company ("International Firm"):

2. If the International Firm was previously assigned an NRD number as a registered firm or an unregistered exempt international firm, provide the NRD number of the firm:

3. Jurisdiction of incorporation of the International Firm:

4. Head office address of the International Firm:

5. The name, e-mail address, phone number and fax number of the International Firm's individual(s) responsible for the supervisory procedure of the International Firm, its chief compliance officer, or equivalent.

   Name:
   E-mail address:
   Phone:
   Fax:

6. The International Firm is relying on an exemption order under section 38 or section 80 of the *Commodity Futures Act* (Ontario) that is similar to the following exemption in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (the "Relief Order"):

   ☐ Section 8.18 [*international dealer*]

   ☐ Section 8.26 [*international adviser*]

   ☐ Other [specify]:

7. Name of agent for service of process (the "Agent for Service"):

8. Address for service of process on the Agent for Service:

9. The International Firm designates and appoints the Agent for Service at the address stated above as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal or other proceeding (a "Proceeding") arising out of or relating to or concerning the International Firm's activities in the local jurisdiction and irrevocably waives any right to raise as a defence in any such proceeding any alleged lack of jurisdiction to bring such Proceeding.

10. The International Firm irrevocably and unconditionally submits to the non-exclusive jurisdiction of the judicial, quasi-judicial and administrative tribunals of the local jurisdiction in any Proceeding arising out of or related to or concerning the International Firm's activities in the local jurisdiction.

11. Until 6 years after the International Firm ceases to rely on the Relief Order, the International Firm must submit to the regulator

    a. a new Submission to Jurisdiction and Appointment of Agent for Service in this form no later than the 30th day before the date this Submission to Jurisdiction and Appointment of Agent for Service is terminated;

    b. an amended Submission to Jurisdiction and Appointment of Agent for Service no later than the 30th day before any change in the name or above address of the Agent for Service;

    c. a notice detailing a change to any information submitted in this form, other than the name or above address of the Agent for Service, no later than the 30th day after the change.

12. This Submission to Jurisdiction and Appointment of Agent for Service is governed by and construed in accordance with the laws of the local jurisdiction.

Dated: _____

_____
(Signature of the International Firm or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

Acceptance

The undersigned accepts the appointment as Agent for Service of _____ [Insert name of International Firm] under the terms and conditions of the foregoing Submission to Jurisdiction and Appointment of Agent for Service.

Dated: _____

_____
(Signature of the Agent for Service or authorized signatory)

_____
(Name of signatory)

_____
(Title of signatory)

This form, and notice of a change to any information submitted in this form, is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

APPENDIX "B"

NOTICE OF REGULATORY ACTION

1. Has the firm, or any predecessors or specified affiliates[1] of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, SRO or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes _____ No _____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?	___	___
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?	___	___
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?	___	___
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?	___	___
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?	___	___
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?	___	___
(g)	Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?	___	___

If yes, provide the following information for each action:

Name of entity	
Type of action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

[1] In this Appendix, the term "specified affiliate" has the meaning ascribed to that term in Form 33-109F6 to National Instrument 33-109 *Registration Information*.

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes _____ No _____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm:
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission's Electronic Filing Portal:

https://www.osc.gov.on.ca/filings

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 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

REASONS AND DECISION
(Subsections 127(1) and (10) of the Act)

Hearing:	In writing		
Decision:	March 29, 2017		
Panel:	Monica Kowal	–	Vice-Chair
Appearances:	Malinda Alvaro	–	For Staff of the Commission
	No submissions were received on behalf of the Respondents		

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REASONS AND DECISION

I. STAFF'S REQUEST

[1] Staff ("**Staff**") of the Ontario Securities Commission (the "**Commission**") seeks an enforcement order pursuant to paragraph 4 of subsection 127(10) and subsection 127(1) of the Securities Act, RSO 1990, c S.5 (the "**Act**"), imposing sanctions in Ontario against: Thomas Arthur Williams ("**Williams**"), Global Wealth Creation Opportunities Inc. ("**Global Opportunities**"), Global Wealth Creation Opportunities Inc. (Belize) ("**Global Opportunities (Belize)**"), Global Wealth

Financial Inc. ("**Global Financial**"), Global Wealth Creation Strategies Inc. ("**Global Strategies**"), CDN Global Wealth Creation Club RW-TW ("**Global Club**"), 2002 Concepts Inc. ("**2002 Concepts**") ("collectively, the "**Global Entities**"), Susan Grace Nemeth ("**Nemeth**"), Renee Michelle Penko ("**Penko**"), Irene G. Beilstein ("**Beilstein**") and Dennis Carl Weigel ("**Weigel**") (collectively, the "**Respondents**"). The Respondents are subject to an order made by a securities regulatory authority, specifically the British Columbia Securities Commission (the "**BCSC**").

[2] The Commission conducted a written hearing to consider Staff's request, and these are the reasons for granting Staff's requested order.

II. PRELIMINARY MATTERS

[3] The Respondents were served with the Notice of Hearing issued on January 10, 2017, a Statement of Allegations dated January 10, 2017 and Staff's disclosure.[1]

[4] The Respondents did not communicate with Staff and did not appear or otherwise participate at the hearing on January 30, 2017. On January 30, 2017, Staff brought an application to convert the matter to a written hearing, as permitted by Rule 11 of the Commission's *Rules of Procedure* (2014), 37 OSCB 4168. The application was granted and a timeline was set for the exchange of materials between Staff and the Respondents. The Respondents were required to serve and file their materials by March 9, 2017.

[5] The Respondents did not file evidence or make submissions in accordance with the timelines set on January 30, 2017. As set out in the Affidavit of Service of Lee Crann sworn February 21, 2017,[2] the Respondents were served: (1) by courier with the Commission's Order dated January 30, 2017 which set out the timeline for the exchange of materials, and (2) by email and/or courier with Staff's written materials, including Staff's written Submissions, Brief of Authorities and Hearing Brief.[3]

[6] A tribunal may proceed in the absence of a party where that party has been given notice of the hearing (Subsection 7(2), *Statutory Powers Procedure Act*, RSO 1990, c S.22 (the "**SPPA**")). Based on the evidence of service from Staff, I am satisfied that the Respondents were properly served and had notice of the written hearing and that the matter may proceed in the absence of their participation in accordance with the SPPA.

III. THE BCSC FINDINGS AND ORDER

[7] In its findings decision dated January 14, 2016 (*Re Williams*, 2016 BCSECCOM 18 (the "**Findings**")), the BCSC Panel found that the following misconduct occurred between February 2007 to April 2010 (the "**Material Time**"):

(a) Williams and each of the Global Entities perpetrated a fraud in contravention of section 57(b) of the British Columbia *Securities Act*, RSBC 1996, c 418 (the "**BC Act**") with respect to $11.7 million of securities sold to 123 investors.[4]

(b) With the exception of 2002 Concepts, each of the Respondents engaged in unregistered trading (contrary to section 34 of the BC Act) and an illegal distribution (contrary to section 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;

1 Affidavit of Service of Lee Crann sworn January 25, 2017, 18 tabs, and Affidavit of Service of Lee Crann sworn January 25, 2017, 5 tabs, respectively marked as Exhibits #1 and #2 at the hearing on January 30, 2017.

2 Marked as Exhibit #3.

3 Staff's Hearing Brief is marked as Exhibit #4.

4 Findings, at para 255.

- Beilstein – $170,500 to three investors for five investments;
- Weigel – $40,000 to three investors.[5]

(c) Williams was the sole directing mind of each of the Global Entities and was liable for the Global Entities' contraventions of the BC Act.[6]

[8] The scheme involved investors lending funds to certain Global Entities under various agreements.[7] Although money was lent by the investors to different Global Entities under the terms of different agreements, investors were promised monthly returns between 2% and 6% per month.[8] Williams told investors that they were invested in something called a "managed risk opportunity" and advised investors that the funds were secure and would not be put at risk.[9] Williams, through Global Strategies, hired Nemeth, Penko, Beilstein and Weigel as associates or "finders" who acted as intermediaries between investors and Williams to persuade investors to invest and these finders earned commissions for doing so.[10] While some investors received cash distributions on their investments as promised early on in the Global Scheme, starting in 2009 the Global Entities started missing payments to investors and in mid to late 2009 the Global Scheme collapsed as investor demands for cash payments continued to be unmet.[11]

[9] The BCSC Panel found that no funds had ever been invested by the Global Entities in 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.[12]

[10] A sanctions hearing was held and the BCSC Panel issued its sanctions decision on August 17, 2016 (*Re Williams*, 2016 BCSECCOM 283 ("BCSC Order")). The BCSC ordered a combination of trading and purchasing bans, market participation prohibition bans, administrative penalties and payments to the BCSC on each respondent. The quantum and length of the sanctions imposed were proportionate to the culpability of each of the respondents, taking into account their participation and role in the scheme.

IV. RESPONDENTS' POSITION

[11] The Respondents did not provide the Commission with any evidence or submissions that would persuade the Commission that Staff's requested order is not appropriate in the circumstances.

V. DECISION

[12] In my view, it is in the public interest to grant the order requested by Staff.

[13] At paragraph 4 of subsection 127(10), the Act provides for inter-jurisdictional enforcement where another securities regulatory authority has imposed "sanctions, conditions, restrictions or requirements on the person or company". The Commission must determine whether, based on any such finding by another securities regulatory authority, an order should be made under subsection 127(1) of the Act.

[14] I find that Staff established the threshold criteria under paragraph 4 of subsection 127(10) of the Act. In addition, I find that it is in the public interest to grant Staff's requested order. I am guided by the public interest mandate of the Act, to provide protection to investors from unfair, improper or fraudulent practices, and to foster fair and efficient capital markets and confidence in capital markets.

[15] While the Commission must make its own determination of what is in the public interest, it is also important that the Commission be aware of and responsive to an interconnected, inter-provincial securities industry. Comity requires that there not be barriers to recognizing and reciprocating the order of other regulatory authorities when the findings of the other jurisdiction qualify under subsection 127(10) of the Act. For comity to be effective and the public interest to be protected, the threshold for reciprocity must be low.

5 Findings, at paras 212 and 256.
6 Findings, at paras 191 and 257.
7 Findings, at para 39.
8 Findings, at para 40.
9 Findings, at paras 45 and 48.
10 Findings, at para 18.
11 Findings, at paras 44 and 80.
12 Findings, at paras 53 and 56.

[16] In my view, Staff's requested order is appropriate for the following reasons:

- The BCSC Panel found that the Respondents engaged in very serious misconduct and the magnitude of the misconduct is on the high end of the spectrum. Specifically:

  > The fraud in this case was a massive Ponzi scheme which was exacerbated by the diversion by Williams and the Global Entities of approximately $6 million of funds raised from investors to various entities controlled by persons with a significant history of securities and/or criminal misconduct. The scope of the fraudulent conduct in this case in terms of the number of investors, the amount of money raised from investors and the extent of the deceit visited on investors was extremely significant. We find the fraudulent misconduct of Williams and the Global Entities alone (without regard to their other misconduct) to be on the upper end of seriousness of the matters that the Commission oversees.[13]

- This Commission has found that fraud is one of the most egregious securities violations and it decreases the confidence in the fairness and efficiency of the capital markets.[14] The BCSC Panel also acknowledged the severity of the fraud in this case and found that it was an aggravating factor that:

  > … the entire investment scheme was a Ponzi scheme and that certain of the funds were diverted to persons with a history of criminal and securities related fraud and other misconduct.[15]

- Investor harm was significant in this case. Specifically, the BCSC found that:

  > In addition to the direct financial loss of their investments, we heard testimony from a number of investors who were persuaded to withdraw funds from other investments, including retirement plans, or to borrow money in order to purchase securities of the Global Entities. There has also been significant indirect financial loss, by way of incurred interest expense and withdrawals from retirement planning and other investments, as a consequence of the misconduct in this case.[16]

- The terms of Staff's requested order are consistent with the fundamental principle that the Commission maintain high standards of fitness and business conduct to ensure honest and responsible conduct by market participants. Williams, Nemeth and Penko have a history of previous registration and should have been aware of the registration requirements associated with the sale of securities.[17] I note that the BCSC Panel took into account Penko's remorse and determined that she could keep her current job provided she is subject to strict supervision.[18]

- The sanctions imposed in the BCSC Order are proportionately appropriate to the magnitude of the misconduct engaged in by each of the Respondents, and provide both specific and general deterrence. The terms of Staff's requested order align with the sanctions for trading and market prohibitions imposed by the BCSC Panel to the extent possible under the Act and will deter the Respondents from engaging in similar misconduct in Ontario.

- The sanctions proposed by Staff are prospective in nature, and would impact the Respondents only if they attempted to participate in the capital markets of Ontario.

[17] Taking into consideration the nature of the misconduct engaged in, the importance of inter-jurisdictional cooperation among securities regulatory authorities in Canada, and the need to deter the Respondents from engaging in similar misconduct in Ontario, I conclude that an order ought to be made in the public interest pursuant to the authority provided in subsection 127(1) of the Act. I therefore order:

(a) against Williams that:

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

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13 BCSC Order, at para 22.

14 *Al-Tar Energy Corp* (2010) 33 OSCB 5535 at para 214.

15 BCSC Order, at para 44.

16 BCSC Order, at para 32.

17 BCSC Order, at paras 42, 48 and 50.

18 BCSC Order, at para 48.

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

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

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

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

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

(b) against Nemeth that:

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

1. 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, are provided to the registrant;

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

1. 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, are provided to the registrant;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Nemeth, except for those exemptions necessary to enable Nemeth to trade or purchase securities in her own account as contemplated by subclauses i. 1. and ii. 1. of paragraph (b) above;

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

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

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

vii. the sanctions listed in (b) i., ii., iii., v. and vi. shall apply 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 BCSC Order have been made;

(c) against Penko that:

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

1. she may trade securities:

a. 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, are provided to the registrant; and

b. 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;

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

1. she may purchase securities:

a. 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, are provided to the registrant; and

b. 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;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Penko, except for those exemptions necessary to enable Penko to trade or purchase securities in her own account as contemplated by subclauses i. 1. a. and ii. 1. a. of paragraph (c) above;

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

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

vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Penko is prohibited from becoming or acting as a registrant, investment fund manager or promoter, except in connection with her employment with a dealer under the applicable securities legislation and under the condition of strict supervision of Penko's registerable activities on the same terms as Appendix A of the BCSC Order; and

vii. the sanctions listed in (c) i., ii., iii., v. and vi. shall apply 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;

(d) against Beilstein that:

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

1. 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, are provided to the registrant;

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

1. 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, are provided to the registrant;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Beilstein, except for those exemptions necessary to enable Beilstein to trade or purchase securities in her own account as contemplated by subclauses i. 1. and ii. 1. of paragraph (d) above;

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

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

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

vii. the sanctions listed in (d) i., ii., iii., v. and vi. shall apply until the later of August 17, 2019, and the date on which the payments ordered against Beilstein in paragraphs 133(34) and 133(35) of the BCSC Order have been made;

(e) against Weigel that:

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

1. 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, are provided to the registrant;

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

1. 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, are provided to the registrant;

iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Weigel, except for those exemptions necessary to enable Weigel to trade or purchase securities in his own account as contemplated by subclauses i. 1. and ii. 1. of paragraph (e) above;

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

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

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

vii. the sanctions listed in (e) i., ii., iii., v. and vi. shall apply 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;

(f) against each of the Global Entities:

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

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

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

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

Dated at Toronto this 29th day of March 2017.

“Monica Kowal”

3.2 Director's Decisions

3.2.1 Christopher Aqui

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

AND

IN THE MATTER OF
AN APPLICATION FOR REGISTRATION BY
CHRISTOPHER AQUI

SETTLEMENT AGREEMENT

I. INTRODUCTION

1. This settlement agreement (the "**Settlement Agreement**") relates to an application (the "**Application**") for a reactivation of registration as a mutual fund dealing representative under the *Securities Act* (Ontario) (the "**Act**") by Christopher Aqui ("**Aqui**") with Banwell Financial Group Inc.

2. In reviewing the Application, staff of the Ontario Securities Commission ("**Staff**") became aware of information which could impugn Aqui's suitability for registration under the Act, and which could form the basis of a recommendation by Staff to the Director that the Application be refused.

3. In the event that Staff recommended to the Director that the Application be refused, Aqui would be entitled to an opportunity to be heard (an "**OTBH**") pursuant to section 31 of the Act in respect of Staff's recommendation.

4. Staff and Aqui have agreed to make a joint recommendation to the Director regarding the Application, as more particularly described in this Settlement Agreement.

II. AGREED STATEMENT OF FACTS

5. The parties agree to the facts as stated below.

A. Aqui's Registration History

6. Aqui has been registered under the Act as follows:

   (a) June 7, 1988 to January 1, 1992: Investors Syndicate Limited (salesperson, mutual fund dealer);

   (b) January 1, 1992 to October 29, 1996: Investors Group Financial Services Inc. (salesperson, mutual fund dealer and limited market dealer);

   (c) December 9, 1996 to September 10, 1997: McDermid St. Lawrence Securities Ltd. (registered mutual fund sales representative);

   (d) June 10, 1998 to December 2, 2002: Raymond James Ltd. (registered representative);

   (e) December 5, 2002 to March 13, 2009: Keybase Investments Inc. (salesperson, mutual fund dealer and limited market dealer);

   (f) March 17, 2009 to January 19, 2011: IPC Investment Corporation (salesperson, mutual fund dealer and limited market dealer (after September 28, 2009 the category of salesperson, mutual fund dealer became exempt market dealing representative); and

   (g) January 19, 2011 to March 24, 2016: IPC Investment Corporation (mutual fund dealing representative).

7. Aqui's registration has been subject to regulatory action from time to time, as follows:

   (a) On September 10, 1997, the Investment Dealers Association of Canada (now the Investment Industry Regulatory Organization of Canada) suspended Aqui's registration because he did not complete either the

Canadian Securities Course or the *Conduct and Practices Handbook Course*, as required by the condition of his registration;

(b) Aqui's trading privileges were removed between December 18, 2000 and January 30, 2001 because he did not complete the *Professional Financial Planning Course*, as required by the condition of his registration; and

(c) Between November 29, 2006 and August 24, 2007, and again from March 2, 2011 until March 24, 2016, the date Aqui was last registered, terms and conditions requiring close supervision of his trading activity were imposed on his registration because of his personal financial difficulties.

8. Aqui was dismissed for cause by IPC effective March 24, 2016. According to the Form 33-109F1 *Notice of Termination of Registered Individuals and Permitted Individuals* delivered in relation to Aqui's dismissal from IPC, he was dismissed because of material violations of the firm's policy concerning the use of blank signed forms, making false representations on an annual compliance questionnaire regarding the use of blank signed forms, and non-compliance with the firm's policy regarding deferred sales charges ("**DSCs**").

9. The Application was submitted on April 8, 2016.

B. Pre-Signed and Altered Forms

10. In February 2016, IPC conducted an internal review of Aqui's practice and discovered that he had engaged in a pattern of obtaining and using pre-signed forms, and altering client forms without having the client initial the alteration.

11. Records produced by IPC included 90 pre-signed forms for 15 different clients, and most of these pre-signed forms had been used to process transactions for clients. The records produced by IPC also included 27 forms for 17 clients where Aqui had altered the document without having the client initial the change. Some clients had both pre-signed and altered forms. In total, this conduct affected 28 different clients, and spanned the period 2013 to 2016.

12. The pre-signed forms and altered forms contained in the records produced by IPC are set out in Schedule "A" to this Settlement Agreement.

13. At the time he obtained pre-signed forms, Aqui was aware that they were not permitted by IPC's policies and procedures, or by the Rules of the Mutual Fund Dealers Association of Canada (the "**MFDA**").

14. It is Aqui's position that he obtained pre-signed forms and that he altered forms for the convenience of his clients, that his clients were aware of all transactions that he processed for them, and that with the exception of client BH, he did not use any of the pre-signed or altered forms to engage in discretionary trading.

C. Failure to Disclose Pre-Signed Forms

15. During his employment with IPC, Aqui was required to complete annual compliance attestations. Among other things, these annual compliance attestations required registered dealing representatives to disclose if they had obtained or used pre-signed forms.

16. Aqui completed IPC's annual compliance attestations by indicating that he had not obtained or used pre-signed forms. Aqui acknowledges that these responses were false, and states that his answers were for the sake of expediency.

17. During the course of IPC's internal review of Aqui's practice, IPC personnel interviewed Aqui and specifically asked him whether he had ever obtained pre-signed forms, and Aqui responded that he had not. Aqui acknowledges that this response was false, and states that it was a misguided attempt to salvage his employment at IPC.

D. Discretionary Trading

18. BH was a client of Aqui.

19. In 2014 or 2015, BH began withdrawing money from her investment account with increased frequency. To effect these frequent redemptions, BH provided Aqui with pre-signed Order Entry Forms and she would then call him with a request for funds, and would leave it to him to select which mutual funds to redeem. Aqui would select whichever mutual funds he felt were appropriate, and would process the redemptions without informing BH in advance as to which funds were being redeemed, thereby engaging in discretionary trading.

20. Aqui acknowledges that he engaged in discretionary trading for BH on at least two occasions.

21. On or around January 25, 2016, Aqui prepared a "Letter of Indemnity" for BH to sign, in which she purported to "indemnify" Aqui for "any market losses or excess Deferred Sales Charges" she may incur. At Aqui's request, BH signed the letter.

22. Aqui states that he procured the letter from BH because of the frequent redemptions she was requesting, and that as a result he felt exposed in that he was not giving her proper advice.

E. Improper Conduct with Respect to DSCs

23. From time to time, Aqui would transfer his clients' assets from one mutual fund with a DSC to another mutual fund with a DSC, thereby restarting the DSC schedule applicable to those assets and generating a sales commission for himself. Aqui believes he verbally informed his clients that their DSC schedules would restart, but acknowledges that he did not provide them with any written disclosure to that effect, and that he did not keep notes of such discussions with his clients.

24. Aqui states that he transferred assets between DSC mutual funds on the instruction of his clients as part of a portfolio rebalancing process, and that he would rebate any DSCs the client incurred as a result of this process in accordance with the policies and procedures of IPC. However, on at least one occasion, Aqui processed such a transfer without rebating the resulting DSC to the client.

25. On March 1, 2013, Aqui redeemed $21,450.44 worth of units of the Fidelity Canadian Asset Allocation Fund Series A for client TI, which resulted in a DSC to the client of $525.44. This DSC was not rebated. On March 4, 2013, Aqui purchased $20,925 worth of units of the Fidelity U.S. Dividend Fund Series A for the client. Aqui acknowledges that this transaction should have been processed as a switch without a DSC being paid by the client, and that he failed to identify this error at the time the transaction was being processed.

III. ADMISSIONS BY AQUI

26. Aqui admits that he contravened subsection 2.1(2) of OSC Rule 31-505 *Conditions of Registration* and failed to deal fairly, honestly, and in good faith with his clients by:

    (a) Obtaining and using pre-signed client forms and altering client forms;

    (b) Obtaining a "Letter of Indemnity" from BH;

    (c) Failing to ensure that his clients received adequate disclosure that their DSC schedules would restart when he transferred their assets from one DSC mutual fund to another DSC mutual fund; and

    (d) Failing to ensure that DSCs were rebated to a client when they were incurred as part of a portfolio rebalancing strategy recommended by Aqui.

27. Aqui admits that he contravened rule 2.3 of the MFDA Rules and the adviser registration requirement in subsection 25(3) of the Act by engaging in discretionary trading for a client.

28. Aqui admits that he failed to conduct himself with the integrity required of a registrant by engaging in the acts described in paragraphs 24 and 25 above, and by failing to disclose the existence of his pre-signed forms to IPC when required to do so.

IV. JOINT RECOMMENDTION TO THE DIRECTOR

29. In order to resolve the matter of the Application, and on the basis of the Agreed Statement of Facts and the Admissions by Aqui set out in this Settlement Agreement, Staff and Aqui make the following joint recommendation to the Director:

    (a) Aqui will withdraw the Application and will not reapply for registration for a period of at least fifteen months from April 8, 2016, the date of the Application;

    (b) Before reapplying for registration, Aqui will successfully complete the *Conduct and Practices Handbook Course*;

    (c) If Aqui complies with paragraphs 29(a) and (b) above, then upon Aqui reapplying for registration in the future with a registered mutual fund dealer, Staff will not recommend to the Director that his application be refused unless Staff becomes aware after the date of this Settlement Agreement of conduct impugning Aqui's

suitability for registration or rendering his registration otherwise objectionable, provided Aqui meets all other applicable criteria for registration at the time he applies for registration; and

(d) In the event Aqui's registration is reactivated, it shall be subject to the terms and conditions set out in Schedule "B" to this Settlement Agreement for a period of not less than one year, after which time Aqui may apply to the Director to have the terms and conditions modified or removed.

(e) This Settlement Agreement will be published on the website of the Ontario Securities Commission and in the OSC Bulletin.

30. The parties submit that their joint recommendation is reasonable, having regard to the following factors:

(a) Aqui has recognized and acknowledged his misconduct;

(b) The joint recommendation requires Aqui to obtain additional education about his professional responsibilities as a registrant;

(c) The period of time Aqui is to be refused registration under the Settlement Agreement is commensurate with the gravity of his misconduct;

(d) The terms and conditions proposed by the Settlement Agreement provide a means to detect and prevent the future use of pre-signed forms by Aqui; and

(e) By agreeing to this Settlement Agreement, Aqui has saved Staff and the Director the time and resources that would have been required for an OTBH.

31. The parties acknowledge that if the Director does not accept this joint recommendation:

(a) This joint recommendation and all discussions and negotiations between Staff and Aqui in relation to this matter shall be without prejudice to the parties; and

(b) Aqui will be entitled to an OTBH in accordance with section 31 of the Act in respect of a recommendation that may be made by Staff regarding his registration status.

"*Marrianne Bridge"*	*"Christopher Aqui"*
Deputy Director	Christopher Aqui
Compliance and Registrant Regulation	
March 28, 2017	March 24, 2017

SCHEDULE "A"

Pre-Signed Forms

Client Name	Document
LA	Blank signed Order Entry Form, undated
	Blank signed Order Entry Form, undated
	Blank signed Order Entry Form, undated
	Blank signed Order Entry Form, undated
	Blank signed Order Entry Form, undated
	Blank signed Order Entry Form, undated
	Blank signed Order Entry Form, undated
	Blank signed Free Units Processing Instruction Form, undated
	Blank signed Matured Units Processing Instruction Form, undated
	Partially-completed signed NAAF/KYC, undated
MM	Used pre-signed Order Entry Form, August 28, 2015
BN	Used pre-signed Order Entry Form, February 8, 2013
	Used pre-signed Order Entry Form, March 12, 2013
	Used pre-signed Order Entry Form, April 9, 2013
	Used pre-signed Order Entry Form, May 10, 2013
	Used pre-signed Order Entry Form, June 7, 2013
	Used pre-signed Order Entry Form, July 9, 2013
	Used pre-signed Order Entry Form, December 11, 2013
	Used pre-signed Deregistration/Withdrawal Request, December 11, 2013
	Used pre-signed Order Entry Form, January 9, 2014
	Used pre-signed Deregistration/Withdrawal Request, January 9, 2014
	Used pre-signed Order Entry Form, March 5, 2014
	Used pre-signed Order Entry Form, April 9, 2014
	Used pre-signed Order Entry Form, May 5, 2014
	Used pre-signed Deregistration/Withdrawal Request, May 5, 2015
	Used pre-signed Order Entry Form, June 6, 2014
	Used Deregistration/Withdrawal Request, June 6, 2014
	Used pre-signed Order Entry Form, July 7, 2014
	Used pre-signed Deregistration/withdrawal Request, July 7, 2014
	Used pre-signed Order Entry Form, August 7, 2014
	Used pre-signed Deregistration/Withdrawal Request, August 7, 2014
	Used pre-signed Order Entry Form, September 8, 2014
	Used pre-signed Deregistration/Withdrawal Request, September 8, 2014
	Used pre-signed Order Entry Form, October 6, 2014
	Used pre-signed Deregistration/Withdrawal Request, October 6, 2014
	Used pre-signed Order Entry Form, November 7, 2014
	Used pre-signed Deregistration/Withdrawal Request, November 10, 2014
	Used pre-signed Order Entry Form, December 4, 2014
	Used pre-signed Deregistration/Withdrawal Request, December 4, 2014

Client Name	Document
	Used pre-signed Order Entry Form, February 6, 2015
	Used pre-signed Withdrawal Request, February 6, 2015
	Used pre-signed Order Entry Form, March 6, 2015
	Used pre-signed Withdrawal Request, March 6, 2015
	Used pre-signed Order Entry Form, April 7, 2015
	Used Withdrawal Request, April 7, 2015
	Used pre-signed Order Entry Form, May 6, 2015
	Used pre-signed Withdrawal Request, May 6, 2015
	Used pre-signed Order Entry Form, September 4, 2015
	Used pre-signed Withdrawal Request, September 4, 2015
	Used pre-signed Order Entry Form, October 6, 2015
	Used pre-signed Withdrawal Request, October 6, 2015
	Used pre-signed Order Entry Form, November 6, 2015
	Used pre-signed Withdrawal Request, November 6, 2015
	Used pre-signed Order Entry Form, December 7, 2015
	Used pre-signed Withdrawal Request, December 7, 2015
	Used pre-signed Order Entry Form, January 6, 2016
	Used pre-signed Withdrawal Request, January 6, 2016
LA	Used pre-signed NAAF, February 11, 2013
AA	Used pre-signed Order Entry Form, December 2, 2013
KM	Used pre-signed NAAF/KYC form, December 3, 2013
SG	Used pre-signed Order Entry form, May 12, 2014
GH	Used pre-signed KYC Update, June 7, 2014
	Used pre-signed Order Entry Form, December 3, 2014
JB	Used pre-signed Order Entry Form, March 7, 2014
CM	Partially completed pre-signed KYC Update, July 28, 2014
	Used pre-signed KYC Update, July 28, 2014
	KYC update with alterations not initialed by client, March 17, 2015
NS	Order Entry Form with alterations not initialed by client, July 1, 2014
	Order Entry Form with alterations not initialed by client, August 11, 2014
BH	Used pre-signed Order Entry Form, July 31, 2014
	Used pre-signed Order Entry Form, January 18, 2014
	Used pre-signed Order Entry Form, September 19, 2014
	Used pre-signed Order Entry Form, October 8, 2014
	Used pre-signed Order Entry Form, December 10, 2014
	Used pre-signed Order Entry Form, March 27, 2015
	Used pre-signed Order Entry Form, April 14, 2015
	Used pre-signed Order Entry Form, May 8, 2015
	Used pre-signed Order Entry Form, June 11, 2015
	Used pre-signed Order Entry Form, July 6, 2015
	Used pre-signed Withdrawal Request, July 6, 2015
	Used pre-signed Withdrawal Request, July 21, 2015

Client Name	Document
	Used pre-signed Order Entry Form, October 12, 2015
	Used pre-signed Order Entry Form, December 15, 2015
CT	KYC Update with alterations not initialed by client, October 6, 2014
AV	Used pre-signed Order Entry Form, November 11, 2014
	Used pre-signed Order Entry Form, December 3, 2014
ER	Used pre-signed Order Entry Form, March 24, 2015
	Used pre-signed Order Entry Form, March 24, 2015
	Used pre-signed Order Entry Form, August 18, 2015
	Used pre-signed Order Entry Form, August 18, 2015

Forms Altered Without Client Initial

Client	Document
MM	NAAF net worth changed without client initial, October 11, 2012
	NAAF investment objectives changed without client initial, October 11, 2012
HK	Order Entry Form with alterations not initialed by client, June 17, 2013
	Order Entry Form with alterations not initialed by client, January 17, 2014
MC	Order Entry Form with alterations not initialed by client, July 23, 2013
	Order Entry Form with alterations not initialed by client, July 23, 2013
BM	KYC Update with alterations not initialed by client, August 12, 2013
SV	Order Entry Form with alterations not initialed by client, November 20, 2013
	Order Entry Form with alterations not initialed by client, November 11, 2013
	Order Entry Form with alterations not initialed by client, January 27, 2014
AA	Order Entry Form with alterations not initialed by client, November 21, 2013
	Order Entry Form with alterations not initialed by client, November 22, 2013
	Order Entry Form with alterations not initialed by client, July 1, 2014
	Order Entry Form with alterations not initialed by client, August 11, 2014
MB	Order Entry Form with alterations not initialed by client, November 22, 2013
GE	KYC Update Form with alterations not initialed by client, January 10, 2014
SG	Re-used Order Entry Form with alterations not initialed by client, February 1, 2014
	Re-used Order Entry Form with alterations not initialed by client, March 3, 1, 2014
SK	Order Entry Form with alterations not initialed by client, February 2, 2014
	Order Entry Form with alterations not initialed by client, February 4, 2015
GH	Order Entry Form with alterations not initialed by client, March 25, 2014
JA	Order Entry Form with alterations not initialed by client, May 9, 2014
MC	Order Entry Form with alterations not initialed by client, December 2, 2014
DB	NAAF/KYC Form with alterations not initialed by client, March 3, 2015
MM	Order Entry Form with alterations not initialed by client, April 24, 2015
FB	Order Entry Form with alterations not initialed by client, July 23, 2015
RC	Order Entry Form with alterations not initialed by client, January 12, 2015

SCHEDULE "B"

Terms and Conditions

The registration of Christopher Aqui (the "**Registrant**") under the *Securities Act* (Ontario) (the "**Act**") is subject to the following terms and conditions, which were imposed by the Director pursuant to section 27 of the Act:

Strict Supervision

1. The registration of the Registrant shall be subject to strict supervision by his sponsoring firm.

2. The Registrant's sponsoring firm is to submit written monthly supervision reports in the form specified in Appendix A to the Ontario Securities Commission (the "**OSC**"), Attention: Deputy Director, Registrant Conduct Team, Compliance and Registrant Regulation Branch, and also to the Mutual Fund Dealers Association ("**MFDA**"), Attention: Manager, Compliance, or such other form of written monthly supervision report as may be required by the OSC from time to time. These reports will be submitted within 15 calendar days after the end of each month.

3. The Registrant must immediately report to the OSC's Deputy Director, Registrant Conduct Team, Compliance and Registrant Regulation Branch if he is under investigation by the MFDA or is reprimanded in any way by the MFDA.

Delivery of Documents

4. The Registrant may not process any transactions for a client without the client's written authorization, which must be delivered to the Registrant's sponsoring firm at the time the Registrant processes the transaction.

5. If the Registrant processes a transaction for a client using a document that is signed or initialed by a client and that is not the original version of the document (a "**Copied Document**"), the Registrant must deliver the original document to his sponsoring firm within one week of the transaction to permit the firm to verify the authenticity of the Copied Document, including whether the Copied Document was created using a pre-signed form.

Appendix "A"

Strict Supervision Report

I hereby certify that supervision has been conducted for the month ending _____, 201_ of the trading activities of Christopher Aqui (the "**Registrant**") by the undersigned. I further certify the following:

1. All orders, both buy and sell, and sales contracts have been reviewed by a supervising officer of Banwell Financial Group Inc. prior to the trade occurring.

2. All client accounts have been reviewed for leveraging, suitability of investments, overconcentration of investments, excess trading or switching, and any amendments to know your client information.

3. A review of trading activity on a daily basis has been conducted of the dealing representative's client accounts.

4. No transactions have been made in any client account until the full and correct documentation is in place.

5. The Registrant has not been granted any power of attorney over any client accounts.

6. All payments for the purchase of the investments were made payable to the dealer. There were no cash payments accepted.

7. No client complaints have been received during the preceding month. If there have been complaints, an outline of the nature of the complaint and follow-up action initiated by the company is attached.*

8. There has been no handling of clients' funds or securities or issuance of cheques to clients without management approval.

9. Any transfer of funds or securities between clients' accounts has been authorized in writing and reviewed by the supervising officer.

10. Spot audits relative to the Registrant's client accounts have been conducted during the preceding month to ensure compliance with these procedures and no violations of these procedures were discovered.

* In the event of client complaints or violations of securities legislation and/or the dealer's internal policies and procedures, the Ontario Securities Commission must be notified immediately.

_____ _____

Date Signature of Supervising Officer

_____

Name of Supervising Officer

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke

THERE IS NOTHING TO REPORT THIS WEEK.

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation

THERE IS NOTHING TO REPORT THIS WEEK.

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order

THERE IS NOTHING TO REPORT THIS WEEK.

4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

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Chapter 5

Rules and Policies

5.1.1 NI 94-101 Mandatory Central Counterparty Clearing of Derivatives

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)

5.1.2 Companion Policy 94-101 Mandatory Central Counterparty Clearing of Derivatives

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.

Chapter 6

Request for Comments

6.1.1 Proposed NI 93-101 Derivatives: Business Conduct and Proposed Companion Policy 93-101CP Derivatives: Business Conduct

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment

Proposed National Instrument 93-101
Derivatives: Business Conduct

Proposed Companion Policy 93-101CP
Derivatives: Business Conduct

April 4, 2017

Introduction

We, the Canadian Securities Administrators (the **CSA** or **we**), are publishing the following for a 150-day comment period, expiring on September 1, 2017:

- Proposed National Instrument 93-101 *Derivatives: Business Conduct* (the **Instrument**);
- Proposed Companion Policy 93-101 *Derivatives: Business Conduct* (the **CP**).

Collectively, the Instrument and the CP are referred to as the **Proposed Instrument** in this Notice.

We are issuing this Notice to solicit comments on the Proposed Instrument. We welcome all comments on this publication and have also included specific questions in the Comments section.

The CSA intends to collaborate with the Bank of Canada, the Office of the Superintendent of Financial Institutions (Canada), and the Department of Finance (Canada) on the Proposed Instrument throughout its development.

We are also in the process of developing a proposed registration regime for derivatives dealers, derivatives advisers and potentially other derivatives market participants. We expect to publish Proposed National Instrument 93-102 *Derivatives: Registration* and a related companion policy (collectively the **Proposed Registration Instrument**) for comment during the consultation period for the Proposed Instrument.

We have extended the comment period on the Proposed Instrument to 150 days in order to allow investors, derivatives market participants and other stakeholders an opportunity to consider both of the proposed instruments before the comment period for the Proposed Instrument expires.

Background

In April 2013, the CSA published for comment a consultation paper, CSA Consultation Paper 91-407 *Derivatives: Registration* (the **Consultation Paper**), that outlined a proposed registration and business conduct regime for derivatives market participants.

Based on our consideration of comments received on the Consultation Paper as well as our review of developments internationally, including the introduction of registration and market conduct regimes for swap dealers and major swap

participants in the U.S.,[1] we have developed the Proposed Instrument and are in the process of developing the Proposed Registration Instrument for the purpose of adopting a harmonized derivatives registration and business conduct regime across Canada.

The CSA have chosen to split the proposed derivatives registration and business conduct regimes into two separate rules. This approach is intended to ensure that all derivatives firms remain subject to certain minimum standards in relation to their business conduct towards their customers and counterparties.

The Proposed Instrument applies to a person or company that meets the definition of "derivatives adviser" or "derivatives dealer" regardless of whether it is registered or exempted from the requirement to be registered in a jurisdiction.

Substance and Purpose of the Proposed Instrument

The CSA have developed the Proposed Instrument to help protect investors, reduce risk, improve transparency and accountability and promote responsible business conduct in the over-the-counter (**OTC**) derivatives markets.

During the financial crisis of 2008, the inappropriate sale of financial investments led to major losses for retail and institutional investors. The International Organization of Securities Commissions (**IOSCO**) noted in 2012 that "until recently, OTC derivatives markets have not been subject to the same level of regulation as securities markets. Insufficient regulation allowed certain participants to operate in a manner that created risks to the global economy that manifested during the financial crisis of 2008."[2] Since the financial crisis, there have been numerous cases of serious market misconduct in the global derivatives market including, for example, misconduct relating to the manipulation of benchmarks and alleged front-running of customer orders.

The Proposed Instrument establishes a robust investor protection regime that meets IOSCO's international standards and takes into account CSA jurisdictions' commitments to create a derivatives dealer regime that is also consistent with the regulatory approach taken by most IOSCO jurisdictions with active derivatives markets.[3] The Proposed Instrument will help to protect participants in the OTC derivatives markets from unfair, improper or fraudulent practices.

The Proposed Instrument is intended to create a uniform approach to derivatives market conduct regulation in Canada and will promote consistent protections for market participants regardless of the type of firms they deal with while also providing that persons or companies that are subject to requirements under the Proposed Instrument are subject to consistent regulation that does not result in a competitive advantage.

A person or company is subject to the Proposed Instrument only if it is a "derivatives adviser" or a "derivatives dealer". As described below in the Summary of the Instrument, generally this is determined using a test to determine if the person or company is in the business of trading or advising in OTC derivatives.[4] Furthermore, a person or company that may be in the business of trading in OTC derivatives may nevertheless be exempt from the requirements of the Proposed Instrument if they qualify for the end-user exemption described further below. Finally, even if a person or company is subject to the requirements of the Proposed Instrument, those requirements are tailored depending on the nature of the dealer or adviser's derivatives party (refer to the description of the two-tiered structure of the Instrument, below).

The Proposed Instrument sets out a comprehensive regime regulating the conduct of derivatives market participants, including requirements relating to the following:

- Fair dealing
- Conflicts of interest
- Know your client (KYC)
- Suitability
- Pre-trade disclosure
- Reporting
- Compliance
- Senior management duties
- Recordkeeping
- Treatment of derivative party assets

Many of the requirements in the Proposed Instrument are similar to existing market conduct requirements applicable to registered dealers and advisers under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) but have been modified to reflect the different nature of derivatives markets.

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1 In this Notice, we use the terms "swap dealer" and "major swap participant" to refer to both swap dealers and major swap participants regulated by the Commodity Futures Trading Commission (**CFTC**) and security-based swap dealers and major security-based swap participants regulated by the Securities and Exchange Commission (the **SEC**). In Canada, the distinction between security-based swaps and other swaps will generally not be relevant.

2 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD381.pdf (DMI Report) at p 1.

3 https://www.iosco.org/library/pubdocs/pdf/IOSCOPD497.pdf (DMI Implementation Review) at p. 13.

4 Only those OTC derivatives set out in the applicable Product Determination Rule are relevant.

Much like NI 31-103, the Proposed Instrument takes a two-tiered approach to investor/customer protection, as follows:

- certain obligations apply in all cases when a derivatives firm is dealing with or advising a derivatives party, regardless of the level of sophistication or financial resources of the derivatives party; and
- certain obligations:
    - do not apply if the derivatives firm is dealing with or advising a derivatives party that is an "eligible derivatives party" and that is not an individual, and
    - apply but may be waived if the derivatives firm is dealing with or advising a derivatives party who is an "eligible derivatives party" and is an individual.

The concept of "eligible derivatives party" and the extent to which obligations do not apply, or apply unless waived, when dealing with or advising an eligible derivatives party are explained in Part 1 of the summary of the Instrument below.

Summary of the Instrument

Part 1 – Definitions

Part 1 of the Instrument sets out relevant definitions and principles of interpretation.

Some of the most important definitions in the Instrument are as follows.

Derivatives adviser and derivatives dealer

The definitions of "derivatives adviser" and "derivatives dealer" incorporate a "business trigger" similar to the business trigger for registration in Canadian securities legislation.

As previously mentioned, it is important to note that the Instrument applies to a person or company that meets the definition of "derivatives adviser" or "derivatives dealer" regardless of whether they are registered or exempted from the requirement to be registered in a jurisdiction. This is intended to ensure that certain derivatives market participants that may benefit from an exemption from registration in certain jurisdictions nevertheless remain subject to certain minimum standards in relation to their business conduct towards their customers.

Clause (b) in the definitions of "derivatives adviser" and "derivatives dealer" has been included since the Proposed Registration Instrument may designate as or prescribe additional entities to be derivatives advisers or derivatives dealers based on specified activities (e.g., trading with non-eligible derivatives parties or engaging in certain market-making activities).

Derivatives party

In the Proposed Instrument, the term "derivatives party" refers to a derivatives firm's counterparties, customers, and other persons or companies that the derivatives firm may deal with or advise (e.g., affiliates or other derivatives firms).

Eligible derivatives party

The term "eligible derivatives party" refers to those derivatives parties that do not require the full set of protections afforded to "retail" customers or investors, either because they may reasonably be considered sophisticated or because they have sufficient financial resources to purchase professional advice or otherwise protect themselves through contractual negotiation with the derivatives firm.

As currently drafted, the definition of "eligible derivatives party" is generally consistent with the current regulatory regimes in the U.S. and Canada in relation to OTC derivatives.[5] In addition, the eligible derivatives party concept should be familiar to market participants because it is similar to the definition of "permitted client" in NI 31-103, with a few modifications to reflect the different nature of derivatives markets and participants.

[5] See, for example, the definition of "eligible contract participant" under the U.S. *Commodity Exchange Act* and the *Securities Exchange Act of 1934* applicable to CFTC and SEC swap dealers and major swap participants, the definition of "qualified party" in British Columbia Blanket Order 91-501 *Over-the-Counter Derivatives*, the definition of "qualified party" in Alberta Blanket Order 91-507 *Over-the-Counter Derivatives*, the definition of "accredited counterparty" in section 3 of the Quebec *Derivatives Act*, the definition of "qualified party" in New Brunswick Local Rule 91-501 *Derivatives*, the definition of "qualified party" in Nova Scotia Blanket Order 91-501 *Over The Counter Trades in Derivatives* and the definition of "qualified party" in Saskatchewan General Order 91-908 *Over-the-Counter Derivatives*.

We are seeking comment on a number of elements of the definition of "eligible derivatives party" and have included specific questions about the definition in the Comments section, including a question related to the proposed definition of "institutional client" included in the CSA Consultation Paper 33-404 *Proposals to Enhance the Obligations of Advisers, Dealers, and Representatives toward their Clients* (**CSA Consultation Paper 33-404**) published in April 2016.

As the CSA staff responsible for CSA Consultation Paper 33-404 continue to review comments received during the consultation period and engage in various stakeholder consultations, we propose to monitor the work on this project, and may recommend amendments to the Proposed Instrument at a later date based on this work.

Part 2 – Application of the Instrument

Part 2 of the Instrument sets out a number of provisions relating to the application and scope of the Instrument.

Section 3 is a scope provision intended to ensure that the Instrument applies to the same contracts and instruments in all jurisdictions of Canada. Each jurisdiction has adopted a Product Determination Rule that excludes certain types of contracts and instruments from being derivatives for the purpose of the Instrument.

Section 7 provides that the requirements of the Instrument, other than the specific requirements listed in subsection 7(1), do not apply to a derivatives firm if it is dealing with or advising an eligible derivatives party that is not an individual, or an eligible derivatives party that is an individual that has waived these protections in writing (collectively, a **specified eligible derivatives party**).

When a derivatives firm is dealing with or advising a specified eligible derivatives party, the derivatives firm will only be subject to the following requirements of the Instrument:

(a) Division 1 [*General obligations towards all derivatives parties*] of Part 3 [*Dealing with or advising derivatives parties*];

(b) Sections 24 [*Interaction with NI 94-102*] and 25 [*Segregating derivatives party assets*] of Part 4 [*Derivatives party accounts*];

(c) Subsection 29(1) [*Content and delivery of transaction confirmations*] of Part 4 [*Derivatives party accounts*]; and

(d) Part 5 [*Compliance and recordkeeping*].

A derivatives firm and a specified eligible derivatives party may choose to incorporate additional protections in the contracts that govern their relationship and their derivatives trading activities. However, the CSA are of the view that, in the case of a derivatives firm dealing with or advising a specified eligible derivatives party these protections should not be required but rather should be a matter of contract for the parties.

Despite the foregoing, section 7 does not limit the requirements that apply to a derivatives firm acting as an adviser in respect of a managed account of an eligible derivatives party.

We have included specific questions about the differential treatment of derivatives parties and specified eligible derivatives parties in the Comments section.

We have also included a table that compares the approach in the Instrument with the approach under NI 31-103 in Appendix B.

Part 3 – Dealing with or advising derivatives parties

DIVISION 1 – GENERAL OBLIGATIONS TOWARDS ALL DERIVATIVES PARTIES

Division 1 of Part 3 sets out the fundamental business conduct obligations that the CSA have recommended should apply to all derivatives firms when dealing with or advising derivatives parties, including eligible derivatives parties, namely

- fair dealing,
- responding to conflicts of interest, and
- general (or "gatekeeper") know-your-derivatives party obligations.

Fair dealing

The fair dealing obligation proposed in section 8 of this Instrument is consistent with international practice and is in line with the standards set by NI 31-103 while keeping in mind the differences between derivatives and securities markets. The CSA believe that the fair dealing obligation in section 8, as a principles-based obligation, should be interpreted flexibly and in a manner that is sensitive to context and to derivatives market participants' reasonable expectations; the expectation is that it will be applied differently depending on the sophistication of the market participant.

Identifying and responding to conflicts of interest

Section 9 of the Instrument contains obligations to identify and respond to conflicts of interest. This obligation applies when dealing with or advising market participants of all levels of sophistication. It is a principles-based obligation, which should be interpreted flexibly and in a manner that is sensitive to context and to derivatives market participants' reasonable expectations. Furthermore, it is expected that in responding to any conflict of interest, the derivatives party will consider the fair dealing obligation in Part 3 as well as any other standard of care that may apply when dealing with or advising a derivatives party.

General (or "gatekeeper") know-your-derivatives party obligations

Section 10 of the Instrument sets out the general "gatekeeper" know-your-derivatives party (**KYDP**) obligations. These obligations include requirements to: verify the identity of a derivatives party, verify that the derivatives party is an eligible derivatives party, determine if the derivatives party is an insider of a reporting issuer, and comply with anti-money-laundering and terrorist financing obligations.

We would anticipate that many derivatives firms, including Canadian financial institutions, will already have policies and procedures in place to address these obligations and that section 10 should not result in any significant new obligations for these entities.

DIVISION 2 – ADDITIONAL OBLIGATIONS WHEN DEALING WITH OR ADVISING CERTAIN DERIVATIVES PARTIES

The obligations in Division 2 of Part 3 do not apply if a derivatives firm is dealing with or advising a specified eligible derivatives party.

These obligations are intended to protect less sophisticated market participants. These include but are not limited to:

Derivatives-party-specific needs and objectives

Section 11 sets out the obligation on a derivatives firm to obtain information about a derivatives party's specific investment needs and objectives in order for the derivatives firm to meet its suitability obligations under section 12 and to assess a transaction under subsection 19(1).

Information on a derivatives party's specific needs and objectives (sometimes referred to as "client-specific KYC information") forms the basis for determining whether transactions in derivatives are suitable for a derivatives party or the terms of the transaction are the most advantageous. The obligations in section 11 require a derivatives firm to take reasonable steps to obtain and periodically update information about its derivatives parties.

Suitability

Section 12 requires a derivatives firm to take reasonable steps to ensure that a proposed transaction is suitable for a derivatives party before making a recommendation or accepting instructions from the derivatives party to transact in a derivative.

Disclosure regarding the use of borrowed money or leverage

Section 16 requires a derivatives firm to provide a risk disclosure to a derivatives party before a transaction takes place, which explains that the leverage inherent in derivatives may require the derivatives party to deposit additional funds if the value of the derivative declines and that borrowing money or using leverage to fund a derivatives transaction carries additional risk.

DIVISION 3 – RESTRICTIONS ON CERTAIN BUSINESS PRACTICES WHEN DEALING WITH CERTAIN DERIVATIVES PARTIES

The obligations in Division 3 focus on restricting certain business activities when dealing with less sophisticated derivatives parties. These obligations relate to tied selling and fair terms and pricing. The obligations in this Division do not apply if a derivatives firm is dealing with or advising a specified eligible derivatives party.

Tied selling

Section 18 prohibits a derivatives firm from engaging in certain sales practices that would pressure or require a derivatives party to obtain a product or service as a condition of obtaining other products or services from the derivatives firm. An example of tied selling would be offering a loan on the condition that the derivatives party purchase another product or service, such as a swap to hedge the loan from the derivatives firm or one of its affiliates.

As explained in the CP, section 18 is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. Relationship pricing refers to the practice of industry participants offering financial incentives or advantages to certain derivatives parties.

Fair terms and pricing

Subsection 19(1) imposes an obligation on derivatives firms to implement policies and procedures that are reasonably designed to obtain the most advantageous terms reasonably available when acting as agent for a derivatives party. Subsection 19(2) requires derivatives dealers, when transacting with a derivatives party as principal to make a reasonable effort to provide a price that is fair and reasonable taking into account all relevant factors.

Part 4 – Derivatives Party Accounts

DIVISION 1 – DISCLOSURE TO DERIVATIVES PARTIES

The CSA believe that less sophisticated derivatives parties, or those individuals who would like a higher level of protection, need more detailed information concerning their transactions and their accounts. Below are some of the requirements designed to keep derivatives parties informed. The obligations in this Division do not apply if a derivatives firm is dealing with or advising a specified eligible derivatives party.

Section 20 requires a derivatives firm to provide a derivatives party with all information that the derivatives party needs to understand not only their relationship with the derivatives firm but also the products and services that the derivatives firm will or may provide and the fees or other charges that the derivatives party may be required to pay.

Subsection 21(1) sets out the obligation for a derivatives firm to provide a derivatives party with disclosure relating to the type of derivative that is reasonably designed to allow the derivatives party to assess the material risks of transacting in the derivative. This includes the derivatives party's potential exposure and the material characteristics of the derivative which include the material economic terms and the rights and obligations of the counterparties to the type of derivative.

In addition, subsection 21(2) establishes obligations, before transacting a specific derivative, to advise the derivatives party about material risks in relation to the specific derivative that are materially different than the risks disclosed under subsection 21(1) and, if applicable, the price of the derivative to be transacted and the most recent valuation.

Further to these obligations, section 22 requires a derivatives firm to provide a derivatives party with daily valuation of the derivatives that it has transacted with or on behalf of that derivatives party.

DIVISION 2 – DERIVATIVES PARTY ASSETS

Division 2 sets out certain requirements related to segregation and holding of derivatives party assets held by a derivatives firm, as well as restrictions on the use and investment of those assets.

The obligations in this Division, other than section 24 and section 25, do not apply if a derivatives firm is dealing with or advising a specified eligible derivatives party.

DIVISION 3 – REPORTING TO DERIVATIVES PARTIES

Division 3 sets out obligations of derivatives firms to provide certain reports to derivatives parties.

Section 29 provides that a derivatives firm must provide a confirmation of the key elements of a derivatives transaction. The contents of this confirmation are set out in subsection 29(2).

Section 30 sets out the obligations of a derivatives firm to provide monthly statements to derivatives parties. Subsection 30(2) describes the information that must be provided in the monthly statement.

The obligations in this Division, other than the fundamental transaction confirmation requirement in subsection 29(1), do not apply if a derivatives firm is dealing with or advising a specified eligible derivatives party.

Part 5 – Compliance and recordkeeping

DIVISION 1 – COMPLIANCE

Section 32 provides that a derivatives firm must have policies and procedures that establish a system of controls to assure that, with respect to transacting or advising on derivatives, the firms and individuals acting on its behalf comply with applicable laws, to manage risk and to ensure that individuals have the necessary training and expertise.

Section 33 imposes certain supervisory, management, and reporting obligations on "senior derivatives managers". These requirements are intended to create accountability at the senior management level. The CSA are monitoring international regulatory initiatives[6] designed to ensure that senior managers bear responsibility for the effective and efficient management of their business units. A senior derivatives manager is an individual that is responsible for the derivatives activities of a particular business unit (e.g., the individual responsible for, or head of, interest rate trading or the "rates desk" at a derivatives firm). Senior derivatives managers must supervise compliance activities, promote compliance, and take steps to prevent and respond to non-compliance. At least annually, senior derivatives managers must also report to the firm's board of directors, either to certify that the business unit is in material compliance with all applicable securities legislation, or to specify circumstances of material non-compliance.

Section 34 sets out the requirement of a derivatives firm to respond to material non-compliance, and in certain circumstances to report material non-compliance to the regulator or securities regulatory authority.

Part 6 – Exemptions

DIVISION 1 – EXEMPTIONS FROM THE INSTRUMENT

Section 38 provides that persons or companies that are registered under securities legislation, in Canada or a foreign jurisdiction, do not qualify for the exemption in section 39.

Section 39 provides that derivatives end-users (e.g., entities that trade derivatives for their own account for commercial purposes) are exempt from the Instrument provided they do not do any of the following:

- solicit or otherwise transact in a derivative with, for or on behalf of a person or company that is not an eligible derivatives party;
- advise persons or companies in respect of transactions in derivatives, if the person or company is not an eligible derivatives party, other than general advice that is provided in accordance with the conditions of section 43;
- regularly quote prices at which they would be willing to transact in a derivative or otherwise make or offer to make a market in a derivative with a derivatives party;
- regularly facilitate or otherwise intermediate transactions in derivatives for another person or company;
- facilitate the clearing of a transaction in a derivative through the facilities of a clearing agency for a third-party, other than an affiliated entity.

DIVISION 2 AND DIVISION 3 – EXEMPTIONS FROM SPECIFIC REQUIREMENTS OF THE INSTRUMENT

Foreign derivatives dealers and foreign derivatives advisers

These Divisions provide, under certain conditions, an exemption from requirements in the Instrument for foreign derivatives dealers and foreign derivatives advisers that are regulated under the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Proposed Instrument.

These exemptions apply to the provisions of the Instrument where the derivatives dealer or derivatives adviser is subject to and in compliance with the laws of a foreign jurisdiction set out in Appendix A and Appendix D of the Instrument opposite the name of the foreign jurisdiction. The jurisdictions specified in Appendices A and D will be determined on a jurisdiction-by-jurisdiction basis, and based on a review of the laws and regulatory framework of the jurisdiction.

[6] See for example https://www.fca.org.uk/firms/senior-managers-certification-regime and http://www.sfc.hk/web/EN/faqs/intermediaries/licensing/manager-in-charge-regime.html

Note that as of the time of this publication for comment, the equivalence analysis required to populate Appendices A and D of the Instrument has not been completed.

DIVISION 3 – EXEMPTIONS FOR DERIVATIVES ADVISERS

Advising generally

Division 3 provides an exemption for persons and companies that provide general advice in relation to derivatives, where the advice is not tailored to the needs of the person or company receiving the advice (e.g., analysis published in mass media), and the person or company discloses all financial or other interests in relation to the advice.

Anticipated Costs and Benefits

The CSA have developed the Proposed Instrument to help protect investors and counterparties, reduce risk, improve transparency and accountability and promote responsible business conduct in the OTC derivatives markets.

We are proposing an investor protection regime for Canadian OTC derivatives parties that is equivalent to the protections offered in major international markets and also targets misconduct that could impact the Canadian market.

There will be compliance costs for derivatives firms that may increase the cost of trading or receiving advice for market participants. In the CSA's view, the compliance costs to market participants are proportionate to the benefits to the Canadian market of implementing the Proposed Instrument. The major benefits and costs of the Proposed Instrument are described below.

(a) Benefits

The Proposed Instrument will protect participants in the Canadian OTC derivatives market by reducing the likelihood of suffering loss through inappropriate transactions, inappropriate sale of derivatives and market misconduct. The Proposed Instrument offers protections not only to retail market participants but also large market participants whose derivatives losses could impact their business operations and potentially the Canadian economy more broadly. The Proposed Instrument fills a regulatory gap in the Canadian OTC derivatives market for certain derivatives firms that are not subject to business conduct regulation and oversight. It is intended to foster confidence in the Canadian derivatives market by creating a regime that meets international standards and is equivalent to the regimes in major trading jurisdictions. Currently, OTC derivatives are regulated differently across Canadian jurisdictions, and there is inconsistency in regulation of business conduct in OTC derivatives markets. The Proposed Instrument aims to reduce compliance costs for derivatives firms by harmonizing the rules across Canadian jurisdictions and establishing a regime that is tailored for the derivatives market.

(b) Costs

Generally, any increased costs resulting from compliance with the Proposed Instrument are expected to arise from analysing the requirements put forth and establishing policies and procedures for compliance. Any costs associated with complying with the Proposed Instrument are expected to be borne by derivatives firms and in certain circumstances may be passed on to derivatives parties. There is also a possibility that foreign derivatives firms may be dissuaded from entering or remaining in the Canadian market due to the costs of complying with the Proposed Instrument, which would reduce Canadian derivatives parties' options for derivatives services. However the Proposed Instrument contemplates an exemption for derivatives firms located in foreign jurisdictions, which are subject to and in compliance with equivalent exemptions under foreign laws. This exemption could significantly reduce compliance costs associated with the Proposed Instrument for derivatives firms located in and complying with the laws of approved foreign jurisdictions.

(c) Conclusion

Protection of derivatives parties and the integrity of the Canadian derivatives market are the fundamental principles of the Proposed Instrument. The CSA are of the view that the impact of the Proposed Instrument, tailored for the OTC derivatives market, including anticipated compliance costs for derivatives firms, is proportional to the benefits sought. The Proposed Instrument aims to provide a level of protection similar to that offered to derivatives parties in other jurisdictions with significant OTC derivatives markets. To achieve a balance of interests, the Proposed Instrument is designed to promote a safer environment in the Canadian derivatives market by delivering a high level of protection to customers transacting in OTC derivatives and also facilitate a flexible and competitive market for derivatives firms to operate in.

Contents of Annexes

The following annexes form part of this CSA Notice:

- Annex I – Proposed National Instrument 93-101 *Derivatives: Business Conduct*
- Annex II – Proposed Companion Policy 93-101 *Derivatives: Business Conduct*
- Annex III – Local Matters

Comments

In addition to your comments on all aspects of the Proposed Instrument, the CSA also seek specific feedback on the following questions:

1) Definition of "eligible derivatives party"

As currently drafted, the definition of "eligible derivatives party" is generally similar to the definition of "permitted client" in NI 31-103, with a few modifications to reflect the different nature of derivatives markets and participants.

Do you agree this is the appropriate definition for this term? Are there additional categories that we should consider including, or categories that we should consider removing from this definition?

Should an individual qualify as an eligible derivatives party or should individuals always benefit from market conduct protections available to persons that are not eligible derivatives parties?

2) Alternative definition of "eligible derivatives party"

In the CSA Consultation Paper 33-404, it was put forth that certain proposed targeted reforms relating to the client-registrant relationship be tailored in their application to "institutional clients." Proposed targeted reforms relating to suitability and KYC requirements would, for instance, not apply to registrants dealing with an institutional client.[7]

The CSA Consultation Paper 33-404 proposed a definition of "institutional client"[8] which is generally similar to the definition of a "permitted client" in section 1.1 of NI 31-103. However, in comparison to the definition of "permitted client" in NI 31-103 (which refers in paragraph (o) to individuals that beneficially own a specified threshold of financial assets), the definition of "institutional client" in the Consultation Paper did not include individuals. Moreover, in comparison to paragraph (q) of the definition of "permitted client" (which refers to "a person or company, other than an individual or an investment fund, that has net assets of at least $25 million as shown on its most recently prepared financial statements"), the following branch of the definition of "institutional client" proposed in the CSA Consultation Paper 33-404 would establish a higher financial threshold for non-individual entities:

> (x) *any other person or company, other than an individual, with financial assets, as defined in section 1.1 of National Instrument 45-106 Prospectus Exemptions, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $100 million.*

Please comment on whether it would be appropriate to use the definition of "institutional client" proposed in the April 28, 2016 CSA Consultation Paper 33-404 as the basis for definition of "eligible derivatives party" in the Proposed Instrument.

3) Knowledge and experience requirements in clauses (m) and (n) of the definition of "eligible derivatives party"

Clauses (m) and (n) of the definition of "eligible derivatives party" provide that a person or company may be an eligible derivatives party if they have represented in writing that they have the requisite knowledge and experience to evaluate, among other things, "the characteristics of the derivatives to be transacted". The corresponding section of the companion policy notes that "some people or companies may only have the requisite knowledge and experience pertaining to derivatives of a certain asset class or product type".

If a person or company only has the knowledge or experience to evaluate a specific type of derivative (for example a commodity derivative), should they be limited to being an eligible derivatives party for that type of derivative or should they be considered to be an eligible derivatives party for all types of derivatives?

Is it practical for a derivatives dealer or adviser to make the eligible derivatives party determination (and manage its relationships accordingly) at the product-type level, or it is only practicable for a derivatives dealer or adviser to treat a derivatives party as an eligible derivatives party (or not) for all purposes?

[7] See (2016), 39 OSCB 3964 et seq.

[8] For the proposed definition of "institutional client, see (2016), 39 OSCB 3978 et seq.

4) Two-tiered approach to requirements: eligible derivatives parties vs. all derivatives parties

Do you agree with the two-tiered approach to investor/customer protection in the Instrument? Are there additional requirements that a derivatives firm should be subject to even when dealing with or advising an eligible derivatives party? For example, should best execution or tied selling obligations, or other obligations in Division 2 of Part 3, also apply when a derivatives firm is dealing with or advising an eligible derivatives party?

Does the Proposed Instrument adequately account for current institutional OTC trading practices? Are there requirements that apply to a derivatives firm in respect of an eligible derivatives party that should not apply, or that impose unreasonable burdens that would unnecessarily discourage trading in OTC derivatives in Canada?

Should the two-tiered approach apply to a derivatives adviser that is advising an eligible derivatives party?

5) Business trigger guidance

Part 1 of the CP sets out factors that are considered relevant in determining whether a person or company is in the business of trading or advising in derivatives. One of those factors is as follows:

> *Quoting prices or acting as a market maker* – The person or company makes a two-way market in a derivative or routinely quotes prices at which they would be willing to transact in a derivative or offers to make a market in a derivative or derivatives.

Similarly, paragraph 39(c) of the Instrument provides that the exemption described therein is only available if "the person or company does not regularly quote prices at which they would be willing to transact in a derivative or otherwise make or offer to make a market in a derivative with a derivatives party".

Does the guidance in the CP, along with 39(c) of the Instrument, appropriately describe the situation in which a person or company should be considered to be a derivatives dealer because they are functioning in the role of a market maker?

6) Fair Dealing

Is the proposed application of a flexible fair dealing model that is dependent on the relationship between the derivatives firm and its derivatives party appropriate?

7) Fair terms and pricing

Are the proposed requirements in section 19 of the Instrument relating to fair terms and pricing appropriate?

8) Derivatives Party Assets

National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* imposes obligations on clearing intermediaries that hold collateral on behalf of customers relating to derivatives cleared through a clearing agency that is a central counterparty. These requirements apply regardless of the sophistication of the customer. Division 2 of Part 4 of the Instrument imposes comparable obligations but does not apply if the derivatives party is not an eligible derivatives party.

Should Division 2 of Part 4 apply if the derivatives party is an eligible derivatives party?

9) Valuations for derivatives

Section 21, 22 and 30 require a derivatives firm to provide valuations for derivatives to their derivatives party. Should these valuations be accompanied by information on the inputs and assumptions that were used to create the valuation?

10) Senior derivatives managers

Section 33 of the Instrument imposes certain supervisory, management, and reporting obligations on "senior derivatives managers", and section 34 imposes related duties on the firm to respond to reports of non-compliance, and in certain circumstances to report non-compliance to the regulator or securities regulatory authority.

Please comment on the proposed senior management requirements including whether the proposed obligations are practical to comply with, and the extent to which they do or do not reflect existing best practices.

11) Exemptions

Sections 40, 41, 42, and 44 of the Instrument contemplate exemptions for derivatives firms, conditional on being subject to and complying with equivalent domestic or foreign regulations. Please provide information on regulations that the CSA should consider for the equivalency analysis. Where possible, please provide specific references and information on relevant requirements and why they are equivalent, on an outcomes basis, to the requirements in the Instrument.

Please provide your comments in writing by September 1, 2017.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.albertasecurities.com, the *Autorité des marchés financiers* at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Please address your comments to each of the following:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Ontario Securities Commission
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

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

M^{e} Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
800, rue du Square-Victoria, 22^{e} étage
C.P. 246, tour de la Bourse
Montréal (Québec) H4Z 1G3
Fax: 514-864-6381
consultation-en-cours@lautorite.qc.ca

Grace Knakowski
Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Questions

Please refer your questions to any of:

Lise Estelle Brault
Co-Chair, CSA Derivatives Committee
Senior Director, Derivatives Oversight
Autorité des marchés financiers
514-395-0337, ext. 4481
lise-estelle.brault@lautorite.qc.ca

Kevin Fine
Co-Chair, CSA Derivatives Committee
Director, Derivatives Branch
Ontario Securities Commission
416-593-8109
kfine@osc.gov.on.ca

Paula White
Deputy Director, Compliance and Oversight
Manitoba Securities Commission
204-945-5195
paula.white@gov.mb.ca

Chad Conrad
Legal Counsel, Corporate Finance
Alberta Securities Commission
403-297-4295
Chad.Conrad@asc.ca

Michael Brady
Manager, Derivatives
British Columbia Securities Commission
604-899-6561
mbrady@bcsc.bc.ca

Abel Lazarus
Senior Securities Analyst
Nova Scotia Securities Commission
902-424-6859
abel.lazarus@novascotia.ca

Wendy Morgan
Senior Legal Counsel, Securities
Financial and Consumer Services Commission, New Brunswick
506-643-7202
wendy.morgan@fcnb.ca

Liz Kutarna
Deputy Director, Capital Markets, Securities Division
Financial and Consumer Affairs Authority of Saskatchewan
306-787-5871
liz.kutarna@gov.sk.ca

Appendix A

Comparison of protections that do not apply to, or may be waived by, "eligible derivatives parties" under Proposed NI 93-101 *Derivatives: Business Conduct* and "permitted clients" under NI 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Certain requirements in the Proposed Instrument are similar to existing market conduct requirements applicable to registered dealers and advisers under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) but have been modified to reflect the different nature of derivatives markets.

The extent to which obligations do not apply, or apply unless waived, when dealing with or advising an eligible derivatives party is set out in the following chart:

Obligation	Approach under NI 31-103	Approach under NI 93-101
Fair dealing[9]	Applies in respect of all clients	Applies in respect of all derivatives parties (s. 8)
Identifying and responding to conflicts of interest	Applies in respect of all clients (s. 13.4) However, client relationship disclosure obligations in relation to conflicts of interest do not apply in respect of a permitted client that is not an individual (s. 14.2(6))	Applies in respect of all derivatives parties (s. 9) However, relationship disclosure obligations in Part 4 in relation to conflicts of interest do not apply in respect of • an EDP that is not an individual • an EDP that is an individual that has waived this disclosure
Gatekeeper KYC (AML, etc.)	Applies in respect of all clients (s. 13.2) However, this does not apply if the client is a registered firm, Canadian financial institution or Schedule III bank (s. 13.2(5))	Applies in respect of all derivatives parties (s. 10) However, this does not apply if the derivatives party is a registered firm or a Canadian financial institution (including a Schedule III bank)
Client-specific KYC (investment needs and objectives, etc.) Suitability	Applies in respect of all clients (ss. 13.2(2)(c) and 13.3) May be waived in writing by a permitted client (including an individual permitted client) if registrant does not act as an adviser in respect of a managed account for the client (ss. 13.2(6) and 13.3(4))	Applies in respect of all derivatives parties other than • an EDP that is not an individual • an EDP that is an individual that has waived in writing this obligation (ss. 7, 11 and 12)
Miscellaneous other obligations	Do not apply to a permitted client • Disclosure when recommending the use of borrowed money – s. 13.13(2) • When the firm has a relationship with a financial institution – s. 14.4(3)	Apply in respect of all derivatives parties other than • an EDP that is not an individual • an EDP that is an individual that has waived in writing this obligation (ss. 7 and 16)

[9] See section 2.1 of OSC Rule 31-505 *Conditions of Registration*; section 14 of the Securities Rules, B.C. Reg. 194/97 **[B.C. Regulations]** under the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 **[B.C. Act]**; section 75.2 of the *Securities Act* (Alberta) R.S.A. 2000, c.S-4 **[Alberta Act]**; section 33.1 of *The Securities Act, 1988* (Saskatchewan), S.S. 1988-89, c. S-42.2 **[Saskatchewan Act]**; subsection 154.2(3) of *The Securities Act* (Manitoba) C.C.S.M. c. S50 **[Manitoba Act]**; section 65 of the *Derivatives Act* (Québec), R.S.Q., c. 14.01 **[Québec Act]**; section 39A of the *Securities Act* (Nova Scotia), R.S.N.S. 1989, c. 418 **[N.S. Act]**; subsection 54(1) of the *Securities Act* (New Brunswick) S.N.B. 2004, c. S-5.5 **[N.B. Act]**; section 90 of the *Securities Act* (Prince Edward Island), R.S.P.E.I. 1988, c. S-3.1 **[P.E.I. Act]**; subsection 26.2(1) of the *Securities Act* (Newfoundland and Labrador), R.S.N.L.1990, c. S-13 **[Newfoundland Act]**; section 90 of the *Securities Act* (Nunavut), S.Nu. 2008, c. 12 **[Nunavut Act]**; section 90 of the *Securities Act* (Northwest Territories), S.N.W.T. 2008, c. 10 **[N.W.T. Act]**; and section 90 of the *Securities Act* (Yukon), S.Y. 2007, c. 16 **[Yukon Act]**.

Miscellaneous other obligations	Do not apply to a permitted client that is not an individual • Dispute resolution service – s. 13.16(8) • Relationship disclosure information – s. 14.2(6) • Pre-trade disclosure of charges – s. 14.2.1(2), • Restriction on self-custody and qualified custodian requirement – s. 14.5.2 • Additional statements – s. 14.14.1 • Security position cost information – s. 14.14.2 • Report on charges and other compensation – s. 14.17 • Investment performance report – s. 14.18	Apply in respect of all derivatives parties other than • an EDP that is not an individual • an EDP that is an individual that has waived in writing this obligation (See s. 7 and Part 4)

Appendix B

Application of business conduct requirements

Regulatory Requirement	Derivatives firms dealing only with EDPs	Derivatives firms dealing with non-EDPs	Derivatives advisers acting for managed account
General obligations toward all (Part 3 Div 1) • Fair dealing • Conflict of interest management • General/gatekeeper know-your-derivatives party	•	•	•
Additional obligations and restrictions (Part 3 Div 2–3) • Derivatives-party-specific know-your-derivatives party • Product suitability • Permitted referral arrangements • Leverage/borrowing disclosure • Complaint handling • Prohibition on tied selling • Fair terms and pricing		•	•
Client and counterparty accounts (Part 4) • Relationship disclosure • Pre-trade disclosures re. risk, product, price, and compensation • Report daily valuations • Notice by non-resident registrants • Holding of assets[10] • Use and investment of assets • Transaction confirmations[11] • Monthly statements		•	•
Compliance and recordkeeping (Part 5) • Compliance and risk management systems • Senior manager certification • Client/counterparty agreement • Recordkeeping	•	•	•

[10] A basic segregation requirement applies in all circumstances, but most of the asset requirements only apply in the non-EDP context.

[11] A basic transaction confirmation requirement applies in all circumstances, but the more detailed requirement applies only in the non-EDP context.

ANNEX I

PROPOSED NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

PART 1
DEFINITIONS AND INTERPRETATION

Definitions and interpretation

1. (1) In this Instrument

"Canadian financial institution" means

(a) an association governed by the *Cooperative Credit Associations Act* (Canada) or a central cooperative credit society for which an order has been made under section 473(1) of that Act, or

(b) a bank, loan corporation, trust company, trust corporation, insurance company, treasury branch, credit union, caisse populaire, financial services cooperative, or league that, in each case, is authorized by an enactment of Canada or a jurisdiction of Canada to carry on business in Canada or a jurisdiction of Canada;

"derivatives adviser" means

(a) a person or company engaging in or holding himself, herself or itself out as engaging in the business of advising others as to transacting in derivatives, and

(b) any other person or company required to be registered as a derivatives adviser under the securities legislation of a jurisdiction of Canada;

"derivatives dealer" means

(a) a person or company engaging in or holding himself, herself or itself out as engaging in the business of trading in derivatives as principal or agent, and

(b) any other person or company required to be registered as a derivatives dealer under the securities legislation of a jurisdiction of Canada;

"derivatives firm" means a derivatives dealer or a derivatives adviser, as applicable;

"derivatives party" means

(a) in the case of a derivatives dealer,

(i) a person or company for which the derivatives dealer acts or proposes to act as an agent in relation to a transaction in a derivative, or

(ii) a person or company that is or is proposed to be a party to a derivative where the derivatives dealer is the counterparty, and

(b) in the case of a derivatives adviser, a person or company to which the adviser provides or proposes to provide advice in relation to derivatives;

"derivatives party assets" means any asset received or held by a derivatives firm, for or on behalf of a derivatives party;

"eligible derivatives party" means any of the following:

(a) a Canadian financial institution;

(b) the Business Development Bank of Canada incorporated under the *Business Development Bank of Canada Act* (Canada);

(c) a subsidiary of a person or company referred to in paragraph (a) or (b), if the person or company owns all of the voting securities of the subsidiary, except the voting securities required by law to be owned by directors of the subsidiary;

(d) a person or company registered under the securities legislation of a jurisdiction of Canada as at least one of the following:

(i) a derivatives dealer;

(ii) a derivatives adviser;

(iii) an adviser;

(iv) an investment dealer;

(e) a pension fund that is regulated by either the federal Office of the Superintendent of Financial Institutions or a pension commission or similar regulatory authority of a jurisdiction of Canada or a wholly-owned subsidiary of such a pension fund;

(f) an entity organized in a foreign jurisdiction that is analogous to any of the entities referred to in paragraphs (a) to (e);

(g) the Government of Canada or a jurisdiction of Canada, or any Crown corporation, agency or wholly-owned entity of the Government of Canada or a jurisdiction of Canada;

(h) any national, federal, state, provincial, territorial or municipal government of or in any foreign jurisdiction, or any agency of that government;

(i) a municipality, public board or commission in Canada and a metropolitan community, school board, the Comité de gestion de la taxe scolaire de l'île de Montréal or an intermunicipal management board in Québec;

(j) a trust company or trust corporation registered or authorized to carry on business under the *Trust and Loan Companies Act* (Canada) or under comparable legislation in a jurisdiction of Canada or a foreign jurisdiction, acting on behalf of a managed derivatives account managed by the trust company or trust corporation, as the case may be;

(k) a person or company acting on behalf of a managed account that is managed by the person or company, if the person or company is registered or authorized to carry on business as an adviser or a derivatives adviser or the equivalent under the securities legislation of a jurisdiction of Canada or a foreign jurisdiction;

(l) an investment fund that is advised by an adviser registered or exempted from registration under securities or commodity futures legislation in Canada;

(m) a person or company, other than an individual,

(i) that has represented in writing that it has the requisite knowledge and experience to evaluate the information provided to the person or company about derivatives, the suitability of the derivatives for that person or company, and the characteristics of the derivatives to be transacted on the person or company's behalf, and

(ii) that has net assets of at least $25 million as shown on its most recently prepared financial statements;

(n) an individual

(i) who has represented in writing that he or she has the requisite knowledge and experience to evaluate the information provided to the individual about derivatives, the suitability of the derivatives for that individual, and the characteristics of the derivatives to be transacted on the individual's behalf, and

(ii) that beneficially owns financial assets, as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions*, that have an aggregate realizable value before tax but net of any related liabilities of at least $5 million;

"investment dealer" means a person or company registered as an investment dealer under the securities legislation of a jurisdiction of Canada;

"managed account" means an account of a derivatives party for which a person or company makes the trading decisions if that person or company has discretion to trade securities for the account or transact in a derivative for the account without requiring the derivatives party's express consent to the transaction;

"permitted depository" means a person or company that is any of the following:

(a) a Canadian financial institution;

(b) a regulated clearing agency;

(c) the central bank of Canada or of a permitted jurisdiction;

(d) in Québec, a person recognized or exempted 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 derivatives party assets that it receives from a derivatives party, a derivatives dealer;

"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 derivatives party has provided express written consent to the derivatives dealer entering into a derivative in a foreign currency, the country of origin of the foreign currency used to denominate the rights and obligations under the derivative entered into by, for or on behalf of the derivatives party, and a political subdivision of that country;

"referral arrangement" means any arrangement in which a derivatives firm agrees to pay or receive a referral fee;

"referral fee" means any form of compensation, direct or indirect, paid for the referral of a derivatives party to or from a derivatives firm;

"registered derivatives firm" means a derivatives dealer or a derivatives adviser that is registered under securities legislation of a jurisdiction in Canada;

"registered firm" means a registered derivatives firm or a registered firm, as that term is defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"regulated clearing agency" has the meaning ascribed to that term in National Instrument 94-101 *Mandatory Central Counterparty Clearing of Derivatives*;

"Schedule III bank" means an authorised foreign bank named in Schedule III of the *Bank Act* (Canada);

"segregate" means to separately hold or separately account for a derivatives party's positions or collateral;

"transaction" means any of the following:

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

(b) the novation of a derivative, other than a novation with a clearing agency;

"valuation" means the current value of a derivative.

(2) In this Instrument, "adviser" includes

(a) in Manitoba, an "adviser" as defined in the *Commodity Futures Act* (Manitoba),

(b) in Ontario, an "adviser" as defined in the *Commodity Futures Act* (Ontario), and

(c) in Québec, an "adviser" as defined in the *Securities Act* (Québec).

(3) 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.

(4) 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.

(5) In this Instrument, a person or company is a subsidiary of another person or company if

(a) it is controlled by

(i) that other,

(ii) that other and one or more persons or companies, each of which is controlled by that other, or

(iii) two or more persons or companies, each of which is controlled by that other, or

(b) it is a subsidiary of a person or company that is that other's subsidiary.

(6) 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*.

PART 2
APPLICATION

Application to registered and unregistered derivatives firms

2. This Instrument applies to a derivatives firm, whether or not it is a registered derivatives firm.

Scope of Instrument

3. 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(6) of this Instrument. The text boxes in this Instrument do not form part of this Instrument and have no official status.

Affiliated entities

4. This Instrument does not apply to a person or company in respect of dealing with or advising an affiliated entity of the person or company.

Regulated clearing agencies

5. This Instrument does not apply to a regulated clearing agency.

Governments, central banks and international organizations

6. This Instrument does not apply to any of the following:

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

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

(c) the Bank for International Settlements;

(d) the International Monetary Fund.

Requirements that apply when dealing with or advising an eligible derivatives party

7. (1) The requirements of this Instrument, other than the following requirements, do not apply to a derivatives firm in respect of a derivatives party that is an eligible derivatives party and that is not an individual:

(a) Division 1 [*General obligations towards all derivatives parties*] of Part 3 [*Dealing with or advising derivatives parties*];

(b) Sections 24 [*Interaction with NI 94-102*] and 25 [*Segregating derivatives party assets*];

(c) Subsection 29(1) [*Content and delivery of transaction confirmations*]; and

(d) Part 5 [*Compliance and recordkeeping*].

(2) The requirements of this Instrument, other than the requirements specified in subsection (1), do not apply to a derivatives firm in respect of a derivatives party who is an eligible derivatives party and who is an individual if

(a) the individual has waived in writing the protections under the Instrument, other than as specified in subsection (1), and

(b) the individual has signed the waiver no earlier than 365 days before the derivatives firm transacts with or provides advice to the individual.

(3) Despite subsections (1) and (2), the requirements of the Instrument apply to a derivatives firm acting as an adviser in respect of a managed account of an eligible derivatives party.

PART 3
DEALING WITH OR ADVISING DERIVATIVES PARTIES

DIVISION 1 – GENERAL OBLIGATIONS TOWARDS ALL DERIVATIVES PARTIES

Fair dealing

8. (1) A derivatives firm must deal fairly, honestly and in good faith with a derivatives party.

(2) An individual acting on behalf of a derivatives firm must deal fairly, honestly and in good faith with a derivatives party.

(3) A derivatives adviser must allocate transaction opportunities fairly among its derivatives parties.

Conflicts of interest

9. (1) A derivatives firm must establish, maintain and apply policies and procedures reasonably designed to identify existing material conflicts of interest, and material conflicts of interest that the derivatives firm in its reasonable opinion would expect to arise, between the derivatives firm, including each individual acting on behalf of the derivatives firm, and a derivatives party.

(2) A derivatives firm must respond to an existing or potential conflict of interest identified under subsection (1).

(3) If a reasonable derivatives party would expect to be informed of a conflict of interest identified under subsection (1), the derivatives firm must disclose, in a timely manner, the nature and extent of the conflict of interest to the derivatives party whose interest conflicts with the interest identified.

Know your derivatives party

10. (1) For the purpose of paragraph 2(c) in Ontario, Nova Scotia and New Brunswick, "insider" has the meaning ascribed to that term in the *Securities Act* of these jurisdictions except that "reporting issuer", as it appears in the definition of "insider", is to be read as "reporting issuer or any other issuer whose securities are publicly traded".

(2) A derivatives firm must establish, maintain and apply reasonable policies and procedures to

(a) obtain such facts as are necessary to comply with applicable federal and provincial legislation relating to the verification of a derivatives party's identity,

(b) establish the identity of a derivatives party and, if the derivatives firm has cause for concern, make reasonable inquiries as to the reputation of the derivatives party,

(c) if transacting with, for or on behalf of, or advising a derivatives party in connection with derivatives that have securities as an underlying interest, establish whether either of the following applies:

(i) the derivatives party is an insider of a reporting issuer or any other issuer whose securities are publicly traded,

(ii) the derivatives party would reasonably be expected to have access to material non-public information relating to any interest underlying the derivative, and

(d) if the derivatives firm will, as a result of its relationship with the derivatives party have any credit risk in relation to the derivatives party, establish the creditworthiness of the derivatives party.

(3) For the purpose of establishing the identity of a derivatives party that is a corporation, partnership or trust, each derivatives firm must establish both of the following:

(a) the nature of the derivatives party's business;

(b) the identity of any individual who meets either of the following:

(i) in the case of a corporation, is a beneficial owner of, or exercises direct or indirect control or direction over, more than 25% of the voting rights attached to the outstanding voting securities of the corporation;

(ii) in the case of a partnership or trust, exercises control over the affairs of the partnership or trust.

(4) A derivatives firm must take reasonable steps to keep the information required under this section current.

(5) This section does not apply if the derivatives party is a registered firm or a Canadian financial institution.

DIVISION 2 – ADDITIONAL OBLIGATIONS WHEN DEALING WITH OR ADVISING CERTAIN DERIVATIVES PARTIES

The obligations in Division 2 of Part 3 do not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7.

Derivatives-party-specific needs and objectives

11. A derivatives firm must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, or transact in a derivative for a derivatives party's managed account, it has sufficient information regarding all of the following to enable it to meet its obligations under section 12 [*Suitability*]:

(a) the derivatives party's needs and objectives with respect to its transacting in derivatives;

(b) the derivatives party's financial circumstances;

(c) the derivatives party's risk tolerance;

(d) if applicable, the nature of the derivatives party's business and the operational risks it wants to manage.

Suitability

12. (1) A derivatives firm must take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a derivatives party to transact in a derivative, the transaction is suitable for the derivatives party.

(2) If a derivatives party instructs a derivatives firm to transact in a derivative and, in the derivatives firm's reasonable opinion, following the instruction would not be suitable for the derivatives party, the derivatives firm must inform the derivatives party in writing of the derivatives firm's opinion and must not transact in the derivative unless the derivatives party instructs the derivatives firm to proceed anyway.

Permitted referral arrangements

13. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not participate in a referral arrangement with another person or company unless

(a) before a derivatives party is referred by or to the derivatives firm, the terms of the referral arrangement are set out in a written agreement between the derivatives firm and the person or company,

(b) the derivatives firm records all referral fees, and

(c) the derivatives firm or individual acting on behalf of the derivatives firm ensures that the information prescribed by section 15 [*Disclosing referral arrangements to a derivatives party*] is provided to the derivatives party in writing before the derivatives firm or individual receiving the referral either opens an account for the derivatives party or provides services to the derivatives party.

Verifying the qualifications of the person or company receiving the referral

14. A derivatives firm, or an individual acting on behalf of a derivatives firm, must not refer a derivatives party to another person or company unless the derivatives firm first takes reasonable steps to verify and conclude that the person or company has the appropriate qualifications to provide the services, and, if applicable, is registered to provide those services.

Disclosing referral arrangements to a derivatives party

15. (1) The written disclosure of the referral arrangement required by paragraph 13(c) [*Permitted referral arrangements*] must include all of the following:

(a) the name of each party to the agreement referred to in paragraph 13(a) [*Permitted referral arrangements*];

(b) the purpose and material terms of the agreement, including the nature of the services to be provided by each party;

(c) any conflicts of interest resulting from the relationship between the parties to the agreement and from any other element of the referral arrangement;

(d) the method of calculating the referral fee and, to the extent possible, the amount of the fee;

(e) the category of registration, or exemption from registration, of each derivatives firm and individual acting on behalf of the derivatives firm that is a party to the agreement with a description of the activities that the derivatives firm or individual is authorized to engage in under that category or exemption and, giving consideration to the nature of the referral, the activities that the derivatives firm or individual is not permitted to engage in;

(f) any other information that a reasonable derivatives party would consider important in evaluating the referral arrangement.

(2) If there is a change to the information set out in subsection (1), the derivatives firm must ensure that written disclosure of that change is provided to each derivatives party affected by the change as soon as possible and no later than the 30th day before the date on which a referral fee is next paid or received.

Disclosure regarding the use of borrowed money or leverage

16. (1) A derivatives firm must, before transacting in a derivative with or on behalf of a derivatives party, provide the derivatives party with a written statement that is substantially similar to the following:

"A characteristic of many derivatives is that you are only required to deposit funds that correspond to a portion of your total potential obligations when entering into the derivative. However, your profits or losses from the derivative are based on changes in the total value of the derivative. This means the leverage characteristic magnifies the profit or loss under a derivative, and losses can greatly exceed the amount of funds deposited. Your derivatives firm may require you to deposit additional funds to cover your obligations under a derivative as the value of the derivative changes. If you fail to deposit these funds, your derivatives firm may close out your position without warning. You should understand all of your obligations under a derivative, including your obligations where the value of the derivative declines.

Using borrowed money to finance a derivatives transaction involves greater risk than using cash resources only. If you borrow money, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the derivative declines."

(2) Subsection (1) does not apply if the derivatives firm has provided the derivatives party with the statement described under subsection (1) no earlier than the 180th day before the date of the proposed transaction.

Handling complaints

17. A derivatives firm must document and, in a manner that a reasonable person would consider fair and effective, respond to each complaint made to the derivatives firm about any product or service offered by the derivatives firm or an individual acting on behalf of the derivatives firm.

The obligations in Division 3 of Part 3 do not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7.

DIVISION 3 – RESTRICTIONS ON CERTAIN BUSINESS PRACTICES WHEN DEALING WITH CERTAIN DERIVATIVES PARTIES

Tied Selling

18. (1) A derivatives firm must not impose undue pressure on or coerce a person or company to obtain a product or service from a particular person or company, including the derivatives firm or any of its affiliates, as a condition of obtaining another product or service from the derivatives firm.

(2) A derivatives firm must, before the derivatives firm first transacts in a derivative with or on behalf of the derivatives party or advises the derivatives party in respect of a derivative, disclose to a derivatives party the prohibition on coercive tied selling set out in subsection (1) in a statement in writing.

Fair terms and pricing

19. (1) A derivatives firm that acts as agent for a derivatives party in connection with a transaction in a derivative must establish, maintain and apply written policies and procedures that are reasonably designed to obtain the most advantageous terms reasonably available when acting as agent for a derivatives party.

(2) When transacting in a derivative with a derivatives party, as principal, a derivatives dealer, or an individual acting on behalf of the derivatives dealer, must make a reasonable effort to provide a price for the derivatives party that is fair and reasonable taking into consideration all relevant factors.

PART 4
DERIVATIVES PARTY ACCOUNTS

DIVISION 1 – DISCLOSURE TO DERIVATIVES PARTIES

The obligations in this Division do not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7.

Relationship disclosure information

20. (1) A derivatives firm must deliver to a derivatives party all information that a reasonable person would consider important about the derivatives party's relationship with the derivatives firm and each individual acting on behalf of the derivatives firm that is providing derivatives-related services to the derivatives party.

(2) Without limiting subsection (1), the information delivered under that subsection must include all of the following:

(a) a description of the nature or type of the derivatives party's account;

(b) a general description of the products and services the derivatives firm offers;

(c) a general description of the types of risks that a derivatives party should consider when making a decision relating to derivatives;

(d) a description of the risks to a derivatives party of using borrowed money to finance a derivative;

(e) a description of the conflicts of interest that the derivatives firm is required to disclose to a derivatives party under securities legislation;

(f) disclosure of the fees or other charges the derivatives party might be required to pay related to the derivatives party's account;

(g) a general description of the types of transaction fees or other charges the derivatives party might be required to pay;

(h) a general description of any compensation paid to the derivatives firm by any other party in relation to the different types of products that a derivatives party may transact in through the derivatives firm;

(i) a description of the content and frequency of reporting for each account or portfolio of a derivatives party;

(j) disclosure of the derivatives firm's obligations if a derivatives party has a complaint contemplated under section 17 [*Handling complaints*];

(k) a statement that the derivatives firm has an obligation to assess whether a derivative is suitable for a derivatives party prior to executing a transaction for the derivative or at any other time or a statement identifying the exemption the derivatives firm is relying on in respect of this obligation;

(l) the information a derivatives firm must collect about the derivatives party under section 10 [*Know your derivatives party*] and 11 [*Derivatives-party-specific needs and objectives*] or a statement identifying the exemption the derivatives firm is relying on in respect of this obligation;

(m) a general explanation of how performance benchmarks might be used to assess the performance of a derivatives party's derivatives and any options for benchmark information that might be made available to the derivatives party by the derivatives firm.

(3) A derivatives firm must deliver the information in subsection (1), if applicable, and subsection (2) to the derivatives party in writing, before the derivatives firm

(a) transacts in a derivative with or on behalf of the derivatives party, or

(b) advises the derivatives party in respect of a derivative.

(4) If there is a significant change in respect of the information delivered to a derivatives party under subsections (1) or (2), the derivatives firm must take reasonable steps to notify the derivatives party of the change in a timely manner and, if possible, before the derivatives firm next

(a) transacts in a derivative with or on behalf of the derivatives party, or

(b) advises the derivatives party in respect of a derivative.

(5) A derivatives firm must not impose any new fee or other charge in respect of an account of a derivatives party, or increase the amount of any fee or other charge in respect of an account of a derivatives party, unless written notice of the new or increased fee or charge is provided to the derivatives party at least 60 days before the date on which the imposition or increase becomes effective.

(6) Subsections (1), (2), (3) and (4) do not apply to a derivatives dealer in respect of a derivatives party for whom the derivatives dealer transacts in a derivatives only as directed by a derivatives adviser acting for the derivatives party.

(7) A derivatives dealer referred to in subsection (6) must deliver the information required under paragraphs (2)(a) and (e) to (j) to the derivatives party in writing before the derivatives dealer first transacts in a derivative for the derivatives party.

Pre-transaction disclosure

21. (1) Before transacting in a type of derivative with or on behalf of a derivatives party for the first time, a derivatives dealer must deliver a document reasonably designed to allow the derivatives party to assess each of the following:

(a) the material risks of the type of derivative transacted, including an analysis of the derivatives party's potential exposure under the type of derivative;

(b) the material characteristics of the type of derivative, including the material economic terms and the rights and obligations of the counterparties to the type of derivative.

(2) Before transacting in a derivative with or on behalf of a derivatives party, a derivatives dealer must advise the derivatives party of all of the following:

(a) any material risks or material characteristics that are materially different from those described in the disclosure required under subsection (1);

(b) if applicable, the price of the derivative to be transacted and the most recent valuation;

(c) any compensation or other incentive payable by the derivatives party relating to the derivative or the transaction in the derivative.

Daily reporting

22. On each business day, a derivatives firm must make available to a derivatives party a valuation for each derivative that it has transacted with or on behalf of the derivatives party and with respect to which contractual obligations remain outstanding on that day.

Notice to derivatives parties by non-resident derivatives firms

23. A derivatives firm whose head office is not located in Canada must not transact in a derivative with a derivatives party in the local jurisdiction unless it has delivered to the derivatives party a statement in writing disclosing all of the following:

(a) the jurisdiction in Canada or the foreign jurisdiction in which the head office or the principal place of business of the derivatives firm is located;

(b) that all or substantially all of the assets of the derivatives firm may be situated outside the local jurisdiction;

(c) that there may be difficulty enforcing legal rights against the derivatives firm because of the above;

(d) the name and address of the agent for service of process of the derivatives firm in the local jurisdiction.

DIVISION 2 – DERIVATIVES PARTY ASSETS

This Division, other than Sections 24 and 25, does not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7.

Interaction with NI 94-102

24. This Division does not apply to a derivatives firm in respect of derivatives party assets if the derivatives firm is subject to and complies with or is exempt from sections 3 through 8 of National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* in respect of those derivatives party assets.

Segregating derivatives party assets

25. A derivatives firm that holds derivatives party assets must segregate those assets from the positions and property of other persons or companies including the positions and property of the derivatives firm.

Holding derivatives party assets

26. A derivatives firm must hold all of its derivatives party assets

(a) in one or more accounts at a permitted depository that are clearly identified as holding derivatives party assets, and

(b) in separate accounts from the property of all persons who are not a derivatives party of the derivatives firm.

Use of derivatives party assets

27. (1) A derivatives firm must not use or permit the use of derivatives party assets except in accordance with this section and section 28 [*Investment of derivatives party assets*].

(2) A derivatives firm must not use or permit the use of derivatives party assets except to do either of the following:

(a) margin, guarantee, secure, settle or adjust the obligations of the derivatives party;

(b) secure or extend the credit of the derivatives party.

(3) Other than with respect to derivatives party assets used in accordance with paragraph (2)(b), a derivatives firm must not create or permit to exist any lien or other encumbrance on the derivatives party assets unless the lien or other encumbrance secures an obligation in favour of the derivatives party.

Investment of derivatives party assets

28. (1) A derivatives firm must not invest derivatives party assets except in accordance with subsections (2) and (3).

(2) Subject to subsection (3), a derivatives firm may

(a) invest derivatives party assets in a permitted investment, and

(b) use derivatives party assets to purchase a permitted investment pursuant to an agreement for resale or repurchase if all of the following apply:

(i) the agreement is in writing;

(ii) the term of the agreement is no more than one business day;

(iii) written confirmation specifying the terms of the agreement is delivered to the derivatives party immediately upon entering into the agreement;

(iv) the agreement is not entered into with an affiliated entity of the derivatives firm.

(3) A loss resulting from an investment or use of a derivatives party's derivatives party assets in accordance with subsection (1) or subsection (2) by the derivatives firm must be borne by the derivatives firm making the investment and not by the derivatives party.

DIVISION 3 – REPORTING TO DERIVATIVES PARTIES

This Division, other than Subsection 29(1), does not apply if a derivatives firm is dealing with an eligible derivatives party that is not an individual or an eligible derivatives party who is an individual that has waived these protections – see section 7.

Content and delivery of transaction confirmations

29. (1) A derivatives dealer that has transacted with, for or on behalf of a derivatives party must promptly deliver to the derivatives party or, if the derivatives party consents in writing, to a derivatives adviser acting for the derivatives party, a written confirmation of the transaction.

(2) If the derivatives dealer has transacted with, for or on behalf of a derivatives party that is not an eligible derivatives party, the written confirmation of the transaction must set out all of the following, if and as applicable:

(a) a description of the derivative;

(b) information sufficient to identify the agreement that governs the transaction;

(c) the notional value or amount, quantity or volume of the underlying asset of the derivative;

(d) the number of units of the derivative;

(e) the total price paid for the derivative and the per unit price of the derivative;

(f) the commission, sales charge, service charge and any other amount charged in respect of the transaction;

(g) whether the derivatives dealer acted as principal or agent in relation to the derivative;

(h) the date and the name of the trading facility, if any, on which the transaction took place;

(i) the name of the individual acting on behalf of the derivatives firm, if any, that provided advice relating to the derivative or the transaction;

(j) the settlement date of the transaction;

(k) the name of the regulated clearing agency, if any, where the derivative was cleared.

(3) For the purpose of paragraph (2)(i), an individual acting on behalf of a derivatives firm may be identified by means of a code or symbol if the confirmation also contains a statement that the name of the individual will be provided to the derivatives party on request of the derivatives party.

(4) The confirmation required under this section must be delivered promptly following the date of the transaction.

Derivatives party statements

30. (1) A derivatives firm must deliver a statement to a derivatives party promptly after the end of each month if either of the following applies:

(a) within the month a derivative was transacted with, for or on behalf of the derivatives party;

(b) the derivatives party has an outstanding position resulting from a transaction where the derivatives firm acted as a derivatives dealer.

(2) A statement delivered under this section must include all of the following information for each transaction made with, for or on behalf of the derivatives party by the derivatives firm during the period covered by the statement, if and as applicable:

(a) the date of the transaction;

(b) a description of the derivative transaction;

(c) information sufficient to identify the agreement that governs the transaction;

(d) the number of units of the derivative transacted and the nature of the transaction;

(e) the total price paid for the derivative and the per unit price of the derivative.

(3) A statement delivered under this section must include all of the following information about the derivatives party's account or position as at the date of the statement, if and as applicable:

(a) a description of each outstanding derivative to which the derivatives party is a party;

(b) the valuation of each outstanding derivative to which the derivatives party is a party as at the statement date;

(c) the final valuation of each derivative to which the derivatives party is a party that expired or terminated during the period covered by the statement as at the expiry or termination date;

(d) a description of all derivatives party assets held by the derivatives firm as collateral;

(e) any cash balance in the account;

(f) a description of any other derivatives party asset held by the derivatives firm;

(g) the total market value of all cash, outstanding derivatives and other derivatives party assets in the account, other than assets held as collateral.

PART 5
COMPLIANCE AND RECORDKEEPING

DIVISION 1 – COMPLIANCE

Definitions

31. In this Division,

"senior derivatives manager" means, in respect of a derivatives business unit of a derivatives firm, the individual designated by the derivatives firm as responsible for directing the derivatives activities of that unit;

"derivatives business unit" means, in respect of a derivatives firm, an organizational unit that transacts in or provides advice in relation to a derivative, or a class of derivatives, on behalf of the derivatives firm.

Policies and procedures

32. A derivatives firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to

(a) provide reasonable assurance that the derivatives firm and each individual acting on its behalf in relation to its activities relating to transacting in or advising on derivatives complies with applicable securities legislation,

(b) manage the risks relating to its derivatives activities in accordance with prudent business practices, and

(c) ensure that individuals that perform an activity relating to transacting in or advising on derivatives have, on an ongoing basis, the experience, the education and the training that a reasonable person would consider necessary to perform that activity competently, including understanding the structure, features and risks of each derivatives that the individual transacts in or recommends.

Responsibilities of senior derivatives managers

33. (1) Each senior derivatives manager of a derivatives firm must do all of the following:

(a) supervise the activities conducted in his or her derivatives business unit that are directed towards ensuring compliance by the derivatives business unit, and each individual working in the derivatives business unit, with this Instrument, applicable securities legislation and the policies and procedures required under section 32 [*Policies and procedures*];

(b) with respect to the derivatives activities conducted in his or her derivatives business unit, promote compliance by the derivatives business unit, and each individual working in the derivatives business unit, with this Instrument, applicable securities legislation and the policies and procedures required under section 32 [*Policies and procedures*];

(c) take reasonable steps to prevent and respond to any non-compliance, with respect to the derivatives activities conducted in his or her derivatives business unit, with this Instrument, applicable securities legislation or the policies and procedures required under section 32 [*Policies and procedures*].

(2) At least once per calendar year, each senior derivatives manager of a derivatives firm must, with respect to the derivatives activities conducted in his or her derivatives business unit, submit a report to the derivatives firm's board of directors, or individuals acting in a similar capacity for the derivatives firm,

(a) certifying that the derivatives business unit is in material compliance with this Instrument, applicable securities legislation, and the policies and procedures required under section 32 [*Policies and procedures*], or

(b) specifying all circumstances where the derivatives business unit is not in material compliance with this Instrument, applicable securities legislation, or the policies and procedures required under section 32 [*Policies and procedures*].

Responsibility of derivatives firm to respond to material non-compliance

34. If a senior derivatives manager specifies circumstances under paragraph 33(2)(b) where a derivatives business unit is not in material compliance with this Instrument, applicable securities legislation, or the policies and procedures required under section 32 [*Policies and procedures*], the derivatives firm must,

(a) respond to the specified non-compliance in a timely manner, and document its response, and

(b) report to the regulator or securities regulatory authority in a timely manner any circumstance where, with respect to the derivatives activities of the derivatives firm, the derivatives firm is not or was not in material compliance with this Instrument, applicable securities legislation, or the policies and procedures required under section 32 [*Policies and procedures*].

DIVISION 2 – RECORDKEEPING

Derivatives party agreement

35. (1) A derivatives firm must establish policies and procedures that are reasonably designed to ensure that the derivatives firm, before transacting in a derivative with or on behalf of a derivatives party, enters into an agreement with that derivatives party.

(2) The agreement referenced in subsection (1) must establish all of the material terms governing the relationship between the derivatives firm and the derivatives party including those relating to the rights and obligations of the derivatives firm and the derivatives party.

Records

36. A derivatives firm must keep complete records of all its derivatives, transactions and advising activities, including, as applicable, all of the following:

(a) general records of its derivatives business and activities conducted with derivatives parties, and compliance with applicable provisions of securities legislation, including

(i) records of derivatives party assets, and

(ii) evidence of the derivatives firm's compliance with internal policies and procedures;

(b) for each derivative, records that demonstrate the existence and nature of the derivative, including

(i) records of communications with derivatives parties relating to transacting in derivatives,

(ii) documents provided to derivatives parties to confirm the derivative and their terms and each transaction relating to the derivative,

(iii) correspondence relating to the derivative and each transaction relating to the derivative, and

(iv) records made by staff relating to the derivative and transactions relating to the derivative, such as notes, memos or journals;

(c) for each derivative, records that provide for a complete and accurate reconstruction of the derivative and all transactions relating to the derivative, including

(i) records relating to pre-execution activity including all communications relating to quotes, solicitations, instructions, transactions and prices however they may be communicated,

(ii) reliable timing data for the execution of each transaction relating to the derivative, and

(iii) records relating to the execution of the transaction including

(A) information obtained to determine whether the counterparty qualifies as an eligible derivatives party,

(B) fees or commissions charged, and

(C) any other information relevant to the transaction;

(d) an itemized record of post-transaction processing and events, including

(i) data reported to a trade repository, including the time and date that the report is made,

(ii) transaction confirmations,

(iii) terminations of derivatives,

(iv) novations of derivatives,

(v) amendments to derivatives,

(vi) assignment of derivatives or rights under derivatives,

(vii) netting of derivatives, and

(viii) margining and collateralization.

Form, accessibility and retention of records

37. (1) A derivatives firm must keep a record that it is required to keep under this Part, 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 derivative, for a period of 7 years following the date on which the derivative expires or is terminated, and

(c) in any other case, for a period of 7 years following the date on which a derivatives party's last derivative expires or is terminated.

(2) Despite subsection (1), in Manitoba, with respect to a derivatives firm or a derivatives party located in Manitoba, the time period applicable to records and supporting documentation kept pursuant to subsection (1) is 8 years.

PART 6
EXEMPTIONS

DIVISION 1 – EXEMPTIONS FROM THIS INSTRUMENT

Limitation on the availability of exemptions in this Division

38. The exemptions in this Division are not available to a person or company if either of the following applies:

(a) the person or company is a registered firm in any jurisdiction in Canada;

(b) the person or company is registered under the securities, commodity futures or derivatives legislation of the foreign jurisdiction in which its head office or principal place of business is located in a category of registration that permits it to carry on the activities in that jurisdiction that registration as a derivatives dealer or derivatives adviser would permit it to carry on in the local jurisdiction.

Exemption for certain derivatives end-users

39. A person or company is exempt from the requirements of this Instrument if each of the following applies:

(a) the person or company does not solicit, or otherwise transact in a derivative with, for or on behalf of, a person or company that is not an eligible derivatives party;

(b) the person or company does not, in respect of transactions in derivatives, advise other persons or companies that are not eligible derivatives parties, other than general advice that is provided in accordance with the conditions of section 43 [*Advising generally*];

(c) the person or company does not regularly quote prices at which they would be willing to transact in a derivative or otherwise make or offer to make a market in a derivative with a derivatives party;

(d) the person or company does not regularly facilitate or otherwise intermediate transactions in derivatives for another person or company;

(e) the person or company does not facilitate the clearing of a transaction in a derivative through the facilities of a clearing agency for another person or company, other than for an affiliated entity.

DIVISION 2 – EXEMPTIONS FROM SPECIFIC REQUIREMENTS IN THIS INSTRUMENT

Foreign derivatives dealers

40. (1) A derivatives dealer whose head office or principal place of business is in a foreign jurisdiction is exempt from this Instrument in respect of a transaction if

(a) the derivatives dealer does not solicit, or otherwise transact in a derivative with, for or on behalf of, a person or company in the local jurisdiction that is not an eligible derivatives party,

(b) the derivatives dealer is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix A to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party, and

(c) the derivatives dealer complies with the laws of the foreign jurisdiction applicable to the derivatives dealer set out in Appendix A relating to the activities being conducted.

(2) Despite subsection (1), a derivatives dealer relying on the exemption set out in that subsection must comply with the provisions of this Instrument set out in Appendix A opposite the name of the foreign jurisdiction in respect of the transaction.

(3) The exemption in subsection (1) is not available to a person or company in respect of a transaction in a derivative unless all of the following apply:

(a) the head office or principal place of business of the person or company is in the foreign jurisdiction in which it is registered, licensed or otherwise authorized;

(b) the person or company engages in the business of a derivatives dealer in the foreign jurisdiction in which its head office or principal place of business is located;

(c) the person or company has delivered to the derivatives party a statement in writing disclosing all of the following:

(i) the foreign jurisdiction in which the person or company's head office or principal place of business is located;

(ii) that all or substantially all of the assets of the person or company may be situated outside of the local jurisdiction;

(iii) that there may be difficulty enforcing legal rights against the person or company because of the above;

(iv) the name and address of the agent for service of the person or company in the local jurisdiction;

(d) the person or company has submitted to the securities regulatory authority a completed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(e) the person or company is not in the business of trading in derivatives on an exchange or a derivatives trading facility designated or recognized in the jurisdiction;

(f) the person or company undertakes to the securities regulatory authority to provide the securities regulatory authority with prompt access to its books and records upon request.

(4) A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or, in Québec, the securities regulatory authority of that fact by December 1 of that year.

(5) In Ontario, subsection (4) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 *Fees*.

Investment dealers

41. A derivatives dealer that is registered as an investment dealer and that is a member of the Investment Industry Regulatory Organization of Canada is exempt from the requirements set out in Appendix B if the derivatives dealer complies with the corresponding conduct and other regulatory requirements of that organization in connection with the transaction or other activity.

Canadian financial institutions

42. A derivatives dealer that is a Canadian financial institution is exempt from the requirements set out in Appendix C if the derivatives dealer is subject to and complies with the corresponding conduct and other regulatory requirements of its prudential regulator in connection with the transaction or other activity.

DIVISION 3 – EXEMPTIONS FOR DERIVATIVES ADVISERS

Advising generally

43. (1) For the purposes of subsection (3), "financial or other interest" includes the following:

(a) ownership, beneficial or otherwise, of the underlying interest or underlying interests of the derivative;

(b) ownership, beneficial or otherwise, of, or other interest in, a derivative that has the same underlying interest as the derivative;

(c) a commission or other compensation received or expected to be received from any person or company in relation to a transaction involving the derivative, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;

(d) a financial arrangement in relation to the derivative, an underlying interest in the derivative or a derivative that has the same underlying interest as the derivative;

(e) any other interest that relates to the transaction.

(2) The requirements of this Instrument applicable to a derivatives adviser do not apply to a person or company that acts as a derivatives adviser if the advice that the person or company provides does not purport to be tailored to the needs of the person or company receiving the advice.

(3) If the person or company that is exempt under subsection (2) recommends a transaction involving a derivative, a class of derivatives or the underlying interest of a derivative or class of derivatives in which any of the following has a financial or other interest, the person or company must disclose the interest, including a description of the nature of the interest, concurrently with providing the advice:

(a) the person or company;

(b) any partner, director or officer of the person or company;

(c) where the person or company is an individual, the spouse or child of the individual;

(d) any other person or company that would be an insider of the first mentioned person or company if the first mentioned persons or company were a reporting issuer.

Foreign derivatives advisers

44. (1) A derivatives adviser whose head office or principal place of business is in a foreign jurisdiction is exempt from this Instrument in respect of advice provided to a derivatives party if

(a) the derivatives adviser does not provide advice to a person or company in the local jurisdiction that is not an eligible derivatives party, other than general advice that is provided in accordance with the conditions of section 43 [*Advising generally*];

(b) the derivatives adviser is registered, licensed or otherwise authorized under the securities, commodity futures or derivatives legislation of a foreign jurisdiction specified in Appendix D to conduct the derivatives activities in the foreign jurisdiction that it proposes to conduct with the derivatives party; and

(c) the derivatives adviser complies with the laws of the foreign jurisdiction applicable to the derivatives adviser set out in Appendix D relating to the activities being conducted.

(2) Despite subsection (1), a derivatives adviser relying on the exemption set out in that subsection must comply with the provisions of this Instrument set out in Appendix D opposite the name of the foreign jurisdiction in respect of the derivatives advice.

(3) The exemption under subsection (1) is not available to a person or company in respect of advice provided to a derivatives party unless all of the following apply:

(a) the head office or principal place of business of the person or company is in the foreign jurisdiction in which it is registered;

(b) the person or company engages in the business of a derivatives adviser in the foreign jurisdiction in which its head office or principal place of business is located;

(c) the person or company has delivered to the derivatives party a statement in writing disclosing the following:

(i) the foreign jurisdiction in which the person or company's head office or principal place of business is located;

(ii) that all or substantially all of the assets of the person or company may be situated outside of the local jurisdiction;

(iii) that there may be difficulty enforcing legal rights against the person or company because of the above;

(iv) the name and address of the agent for service of the person or company in the local jurisdiction;

(d) the person or company has submitted to the securities regulatory authority a completed Form 31-103F2 *Submission to Jurisdiction and Appointment of Agent for Service* under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

(e) the person or company is not in the business of trading in derivatives on an exchange or a derivatives trading facility designated or recognized in the jurisdiction;

(f) the person or company undertakes to the securities regulatory authority to provide the securities regulatory authority with prompt access to its books and records upon request.

(4) A person or company that relied on the exemption in subsection (1) during the 12-month period preceding December 1 of a year must notify the regulator or, in Québec, the securities regulatory authority of that fact by December 1 of that year.

(5) In Ontario, subsection (4) does not apply to a person or company that complies with the filing and fee payment requirements applicable to an unregistered exempt international firm under Ontario Securities Commission Rule 13-502 Fees.

PART 7
EXEMPTION

Exemption

45. (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 such 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 8
EFFECTIVE DATE

Effective date

46. (1) This Instrument comes into force on [*insert date*].

(2) In Saskatchewan, despite subsection (1), if these regulations are filed with the Registrar of Regulations after [*insert date*], these regulations come into force on the day on which they are filed with the Registrar of Regulations.

(3) Despite subsection (1) and, in Saskatchewan, subject to subsection (2), [Part ●] comes into force [*insert date + 6 months*].

(4) Despite subsections (1) to (3), Part ● does not apply to a transaction entered into before [*insert date*] if the derivative that is the subject of the transaction expires or terminates not later than 365 days after that day.

APPENDIX A
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

FOREIGN DERIVATIVES DEALERS
(Section 40)

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS
APPLICABLE TO FOREIGN DERIVATIVES DEALERS

Foreign Jurisdiction	Laws, Regulations or Instruments	Provisions of this Instrument applicable to a foreign derivatives dealer despite compliance with the foreign jurisdiction's laws, regulations or instruments

APPENDIX B
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

INVESTMENT DEALERS
(Section 41)

LAWS, REGULATIONS OR INSTRUMENTS
APPLICABLE TO INVESTMENT DEALERS

IIROC	Laws, Regulations or Instruments	Provisions of this Instrument applicable to an investment dealer despite compliance with IIROC requirements

APPENDIX C
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

CANADIAN FINANCIAL INSTITUTIONS
(Section 42)

LAWS, REGULATIONS OR INSTRUMENTS
APPLICABLE TO CANADIAN FINANCIAL INSTITUTIONS

Federal or provincial prudential regulator	Laws, Regulations or Instruments	Provisions of this Instrument applicable to a Canadian Financial Institution despite compliance with applicable federal or provincial regulatory requirements

APPENDIX D
TO NATIONAL INSTRUMENT 93-101 *DERIVATIVES: BUSINESS CONDUCT*

FOREIGN DERIVATIVES ADVISERS
(Section 44)

LAWS, REGULATIONS OR INSTRUMENTS OF FOREIGN JURISDICTIONS APPLICABLE TO FOREIGN DERIVATIVES ADVISERS

Foreign Jurisdiction	Laws, Regulations or Instruments	Provisions of this Instrument applicable to a foreign derivatives adviser despite compliance with the foreign jurisdiction's laws, regulations or instruments

ANNEX II

PROPOSED COMPANION POLICY 93-101
DERIVATIVES: BUSINESS CONDUCT

TABLE OF CONTENTS

PART 1
GENERAL COMMENTS

Introduction

This companion policy (the **Policy**) sets out the views of the Canadian Securities Administrators (the **CSA** or **we**) on various matters relating to National Instrument 93-101 *Derivatives: Business Conduct* (the **Instrument**) and related securities legislation.

Except for Part 1, the numbering and headings of Parts, sections and subsections in this Policy correspond to the numbering and headings in the Instrument. Any general guidance for a Part or section appears immediately after the Part or section name. Any specific guidance on a section or subsection follows any general guidance. If there is no guidance for a Part or section, the numbering in this Policy 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 Policy is a reference to the corresponding Part, section, subsection, paragraph, subparagraph or definition in the Instrument.

Definitions and interpretation

Unless defined in the Instrument or this Policy, terms used in the Instrument and in this Policy have the meaning given to them in securities legislation, including in National Instrument 14-101 *Definitions*. "Securities legislation" is defined in National Instrument 14-101 *Definitions*, and includes statutes and other instruments related to both securities and derivatives.

In this 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*.

Interpretation of terms defined in the Instrument

Section 1 – Definition of Canadian financial institution

The definition of "Canadian financial institution" in the Instrument is consistent with the definition of this term in National Instrument 45-106 *Prospectus Exemptions* with one exception. The definition of this term in National Instrument 45-106 *Prospectus Exemptions* does not include a Schedule III bank (due to the separate definition of the term "bank" in National Instrument 45-106 *Prospectus Exemptions*), with the result that National Instrument 45-106 *Prospectus Exemptions* contains certain references to "a Canadian financial institution or a Schedule III bank". The definition of this term in the Instrument includes a Schedule III bank.

Section 1 – Definition of derivatives adviser and derivatives dealer

A person or company that meets the definition of "derivatives adviser" or "derivatives dealer" in a local jurisdiction is subject to the Instrument in that jurisdiction, whether or not they are registered or exempted from the requirement to be registered in that jurisdiction.

A person or company will be subject to the requirements of the Instrument if they are

- in the business of trading derivatives or in the business of advising others in respect of derivatives, or
- otherwise required to register as a derivatives dealer or a derivatives adviser as a consequence of engaging in certain specified activities set out in Proposed National Instrument 93-102 *Derivatives: Registration*.

Factors in determining business purpose

In determining whether a person or company is in the business of trading or in the business of advising in derivatives, a number of factors should be considered. The factors are set out below.

This is not a complete list of factors and other factors may also be considered.

- *Quoting prices or acting as a market maker* – The person or company makes a two-way market in a derivative or routinely quotes prices at which they would be willing to transact in a derivative or offers to make a market in a derivative or derivatives.

- *Directly or indirectly carrying on the activity with repetition, regularity or continuity* – Frequent or regular transactions are a common indicator that a person or company may be engaged in trading or advising for a business purpose. The activity does not have to be their sole or even primary endeavour for them to be in the business. We consider regularly trading or advising in any way that produces, or is intended to produce, profits to be for a business purpose.

- *Facilitating or intermediating transactions* – The person or company provides services relating to the facilitation of trading or intermediation of transactions in derivatives between third-party counterparties to derivatives contracts. This typically takes the form of the business commonly referred to as a broker.

- *Transacting with the intention of being compensated* – The person or company receives, or expects to receive, any form of compensation for carrying on derivatives transaction activity. This would include any compensation that is transaction- or value-based including from spreads or built-in fees. It does not matter if the person or company actually receives compensation or what form the compensation takes. However, a person or company would not be considered to be a derivatives dealer solely by reason that it realizes a profit from changes in the market price for the derivative (or its underlying reference asset), regardless of whether the derivative is intended for the purpose of hedging or speculating.

- *Directly or indirectly soliciting in relation to derivatives transactions* – The person or company contacts others to solicit derivatives transactions. Solicitation includes contacting someone by any means, including communication that offers (i) transactions, (ii) participation in transactions or (iii) services relating to transactions. This includes advertising on the internet with the intention of encouraging transacting in derivatives by local persons or companies. A person or company might not be considered to be soliciting solely because it contacts a potential counterparty, or a potential counterparty contacts them to enquire about a transaction in a derivative, unless it is the person or company's intention or expectation to be compensated from the transaction. For example, a person or company that wishes to hedge a specific risk might not be considered to be soliciting for the purpose of the Instrument if they contacted multiple potential counterparties to enquire about potential derivatives transactions to hedge the risk.

- *Engaging in activities similar to a derivatives adviser or derivatives dealer* – The person or company carries out any activities related to transactions involving derivatives that would reasonably appear, to a third party, to be similar to the activities discussed above. This would not include the operator of an exchange or a clearing agency.

- *Providing derivatives clearing services* – The person or company provides services to allow third parties, including counterparties to transactions involving the person or company, to clear derivatives through a clearing agency. These services are actions in furtherance of a trade conducted by a person or company that would typically play the role of an intermediary in the derivatives market

In determining whether or not they are, for the purposes of the Instrument, a derivatives dealer or derivatives adviser, a person or company should consider their activities holistically. We do not consider that all of the factors discussed above necessarily carry the same weight or that any one factor will be determinative.

Generally, we would consider a person or company that engages in the activities discussed above in an organized and repetitive manner to be a derivatives dealer or, depending on the context, a derivatives adviser. Ad hoc or isolated instances of the activities discussed above may not necessarily result in a person or company being a derivatives dealer or, depending on the context, a derivatives adviser. For example, if a person or company makes an effort to take a long and short position at the same time to manage business risk, this does not necessarily mean that the person or company is making a market. Similarly, organized and repetitive proprietary trading, in and of itself, absent other factors described above, may not result in a person or company being considered to be a derivatives dealer for the purpose of the Instrument.

A derivatives dealer or a derivatives adviser in a local jurisdiction is a person or company that conducts the activities described in this section in that jurisdiction. For example, this would include a person or company that is located in a local jurisdiction and that conducts dealing or advising activity in that local jurisdiction or in a foreign jurisdiction. This would also include a person or company located in a foreign jurisdiction that conducts dealing or advising activity with a counterparty located in the local jurisdiction. A person or company does not need to have a physical location, staff or other presence in the local jurisdiction to be a derivatives dealer or derivatives adviser in that jurisdiction.

A person or company's primary business activity does not need to include the activities described above for the person or company to be a derivatives dealer or derivatives adviser for the purpose of the Instrument. The factors described above could represent only a small portion of the person or company's overall business activities. However, if these factors are present, it may be a derivatives dealer or derivatives adviser in the jurisdiction in which it engages in those activities.

Section 4 provides that a person or company is not a derivatives dealer or derivatives adviser for the purpose of the Instrument if they would be a dealer or adviser solely as a result of carrying out the activities described above in relation to one or more affiliated entities of the person or company.

Section 1 – Definition of derivatives party assets

"Derivatives party assets" includes all assets of a derivatives party that are received or held by a derivatives firm for or on behalf of the derivatives party for any purpose relating to derivatives transactions. This will include collateral delivered as initial or variation margin.

Section 1 – Definition of eligible derivatives party

Certain requirements of the Instrument do not apply where a derivatives firm is dealing with or advising a derivatives party that is an eligible derivatives party that is not an individual. If the derivatives firm is dealing with or advising a derivatives party who is an eligible derivatives party and is an individual, these requirements apply but may be waived in writing. Section 7 of this Policy provides additional guidance relating to this waiver.

A derivatives firm should take reasonable steps to determine whether a derivatives party is an eligible derivatives party before transacting with or advising them. In determining whether the person or company that it transacts with or advises is an eligible derivatives party, the derivatives firm may rely on factual representations made in writing by the derivatives party, unless a reasonable person would have grounds to believe that such statements are false or it is otherwise unreasonable to rely on the representation. The criteria for determining whether a derivatives party is an eligible derivatives party are to be applied at the time a particular derivative is first entered into. A derivatives firm is not required to ensure that the derivatives party continues to be an eligible derivatives party during the life of the particular derivative but must consider the derivative party's eligible derivatives party status before entering into a new transaction with that derivatives party.

Section 1 – Definition of eligible derivatives party – subsections (m) and (n)

Under paragraphs (m) and (n) of the definition of "eligible derivatives party", a person or company will only be considered an eligible derivatives party if they have represented in writing to the derivatives firm that they have the requisite knowledge and experience, and they have the minimum assets specified in the applicable paragraph.

If the derivatives firm has not received a written factual statement from a derivatives party, the derivatives firm should consider the derivatives party not to be an eligible derivatives party.

We expect that a derivatives firm would maintain a copy of each derivatives party's written representation about its status as an eligible derivatives party and would have policies and procedures reasonably designed to ensure that the information relating to each derivatives party is up to date.

Whether it is reasonable for a derivatives firm to rely on a derivative's party's written representation will depend on the particular facts and circumstances of the derivatives party and its relationship with the derivatives firm.

For example, in determining whether it is reasonable to rely on a derivative's party's representation that it has the requisite knowledge and experience, a derivatives firm may consider factors such as

- whether the derivatives party enters into transactions with frequency and regularity,
- whether the derivatives party has staff who have experience in derivatives and risk management,
- whether the derivatives party has retained independent advice in relation to its derivatives, and
- publically available financial information.

Taking the above factors into consideration, some people or companies may only have the requisite knowledge and experience pertaining to derivatives of a certain asset class or product type.

Section 1 – Definition of permitted depository

In recognition of the international nature of the derivatives market, paragraph (e) of the definition of "permitted depository" permits a foreign bank or trust company with a minimum amount of reported shareholders' equity to act as a permitted depository and hold derivatives party assets, 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.

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 derivatives firm may invest derivatives party assets, 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 debtors, 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 derivatives firm that invests derivatives party assets in accordance with the Instrument would ensure such investment is:

- consistent with its overall risk-management strategy, and
- fully disclosed to its customers.

We are also of the view that it would be inconsistent with the principles-based approach to permitted investments for a derivatives firm to invest derivatives party assets 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 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) (the "Bank Act");[1]
- 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.[2] As of the time of the publication of this Instrument the following countries and their political subdivisions are included: Belgium, France, Germany, Ireland, Japan, Netherlands, Singapore, Switzerland, United Kingdom, 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[3] and countries using the euro under a monetary agreement with the European Union.[4]

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1 *Bank Act* (SC 1991, c 46).

2 *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).

3 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).

4 European Union, Economic and Financial Affairs, *The euro outside the euro area*, April 9, 2014, online: European Union (https://ec.europa.eu/info/business-economy-euro/euro-area/euro/use-euro/euro-outside-euro-area_en).

Section 1 – Definition of segregate

While the term "segregate" means to separately hold or separately account for derivatives party assets or positions, consistent with the PFMI Report and National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*, accounting segregation is acceptable.

For the purpose of this section "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.

Section 1 – Definition of valuation

We are of the view that the valuation can be calculated based upon the use of an industry-accepted methodology that is in accordance with accounting principles and that results in a reasonable valuation of the derivative[5] such as mark-to-market or mark-to-model. We expect that the methodology used to calculate the valuation that is reported with respect to a derivative would be consistent over the entire life of the derivative.

PART 2
APPLICATION

Section 2 – Application to registered and unregistered derivatives firms

The Instrument applies to "derivatives advisers" and "derivatives dealers" as defined in subsection 1(1) of the Instrument. These definitions include a person or company registered as a "derivatives dealer" or "derivatives adviser" under securities legislation. The Instrument applies even if the person or company is exempted or excluded from registration. Accordingly, derivatives firms that may be exempted from registration in a jurisdiction, such as Canadian financial institutions, will nevertheless be subject to a similar standard of conduct towards their derivatives parties as the standard of conduct applicable to registered derivatives firms and their representatives.

Section 3 – Scope of instrument

This section ensures that the Instrument applies to the same contracts and instruments in all jurisdictions of Canada. Each jurisdiction has adopted a Product Determination Rule that excludes certain types of contracts and instruments from being derivatives for the purpose of the Instrument.

Section 7 – Requirements that apply when dealing with or advising an eligible derivatives party

The term "eligible derivatives party" is intended to refer to those derivatives parties that do not require the full set of protections afforded to derivatives parties that do not have the financial resources or expertise to meet the eligible derivatives party thresholds.

The obligations of a derivatives firm and individuals acting on its behalf towards a derivatives party differ depending on the nature of the derivatives party.

Section 7 – Requirements that apply when dealing with or advising a derivatives party that is not an eligible derivatives party

All of the requirements in Parts 3, 4 and 5 of the Instrument apply to a derivatives firm when dealing with or advising a derivatives party that is not an eligible derivatives party.

Subsection 7(1) – Requirements that apply when dealing with or advising an eligible derivatives party that is not an individual

Only certain requirements in the Instrument apply to a derivatives firm when the derivatives firm is dealing with or advising a derivatives party that is an eligible derivatives party and that is not an individual:

In Part 3 Dealing With or Advising Derivatives Parties,

- all of Division 1 – General Obligations Towards All Derivatives Parties, comprising section 8 [*Fair dealing*], section 9 [*Conflicts of interest*] and section 10 [*Know your derivatives party*], applies, and

[5] For example, see International Financial Reporting Standard 13 *Fair Value Measurement*.

- all other requirements in Part 3 do not apply.

In Part 4 Derivatives Party Accounts,

- in Division 2 – Derivatives Party Assets, section 24 [*Interaction with NI 94-102*] and section 25 [*Segregating derivatives party assets*] apply, and
- all other requirements in Part 4 do not apply.

In Part 5 Compliance,

- all of Division 1 – Compliance applies, and
- all of Division 2 – Recordkeeping applies.

Subsection 7(2) – Requirements that apply when dealing with or advising an eligible derivatives party that is an individual but that may be waived by the individual

If the derivatives firm is dealing with or advising a derivatives party that is an eligible derivatives party and an individual, the requirements of the Instrument apply to the derivatives firm in respect of such dealing or advice. However, the individual eligible derivatives party may agree to waive in writing any or all of the requirements of the Instrument, other than the requirements set out in subsection 7(1).

In the case of a waiver by an individual eligible derivatives party, the waiver may be included in account-opening documentation or other relationship disclosure and will be valid for up to 365 days. If the derivatives firm wishes to continue to be able to rely on a waiver from the individual eligible derivatives party more than 365 days after it has been given, the derivatives firm will need to obtain a new waiver in writing from the derivatives party.

There is no prescribed form for the waiver contemplated by subsection 7(2) of the Instrument. However, consistent with the derivatives firm's obligation to deal fairly, honestly and in good faith with derivatives parties, we expect the waiver to be presented to the derivatives party in a clear and meaningful manner in order to ensure the derivatives party understands the information presented and the significance of the protections being waived.

PART 3
DEALING WITH OR ADVISING DERIVATIVES PARTIES

DIVISION 1 – GENERAL OBLIGATIONS TOWARDS ALL DERIVATIVES PARTIES

Section 8 – Fair dealing

The fair dealing obligation in section 8 is a principles-based obligation and is intended to be similar to the fair dealing obligation applicable to registered firms and registered individuals under Canadian securities legislation (the registrant fair dealing obligation).[6]

The fair dealing obligation should be interpreted flexibly and in a manner sensitive to context

We recognize that there are important differences between derivatives markets and securities markets, with the result that the fair dealing obligation under the Instrument may not always apply to derivatives market participants in the same manner as the registrant fair dealing obligation would apply to securities market participants. Accordingly, we believe that the fair dealing obligation in section 8, as a principles-based obligation, should be interpreted flexibly and in a manner that is sensitive to context and to derivatives market participants' reasonable expectations. For this reason, prior CSA guidance and case law on the registrant fair dealing obligation may not necessarily be relevant in interpreting the fair dealing obligation under the Instrument. Similarly, the guidance in this Policy is not necessarily applicable to registrants in their conduct with securities market participants.

[6] See section 14 of the Securities Rules, B.C. Reg. 194/97 **[B.C. Regulations]** under the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 **[B.C. Act]**; section 75.2 of the *Securities Act* (Alberta) R.S.A. 2000, c.S-4 **[Alberta Act]**; section 33.1 of *The Securities Act, 1988* (Saskatchewan), S.S. 1988-89, c. S-42.2 **[Saskatchewan Act]**; subsection 154.2(3) of *The Securities Act* (Manitoba) C.C.S.M. c. S50 **[Manitoba Act]**; section 2.1 of OSC Rule 31-505 *Conditions of Registration* ; section 65 of the *Derivatives Act* (Québec), R.S.Q., c. 14.01 **[Québec Act]**; section 39A of the *Securities Act* (Nova Scotia), R.S.N.S. 1989, c. 418 **[N.S. Act]**; subsection 54(1) of the *Securities Act* (New Brunswick) S.N.B. 2004, c. S-5.5 **[N.B. Act]**; section 90 of the *Securities Act* (Prince Edward Island), R.S.P.E.I. 1988, c. S-3.1 **[P.E.I. Act]**; subsection 26.2(1) of the *Securities Act* (Newfoundland and Labrador), R.S.N.L.1990, c. S-13 **[Newfoundland Act]**; section 90 of the *Securities Act* (Nunavut), S.Nu. 2008, c. 12 **[Nunavut Act]**; section 90 of the *Securities Act* (Northwest Territories), S.N.W.T. 2008, c. 10 **[N.W.T. Act]**; and section 90 of the *Securities Act* (Yukon), S.Y. 2007, c. 16 **[Yukon Act]**.

We take the view that the concept of fairness when applied to derivatives market participants is context-specific. Conduct that may be considered unfair when dealing with a derivatives party that is not an eligible derivatives party may be considered fair and part of ordinary commercial practice when dealing with an eligible derivatives party. For example, the fair dealing obligation may be different if the derivative party is an individual or small business from what it would be if the derivative party were a sophisticated market participant such as a global financial institution. Similarly, conduct that may be considered to be unfair when acting as an agent to facilitate a derivatives transaction with a third-party may be considered fair when entering into a derivative as principal when it would be expected that each party negotiating the derivative is seeking to ensure favourable financial terms.

Section 9 – Conflicts of interest

We recognize that there are important differences between derivatives markets and securities markets, with the result that the conflict of interest provisions under the Instrument may not always apply to derivatives market participants in the same manner as they would for securities market participants. Accordingly, we believe that the conflict of interest provisions in section 9 should be interpreted flexibly and in a manner that is sensitive to context and to derivatives market participants' reasonable expectations. For this reason, prior CSA guidance and case law on conflicts of interest may not necessarily be relevant in interpreting the conflict of interest provisions under the Instrument. Similarly, the guidance in this Policy is not necessarily applicable to registrants in their conduct with securities market participants.

We take the view that the concept of conflict of interest when applied to derivatives market participants is context-specific. Circumstances that may be considered to give rise to a conflict of interest when dealing with a derivatives party that is not an eligible derivatives party may be considered fair and part of ordinary commercial practice when dealing with an eligible derivatives party. For example, conflicts of interests may be treated differently when dealing with a derivative party that is an individual or small business from how they would be treated if the derivative party were a sophisticated market participant such as a global financial institution.

In addition, the circumstances that may be considered to give rise to a conflict of interest when acting as an intermediary on behalf of an eligible derivatives party may not represent a conflict of interest when entering into a derivative as principal where the derivatives party is reasonably aware that derivatives firm is negotiating the derivative as a commercial arrangement.

Subsection 9(1) – Identifying conflicts of interest

Section 9 of the Instrument requires a derivatives firm to take reasonable steps to identify existing material conflicts of interest and material conflicts that the derivatives firm reasonably expects to arise between the derivatives firm and their derivatives parties.

We consider a conflict of interest to be any circumstance where the interests of a derivatives party and those of a derivatives firm or its representatives, are inconsistent or divergent.

Subsection 9(2) – Responding to conflicts of interest

We expect that a derivatives firm's policies and procedures for managing conflicts would allow the firm and its staff to

- identify conflicts of interest,
- determine the level of risk that a conflict of interest raises, and
- respond appropriately to conflicts of interest.

When responding to any conflict of interest, we expect a derivatives firm to consider the fair dealing obligation in Part 3 of the Instrument as well as any other standard of care that may apply when dealing with or advising a derivatives party.

In general, we view three methods as reasonable to respond to a conflict of interest, depending on the circumstances: avoidance, control and disclosure.

If a derivatives firm allows a serious conflict of interest to continue, there is a high risk of harm to derivatives parties or to the market. We expect that if there is a material risk of harm to a derivatives party or the integrity of the markets, the derivatives firm will take all reasonable steps to avoid the conflict of interest. If the derivatives firm does not avoid the conflict of interest, we expect that it will take steps to either control or disclose the conflict, or both. We would also expect the derivatives firm to consider what internal structures or policies and procedures it should implement to reasonably respond to such a conflict of interest.

Avoiding conflicts of interest

A derivatives firm must avoid all conflicts of interest that are prohibited by law. If a conflict of interest is not prohibited by law, we expect the derivatives firm to avoid the conflict if it is sufficiently contrary to the interests of a derivatives party that there can be no other reasonable response. Conflicts that have a lesser impact on the interests of a derivatives party can be managed through controls or disclosure.

Where conflicts of interest are so contrary to another person's or company's interest that a derivatives party cannot use controls or disclosure to reasonably respond to them, we expect that the derivatives firm to avoid the conflict, stop providing the service or stop dealing with the derivatives party.

Controlling conflicts of interest

We would expect that a derivatives firm would design its organizational structures, lines of reporting and physical locations to control conflicts of interest effectively. For example, the following situations would likely raise a potential conflict of interest:

- advisory staff reporting to marketing staff,
- compliance or internal audit staff reporting to a business unit, and
- individuals acting on behalf of a derivatives firm and investment banking staff in the same physical location.

Depending on the conflict of interest, a derivative firm may control the conflict in an appropriate way, including by

- assigning a different individual to provide a service to the particular derivatives party,
- creating a group or committee to review, develop or approve responses,
- monitoring trading activity, or
- using information barriers for certain internal communication.

Subsection 9(3) – Disclosing conflicts of interest

When disclosure is appropriate

We expect a derivatives firm to inform its derivatives parties about any conflicts of interest that could affect the services the firm provides to them.

Timing of disclosure

Under subsection 9(3), a derivatives firm and individuals acting on its behalf must disclose the conflict in a timely manner. We expect a derivatives firm and its representatives to disclose a conflict of interest to a derivatives party before or at the time they recommend the transaction or provide the service that gives rise to the conflict.

Where this disclosure is provided to a derivatives party before the transaction takes place, we expect the disclosure to be provided shortly before the transaction takes place. For example, if it was initially provided with the derivative party's account-opening documentation months or years previously, we would expect that an individual acting on behalf of a derivatives firm to also disclose this conflict to the derivatives party shortly before the transaction or at the time the transaction is recommended.

When disclosure is not appropriate

Disclosure may not be appropriate if a conflict of interest involves confidential or commercially-sensitive information, or the information amounts to "inside information" under insider trading provisions in securities legislation. In these situations, a derivatives firm will need to assess whether there are other methods to adequately respond to the conflict of interest. If not, the firm may have to decline to provide the service to avoid the conflict of interest. We would also expect a derivatives firm to have specific procedures for responding to conflicts of interest that involve inside information and for complying with insider trading provisions.

How to disclose a conflict of interest

Subsection 9(3) provides that a derivatives firm must provide disclosure about a material conflict of interest to a derivatives party. When a derivatives firm provides this disclosure, we expect that the disclosure would

- be prominent, specific, clear and meaningful to the derivatives party, and
- explain the conflict of interest and how it could affect the service the derivatives party is being offered.

We would expect that a derivatives firm would not

- provide only generic disclosure,
- provide only partial disclosure that could mislead the derivatives party, or
- obscure conflicts of interest in overly detailed disclosure.

Examples of conflicts of interest

Specific situations where a derivatives firm could be in a conflict of interest and how to manage the conflict are described below.

Acting as both dealer and counterparty

When a derivatives firm enters into a transaction with or recommends a transaction to a derivatives party, and the derivatives firm or an affiliated entity of the derivatives firm is the counterparty to the derivatives party in the transaction, we expect that the derivatives firm would respond to the resulting conflict of interest by disclosing it to the derivatives party.

Competing interests of derivatives parties

If a derivatives firm deals with or provides advice to multiple derivatives parties, we would expect the derivatives firm to make reasonable efforts to be fair to all such derivatives parties. We expect that a derivatives firm will have internal systems to evaluate the balance of these interests.

Compensation practices

We expect that a derivatives firm would consider whether any particular benefits, compensation or remuneration practices are inconsistent with their obligations to derivatives parties, especially if the firm relies heavily on commission-based remuneration. For example, if there is a complex product that carries a high commission but may not be appropriate for the derivatives firm's derivatives parties, the derivatives firm may decide that it is not appropriate to offer that product.

If such compensation practices are adopted, a derivatives firm might consider employing persons that do not receive compensation based on derivatives activity to conduct the supervision of staff receiving compensation based on derivatives activity.

DIVISION 2 – ADDITIONAL OBLIGATIONS WHEN DEALING WITH OR ADVISING CERTAIN DERIVATIVES PARTIES

The obligations in Division 2 of Part 3 do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is not an individual or an eligible derivatives party that is an individual that has waived these obligations.

Section 11 – Derivatives-party-specific needs and objectives

Information on a derivatives party's specific needs and objectives (sometimes referred to as "derivatives-party-specific KYC information") forms the basis for determining whether transactions in derivatives are suitable for a derivatives party. The obligations in section 11 require a derivatives firm to take reasonable steps to obtain and periodically update information about their derivatives parties.

The derivatives-party-specific KYC information may also be relevant in complying with policies and procedures that are aimed at ensuring the most advantageous terms of a derivative for a derivatives party under subsection 19(1). Derivatives parties may have a variety of execution priorities. For example, a derivatives party may have as their primary objective the objective of having the transaction executed as quickly as possible rather than trying to obtain the best available price. Factors to consider when evaluating execution include price, certainty, timeliness, and minimizing impact cost of making a trading interest public.

Before transacting with a derivatives party, we expect a derivatives firm to have the appropriate information needed to assess the derivatives party's knowledge, experience and level of understanding of the relevant type of derivative, the derivative's party's objective in entering into the derivative and the risks involved in order to assess whether the derivative is suitable for the derivatives party. The derivatives-party-specific KYC information is obtained with this goal in mind.

If the derivatives party chooses not to provide the necessary information that would enable the derivatives firm to assess suitability, or if the derivatives party provides insufficient information, the firm should advise the derivatives party that it is required to request this information from them in order to determine whether the derivative is suitable for them or their priorities when transacting in the derivative. The derivatives firm should also indicate that without such information there is a strong risk that it will not be able to determine whether the derivatives party has the ability to understand the derivative and the risks involved with transacting the particular derivative.

Derivatives-party-specific KYC information for suitability depends on circumstances

The extent of derivatives-party-specific KYC information a derivatives firm needs to determine the suitability of a transaction or a derivatives party's priorities when transacting in the derivative will depend on factors that include

- the derivatives party's circumstances and objectives,
- the type of derivative,
- the derivatives party's relationship to the derivatives firm, and
- the derivatives firm's business model.

In some cases, a derivatives firm will need extensive KYC information, for example, where the derivatives party would like to enter into a derivatives strategy to hedge a commercial activity in a range of asset classes. In these cases, we would expect the derivatives firm to have a comprehensive understanding of the derivatives party's

- hedging needs and objectives, including the derivatives party's time horizon for their hedging strategy,
- overall financial circumstances, and
- risk tolerance for various types of derivatives, taking into account the derivative party's investment knowledge.

In other cases, a derivatives firm may need to obtain less KYC information, for example, if the derivatives firm enters into a single derivative with a derivatives party who needs to hedge a loan that the derivatives firm extended to the derivatives party.

Section 12 – Suitability

Subsection 12(1) requires a derivatives firm to take reasonable steps to ensure that a proposed transaction is suitable for a derivatives party before making a recommendation or accepting instructions from the derivatives party to transact in a derivative.

Suitability obligation

To meet the suitability obligation, the derivatives firm should have in-depth knowledge of all derivatives that it transacts in with or for, or is recommending to, its derivatives party. This is often referred to as the "know your product" or KYP obligation.

We expect a derivatives firm to know each derivative well enough to understand and explain to the derivatives party the derivative's risks, key features, and initial and ongoing obligations. The decision by a derivatives firm to include a type of derivative on its product shelf or approved list of products does not necessarily mean that the derivative will be suitable for each derivatives party. Individuals acting on behalf of a derivatives firm must still determine the suitability of each transaction for every derivatives party.

When assessing suitability, we expect a derivatives firm to take all reasonable steps to determine whether the derivatives party has the capability to understand the particular type of derivative and the risks involved.

In all cases, we expect derivatives firms to be able to demonstrate a process for making suitability determinations that are appropriate under the circumstances.

Suitability obligations cannot be delegated

A derivatives firm is not permitted to

- delegate its suitability obligations to anyone else, or
- satisfy the suitability obligation by simply disclosing the risks involved with a transaction.

Section 11 and 12 – Use of online services to determine derivatives party needs and objectives and suitability

The conduct obligations set out in the Instrument, including the KYC and suitability obligations in sections 11 and 12 of the Instrument, are "technology neutral". This means that these obligations are the same for derivatives firms that interact with derivatives parties on a face-to-face basis or through an online platform.

Where the information necessary to fulfill derivatives firms' obligations pursuant to sections 11 and 12 of the Instrument is solicited through an online service or questionnaire, the CSA expects that this process would amount to a meaningful discussion with the derivatives party.

An online service or questionnaire will achieve this objective if it

- uses a series of behavioural questions to establish risk tolerance and elicit other KYC information,
- prevents a derivatives party from progressing further until all questions have been answered,
- tests for inconsistencies or conflicts in the answers and will not let the derivatives party complete the questionnaire until the conflict is resolved,
- offers information about the terms and concepts involved, and
- reminds the derivatives party that an individual from the derivatives firm is available to help them throughout the process.

Section 13 – Permitted referral arrangements

Subsection 1(1) defines a "referral arrangement" in broad terms. Referral arrangement means an arrangement in which a derivatives firm agrees to pay or receive a referral fee. The definition is not limited to referrals for providing derivatives, financial services or services requiring registration. It also includes receiving a referral fee for providing a derivatives party name and contact information to an individual or firm. "Referral fee" is also broadly defined. It includes sharing or splitting any commission resulting from a transaction.

Under section 13, parties to a referral arrangement are required to set out the terms of the arrangement in a written agreement. This is intended to ensure that each party's roles and responsibilities are made clear. This includes obligations for a derivatives firm involved in referral arrangements to keep records of referral fees. Payments do not necessarily have to go through a derivatives firm, but a record of all payments related to a referral arrangement must be kept.

We expect referral agreements to include

- the roles and responsibilities of each party,
- limitations on any party that is not a derivatives firm,
- the disclosure to be provided to referred derivatives parties, and
- who provides the disclosure to referred derivatives parties.

If the individual or the derivatives firm receiving the referral is a derivatives firm or an individual acting on its behalf, they are responsible for carrying out all obligations of a derivatives firm towards a derivatives party and communicating with referred derivatives parties.

A derivatives firm is required to be a party to referral agreements. This ensures that it is aware of these arrangements so it can adequately supervise the individuals acting on its behalf and monitor compliance with the agreements. This does not preclude the individual acting on behalf of the derivatives firm from also being a party to the agreement.

A party to a referral arrangement may need to be registered depending on the activities that the party carries out. A derivatives firm cannot use a referral arrangement to assign, contract out of or otherwise avoid its regulatory obligations.

In making referrals, a derivatives firm should ensure that the referral does not itself constitute an activity that the derivatives firm is not authorized to engage in.

Section 14 – Verifying the qualifications of the person or company receiving the referral

Section 14 requires the derivatives firm making a referral to satisfy itself that the party receiving the referral is appropriately qualified to perform the services, and, if applicable, is appropriately registered. The derivatives firm is responsible for determining the steps that are appropriate in the particular circumstances. For example, this may include an assessment of the types of derivatives parties that the referred services would be appropriate for.

Section 15 – Disclosing referral arrangements to a derivatives party

The disclosure of information to a derivatives party required under section 15 is intended to help a derivatives party make an informed decision about the referral arrangement and to assess any conflicts of interest. We expect the disclosure to be provided to a derivatives party before or at the time the referred services are provided. We would also expect a derivatives firm, and any individuals acting on behalf of the derivatives firm who are directly participating in the referral arrangement, to take reasonable steps to ensure that a derivatives party understands

- which entity they are dealing with,
- what they can expect that entity to provide to them,
- the derivatives firm's key responsibilities to them,
- if applicable, the limitations of the derivatives firm's registration category,
- if applicable, any relevant terms and conditions imposed on the derivatives firm's registration,
- the extent of the referrer's financial interest in the referral arrangement, and
- the nature of any potential or actual conflict of interest that may arise from the referral arrangement.

Section 17 – Handling complaints

General duty to document and respond to complaints

Section 17 requires a derivatives firm to document complaints and to effectively and fairly respond to them. We expect that a derivatives firm would document and respond to all complaints received from a derivatives party who has dealt with the derivatives firm (in this section, a "complainant").

Complaint handling policies

We are of the view that an effective complaint system would deal with all formal and informal complaints or disputes in a timely and fair manner. To achieve the objective of handling complaints fairly, we would expect the derivatives firm's compliance system to include standards allowing for objective factual investigation and analysis of the matters specific to the complaint.

We expect a derivatives firm to take a balanced approach to the gathering of facts that objectively considers the interests of

- the complainant,
- the individual or individuals acting on behalf of the derivatives firm, and
- the derivatives firm.

We would also expect a derivatives firm to not limit its consideration and handling of complaints to those relating to possible violations of securities legislation.

Complaint monitoring

We would expect a derivatives firm's complaint handling policy to provide for specific procedures for reporting the complaints to superiors, in order to allow the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative basis, indicate a serious problem. We would also expect the derivatives firm to take appropriate measures to promptly address the cause of a problem, particularly a serious problem.

Responding to complaints

Types of complaints

We expect that all complaints relating to one of the following matters would be responded to by the derivatives firm by providing an initial and substantive response, both in writing and within a reasonable time:

- a trading or advising activity,
- a breach of the derivatives party's confidentiality,
- theft, fraud, misappropriation or forgery,
- misrepresentation,
- an undisclosed or prohibited conflict of interest, or
- personal financial dealings with a derivatives party.

A derivatives firm may determine that a complaint relating to matters other than the matters listed above is nevertheless of a sufficiently serious nature to be responded to in the manner described below. This determination should be made, in all cases, by considering if a derivatives party, acting reasonably, would expect a written response to their complaint.

When complaints are not made in writing

We would not expect that complaints relating to matters other than those listed above, when made orally and when not otherwise considered serious based on a derivatives party's reasonable expectation, would need to be responded to in writing. However, we do expect that oral complaints be given as much attention as written complaints. If a complaint is made orally and is not clearly expressed, the derivatives firm may request the complainant to put the complaint in writing and we would expect a derivatives firm to offer reasonable assistance to do so.

A derivatives firm is entitled to expect the complainant to put unclear oral issues into written format in order to try to resolve confusion about the nature of the issue. If the oral complaint is clearly frivolous, we do not expect a derivatives firm to offer assistance to put the complaint in writing. The derivatives firm may nonetheless ask the complainant to put the complaint in writing on his or her own.

Timeline for responding to complaints

We expect that a derivatives firm would

- promptly send an initial written response to a complainant – we consider that an initial response should be provided to the complainant within 5 business days of receipt of the complaint, and
- provide a substantive response to all complaints relating to the matters listed under "Types of complaints" above, indicating the derivatives firm's decision on the complaint.

A derivatives firm may also wish to use its initial response to seek clarification or additional information from the derivatives party.

We encourage derivatives firms to resolve complaints relating to the matters listed above within 90 days.

DIVISION 3 – RESTRICTIONS ON CERTAIN BUSINESS PRACTICES WHEN DEALING WITH NON-ELIGIBLE DERIVATIVES PARTIES

The obligations in Division 3 of Part 3 do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is not an individual or an eligible derivatives party that is an individual that has waived these obligations.

Section 18 – Tied selling

Section 18 prohibits a derivatives firm from imposing undue pressure on or coercing a person or company to obtain a product or service from a particular person or company, including the derivatives firm or any of its affiliates, as a condition of obtaining another product or service from the derivatives firm. These types of practices are known as "tied selling". In our view, this section would be contravened if, for example, a financial institution agreed to lend money to a derivatives party on the condition

that the derivatives party hedged their loan through the same financial institution. In this example, we would take the view that a derivatives firm would not contravene section 18 if it required the derivatives party to enter into an interest rate derivative in connection with a loan agreement as long as the derivatives party were permitted to transact in this derivative with the counterparty of their choice.

However, section 18 is not intended to prohibit relationship pricing or other beneficial selling arrangements similar to relationship pricing. Relationship pricing refers to the practice of industry participants offering financial incentives or advantages to certain derivatives parties.

Subsection 19(1) – Fair terms and pricing when acting as agent

What constitutes "most advantageous terms" will vary depending on the particular circumstances and a derivatives firm may not be able to achieve the most advantageous terms for every single transaction that it executes on behalf of a derivatives party. The derivatives firm should be able to demonstrate that it has set and follows policies and procedures that are reasonably designed to achieve the most advantageous terms for the derivatives firm's derivatives parties and that these policies and procedures are reviewed regularly and amended as required.

The policies and procedures required under this subsection should consider the following broad factors for the purpose of achieving the most advantageous terms for all derivatives party orders:

- price;
- the speed of execution;
- the certainty of execution;
- the overall cost of the transaction, when costs are passed on to derivatives parties.

These factors are not intended to be exhaustive and a derivatives firm should consider all other facts and circumstances that may be applicable to their derivatives parties

Subsection 19(2) – Fair terms and pricing when acting as principal

Both the compensation component and the market value or price component of the derivative is relevant in determining whether the price for a derivatives party is fair and reasonable. A derivatives firm's policies and procedures must address both the market value of the derivative as well as the reasonableness of compensation.

In assessing the fairness and reasonableness of compensation, the derivatives firm should take into consideration all relevant factors, including the availability of the derivatives involved in the transaction, the expense of executing transaction to the derivatives firm including, when applicable, the costs to hedge the derivative firm's exposure, the value of the services rendered by the derivatives firm, the risks incurred by the derivatives firm and the amount of any other compensation received or to be received by the derivatives firm in connection with the transaction.

PART 4
DERIVATIVES PARTY ACCOUNTS

DIVISION 1 – DISCLOSURE TO DERIVATIVES PARTIES

The obligations in this Division do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is not an individual or an eligible derivatives party that is an individual that has waived these obligations.

Section 20 – Relationship disclosure information

Content of relationship disclosure information

There is no prescribed form for the relationship disclosure information required under section 20. A derivatives firm may provide this information in a single document, or in separate documents, which together give the derivatives party the prescribed information.

We would expect that relationship disclosure information would contain accurate, complete, and up-to-date information. We suggest that derivatives firms review their disclosures annually or more frequently, as necessary. A derivatives firm must take reasonable steps to notify a derivatives party, in a timely manner, of significant changes in respect of the relationship disclosure information that has been provided.

To satisfy their obligations under subsection 20(1), individuals acting on behalf of a derivatives firm must spend sufficient time with derivatives parties in a manner consistent with their operations to adequately explain the relationship disclosure information that is delivered to them. We expect a derivatives firm to have policies and procedures that reflect the derivatives firm's practices when preparing, reviewing, delivering and revising relationship disclosure documents.

Disclosure should occur before entering into an initial derivatives transaction, prior to advising a derivatives party in respect of a derivative and when there is a significant change in respect of the information delivered to a derivatives party. We expect that the derivatives firm will maintain evidence of compliance with their disclosure requirements.

Subsection 20(2) – Required relationship disclosure information

Description of the nature or type of the derivative party's account

Under paragraph 20(2)(a), a derivatives firm must provide derivatives parties with a description of the nature or type of account that the derivatives party holds with the derivatives firm. In particular, we would expect that a derivatives firm would provide sufficient information to enable the derivatives party to understand the manner in which transactions will be executed and any applicable contractual obligations. We would also expect a derivatives firm to provide information regarding margin and collateral requirements, if applicable, and disclose how the derivatives party assets will be held, used and invested. We would expect that the relationship disclosure information would also describe any related services that may be provided by the derivatives firm. If the firm is advising in derivatives, and the adviser has discretion over the derivatives party's account, we would also expect this to be disclosed

Identify the products or services the derivatives firm offers

Under paragraph 20(2)(b) a derivatives firm must provide a general description of the products and services the derivatives firm offers to a derivatives party. We would expect the relationship disclosure information to explain which asset classes the derivatives firm deals in and explain the different types of derivative products that the derivatives firm can transact with the derivatives party.

Describe the types of risks that a derivatives party should consider

We would expect a derivatives firm to provide an explanation of the risks associated with the derivatives products being transacted, including any specific risks relevant to the derivatives offered and strategies recommended to the derivatives party. While not exhaustive, transactions will involve one or more of the following risks: market, credit, liquidity, operational, legal and currency risk.

Describe the risks to a derivatives party of using leverage to finance a derivative

In addition to the disclosure prescribed by section 16, paragraph 20(2)(d) contemplates that a derivatives firm will disclose the risk of leverage to all derivatives parties, regardless of whether or not the derivatives party uses leverage or the derivatives firm recommends the use of borrowed money to finance any part of a transaction. Using leverage means that investors are only required to deposit a percentage of the total value of the investment when entering into a transaction. This effectively amounts to a loan by the derivatives firm to the derivatives party. However, the derivatives party's profits or losses are based on changes in value of the total investment. This means leverage magnifies a derivatives party's profit or loss on a transaction, and losses can exceed the amount of funds deposited.

Describe the conflicts of interest

Under paragraph 20(2)(e) a derivatives firm must provide a description of the conflicts of interest that the derivatives firm is required to disclose under securities legislation. One such requirement is in section 9 of the Instrument, which provides that a firm must take reasonable steps to identify and then respond to existing and potential material conflicts of interest between the derivatives firm and the derivatives party. This includes disclosing the conflict, where appropriate.

Disclosure of charges and other compensation

Paragraphs 20(2)(f), (g) and (h) require a derivatives firm to provide a derivatives party information on fees and costs they might be charged when entering into a transaction in a derivative. These requirements ensure that a derivatives party receives all relevant information to evaluate the costs associated with the products and services they receive from the derivatives firm. We expect this disclosure to include information related to compensation or other incentives that the derivatives party may pay relating to a transaction.

At the outset of their relationship, a derivatives firm must provide the derivatives party with general information on any transaction and other charges that a derivatives party may be required to pay, as well as other compensation the derivatives

firms may receive as a result of their business relationship. We recognize that a derivatives firm may not be able to provide all cost information regarding a particular transaction until the terms of the contract have been agreed upon. However, before entering into an initial transaction, a derivatives firm must meet the applicable pre-trade disclosure requirements in section 21 of the Instrument.

Description of content and frequency of reporting

Under paragraph 20(2)(i) a derivatives firm is required to provide a description of the content and frequency of reporting to the derivatives party. Reporting to derivatives parties includes, as applicable

- daily reporting under section 22,
- transaction confirmations under section 29, and
- derivatives party statements under section 30.

Further guidance about a derivatives firm's reporting obligations to a derivatives party is provided in Division 3 of this Part.

Know your derivatives party information

Paragraph 20(2)(l) requires a derivatives firm to disclose the type of information that it must collect from the derivatives party and explain how this information will be used in assessing and determining the suitability of a derivatives party transaction.

Section 21 – Pre-transaction disclosure

There is no prescribed form for the pre-trade disclosure that must be provided to a derivatives party under section 21. The derivatives firm may provide this information in a single document, or in separate documents which together give the derivatives party the prescribed information.

The disclosure document required under subsection 21(1) must be delivered to the derivatives party at a reasonably sufficient time prior to entering into the first transaction with the derivatives firm to allow the derivatives party to assess the material risks and material characteristics of the type of derivative transacted.

We consider a material risk that a derivatives firm is required under paragraph 21(1)(a) to disclose to a derivatives party to include market, credit, liquidity, foreign currency, legal, operational and any other applicable risks.

In addition to the requirement to provide a general disclosure document under subsection (1), we understand that the use of the term "price" is not always appropriate in relation to a transaction in a derivative. In paragraph 21(2)(b), we also expect disclosure with respect to spreads, premiums, costs, etc.

DIVISION 2 – DERIVATIVES PARTY ASSETS

The obligations in this Division, other than section 24 [*Interaction with NI 94-102*] and section 25 [*Segregating derivatives party assets*], do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is not an individual or an eligible derivatives party that is an individual that has waived these obligations.

Section 25 – Segregating derivatives party assets

A derivatives firm is required to segregate derivatives party assets from its own property either by separately holding or accounting for derivatives party assets. Records maintained by a derivatives firm must make it clear that accounts holding derivative party assets are for the benefit of derivatives parties only.

Section 26 – Holding derivatives party assets

We expect that a derivatives firm would take reasonable efforts to confirm that the permitted depository holding the derivatives party assets

- 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 derivatives party assets and minimize and manage the risks associated with the safekeeping and transfer of the derivatives party assets,

- maintains securities in an immobilised or dematerialised form for their transfer by book entry,
- protects derivatives party assets 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 derivative party on the participant's books and facilitates the transfer of derivatives party assets,
- identifies, measures, monitors, and manages its risks from other activities that it may perform, and
- facilitates prompt access to derivatives party assets, when required.

If a derivatives firm is a permitted depository, as defined in the Instrument, it may hold derivatives party assets itself and is not required to hold derivatives party assets at a third party depository. For example, a Canadian financial institution that acts as a derivatives firm would be permitted to hold derivatives party assets provided it did so in accordance with the requirements of the Instrument. Where a derivatives firm deposits derivatives party assets with a permitted depository, the derivatives firm is responsible for ensuring the permitted depository maintains appropriate books and records to ensure the derivatives party assets can be attributed to the derivatives party.

Section 27 – Use of derivatives party assets

The use of derivatives party assets attributable to a derivatives party to satisfy the obligations of any other party is not permitted.

Subsection 27(3) allows a derivatives firm to place a lien on derivatives party assets where the lien arises in connection with an obligation of the derivatives party. This exception recognizes that certain arrangements involve the granting of security interests in derivatives party assets. A derivatives firm is prohibited from imposing or permitting a lien that is not expressly permitted by the Instrument on derivatives party assets and should such an improper lien be placed on derivatives party assets, the derivatives firm must take all reasonable steps to promptly address the improper lien.

Section 28 – Investment of derivatives party assets

Although losses in the value of invested derivatives party assets are not to be allocated to a derivatives party, we are of the view that parties should be free to contract for the allocation of gains resulting from a derivatives firm’s investment activities in accordance with the Instrument.

DIVISION 3 – REPORTING TO DERIVATIVES PARTIES

The obligations in this Division, other than subsection 29(1) [*Content and delivery of transaction confirmations*], do not apply if a derivatives firm is dealing with or advising an eligible derivatives party that is not an individual or an eligible derivatives party that is an individual that has waived these obligations.

Section 29 – Content and delivery of transaction confirmations

We are of the view that the description of the derivative transacted required by paragraph 29(2)(a) would be fulfilled by providing a plain language description of the asset class of the derivative and the features of the derivative (e.g., fixed for floating interest swap with CDOR as reference rate, single name credit default swap).

Section 30 – Derivatives party statements

We are of the view that the description of the derivative transacted required by paragraphs 30(2)(b) and 30(3)(a) would be fulfilled by providing a plain language description of the asset class of the derivative and the features of the derivative (e.g., fixed for floating interest swap with CDOR as reference rate, single name credit default swap).

PART 5
COMPLIANCE AND RECORDKEEPING

DIVISION 1 – COMPLIANCE

Section 31 – Definitions

For the purposes of this Division 1 – *Compliance* of Part 5, a "derivative business unit" refers to an organizational unit or division of a derivatives firm that conducts derivatives activities. A derivatives firm may have one or more organizational divisions that conduct derivatives activities. For example, a firm may divide its derivatives activities based on asset class or geographic location of trading. A derivatives business unit may conduct activities in addition to over-the-counter (OTC) derivatives trading such as exchange-traded derivatives or securities activities.

For the purposes of this Division, "senior derivatives manager" refers to each individual who is principally responsible for managing one or more derivatives business units at a derivatives firm. For example, an individual responsible for, or head of, interest rate trading or the "rates desk" at a derivatives firm would be considered a senior derivatives manager. Depending on its size, level of derivatives activity and structure, a derivatives firm may have a number of different derivatives business units. A derivatives firm would be required to have a senior derivatives manager who fulfills the requirements of this Division in respect of each derivatives business unit. A senior manager may be responsible for multiple business units.

The definition of "senior derivatives manager" is intended to capture individuals who are directly responsible for specific lines of derivatives activity and therefore this would not necessarily be the Chief Executive Officer or Chief Compliance Officer of a derivatives firm.

Section 32 – Policies and procedures

Section 32 requires a derivatives firm to establish, maintain and apply policies and procedures that establish a system of controls and supervision (i.e., a "compliance system") that provides assurance that the derivatives firm and those acting for it, as applicable, comply with applicable securities legislation, manage risks prudently, and possess the requisite education and training to perform these activities in a competent manner.

We would expect that a compliance system that is sufficient to meet the requirements of this section would include internal controls and monitoring systems that are reasonably likely to identify non-compliance at an early stage and supervisory systems that allow the firm to correct non-compliant conduct in a timely manner. As more requirements apply to a derivatives firm when transacting with or advising a person or company that is not an eligible derivatives party, the monitoring and compliance systems that are appropriate when transacting with or advising such person or company would be commensurately more comprehensive.

"Securities legislation" is defined in National Instrument 14-101 *Definitions*, and includes statutes and other instruments related to both securities and derivatives. We do not expect that the compliance system established in accordance with the Instrument would be applicable to activities other than a derivatives firm's derivatives activities. For example, a derivatives dealer may also be a reporting issuer. The compliance system established to monitor compliance with the Instrument would not necessarily be concerned with matters related only to the derivatives firm's status as a reporting issuer, though it would be acceptable to have a single compliance system related to the derivatives firm's compliance with all applicable securities laws.

The risks referred to in paragraph 32(b) include the risks inherent in derivatives trading (including credit risk, counterparty risk, and market risk), which relate to the derivatives firm's overall financial viability.

The proficiency requirement in paragraph 32(c) imposes on a derivatives firm a duty to ensure that individuals acting for the derivatives firm in relation to its derivatives activities possess the required education and training to ensure competency. The Instrument establishes a reasonableness standard rather than setting out specific courses or other training requirements. However, a derivatives firm may also be required to be registered in accordance with securities legislation; more specific training and experience requirements apply to such a derivatives firm and its representatives under that instrument.

While a certain amount of industry experience could substitute for formal education and training, we would expect that all individuals connected with trading in or advising on derivatives receive appropriate recurring training, at least annually.

Section 33 – Responsibilities of senior derivatives managers

A senior derivative manager's responsibilities under this Division apply to the senior derivative manager even in situations where that individual has delegated his or her responsibilities.

The requirement on a senior derivative manager in paragraph 33(1)(c) to take reasonable steps to prevent material non-compliance with respect to derivatives activities conducted in his or her business unit includes both preventative steps and reactive steps where a senior derivatives manager has discovered material non-compliance. Where a senior manager becomes aware of material non-compliance in his or her business unit but does not take reasonable steps to address it, that senior derivatives manager would be in breach of the Instrument. A senior manager would also be in breach of the Instrument in terms of identifying and reporting non-compliance even if the senior manager has delegated responsibilities and has not been properly advised of the non-compliance.

Under section 33 of the Instrument, each senior derivatives manager of a derivatives firm must, at least once per calendar year, submit a report to the derivatives firm's board of directors

- certifying that the derivatives business unit is in material compliance with the Instrument, applicable securities legislation, and the policies and procedures of the derivatives firm under section 32, or
- specifying all circumstances where the derivatives business unit is not in material compliance with the Instrument, applicable securities legislation, or the policies and procedures of the derivatives firm under section 32.

We would expect that in complying with this requirement the senior derivatives manager will exercise reasonable care in determining when and how often material non-compliance should be reported to the board. For example, in a case of serious misconduct we would expect the board to be made aware promptly.

We consider non-compliance with the Instrument, applicable securities legislation and the policies and procedures of the derivatives firm required under section 32 to be material if the non-compliance

- has, or could have, a negative impact on the interest of a derivatives party,
- results, or could result, in a material harm to the derivatives firm, including causing the derivatives firm to incur
  - a material financial loss, or
  - a material increase in their business or financial risk,
- was part of a pattern on non-compliance, or
- would constitute bad faith or fraud or would be an offence under applicable securities legislation.

Section 34 – Responsibility of a derivatives firm to respond to material non-compliance

If a senior derivatives manager notifies the board of directors of a derivatives firm that his or her derivatives business unit is not in material compliance with the Instrument, applicable securities legislation, or the policies and procedures of the derivatives firm under section 32, the derivatives firm must,

- respond to the specified non-compliance in a timely manner, and document its response, and
- report to the regulator or securities regulatory authority in a timely manner any circumstance where, with respect to the derivatives activities of the derivatives firm, the derivatives firm is not or was not in material compliance with the Instrument, applicable securities legislation, or the policies and procedures of the derivatives firm required under section 32.

The obligation on the derivatives firm to make a report to the regulator under subsection 34(b) will depend on whether the specified non-compliance would reasonably be considered material non-compliance by the derivatives firm, with the Instrument, applicable securities legislation, or the policies and procedures required under section 32.

DIVISION 2 – RECORDKEEPING

Section 35 – Derivatives party agreement

Appropriate subject matter for the derivatives party agreement includes terms addressing payment obligations, netting of payments, events of default or other termination events, calculation and netting of obligations upon termination, transfer of rights and obligations, governing law, valuation, and dispute resolution. We would expect that the agreement would also cover other areas as appropriate in the context of the transactions into which the parties will enter. For example, where transactions will be

subject to margin, we would expect the agreement to cover margin requirements, assets that may be used, asset valuation methods, investment and rehypothecation terms, and custodial arrangements.

Section 36 – Records

Section 36 imposes a general obligation on a derivatives firm to keep full and complete records relating to the derivatives firm's derivatives, transactions in derivatives, and all of its business activities relating to derivatives, trading in derivatives or advising in derivatives. This list of records is not intended to be exhaustive but rather includes the records that must be kept, at a minimum. We would expect a derivatives firm to consider the nature of its derivatives-related activity when determining the records that it must keep and the form of those records.

The general principle underlying section 36 is that a derivatives firm must document, through its records,

- compliance with all applicable securities legislation (including the Instrument),
- the details and evidence of the derivatives to which it has been a party or in respect of which it has been an agent,
- the circumstances surrounding the entry into and termination of those derivatives, and
- related post-trade matters.

We would, for example, expect a derivatives firm to be able to demonstrate, for each derivatives party, the details of compliance with the obligations in section 10 [*Know your derivatives party*] and, if applicable, the obligations in section 11 [*Derivatives-party-specific needs and objectives*] and section 12 [*Suitability*] (and if sections 11 and 12 are not applicable, the reason as to why it is not).

If a derivatives firm wishes to rely on any exemption or exclusion in the Instrument or other related securities laws, it should be able to demonstrate that it is entitled to rely on the exemption or exclusion.

With respect to records demonstrating the existence and nature of the derivatives firm's derivatives that are required to be kept pursuant to paragraph 36(b) and records documenting the transactions relating to the derivatives required to be kept pursuant to paragraph 36(c), we expect a derivatives firm to accurately and fully document every transaction it enters into. We expect a derivatives firm to maintain notes of communications that could have an impact on a derivatives party's account or its relationship with the derivatives firm. These communications may include oral communications and all e-mail, regular mail, fax and other written communications.

While a derivatives firm may not need to save every voicemail or e-mail, or to record all telephone conversations with every derivatives party, we do expect a derivatives firm to maintain records of all communications with a derivatives party relating to derivatives transacted with, for or on behalf of the derivatives party.

Section 37 – Form, accessibility and retention of records

Paragraph 37(1)(b) requires derivatives firms to keep their records in a safe location. This includes ensuring that no one has unauthorized access to information, particularly confidential derivatives party and counterparty information. We would expect a derivatives firm to be particularly vigilant if it maintains books and records in a location that may be accessible by a third party. In this case, we would expect the derivatives firm to have a confidentiality agreement with the third party.

PART 6
EXEMPTIONS

The Instrument provides several exemptions from the requirements in the Instrument. If a person or company is exempt from a requirement in the Instrument, the individuals acting on its behalf are also exempt from the requirement on the same terms.

DIVISION 1 – EXEMPTIONS FROM THIS INSTRUMENT

Section 39 – Exemption for certain derivatives end-users

Section 39 provides an exemption from the requirements of the Instrument for a person or company that transacts in derivatives but does not engage in the activities set out in paragraphs (a) – (e). The intention of this exemption is to exclude from the application of the Instrument a person or company that uses derivatives in the course of their business but does not deal with or advise other derivatives parties. For example, a person or company that frequently and regularly transacts in derivatives to hedge business risk may qualify for this exemption. Typically, such a person or company would transact with a derivatives

dealer who would be subject to the requirements of the Instrument. It would not be reasonable for a person or company who regularly quotes prices on derivatives to other derivatives parties to claim that they are an end-user hedging business activities.

Under paragraph 39(c), a person or company who regularly quotes prices at which they would be willing to transact in a derivative would not qualify for this exemption. This ineligibility applies even if the person or company does not make a two-way market in a derivative by publishing quotes to buy and quotes to sell a derivatives position at the same time. For example, a person or company who is only willing to take a long position in a derivative but regularly quotes prices to prospective counterparties would not qualify for this exemption.

DIVISION 2 – EXEMPTIONS FROM SPECIFIC REQUIREMENTS IN THIS INSTRUMENT

Section 40 – Foreign derivatives dealers

General principle

Section 40 contemplates an exemption from the Instrument for foreign derivatives dealers that are regulated under the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Instrument. This exemption applies to the provisions of the Instrument where the derivatives dealer is subject to and 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 in Appendix A are determined on a jurisdiction-by-jurisdiction basis, and depend on a review of the laws and regulatory framework of the jurisdiction.

This exemption is only available where a foreign derivatives dealer 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 foreign derivatives dealer in connection with the laws of the foreign jurisdiction. Where a foreign derivatives dealer 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 consideration of similar exemptive or discretionary relief from the Instrument.

Conditions

This exemption is only available where the foreign derivative dealer is dealing with persons or companies that are eligible derivatives parties. The foreign derivatives dealer must also comply with each of the requirements under section 40. Furthermore, there may be “residual” provisions of the Instrument listed in Appendix A which must be complied with even if a foreign derivatives dealer is in compliance with the laws of a foreign jurisdiction set out in Appendix A.

DIVISION 3 – EXEMPTIONS FOR DERIVATIVES ADVISERS

Section 44 – Foreign derivatives advisers

General principle

Section 44 contemplates an exemption from the Instrument for foreign derivatives advisers that are regulated under the laws of a foreign jurisdiction that achieve substantially the same objectives, on an outcomes basis, as the Instrument. This exemption applies to the provisions of the Instrument where the derivatives adviser is subject to and in compliance with the laws of a foreign jurisdiction set out in Appendix D opposite the name of the foreign jurisdiction. The foreign jurisdictions specified in Appendix D are determined on a jurisdiction-by-jurisdiction basis, and depend on a review of the laws and regulatory framework of the jurisdiction.

This exemption is only available where a foreign derivatives adviser is in compliance with the requirements of the laws of the applicable foreign jurisdiction specified in Appendix D and does not incorporate any exemption or discretionary relief granted to a foreign derivatives adviser in connection with the laws of the foreign jurisdiction. Where a foreign derivatives adviser relies on an exemption or discretionary relief from the laws of a foreign jurisdiction set out in Appendix D, it will need to apply to the relevant securities regulatory authorities for consideration of similar exemptive or discretionary relief from the Instrument.

Conditions

This exemption is only available where the foreign derivative adviser is dealing with persons or companies that are eligible derivatives parties. The foreign derivatives adviser must also comply with each of the requirements under section 44. Furthermore, there may be “residual” provisions of the Instrument listed in Appendix D which must be complied with even if a foreign derivatives adviser is in compliance with the laws of a foreign jurisdiction set out in Appendix D.

ANNEX III

LOCAL MATTERS

ONTARIO RULE-MAKING AUTHORITY

AUTHORITY FOR THE PROPOSED INSTRUMENT

In Ontario, the rule-making authority for the Proposed Instrument is in paragraphs 11, 13 and 35 of subsection 143(1) of the *Securities Act*.

- Paragraph 11 of subsection 143(1) provides the Commission with the authority to regulate the trading of derivatives.
- Paragraph 13 of subsection 143(1) provides the Commission with the authority to regulate trading in or advising about derivatives to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.
- Paragraph 35 of subsection 143(1) provides the Commission with the authority to prescribe requirements relating to derivatives.

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

INVESTMENT FUNDS

Issuer Name:
Allegro Aggressive Canada Focus Portfolio
Allegro Aggressive Portfolio
Allegro Conservative Portfolio
Allegro Moderate Aggressive Canada Focus Portfolio
Allegro Moderate Aggressive Portfolio
Allegro Moderate Conservative Portfolio
Allegro Moderate Portfolio
Alto Aggressive Canada Focus Portfolio
Alto Aggressive Portfolio
Alto Conservative Portfolio
Alto Moderate Aggressive Canada Focus Portfolio
Alto Moderate Aggressive Portfolio
Alto Moderate Conservative Portfolio
Alto Moderate Portfolio
Alto Monthly Income and Enhanced Growth Portfolio
Alto Monthly Income and Global Growth Portfolio
Alto Monthly Income and Growth Portfolio
Alto Monthly Income Portfolio
IG AGF Canadian Balanced Fund
IG AGF Global Equity Fund
IG AGF U.S. Growth Fund
IG Beutel Goodman Canadian Balanced Fund
IG Beutel Goodman Canadian Equity Fund
IG Beutel Goodman Canadian Small Cap Fund
IG FI Canadian Allocation Fund
IG FI Canadian Equity Fund
IG FI U.S. Large Cap Equity Fund
IG Fiera Canadian Small Cap Fund (Formerly IG AGF Canadian Diversified Growth Fund)
IG Franklin Bissett Canadian Equity Fund
IG Mackenzie Canadian Equity Growth Fund
IG Mackenzie Cundill Global Value Fund
IG Mackenzie Dividend Growth Fund
IG Mackenzie Floating Rate Income Fund
IG Mackenzie Income Fund
IG Mackenzie Ivy European Fund
IG Mackenzie Strategic Income Fund
IG Putnam Emerging Markets Income Fund
IG Putnam Low Volatility U.S. Equity Fund
IG Putnam U.S. Growth Fund
IG Putnam U.S. High Yield Income Fund
IG Templeton International Equity Fund
Investors Canadian Balanced Fund
Investors Canadian Bond Fund
Investors Canadian Corporate Bond Fund
Investors Canadian Equity Fund
Investors Canadian Equity Income Fund
Investors Canadian Growth Fund
Investors Canadian High Yield Income Fund
Investors Canadian Large Cap Value Fund
Investors Canadian Money Market Fund
Investors Canadian Natural Resource Fund
Investors Canadian Small Cap Fund
Investors Canadian Small Cap Growth Fund
Investors Core Canadian Equity Fund
Investors Core U.S. Equity Fund
Investors Cornerstone I Portfolio
Investors Cornerstone II Portfolio
Investors Cornerstone III Portfolio
Investors Dividend Fund
Investors European Equity Fund
Investors European Mid-Cap Equity Fund
Investors Fixed Income Flex Portfolio
Investors Global Bond Fund
Investors Global Dividend Fund
Investors Global Financial Services Fund
Investors Global Fixed Income Flex Portfolio
Investors Global Fund
Investors Global Real Estate Fund
Investors Global Science & Technology Fund
Investors Greater China Fund
Investors Growth Plus Portfolio
Investors Growth Portfolio
Investors Income Plus Portfolio
Investors International Equity Fund
Investors Low Volatility Canadian Equity Fund
Investors Low Volatility Global Equity Fund
Investors Mortgage and Short Term Income Fund
Investors Mutual of Canada
Investors North American Equity Fund
Investors Pacific International Fund
Investors Pan Asian Equity Fund
Investors Quebec Enterprise Fund
Investors Retirement Growth Portfolio
Investors Retirement Plus Portfolio
Investors Summa SRI Fund
Investors U.S. Dividend Growth Fund
Investors U.S. Dividend Registered Fund
Investors U.S. Large Cap Value Fund
Investors U.S. Money Market Fund
Investors U.S. Opportunities Fund
Maestro Balanced Portfolio
Maestro Growth Focused Portfolio
Maestro Income Balanced Portfolio
Principal Regulator –Manitoba
Type and Date:
Amendment #2 dated March 21, 2017 to Final Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated June 30, 2016
Received on March 27, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
INVESTORS GROUP FINANCIAL SERVICES INC.
INVESTORS GROUP SECURITIES INC.
Investors Group Financial Services Inc. and Investors Group Securities Inc.

Investors Group Financial Services Inc. & Investors Group Securties Inc.
Investors Group Financial Services Inc./Investos Group Securities Inc.
Investors Group Financial Services Inc. and Investors Groups Securities Inc
Investors Group Financial Inc. and Investors Group Securities Inc.
Promoter(s):
I.G. INVESTMENT MANAGEMENT, LTD.
Project #2489976

Issuer Name:
Allegro Aggressive Portfolio
Allegro Conservative Portfolio
Allegro Moderate Aggressive Portfolio
Allegro Moderate Conservative Portfolio
Allegro Moderate Portfolio
Alto Aggressive Portfolio
Alto Conservative Portfolio
Alto Moderate Aggressive Portfolio
Alto Moderate Conservative Portfolio
Alto Moderate Portfolio
Investors Canadian Money Market Fund
Investors Cornerstone III Portfolio
Principal Regulator –Manitoba
Type and Date:
Amendment #2 dated March 21, 2017 to Final Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated June 30, 2016
Received on March 27, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Investors Group Financial Services Inc. and Investors Group Securities Inc.
Promoter(s):
-
Project #2490445

Issuer Name:
Aston Hill Canadian Total Return Fund
Aston Hill U.S. Conservative Growth Fund
Aston Hill High Income Class
Aston Hill Strategic Yield Class
Aston Hill Total Return Class
Principal Regulator –Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated March 28, 2017
Received on March 31, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Aston Hill Asset Management Inc.
Promoter(s):
Aston Hill Asset Management Inc.
Project #2469292

Issuer Name:
Counsel Canadian Balanced Portfolio
Counsel Canadian Conservative Portfolio
Counsel Canadian Growth Portfolio
Principal Regulator –Ontario
Type and Date:
Preliminary Simplified Prospectus dated March 29, 2017
NP 11-202 Preliminary Receipt dated March 30, 2017
Offering Price and Description:
SERIES A, D AND I SECURITIES
Underwriter(s) or Distributor(s):
-
Promoter(s):
Counsel Portfolio Services Inc.
Project #2602626

Issuer Name:
Fidelity Canadian Growth Company Fund
Fidelity Dividend Plus Fund
Fidelity Special Situations Fund
Fidelity True North Fund
Fidelity Small Cap America Fund
Fidelity U.S. Dividend Fund
Fidelity U.S. Dividend Currency Neutral Fund
Fidelity Emerging Markets Fund
Fidelity Global Concentrated Equity Fund
Fidelity Frontier Emerging Markets Fund
Fidelity International Growth Fund
Fidelity Global Technology Fund
Fidelity U.S. Monthly Income Currency Neutral Fund
Fidelity Tactical High Income Fund
Fidelity Conservative Income Fund
Fidelity Income Portfolio
Fidleity ClearPath 2030 Portfolio
Fidelity ClearPath 2055 Portfolio
Fidelity Canadian Money Market Fund
Fidelity American High Yield Fund
Fidelity Floating Rate High Income Currency Neutral Fund
Fidelity International Concentrated Equity Fund
Principal Regulator –Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated March 28, 2017
Received on March 30, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Fidelity Investments Canada Limited
Promoter(s):
Fidelity Investments Canada ULC
Project #2535350

Issuer Name:
Fidelity International Growth Investment Trust
Principal Regulator –Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated March 31, 2017
Received on March 31, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
FIDELITY INVESTMENTS CANADA ULC
Project #2515520

Issuer Name:
Fidelity Canadian Real Return Bond Index Investment Trust
Fidelity Multi-Sector Bond Currency Neutral Fund
Fidelity Multi-Sector Bond Fund
Fidelity NorthStar Currency Neutral Fund
Principal Regulator –Ontario
Type and Date:
Preliminary Simplified Prospectus dated March 31, 2017
NP 11-202 Preliminary Receipt dated April 3, 2017
Offering Price and Description:
Series A, B, F, O, E1, E2, E3, E4, E5, P1, P2, P3, P4 and P5 Units
Underwriter(s) or Distributor(s):
Fidelity Investments Canada ULC
Promoter(s):
Fidelity Investments Canada ULC
Project #2607610

Issuer Name:
Manulife U.S. Dividend Income Class
Manulife Diversified Income Portfolio
Manulife Diversified Strategies Fund
Manulife Value Balanced Fund
Manulife Portrait Conservative Portfolio
Manulife Portrait Moderate Portfolio
Manulife Portrait Growth Portfolio
Manulife Portrait Growth Portfolio Class
Manulife Portrait Dividend Growth & Income Portfolio
Manulife Portrait Dividend Growth & Income Portfolio Class
Manulife Portrait Aggressive Portfolio
Manulife Leaders Balanced Income Portfolio
Manulife Leaders Balanced Growth Portfolio
Manulife Leaders Opportunities Portfolio
Principal Regulator –Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated March 31, 2017
Received on March 31, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Manulife Asset Management Investments Inc.
Promoter(s):
Manulife Asset Management Limited
Project #2496519

Issuer Name:

Black Creek Global Leaders Fund
Black Creek Global Leaders Corporate Class
Black Creek International Equity Fund
Black Creek International Equity Corporate Class
Cambridge American Equity Fund
Cambridge American Equity Corporate Class
Cambridge Canadian Dividend Fund
Cambridge Canadian Dividend Corporate Class
Cambridge Canadian Equity Corporate Class
Cambridge Canadian Growth Companies Fund
Cambridge Global Dividend Fund
Cambridge Global Dividend Corporate Class
Cambridge Global Equity Corporate Class
Cambridge Growth Companies Corporate Class
Cambridge Pure Canadian Equity Fund
Cambridge Pure Canadian Equity Corporate Class
Cambridge Stock Selection Fund
Cambridge U.S. Dividend Fund
Cambridge U.S. Dividend Registered Fund
Cambridge U.S. Dividend US$ Fund
CI American Managers® Corporate Class
CI American Small Companies Fund
CI American Small Companies Corporate Class
CI American Value Fund
CI American Value Corporate Class
CI Can-Am Small Cap Corporate Class
CI Canadian Dividend Fund
CI Canadian Investment Fund
CI Canadian Investment Corporate Class
CI Canadian Small/Mid Cap Fund
CI Global Health Sciences Corporate Class
CI Global High Dividend Advantage Fund
CI Global High Dividend Advantage Corporate Class
CI Global Managers® Corporate Class
CI Global Small Companies Fund
CI Global Small Companies Corporate Class
CI Global Value Fund
CI Global Value Corporate Class
CI International Value Fund
CI International Value Corporate Class
CI Pacific Fund
CI Pacific Corporate Class
Harbour Fund
Harbour Corporate Class
Harbour Global Equity Corporate Class
Harbour Voyageur Corporate Class
Signature Emerging Markets Fund
Signature Emerging Markets Corporate Class
Signature Global Dividend Fund
Signature Global Dividend Corporate Class
Signature Global Energy Corporate Class
Signature Global Equity Fund
Signature Global Equity Corporate Class
Signature Global Resource Fund
Signature Global Resource Corporate Class
Signature Global Science & Technology Corporate Class
Signature International Fund
Signature International Corporate Class
Signature Real Estate Pool
Signature Select Canadian Fund
Signature Select Canadian Corporate Class
Synergy American Fund
Synergy American Corporate Class
Synergy Canadian Corporate Class
Synergy Global Corporate Class
Black Creek Global Balanced Fund
Black Creek Global Balanced Corporate Class
Cambridge Asset Allocation Corporate Class
Harbour Global Growth & Income Corporate Class
Harbour Growth & Income Fund
Harbour Growth & Income Corporate Class
Signature Canadian Balanced Fund
Signature Global Income & Growth Fund
Signature Global Income & Growth Corporate Class
Signature Income & Growth Fund
Signature Income & Growth Corporate Class
Synergy Tactical Asset Allocation Fund
Cambridge Global High Income Fund
Cambridge Income Fund
Cambridge Income Corporate Class
CI Income Fund
CI Investment Grade Bond Fund
CI Money Market Fund
CI Short-Term Corporate Class
CI Short-Term US$ Corporate Class
CI U.S. Income US$ Pool
CI US Money Market Fund
Lawrence Park Strategic Income Fund
Marret High Yield Bond Fund
Marret Short Duration High Yield Fund
Marret Strategic Yield Fund
Signature Canadian Bond Fund
Signature Canadian Bond Corporate Class
Signature Corporate Bond Fund
Signature Corporate Bond Corporate Class
Signature Diversified Yield Corporate Class
Signature Diversified Yield II Fund
Signature Dividend Fund
Signature Dividend Corporate Class
Signature Global Bond Fund
Signature Global Bond Corporate Class
Signature Gold Corporate Class
Signature High Income Fund
Signature High Income Corporate Class
Signature High Yield Bond Fund
Signature High Yield Bond Corporate Class
Signature High Yield Bond II Fund
Signature Preferred Share Pool
Signature Short-Term Bond Fund
Signature Tactical Bond Pool
Portfolio Series Balanced Fund
Portfolio Series Balanced Growth Fund
Portfolio Series Conservative Balanced Fund
Portfolio Series Conservative Fund
Portfolio Series Growth Fund
Portfolio Series Income Fund
Portfolio Series Maximum Growth Fund
Select 80i20e Managed Portfolio Corporate Class
Select 70i30e Managed Portfolio Corporate Class
Select 60i40e Managed Portfolio Corporate Class
Select 50i50e Managed Portfolio Corporate Class
Select 40i60e Managed Portfolio Corporate Class
Select 30i70e Managed Portfolio Corporate Class
Select 20i80e Managed Portfolio Corporate Class
Select 100e Managed Portfolio Corporate Class

Select Canadian Equity Managed Corporate Class
Select Income Managed Corporate Class
Select International Equity Managed Corporate Class
Select U.S. Equity Managed Corporate Class
Select Staging Fund
Principal Regulator –Ontario
Type and Date:
Amended and Restated to Simplified Prospectus and AIF dated March 10, 2017
NP 11-202 Receipt dated March 31, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
n/a
Promoter(s):
CI Investments Inc.
Project #2494270

Issuer Name: Canadian Equity Alpha Corporate Class
Canadian Equity Growth Corporate Class
Canadian Equity Growth Pool
Canadian Equity Small Cap Corporate Class
Canadian Equity Small Cap Pool
Canadian Equity Value Corporate Class
Canadian Equity Value Pool
Canadian Fixed Income Corporate Class
Canadian Fixed Income Pool
Cash Management Pool
Emerging Markets Equity Corporate Class
Emerging Markets Equity Pool
Enhanced Income Corporate Class
Enhanced Income Pool
Global Fixed Income Corporate Class
Global Fixed Income Pool
International Equity Alpha Corporate Class
International Equity Growth Corporate Class
International Equity Growth Pool
International Equity Value Corporate Class
International Equity Value Currency Hedged Corporate Class
International Equity Value Pool
Real Estate Investment Corporate Class
Real Estate Investment Pool
Short Term Income Corporate Class
Short Term Income Pool
US Equity Alpha Corporate Class
US Equity Growth Corporate Class
US Equity Growth Pool
US Equity Small Cap Corporate Class
US Equity Small Cap Pool
US Equity Value Corporate Class
US Equity Value Currency Hedged Corporate Class
US Equity Value Pool
Principal Regulator –Ontario
Type and Date:
Amended and Restated to Final Simplified Prospectus dated March 13, 2017
NP 11-202 Receipt dated March 31, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Assante Capital Management Ltd.
Promoter(s):
-
Project #2493946

Issuer Name:
Fidelity American Disciplined Equity Class
Fidelity American Disciplined Equity Currency Neutral Class
Fidelity American Equity Class
Fidelity American Equity Currency Neutral Class
Fidelity AsiaStar Class
Fidelity Balanced Class Portfolio
Fidelity Canadian Asset Allocation Class
Fidelity Canadian Balanced Class
Fidelity Canadian Disciplined Equity Class
Fidelity Canadian Growth Company Class
Fidelity Canadian Large Cap Class
Fidelity Canadian Opportunities Class
Fidelity Canadian Short Term Income Class
Fidelity China Class
Fidelity Corporate Bond Class
Fidelity Dividend Class
Fidelity Dividend Plus Class
Fidelity Emerging Markets Class
Fidelity Europe Class
Fidelity Event Driven Opportunities Class
Fidelity Far East Class
Fidelity Global Balanced Class Portfolio
Fidelity Global Class
Fidelity Global Concentrated Equity Class
Fidelity Global Consumer Industries Class
Fidelity Global Disciplined Equity Class
Fidelity Global Disciplined Equity Currency Neutral Class
Fidelity Global Dividend Class
Fidelity Global Financial Services Class
Fidelity Global Growth Class Portfolio
Fidelity Global Health Care Class
Fidelity Global Income Class Portfolio
Fidelity Global Intrinsic Value Class
Fidelity Global Intrinsic Value Currency Neutral Class
Fidelity Global Large Cap Class
Fidelity Global Large Cap Currency Neutral Class
Fidelity Global Natural Resources Class
Fidelity Global Real Estate Class
Fidelity Global Small Cap Class
Fidelity Global Technology Class
Fidelity Global Telecommunications Class
Fidelity Greater Canada Class
Fidelity Growth Class Portfolio
Fidelity Income Class Portfolio
Fidelity Insights Class
Fidelity Insights Currency Neutral Class
Fidelity International Disciplined Equity Class
Fidelity International Disciplined Equity Currency Neutral Class
Fidelity International Growth Class
Fidelity Japan Class
Fidelity Monthly Income Class
Fidelity North American Equity Class
Fidelity NorthStar Class
Fidelity NorthStar Currency Neutral Class
Fidelity Small Cap America Class
Fidelity Small Cap America Currency Neutral Class
Fidelity Special Situations Class
Fidelity True North Class
Fidelity U.S. All Cap Class
Fidelity U.S. All Cap Currency Neutral Class
Fidelity U.S. Focused Stock Class (formerly Fidelity Growth America Class)
Fidelity U.S. Focused Stock Currency Neutral Class
Principal Regulator –Ontario
Type and Date:
Final Simplified Prospectus dated March 28, 2017
NP 11-202 Receipt dated March 29, 2017
Offering Price and Description:
Series A, B, E1, E2, E3, E4, E5, F, P1, P2, P3, P4, P5, F5, P1T5, P2T5, P3T5, P4T5, P5T5, F8, T5, T8, S5, E1T5, E2T5, E3T5 and S8 shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
Fidelity Investments Canada ULC
Project #2586927

Issuer Name:
Templeton Asian Growth Fund
Templeton Asian Growth Corporate Class
Templeton Emerging Markets Fund
Templeton Emerging Markets Corporate Class
Templeton Frontier Markets Fund
Templeton Frontier Markets Corporate Class
Franklin Bissett All Canadian Focus Fund
Franklin Bissett All Canadian Focus Corporate Class
Franklin Bissett U.S. Focus Fund
Franklin Bissett U.S. Focus Corporate Class
Principal Regulator –Ontario
Type and Date:
Amendment # 5 to Simplified Prospectus and Amendment # 7 to AIF dated March 27, 2017
NP 11-202 Receipt dated March 31, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Franklin Templeton Investments Corp.
Bissett Investment Management, a division of Franklin Templeton Investments Corp.
Promoter(s):
Franklin Templeton Investments Corp.
Project #2469490

Issuer Name:
Horizons Canadian Dollar Currency ETF
Horizons Canadian Midstream Oil & Gas Index ETF
Horizons Cdn Insider Index ETF
Horizons Medical Marijuana Life Sciences ETF
Horizons US Dollar Currency ETF
Principal Regulator –Ontario
Type and Date:
Final Long Form Prospectus dated March 27, 2017
NP 11-202 Receipt dated March 28, 2017
Offering Price and Description:
Class A units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2586349

Issuer Name:
iShares Canadian Corporate Bond Index ETF
iShares Canadian Government Bond Index ETF
iShares Canadian Growth Index ETF
iShares Canadian HYBrid Corporate Bond Index ETF
iShares Canadian Real Return Bond Index ETF (formerly, iShares DEX Real Return Bond Index Fund)
iShares Canadian Select Dividend Index ETF
iShares Canadian Short Term Bond Index ETF (formerly, iShares DEX Short Term Bond Index Fund)
iShares Canadian Universe Bond Index ETF
iShares Canadian Value Index ETF
iShares China Index ETF (formerly, iShares China Index Fund)
iShares Core Canadian Long Term Bond Index ETF
iShares Core Canadian Short Term Corporate + Maple Bond Index ETF (formerly, iShares Canadian Short Term Corporate + Map
iShares Core MSCI All Country World ex Canada Index ETF
iShares Core MSCI EAFE IMI Index ETF (CAD-Hedged)
iShares Core MSCI EAFE IMI Index ETF (formerly, iShares MSCI EAFE IMI Index ETF)
iShares Core MSCI Emerging Markets IMI Index ETF (formerly, iShares MSCI Emerging Markets IMI Index ETF)
iShares Core S&P 500 Index ETF (CAD-Hedged) (formerly, iShares S&P 500 Index ETF (CAD-Hedged))
iShares Core S&P 500 Index ETF (formerly, iShares S&P 500 Index ETF)
iShares Core S&P U.S. Total Market Index ETF
iShares Core S&P U.S. Total Market Index ETF (CAD-Hedged)
iShares Core S&P/TSX Capped Composite Index ETF
iShares Core S&P/TSX Composite High Dividend Index ETF
iShares Core Short Term High Quality Canadian Bond Index ETF
iShares Edge MSCI Min Vol Canada Index ETF, (formerly, iShares MSCI Canada Minimum Volatility Index ETF)
iShares Edge MSCI Min Vol EAFE Index ETF (CAD-Hedged)
iShares Edge MSCI Min Vol EAFE Index ETF (formerly, iShares MSCI EAFE Minimum Volatility Index ETF)
iShares Edge MSCI Min Vol Emerging Markets Index ETF (former, iShares MSCI Emerging Markets Minimum Volatility Index ETF
iShares Edge MSCI Min Vol Global Index ETF (CAD-Hedged)
iShares Edge MSCI Min Vol Global Index ETF (formerly, iShares MSCI All Country World Minimum Volatility Index ETF)
iShares Edge MSCI Min Vol USA Index ETF (CAD-Hedged)
iShares Edge MSCI Min Vol USA Index ETF (formerly, iShares MSCI USA Minimum Volatility Index ETF)
iShares Edge MSCI Multifactor Canada Index ETF (formerly, iShares FactorSelect MSCI Canada Index ETF)
iShares Edge MSCI Multifactor EAFE Index ETF (CAD-Hedged) (former, iShares FactorSelect MSCI EAFE Index ETF (CAD-Hedged
iShares Edge MSCI Multifactor EAFE Index ETF (formerly, iShares FactorSelect MSCI EAFE Index ETF)

iShares Edge MSCI Multifactor USA Index ETF (CAD-Hedged) (former, iShares FactorSelect MSCI USA Index ETF (CAD-Hedged))
iShares Edge MSCI Multifactor USA Index ETF (formerly, iShares FactorSelect MSCI USA Index ETF)
iShares Floating Rate Index ETF
iShares Global Healthcare Index ETF (CAD-Hedged) (formerly, iShares S&P Global Healthcare Index Fund (CAD-Hedged))
iShares India Index ETF (formerly, iShares CNX Nifty India Index ETF)
iShares J.P. Morgan USD Emerging Markets Bond Index ETF (CAD-Hedged) (formerly, iShares J.P. Morgan USD Emerging Markets
iShares Jantzi Social Index ETF
iShares MSCI Brazil Index ETF (formerly, iShares MSCI Brazil Index Fund)
iShares MSCI EAFE Index ETF (CAD-Hedged) (formerly, iShares MSCI EAFE Index Fund (CAD-Hedged))
iShares MSCI Emerging Markets Index ETF (formerly, iShares MSCI Emerging Markets Index Fund)
iShares MSCI Europe IMI Index ETF
iShares MSCI Europe IMI Index ETF (CAD-Hedged)
iShares MSCI World Index ETF (formerly, iShares MSCI World Index Fund)
iShares NASDAQ 100 Index ETF (CAD-Hedged) (formerly, iShares NASDAQ 100 Index Fund (CAD-Hedged))
iShares S&P Global Consumer Discretionary Index ETF (CAD-Hedged)
iShares S&P Global Industrials Index ETF (CAD-Hedged)
iShares S&P U.S. Mid-Cap Index ETF
iShares S&P U.S. Mid-Cap Index ETF (CAD-Hedged)
iShares S&P/TSX 60 Index ETF
iShares S&P/TSX Capped Consumer Staples Index ETF
iShares S&P/TSX Capped Energy Index ETF
iShares S&P/TSX Capped Financials Index ETF
iShares S&P/TSX Capped Information Technology Index ETF
iShares S&P/TSX Capped Materials Index ETF
iShares S&P/TSX Capped REIT Index ETF
iShares S&P/TSX Capped Utilities Index ETF
iShares S&P/TSX Completion Index ETF
iShares S&P/TSX Global Base Metals Index ETF (formerly, iShares S&P/TSX Global Base Metals Index Fund)
iShares S&P/TSX Global Gold Index ETF (formerly, iShares S&P/TSX Global Gold Index Fund)
iShares S&P/TSX North American Preferred Stock Index ETF (CAD-Hedged) (formerly, iShares S&P/TSX North American Preferre
iShares S&P/TSX SmallCap Index ETF
iShares U.S. High Dividend Equity Index ETF
iShares U.S. High Dividend Equity Index ETF (CAD-Hedged) (formerly, iShares U.S. High Dividend Equity Index Fund (CAD-He
iShares U.S. High Yield Bond Index ETF (CAD-Hedged) (formerly, iShares U.S. High Yield Bond Index Fund (CAD-Hedged))
iShares U.S. IG Corporate Bond Index ETF (CAD-Hedged) (formerly, iShares U.S. IG Corporate Bond Index Fund (CAD-Hedged))
iShares U.S. Small Cap Index ETF (CAD-Hedged) (formerly, iShares Russell 2000 Index Fund (CAD-Hedged))
Principal Regulator –Ontario
Type and Date:
Final Long Form Prospectus dated March 29, 2017
NP 11-202 Receipt dated March 30, 2017
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
Promoter(s):
-
Project #2587867

Issuer Name:
iShares Conservative Short Term Strategic Fixed Income ETF
iShares Conservative Strategic Fixed Income ETF
iShares Diversified Monthly Income ETF (formerly, iShares Diversified Monthly Income Fund)
iShares Short Term Strategic Fixed Income ETF
Principal Regulator –Ontario
Type and Date:
Final Long Form Prospectus dated March 29, 2017
NP 11-202 Receipt dated March 30, 2017
Offering Price and Description:
Units
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
Promoter(s):
-
Project #2587886

Issuer Name:
R.E.G.A.R. Investment Management Global Equity Class
R.E.G.A.R. Investment Management Global Equity Fund
Principal Regulator –Quebec
Type and Date:
Final Simplified Prospectus dated March 27, 2017
NP 11-202 Receipt dated March 30, 2017
Offering Price and Description:
Series A, F, P, R,T5, FT5, PT5 and RT5 Shares @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
R.E.G.A.R. Gestion Privée Inc.
Project #2583166

Issuer Name:
TD Emerald Balanced Fund
TD Emerald Canadian Bond Index Fund
TD Emerald Canadian Equity Index Fund
TD Emerald Canadian Short Term Investment Fund
TD Emerald Canadian Treasury Management – Government of Canada Fund
TD Emerald Canadian Treasury Management Fund
TD Emerald International Equity Index Fund
TD Emerald U.S. Market Index Fund
Principal Regulator –Ontario
Type and Date:
Final Simplified Prospectus dated March 30, 2017
NP 11-202 Receipt dated March 31, 2017
Offering Price and Description:
Institutional Class units and Class B Units @ Net Asset Value
Underwriter(s) or Distributor(s):
-
Promoter(s):
TD Asset Management Inc.
Project #2584656

NON-INVESTMENT FUNDS

Issuer Name:
Angus Ventures Inc.
Principal Regulator –British Columbia
Type and Date:
Preliminary CPC Prospectus dated March 28, 2017
NP 11-202 Preliminary Receipt dated March 28, 2017
Offering Price and Description:
$200,000.00 –2,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
-
Project #2601628

Issuer Name:
CanWel Building Materials Group Ltd.
Principal Regulator –British Columbia
Type and Date:
Preliminary Short Form Prospectus dated April 3, 2017
NP 11-202 Preliminary Receipt dated April 3, 2017
Offering Price and Description:
$35,000,580.00 –5,737,800 Common Shares
Price; $6.10 per Common Share
Underwriter(s) or Distributor(s):
GMP Securities L.P.
National Bank Financial Inc.
Canaccord Genuity Corp.
Haywood Securities Inc.
Raymond James Ltd.
Cormark Securities Inc.
Promoter(s):
-
Project #2601455

Issuer Name:
Carrus Capital Corporation
Principal Regulator –British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 31, 2017
NP 11-202 Preliminary Receipt dated March 31, 2017
Offering Price and Description:
$10,731,200 .00 Common Shares and Warrants on Exercise of $10,731,200 Special Warrants
Price; $0.05 per Special Warrant
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2606047

Issuer Name:
Enbridge Income Fund Holdings Inc.
Principal Regulator –Alberta
Type and Date:
Preliminary Short Form Prospectus dated March 31, 2017
NP 11-202 Preliminary Receipt dated March 31, 2017
Offering Price and Description:
$500,067,750.00 –15,085,000 Common Shares
Price: $33.15 Per Common Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
TD Securities Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
J.P. Morgan Securities Canada Inc.
Altacorp Capital Inc.
Canaccord Genuity Corp.
GMP Securities L.P.
Peters & Co. Limited
Promoter(s):
-
Project #2601067

Issuer Name:
Liberty Biopharma Inc.
Principal Regulator –British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 29, 2017
NP 11-202 Preliminary Receipt dated March 29, 2017
Offering Price and Description:
Up to $10,000,000.00 –Up to * units comprised * common shares and * common shares purchase warrants
Price: $* per unit
Underwriter(s) or Distributor(s):
Kernaghan & Partners Ltd.
Promoter(s):
-
Project #2601273

Issuer Name:
Seabridge Gold Inc.
Principal Regulator –Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 29, 2017
NP 11-202 Preliminary Receipt dated March 29, 2017
Offering Price and Description:
$* –* Common Shares
Price: * per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Cantor Fitzgerald Canada Corporation
Paradigm Capital Inc.
Promoter(s):
-
Project #2602559

Issuer Name:
Seabridge Gold Inc.
Principal Regulator –Ontario
Type and Date:
Amended and Restated Preliminary Short Form Prospectus dated March 30, 2017
NP 11-202 Preliminary Receipt dated March 30, 2017
Offering Price and Description:
$14,300,000.00 –1,000,000 Common Shares
Price: $14.30 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Cantor Fitzgerald Canada Corporation
Paradigm Capital Inc.
Promoter(s):
-
Project #2602559

Issuer Name:
Zymeworks Inc.
Principal Regulator –British Columbia
Type and Date:
Preliminary Long Form Prospectus dated March 31, 2017
NP 11-202 Preliminary Receipt dated April 3, 2017
Offering Price and Description:
US$[*] –[*] Common Shares
Price: US$[*] per Common Share
Underwriter(s) or Distributor(s):
Citigroup Global Markets Canada Inc.
Barclays Capital Canada Inc.
Wells Fargo Securities Canada, Ltd.
Canaccord Genuity Corp.
Cormark Securities Inc.
Promoter(s):
-
Project #2607519

Issuer Name:
Aumento Capital VI Corporation
Principal Regulator –Ontario
Type and Date:
Final Prospectus dated March 30, 2017
NP 11-202 Receipt dated March 31, 2017
Offering Price and Description:
Minimum $600,000.00 –1,200,000 Common Shares
Maximum of $720,000.00 –1,440,000 Common Shares
Price: $0.50 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Promoter(s):
-
Project #2589439

Issuer Name:
Enerplus Corporation
Principal Regulator –Alberta
Type and Date:
Final Shelf Prospectus dated March 28, 2017
NP 11-202 Receipt dated March 28, 2017
Offering Price and Description:
$2,000,000,000.00 –Common Shares, Preferred Shares, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2597917

Issuer Name:
Hope Well Capital Corp.
Principal Regulator –Ontario
Type and Date:
Final Prospectus dated March 24, 2017
NP 11-202 Receipt dated March 30, 2017
Offering Price and Description:
MINIMUM OFFERING: $450,000.00 or 2,250,000 Common Shares
MAXIMUM OFFERING: $1,250,000.00 or 6,250,000 Common Shares
PRICE: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
-
Project #2585243

Issuer Name:
HUSKY ENERGY INC.
Principal Regulator –Alberta
Type and Date:
Final Shelf Prospectus dated March 30, 2017
NP 11-202 Receipt dated March 30, 2017
Offering Price and Description:
Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2598692

Issuer Name:
Lexington Biosciences, Inc. (formerly, Glenwood Acquisitions Corp.)
Principal Regulator –British Columbia
Type and Date:
Final Long Form Prospectus dated March 31, 2017
NP 11-202 Receipt dated March 31, 2017
Offering Price and Description:
non-offering prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
Eric Willis
Bradley Hoeppner
Project #2576928

Issuer Name:
Painted Pony Petroleum Ltd.
Principal Regulator –Alberta
Type and Date:
Final Short Form Prospectus dated March 30, 2017
NP 11-202 Receipt dated March 30, 2017
Offering Price and Description:
18,018,100 Common Shares, $5.60 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
TD Securities Inc.
GMP Securities L.P.
Scotia Capital Inc.
Canaccord Genuity Corp.
RBC Dominion Securities Inc.
Raymond James Ltd.
AltaCorp Capital Inc.
CIBC World Markets Inc.
Promoter(s):
-
Project #2596176

Issuer Name:
Union Gas Limited
Principal Regulator –Ontario
Type and Date:
Final Shelf Prospectus dated March 28, 2017
NP 11-202 Receipt dated March 29, 2017
Offering Price and Description:
$1,500,000,000.00 –MEDIUM TERM NOTE DEBENTURES (UNSECURED)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #2597743

Issuer Name:
Westcoast Energy Inc.
Principal Regulator –British Columbia
Type and Date:
Final Shelf Prospectus dated March 28, 2017
NP 11-202 Receipt dated March 28, 2017
Offering Price and Description:
$500,000,000.00 –MEDIUM TERM NOTE DEBENTURES (UNSECURED)
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
BMO Nesbitt Burns Inc.
Desjardins Securities Inc.
HSBC Securities (Canada) Inc.
Merrill Lynch Canada Inc.
National Bank Financial Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #2597747

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Voluntary Surrender	CUDA Management Consulting Inc.	Exempt Market Dealer	March 30, 2017
Voluntary Surrender	Global Securities Corporation / Societe De Valeurs Global Inc.	Investment Dealer & Futures Commission Merchant	March 30, 2017
Voluntary Surrender	Strathy Investment Management Limited	Portfolio Manager	March 30, 2017
Voluntary Surrender	Tocqueville Asset Management, L.P.	Portfolio Manager	April 3, 2017

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.1 SROs

13.1.1 IIROC – Proposed Amendments Relating to Personal Financial Dealings with Clients – Notice of Withdrawal

THE INVESTMENT INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

AMENDMENTS RELATING TO PERSONAL FINANCIAL DEALINGS WITH CLIENTS

NOTICE OF WITHDRAWAL

IIROC is publishing a Notice withdrawing proposed amendments to Dealer Member Rules (DMR) 42 and 43 relating to Personal Financial Dealings with Clients ("proposed amendments"). The proposed amendments were published for public comment on April 24, 2014. See IIROC Rules Notice – Request for Comments – *Proposed Personal Dealing Amendments* (2014). With the withdrawal, IIROC will implement DMR 43.2(5)(i) as published in IIROC Notice 13-0162, effective October 6, 2017. Once DMR 43.2(5)(i) is implemented, employees and Approved Persons will not be able to act as Powers of Attorney, trustees or executors for a client or have control over the financial affairs of a client unless they are related to that client and, for Registered Representatives and Investment Representatives, have received approval.

A copy of the IIROC Notice stating the reasons for the withdrawal is published on our website at http://www.osc.gov.on.ca.

13.2 Marketplaces

13.2.1 TSX – Amendments to TSX Company Manual – Request for Comments

TORONTO STOCK EXCHANGE
REQUEST FOR COMMENTS
AMENDMENTS TO TORONTO STOCK EXCHANGE COMPANY MANUAL

Toronto Stock Exchange ("**TSX**") is publishing the following proposed amendments to the TSX Company Manual (the "**Manual**"): (i) introduction of website disclosure requirements for listed issuers (the "**Part IV Amendments**"); and (ii) amendment of the disclosure requirements regarding security based compensation arrangements (the "**Part VI Amendments**"). The Part IV Amendments, the Part VI Amendments, and certain ancillary changes are collectively referred to as the "**Amendments**". The Amendments provide for public interest changes to Parts IV and VI of the Manual, and are being published for public comment for a thirty (30) day period.

The Amendments will only become effective following public notice and comment, and approval by the Ontario Securities Commission (the "**OSC**"). Comments should be in writing and delivered by May 8, 2017 to:

Joanne Sanci
Legal Counsel, Regulatory Affairs
Toronto Stock Exchange
The Exchange Tower
130 King Street West
Toronto, Ontario M5X 1J2
Fax: (416) 947-4461
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Fax: (416) 595-8940
Email: marketregulation@osc.gov.on.ca

Comments will be publicly available unless confidentiality is requested.

Overview

On May 26, 2016, TSX published a Request for Comments in respect of proposed amendments (the "**May RFC**") to the Manual to introduce website disclosure requirements for TSX listed issuers, to amend the disclosure requirements regarding security based compensation arrangements, and to introduce Form 15 – *Disclosure of Security Based Compensation Arrangements* ("**Form 15**") (collectively, the "**May Amendments**"). In response to the May RFC, some market participants expressed concerns with the May Amendments including the increase in regulatory burden, the uncertainty in the types of documents required to be posted on a listed issuer's website, and the insufficiency of disclosure provided by Form 15.

TSX thanks all commenters for their feedback and suggestions. Following the May RFC, TSX modified the May Amendments as a result of the comments received. TSX is publishing this Request for Comment because the Amendments represent notable modifications from the May Amendments.

TSX is seeking public comment on the Amendments. This Request for Comments explains the reasons for, and objectives of, the Amendments. Following the comment period, TSX will review and consider the comments received and determine whether to proceed with the Amendments as proposed or as modified as a result of comments.

PART IV AMENDMENTS

Proposed Amendments

The Part IV Amendments introduce a new Section 473 to the Manual and amend Section 461.3 and Part XI of the Manual as ancillary matters.

As a result of comments received in connection with the May RFC, TSX has revised Section 473 to create greater certainty about the governance documents a listed issuer is expected to make available on its website. The Part VI Amendments would require listed issuers (other than Non-Corporate Issuers (as such term is defined in the Manual)) to make available the current, effective versions of the following documents (or their equivalent), as applicable:

1. Articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer and its by-laws; and

2. If adopted, copies of :

    a. majority voting policy,

    b. advance notice policy,

    c. position descriptions for the chairman of the board, the lead director, and key officers,

    d. board mandate, and

    e. board committee charters.

Please refer to the text of new Section 473 and to the ancillary amendments to Section 461.3 and Part XI of the Manual as set out in **Appendix A**.

Rationale for the Part IV Amendments

TSX continues to believe that disclosure of certain governance documents is beneficial to participants in the Canadian capital markets as this will provide ready access to key information pertinent to investors. Following the May RFC and the comments received, TSX met and discussed the proposed disclosure requirements with interested parties, including institutional investors who are members of the Canadian Coalition for Good Governance. TSX continues to believe that there is value in providing investors with a centralized location for a listed issuer's corporate governance information.

TSX is aware that there are concerns that Section 473 will result in an increase in regulatory burden. However, TSX believes the modest increase in regulatory burden is outweighed by the benefits to investors.

Questions

In responding to any of the questions below, please explain your response.

1. Should Section 473 require an issuer to disclose, if adopted, its (a) code of business conduct and ethics, (b) diversity policy, (c) anti-corruption policy, (d) human rights policy, (e) environment policy, or (f) health and safety policy?

2. Should certain types of issuers (e.g., Eligible Interlisted Issuer or Eligible International Interlisted Issuers) be exempt from the requirements of Section 473? If so, please provide an explanation of why they should be exempt.

3. Are there other modifications TSX should make to the list of documents proposed to be made available?

PART VI AMENDMENTS

Proposed Amendments

The Part VI Amendments will clarify and amend Section 613(d) and introduce Section 613(p) as set out in **Appendix A**.

Section 613(d) will be amended to require disclosure of an annual burn rate for each security based compensation arrangement (a "**Plan**") maintained by the listed issuer, and to clarify existing disclosure regarding securities awarded or to be awarded under a Plan ("**Awards**"). The Part VI Amendments will also introduce Section 613(p), which will provide the formula for calculating the annual burn rate.

The burn rate disclosure may be omitted for the first fiscal year of any newly adopted Plans, but would need to be included for new Plans adopted in replacement of similar Plans.

Disclosure of the annual burn rate of the Plan would be calculated as follows and expressed as a percentage:

$$\frac{\text{Number of Awards}^{1} \text{ granted under the Plan during the applicable fiscal year}}{\text{Weighted average number of securities outstanding}^{2} \text{ for the applicable fiscal year}}$$

If the Award includes a multiplier, a listed issuer would be expected to provide details in respect to such multiplier.

For security holder meetings where security holder approval will be sought for a Plan matter ("**Approval Meetings**"), listed issuers will be expected to disclose the annual burn rate for each of the listed issuer's three most recently completed fiscal years for the relevant Plan. Where the Plan has not existed for a listed issuer's last three fiscal years (including predecessor Plans which were similar) or where the Plan was approved by security holders within a listed issuer's last three fiscal years, listed issuers will be expected to disclose the annual burn rate for each of the listed issuer's fiscal years completed since adoption or the most recent security holder approval.

For annual security holder meetings where security holder approval will not be sought for a Plan matter, listed issuers will be expected to disclose the annual burn rate for the listed issuer's most recently completed fiscal year.

In addition, Section 613(d) is being amended to clarify the type of disclosure required in respect of the maximum number of Awards issuable, the number of outstanding Awards, and the number of Awards available for grant.

Finally, Section 613(d) is being amended to change the time period covering the disclosure. For any annual meeting (whether an Approval Meeting or not), the information should be prepared as at the end of the listed issuer's most recently completed fiscal year. For any Approval Meeting, which is not also an annual meeting, the information (other than the annual burn rate) should be prepared as at the date of the materials, which would remain unchanged from the current requirements.

Rationale for the Part VI Amendments

A significant number of commenters to the May RFC were not supportive of the introduction of Form 15. Therefore, TSX has deleted the previously proposed use of Form 15. A large majority of the comments were supportive of adding disclosure regarding burn rate, with certain modifications. The revised burn rate formula is derived from the comments received.

The amendments in respect of the time period covered by the disclosure for annual meetings (whether an Approval Meeting or not) are being made to better align the disclosure requirements of Section 613(d) with executive compensation disclosure requirements of National Instrument 51-102F6 *Statement of Executive Compensation.*

[1] Awards include, but are not limited to, options, performance stock units, deferred stock units, restricted stock units or other similar awards.

[2] The weighted average number of securities outstanding during the period is the number of securities outstanding at the beginning of the period, adjusted by the number of securities bought back or issued during the period multiplied by a time-weighting factor. The time-weighting factor is the number of days that the securities are outstanding as a proportion of the total number of days in the period; a reasonable approximation of the weighted average is adequate in many circumstances. The weighted average number of securities outstanding is to be calculated in accordance with the CPA Canada Handbook, as such may be amended or superseded from time to time.

Questions

In responding to any of the questions below, please explain your response.

1. Should the requirement to disclose static terms of a Plan (e.g., financial assistance, vesting, etc.) be limited to Approval Meetings?

2. Is the burn rate and the formula for calculating it useful and appropriate disclosure?

TSX is publishing the Amendments for a thirty (30) day comment period, which expires May 8, 2017. The Amendments will only become effective following public notice and comment, and the approval by the OSC.

APPENDIX A
BLACKLINES OF PUBLIC INTEREST AMENDMENTS

PART IV AMENDMENTS

Sec. 461.3.

[…]

If an issuer adopts a Policy to satisfy the Majority Voting Requirement, it must ~~fully describe~~post a copy of the Policy on ~~an annual basis, in its materials sent to holders of listed securities in connection with a meeting at which directors are being elected.~~its website in accordance with Section 473.

[…]

Website Disclosure of Security Holder Information

473. Listed issuers must maintain a publicly accessible website and post the current, effective versions of the following documents (or their equivalent), as applicable:

(a) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer and its by-laws; and

(b) if adopted, copies of

(i) majority voting policy,

(ii) advance notice policy,

(iii) position descriptions for the chairman of the board, the lead director, and key officers,

(iv) board mandate, and

(v) board committee charters.

The webpage(s) containing the above noted documents should be easily identifiable and accessible from the listed issuer's home page or investor relations page. If a listed issuer's website is shared with other issuers, each listed issuer should have a separate, dedicated webpage on the website for the purposes of complying with Section 473. For greater certainty, if any document required to be made accessible pursuant to Section 473 is contained within or forms part of a larger document, a listed issuer may satisfy the requirements of Section 473 by posting the current, effective version of such larger document.

[…]

PART VI AMENDMENTS

Sec. 613.

[…]

Disclosure Required when Seeking Security Holder Approval & Annually

(d) Materials provided to security holders in respect of a meeting at which the approval of security based compensation arrangements will be requested must be pre-cleared with TSX. ~~Such~~Meeting materials must provide the following disclosure~~, as of the date of the materials,~~ in respect of:

(i) the eligible participants under ~~the~~each arrangement;

(ii) each of the following, as applicable:

i. ~~for plans with a fixed~~Plan Maximum – the maximum number of securities issuable ~~(A) the total number of securities issued and securities issuable~~ under each arrangement ~~and (B) this total~~expressed as a fixed number (together with the percentage ~~of~~this number represents relative to the number of issued and outstanding securities of the listed issuer~~'s securities currently~~) or fixed percentage of the number of issued and outstanding securities of the listed issuer,

ii. Outstanding Securities Awarded – the number of outstanding securities awarded under each arrangement, together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer, and

iii. Remaining Securities Available for Grant – the number of securities under each arrangement that are available for grant, together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer;

(iii) the annual burn rate of each arrangement, as calculated in accordance with Section 613(p);

(iv) ~~ii. for plans with a fixed~~the maximum percentage ~~of securities issuable, the total number~~, if any, of securities ~~issued and securities issuable~~ under each arrangement ~~as a percentage of the number of the listed issuer's securities currently outstanding, and~~

~~iii. the total number of securities issuable under actual grants or awards made and this total as a percentage of the number of the listed issuer's securities currently outstanding;~~

~~(iii) the maximum percentage, if any, of securities under each arrangement~~ available to insiders of the listed issuer;

(v) ~~(iv)~~ the maximum number of securities, if any, any one person or company is entitled to receive under each arrangement and the percentage of the listed issuer's currently outstanding capital represented by these securities;

(vi) ~~(v)~~ subject to Section 613(h)(i), the method of determining the exercise price for securities under each arrangement;

(vii) ~~(vi)~~ the method of determining the purchase price for securities under security purchase arrangements, with specific disclosure as to whether the purchase price could be below the market price of the securities;

(viii) ~~(vii)~~ the formula for calculating market appreciation of stock appreciation rights;

(ix) ~~(viii)~~ the ability for the listed issuer to transform a stock option into a stock appreciation right involving an issuance of securities from treasury;

(x) ~~(ix)~~ the vesting of stock options;

(xi) ~~(x)~~ the term of stock options;

(xii) ~~(xi)~~ the causes of cessation of entitlement under each arrangement, including the effect of an employee's termination for or without cause;

(xiii) ~~(xii)~~ the assignability of ~~security based compensation arrangements~~ benefits under each arrangement and the conditions for such assignability;

(xiv) ~~(xiii)~~ the procedure for amending each arrangement, including specific disclosure as to whether security holder approval is required for amendments;

~~(xiv)~~ any financial assistance provided by the listed issuer to participants under each arrangement to facilitate the purchase of securities under the arrangement, including the terms of such assistance;

(xvi) ~~(xv)~~ entitlements under each arrangement previously granted but subject to ratification by security holders; and

(xvii) ~~(xvi)~~ such other material information as may be reasonably required by a security holder to approve ~~the arrangements~~each arrangement.

Should a security based compensation arrangement not provide for the procedure for amending the arrangement, security holder approval will be required for such amendments, as provided for in Subsections 613(a) and (i). In addition, the votes attaching to any securities held by insiders who hold securities subject to the amendment will be excluded. Please see Subsection 613(l) for more information.

Other than the disclosure regarding the annual burn rate under Section 613(d)(iii), the disclosure required by this Section 613(d) should be presented as at (a) the end of the listed issuer's most recently completed fiscal year, in the case of an annual security

holder meeting, and (b) the date of the meeting materials, in the case of any security holder meeting (other than an annual meeting) where security holder approval is being sought in connection with a security based compensation arrangement matter.

[…]

Burn Rate

(p) Annual burn rate disclosure may be omitted for the first fiscal year of newly adopted arrangements, but must be included for new arrangements adopted in replacement of similar arrangements.

For purposes of the disclosure required under Section 613(d)(iii), the annual burn rate of the arrangement must be calculated as follows and expressed as a percentage:

$$\frac{\text{Number of securities}^{1} \text{ granted under the arrangement during the applicable fiscal year}}{\text{Weighted average number of securities outstanding}^{2} \text{ for the applicable fiscal year}}$$

If the securities awarded include a multiplier, listed issuers are required to provide details in respect to such multiplier.

For any security holder meeting where security holder approval will be sought for a security based compensation arrangement matter, listed issuers are required to disclose the annual burn rate for each of the listed issuer's three most recently completed fiscal years for the relevant arrangement. Where the arrangement has not existed for three fiscal years (including predecessor arrangements which were similar) or was approved by security holders within the last three fiscal years, listed issuers should disclose the annual burn rate for each of the listed issuer's fiscal years completed since adoption or the most recent security holder approval.

For annual security holder meetings where security holder approval will not be sought for a security based compensation arrangement matter, listed issuers are required to disclose the annual burn rate for the listed issuer's most recently completed fiscal year.

[…]

PART XI AMENDMENTS

Part XI Requirements Applicable to Non-Corporate Issuers

This section sets out the requirements that are specifically applicable to Non-Corporate Issuers.

In addition to the specific requirements outlined in this Part XI, Non-Corporate Issuers must also comply with the following sections of the Manual:

Part IV—MAINTAINING A LISTING

All Sections, other than Shareholders' Meeting and Proxy Solicitation (Sections 455-465) and Website Disclosure of Security Holder Information (Section 473)

[…]

[1] Securities awarded under an arrangement include, but are not limited to, options, performance stock units, deferred stock units, restricted stock units or other similar awards.

[2] The weighted average number of securities outstanding during the period is the number of securities outstanding at the beginning of the period, adjusted by the number of securities bought back or issued during the period multiplied by a time-weighting factor. The time-weighting factor is the number of days that the securities are outstanding as a proportion of the total number of days in the period; a reasonable approximation of the weighted average is adequate in many circumstances. The weighted average number of securities outstanding is to be calculated in accordance with the CPA Canada Handbook, as such may be amended or superseded from time to time.

APPENDIX B
CLEAN VERSION OF PUBLIC INTEREST AMENDMENTS

PART IV AMENDMENTS

Sec. 461.3.

[…]

If an issuer adopts a Policy to satisfy the Majority Voting Requirement, it must post a copy of the Policy on its website in accordance with Section 473.

[…]

Website Disclosure of Security Holder Information

473. Listed issuers must maintain a publicly accessible website and post the current, effective versions of the following documents (or their equivalent), as applicable:

(a) articles of incorporation, amalgamation, continuation or any other constating or establishing documents of the issuer and its by-laws; and

(b) if adopted, copies of

(i) majority voting policy,

(ii) advance notice policy,

(iii) position descriptions for the chairman of the board, the lead director, and key officers,

(iv) board mandate, and

(v) board committee charters.

The webpage(s) containing the above noted documents should be easily identifiable and accessible from the listed issuer's home page or investor relations page. If a listed issuer's website is shared with other issuers, each listed issuer should have a separate, dedicated webpage on the website for the purposes of complying with Section 473. For greater certainty, if any document required to be made accessible pursuant to Section 473 is contained within or forms part of a larger document, a listed issuer may satisfy the requirements of Section 473 by posting the current, effective version of such larger document.

[…]

PART VI AMENDMENTS

Sec. 613.

[…]

Disclosure Required when Seeking Security Holder Approval & Annually

(d) Materials provided to security holders in respect of a meeting at which the approval of security based compensation arrangements will be requested must be pre-cleared with TSX. Meeting materials must provide the following disclosure in respect of:

(i) the eligible participants under each arrangement;

(ii) each of the following, as applicable:

i. Plan Maximum – the maximum number of securities issuable under each arrangement expressed as a fixed number (together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer) or fixed percentage of the number of issued and outstanding securities of the listed issuer,

ii. Outstanding Securities Awarded – the number of outstanding securities awarded under each arrangement, together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer, and

iii. Remaining Securities Available for Grant – the number of securities under each arrangement that are available for grant, together with the percentage this number represents relative to the number of issued and outstanding securities of the listed issuer;

(iii) the annual burn rate of each arrangement, as calculated in accordance with Section 613(p);

(iv) the maximum percentage, if any, of securities under each arrangement available to insiders of the listed issuer;

(v) the maximum number of securities, if any, any one person or company is entitled to receive under each arrangement and the percentage of the listed issuer's currently outstanding capital represented by these securities;

(vi) subject to Section 613(h)(i), the method of determining the exercise price for securities under each arrangement;

(vii) the method of determining the purchase price for securities under security purchase arrangements, with specific disclosure as to whether the purchase price could be below the market price of the securities;

(viii) the formula for calculating market appreciation of stock appreciation rights;

(ix) the ability for the listed issuer to transform a stock option into a stock appreciation right involving an issuance of securities from treasury;

(x) the vesting of stock options;

(xi) the term of stock options;

(xii) the causes of cessation of entitlement under each arrangement, including the effect of an employee's termination for or without cause;

(xiii) the assignability of benefits under each arrangement and the conditions for such assignability;

(xiv) the procedure for amending each arrangement, including specific disclosure as to whether security holder approval is required for amendments;

(xv) any financial assistance provided by the listed issuer to participants under each arrangement to facilitate the purchase of securities under the arrangement, including the terms of such assistance;

(xvi) entitlements under each arrangement previously granted but subject to ratification by security holders; and

(xvii) such other material information as may be reasonably required by a security holder to approve each arrangement.

Should a security based compensation arrangement not provide for the procedure for amending the arrangement, security holder approval will be required for such amendments, as provided for in Subsections 613(a) and (i). In addition, the votes attaching to any securities held by insiders who hold securities subject to the amendment will be excluded. Please see Subsection 613(l) for more information.

Other than the disclosure regarding the annual burn rate under Section 613(d)(iii), the disclosure required by this Section 613(d) should be presented as at (a) the end of the listed issuer's most recently completed fiscal year, in the case of an annual security holder meeting, and (b) the date of the meeting materials, in the case of any security holder meeting (other than an annual meeting) where security holder approval is being sought in connection with a security based compensation arrangement matter.

[…]

Burn Rate

(p) Annual burn rate disclosure may be omitted for the first fiscal year of newly adopted arrangements, but must be included for new arrangements adopted in replacement of similar arrangements.

For purposes of the disclosure required under Section 613(d)(iii), the annual burn rate of the arrangement must be calculated as follows and expressed as a percentage:

$$\frac{\text{Number of securities}^{1} \text{ granted under the arrangement during the applicable fiscal year}}{\text{Weighted average number of securities outstanding}^{2} \text{ for the applicable fiscal year}}$$

If the securities awarded include a multiplier, listed issuers are required to provide details in respect to such multiplier.

For any security holder meeting where security holder approval will be sought for a security based compensation arrangement matter, listed issuers are required to disclose the annual burn rate for each of the listed issuer's three most recently completed fiscal years for the relevant arrangement. Where the arrangement has not existed for three fiscal years (including predecessor arrangements which were similar) or was approved by security holders within the last three fiscal years, listed issuers should disclose the annual burn rate for each of the listed issuer's fiscal years completed since adoption or the most recent security holder approval.

For annual security holder meetings where security holder approval will not be sought for a security based compensation arrangement matter, listed issuers are required to disclose the annual burn rate for the listed issuer's most recently completed fiscal year.

[…]

PART XI AMENDMENTS

Part XI Requirements Applicable to Non-Corporate Issuers

This section sets out the requirements that are specifically applicable to Non-Corporate Issuers.

In addition to the specific requirements outlined in this Part XI, Non-Corporate Issuers must also comply with the following sections of the Manual:

Part IV—MAINTAINING A LISTING

All Sections, other than Shareholders' Meeting and Proxy Solicitation (Sections 455-465) and Website Disclosure of Security Holder Information (Section 473)

[…]

1 Securities awarded under an arrangement include, but are not limited to, options, performance stock units, deferred stock units, restricted stock units or other similar awards.

2 The weighted average number of securities outstanding during the period is the number of securities outstanding at the beginning of the period, adjusted by the number of securities bought back or issued during the period multiplied by a time-weighting factor. The time-weighting factor is the number of days that the securities are outstanding as a proportion of the total number of days in the period; a reasonable approximation of the weighted average is adequate in many circumstances. The weighted average number of securities outstanding is to be calculated in accordance with the CPA Canada Handbook, as such may be amended or superseded from time to time.

13.2.2 TSX – Housekeeping Amendments to the TSX Rule Book – Notice of Housekeeping Rule Amendments

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS

HOUSEKEEPING AMENDMENTS TO THE RULES OF THE TORONTO STOCK EXCHANGE

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "Protocol"), TSX Inc. ("TSX") has adopted, and the Ontario Securities Commission has approved, amendments (the "Amendments") to the TSX Rule Book. The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Reasons for the Amendments

Rule 4-305 *Sales from Control Block Through the Facilities of the Exchange* has been amended to conform to Part VI, Section M of the TSX Company Manual (the "Manual").

Rule 4-305 of the TSX Rules and Part VI, Section M of the Manual are intended to be consistent with each other and National Instrument 45-102 – *Resale of Securities* ("NI 45-102"). When Part VI, Section M of the Manual was amended Rule 4-305 was inadvertently not amended, resulting in an inconsistency. Rule 4-305 is therefore out of date and has been amended to conform to Part VI, Section M of the Manual and NI 45-102.

Text of the Amendments

The Amendments to the TSX Rule Book are set out as blacklined text at **Appendix A**.

Timing

The Amendments become effective today, **April 6, 2017**.

APPENDIX A
BLACKLINES OF NON-PUBLIC INTEREST AMENDMENTS

Rule 4-305 Sales from Control Block Through the Facilities of the Exchange

~~If any order for the sale of a listed security on the Exchange is being undertaken in reliance on clause 72(7)(b) of the *Securities Act*, the client and the Participating Organization shall comply with such requirements as prescribed.~~

~~Policy 4-305 Sales from Control Block Through the Facilities of the Exchange~~

(1) Responsibility of Participating Organization and Seller

It is the responsibility of both the selling ~~shareholder~~security holder and ~~the~~ Participating Organization acting on their behalf to ensure compliance with Exchange Requirements and applicable securities laws. In particular, Participating Organizations and selling ~~shareholders~~security holders should familiarize themselves with the procedures and requirements set out in ~~subsection 72(7) of the Securities Act and the restrictions on control block sales imposed in Part 3 of Rule 45-501 made under the Securities Act.~~Part 2 of National Instrument 45-102.

(2) Sales Pursuant to an Order or Exemption

If securities are to be sold from a control block pursuant to an order made under section 74 of the Securities Act or an exemption contained in ~~subsection 72(1)~~Part XVII of the Securities Act~~,~~ or in Part 4 of National Instrument 45-106, the securities acquired by the purchaser may be subject to a hold period in accordance with the provisions of the Securities ~~Act.~~Act or National Instrument 45-102. Sales of securities subject to a hold period are special terms trades and will normally be permitted to take place on the Exchange without interference.

(3) General Rules for Control Block Sales on the Exchange

1. ***Filing—***The seller shall file ~~"Form 23" under the Regulation under the Securities Act with the Exchange~~Form 45-102F1 Notice of Intention to Distribute Securities under subsection 2.8 of National Instrument 45-102 with the Exchange at least seven calendar days prior to the first trade made to carry out the distribution.

2. ***Notification of Appointment of Participating Organization—***The seller must notify the Exchange of the name of the Participating Organization which will act on behalf of the seller. The seller shall not change the Participating Organization without prior notice to the Exchange

3. ***Acknowledgement of Participating Organization—***The Participating Organization acting as agent for the seller shall give notice to the Exchange of its intention to act on the sale from control~~, and such notice shall be accepted in writing by the Exchange,~~ before any sales commence.

4. ***Report of Sales—***The Participating Organization shall report in writing to the Exchange ~~Division~~ on the last day of each month the total number of securities sold by the seller during the month, and, if and when all of the securities have been sold, the Participating Organization shall so report forthwith in writing to the Exchange.

5. ***Issuance of Exchange Bulletin—***The Exchange shall issue a bulletin respecting the proposed sale from control which bulletin will contain the name of the seller, the number of securities of the listed company held by the seller, the number proposed to be sold, and any other information that the Exchange considers appropriate. The Exchange may issue further bulletins from time to time regarding the sales made by the seller.

6. ***Special Conditions—***The Exchange may, in circumstances it considers appropriate, require that special conditions be met with respect to any sales. Possible conditions include, but are not limited to, the requirement that the seller not make a sale below the price of the last sale of a board lot of the security on the Exchange which is made by another person acting independently.

7. ***~~Term and Renewal~~ —***The ~~initial~~ filing of Form ~~23~~45-102F1 is valid for a period of ~~60 days and a renewal of the Form 23 must be filed with the Exchange every 28 days thereafter if sales are to continue~~30 days from the date the form was filed.

8. ***First Sale—***The first sale cannot be made until at least ~~7~~seven calendar days after the filing of Form ~~23 and the first sale under the initial Form 23 must be made within 14 days of the filing.~~45-102F1.

(4) Restrictions on Control Block Sales on the Exchange

1. ***Private Agreements*—**A Participating Organization is not permitted to participate in sales from control by private agreement transactions. ~~If Participating Organizations are to participate, transactions must be executed on the Exchange or the transactions must be exempt from the requirement to be conducted on the Exchange in accordance with~~ Rule 4-102~~.~~

2. ***Normal Course Issuer Bids*—**If the issuer of the securities which are the subject of the sale from control block is undertaking a normal course issuer bid in accordance with Part 6 of the Rules, the normal course issuer bid and the sale from control block will be permitted on the condition that:

   (a) the Participating Organization acting for the issuer confirms in writing to the Exchange that it will not bid for securities on behalf of the issuer at a time when securities are being offered on behalf of the control block seller;

   (b) the Participating Organization acting for the control block seller confirms in writing to the Exchange that it will not offer securities on behalf of the control block seller at a time when securities are being bid for under the issuer bid; and

   (c) transactions in which the issuer is on one side and the control block seller on the other are not permitted.

3. ***Price Guarantees*—**The price at which the sales are to be made can not be established or guaranteed prior to the seventh day after the filing of Form ~~23~~45-102F1 with the Exchange.

4. ***Crosses*—**A Participating Organization may distribute the whole of a control block sale to its own clients by means of a cross. Established crossing rules require that, prior to execution, all orders that are entered on any Canadian Exchange at better prices than the price of the proposed cross must be filled in full. If the market is to be moved before execution of a cross, the Responsible Registered Trader should be notified in advance.

Amended (●, 2017)

13.2.3 Liquidnet Canada – Notice of Proposed Changes and Request for Comment

LIQUIDNET CANADA

NOTICE OF PROPOSED CHANGES AND REQUEST FOR COMMENT

Liquidnet Canada is publishing this Notice of Proposed Changes in accordance with the "Process for the Review and Approval of the Information Contained in Form 21-101F2 and the Exhibits Thereto." Market participants are invited to provide the Commission with comment on the proposed changes.

Comment on the proposed changes should be in writing and submitted by May 8, 2017 to

Market Regulation Branch
Ontario Securities Commission
22nd Floor
20 Queen Street West
Toronto, ON M5H 3S8
Fax: (416) 595-8940
marketregulation@osc.gov.on.ca

and

Thomas Scully
General Counsel
Liquidnet Canada Inc.
498 Seventh Avenue
New York, NY 10018
tscully@liquidnet.com

Comments received will be made public on the OSC website. Upon completion of the Review by OSC staff, and in the absence of any regulatory concerns, notice will be published to confirm the completion of Commission staff's review and to outline the intended implementation date of the changes.

Any questions regarding the information below should be addressed to:

Peter Coffey
Head of Liquidnet Canada & Chief Compliance Officer
Liquidnet Canada Inc.
79 Wellington Street West - Suite 2403
TD South Tower
Toronto, ON M5K 1K2
pcoffey@liquidnet.com

Liquidnet Canada proposes to introduce the following changes to the Liquidnet Canada trading system:

1. Increased minimum order size for broker block orders and additional order flow from broker participants

A. Description of the proposed change

Currently, the Liquidnet Canada ATS has two types of broker participants: Liquidity partners (LPs) and Canada broker blocks participants. LPs can send immediate-or-cancel (IOC) orders for Canadian equities, and Canada broker blocks participants can send resting orders for Canadian equities. Currently, the minimum order size for resting orders from Canada broker blocks participants is 50 standard trading units, i.e., 5,000 shares for equities trading over $1.00. Currently, both LPs and Canada broker blocks participants can send agency orders, but not other types of order flow, such as principal orders, to the Liquidnet Canada ATS.

In an effort to source additional liquidity for buy-side participants, provide sell-side brokers with additional access to unique block-sized liquidity, and align with current practice in the US and European markets, Liquidnet Canada proposes to allow both categories of broker participants, i.e., LPs and Canada broker blocks participants, to send all types of order flow to the Liquidnet Canada ATS, not just agency order flow. To ensure that meaningful block-size orders are submitted, and address concerns regarding possible information leakage, Liquidnet Canada also proposes to increase the minimum order size for Canada broker block orders (whether agency, principal or otherwise) to at least 10,000 shares or $100,000 in value.[1] Buy-side participants of the Liquidnet Canada ATS will continue to choose whether or not to interact with order flow from Canada broker blocks participants and LPs via Liquidnet's Transparency Controls tool.

B. The expected date of implementation

It is expected that the proposed change will be implemented shortly after satisfaction of the requirements set forth in Section 3.2(1) of National Instrument 21-101, *Marketplace Operation* (NI 21-101), including the expiration of a 45-day notice period. Subscribers will be notified prior to implementation.

C. Rationale for the proposed change

Liquidnet Canada plans to implement this proposed change to expand access to the Liquidnet Canada ATS to broker participants who have requested the ability to participate via additional order types, including principal/liability orders. The proposed change will also permit Liquidnet to source additional liquidity for buy-side subscribers, and align with current practice in the US and European markets. The increase in minimum order size for broker blocks orders will allow for efficient block-volume discovery, limit information leakage, and reduce market volatility as orders are completed in block size. This rationale is consistent with Liquidnet Canada's position as the unique, block-trading marketplace in Canada, with an average negotiated execution size of more than 65,000 shares in 2016.

D. Expected impact of the proposed change on market structure, subscribers, investors and capital markets

We foresee no adverse impact on market structure, subscribers, investors or the capital markets because the proposed change will only encourage broker participants to transmit additional actionable, block-size liquidity to the Liquidnet Canada ATS.

E. Expected impact of the proposed change on Liquidnet Canada's compliance with Ontario securities law and the requirements for fair access and maintenance of a fair and orderly market

We foresee no adverse impact on Liquidnet Canada's compliance with market structure, Ontario securities laws or to requirements of fair access and the maintenance of a fair and orderly market. Liquidnet Canada respectfully submits that increasing the minimum order size for broker block orders to 10,000 shares or $100,000 in value is consistent with the fair access requirements of National Instrument 21-101 because it will apply to all broker blocks orders and will present no unreasonable barriers to participation. As noted in subsection 7.1(1) of Companion Policy 21-101CP, the requirements regarding access for marketplace participants "do not restrict the marketplace from maintaining reasonable standards for access" to marketplace services. And the purpose of the access requirements "is to ensure that rules, policies, procedures, and fees, as applicable, of the marketplace do not unreasonably create barriers to access to the services provided by the marketplace." Moreover, a plain reading of the text of subsection 5.1(3) of NI 21-101 indicates that a marketplace may indeed implement participation criteria that result in limited access to certain products or services as long as those criteria do not result in "unreasonable discrimination" among participants or "impose any burden on competition that is not reasonably necessary and appropriate." As discussed above, the

[1] These proposed minimums would not apply to IOC orders from LPs.

proposed minimum size for broker block orders is intended to ensure that meaningful block-size orders are submitted, allow for efficient block-volume discovery, limit information leakage, and reduce market volatility. In this context, the proposed minimum block order size does not permit unreasonable discrimination among participants or impose any unreasonable or inappropriate burdens on competition.

F. Consultations undertaken in formulating the proposed change, including internal governance process followed

Liquidnet Canada consulted with certain customers before proceeding with the proposed change. Liquidnet Canada also consulted with Liquidnet affiliates in other regions to understand their models, rationale and experience. The proposed change was approved by the management of Liquidnet Canada.

G. Whether the proposed change will require subscribers and vendors to modify their own systems

The proposed change will not require any work by existing subscribers to modify their own systems because there is no change to existing order execution functionality. Some standard technical work may be required by broker participants who wish to implement this optional service. The proposed change is not a material change to technology requirements regarding interfacing with or accessing the marketplace within the meaning of Part 12.3 of NI 21-101.

H. Whether the proposed change would introduce a fee model or feature that currently exists in other markets or jurisdictions

Liquidnet Canada's US and European affiliates already permit principal order flow from broker participants.

* * *

2. Expansion of conditional order functionality for Canadian equities

A. Description of the proposed change

Currently, Member participants of the Liquidnet Canada ATS can create LN auto-ex orders, which can access the Liquidnet negotiation and H2O (auto-execution) systems, but not external venues, on a conditional or firm basis, as directed by the Member. Prior to executing a conditional LN auto-ex order, Liquidnet sends a request to the Member's system to commit the shares on the order, and the Member's system responds by sending all or a portion of its remaining unexecuted shares to Liquidnet (known as a "firm-up"). This firm-up request is used to protect the Member against over-execution. Member firm-up rates are periodically reviewed by Liquidnet Sales personnel, with appropriate follow-up to the Member to address any issues.

As also previously disclosed, conditional order functionality is currently incorporated into Liquidnet Canada's algo order functionality such that, for certain types of algos, Liquidnet interacts with the negotiation and H2O (auto-execution) systems on a conditional basis. This type of conditional functionality does not require a firm-up request from the Member or customer. Instead, the Liquidnet algo, which could be working shares at an external venue, must firm-up the order to the negotiation and H2O system, as applicable, immediately prior to execution.

In an effort to align with the US market and provide additional trading flexibility to participants of the Liquidnet Canada ATS, Liquidnet Canada proposes to further expand conditional order functionality to the interaction of resting orders from Canada Broker Block participants with the Liquidnet negotiation system.

Conditional orders from Canada broker blocks participants

"Canada broker blocks participants" are IIROC-registered Canadian brokers that can enter committed orders on behalf of their customers (currently, agency orders only),[2] via FIX, using compliant order-entry technology. These brokers are considered direct participants in the Liquidnet Canada ATS, and their orders are referred to as "Canada broker block orders". These brokers do not have access to the Liquidnet desktop application. In handling a Canada broker block order, Liquidnet Canada creates a Liquidnet algo order. These resting orders interact with Liquidnet liquidity in the same manner as orders from trading desk customers, but trading desk personnel do not have access to order information of Canada broker blocks participants. Members and eligible customers elect through Liquidnet Transparency Controls whether or not to interact with order flow from Canada broker blocks participants.

[2] As indicated in Part 1 of this Notice, Liquidnet Canada is also proposing that broker participants, i.e., liquidity partners (LPs) and Canada broker blocks participants, also be permitted to transmit non-agency order flow, such as principal orders.

Liquidnet Canada proposes to permit Canada broker blocks participants to transmit resting orders to the Liquidnet Canada ATS on a conditional basis, at their option. This functionality, which is fully automated from the point at which the broker transmits the conditional order to Liquidnet, allows the broker to rest actionable order flow in the Liquidnet Canada ATS that may include shares already placed at other trading venues. These orders are considered "conditional" since the Canada broker block participant will commit the order only prior to execution with a matched contra order. Prior to executing a conditional order, Liquidnet sends a request to the Canada broker block participant's system to commit the shares on the order, and the broker's system responds by sending remaining unexecuted shares to Liquidnet (known as a "firm-up"). This firm-up request is used to protect the Canada broker block participant against over-execution. Broker firm-up rates are periodically reviewed by Liquidnet Sales, with appropriate follow-up to the broker to address any issues.

B. The expected date of implementation

It is expected that the proposed change will be implemented shortly after satisfaction of the requirements set forth in Section 3.2(1) of National Instrument 21-101, *Marketplace Operation* (NI 21-101), including the expiration of a 45-day notice period. Subscribers will be notified prior to implementation.

C. Rationale for the proposed change

As Liquidnet operates a global trading system, Liquidnet Canada is implementing this proposed change to align with the US region and provide broker participants with functionality currently available to other participants. This functionality will allow broker participants to seek block-sized liquidity in the Liquidnet Canada ATS and other dark/lit venues simultaneously, without risk of over-execution. Brokers will also benefit from reduced information leakage and associated predatory trading behavior on large size orders. This change will also benefit the marketplace as a whole by not forcing participants to choose one market over another, thereby exposing liquidity more broadly across multiple marketplaces.[3]

D. Expected impact of the proposed change on market structure, subscribers, investors and capital markets

We foresee no adverse impact on market structure, subscribers, investors or the capital markets because the proposed change will only encourage broker participants to rest liquidity at the marketplace, without limiting trading opportunities at other venues.

E. Expected impact of the proposed change on Liquidnet Canada's compliance with Ontario securities law and the requirements for fair access and maintenance of a fair and orderly market

We foresee no adverse impact on Liquidnet Canada's compliance with market structure, Ontario securities laws or to requirements of fair access and the maintenance of a fair and orderly market.

F. Consultations undertaken in formulating the proposed change, including internal governance process followed

Liquidnet Canada consulted with certain customers before proceeding with the proposed change. The proposed change was approved by the management of Liquidnet Canada.

G. Whether the proposed change will require subscribers and vendors to modify their own systems

The proposed change will not require any work by existing subscribers to modify their own systems because this is optional functionality. Standard technical work will be required by broker participants who wish to implement this optional conditional order functionality.

H. Whether the proposed change would introduce a fee model or feature that currently exists in other markets or jurisdictions

Liquidnet Canada's US affiliate has already implemented similar functionality for broker participants.

* * *

[3] This proposed change also supports the Canadian regulators' efforts to encourage broker dealers to trade in non-transparent venues as part of fulfilling their best execution obligations. See UMIR Policy 5.1 – Best Execution of Client Orders, Part 2 - Specific Factors To Be Considered, http://www.iiroc.ca/industry/rulebook/Documents/UMIR0501_en.pdf

3. Addition of "automated routing customers" as participants on the Liquidnet Canada ATS

A. Description of the proposed change

The Liquidnet Canada ATS currently permits four (4) categories of participants to trade Canadian equities:

- Members
- Trading desk customers
- Canada broker blocks participants
- Liquidity partners (LPs)

In an effort to align with other regions and provide additional flexibility to buy-side institutions wishing to participate in the Liquidnet Canada ATS, Liquidnet Canada is proposing a fifth participant category – known as "automated routing customers." As an automated routing customer, a buy-side institution meeting certain applicable admission criteria will be able to transmit orders (including conditional orders) to the Liquidnet Canada ATS via an automated router, subject to applicable risk controls. These buy-side institutions can participate directly, through a service provider, or through a routing securities dealer (referred to as an "automated routing dealer") as long as the securities dealer identifies the buy-side institution to Liquidnet on an order-by-order basis (through FIX or an equivalent mechanism). Similar to existing trading desk customers, an automated routing customer will not have access to the Liquidnet desktop application.

Admission and retention criteria for automated routing customers

An automated routing customer must be: (A) an institutional investor that transmits orders through an internal order router; (B) an institutional investor that transmit orders through an order router operated by a third-party service provider; or (C) a securities dealer that transmits orders through an order router on behalf of one or more institutional investors. Automated routing customers under (A) and (B) are referred to as buy-side automated routing customers; securities dealers under (C) are referred to as automated routing brokers. In addition to these criteria, buy-side automated routing customers and customers of an automated routing broker also (i) must have total equity assets, or total equity assets under management, of US $100 million or more, or the equivalent in another currency and (ii) must execute block trades as part of its regular course of trading activity. Buy-side automated routing customers must also enter into a subscriber agreement and other documentation required by Liquidnet.

For an automated routing customer relationship that involves a service provider or securities dealer (a provider), the provider must satisfy Liquidnet Canada, and Liquidnet Canada must determine, that the provider's order handling processes will not cause frustration to, or adversely impact, other Liquidnet participants. In making this determination, Liquidnet will take into consideration a variety of factors, including the provider's automated routing logic and venue prioritization, use of conditional orders, use of committed orders, data usage and disclosure, risk controls and compliance oversight.

In the case of a securities dealer transmitting an order on behalf of a buy-side firm, the securities dealer must identify the buy-side firm to Liquidnet on an order-by-order basis (through FIX or an equivalent mechanism).

An automated routing customer must satisfy credit and legal criteria as Liquidnet or its clearing broker may establish from time to time. This includes Liquidnet's compliance with any customer identification procedure and other anti-money laundering rules and regulations relating to customer due diligence. Liquidnet's clearing broker must also consent to the entity as a Liquidnet customer.

Guidelines for automated routing customers

Liquidnet plans to implement the following guidelines for automated routing customer orders transmitted through a service provider or broker-dealer (referred to as a "provider"):

- For firm orders, average order resting time of one minute or more
- For conditional orders, average order resting time of two minutes or more.

These guidelines are intended to maximize the value of the interaction between automated routing customers and other Liquidnet participants for the benefit of each side. On a quarterly basis, Liquidnet will review each provider's performance relative to these guidelines. If a provider fails to meet these guidelines on a consistent basis, Liquidnet

can commence a discussion with the provider as to whether it is beneficial for the provider and Liquidnet's participants to continue the automated routing relationship. Automated routing customers are also subject to the same minimum order size requirements as other buy-side Member participants.

Notification of active contras to automated routing customers

Liquidnet automated routing customers (or their respective service providers) transmitting algo orders (including conditional orders) may receive electronic notification in real-time of the matching of an algo order with an active contra.

Automated market surveillance for conditional orders by automated routing customers

When an automated routing customer that transmits conditional orders fails to firm-up for a configured number of times within a configured time period in a particular symbol, the automated routing customer will be automatically blocked from matching in that symbol with any contra-indications in the negotiation system and/or from matching in that symbol with any contra-side conditional orders in Liquidnet H2O for a configured time period.

In addition, where Liquidnet has blocked an automated routing customer from matching in a configurable number of symbols within a trading day pursuant to the preceding paragraph, Liquidnet will block all orders from that automated routing customer for the remainder of the trading day and cancel all orders received by Liquidnet from that customer that are then outstanding. As noted above, orders from automated routing customers are also subject to the same risk controls applied by Liquidnet Canada to all other algo orders.

Liquidnet also may block conditional orders from an automated routing customer if the automated routing customer's average order duration is below thirty (30) seconds for a configurable period of time.

Liquidnet can set and modify the configurations from time to time, but at any particular time the same configurations apply for all automated routing customers transmitting conditional orders. Upon request, Liquidnet will notify any Member or customer regarding the applicable configurations at that time.

B. The expected date of implementation

It is expected that the proposed change will be implemented shortly after satisfaction of the requirements set forth in Section 3.2(1) of National Instrument 21-101, Marketplace Operation (NI 21-101), including the expiration of a 45-day notice period. Subscribers will be notified prior to implementation.

C. Rationale for the proposed change

As Liquidnet operates a global trading system, Liquidnet Canada is adding this new participant category to align with other regions and provide an additional automated means for Canadian buy-side participants to access the Liquidnet Canada ATS, i.e., via an internal or third-party order router as opposed to the Liquidnet desktop application. Automated routing customers currently participate and provide valuable liquidity in other markets.

D. Expected impact of the proposed change on market structure, subscribers, investors and capital markets

We foresee no adverse impact on market structure, subscribers, investors or the capital markets because the proposed change will only add liquidity from buy-side participants who would otherwise not participate on the marketplace. We also note that the proposed change is an optional means by which buy-side participants may access the Liquidnet Canada ATS. Buy-side participants may still access the Liquidnet Canada ATS as Members via our existing desktop software application.

E. Expected impact of the proposed change on Liquidnet Canada's compliance with Ontario securities law and the requirements for fair access and maintenance of a fair and orderly market

We foresee no adverse impact on Liquidnet Canada's compliance with market structure, Ontario securities laws or to requirements of fair access and the maintenance of a fair and orderly market.

F. Consultations undertaken in formulating the proposed change, including internal governance process followed

Liquidnet Canada consulted with certain customers before proceeding with the proposed change. The proposed change was approved by the management of Liquidnet Canada.

G. Whether the proposed change will require subscribers and vendors to modify their own systems

The proposed change will not require any work by existing subscribers to modify their own systems because this is an optional method for interacting with the Liquidnet Canada ATS, not a requirement. Standard technical work will be required by new subscribers opting to participate as automated routing customers. The proposed change is not a material change to technology requirements regarding interfacing with or accessing the marketplace within the meaning of Part 12.3 of NI 21-101.

H. Whether the proposed change would introduce a fee model or feature that currently exists in other markets or jurisdictions

Liquidnet Canada's affiliates in other jurisdictions have already implemented the proposed automated routing customer participant category.

13.2.4 Bloomberg Tradebook Canada Company – Filing of Form 21-101F4 – Notice of Cessation of ATS Business

BLOOMBERG TRADEBOOK CANADA COMPANY

NOTICE OF CESSATION OF ATS BUSINESS

Bloomberg Tradebook Canada Company (Bloomberg Tradebook) has filed Form 21-101F4 *Cessation of Operations Report for Alternative Trading System* (F4) with the Commission. The F4 indicates that Bloomberg Tradebook Canada Company has closed its equity securities marketplace functionality and is no longer carrying on business as an alternative trading system in Ontario.

A related order is contained in Chapter 2 of this Bulletin.

13.2.5 TSX Inc. – Proposed Amendments to TSX Rule Book – OSC Staff Notice and Request for Comments

TSX INC.

NOTICE OF PROPOSED AMENDMENTS AND REQUEST FOR COMMENTS

TSX Inc. (TSX) is publishing for comment proposed changes to the TSX Rule Book in accordance with the *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto*.

TSX is proposing changes to the market making rules and to certain marketplace functionality to support enhancements to TSX's market making program.

A copy of the TSX notice including the proposed amendments is published on our website at www.osc.gov.on.ca. The comment period ends on May 8, 2017.

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