The Ontario Securities Commission

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

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1.3.1 Dennis Wing – ss. 127, 127.1

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

AND

IN THE MATTER OF
DENNIS WING

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

TAKE NOTICE that the Ontario Securities Commission (the **Commission**) will hold a hearing pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the **Act**), at the offices of the Commission located at 20 Queen Street West, Toronto, 17th Floor, commencing on June 2, 2017, 2017 at 1:00 p.m. or soon thereafter as the hearing can be held;

AND TAKE NOTICE that the purpose of the hearing is to consider whether, in the Commission's opinion, it is in the public interest for the Commission to make the following orders:

(a) that Dennis Wing (**Mr. Wing** or the **Respondent**) pay an administrative penalty of not more than $1 million for his failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

(b) that Mr. Wing be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(c) that Mr. Wing be ordered to pay the costs of the Commission investigation and hearing, pursuant to section 127.1 of the Act; and,

(d) such other order as the Commission considers appropriate in the public interest.

BY REASON OF the allegations set out in the Statement of Allegations of Staff dated May 4, 2017, and such further allegations as counsel may advise and the Commission may permit;

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

AND TAKE FURTHER NOTICE that upon failure of any party to attend at the time and place stated above, 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, participation may be in either French or English and participants must notify the Secretary's Office in writing as soon as possible, and in any event, at least thirty (30) days before a hearing if the participant is requesting a proceeding to be conducted wholly or partly in French; and

ET AVIS EST ÉGALEMENT DONNÉ PAR LA PRÉSENTE que l'avis d'audience est disponible en français, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit le plus 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 4th day of May, 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
DENNIS WING

STATEMENT OF ALLEGATIONS OF
STAFF OF THE ONTARIO SECURITIES COMMISSION

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

A. Overview

1. On or about August 28, 2015, Dennis Wing ("Mr. Wing") traded securities contrary to an order made by the Ontario Securities Commission (the "Commission") on June 24, 2015 that he cease trading securities permanently and thereby breached subsection 122(1)(c) of the *Securities Act*, R.S.O. 1990, c. S.5 (as amended) (the Act).

B. The Respondent

2. Mr. Wing is a resident of Toronto.

C. Background to allegations:

(i) The June 24, 2015 Order

3. On June 24, 2015, the Commission made an order against Mr. Wing that provided, among other things, that trading in any securities by him cease permanently.

(ii) The August 28, 2015 Trades

4. On August 28, 2015, Mr. Wing sold 130,000 shares of Just Energy Group Inc. from his BMO InvestorLine account 225-43929 for proceeds of $1,040,417.

D. Conduct contrary to Ontario securities law and contrary to the public interest

5. By trading securities on August 28, 2015 in breach of the June 24, 2015 cease trade order made by the Commission against him, Mr. Wing violated subsection 122(1)(c) of the Act and thereby acted contrary to the public interest.

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

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

1.5 Notices from the Office of the Secretary

1.5.1 Issam El-Bouji et al.

FOR IMMEDIATE RELEASE
May 3, 2017

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

AND

IN THE MATTER OF
ISSAM EL-BOUJI,
GLOBAL RESP CORPORATION,
GLOBAL GROWTH ASSETS INC.,
GLOBAL EDUCATION TRUST FOUNDATION
AND MARGARET SINGH

TORONTO – The Commission issued its Reasons and Decision on a Motion for Directions and Other Relief in the above named matter.

A copy of the Reasons and Decision on a Motion for Directions and Other Relief dated May 2, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.2 Benedict Cheng et al.

FOR IMMEDIATE RELEASE
May 4, 2017

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

AND

IN THE MATTER OF
BENEDICT CHENG,
FRANK SOAVE,
JOHN DAVID ROTHSTEIN and
ERIC TREMBLAY

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing is adjourned until September 11, 2017, at 10:00 a.m., or such other date and time as provided by the Office of the Secretary and agreed to by the parties.

A copy of the Order dated May 4, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.3 Home Capital Group Inc. et al.

FOR IMMEDIATE RELEASE
May 4, 2017

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

AND

IN THE MATTER OF
HOME CAPITAL GROUP INC.,
GERALD SOLOWAY, ROBERT MORTON and
MARTIN REID

TORONTO – The Commission issued an Order in the above named matter which provides that this matter is adjourned to June 2, 2017 at 2:00 p.m.

A copy of the Order dated May 4, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

media_inquiries@osc.gov.on.ca

For investor inquiries:

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

1.5.4 Edward Furtak et al.

FOR IMMEDIATE RELEASE
May 5, 2017

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

AND

IN THE MATTER OF
EDWARD FURTAK,
AXTON 2010 FINANCE CORP.,
STRICT TRADING LIMITED,
RONALD OLSTHOORN,
TRAFALGAR ASSOCIATES LIMITED,
LORNE ALLEN AND
STRICTRADE MARKETING INC.

TORONTO – The Commission issued its Reasons and Decision on Sanctions and Costs and an Order in the above noted matter.

A copy of the Reasons and Decision on Sanctions and Costs and the Order dated May 4, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

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For investor inquiries:

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

1.5.5 Dennis Wing

FOR IMMEDIATE RELEASE
May 5, 2017

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

AND

IN THE MATTER OF
DENNIS WING

TORONTO – The Office of the Secretary issued a Notice of Hearing on May 4, 2017 setting the matter down to be heard on June 2, 2017 at 11:00 a.m. or as soon thereafter as the hearing can be held in the above named matter. The hearing will be held at the offices of the Commission at 20 Queen Street West, 17th Floor, Toronto.

A copy of the Notice of Hearing dated May 4, 2017 and Statement of Allegations of Staff of the Ontario Securities Commission dated May 4, 2017 are available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Northwest & Ethical Investments L.P.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds 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.

April 28, 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
NORTHWEST & ETHICAL INVESTMENTS 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 the Funds (as defined below) from the requirements set out in paragraph 15.3(4)(c) (in respect of both the FundGrade A+ Awards presented annually by Fundata Canada Inc. (**Fundata**) and the FundGrade Ratings) and paragraph 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:

(i) 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

(ii) 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

to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds (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 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. The following term has the following meaning:

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

Representations

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

The Filer and the Funds

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

2. The Filer is registered under securities legislation in British Columbia, Ontario, Quebec and Saskatchewan as an exempt market dealer, in British Columbia, Ontario, Quebec and Newfoundland & Labrador as an investment fund manager and in Ontario as a portfolio manager.

3. Each of the Funds is, or will be, a mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds 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 one or more of the Jurisdictions.

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 existing Funds are not in default of any of the requirements of securities legislation of the Jurisdictions.

Fundata FundGrade Ratings and FundGrade A+ Awards Program

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 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.

14. 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+ Award 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+ Award Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

15. 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).

16. 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.

17. 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 also, required in order for Funds to reference the FundGrade A+ Awards in sales communications.

18. 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.

19. 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. Relief from paragraph 15.3(4)(f) is required in order for the FundGrade A+ Awards to be referenced in sales communications relating to the Funds outside the above periods.

20. The Exemption Sought is required in order for the FundGrade Ratings and the FundGrade A+ Awards to be referenced in sales communications relating to the Funds.

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 FundGrade 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 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+ Award 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 mutual funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.2 RBC Global Asset Management Inc.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds 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.

April 28, 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
RBC GLOBAL ASSET MANAGEMENT INC.
(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 the Funds (as defined below) from the requirements set out in paragraph 15.3(4)(c) (in respect of both the FundGrade A+ Awards presented annually by Fundata Canada Inc. (**Fundata**) and the FundGrade Ratings) and paragraph 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:

(i) 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

(ii) 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

to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds (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 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. The following term has the following meaning:

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

Representations

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

The Filer and the Funds

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

2. The Filer is registered under securities legislation in each of the Jurisdictions as a portfolio manager and exempt market dealer and in each of British Columbia, Ontario, Quebec and Newfoundland and Labrador as an investment fund manager and in Ontario as a commodity trading manager.

3. Each of the Funds is, or will be, a mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds 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 one or more of the Jurisdictions.

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 existing Funds are not in default of any of the requirements of securities legislation of the Jurisdictions.

Fundata FundGrade Ratings and FundGrade A+ Awards Program

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 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.

14. 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+ Award 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+ Award Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

15. 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).

16. 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.

17. 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 also, required in order for Funds to reference the FundGrade A+ Awards in sales communications.

18. 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.

19. 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. Relief from paragraph 15.3(4)(f) is required in order for the FundGrade A+ Awards to be referenced in sales communications relating to the Funds outside the above periods.

20. The Exemption Sought is required in order for the FundGrade Ratings and the FundGrade A+ Awards to be referenced in sales communications relating to the Funds.

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 FundGrade 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 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+ Award 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 mutual funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.3 BMO Investments Inc.

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds 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.

April 28, 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)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**), pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), exempting the Funds (as defined below) from the requirements set out in paragraph 15.3(4)(c) (in respect of both the FundGrade A+ Awards presented annually by Fundata Canada Inc. (**Fundata**) and the FundGrade Ratings) and paragraph 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:

(i) 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

(ii) 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

to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds (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 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. The following term has the following meaning:

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

Representations

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

The Filer and the Funds

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

2. The Filer is a corporation governed by the laws of Canada. The Filer is registered as a mutual fund dealer or its equivalent in each of 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.

3. Each of the Funds is, or will be, a mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds 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 one or more of the Jurisdictions.

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 existing Funds are not in default of any of the requirements of securities legislation of the Jurisdictions.

Fundata FundGrade Ratings and FundGrade A+ Awards Program

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 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.

14. 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+ Award 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+ Award Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

15. 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).

16. 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.

17. 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 also, required in order for Funds to reference the FundGrade A+ Awards in sales communications.

18. 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.

19. 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. Relief from paragraph 15.3(4)(f) is required in order for the FundGrade A+ Awards to be referenced in sales communications relating to the Funds outside the above periods.

20. The Exemption Sought is required in order for the FundGrade Ratings and the FundGrade A+ Awards to be referenced in sales communications relating to the Funds.

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 FundGrade 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 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+ Award 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 mutual funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.4 Russell Investments Canada Limited

Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds 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.

April 28, 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
RUSSELL INVESTMENTS CANADA LIMITED
(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 the Funds (as defined below) from the requirements set out in paragraph 15.3(4)(c) (in respect of both the FundGrade A+ Awards presented annually by Fundata Canada Inc. (**Fundata**) and the FundGrade Ratings) and paragraph 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:

(i) 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

(ii) 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

to permit the FundGrade A+ Awards and the FundGrade Ratings to be referenced in sales communications relating to the Funds (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 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. The following term has the following meaning:

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

Representations

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

The Filer and the Funds

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

2. The Filer is registered under securities legislation in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Northwest Territories, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon as a portfolio manager, exempt market dealer and investment fund manager, in Manitoba as an adviser (commodities) and in Ontario as a mutual fund dealer and commodity trading manager.

3. Each of the Funds is, or will be, a mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds 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 one or more of the Jurisdictions.

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 existing Funds are not in default of any of the requirements of securities legislation of the Jurisdictions.

Fundata FundGrade Ratings and FundGrade A+ Awards Program

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 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.

14. 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+ Award 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+ Award Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

15. 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).

16. 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.

17. 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 also, required in order for Funds to reference the FundGrade A+ Awards in sales communications.

18. 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.

19. 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. Relief from paragraph 15.3(4)(f) is required in order for the FundGrade A+ Awards to be referenced in sales communications relating to the Funds outside the above periods.

20. The Exemption Sought is required in order for the FundGrade Ratings and the FundGrade A+ Awards to be referenced in sales communications relating to the Funds.

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 FundGrade 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 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+ Award 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 mutual funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.5 Nasdaq CXC Limited

May 3, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA, ALBERTA, MANITOBA,
NOVA SCOTIA, QUÉBEC AND ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
NASDAQ CXC LIMITED
(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 relief from the requirements in the Legislation that the Filer provide to the Decision Makers by March 1, 2017 an independent systems review report prepared by a qualified party in accordance with established audit standards (collectively, an "**ISR**") for the year 2016 (the **Exemptive Relief Sought**).

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

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

(b) the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* 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. Nasdaq CXC Limited ("**NCXL**") is a corporation established under the laws of Canada and its principal business is to operate an alternative trading system ("**ATS**") as defined in National Instrument 21-101 *Marketplace Operation*;

2. The head office of NCXL is located in Toronto, Ontario;

3. NCXL is a member of the Investment Industry Regulatory Organization of Canada, the Canadian Investor Protection Fund and is registered in each of the Jurisdictions in the category of investment dealer;

4. NCXL offers three trading books, Nasdaq CXC ("**CXC**"), Nasdaq CX2 ("**CX2**") and Nasdaq CXD ("**CXD**");

5. NCXL has adopted a plan to migrate by June 5, 2017 NCXL's legacy Chi-X Global technology platform to Nasdaq, Inc.'s technology platform for CXC, CX2 and CXD (the "**Migration Plan**");

6. NCXL wishes to synchronize the periods covered by the 2016 ISR with the technology migration dates set out in the Migration Plan;

7. The independent systems review report prepared for CX2 in respect of the period March 6, 2017 to June 4, 2017 will be conducted by the Nasdaq Internal Audit department on a basis consistent with the scope which would have applied had the report been prepared by an external auditor;

8. The cost of retaining an external auditor to prepare the independent systems review for CX2 in respect of the period of March 6, 2017 to June 4, 2017 would be excessively high given the short period of time being sampled;

9. For each of its systems that supports order entry, order execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, NCXL has developed and maintains:

    - reasonable business continuity and disaster recovery plans;
    - an adequate system of internal control over those systems; and
    - adequate information technology general controls, including without limitation, controls relating to information systems operations, information security (including cyber security), change management, problem management, network support and system software support.

10. In accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, NCXL:

    - makes reasonable current and future capacity estimates;
    - conducts capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner;
    - tests its business continuity and disaster recovery plans; and
    - reviews the vulnerability of the NCXL trading facilities and data centre operations to internal and external threats including physical hazards, and natural disasters;

11. NCXL's current trading and order entry volumes in the NCXL trading facilities are less than 20% of the current design and peak capacity of the NCXL trading facilities and NCXL has not experienced any failure of its trading facilities;

12. The NCXL trading facilities are monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure; and

13. NCXL is currently up to date on all of its regulatory filings, and other than section 12.2 of NI 21-101 which is the subject of the Exemptive Relief Sought, NCXL is in compliance with applicable securities legislation;

14. NCXL shall promptly notify the Commission of any failure to comply with the representations set out herein.

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 Exemptive Relief Sought is granted provided that:

1. NCXL shall promptly notify the Commission of any material changes to the representations set out herein; and

2. NCXL shall provide no later than July 31, 2017, an independent systems review report prepared by a qualified party in accordance with established audit standards in respect of the following periods:

    a. For CXC: February 1, 2016 to June 4, 2017 (to be conducted by an external auditor);

    b. CX2: February 1, 2016 to March 5, 2017 (to be conducted by an external auditor) and March 6, 2017 to June 4, 2017 (to be conducted by the Nasdaq Internal Audit department on a basis consistent with the scope which would have applied had the report been prepared by an external auditor); and

    c. For CXD: November 1, 2016 to June 4, 2017 (to be conducted by an external auditor)

DATED this 3rd day of May, 2017

"Tracey Stern"
Manager, Market Regulation
Ontario Securities Commission

2.1.6 Cantor Fitzgerald & Co.

Headnote

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

Applicable Legislative Provisions

Statutes Cited

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

Instruments Cited

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

May 4, 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
CANTOR FITZGERALD & CO.
(the Filer)

DECISION

Background

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

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

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is a partnership established under the laws of the State of New York. The head office of the Filer is located in New York, New York, United States of America.

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

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

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

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

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

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

8. The permitted activities under subsection 8.18(2) of NI 31-103 do not include a trade in a debt security of a Canadian issuer with a permitted client, other than during the security's distribution in the limited circumstances described above.

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

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

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

12. It may be difficult at the time of a resale of a debt security to determine whether the debt security was originally offered as part of an offering that was made primarily in a foreign jurisdiction or whether a prospectus was filed in Canada in connection with such offering. However, the Filer believes, based on its experience with foreign-currency-denominated fixed income offerings by Canadian issuers (**Canadian foreign-currency fixed income offerings**), that such offerings are generally made primarily outside of Canada. Accordingly, the Filer believes that the denomination of an offering of debt securities in a foreign currency will be a reasonable proxy for determining whether the offering was originally made primarily outside of Canada.

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

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

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Filer complies with the terms and conditions described in section 8.18 of NI 31-103 as if the Filer had made the trades in reliance on an exemption contained in section 8.18.

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

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

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

"Monica Kowal"
Vice-Chair
Ontario Securities Commission

"D. Grant Vingoe"
Vice-Chair
Ontario Securities Commission

2.1.7 Excel Funds Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from subsection 2.1(1) and paragraphs 2.2(1)(a), 2.5(2)(a) and 2.5(2)(e) of National Instrument 81-102 Investment Funds to allow mutual funds to invest in ETFs under common management or managed by an affiliate, and to allow the top funds to pay brokerage commissions for the purchase and sale of securities of the underlying ETFs – Underlying ETFs are subject to NI 81-102, and are not commodity pools under NI 81-104 – Relief subject to terms and conditions based on the investment restrictions of NI 81-102 such that top funds cannot do indirectly via investment in underlying ETFs what they cannot do directly under NI 81-102.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1), 2.2(1)(a), 2.5(2)(a), 2.5(2)(e), 19.1.

April 28, 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)

AND

IN THE MATTER OF
THE EXISTING MUTUAL FUNDS MANAGED BY THE FILER
(THE EXISTING TOP FUNDS)

DECISION

BACKGROUND

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Existing Top Funds and any additional mutual funds, including exchange-traded funds (the **Future Top Funds** and together with the Existing Top Funds, the **Top Funds**) that may be managed in the future by the Filer, or by an affiliate of the Filer, for a decision under the securities legislation of the principal regulator (the **Legislation**) granting an exemption to the Top Funds from the following prohibitions in National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Exemption Sought**):

(i) subsection 2.1(1) of NI 81-102 to permit each Top Fund to purchase a security of an exchange-traded mutual fund that is managed by the Filer (the **Initial Underlying ETFs**) or an exchange-traded mutual fund that will be managed by the Filer of an affiliate of the Filer in the future (the **Future Underlying ETFs** and together with the Initial Underlying ETFs, the **Underlying ETFs**) or enter into a specified derivatives transaction with respect to an Underlying ETF even though, immediately after the transaction, more than 10% of the net asset value of the Top Fund would be invested, directly or indirectly, in securities of the Underlying ETF (the **Concentration Restriction**);

(ii) paragraph 2.2(1)(a) of NI 81-102 to permit each Top Fund to purchase a security of an Underlying ETF such that, after the purchase, the Top Fund would hold securities representing more than 10% of:

(A) the votes attaching to the outstanding voting securities of the Underlying ETF; or

(B) the outstanding equity securities of the Underlying ETF (the **Control Restriction**);

(iii) paragraph 2.5(2)(a) of NI 81-102 to permit each Top Fund to purchase and hold a security of an Underlying ETF that is not offered under a simplified prospectus prepared in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) (the **Fund of Fund Restriction**); and

(iv) paragraph 2.5(2)(e) of NI 81-102 to permit each Top Fund to pay brokerage commissions in relation to its purchase and sale on a recognized exchange (as defined in the *Securities Act* (Ontario)) in Canada of securities of the Underlying ETFs (the **Sales and Redemption Fee Restriction**).

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 other provinces and territories of Canada (together with the Jurisdiction, 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 and the Top Funds

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

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

3. The Filer or an affiliate acts, or will act, as manager of each of the Top Funds.

4. The Filer is registered as an investment fund manager in the Provinces of Newfoundland and Labrador, Ontario and Quebec.

5. The Top Funds are, or will be, open-ended mutual funds, including exchange-traded funds, organized and governed by the laws of a jurisdiction of Canada.

6. The Top Funds are, or will be, governed by the provisions of NI 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.

7. Each Top Fund distributes, or will distribute, some or all of its securities pursuant to a simplified prospectus prepared pursuant to NI 81-101 and Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) or a long form prospectus prepared pursuant to National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**) and Form 41-101F2 *Information Required in an Investment Fund Prospectus* (**Form 41-101F2**).

8. The Top Funds are, or will be, reporting issuers in the provinces and territories of Canada in which their securities are distributed.

9. Each Top Fund wishes to have the ability to invest up to 100% of its net asset value in any one or more Underlying ETFs.

10. Each investment by a Top Fund in securities of an Underlying ETF will be made in accordance with the investment objectives of the Top Fund and will represent the business judgement of responsible persons uninfluenced by considerations other than the best interest of the Top Fund.

11. The Top Funds do not, and will not, sell short securities of any Underlying ETF.

The Underlying ETFs

12. The Filer, or an affiliate of the Filer, acts, or will act, as the investment fund manager of each Underlying ETF.

13. Each Underlying ETF may issue more than one series of securities. Each Initial Underlying ETF will initially offer Class E securities. The Top Funds may invest in Class E securities, or other designated securities, of the Underlying ETFs (collectively, the **Securities**).

14. Each Underlying ETF is, or will be, an open-ended mutual fund subject to NI 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.

15. Securities of each Underlying ETF are, or will be:

    (a) distributed pursuant to a long form prospectus prepared pursuant to NI 41-101 and Form 41-101F2; and

    (b) listed on the Toronto Stock Exchange or another "recognized exchange" in Canada, as that term is defined in securities legislation.

16. Because Securities of the Underlying ETFs are, or will be, distributed pursuant to a long form prospectus prepared pursuant to NI 41-101 and Form 41-101F2, each Underlying ETF is, or will be, a reporting issuer in the provinces and territories of Canada in which its securities are distributed.

17. The Underlying ETFs are, or will be, actively managed exchange-traded mutual funds. Accordingly, Securities of the Underlying ETFs are not, or will not be, index participation units, as such term is defined in NI 81-102 (**IPUs**).

18. No Underlying ETF holds, or will hold, more than 10% of its net asset value in securities of another investment fund, unless: (i) the securities of the other investment fund are securities of a money market fund, as defined in NI 81-102; (ii) the securities of the other investment fund are IPUs issued by an investment fund; or (iii) such investment is permitted pursuant to exemptive relief that has been granted by the securities regulatory authorities.

19. No Top Fund pays, or will pay, a management or an incentive fee which to a reasonable person would duplicate a fee payable by the applicable Underlying ETF for the same service.

20. A holder of Securities may:

    (a) sell such securities on the TSX or another "recognized exchange";

    (b) redeem such securities in any number at a redemption price equal to 95% of the closing price for the security on the TSX or another "recognized exchange" on the effective day of redemption; or

    (c) if such holder is a designated broker or dealer or has the consent of the Filer, exchange a prescribed number of securities (a **PNU**) (and any additional multiple thereof) of the Underlying ETF for cash or securities and cash, the exchange price being equal to the net asset value of the securities of the Underlying ETF tendered for exchange on the effective day of the exchange request.

21. The Securities of each Underlying ETF are, or will be, highly liquid, as the designated broker acts, or will act, as an intermediary between investors and each Underlying ETF, standing in the market with bid and ask prices for such securities to maintain a liquid market for them.

22. All brokerage costs related to trades in Securities of the Underlying ETFs will be borne by the Top Funds in the same manner as any other portfolio transactions made on the exchange.

23. No Underlying ETF is, or will be, a commodity pool governed by National Instrument 81-104 *Commodity Pools* (**NI 81-104**).

24. No Underlying ETF has, or will have, a net market exposure greater than 100% of its net asset value.

25. The Underlying ETFs primarily achieve, or will primarily achieve, their investment objectives through direct holdings of cash and securities, or other investment funds, in accordance with their investment objectives and strategies and the requirements of NI 81-102.

26. Each Top Fund and each Underlying ETF is, or will be, subject to National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**) generally and in respect of conflicts of interest matters arising from trades of securities of an Underlying ETF.

27. If a Top Fund makes a trade in securities of an Underlying ETF with or through the Filer acting as dealer, the Filer will comply with its obligations under NI 81-107 in respect of any proposed related party transactions. All such related party transactions will be disclosed to securityholders of the relevant Top Fund in its management report of fund performance.

Reasons for Exemption Sought

28. Due to the potential size disparity between the Top Funds and the Underlying ETFs, it is possible that a relatively small investment, on a percentage of net asset value basis, by a relatively larger Top Fund in Securities of an Underlying ETF could result in such Top Fund holding securities representing more than 10% of: (i) the votes attaching to the outstanding voting securities of the applicable Underlying ETF; or (ii) the outstanding equity securities of that Underlying ETF, contrary to the Control Restriction.

29. It is anticipated that many of the trades in Securities of an Underlying ETF conducted by a Top Fund will not be of the size necessary for the Top Fund to be eligible to purchase or redeem a PNU of Securities of an Underlying ETF directly from or to, as the case may be, the Underlying ETF. As such, it is anticipated that many of the trades in Securities of an Underlying ETF by a Top Fund will be conducted in the secondary market through the TSX or another recognized exchange in Canada. Absent the Exemption Sought, the Top Funds would not be permitted to pay brokerage commission fees for such trades in Securities of an Underlying ETF.

30. An investment by a Top Fund in Securities of an Underlying ETF does not qualify for the exemptions set out in:

    (a) paragraph 2.1(2)(d) of NI 81-102 from the Concentration Restriction;

    (b) paragraph 2.2(1.1)(b) of NI 81-102 from the Control Restriction;

    (c) subsection 2.5(3) of NI 81-102 from the Fund of Fund Restriction; and

    (d) subsection 2.5(5) of NI 81-102 from the Sales and Redemption Fee Restriction

    because Securities of the Underlying ETFs are not, or will not be, IPUs.

31. An investment in an Underlying ETF by a Top Fund is an efficient and cost effective alternative to administering one or more investment strategies similar to that of the Underlying ETF.

32. An investment in an Underlying ETF by a Top Fund should pose no additional investment risk to the Top Fund because each Underlying ETF is, or will be, subject to NI 81-102, subject to any exemption therefrom that has been, or may in the future be, granted by the securities regulatory authorities.

33. The only material difference between an Underlying ETF and other types of mutual funds governed by NI 81-102 is the method of distribution and disposition of its Securities. Granting the Exemption Sought will permit the Top Funds to invest in actively-managed mutual funds that are listed on the TSX (or another recognized exchange in Canada) in the same manner as they are permitted to invest in mutual funds that file a simplified prospectus under NI 81-101.

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 is that the Exemption Sought is granted, provided that:

(i) the investment by a Top Fund in securities of an Underlying ETF is in accordance with the investment objectives of the Top Fund;

(ii) a Top Fund does not sell securities of an Underlying ETF short;

(iii) the Underlying ETF is not a commodity pool governed by NI 81-104;

(iv) the Underlying ETF does not rely on exemptive relief from:

(A) section 2.3 of NI 81-102 regarding the purchase of physical commodities;

(B) sections 2.7 and 2.8 of NI 81-102 regarding the purchase, sale or use of specified derivatives; and

(C) subsections 2.6(a) and 2.6(b) of NI 81-102 with respect to the use of leverage;

(v) in connection with the Exemption Sought from the Concentration Restriction, the Top Fund shall, for each investment it makes in the securities of an Underlying ETF, apply, to the extent applicable, subsections 2.1(3), 2.1(4) and 2.1(5) of NI 81-102 as if those provisions applied to a Top Fund's investments in securities of the Underlying ETF, and, accordingly, limit a Top Fund's indirect holdings in securities of an issuer held by one or more Underlying ETFs as required by, and in accordance with, subsections 2.1(3), 2.1(4) and 2.1(5) of NI 81-102;

(vi) the investment by a Top Fund in securities of an Underlying ETF is made in compliance with section 2.5 of NI 81-102, with the exception of paragraph 2.5(2)(a) and, in respect only of brokerage fees incurred for the purchase and sale of Underlying ETFs by a Top Fund, paragraph 2.5(2)(e) of NI 81-102; and

(vii) the prospectus of each Top Fund discloses, or will disclose at the time of its next renewal, the fact that the Top Fund has obtained the Exemption Sought to permit the relevant transactions on the terms described herein.

"Darren McKall"
Manager, Investment Funds and Structured Products Branch

2.1.8 Excel Funds Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Existing and future mutual funds granted relief to invest in specified ETFs whose securities would meet the definition of index participation unit under NI 81-102 but for the fact that they are listed on the London Stock Exchange (London ETFs) – relief is subject to certain conditions and requirements including that none of the London ETFs are synthetic ETFs and that each top fund will not invest more than 10% of its net asset value in any single London ETF and will not invest more than 20% in London ETFs in the aggregate

Applicable Legislative Provisions

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

April 28, 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 each of the investment funds (the **Funds**) for which the Filer or an affiliate acts as manager that are subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**), for a decision under the securities legislation of the jurisdiction of the principal regulator (the **Legislation**) providing an exemption from paragraphs 2.5(2)(a) and (c) of NI 81-102 to permit the Funds to invest in securities of exchange traded funds listed on the London Stock Exchange (the **London ETFs**) that, but for the fact that they are listed on a stock exchange in London and not on a stock exchange in Canada or the United States, would otherwise qualify as "index participation units" (**IPU**) as defined in NI 81-102 (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 subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in all of the other provinces and territories of Canada (together with the Jurisdiction, 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 and the Funds

1. The Filer is a corporation organized under the laws of Ontario with a head office in Mississauga, Ontario.

2. The Filer is registered as an investment fund manager in Newfoundland and Labrador, Ontario and Quebec.

3. The Filer or an affiliate acts, or will act, as manager of each of the Funds.

4. Each Fund is, or will be, an investment fund under the laws of a Jurisdiction of Canada and a reporting issuer under the laws of some or all of the Jurisdictions.

5. Each Fund is, or will be, governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

6. The securities of each Fund are, or will be, qualified for distribution in some or all of the Jurisdictions under a prospectus or simplified prospectus.

7. Neither the Filer nor the existing Funds are in default of securities legislation in any of the Jurisdictions.

The London ETFs

8. Each Fund proposes, from time to time, to invest up to 10% of its net asset value in securities issued by a single London ETF. At no time will a Fund invest more than 20% of its net asset value in securities issued by London ETFs in aggregate.

9. Each London ETF is a portfolio, with segregated liability, of an umbrella open-ended investment company with variable capital. An investment company is incorporated with limited liability in Ireland and is authorized by the European Communities (Undertakings for Collective Investment in Transferable Securities) Regulations, 2003, as amended (the **UCITS Regulations**). Each London ETF is therefore a "UCITS" and will therefore comply with UCITS requirements.

10. The investment objective of a London ETF is to provide investors with a total return, taking into account both capital and income returns, which reflects the return of the applicable index which would be a "permitted index" within the meaning of NI 81-102.

11. Securities of each London ETF are listed on the London Stock Exchange (the **LSE**). The securities of a London ETF may also be listed on one or more additional stock exchanges.

12. The UK Financial Conduct Authority, in its role as the UK Listing Authority (**UKLA**), is the regulator for the LSE. The UKLA has the responsibility for overseeing the admission process to the LSE.

13. The LSE is subject to substantially equivalent regulatory oversight to securities exchanges in Canada and the requirements to be complied with by the London ETFs in order to be admitted to trading on the LSE are consistent with the Toronto Stock Exchange listing requirements.

14. Each London ETF is an "investment fund" and a "mutual fund" within the meaning of applicable Canadian securities legislation.

15. Securities of each London ETF would be IPUs within the meaning of NI 81-102, but for the fact that they are not traded on a stock exchange in Canada or the United States.

16. Each London ETF either: (a) holds securities that are included in a specified widely-quoted market index in substantially the same proportion as those securities are reflected in that index; or (b) invests in a manner that causes the issuer to replicate the performance of that index.

17. BlackRock Asset Management Ireland Limited is the manager of the London ETFs and has responsibility for the management and administration and overall oversight of all service providers and other delegates and for the investment and reinvestment of assets of the London ETFs. BlackRock Asset Management Ireland Limited is not an affiliate or associate of the Filer.

18. BlackRock Advisors (UK) Limited is the investment manager and has responsibility for the investment and reinvestment of assets held by the London ETFs.

19. The following third parties are also involved in the administration of the London ETFs:

(a) State Street Fund Services (Ireland) Limited is the administrator and registrar;

(b) State Street Custodial Services (Ireland) Limited is the depository of the London ETFs; and

(c) PricewaterhouseCoopers are the auditors and reporting accountant.

20. The London ETFs are subject to the following regulatory requirements:

(a) Each London ETF is subject to a robust risk management framework through prescribed rules on governance, risk, regulation of service providers and safekeeping of assets.

(b) No London ETF is a "synthetic ETF", meaning that no London ETF will principally rely on an investment strategy that makes use of swaps or other derivatives to gain an indirect financial exposure to the return of an index.

(c) A London ETF is restricted to investments permitted by the UCITS Regulations and/or authorized by the Central Bank of Ireland.

(d) A London ETF is subject to investment restrictions generally designed to limit holdings of illiquid securities which are not listed on a stock exchange or regulated market to 15% or less of its net asset value. In addition, a London ETF will hold no more than 10% of its net asset value in securities of other collective investment undertakings.

(e) Each London ETF is subject to restrictions concerning the use of derivatives, including the types of derivatives in which it may transact, limits on counterparty risk, and limits on increases to overall market risk resulting from the use of derivatives.

(f) Each London ETF has procedures in place relating to the use of derivatives and risk modelling of derivatives positions.

(g) No London ETF engages in securities lending activities.

(h) Each London ETF has a prospectus that discloses material facts and that is similar to the disclosure required to be included in a prospectus or simplified prospectus of a Fund.

(i) Each London ETF has a product key facts statement which forms part of the prospectus and contains disclosure similar to that required to be included in a fund facts document prepared under National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**).

(j) Each London ETF is subject to continuous disclosure obligations which are similar to the disclosure obligations under National Instrument 81-106 *Investment Fund Continuous Disclosur*e.

(k) Each London ETF is required to update information of material significance in the prospectus and to prepare unaudited semi-annual reports and audited annual reports.

(l) Each London ETF has an investment manager that is subject to a governance framework which sets out a duty of care and a standard of care requiring the management board of the investment manager to act in the best interest of unitholders.

21. The index tracked by each London ETF is transparent, in that the methodology for the selection and weighting of index components is publicly available.

22. Details of the components of the index tracked by each London ETF, such as issuer name, ISIN and weighting within the index is publicly available and updated from time to time.

23. The index tracked by a London ETF includes sufficient component securities so as to be broad-based and is distributed and referenced sufficiently so as to be broadly utilized.

24. Each London ETF makes the net asset value of its holdings available to the public through at least one price information system associated with the LSE and on the website of its manager.

Investment by Funds in London ETFs

25. The investment objective and strategies of each Fund will be disclosed in each Fund's prospectus or simplified prospectus.

26. The Funds will provide all disclosure mandated for investment funds investing in other investment funds.

27. There will be no duplication of management fees or incentive fees as a result of an investment by a Fund in a London ETF.

28. The amount of loss that could result from an investment by a Fund in a London ETF will be limited to the amount invested by the Fund in such London ETF.

29. The majority of trading in securities of the London ETFs occurs in the secondary market rather than by subscribing or redeeming such securities directly from the London ETF.

30. As is the case with the purchase or sale of any other equity security made on an exchange, brokers are typically paid a commission in connection with trading in securities of exchange-traded funds, such as the London ETFs.

31. Securities of the London ETFs are typically only directly subscribed or redeemed from a London ETF in large blocks and it is anticipated that many of the trades conducted by the Funds in London ETFs would not be the size necessary for a Fund to be eligible to directly subscribe for securities.

32. It is proposed that the Funds will purchase and sell securities of the London ETFs on the LSE.

33. Where a Fund purchases or sells securities of a London ETF in the secondary market it will pay commissions to brokers in connection with the purchase and sale of such securities.

34. There will be no duplication of fees payable by an investor in a Fund and the Filer will ensure that there are appropriate restrictions on sales fees and redemption charges for any purchase or sale of securities of a London ETF.

Rationale for Investment in London ETFs

35. A Fund is not permitted to invest in securities of a London ETF unless the requirements of subsection 2.5(2) of NI 81-102 are satisfied.

36. If securities of a London ETF were IPUs within the meaning of NI 81-102, a Fund would be permitted by subsections 2.5(3), (4) and (5) of NI 81-102 to invest in securities of that London ETF.

37. Securities of each London ETF would be IPUs, but for the requirement in the definition of IPU that the securities be traded on a stock exchange in Canada or the United States.

38. The Filer considers that investments in a London ETF provide an efficient and cost effective way for the Funds to achieve diversification and obtain exposure to the markets and asset classes in which the London ETFs invest.

39. The investment objectives and strategies of each Fund, which contemplate or will contemplate investment in global or international securities, permit or will permit the allocation of assets to global or international securities. As economic conditions change, the Funds may reallocate assets, including on the basis of industrial sector or geographic region. A Fund will invest in the London ETFs to gain exposure to certain unique strategies in global or international markets in circumstances where it would be in the best interests of the Fund to do so through ETFs rather than through investments in individual securities. For example, a Fund will invest in the London ETFs in circumstances where certain investment strategies preferred by the Fund are either not available or not cost effective.

40. The Filer is not aware of any mutual fund that:

    (a) is subject to NI 81-102;

    (b) issues securities that are traded on Canadian or U.S. stock exchanges; and

    (c) focuses primarily on the European bond market and is able to trade in local UK time (thereby providing for tighter and more relevant execution).

    The Filer therefore believes that the London ETFs will be able to provide the Funds with unique exposures.

41. By investing in the London ETFs, the Funds will obtain the benefits of diversification, which would be more expensive and difficult to replicate using individual securities. This will reduce single issuer risk.

42. Investment by each Fund in a London ETF meets, or will meet, the investment objectives of such Fund.

43. An investment by the Funds in securities of each London ETF will represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the Funds.

44. In the absence of the Exemption Sought:

    (a) The investment restriction in paragraph 2.5(2)(a) of NI 81-102 would prohibit a Fund that is a mutual fund from purchasing or holding securities of the London ETFs because such London ETFs are not subject to NI 81-102 and neither would such London ETFs offer securities under a simplified prospectus in accordance with NI 81-101. Because IPUs are currently defined to be securities that are traded on a stock exchange in Canada or the United States only, a Fund would not be able to rely on the IPU exemption set forth in paragraph 2.5(3)(a) of NI 81-102 in respect of its investments and holdings of the London ETFs.

    (b) The investment restriction in paragraph 2.5(2)(c) of NI 81-102 would prohibit a Fund that is a mutual fund from purchasing or holding securities of the London ETFs because such London ETFs will not be reporting issuers in the local jurisdiction. Because IPUs are currently defined to be securities that are traded on a stock exchange in Canada or the United States only, a Fund would not be able to rely on the IPU exemption set forth in paragraph 2.5(3)(a) of NI 81-102 for its investments and holdings of London ETFs.

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 is that the Exemption Sought is granted, provided that:

(a) the investment by a Fund in securities of the London ETFs is in accordance with the fundamental investment objectives of the Fund;

(b) none of the London ETFs are synthetic ETFs, meaning that they will not principally rely on an investment strategy that makes use of swaps or other derivatives to gain an indirect financial exposure to the return of an index;

(c) the prospectus of each Fund that is relying on the Exemption Sought discloses the fact that the Fund has obtained relief to invest in the London ETFs and, in the case of a Fund that is a mutual fund, the matters required to be disclosed under NI 81-101 in respect of fund of fund investments, provided that any such Fund that is in existence as of the date of this decision makes the required disclosure no later than the next time the simplified prospectus or prospectus of the Fund is renewed after the date of this decision;

(d) the investment by a Fund in the London ETFs otherwise complies with section 2.5 of NI 81-102;

(e) a Fund does not invest more than 10% of its net asset value in securities issued by a single London ETF and does not invest more than 20% of its net asset value in securities issued by London ETFs in aggregate; and

(f) a Fund shall not acquire any additional securities of a London ETF, and shall dispose of any securities of a London ETF then held, in the event the regulatory regime applicable to the London ETF is changed in any material way.

“Darren McKall”
Manager, Investment Funds and Structured Products Branch

2.1.9 Excel Funds Management Inc. 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.

April 28, 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.

AND

IN THE MATTER OF
EXCEL GLOBAL BALANCED ASSET ALLOCATION ETF AND
EXCEL GLOBAL GROWTH ASSET ALLOCATION ETF
(THE EXISTING ETFS)

DECISION

BACKGROUND

The principal regulator in the Jurisdiction has received an application from Excel Funds Management Inc. (the **Filer**), on behalf of the Existing ETFs and additional exchange-traded mutual funds (the **Future ETFs**, and together with the Existing ETFs, the **ETFs** and each, an **ETF**) established in the future of which the Filer is the manager, and on behalf of an affiliate of the Filer that acts as an investment fund manager to an ETF, for a decision under the securities legislation of the Jurisdiction (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 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 all purchasers and holders of Securities (as defined below) who purchase Securities in the normal course through the facilities of the TSX (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 other provinces and territories of Canada (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.

The following terms shall also have the following meanings:

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

(b) **Authorized Dealer** means a registered dealer that has entered, or intends to enter, 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.

(c) **Basket of Securities** means a group of securities determined by the Filer from time to time representing the constituents of the investment portfolio then held by certain ETFs.

(d) **Creation Units** means, in relation to an ETF, the number of Securities of an ETF determined by the Filer from time to time for subscription orders, exchanges, redemptions or for other purposes.

(e) **Dealers** means, collectively, an Affiliate Dealer, Authorized Dealer, or Other Dealer and Dealer means any of them.

(f) **Designated Broker** means a registered dealer that has entered, or intends to enter, into an agreement with the Filer to perform certain duties in relation to the ETF, including posting a liquid two-way market for the trading of the ETF's Securities on the TSX or another Marketplace.

(g) **ETF Facts** means a prescribed summary disclosure document required pursuant to amendments to the Legislation expected to be made after the date of this decision, in respect of one or more classes or series of Securities being distributed under a prospectus.

(h) **Filer** includes an affiliate that acts as an investment fund manager to an ETF.

(i) **Marketplace** means a "marketplace" as defined in National Instrument 21-101 *Marketplace Operations*, in Canada.

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

(k) **Prospectus Delivery Decision** means a decision granting relief from the Prospectus Delivery Requirement to a Designated Broker or Dealer dated August 24, 2015 or any subsequent decision granting similar relief to a Designated Broker or Dealer, and in each case, that is in effect at the relevant time.

(l) **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.

(m) **Securities** means securities of an ETF.

(n) **Securityholder** means a beneficial and registered holder of Securities of an ETF.

(o) **Summary Document** means a document, in respect of a class or series of Securities of an ETF being distributed under a prospectus, prepared in accordance with Appendix A.

(p) **Take-Over Bid Requirements** means the requirements of the Legislation relating to take-over bids, including the requirement to file a report of a take-over bid and to pay the accompanying fee, in the Jurisdiction.

(q) **TSX** means the Toronto Stock Exchange.

REPRESENTATIONS

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

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

2. The Filer is registered as an investment fund manager in Newfoundland and Labrador, Ontario and Quebec.

3. The Filer is the trustee and investment fund manager of the Existing ETFs and will be the manager of the Future ETFs.

4. Excel Investment Counsel Inc. will be the portfolio manager of the Existing ETFs. Excel Investment Counsel Inc. is registered as: (i) an exempt market dealer in the Provinces of Ontario and Quebec; and (ii) as a portfolio manager in the Province of Ontario.

5. The ETFs are, and will be, mutual fund trusts governed by the laws of Ontario and will be reporting issuers under the laws of one or more of the Jurisdictions.

6. Each ETF is, or 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.

7. The Filer has filed, and will file, a long-form prospectus in accordance with National Instrument 41-101 *General Prospectus Requirements* on behalf of the ETFs, subject to any exemptions that have been or may be granted by the applicable securities regulatory authorities.

8. The Filer and each Existing ETF are not in default of securities legislation in any of the Jurisdictions.

9. Each ETF will be in continuous distribution. The Securities of each ETF will be listed on the TSX or another Marketplace in Canada.

10. Securities of an ETF are, or will be, distributed on a continuous basis in one or more of the Jurisdictions under a long-form prospectus. Securities of an ETF may generally only be subscribed for, or purchased directly from, the ETF in an amount equal to a Creation Unit by Authorized Dealers or Designated Brokers. Authorized Dealers or Designated Brokers will subscribe for Creation Units of an ETF for facilitating investor purchases of Securities of the ETF on the TSX or another Marketplace in Canada.

11. Securityholders of each ETF will have the right to vote at a meeting of Securityholders of the ETF in respect of matters prescribed by NI 81-102.

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

13. According to the Authorized Dealers and Designated Brokers, Creation Units of an ETF are generally commingled with other Securities of the ETF 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 re-sale of Securities of an ETF involves Creation Units or Securities of the ETF purchased in the secondary market.

14. The net asset value per Security of each ETF will be calculated on any day when there is a trading session on the TSX or another Marketplace on which an ETF is listed and will be made available daily on the Filer's website.

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

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

Exemption from the Prospectus Form Requirement

17. The Filer understands that the Canadian securities administrators have taken the view that the first re-sale of a Creation Unit of an ETF on the TSX or another Marketplace in Canada will generally constitute a distribution of Creation Units of an ETF 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 Securities of an ETF in the secondary market that are not Creation Units of the ETF would not ordinarily constitute a distribution of such Securities.

18. Under a 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 of an ETF to investors on the TSX or another Marketplace in Canada. Under a 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.

19. A Prospectus Delivery Decision includes a condition that the Designated Broker or Dealer undertakes that it will send or deliver to each purchaser of Securities of an ETF 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 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 Securities of the ETF, not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after the purchase of Securities of the ETF.

20. 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 Securities of an ETF and will make available to the applicable Dealers and Designated Brokers the requisite number of copies of the Summary Document for facilitating their compliance with the Prospectus Delivery Decision within the timeframe necessary to allow the applicable Dealers and Designated Brokers to effect delivery of the Summary Document as contemplated in the applicable Prospectus Delivery Decision.

21. The Filer will file a Summary Document for each class or series of Securities of an ETF within the timeframe necessary to allow Dealers and Designated Brokers to effect delivery of the Summary Document as contemplated in the Prospectus Delivery Decision.

22. The Exemption Sought from the Prospectus Form Requirement is required to reflect the relief provided in the 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.

Exemption from the Underwriter's Certificate Requirement

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

24. The Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem Securities of an ETF by engaging in arbitrage trading to capture spreads between the trading prices of Securities of the ETF and their underlying securities and by making markets for their clients to facilitate client trading in Securities of the ETF.

25. The Filer generally conducts its own marketing, advertising and promotion of the ETFs. The Filer may, at its discretion, charge an administration fee on the issuance of Creation Units of an ETF to Authorized Dealers or Designated Brokers.

26. The Authorized Dealers and Designated Brokers are not 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 do not incur any marketing costs or receive any underwriting fees or commissions from the ETFs or the Filer in connection with the distribution of Creation Units of an ETF. Furthermore, the Authorized Dealers will change from time to time. Accordingly, it is not practical to provide an underwriters' certificate in the prospectus of the ETFs.

Exemption from the Take-Over Bid Requirements

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

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

28. The application of the Take-Over Bid Requirements to an ETF would have an adverse impact upon the liquidity of a Security of the ETF because they could cause Dealers, Designated Brokers and other large Securityholders of the ETF to cease trading Securities of the ETF once prescribed take-over bid thresholds are reached. This, in turn, could serve to provide conventional mutual funds with a competitive advantage over an ETF.

Generally

29. The Filer understands that the securities regulatory authorities have adopted rule amendments that will require the Filer to file an ETF Facts on behalf of an ETF in connection with the filing of a prospectus which will supersede the requirement to file a Summary Document. Since the introduction of the ETF Facts is subject to a transition period, there will 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 Securities of an ETF, then the Filer will use such ETF Facts instead of a Summary Document to satisfy its obligations with respect to the Exemption Sought in respect of any purchase of such class or series of 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 is that the Exemption Sought in respect of the Underwriter's Certificate Requirement and the Prospectus Form Requirement is granted, 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 a class or series of Securities of an ETF when filing 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 such Summary Document for a class or series of Securities of each ETF;

    (c) the Filer amends the Summary Document at the same time it files any amendments to the 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 Dealer or Designated Broker, the number of copies of the Summary Document of the class or series of Securities of the ETF that the Dealer or Designated Broker reasonably requests in support of compliance with its respective Prospectus Delivery Decision;

(e) each ETF's prospectus, pro forma prospectus or any amendment:

(i) incorporates the relevant Summary Document by reference;

(ii) contains the disclosure referred to in paragraph 22 above; and

(iii) discloses both this decision 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 its election, in connection with the re-sale of Creation Units of the ETF on the TSX or another Marketplace in Canada, 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 a Dealer or Designated Broker agrees to deliver the Summary Document in accordance with a Prospectus Delivery Decision:

(A) an undertaking that the Dealer or Designated Broker 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 Securities of each such ETF; and

(B) confirming that the Dealer or Designated Broker 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 Designated Brokers and 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 Securities, the latest ETF Facts filed in respect of such class or series of Securities must be substituted for a Summary Document in order to satisfy the foregoing conditions with respect to any purchase in such class or series of Securities that occurs after the date of 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 Securities of an ETF if the Filer files an ETF Facts; and

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

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

3. 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.

As to the Exemption Sought from the Underwriter's Certificate Requirement:

"Philip Anisman"
Commissioner

"Peter W. Currie"
Commissioner

As to the Exemption Sought from the Prospectus Form Requirement and Take-Over Bid Requirements:

"Darren McKall"
Manager, Investment Funds and Structured Products Branch

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) "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.

2.1.10 William Blair & Company, L.L.C.

Headnote

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

Applicable Legislative Provisions

Statutes Cited

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

Instruments Cited

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

May 5, 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
WILLIAM BLAIR & COMPANY, L.L.C.
(the Filer)

DECISION

Background

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

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

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is a limited liability company organized under the laws of the State of Delaware. Its head office is located at 222 West Adams Street, Chicago, IL 60606, U.S. It is a wholly owned subsidiary of WBC Holdings, L.P., a Delaware limited partnership.

2. The Filer is registered with the U.S. Securities and Exchange Commission (SEC) as a broker-dealer under the *Securities Exchange Act of 1934* and a registered investment advisor under the *Investment Advisers Act of 1940*, and is a member of the Financial Industry Regulatory Authority (**FINRA**). This registration subjects William Blair to requirements over regulatory capital, lending of money, extension of credit and provision of margin, financial reporting to the SEC and FINRA, and segregation and custody of assets which provide protections that are substantially similar to the protections provided by the rules to which dealer-members of the Investment Industry

Regulatory Organization of Canada (**IIROC**) are subject.

3. The Filer is a member of a number of major U.S. securities exchanges, including the New York Stock Exchange and NASDAQ.

4. The Filer provides a variety of capital raising, investment banking, market making, brokerage, and advisory services, including fixed income and equity sales and research for governments, corporate and financial institutions.

5. The Filer is currently relying on the "international dealer exemption" under section 8.18 of NI 31-103 (**the international dealer exemption**) in British Columbia, Manitoba, Nova Scotia, Ontario and Quebec.

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

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

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

9. The permitted activities under subsection 8.18(2) of NI 31-103 do not include a trade in a debt security of a Canadian issuer with a permitted client, other than during the security's distribution in the limited circumstances described above.

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

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

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

13. It may be difficult at the time of a resale of a debt security to determine whether the debt security was originally offered as part of an offering that was made primarily in a foreign jurisdiction or whether a prospectus was filed in Canada in connection with such offering. However, the Filer believes, based on its experience with foreign-currency-denominated fixed income offerings by Canadian issuers (**Canadian foreign-currency fixed income offerings**), that such offerings are generally made primarily outside of Canada. Accordingly, the Filer believes that the denomination of an offering of debt securities in a foreign currency will be a reasonable proxy for determining whether the offering was originally made primarily outside of Canada.

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

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

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted provided that the Filer complies with the terms and conditions described in section 8.18 of NI 31-103 as if the Filer had made the trades in reliance on an exemption contained in section 8.18.

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

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

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

"Grant Vingoe"
Vice Chair or Commissioner
Ontario Securities Commission

"Monica Kowal"
Vice Chair or Commissioner
Ontario Securities Commission

2.1.11 Ubisoft Entertainment S.A.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – The offering will involve the use of a collective employee shareholding vehicle, a fonds communs de placement d'entreprise (FCPE) – The issuer cannot rely on the employee exemption in section 2.24 of National Instrument 45-106Prospectus Exemptions or the plan administrator exemption in section 8.16 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations as the securities are not being offered to Canadian employees directly by the issuer but through the FCPE – Canadian participants will receive disclosure documents – The FCPE is subject to the supervision of the local securities regulator – Canadian employees will not be induced to participate in the offering by expectation of employment or continued employment – There is no market for the securities of the issuer in Canada – Relief granted without conditions – Relief granted based on the particular facts and circumstances of the application – Decision omits certain customary conditions and should not be used as a precedent in Ontario.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25, 53, 74.
National Instrument 45-106 Prospectus Exemptions, s. 2.24.
National Instrument 45-102 Resale of Securities, s. 2.14.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 8.16.

Translation

May 5 , 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
UBISOFT ENTERTAINMENT S.A.
(the "Filer")

DECISION

Background

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

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

   (a) trades in units (the "**2017 Units**") of the UBI SHARE OWNERSHIP 2017 compartment (the "**2017 UBI FCPE Compartment**") of the UBI SHARE OWNERSHIP FCPE, a *fonds commun de placement d'entreprise* ("**FCPE**"), pursuant to the global employee share acquisition offer by the Filer (the "**Employee Offering**") made by the 2017 UBI FCPE Compartment to or with Qualifying Employees (as defined below) resident in the Jurisdictions and in Nova Scotia who elect to participate in the Employee Offering (the "**Canadian Participants**");

   (b) trades in units (the "**Second FCPE Units**", together with the 2017 Units, the "**Units**" and each a "**Unit**") of another FCPE or FCPE compartment established by the Filer in connection with the Employee Offering (the "**Second FCPE**", together with the 2017 UBI FCPE Compartment, the "**UBI FCPEs**" and each a "**UBI FCPE**") made by the Second FCPE pursuant to the Employee Offering to or with Canadian Participants pursuant to Redemption Subscriptions (as defined below) or the Default Windup Redemption (as defined below); and

2. an exemption from the dealer registration requirement of the Legislation (the "**Registration Relief**", together with the Prospectus Relief, the "**Exemptive Relief Sought**") so that such requirement does not apply to the Filer, the Canadian affiliates of the Filer, being Ubisoft Divertissements Inc., Hybride Technologies Inc. and Ubisoft Toronto Inc. (the "**Canadian Related Entities**", and together with the Filer and other affiliates of the Filer, the "**Ubisoft Group**"), the UBI FCPEs and Amundi Asset Management ("**Amundi**", or the "**Manager**") in respect of:

   (a) trades in 2017 Units made pursuant to the Employee Offering to or with Canadian Participants;

   (b) trades in Second FCPE Units made pursuant to the Redemption Subscription or the Default Windup Redemption to or with Canadian Participants.

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

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

   (b) the Filer has provided notice that subsection 4.7(1) of *Regulation 11-102 respecting Passport System* ("**Regulation 11-102**") is intended to be relied upon in Nova Scotia; and

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

Interpretation

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

Representations

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

1. The Filer is a corporation formed under the laws of France.

2. The ordinary shares of the Filer ("**Shares**") are listed on the Euronext Paris stock exchange (the "**Exchange**").

3. The Filer is not and does not intend on becoming a reporting issuer under the securities legislation in any of the jurisdictions of Canada.

4. Each Canadian Related Entity is a direct or an indirect controlled subsidiary of the Filer and is not, and does not intend on becoming, a reporting issuer under the securities legislation in any of the jurisdictions of Canada.

5. The Employee Offering is reserved for employees of the Filer's related entities in France and elsewhere, including the Canadian Related Entities, in which the Filer directly or indirectly holds at least 80% of the share capital or voting rights, provided that such related entities participate in the Ubisoft Group International Savings Plan ("**PEGI**").

6. The Employee Offering is reserved for employees of the Ubisoft Group who belong to the PEGI and have at least three month's seniority as determined by Ubisoft (the "**Qualifying Employees**").

7. Qualifying Employees will be invited to participate in the Employee Offering under the terms of the

2017 UBI FCPE Compartment, which is intended to provide Qualifying Employees with an opportunity to indirectly hold an investment in Shares.

8. Only participants in the Employee Offering are allowed to hold 2017 Units.

9. For purposes of the Employee Offering in Canada, there are currently approximately 3,808 Qualifying Employees resident in Canada, in the provinces of Québec (approximately 3,230), Ontario (approximately 531) and Nova Scotia (approximately 47). The Qualifying Employees residing in Canada represent approximately 34% of the Qualifying Employees worldwide.

10. Qualifying Employees will not be induced to participate in the Employee Offering by expectation of employment or continued employment. Participation in the Employee Offering is optional and voluntary. The total amount invested by a Qualifying Employee in the Employee Offering cannot exceed 2.5% of his or her 2017 estimated gross annual compensation. During the Acquisition/Withdrawal Period (as defined below), the ceiling will be reduced to 0.25% of the Qualifying Employee's 2017 estimated gross annual compensation.

11. Qualifying Employees can indicate their intent to subscribe for an amount under the Employee Offering and make a reservation by filling out a reservation form during a prescribed reservation period (the "**Reservation Period**"). After the expiration of the Reservation Period, the subscription price is set and the acquisition period and withdrawal period commences (the "**Acquisition/Withdrawal Period**"). During the Acquisition/Withdrawal Period, an employee who has made a reservation may withdraw his or her subscription of 2017 Units under the Employee Offering. However, an employee who has not made a reservation may still subscribe.

12. The 2017 UBI FCPE Compartment is a compartment of an FCPE, a collective shareholding vehicle of a type commonly used in France for investing in shares of an issuer by employee-investors. The 2017 UBI FCPE Compartment is established by the Manager and the Filer to facilitate the participation of Qualifying Employees in the Employee Offering and to simplify custodial arrangements for such participation.

13. Each UBI FCPE must be registered and approved by the French Autorité des marchés financiers ("**AMF France**") at the time of its creation.

14. The UBI FCPEs are not and do not intend on becoming reporting issuers under the securities legislation in any of the jurisdictions in Canada.

15. The Second FCPE is or will be an FCPE or FCPE compartment especially established by the Filer to invest in Shares. At the end of the Lock-Up Period (as defined below), Canadian Participants may, in lieu of a cash payment, elect to transfer the corresponding cash equivalent of the Initial Investment and the amount of the Performance (each as defined below) of their 2017 Units to the Second FCPE in exchange for Second FCPE Units (the "**Redemption Subscription**"). In the case that the Canadian Participants do not make any election, prior to its winding-up, the 2017 UBI FCPE Compartment will, under the default option, transfer the cash redemption value (the Initial Investment plus the amount of the Performance) of the 2017 Units to the Second FCPE to subscribe for, on behalf of the respective Canadian Participants, Second FCPE Units (the "**Default Windup Redemption**").

16. Pursuant to the Employee Offering, the 2017 UBI FCPE Compartment will invest in Shares.

17. The Employee Offering is comprised of an offering of 2017 Units, to fund the acquisition of Shares by the 2017 UBI FCPE Compartment, to be subscribed as follows:

    (a) Canadian Participants will subscribe for 2017 Units for an amount per 2017 Unit equivalent to the Purchase Price (as defined below) paid by the 2017 UBI FCPE Compartment to acquire Shares. The Employee Offering will have a minimum investment amount per Canadian Participant, i.e. EUR 50. Canadian Participants will acquire 2017 Units in Canadian dollars, with the exchange rate to be determined at the same time as the Purchase Price. The value of a 2017 Unit is tied to the market price of the Shares. The value of 2017 Units will be adjusted on the basis of the market price of the Shares and other assets (e.g., cash) held by the 2017 UBI FCPE Compartment, effective from the first date on which the net asset value is calculated and whenever Shares or other assets are contributed to the 2017 UBI FCPE Compartment, as applicable.

    (b) For each cash investment made by a Canadian Participant in the Employee Offering (the "**Employee's Personal Payment**"), the Filer will make a 300% cash contribution capped at an amount in Canadian dollars equivalent of EUR 900 net per Canadian Participant (the "**Ubisoft Contribution**", together with the Employee's Personal Payment, the "**Initial Investment**"). The net amount of the Ubisoft Contribution will be fully invested on behalf of the Canadian

Participant to acquire additional 2017 Units.

(c) The 2017 UBI FCPE Compartment will apply the cash received from (i) the Initial Investments and (ii) the Bank Upfront Payment (as defined below), to acquire Shares at the Purchase Price. The purchase price for a 2017 Unit will be equal to the Reference Price (as defined below), minus a 15% discount (the "**Discount**"), rounded up to the nearest euro cent (the "**Purchase Price**"). The reference price will be the volume weighted average prices (VWAP) of the Shares on the twenty days preceding the date on which the Filer's board of directors (or its Chief Executive Officer acting by delegation) determines the Employee Offering period as well as the Purchase Price (the "**Reference Price**").

(d) Pursuant to the operation of a five year swap agreement (the "**Swap**"), entered into between the 2017 UBI FCPE Compartment (represented by the Manager), and the Crédit Agricole CIB (the "**Bank**"), whereby on the day of settlement and delivery of the Shares, the Bank provides to the 2017 UBI FCPE Compartment a cash amount (the "**Bank Upfront Payment**") equal to nine times the sum of the Initial Investments, to be used by the 2017 UBI FCPE Compartment to acquire additional Shares from the Filer at the Purchase Price.

(e) Under the Swap, dividends and any other financial rights on the Shares received by the 2017 UBI FCPE Compartment during the five-year period will be paid by the 2017 UBI FCPE Compartment to the Bank as and when received. Canadian Participants will not receive additional 2017 Units on account of dividends paid on Shares held in the 2017 UBI FCPE Compartment.

(f) Canadian Participants will be subject to a five year lock-up period (the "**Lock-Up Period**") and will be prohibited from disposing of or requesting repurchase of 2017 Units during the Lock-Up Period unless one of the following cases of early release occurs with respect to the Canadian Participant: (i) disability; (ii) termination of the employment; or (iii) death (the "**Case of Early Release**").

(g) At the end of the Lock-Up Period, or earlier if a Case of Early Release occurs and a Canadian Participant requests the repurchase of his or her 2017 Units: (i) the 2017 UBI FCPE Compartment will sell the corresponding number of Shares on the Exchange (the "**Sale**") and pay the total proceeds from the Sale to the Bank; (ii) the Bank will pay to the 2017 UBI FCPE Compartment an amount corresponding to the sum of (a) the Initial Investment and (b) an amount equal to a multiple (under the Employee Offering, the multiple will be five) of the Protected Average Performance (as defined below) of the Shares corresponding to the employee's Initial Investment (the "**Performance**"); and (iii) the Canadian Participant will receive a cash amount equal to (a) the repayment of his or her Initial Investment, it being specified that only the euro amount of the Initial Investment is guaranteed and Canadian Participants will carry the risk of any fluctuations in the Canadian dollar/Euro exchange rate between the investment date and the date of redemption and (b) the amount of the Performance.

(h) The Protected Average Performance represents the difference between (i) the average reference price, i.e., the average of the monthly market reference prices of the Shares over a 60-month period (with the 60-month period scheduled to commence on July 28, 2017, subject to Bank confirmation) (the "**Average Reference Price**") and (ii) the Reference Price (the "**Protected Average Performance**"). The monthly market reference price is fixed on a pre-agreed business day of the month. The monthly market reference price shall be, for each month, the higher of (i) the market price of the Shares on that business day of the month in question and (ii) the Reference Price. If a Case of Early Release occurs and the Canadian Participant asks for the repurchase of his or her 2017 Units, in order to calculate the monthly market reference price for the remaining period between the month where the Case of Early Release occurs and the end of the 5 year period, the last monthly market reference price of the Shares for the month when the Case of Early Release occurs shall be used for the month of the Case of Early Release and every subsequent month up until the end of the 5 year period (to have 60 monthly market reference prices in order to determine the Average Reference Price).

(i) The Canadian Participant may, in lieu of a cash payment at the end of the Lock-Up Period, elect to transfer the

corresponding cash equivalent of the Initial Investment and the amount of the Performance of his or her 2017 Units to the Second FCPE in exchange for Second FCPE Units (i.e., the Redemption Subscription). The number of Second FCPE Units received will correspond to the Initial Investment and the amount of the Performance divided by the par value of the Second FCPE Units. The par value of a Second FCPE Unit will be based on the net assets of the Second FCPE divided by the number of Second FCPE Units outstanding. The Canadian Participant may redeem Second FCPE Units at any time, and upon redemption will only be entitled to the corresponding cash equivalent of the liquidation value of the Second FCPE Units (i.e., the market value of the assets within the Second FCPE divided by the number of Second FCPE Units). The investments made in the Second FCPE will not be guaranteed.

(j) The Units held by a Canadian Participant are not transferable, except on the redemption of the Units held by the Canadian Participant (as described in paragraph 17(i)). Canadian Participants are not entitled to Shares upon the redemption of Units at the end of the Lock-Up Period (or earlier in the Case of Early Release).

(k) The Units will not be listed on any stock exchange. The initial par value of a 2017 Unit will be equivalent to the Purchase Price. The value of the 2017 Units and the Second FCPE Units will be calculated and reported to the French AMF on a regular basis, based on the net assets of the respective UBI FCPE divided by the number of 2017 Units or the Second FCPE Units outstanding, as appropriate.

(l) The 2017 UBI FCPE Compartment will be wound up shortly after the expiry of the Lock-Up Period (the "**Wound Up FCPE**"), with Shares held by the Wound Up FCPE being sold (as described in paragraph 17(g) above) and the cash redemption value (the Initial Investment plus the amount of the Performance) of those 2017 Units not redeemed by Canadian Participants, being automatically transferred by the Wound Up FCPE to the Second FCPE to subscribe, on behalf of the respective Canadian Participants, for Second FCPE Units at the same value as set out in paragraph 17(i) (i.e., the Default Windup Redemption).

18. Shares issued under the Employee Offering will be deposited in the UBI FCPEs through a custodian (the "**Custodian**"). The Custodian will carry out orders to purchase and sell securities, and take all necessary action to allow the UBI FCPEs to exercise the rights relating to the Shares held. The Custodian must carry out its activities in accordance with French law. The current Custodian is CACEIS Bank, a large French commercial bank.

19. The UBI FCPEs are or will be established by the Manager and the Filer. The Manager will be a portfolio management company governed by the laws of France. The Manager will be registered with AMF France to manage French investment funds and will comply with the rules of AMF France. At present, the Manager of the 2017 UBI FCPE Compartment is Amundi Asset Management, a limited liability company registered in the *Paris Trade and Companies Register*. It is not and has no current intention of becoming a reporting issuer under the securities legislation in any of the jurisdictions of Canada, nor is it registered as an adviser or a dealer under the securities legislation in any of the jurisdictions of Canada. The Manager is not in default of securities legislation of any jurisdiction of Canada.

20. The Manager's portfolio management activities in connection with Employee Offering and the Redemption Subscription will be limited to acquiring Shares and selling such Shares as necessary in order to fund redemption requests. The Manager will be responsible for the daily operation of the UBI FCPEs and preparing the annual statement of the number, net asset value and the total value of Units each Canadian Participant holds in each of the UBI FCPEs (a "**Statement of Account**"). The Manager's activities will in no way affect the value of the Shares or the Units.

21. The management of the UBI FCPEs will be overseen by a separate supervisory board (the "**Supervisory Board**") comprised of employee unitholders and management representatives of the Filer. The Supervisory Board's duties will include, among other things, examining the UBI FCPEs' management reports and annual accounts and reviewing major changes with respect to the UBI FCPEs.

22. Administrative, accounting, audit, financial management and other expenses incurred by a UBI FCPE, including transaction fees relating to the acquisition and sale of Shares, will be borne by such UBI FCPE and paid from its assets.

23. Canadian Qualifying Employees will receive an information package in French or English which will include a summary of the terms of the Employee Offering and a description of Canadian

income tax consequences of subscribing for and holding 2017 Units and the redemption of 2017 Units at the end of the Lock-Up Period. The information package will also include a risk statement which will describe certain risks associated with an investment in 2017 Units.

24. Canadian Participants will not receive any dividends declared by the Filer on the Shares held by the UBI FCPEs. Furthermore, the French AMF expressly requires the Manager to state in the information package provided to Qualifying Employees that employees will not receive any dividends from the Shares held by the UBI FCPEs.

25. Qualifying Employees will have access, through the Filer's website, to the Filer's continuous disclosure furnished by the Filer to its shareholders generally.

26. A copy of the rules of the UBI SHARE OWNERSHIP FCPE (which are analogous to company by-laws) will be made available to Qualifying Employees when they receive their application to subscribe for Units of the 2017 UBI FCPE Compartment. A copy of the rules of the Second FCPE will be made available to Canadian Participants prior to the end of the Lock- Up Period (i.e., prior to when such Canadian Participants choose between the redemption of their 2017 Units for cash or for Second FCPE Units).

27. Each Canadian Participant will receive, at least annually, a Statement of Account.

28. There are no circumstances under which a Canadian Participant would be required to contribute amounts in addition to their Employee Personal Payment other than certain tax and social security amounts payable pursuant to the Employee Offering.

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

30. None of the Filer, the Manager, the Canadian Related Entities or any of their directors, officers, employees, agents or representatives will provide investment advice to the Qualifying Employees with respect to investments in the Units.

31. Each UBI FCPE will pay fees to the Manager to cover the cost of running the UBI FCPE. These fees are or will be disclosed in the information package provided to Qualifying Employees as well as in the rules (which are analogous to company by-laws) of the respective UBI FCPE.

32. The 2017 UBI FCPE Compartment may, through the Manager, cancel the Swap at any time provided that it is in the best interests of all the participants, including the Canadian Participants, to do so. If the 2017 UBI FCPE Compartment, through the Manager, cancels the Swap, Canadian Participants may, based on the market value of the Shares, receive an amount which is different (higher or lower) than the guaranteed amount to be paid at the end of the Lock-Up Period. In the event the Swap is cancelled and such actions are determined not to be in the best interests of the holders of Units, such holders have a right of action under French law against the Manager.

33. Any dividends paid on the Shares held in the Second FCPE will be paid to the Second FCPE and the Second FCPE may either retain the cash proceeds in the Second FCPE or use them to purchase additional Shares on the Exchange. If the Second FCPE retains the cash proceeds in the Second FCPE, the par value of the Second FCPE Units will increase accordingly. If the Second FCPE purchases additional Shares on the Exchange with the cash proceeds, the Second FCPE may (i) issue additional Second FCPE Units to Canadian Participants, in which case the par value of the Second FCPE Units will not be adjusted accordingly or (ii) not issue any additional Second FCPE Units to Canadian Participants, in which case the par value of the Second FCPE Units will be adjusted accordingly.

34. The 2017 UBI FCPE Compartment will hold no other securities aside from the Shares and cash-equivalents or money-market securities representing up to 10% of the value of the assets of the 2017 UBI FCPE Compartment to be used to pay redemption amounts pursuant to Cases of Early Release.

35. None of the Filer, the Ubisoft Group or the UBI FCPEs are in default of any securities legislation of 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 Exemptive Relief Sought is granted.

"Lucie J. Roy"
Senior Director, Corporate Finance

2.1.12 LOGiQ Asset Management Ltd. and Canadian 50 Advantaged Preferred Share Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – investment fund manager obtaining relief from the requirement to obtain the approval of securityholders before changing the fundamental investment objective of the fund – relief required as a result of changes to federal budget eliminating certain tax benefits associated with character conversion transactions – Filer required to send written notice at least 30 days before the effective date of the change to the investment objective of the fund setting out the change, the reasons for such change and a statement that the fund will no longer distribute gains under forward contracts that are treated as capital gains for tax purposes – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.1(1)(c), 19.1

May 5, 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
LOGiQ ASSET MANAGEMENT LTD.
(the Filer)

AND

IN THE MATTER OF
CANADIAN 50 ADVANTAGED PREFERRED SHARE FUND
(the Fund)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Fund for a decision under the securities legislation of the Jurisdiction (the **Legislation**) exempting the Fund from the requirements in section 5.1(1)(c) of National Instrument 81 102 – *Investment Funds* (**NI 81-102**) to obtain the approval of securityholders before changing the fundamental investment objectives of the Fund (the **Requested Relief**).

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

1. the Ontario Securities Commission is the principal regulator for this application; and

2. 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 (collectively 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:

1. The Filer is the portfolio adviser and manager of the Fund. The Filer is registered as a portfolio manager and an exempt market dealer under applicable securities legislation in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario and Quebec. It is also registered as an investment fund manager under the *Securities Act* (Newfoundland and Labrador), the *Securities Act* (Ontario) and *Securities Act* (Quebec). The head office of the Filer is located at 77 King Street West, Suite 2110, Toronto, Ontario M5K 1G8.

2. The Fund is an investment trust established under the laws of the Province of Ontario pursuant to a declaration of trust.

3. Neither the Filer nor the Fund is in default of securities legislation in any jurisdiction.

4. The Fund is a non-redeemable investment fund. Its units were qualified for distribution pursuant to a prospectus dated April 24, 2012, that was prepared and filed in accordance with the securities legislation of the Jurisdictions. Accordingly, the Fund is a reporting issuer or the equivalent in each Jurisdiction. The units of the Fund are listed and posted for trading on the Toronto Stock Exchange (the **TSX**).

5. The current investment objectives of the Fund are to provide tax-advantaged quarterly cash distributions consisting primarily of returns of capital and low-cost exposure to the total return approximating that of the BMO Capital Markets 50 Preferred Share Index (the **Portfolio**). The Fund gains exposure to the returns of the securities of

the Portfolio by entering into forward contracts (the **Forward Agreement**) under which the Fund provides tax-advantaged distributions to security-holders because the Fund realizes capital gains (or capital losses) on the disposition of securities acquired under the Forward Agreement rather than ordinary income (the **Character Conversion Transactions**).

6. The Portfolio is managed by BMO Asset Management Inc. (the **Portfolio Manager**).

7. The *Income Tax Act* (Canada) was amended in December 2013 to implement proposals that were first announced in the March 21, 2013 federal budget regarding the income tax treatment of character conversion transactions (the **Tax Changes**). The Tax Changes apply to Character Conversion Transactions entered into or amended after March 20, 2013.

8. In response to the Tax Changes, it was anticipated that the Forward Agreement would no longer be able to, over the long term, provide material tax efficiency to securityholders of the Fund. A press release was issued on March 27, 2013, notifying securityholders of the Tax Changes and of the expiry date of the Forward Agreement. Further to the March 27, 2013 press release, the Filer wishes to change the fundamental investment objectives of the Fund (the **Objective Changes**), and has determined that, upon expiry and termination of the Forward Agreement, the Fund will own its portfolio of investments directly rather than gaining exposure to the Portfolio through the Forward Agreement.

9. The Portfolio Manager has agreed to act as portfolio manager of the Fund after the Effective Date.

10. The Forward Agreement with respect to the Fund is expected to expire and terminate on May 18, 2017. The existing investment objectives of the Fund are expected to continue in effect until on or about May 18, 2017 and the Objective Changes will take effect as soon as reasonably practicable thereafter (the **Effective Date**).

11. The Filer has determined that, as a result of the Tax Changes, it would be more efficient and less costly for the Fund to seek to achieve its fundamental investment objectives after the Effective Date by investing its assets directly in the same, or substantially the same, assets as those held by the Portfolio.

12. The Filer wishes to effect a change (the **Change**) to the fundamental investment objectives of the Fund to delete references to "tax-advantaged" and to clarify that the Fund will invest directly in securities similar to those held by the Portfolio.

13. Following such a Change, the revised investment objectives of the Fund will be to provide:

    (i) quarterly cash distributions; and

    (ii) exposure to the total return approximating that of the BMO Capital Markets 50 Preferred Share Index.

14. The Filer has complied with the material change report requirements set out in Part 11 of National Instrument 81-106 – *Investment Fund Continuous Disclosure* in connection with the Filer's decision to make the changes to the investment objectives of the Fund set out above.

15. The Fund will issue a press release before the effective date of the Objective Changes that sets out the revised investment objective, the reasons for changing the fundamental investment objective, and a statement that the Fund will no longer distribute gains under forward contracts that are treated as capital gains for tax purposes.

16. The Filer has determined that it would be in the best interests of the Fund and not prejudicial to the public interest to receive the Requested Relief.

Decision

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that, at least 30 days before the effective date of the change in the investment objectives of the Fund, the Filer will send to each securityholder of the Fund a written notice that sets out the change to the investment objective, the reasons for such change and a statement that the Fund will no longer distribute gains under forward contracts that are treated as capital gains for tax purposes.

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

2.1.13 Canada Jetlines Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

National Instrument 62-104, Part 6 Take-Over Bids – Exemption from the formal take-over bid requirements – An issuer wants relief so that the take-over bid thresholds are calculated based on the aggregate number of securities outstanding, rather than for each class of securities – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of securities are freely tradeable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the security holder's Canadian or non-Canadian status; security holders will calculate their ownership position by combining the outstanding classes of securities for the purposes of determining whether take-over bid requirements are triggered

National Instrument 62-104, Part 6 Take-Over Bids – Early warning relief – An issuer wants relief so that the early warning thresholds are calculated based on the aggregate number of securities outstanding, rather than for each class of securities – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of securities are freely tradeable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the security holder's Canadian or non-Canadian status; security holders will calculate their ownership position by combining the outstanding classes of securities for the purposes of determining whether early warning requirements are triggered

National Instrument 62-104, Part 6 Take-Over Bids – Exemption from the formal take-over bid requirements – News release relief – An issuer wants relief so that the threshold triggering the requirement for an acquiror to file a news release during a take-over bid or an issuer bid is calculated based on the aggregate number of securities outstanding, rather than for each class of securities – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of securities are freely tradeable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the security holder's Canadian or non-Canadian status; acquirors will calculate their ownership position by combining the outstanding classes of securities for the purposes of determining whether the requirement to file a news release during a take-over bid or issuer bid is triggered

National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, s. 11.1 – Alternative reporting relief – An issuer wants relief so that an eligible institutional investor subject to early warning requirements may rely on alternative eligibility criteria from those in section 4.5 of NI 62-103 in order to benefit from the exemption contained in section 4.1 of NI 62-103 – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of securities are freely tradeable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the security holder's Canadian or non-Canadian status; eligible institutional investors will calculate their ownership position by combining the outstanding classes of securities for the purposes of determining whether they are eligible for the reporting exemption in s. 4.1 of NI 62-103

National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1 – Continuous disclosure relief – An issuer wants relief so that it can provide disclosure on significant security holders in its information circular on a combined basis, rather than for each class of securities – The issuer is subject to foreign ownership restrictions in its governing federal legislation; the issuer implemented a dual class share structure solely for compliance with foreign ownership restrictions in the aviation industry; both classes of securities are freely tradeable, have identical economic attributes and are automatically and mandatorily inter-convertible based on the security holder's Canadian or non-Canadian status; the issuer will provide disclosure on holders of its voting securities on a combined basis in its information circular

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2, ss. 5.2, 5.4, 6.1.
National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues, ss. 4.1, 4.5, 11.1.
National Instrument 51-102 Continuous Disclosure Obligations, s. 13.1.

May 8, 2017

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

AND

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

AND

IN THE MATTER OF
CANADA JETLINES LTD.
(the Filer)

DECISION

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (each a Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) that:

(a) an offeror that makes an offer to acquire outstanding variable voting shares of the Filer (Variable Voting Shares) or outstanding common shares of the Filer (Common Shares, and collectively with the Variable Voting Shares, the Shares), which would constitute a take-over bid under the Legislation as a result of the securities subject to the offer to acquire, together with the offeror's securities of that class, constituting in the aggregate 20% or more of the outstanding Variable Voting Shares or Common Shares, as the case may be, at the date of the offer to acquire, be exempted under section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (NI 62-104) from the take-over bid requirements contained in NI 62-104 (the TOB Rules) (the TOB Relief);

(b) an acquiror who acquires beneficial ownership of, or the power to exercise control or direction over, Variable Voting Shares or Common Shares, or securities convertible into such shares, that, together with the acquiror's securities of that class, would constitute 10% or more of the outstanding Variable Voting Shares or Common Shares, as the case may be, be exempted from the early warning requirements contained in the Legislation (the Early Warning Relief);

(c) an acquiror who acquires, during a take-over bid or an issuer bid, beneficial ownership of, or the power to exercise control or direction over, Variable Voting Shares or Common Shares, or securities convertible into such shares, that, together with the acquiror's securities of that class, would constitute 5% or more of the outstanding Variable Voting Shares or Common Shares, as the case may be, be exempted from the requirement in section 5.4 of NI 62-104 to issue and file a news release (the News Release Relief);

(d) an eligible institutional investor subject to the early warning requirements of the Legislation be entitled to rely on alternative eligibility criteria from those in section 4.5 of National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* (NI 62-103) in order to benefit from the exemption contained in section 4.1 of NI 62-103 (the Alternative Monthly Reporting Criteria); and

(e) the Filer be entitled to rely on alternative disclosure requirements from those in Item 6.5 of Form 51-102F5 *Information Circular* (Form 51-102F5) of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) (the Alternative Disclosure Requirements and, collectively with the TOB Relief, the Early Warning Relief, the News Release Relief and the Alternative Monthly Reporting Criteria, the Exemption Sought).

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

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

(b) the 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, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Northwest Territories and the Yukon, and

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

Interpretation

2 Terms defined in National Instrument 14-101 *Definitions*, NI 62-103, NI 62-104 or MI 11-102, including without limitation, "offeror", "offeror's securities", "offer to acquire", "acquiror", "acquiror's securities", "early warning requirements", "eligible institutional investor", and "securityholding percentage", have the same meaning if used in this decision, unless otherwise defined herein. For the purposes of this decision, the terms below have the following meanings:

"Canadian" has the meaning ascribed to that term in the CTA;

"CTA" means *Canada Transportation Act*; and

"TSXV" means the TSX Venture Exchange.

Representations

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

1. the Filer is a corporation governed by the *Canada Business Corporations Act*;

2. the head office of the Filer is located in Richmond, British Columbia;

3. the Filer is a reporting issuer in all of the provinces and territories of Canada, except for Québec and Nunavut, and is not in default of any requirement of the securities legislation in any of these jurisdictions or the policies of the TSXV;

4. Canada Jetlines Operations Ltd. (CJL Operations), a wholly-owned subsidiary of the Filer, has applied to the Canada Transportation Agency for a domestic license (as defined in the CTA) for the purposes of operating an ultra-low cost carrier airline;

5. CJL Operations is subject to the requirements of the CTA; the CTA requires that air carriers which provide domestic services be controlled in fact by Canadians, and prohibits non-Canadians from holding or controlling more than 25% of the voting interests of a licensed domestic carrier;

6. the Filer and CJL Operations requested and received, on December 2, 2016, an order (the Exemption Order) exempting CJL Operations from the requirement to be Canadian in order to be issued a license to operate and to conduct a domestic air service, provided that:

   (a) at all times, at least 51% of the voting interest of CJL Operations are owned by Canadians;

   (b) no single foreign investor or its affiliates owns more than a 25% voting interest in CJL Operations;

   (c) no non-Canadian air carrier or its affiliates owns more than a 25% voting interest in CJL Operations;

   (d) at all times CJL Operations is controlled in fact by Canadians; and

   (e) at the end of the term of the Exemption Order, CJL Operations conforms to the legislative framework regarding the ownership of Canadian air carriers then in effect;

7. unless rescinded, the Exemption Order expires on December 1, 2021;

8. the foreign ownership rules in the CTA apply equally to the Filer, as the parent company of CJL Operations; accordingly, voting control of the Filer must be in compliance with the terms of the Exemption Order which would restrict non-Canadian voting interest in the Filer to 49%, subject to the conditions noted in paragraph 6;

9. the authorized share capital of the Filer is comprised of an unlimited number of Variable Voting Shares and an unlimited number of Common Shares; as of March 31, 2017; there were 57,636,409 Shares outstanding, of which 7,694,694 (or approximately 13.4%) were Variable Voting Shares and 49,941,715 (or approximately 86.6%) were Common Shares;

10. the Common Shares may only be held, beneficially owned or controlled, directly or indirectly, by Canadians; an outstanding Common Share is converted into one Variable Voting Share, automatically and without any further act of the Filer or the holder, if such Common Share becomes held, beneficially owned or controlled, directly or indirectly, by a person who is not a Canadian;

11. the Variable Voting Shares may only be held, beneficially owned or controlled, directly or indirectly, by persons who are not Canadians; an outstanding Variable Voting Share is converted into one Common Share, automatically and without any further act of the Filer or the holder, if such Variable Voting Share becomes held, beneficially owned or controlled, directly or indirectly, by a Canadian;

12. each Common Share confers the right to one vote; for the term of the Exemption Order, each Variable Voting Share confers the right to one vote unless: (i) the number of Variable Voting Shares outstanding, as a percentage of the total number of all Shares of the Filer outstanding exceeds 49%, or (ii) the total number of votes cast by holders of Variable Voting Shares at any meeting exceeds 49% of the total number of votes that may be cast at such meeting; if either of these thresholds would otherwise be surpassed at any time, the vote attached to each Variable Voting Share decreases proportionately such that: (i) the Variable Voting Shares as a class do not carry more than 49% of the aggregate votes attached to all outstanding Shares of the Filer, and (ii) the total number of votes cast by holders of Variable Voting Shares at any meeting do not exceed 49% of the total number of votes that may be cast at such meeting; after the expiration of the Exemption Order, references to “49%” in the foregoing are to be read as “25%” (or any higher percentage that the Governor in Council may specify under the CTA);

13. aside from the differences in voting rights stated above, the Variable Voting Shares and Common Shares are the same in all other respects, including the right to receive dividends and the right to receive the property and assets of the Filer in the event of dissolution, liquidation or winding up of the Filer;

14. the articles of the Filer contain coattail provisions under which Variable Voting Shares may be converted into Common Shares if an offer is made to purchase Common Shares and the offer is one which is required to be made to all or substantially all the holders of Common Shares; similar coattail provisions are contained in the terms of the Common Shares and provide for the conversion of Common Shares into Variable Voting Shares if an offer is made to purchase Variable Voting Shares and the offer is one which is required to be made to all or substantially all the holders of Variable Voting Shares; since these coattail provisions currently do not specify the threshold at which the offer is required to be made to all the holders of a class of Shares, they do not need to be amended as a result of the decision to grant the Exemption Sought;

15. the Variable Voting Shares and the Common Shares are both listed for trading on the TSXV under the same ticker symbol, “JET”;

16. the Filer’s dual class structure was implemented solely to ensure compliance with the requirements of the CTA;

17. an investor does not control or choose which class of Shares it acquires and holds; there are no unique features of either class of Shares which an existing or potential investor can choose to acquire, exercise or dispose of; the class of Shares ultimately available to an investor is solely a function of the investor’s Canadian or non-Canadian status; moreover, if after having acquired Shares, a holder’s Canadian or non-Canadian status changes, the Shares will convert accordingly and automatically;

18. the Variable Voting Shares are not considered “restricted voting securities” for the purposes of the Legislation; and

19. the TOB Rules and early warning requirements apply to the acquisition of securities of a class; due to the significantly smaller public float of Variable Voting Shares (compared to the public float of Common Shares), it is more difficult for non-Canadian investors to acquire Shares in the ordinary course without the apprehension of inadvertently triggering the TOB Rules and early warning requirements; aggregating Variable Voting Shares and Common Shares for the purpose of the TOB Rules and early warning requirements would facilitate investment in Variable Voting Shares.

Decision

4 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) the Filer publicly discloses the terms of the Exemption Sought in a news release filed on SEDAR promptly following the issuance of this decision document;

(b) the Filer discloses the terms and conditions of the Exemption Sought in all of its annual information forms and management proxy circulars filed on SEDAR following the issuance of this decision document;

(c) with respect only to the TOB Relief, the Variable Voting Shares or Common Shares, as the case may be, subject to the offer to acquire of an offeror, together with the Variable Voting Shares and Common Shares beneficially owned, or over which control or direction is exercised, on the date of the offer to acquire, by the offeror or by any person acting jointly or in concert with the offeror, would not constitute, at the date of the offer to acquire, in the aggregate 20% or more of the outstanding Variable Voting Shares and Common Shares on a combined basis;

(d) with respect only to the Early Warning Relief, the Variable Voting Shares or Common Shares, or securities convertible into such shares, as the case may be, over which the acquiror acquires beneficial ownership of, or the power to exercise control or direction over, together with the securities of the Filer beneficially owned, or over which control or direction is exercised, by the acquiror or any person acting jointly or in concert with the acquiror, would not constitute 10% or more of the outstanding Variable Voting Shares and Common Shares on a combined basis;

(e) with respect only to the News Release Relief, the Variable Voting Shares or Common Shares, or securities convertible into such shares, as the case may be, over which the acquiror acquires beneficial ownership of, or the power to exercise control or direction over, together with the securities of the Filer beneficially owned, or over which control or direction is exercised, by the acquiror or any person acting jointly or in concert with the acquiror, would not constitute 5% or more of the outstanding Variable Voting Shares and Common Shares on a combined basis;

(f) with respect only to the Alternative Monthly Reporting Criteria, the eligible institutional investor will meet any of the eligibility criteria contained in section 4.5 of NI 62-103 by calculating its securityholding percentage using (i) a denominator comprised of all of the outstanding Variable Voting Shares and Common Shares on a combined basis, and (ii) a numerator including all of the Variable Voting Shares and Common Shares, as the case may be, beneficially owned or over which control or direction is exercised by the eligible institutional investor; and

(g) with respect only to the Alternative Disclosure Requirements, the Filer will meet the disclosure requirements contained in Item 6.5 of Form 51-102F5 by calculating the securityholding percentage using (i) a denominator comprised of all of the outstanding Variable Voting Shares and Common Shares on a combined basis, and (ii) a numerator including all of the Variable Voting Shares and Common Shares, as the case may be, beneficially owned, or over which control or direction is exercised, directly or indirectly, by any person who, to the knowledge of the Filer's directors or executive officers, beneficially owns, controls or directs, directly or indirectly, voting securities carrying 10% or more of the voting rights attached to the outstanding Variable Voting Shares and Common Shares on a combined basis.

"Nigel P. Cave"
Vice Chair
British Columbia Securities Commission

2.2 Orders

2.2.1 Luna Gold Corp.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceases to be a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

April 28, 2017

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

AND

IN THE MATTER OF
THE PROCESS FOR CEASE TO BE
A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
LUNA GOLD CORP.
(the Filer)

ORDER

Background

1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Makers) has received an application from the Filer for an order under the securities legislation of the Jurisdictions (the Legislation) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the Order Sought).

Under the Process for Cease to be a Reporting Issuer Applications (for a dual application):

(a) the British Columbia Securities Commission is the principal regulator for this application,

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, and

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

Interpretation

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

Representations

3 This order is based on the following facts represented by the Filer:

1. the Filer is a corporation incorporated under the *Canada Business Corporations Act*;

2. the Filer's authorized share capital consists of an unlimited number of common shares (Common Shares);

3. there are 43,842,642 Common Shares issued and outstanding, all of which are owned by Trek Mining Inc. (formerly JDL Gold Corp.);

4. on March 31, 2017 all of the Common Shares of the Filer were acquired by JDL Gold Corp., which was renamed Trek Mining Inc. (Trek), by way of a plan of arrangement (the Arrangement) under the *Canada Business Corporations Act* in exchange for 1.105 Trek common shares for each Common Share;

5. the Filer has no securities issued and outstanding other than as set out in paragraph 3;

6. the Common Shares were delisted from the Toronto Stock Exchange on April 4, 2017;

7. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

8. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

9. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

10. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer;

11. the Filer is not in default of securities legislation in any jurisdiction, other than an obligation (arising after the Arrangement) to file on or before March 31, 2017 its annual information form, its annual financial statements and its management discussion and analysis in respect of such statements for the year ended December 31, 2016, as required under National Instrument 51-102 *Continuous Disclosure Obligations* and the related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuer's Annual and Interim Filings* (collectively, the Filings); and

12. the Filer is not eligible to use the simplified procedure under National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it is in default for failure to file the Filings.

Order

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

The decision of the Decision Makers under the Legislation is that the Order Sought is granted.

"Peter Brady"
Executive Director
British Columbia Securities Commission

2.2.2 Benedict Cheng et al.

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

AND

**IN THE MATTER OF
BENEDICT CHENG,
FRANK SOAVE,
JOHN DAVID ROTHSTEIN and
ERIC TREMBLAY**

ORDER

Mark J. Sandler, Chair of the Panel

May 4, 2017

WHEREAS on May 4, 2017, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario.

ON HEARING the submissions of the representatives for Staff of the Commission and Benedict Cheng, Frank Soave and Eric Tremblay, no one appearing for John David Rothstein, having settled the allegations against him in respect of this proceeding;

IT IS ORDERED THAT the hearing is adjourned until September 11, 2017, at 10:00 a.m., or such other date and time as provided by the Office of the Secretary and agreed to by the parties.

"Mark J. Sandler"

2.2.3 Home Capital Group Inc. et al.

**IN THE MATTER OF
HOME CAPITAL GROUP INC.,
GERALD SOLOWAY,
ROBERT MORTON and
MARTIN REID**

ORDER

Janet A. Leiper, Commissioner

May 4, 2017

WHEREAS on May 4, 2017, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of the representative for all parties;

IT IS ORDERED THAT:

1. This matter is adjourned to June 2, 2017 at 2:00 p.m.

"Janet Leiper"

2.2.4 Edward Furtak et al. – ss. 127, 127.1

**IN THE MATTER OF
EDWARD FURTAK,
AXTON 2010 FINANCE CORP.,
STRICT TRADING LIMITED,
RONALD OLSTHOORN,
TRAFALGAR ASSOCIATES LIMITED,
LORNE ALLEN AND
STRICTRADE MARKETING INC.**

**ORDER
(Sections 127 and 127.1 of the
Securities Act, RSO 1990, c S.5)**

**Janet Leiper, Chair of the Panel
D. Grant Vingoe, Vice-Chair
AnneMarie Ryan, Commissioner**

May 4, 2017

WHEREAS on January 30, 2017 and March 2 and 3, 2017, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, to determine whether it is in the public interest to impose sanctions and costs in respect of Edward Furtak (**Furtak**), Axton 2010 Finance Corp. (**Axton**), Strict Trading Limited (**STL**), Ronald Olsthoorn (**Olsthroon**), Trafalgar Associates Limited (**TAL**), Lorne Allen (**Allen**) and Strictrade Marketing Inc. (**SMI**) (collectively, the **Respondents**).

ON READING the written submissions and on hearing the oral submissions of the representatives for Staff and the Respondents;

IT IS ORDERED THAT:

1. with respect to Furtak, Axton and STL:

   a. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), each of Furtak, Axton and STL shall cease trading in and acquiring securities for 10 years, with the exception that Furtak may trade and acquire securities for his RRSP accounts after the administrative penalty at subparagraph 1(e) and disgorgements at subparagraphs 1(f), 3(f) and 5(f) ordered against him below are paid in full;

   b. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of Furtak, Axton and STL for 10 years;

   c. pursuant to paragraph 6 of subsection 127(1) of the Act, each of Furtak, Axton and STL is reprimanded;

   d. pursuant to paragraph 8.5 of subsection 127(1) of the Act, each of Furtak, Axton and STL is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for 10 years;

   e. pursuant to paragraph 9 of subsection 127(1) of the Act, Furtak, Axton and STL shall jointly and severally pay to the Commission an administrative penalty of $75,000, which amount shall be designated for allocation or use by the Commission in accordance with sub-section 3.4(2) of the Act;

   f. pursuant to paragraph 10 of subsection 127(1) of the Act, Furtak, Axton and STL shall jointly and severally disgorge to the Commission $180,298.66, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

   g. pursuant to section 127.1 of the Act, Furtak, Axton and STL shall jointly and severally pay $186,013.77 in respect of part of the costs of the Commission's investigation and hearings;

2. with respect to Furtak:

   a. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Furtak shall resign any position he holds as a director or officer of an issuer, registrant or investment fund manager; and

   b. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Furtak is prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager for 10 years;

3. with respect to Olsthoorn and TAL:

   a. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, each of Olsthoorn and TAL shall cease trading in and acquiring securities for 8 years, with the exception that Olsthoorn may trade and acquire securities for his RRSP accounts after the administrative penalty at subparagraph 3(e) and disgorgement at subparagraph 3(f) ordered against him below are paid in full;

   b. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of Olsthoorn and TAL for 8 years;

c. pursuant to paragraph 6 of subsection 127(1) of the Act, each of Olsthoorn and TAL is reprimanded;

d. pursuant to paragraph 8.5 of subsection 127(1) of the Act, each of Olsthoorn and TAL is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for 8 years;

e. pursuant to paragraph 9 of subsection 127(1) of the Act, Olsthoorn and TAL shall jointly and severally pay to the Commission an administrative penalty of $35,000, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2) of the Act;

f. pursuant to paragraph 10 of subsection 127(1) of the Act, Olsthoorn and TAL shall, on a joint and several basis with Furtak, Axton and STL, disgorge to the Commission $14,415, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

g. pursuant to section 127.1 of the Act, Olsthoorn and TAL shall jointly and severally pay $139,510.33 in respect of part of the costs of the Commission's investigation and hearings;

4. with respect to Olsthoorn:

a. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Olsthoorn shall resign any position he holds as a director or officer of an issuer, registrant or investment fund manager; and

b. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Olsthoorn is prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager for 8 years;

5. with respect to Allen and SMI:

a. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, each of Allen and SMI shall cease trading in and acquiring securities for 6 years, with the exception that Allen may trade and acquire securities for his RRSP accounts after the administrative penalty at subparagraph 5(e) and disgorgement at subparagraph 5(f) ordered against him below are paid in full;

b. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of Allen and SMI for 6 years;

c. pursuant to paragraph 6 of subsection 127(1) of the Act, each of Allen and SMI is reprimanded;

d. pursuant to paragraph 8.5 of subsection 127(1) of the Act, each of Allen and SMI is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for 6 years;

e. pursuant to paragraph 9 of subsection 127(1) of the Act, Allen and SMI shall jointly and severally pay to the Commission an administrative penalty of $25,000, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2) of the Act;

f. pursuant to paragraph 10 of subsection 127(1) of the Act, Allen and SMI shall, on a joint and several basis with Furtak, Axton and STL, disgorge to the Commission $21,825, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

g. pursuant to section 127.1 of the Act, Allen and SMI shall jointly and severally pay $139,510.33 in respect of part of the costs of the Commission's investigation and hearings;

6. with respect to Allen:

a. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Allen shall resign any position he holds as a director or officer of an issuer, registrant or investment fund manager; and

b. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Allen is prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager for 6 years.

"Janet Leiper"

"D. Grant Vingoe"

"AnneMarie Ryan"

2.2.5 Augustine Ventures Inc. – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 1(6).

IN THE MATTER OF
THE BUSINESS CORPORATIONS ACT (ONTARIO),
R.S.O. 1990, C. B.16, AS AMENDED
(the OBCA)

AND

IN THE MATTER OF
AUGUSTINE VENTURES INC.
(the APPLICANT)

ORDER
(Subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the Commission) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant representing to the Commission that:

1. The Applicant is an "offering corporation" as defined in the OBCA, and has an authorized capital consisting of an unlimited number of common shares (the **Common Shares**).

2. The head office of Applicant is located at 1001-145 Wellington Street West, Toronto, Ontario, M5J 1H8.

3. On February 3, 2017, Red Pine Exploration Inc. (**Red Pine**) acquired all of the issued and outstanding Common Shares pursuant to a plan of arrangement under the OBCA (the **Arrangement**). As a result, Red Pine became the sole holder of all of the Common Shares.

4. The Arrangement was approved by shareholders of the Applicant at the annual and special meeting of shareholders of the Applicant held on January 20, 2017.

5. The Arrangement was approved by the Ontario Superior Court of Justice (Commercial List) on February 1, 2017.

6. As of the date of this decision, all of the outstanding securities of the Applicant, including debt securities, are beneficially owned, directly or indirectly, by a sole securityholder, Red Pine.

7. The Common Shares have been de-listed from the Canadian Securities Exchange, effective as of the close of trading on February 6, 2017.

8. No securities of the Applicant, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported.

9. The Applicant applied to the Commission, as principal regulator on behalf of the securities regulatory authorities in the provinces of Ontario, Alberta and Nova Scotia (collectively, the **Jurisdictions**), for a decision that the Applicant is not a reporting issuer in the Jurisdictions in accordance with the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (the **Order**). The Order was granted on March 24, 2017.

10. The Applicant is not a reporting issuer in any jurisdiction of Canada.

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

12. The Applicant has no intention to seek public financing by way of an offering of securities.

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

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA that the Applicant be deemed to have ceased to be offering its securities to the public for the purpose of the OBCA.

DATED at Toronto on this 24th day of March, 2017.

"Philip Anisman"
Commissioner
Ontario Securities Commission

"Ann Marie Ryan"
Commissioner
Ontario Securities Commission

Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 Issam El-Bouji et al.

IN THE MATTER OF
ISSAM EL-BOUJI,
GLOBAL RESP CORPORATION,
GLOBAL GROWTH ASSETS INC.,
GLOBAL EDUCATION TRUST FOUNDATION and
MARGARET SINGH

REASONS AND DECISION ON A MOTION FOR DIRECTIONS AND OTHER RELIEF

Hearing:	April 25 and 27, 2017		
Decision:	May 2, 2017		
Panel:	Timothy Moseley	–	Commissioner and Chair of the Panel
Appearances:	Kevin Richard	–	For the moving parties Global RESP Corporation and Global Growth Assets Inc.
	Michelle Vaillancourt Thomas Ng (Student-at-Law)	–	For Staff of the Commission

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REASONS AND DECISION

I. INTRODUCTION

[1] After a proceeding has ended, does the Commission retain jurisdiction to give directions to the parties or to grant other relief? If so, under what circumstances, and do those circumstances apply in this case?

[2] This is a motion brought by two parties, Global RESP Corporation and Global Growth Assets Inc. who were respondents in an Enforcement proceeding. They settled that proceeding with Staff of the Commission in 2014 (the "**2014 Proceeding**"). The Commission issued an order (the "**2014 Order**"),[1] in which the Commission, among other things:

a. permanently suspended Issam El-Bouji ("**Mr. Bouji**"), who was also a respondent in the 2014 Proceeding, as the Ultimate Designated Person ("**UDP**") of the moving parties Global RESP Corporation and Global Growth Assets Inc., both of which firms are registered with the Commission;

[1] (2014), 37 OSCB 4112.

b. required the two firms to appoint a new independent CEO and UDP to replace Mr. Bouji; and

c. prohibited Mr. Bouji, for nine years, from becoming or acting as a director or officer of, among other things, a registrant and an investment fund manager.

[3] As required by the 2014 Order, the two firms appointed a new and independent CEO and UDP. That individual plans to step down soon. Mr. Bouji's daughter, who is a registrant, has applied to the Commission to amend her registration to allow her to take over the role of UDP. Staff opposes her application, and in telling Ms. Bouji why, Staff referred to the 2014 Order. Staff says that until the end of the nine-year prohibition against Mr. Bouji, any new UDP must be independent, at least while Mr. Bouji continues to play an active role in the firms. Ms. Bouji is not independent.

[4] The moving parties disagree with Staff about the Order's effect. They ask the Commission:

a. for directions about the Order; specifically, confirmation that the 2014 Order does not require that any UDP appointed after Mr. Bouji's successor, and before the expiry of the nine-year period applicable to Mr. Bouji, be independent; and

b. to order the Commission's Director to amend Ms. Bouji's registration as requested.

[5] Staff submits that the Commission does not have jurisdiction to consider this motion, because the 2014 Proceeding has concluded. Staff says that the proper place and time for Ms. Bouji to argue that Staff is improperly interpreting or applying the 2014 Order is in a hearing before the Director regarding her application for registration.

[6] The hearing of this motion was limited to the question of jurisdiction. At the end of the hearing, I advised that I was dismissing the motion, with reasons to follow. These are my reasons, which relate only to the question of jurisdiction and not to the merits of the motion.

[7] As I explain below, I conclude that as soon as the 2014 Proceeding ended, so did the Commission's jurisdiction regarding that proceeding, with limited exceptions that do not apply in this case.

II. ANALYSIS

A. Introduction

[8] Staff's objection raises three issues:

a. After a proceeding has ended, does the Commission retain any jurisdiction?

b. If so, does that jurisdiction provide a basis for the Commission to hear this motion for directions?

c. Does the Commission have jurisdiction to require the Director to grant Ms. Bouji's application for registration?

[9] I will deal with each issue in turn.

B. After a proceeding has ended, does the Commission retain any jurisdiction?

[10] I must first determine whether the Commission has jurisdiction with respect to a matter once the matter has ended. The moving parties submit that a tribunal has jurisdiction forever to give directions about a previous order, even if the tribunal does not provide for that in the order. I do not accept that submission. For the following reasons, I conclude that once a matter has ended, the tribunal has no further jurisdiction, subject to limited exceptions.

[11] Unlike superior courts, the Commission has no inherent jurisdiction. The Commission possesses only those powers that the legislature grants it.[2] Virtually all of those powers are found in the *Securities Act* (the "***Act***"),[3] which is the Commission's enabling statute. Other powers may be found in the *Statutory Powers Procedure Act*,[4] which applies to tribunals generally.

[12] Normally, a tribunal loses jurisdiction at the end of a proceeding. This principle, often known by the Latin term *functus officio*, means among other things that except in limited circumstances, parties cannot return to the tribunal asking for

2 *Tranchemontagne v Ontario (Director, Disability Support Program)*, 2006 SCC 14 (CanLII) at para 16.

3 RSO 1990, c S.5.

4 RSO 1990, c S.22 ("***SPPA***").

supplementary reasons. The principle promotes the expeditious resolution of disputes, the finality of proceedings, certainty for those affected by the tribunal's decisions, and conservation of adjudicative resources.[5]

[13] Sometimes at the end of a proceeding the tribunal will issue an order that expressly reserves jurisdiction for the tribunal after the order is issued. A common purpose of doing this is to enable parties to ask the tribunal for directions if the parties have any difficulty implementing the order. Such provisions have their own limitations, which I need not consider, because the 2014 Order did not have one.

[14] In some instances, a tribunal's jurisdiction is based on its power to determine its own procedures and practices.[6] However, that power "does not extend to post-judgment jurisdiction" and does not include an ability to "clarify previous decisions".[7]

[15] Because neither the Commission's general powers nor the terms of the 2014 Order confer authority on the Commission to give the directions that the moving parties seek, any authority to make a further decision regarding the proceeding must either:

a. arise because the parties seek to remedy a slip or error present in the 2014 Order, which slip or error resulted in the Commission not having expressed its manifest intention;[8] or

b. be specifically conferred by statute.

[16] I must therefore determine whether on the facts of this case, the Commission has jurisdiction based on either of those two exceptions.

C. Do the exceptions to the general "no jurisdiction" rule provide a basis for the Commission to hear this motion for directions?

[17] In my view, neither of the exceptions is available to the moving parties.

[18] The first exception, used where necessary to remedy a slip or error, does not apply. None of the parties says that there was a slip or error in the 2014 Order. The parties agree that the terms of the 2014 Order are clear and unambiguous.

[19] As for a statutory basis for this motion, the moving parties did not assert any such basis, and none is apparent. Section 144 of the *Act* does empower the Commission to make an order revoking or varying a previous decision of the Commission. However, the moving parties expressly chose not to bring an application under that section. Their choice is consistent with the fact that they are not concerned about the decision itself, but rather about how Staff is applying that decision.

[20] The moving parties' concern about Staff's position with respect to Ms. Bouji's application is reasonable, and arises from the e-mails and correspondence described in the following paragraphs.

[21] Staff has consistently said that it considers Ms. Bouji's proposed registration to be "otherwise objectionable", within the meaning of clause 27(1)(b) of the *Act*. However, in written communication to the moving party firms, Staff has been inconsistent about the reasons for its position.

[22] For some time, it seemed clear that Staff was effectively reading in new terms to the 2014 Order. A December 19, 2016, e-mail from a Senior Legal Counsel in the Commission's Compliance and Registrant Regulation Branch to the General Counsel for the moving party firms advised that:

> [Staff's] position is that the most appropriate reading of the Order provides that an independent UDP is required for so long as the Order is in force, absent a variation of the Order.

[23] The e-mail is categorical, it contemplates no other factors that would be relevant to Staff in considering any application from a proposed UDP, and it echoes the position Staff set out more than a year earlier, in a November 4, 2015, e-mail between the same individuals.

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5 *Chandler v Assn. of Architects (Alberta)*, [1989] 2 SCR 848 at paras 75, 76 ("***Chandler***"); *Jacobs Catalytic Ltd. v International Brotherhood of Electrical Workers, Local 353*, 2009 ONCA 749 (CanLII) at para 49 ("***Jacobs***").

6 *SPPA*, s 25.0.1.

7 *Jacobs* at para 62.

8 *Chandler* at para 75.

[24] In a letter sent by Staff to Ms. Bouji two weeks before the hearing of this motion, Staff put its position differently, although the effect of the change is not clear. In the third paragraph of the letter, Staff says that its recommendation is based on the 2014 Order and "in light of Mr. Bouji's active involvement in the business of Global RESP", suggesting that these two factors combine to make Ms. Bouji's application objectionable.

[25] However, that sentence is followed by a half-page section headed "*The Amendments Requested in the Application are Objectionable Given the Terms of the Order*". The section reiterates the position in the two e-mails referred to above, in that it says that Ms. Bouji's application is objectionable simply as a result of the 2014 Order.

[26] That characterization is consistent with the next section of the letter, which is headed "*Mr. Bouji's Ongoing Role at Global RESP Underscores the Need for an Independent UDP*". That section, and the use of the word "Underscores" in the heading, give the impression that in Staff's view Mr. Bouji's ongoing role is not a necessary component of Staff's objection; rather, that it reinforces Staff's view, which Staff already holds, that the proposed registration is objectionable.

[27] At the hearing of this motion, Staff again expressed its position differently. Staff counsel fairly and correctly conceded that the terms of the 2014 Order do not, by themselves, require that a new UDP for the two firms be independent. Staff states that its position with respect to Ms. Bouji's application is that her lack of independence is disqualifying at this time, given the active role of her father, Mr. Bouji, in the firms.

[28] While I am sympathetic to the moving parties' concerns given the history, those concerns cannot clothe the Commission with jurisdiction it does not have. As noted above, and as is evident from the moving parties' submission that they are not "putting the decision in play", the parties agree on what the 2014 Order explicitly requires and prohibits. The parties disagree on the further consequences, if any, that should flow from that order, in the context of an application for registration of a new UDP.

[29] The *Act* provides for the process by which an individual can seek registration. The individual submits her/his application to a Director of the Commission.[9] Staff makes a recommendation to the Director and communicates that recommendation to the applicant. If the applicant is dissatisfied with Staff's recommendation, the applicant may require a hearing before the Director.[10] The Director considers the positions of both parties and makes a decision. If the applicant is dissatisfied with the decision, he/she may request and is entitled to a hearing and review of the Director's decision by the Commission.[11]

[30] The distinction referred to in paragraph [28] above, that the moving parties disagree not about what the order says but about its consequences when other circumstances are considered, is critical. The moving parties submit that the "concept of *functus officio* has no bearing in this matter [because they] are not seeking an alteration" of the 2014 Order. Not only are they not seeking an alteration, they are not seeking an interpretation or an explanation. They are effectively seeking a determination, in advance of a possible hearing before the Director, of an issue that may come before the Director.

[31] The proper venue for Ms. Bouji to challenge Staff's objection to her application is before the Director. Ms. Bouji may get a favourable decision. If she does not, she may then require a review of that decision before the Commission, if she wishes. Her objection to Staff's position does not give her a basis for having the Commission resolve the dispute now.

D. Does the Commission have jurisdiction to require the Director to grant Ms. Bouji's application for registration?

[32] The moving parties were unable to cite a specific provision of the *Act* that would support their request for an order directing the Director to approve Ms. Bouji's application. They referred to section 8, which provides for the hearing and review referred to above, and submitted that the Commission's oversight of Directors, as embodied in that section, leads to the natural conclusion that the Commission can require a Director to approve an application for registration. The moving parties submit that I ought to make that order in this case.

[33] I do not agree, for several reasons:

a. clear authority for the Commission to make such an extraordinary order would be required, and none exists;

b. as of the hearing of this motion, the Director has not been asked to hold a hearing regarding Ms. Bouji's application; and

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9 *Act*, s 27; NI 33-109 *Registration Information*, s 2.2; NI 14-101, *Definitions*, subsection 1.1(3) "regulator".

10 *Act*, s 31.

11 *Act*, subsection 8(2).

c. even if the authority existed for the Commission to make the requested order, it would be inappropriate to permit an applicant to bypass the statutory process.

III. CONCLUSION

[34] For the reasons set out above, I conclude that in the circumstances of this case, the Commission does not have jurisdiction to consider the moving parties' request for directions in respect of the 2014 Order, or their request for an order requiring the Director to approve Ms. Bouji's application. The motion is dismissed.

Dated at Toronto this 2nd day of May, 2017.

"Timothy Moseley"

3.1.2 Edward Furtak et al. – ss. 127, 127.1

Citation: Strictrade Marketing Inc. et al., 2017 ONSEC 12
Date: 2017-05-04

IN THE MATTER OF
EDWARD FURTAK,
AXTON 2010 FINANCE CORP.,
STRICT TRADING LIMITED,
RONALD OLSTHOORN,
TRAFALGAR ASSOCIATES LIMITED,
LORNE ALLEN AND
STRICTRADE MARKETING INC.

REASONS AND DECISION ON SANCTIONS AND COSTS
(Sections 127 and 127.1 of the Securities Act, RSO 1990, c S.5)

Hearing:	January 30, 2017 March 2 and 3, 2017		
Decision:	May 4, 2017		
Panel:	Janet Leiper	–	Chair of the Panel
	D. Grant Vingoe	–	Vice-Chair
	AnneMarie Ryan	–	Commissioner
Appearances:	Catherine Weiler Yvonne B. Chisholm Christina Galbraith	–	For Staff of the Commission
	Julia Dublin	–	For the Respondents

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REASONS AND DECISION OF THE MAJORITY (Commissioners Leiper and Ryan)

I. INTRODUCTION

A. The Allegations and Merits Findings

[1] The Respondents are the subject of enforcement proceedings brought by Staff of the Ontario Securities Commission. A Statement of Allegations issued on March 30, 2015, alleged that the Respondents breached the *Securities Act*, RSO 1990, c S.5 (the **Act**) by, among other things, marketing and selling licences for trading software (the **Strictrade Offering**). A hearing into the merits of the allegations was held between May and October of 2016 (the **Merits Hearing**).

[2] A merits decision was issued on November 24, 2016 (*Re Furtak* (2016), 38 OSCB 9731) (the **Merits Decision**), in which the Commission gave reasons for finding the following breaches of the Act:

a. engaging in the illegal distribution of securities, contrary to subsection 53(1) of the Act (all Respondents);

b. engaging in or holding themselves out as engaging in trading in securities without registration, contrary to subsection 25(1) of the Act (Lorne Allen, Strictrade Marketing Inc. (**SMI**), Edward Furtak, Axton 2010 Finance Corp. (**Axton**) and Strict Trading Limited (**STL**));

c. violating provisions of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (Trafalgar Associates Limited (**TAL**) and Ronald Olsthoorn); and

d. failing to comply with Ontario securities laws as directors and officers, contrary to section 129.2 of the Act (Furtak, Olsthoorn and Allen).

[3] The breaches of the Act related to the sale of the Strictrade Offering, which the Panel determined to be an investment contract. The Strictrade Offering was created by Furtak and marketed by Olsthoorn and Allen across Canada and in Las Vegas, United States. The evidence revealed a complicated investment scheme among a group of related entities and individuals.

[4] Investors purchased licences for trading software from Furtak's company, Axton. Every investor then signed a promissory note with Axton to finance the purchase amount. Investors paid Axton 10.5% per year in advance in interest and loan maintenance fees. Investors contracted with STL, another entity created by Furtak. STL was the "customer" who operated the software and paid investors for trading reports generated by the software. Investors also paid in advance an annual software hosting fee to STL.

[5] The Strictrade Offering promised to pay annual capped "trading report payments." A "Software Performance Bonus" was offered to those investors who stayed in the scheme for at least five years. In addition, the promoters highlighted the tax deductions and capital cost allowance possibly available to purchasers of the licences. The Respondents' marketing materials referred to a valuation report as evidence of the licence value. The valuation report, which was not provided to investors, was based on a different kind of licence arrangement than that sold to investors. We found that this was a misleading feature of the marketing of the Strictrade Offering.

[6] Due to the complexity of the scheme, a number of the investors who purchased the licences did not understand the nature of their investment. Several testified that they did not know they would be required to make annual payments. In relation to the annual payments required by the contract, one such investor, Daniel G, testified: "This is killing me." However, Daniel G elected to stay in the investment in the hope of maintaining certain tax deductions and the expectation of the payment of trading report payments and an eventual bonus payment in the future.

B. The Issues

[7] On January 30, 2017 and March 2 and 3, 2017, the Commission received evidence and submissions from Staff and the Respondents on the issues of sanctions and costs. At the end of the first day of the hearing, Staff requested an order requiring the Respondents to cease trading in the Strictrade Offering. The Commission made an interim cease trade order pending its decision on sanctions and costs.

[8] Staff submits that a range of sanctions is justified by the findings on the merits and that such sanctions would be consistent with previous decisions of the Commission involving unlawful trading. Staff requests an order with trading, director and officer bans, registration bans, monetary penalties, disgorgement and costs.

[9] In contrast, the Respondents submit that none of the sanctions sought by Staff are justified, arguing that the sanctions are disproportionate to the conduct. At the Sanctions Hearing, the Respondents tendered emails and letters between their lawyer and Commission Staff to suggest that they had been transparently communicating with their regulator while attempting to promote a novel arrangement that they believed was not a security in law.

[10] The Respondents ask that the Panel decline to impose any market participation bans in order to allow them to continue the investment scheme with current investors. They ask to continue to collect fees and interest payments from the remaining three investors. They point to the benefits of the tax deductions that the investors have taken and may continue to take, as well as the Software Performance Bonus, which becomes payable at the end of the fifth year of participation in the scheme. One of the Respondents, Ron Olsthoorn is also a significant investor in the scheme and intends to take tax deductions in relation to his investment.

[11] In essence, the Respondents ask the Commission to allow them to continue to receive funds from the remaining investors, to benefit from a scheme that has been found to be unlawful and to receive no sanctions for their breaches of the Act.

II. EVIDENCE ON SANCTIONS

A. The Net Profits to the Respondents

[12] By way of affidavits sworn on December 22, 2016, January 25, 2017 and February 13, 2017, a Senior Forensic Accountant with Staff provided evidence on the difference between payments made by investors in the scheme and the amounts these investors had received from the trading report payments. As of the final date of the Sanctions Hearing, March 3, 2017, the net amount of funds obtained by the Respondents totalled $216,538.66. The calculations in this case do not include the investment made by Olsthoorn, as he is a Respondent in the proceedings.

[13] On January 30, 2017, Daniel G sent a bank draft to the Respondents in the amount of $15,000. The interim cease trade order was made by the Commission on that day. By correspondence with Staff prior to the Sanctions Hearing resuming on March 2, 2017, Daniel G confirmed his understanding that the Respondents would not cash the draft pending the outcome of the hearing. He also advised Staff that he had paid into the scheme for five years and expects to receive the promised Software Performance Bonus. If the scheme terminates, the investors would not be entitled to the Software Performance Bonus and would not be able to take advantage of any tax benefits that may have applied over the next couple of years. Daniel G expressed his concern about the impact on his personal income tax situation if the scheme is brought to an end as a result of an Order made by the Commission.

B. The Tax Positions of the Investors

[14] The Senior Forensic Accountant with Staff compiled tax returns for the investors and calculated the tax benefits they received from the Strictrade Offering between 2012 and 2015. One investor who participated in the scheme, but has since terminated her contracts, claimed business losses in 2013 related to the Strictrade Offering. Her claim was reassessed by the Canada Revenue Agency three years later. The business losses arising from the Strictrade Offering were denied. She was charged arrears interest relating to the Strictrade Offering of $856.84. To date, none of the other investors who have claimed deductions and losses under the Strictrade Offering have been reassessed. They have all claimed tax benefits from expenses relating to the Strictrade Offering.

C. Evidence of Edward Furtak on Sanctions

[15] Furtak gave evidence at the Sanctions Hearing. He described the various schemes that he developed to use trading software, which ultimately culminated in the Strictrade Offering. He had created various ways to monetize trading software, either by joint venture (**MoneyMoves**) or by licences and payment of fees to purchasers for trading reports generated by software (**STRICTrade Contracts**). Through legal counsel, Furtak sent descriptions of these proposed "transactions" to the Commission, seeking regulatory certainty that they would not be considered as sales of "securities" or that they could be exempt from prospectus and registration requirements under the Act. The evidence establishes that Furtak was cautioned, through correspondence with his counsel, about the risks of proceeding with the products described to the Commission.

[16] The letters, memoranda and emails tendered by the Respondents include a 2009 email from Staff of the General Counsel's Office of the Commission concerning the MoneyMoves program developed by Furtak. In that email, Staff wrote to Furtak's counsel, Julia Dublin:

> Our preliminary view is that the structure you have described in your memo of 4 February 2009 would constitute an offering of 'investment contracts' for the purposes of the *Securities Act*. Please

> note that these are the views of OSC staff only and do not constitute any kind of decision with respect to the matters you have raised with us.

Staff asked for confirmation that the program was not being distributed to investors in Ontario or if so, that it should cease being distributed, other than in compliance with the Act.

[17] Ms. Dublin wrote to Commission Staff that her clients disagreed with the analysis and that they preferred not to market the MoneyMoves program as a security. Furtak testified that he believed he stopped any work on the MoneyMoves program after this exchange with the Commission. The following year, he began to develop the Strictrade Offering along with Allen and Olsthoorn.

[18] During the Merits Hearing, Ms. Dublin conceded that the Respondents were aware that there was a risk of a finding that the transactions in issue were securities and that the Respondents had not been relying on a legal opinion:

> MS. DUBLIN: … But they are not going to argue that this was – that they believed, having read it, that it was necessarily the only opinion you could form on their facts. It was the opinion they preferred, the opinion that they felt was reasonable.
>
> THE CHAIR: So they didn't have a green light by way of a legal opinion. You're really saying they had a yellow light –
>
> MS. DUBLIN: They had a yellow light.

[19] In a memorandum dated May 12, 2013 (the **May 2013 Memorandum**), counsel to the Respondents described a "contemplated transaction" and presented an argument in support of the "most reasonable conclusion" that individuals purchasing that product were not entering into an investment contract but a different commercial arrangement. The product described in the May 2013 Memorandum is not the Strictrade Offering, which by then had been marketed and sold to the investors for over a year. The differences between the product described in the memorandum and the Strictrade Offering are compared in a chart Staff included in its reply submissions. A copy of the chart is attached to these Reasons as Appendix A.

[20] The Respondents argued at the Sanctions Hearing (over the objections of Staff as to the relevance of the document) that the May 2013 Memorandum is evidence of their good faith engagement with the regulator and should be taken into account in assessing sanctions. Commission Staff did not provide any assurances in response to the May 2013 Memorandum. Correspondence filed by the Respondents reveals that investigations by the Compliance and Registrant Regulation and Enforcement branches began around May–June of 2013. This led to the filing of the Statement of Allegations and the Merits Hearing.

[21] In his cross-examination at the Sanctions Hearing, Furtak was asked about a settlement agreement he entered into with the Commission in 2003. In the settlement, he and TAL admitted to unregistered trading in securities and conduct contrary to the public interest. He repaid investors as part of the settlement. A public interest order was made and included a reprimand, a cease trade order for six months and costs. The settlement agreement approved by the Commission describes the conduct that occurred in 1998, which included the sale of software licencing agreements by Furtak to a client for whom they were not suitable.

[22] Furtak was asked by a Panel member about whether he had considered the potential risk of enforcement proceedings and disruption to the scheme, during the marketing of the Strictrade Offering, as it could lead to investor losses. He said that he did not believe that this was ever raised as a risk with him by his lawyer. He said that he was not told that the licensees' "businesses" would be disrupted. Furtak testified, "[W]e never anticipated that we would be precluded from carrying on the contracts that were benefitting the licensee."

[23] At the end of the Sanctions Hearing, Furtak gave an oral undertaking that he would honour the terms of the Software Performance Bonus provided for in the licencing agreement. There were no submissions or evidence on Furtak's ability to fulfill that undertaking. During the hearing, evidence was tendered showing that some of the trading report payments were not made by STL, the entity with whom investors had contracted for payment, but by other entities controlled by Furtak (*i.e.*, Axton and Aileron Capital Limited).

D. Evidence of Ronald Olsthoorn on Sanctions

[24] Olsthoorn also testified at the Sanctions Hearing. He described his concerns over the potential termination of the Strictrade Offering due to a cease trade order. He prepared a number of scenarios as to the potential tax and recapture implications depending on the timelines of various investments. Olsthoorn testified that the most advantageous scenario, and one that he hoped to employ for himself, involved staying in the investment for seven years and rolling

over the investment into a corporation for the latter part of that period to avoid recapture. According to Olsthoorn, under this "best case scenario," for investors Daniel G and Georgina F, their investments might not wrap up until 2020 and 2022, respectively.

[25] Olsthoorn agreed that in the marketing slides in evidence, there is no discussion of a seven-year "best case scenario" for terminating the scheme. He testified that he would have conveyed this information to the investors, or their accountants, orally. Olsthoorn agreed that if Daniel G decided to leave the investment after five years as he intended (in order to qualify for the Software Performance Bonus), he could not take advantage of any corporate rollover to avoid recapture. He also agreed that any disposal of the asset by an individual at the end of the investment period would lead to recapture, where the individual does not defer tax through a corporate rollover.

III. PUBLIC INTEREST ORDERS UNDER THE SECURITIES ACT

[26] The Commission is mandated to provide protection to investors from unfair, improper or fraudulent practices and to foster fair and efficient capital markets as well as confidence in capital markets (section 1.1 of the Act). When making orders under subsection 127(1) of the Act, the Commission has a broad discretion to intervene in the public interest. These orders are "preventive in nature and prospective in orientation" (*Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at para 45) (***Asbestos***).

[27] In *Asbestos*, the Supreme Court of Canada noted that the powers granted to the Commission under section 127 of the Act require that any order be made with regard to the public interest and that it is "an error to focus only on the fair treatment of investors" (at para 41). As a regulatory provision, section 127 cannot be used merely to remedy misconduct under the Act that is alleged to have caused harm or damages to private individuals (*Asbestos* at paras 41–45).

[28] The range of orders available under the Act includes the removal of those individuals who have behaved in a way that is detrimental to the integrity of the markets. As the Commission stated in *Re Mithras Management Ltd.* (1990), 13 OSCB 1600 at (1610–11):

> We are here to restrain, as best we can, future conduct that is likely to be prejudicial to the public interest in having capital markets that are both fair and efficient. In so doing we must, of necessity, look to past conduct as a guide to what we believe a person's future conduct might reasonably be expected to be.

[29] In making public interest orders, it is also appropriate to consider general deterrence in order to discourage like behaviour from others. The weight given to general deterrence, for example by imposing financial penalties, will vary from case to a case and is within the discretion of the Commission (*Re Cartaway Resources Corp*, 2004 SCC 26 at paras 60, 64).

[30] In deciding the nature of sanctions that are appropriate, the Commission has taken into account relevant factors, including:

a. the seriousness of the allegations;

b. the respondents' experience in the marketplace;

c. the level of the respondents' activity in the marketplace;

d. whether there has been recognition by the respondents of the seriousness of the conduct;

e. whether or not the sanctions may serve to deter any like-minded people from similarly abusing the capital markets;

f. any mitigating factors;

g. whether the violations were recurrent or isolated;

h. the size of profits made or losses avoided from the conduct;

i. the size of voluntary payments or financial sanctions;

j. the effect of sanctions on the livelihood of the respondent;

k. the restraint sanctions may have on the ability of the respondent to participate without check in the capital markets;

l. the reputation and prestige of the respondent;

m. the shame or financial pain to the respondent; and

n. the remorse of the respondent.

(*Re Belteco Holdings Inc.* (1998), 21 OSCB 7743 at 7746; *Erikson v Ontario (Securities Commission)* (2003), 26 OSCB 1622 (Div Ct) (***Erikson***) at para 58; *Re MCJC Holdings Inc.* (2002), 25 OSCB 1133 at 1136)

IV. ANALYSIS

A. Approach to Sanctions

[31] We accept the approach to sanctions as submitted by Staff as being a proportionate response and grounded in the public interest. Sanctions are required to respond to the features of the Strictrade Offering, the harm to investors and the future risks posed by the Respondents to the markets. We reject the Respondents' submission that this was an appropriately conducted exercise in testing the jurisdiction of the Commission with a novel business product by people who are amenable to regulation. The evidence does not support that narrative.

B. Factors Relevant to Sanctions

1. Seriousness of the Allegations/Level of the Respondents' Activity in the Marketplace

[32] Unlike the MoneyMoves offering, which was viewed unfavourably by Commission Staff, and unlike the product described in the May 2013 Memorandum from the Respondents' counsel to the Commission, the Strictrade Offering, which is the subject of these proceedings, was not described to the Commission in advance of its promotion or sales. Prospective investors were not advised of any regulatory risk to its continuation, in spite of the efforts of the promoters to persuade the regulator that similar products involving a variety of contracts for selling trading software were not securities. The creator of the scheme, Furtak, was the subject of a Commission Order in 2003 in which he was removed from the capital markets for six months after he unlawfully sold investments, including unsuitable software licences. We conclude on this basis that the Respondents knew the risks and ignored them. They created and sold a complex product of dubious value to investors without making them aware of the nature of the product, the regulatory risks and the potential for disruption and loss.

[33] The evidence at the Merits hearing described months of presentations to potential distributors and purchasers across Canada at investment seminars. Ultimately, only seven investors purchased licences.

[34] Unlike his redemption of the problematic investments involved in the Commission Order against him in 2003, Furtak has not taken any steps to refund any investors for their participation in the Strictrade Offering. The Respondents now point to the losses to investors as a reason to continue their unlawful scheme. This represents a lack of understanding and insight into the findings of the Commission and the impact on the investors. An appropriate order will protect the public in the future and deter others. This means that the scheme must come to an end.

[35] The factors that are relevant in this case in determining the appropriate sanctions include the Respondents' extensive marketing activities and their deliberate decision to omit any discussion of the investment contract at issue while describing similar vehicles to Staff, as well as the misleading nature of the scheme without commercial justification for its complex structure. The additional evidence filed at the Sanctions Hearing reveals both the rationale of the Respondents in their attempts to secure a regulatory "pass" for their various schemes to monetize trading software and, significantly, the omission of any description of the actual scheme sold. This was the same approach taken as when the Respondents used the results of an earlier software licence valuation in the Strictrade Offering marketing materials; although it was based on a different kind of licence, it was positioned as evidence of value to the licensees as a way to give the scheme legitimacy.

[36] In their submissions, the Respondents invite us to reconsider some of the negative findings made on the merits. We decline to do so and confirm our finding that this was a deliberately complex scheme with misleading elements. It was not well understood by the investors. Further, the Respondents lacked candour with the regulator during the Material Time. The Respondents argue that their communications with the Commission in the lead-up to and during the Material Time was transparent – we do not agree. The Respondents prefer their own interpretation of the Act to that of Commission Staff in respect of a product they ultimately did not sell; they argue that this is consistent with good faith.

To the Panel, this suggests awareness by the Respondents that the product ultimately marketed would not pass regulatory scrutiny.

2. The Respondents' Experience in the Marketplace

[37] Furtak and Olsthoorn are experienced participants in the marketplace. Olsthoorn and TAL were registered with the Commission during the misconduct. Furtak was registered with the Commission from 1992–1994, has been an approved shareholder of TAL since August 19, 2011 and is an officer and director of multiple international companies. He was the beneficial owner, officer and director of two respondent companies in this matter, Axton and STL. Olsthoorn was a dealing representative as well as TAL's Chief Compliance Officer (**CCO**) and Ultimate Designated Person (**UDP**). These are aggravating factors as related to Furtak and Olsthoorn: Registrants are held to a higher standard and are expected to have a higher level of understanding of the regulatory framework and awareness of their responsibilities (*Re North American Financial Group Inc.* (2014), 37 OSCB 8522 at para 38).

[38] Allen, Axton, STL and SMI have never been registered with the Commission. This factor is neutral as far as they are concerned.

3. Profits Made from the Conduct

[39] The net amount received from investors (their interest and loan maintenance fees less their trading report payments) was $216,538.66. SMI, which is owned by Allen, received commissions on sales of the Strictrade Offering, some of which was in turn paid to Olsthoorn as well as to an accountant and a firm in respect of the sale of the Strictrade Offering to David D.

4. Recognition of the Seriousness of the Misconduct/Mitigating Factors

[40] Staff submits that there are no mitigating factors. We agree. In fact, the evidence points to the contrary: the Respondents do not appreciate the impact of their conduct and essentially insist that they are right in the face of the evidence and logic. Furtak, an experienced market participant, failed to even consider the possibility that the scheme could be stopped. The Respondents submitted at the close of the Sanctions Hearing that this was a legitimate and "benign" commercial arrangement involving "sophisticated investors." They took no steps to remedy the unfair position in which they placed the investors, particularly Daniel G, who is financially vulnerable and withdrew money from his registered retirement saving plan (**RRSP**) to make payments to the Strictrade Offering. Instead, the Respondents argue for the right to continue to take the investors' money under the impugned contracts.

C. Sanctions Requested

1. Disgorgement

[41] Paragraph 10 of subsection 127(1) of the Act permits the Commission to make an order for disgorgement to ensure that respondents do not benefit from their breaches. Disgorgement also functions as a form of deterrence. All money obtained from investors is subject to disgorgement where it is obtained as a result of non-compliance with the Act. The Commission may also look to the seriousness of the misconduct, the harm to investors, whether the amount is ascertainable and whether individuals are likely to be able to obtain redress (*Re Phillips* (2015), 38 OSCB 9311, aff'd *Phillips v Ontario (Securities Commission)*, 2016 ONSC 7901).

[42] Staff submits that an order for disgorgement against the Respondents should be the net amount received from all investors, being the total paid by investors less the total received by investors as trading report payments. This amount was calculated as $216,538.66.

[43] The Respondents submit that the tax benefits obtained by investors should be deducted from the disgorgement amounts. Staff submits that these tax benefits are unrelated to the funds obtained by the Respondents as a result of their unlawful activities and that a plain reading of paragraph 10 of subsection 127(1) of the Act does not anticipate reduction of disgorgement by reason of amounts paid to investors by third parties. Further, given the possibility that investors in addition to Geraldine O may be reassessed, any such tax benefits are uncertain.

[44] Paragraph 10 of subsection 127(1) of the Act reads:

> The Commission may make one or more of the following orders if in its opinion it is in the public interest to make the order or orders:

> 10. If a person or company has not complied with Ontario securities law, an order requiring the person or company to disgorge to the Commission any amounts obtained as a result of the non-compliance.

We agree with Staff's submissions that a plain reading of this section, informed by prior Commission practice, is to apply it to amounts actually obtained by Respondents less amounts repaid to investors.

[45] Staff submits that Furtak, Axton and STL should be responsible to pay disgorgement of the amount received from investors, $216,538.66, less commissions of $51,000 paid out to Olsthoorn, Allen and others. Staff calculated this amount to be $165,298. Staff requests disgorgement of $21,285 from Allen and SMI and $14,415 from Olsthoorn and TAL, representing the commissions they received. We note that $15,000 was paid to third parties who were not respondents in this matter and that Staff did not make submissions on who should be responsible for this amount.

[46] We find that Allen and SMI and Olsthoorn and TAL should disgorge the amounts paid to them in commissions as requested by Staff. We find that it is appropriate that Furtak be responsible for the balance of the amount obtained from investors, including the amount paid in commissions to third parties. Furtak was the directing mind behind that Strictrade Offering scheme and companies over which he had control received the monies from investors. We find further support for this approach from the Commission's decision in (*Re Limelight Entertainment Inc.* (2008), 31 OSCB 12030 (***Limelight***):

> … paragraph 10 of subsection 127(1) of the Act provides that disgorgement can be ordered with respect to "any amounts obtained" as a result of non-compliance with the Act. Thus, the legal question is not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity. In our view, this distinction is made in the Act to make clear that all money illegally obtained from investors can be ordered to be disgorged, not just the "profit" made as a result of the activity. This approach also avoids the Commission having to determine how "profit" should be calculated in any particular circumstance. Establishing how much a respondent obtained as a result of his or her misconduct is a much more straightforward test.
>
> (para 49)

[47] Therefore, we order disgorgement by Furtak, Axton and STL, jointly and severally, of $180,298.66; by Allen and SMI, jointly and severally, of $21,825; and Olsthoorn and TAL, jointly and severally, of $14,415.

2. Administrative Penalties

[48] Monetary penalties are imposed to discourage repeat conduct by respondents and to demonstrate to other market participants that there will be consequences for similar behaviour. These are principles of specific and general deterrence (*Limelight*). Staff submits that the Commission should apportion the administrative penalties taking into account that there were few investors involved and the amounts obtained as compared to other cases involving investment contracts, such as *Re Energy Syndications Inc.* (2013), 36 OSCB 11613 (***Energy Syndications***). Staff proposes penalties of $75,000, jointly and severally, against Furtak Axton and STL; $35,000, jointly and severally, against Olsthoorn and TAL; and $25,000, jointly and severally, against Allen and SMI. The differences among the Respondents are justified by virtue of the varying levels of control and involvement in the scheme. This is a principle that has been followed in other decisions of the Commission (*Re 2241153 Ontario Inc.* (2016), 39 OSCB 2733; *Re Morgan Dragon Development Corp.* (2014), 37 OSCB 8511 (***Morgan Dragon***); *Energy Syndications*).

[49] We conclude that deterrence requires some additional form of administrative penalty beyond disgorgement. The sanctions need to be meaningful and not merely the cost of doing business. The penalties proposed by Staff are proportionate to the misconduct.

3. Market Participation and Director and Officer Bans

[50] In considering the length of any market participation and director and officer bans, Staff submits that there should be a distinction made between Furtak, as the principal architect of the scheme, and Olsthoorn and Allen, who were salespersons for the Strictrade Offering. The following features further distinguish Furtak's culpability from that of Olsthoorn and Allen: (i) his creation and control of the contracts, entities and materials; (ii) his past securities misconduct; (iii) his experience as a former registrant; (iv) his expressed ongoing interest in finding ways to sell the Strictrade Offering; (v) his insistence that the scheme does not hold any potential risk or harm to investors; (vi) his control of the flow of funds among the entities; and (vii) his use of the misleading valuation in the marketing materials, in spite of his control of the finances of the corporate entities and ownership of the software.

[51] Staff also distinguishes between Olsthoorn and Allen in that Olsthoorn has had substantially greater experience in the market as a former registrant in Ontario and in British Columbia.

[52] Staff seeks market participation bans of ten years against Furtak, Axton and STL, of eight years against TAL and Olsthoorn and of six years against Allen and SMI. Staff also seeks director and officer bans of ten years against Furtak, of eight years against Olsthoorn and of six years against Allen.

[53] In Commission cases that have considered the primary promoter of unlawful distribution schemes, there is a precedent for imposing significant bans. Staff cites bans of 10 years in Energy Syndications and 15 years in *Re Axcess Automation LLC* (2013), 36 OSCB 2919 (***Axcess Automation***). In *Morgan Dragon*, a multimillion dollar solicitation of an investment contract scheme led to five-year bans for the directing minds and co-owners of the corporate respondent.

[54] The Respondents distinguish their case from those where bans were imposed in the context of findings of fraud or where larger sums of money were involved from a greater number of investors. We accept that prior decisions provide some guidance, but they are neither determinative nor formulaic. Instead, we look to the principles of public protection in deciding whether to make the orders requested. The question we must consider is what amount of trust the Commission could have in the Respondents if they are to be allowed to continue to participate in the capital markets.

[55] In this case, the impact was experienced by a smaller number of investors than in *Energy Syndication*, *Morgan Dragon* or *Axcess Automation*; however, the potential future impact on prospective investors remains a risk factor. The Respondents have not changed their attitudes nor do they appear to be willing to alter their behaviour towards investors, even after the finding that they were unlawfully selling securities. The misleading nature of the marketing materials and the Respondents' selective disclosure to the Commission while the scheme was up and running are aggravating features. We have minimal trust in the Respondents as market participants. The length and nature of the market participation and director and officer bans sought by Staff are appropriate.

4. Trading Bans

(a) The Jurisdictional Argument: Do Future Payments under the Strictrade Offering Constitute Acts in Furtherance of a Trade?

[56] Staff seeks trading bans of ten years against Furtak, Axton and STL, of eight years against TAL and Olsthoorn and of six years against Allen and SMI.

[57] The Respondents submit that no bans should be imposed and that the Strictrade Offering should continue with regard to the three remaining investors. In addition, counsel for the Respondents argued at the hearing that the receipt of fees and interest from the investors under the terms of their contracts should not be considered as acts in furtherance of a trade. Before considering the nature of any market or participation bans as part of the sanctions requested by Staff, the Panel must consider the threshold question of whether any future payments made by investors would be caught by the Act.

[58] The Respondents' submissions begin with the principle rearticulated in *Re Sabourin* (2009), 29 OSCB 2707 (***Sabourin***) that the question of whether an act is in furtherance of a trade is fact-specific and that the inquiry can usefully begin with the question of whether the activity has a "sufficiently proximate connection to an actual trade" (at para 57, citing *Re Costello* (2003), 26 OSCB 1617 at para 47).

[59] The Respondents argue that the Commission has found an act to be in furtherance of a trade when a respondent "received consideration or other benefit from an eventual sale" (*Sabourin* at para 61, citing *Re Momentas Corp.* (2006), 29 OSCB 7408 at paras 87-88 (***Momentas***)). The Respondents characterize the activities in the case at hand as those that are necessary to promote or close the original trade. They argue that the annual contractual payments by the investors do not promote a trade but instead are a business feature of a contract. Further, the Respondents submit that the payments fall outside of the Material Time as defined in the Statement of Allegations, and thus the Commission has no jurisdiction to make orders purporting to prevent the continuing payments.

[60] The definition of "trade" or "trading" as defined in subsection 1(1) of the Act includes:

> (a) any sale or disposition of a security for valuable consideration whether the terms of payment be on margin, instalment or otherwise,
>
> …

(e) any act, advertisement, solicitation, conduct or negotiation directly or indirectly in furtherance of any of the foregoing.

[61] The ongoing payments that are a part of the Strictrade Offering, which we found to be a security, and are part of the consideration for the investment. The payments meet the definition of "trade" under a plain reading of the definition in the Act. Payments were previously found by the Commission to be acts in furtherance of a trade (*Momentas*). Finally, the payment of the ongoing consideration for the investment through the life of the contracts is inextricably linked to the security, which establishes a "proximate connection." We conclude that ongoing acceptance of payments would amount to trading in a security. Therefore, any order banning the Respondents from trading will apply to the Strictrade Offering and will preclude the acceptance of any future funds from investors, including the $15,000 bank draft from Daniel G, which is currently being held pending this decision.

(b) Analysis: Are Trading Bans in the Public Interest?

[62] The Respondents submit that if the jurisdictional question is not decided in their favour, in any event, no bans should be issued. In particular, they argue that the Strictrade Offering be permitted to continue until the investors choose to terminate the investments. They point to the potential negative tax consequences as well as the loss of the Software Performance Bonus, which is part of the contractual arrangement.

[63] It is a privilege to participate in Ontario's capital markets (*Erikson* at paras 55–56). In this case, the Respondents were aware of the regulatory sphere in which they operated. Furtak and TAL have prior Commissions orders made against them. Furtak is a former registrant and Olsthoorn was the CCO and UDP of an exempt market dealer. In spite of the views expressed by Commission Staff that earlier versions of monetized trading software investments were securities, the Respondents proceeded with a new version but did not disclose this prior to taking the Strictrade Offering to the market. The Respondents continued to accept payments from investors throughout the proceeding, after the finding on the merits and until the end of the first day of the Sanctions Hearing. They asked to continue the scheme, pointing to the potential prejudice to investors that they created in order to profit from the scheme. Given these circumstances, it is appropriate to consider whether the Respondents should be banned from participating in Ontario's capital markets for a period of time.

[64] In having regard to sanctions, the Commission takes into account the harm to investors as part of its consideration of the seriousness of the conduct. However, the overarching public interest mandate of the Commission means that it would be an error to focus only on the harm to individual investors in any one case. There are other avenues for redress, including by way of civil remedies or allocating disgorged funds for the benefit of third parties pursuant to the Act. The Commission acting as a tribunal must concern itself with protecting and preventing future abuses of the market by individual respondents and by those who might breach the Act. It must also consider public confidence in capital markets in carrying out its mandate.

[65] The Panel concludes that having found that the Respondents breached the Act in carrying out the Strictrade Offering, it would send a confusing message to the markets and registrants if the Respondents were allowed to continue trading unabated or if the scheme was allowed to continue. It would also be an unprecedented exercise of discretion by the Commission to permit an unlawfully promoted scheme to continue for years past the dates of the merits and sanctions hearings. The Respondents would potentially profit from their unlawful actions and expose the remaining investors to further losses, both of funds that might be available for more advantageous investments and of tax deductions that may be reassessed. Such an order may also put the Commission in the position of advancing the alleged interests of the individual investors ahead of the public at large.

[66] Counsel for the Respondents cites *Re Universal Settlements International Inc.* (2006), 29 OSCB 7880, a decision of the Commission, in support of the Respondents' request to continue receiving investor funds. In Universal Settlements, the Commission found that the products sold amounted to investment contracts. Staff sought a cease trade order without other sanctions. Some of the investors' funds had already been used to purchase insurance products, and the investors were allowed to retain those interests. However, to the extent that funds had been transferred to the promoters and not yet used for purchase, those funds were to be returned to the investors. Accordingly, although the Respondents request a *Universal Settlements*-type order, Staff submits, and the Panel agrees, that this is not a precedent that permits receipt of future ongoing payments from investors as consideration for unlawfully distributed securities.

[67] As stated above, we have minimal trust in the Respondents as market participants. The length and nature of the trading bans sought by Staff are appropriate. An exception is granted for personal trading in an RRSP account once the financial sanctions and costs have been paid.

D. Costs

[68] Section 127.1 of the Act provides the Commission with the discretion to order a respondent to pay costs of an investigation and hearing if the Commission is satisfied that the respondent has failed to comply with Ontario securities law.

[69] Staff submitted a bill of costs, which details the total costs sought by Staff. The total fees in relation to Staff time is comprised of the time of Senior Litigation Counsel, Catherine Weiler, as well as the time of two investigative counsel who worked consecutively, but not concurrently, on the file. The total fees do not include the work of Senior Litigation Counsel, Yvonne B Chisholm, or of Litigation Counsel, Christina Galbraith. Although the Sanctions Hearing occupied three hearing days and included viva voce evidence as well as submissions, no time has been claimed for preparing for or attending on these hearing dates. In addition to fees, the disbursements for process serving, court reporting and witness fees are included in the bill of costs.

[70] The total costs sought by Staff are $465,034.44, with the apportionment between the Respondents as 40% payable by Furtak, Axton and STL, 30% payable by Olsthoorn and TAL and 30% payable by Allen and SMI, with each amount being on a joint and several basis.

[71] Rule 18.2 of the *Commission's Rules of Procedure* (2014), 37 OSCB 4168 sets out factors that the Commission may consider when exercising its discretion to award costs against a person or company:

a. whether the respondent failed to comply with a procedural order or direction of the Panel;

b. the complexity of the proceeding;

c. the importance of the issues;

d. the conduct of Staff during the investigation and during the proceeding, and how Staff's conduct contributed to the costs of the investigation and the proceeding;

e. whether the respondent contributed to a shorter, more efficient, and more effective hearing, or whether the conduct of the respondent unnecessarily lengthened the duration of the proceeding;

f. whether any step in the proceeding was taken in an improper, vexatious, unreasonable, or negligent fashion or in error;

g. whether the respondent participated in the proceeding in a way that helped the Commission understand the issues before it;

h. whether the respondent participated in a responsible, informed and well-prepared manner;

i. whether the respondent co-operated with Staff and disclosed all relevant information;

j. whether the respondent denied or refused to admit anything that should have been admitted; or

k. any other factors the Panel considers relevant.

[72] The Commission has also identified criteria that it considered in awarding costs in past decisions:

a. failure by Staff to provide early notice of an intention to seek costs may result in a reduced costs award;

b. the seriousness of the charges and the conduct of the parties;

c. abuse of process by a respondent may be a factor in increasing the amount of costs;

d. the greater investigative/hearing costs that the specific conduct of a respondent tends to require in the case; and

e. the reasonableness of the costs requested by Staff.

(*Re Ochnik* (2006), 29 OSCB 5917 at para 29).

[73] The Strictrade Offering was a complex product made up of multiple entities located in Ontario and offshore, as well as multiple individual persons. The Respondents should reasonably expect the costs related to the investigation and hearing of such a matter to be higher.

[74] All but one of the allegations against the Respondents was made out by Staff at the hearing. All of the witnesses called by Staff were necessary to prove Staff's case.

[75] The principle at the heart of the costs provision is that those who have breached Ontario securities laws should contribute to the costs of investigations and hearings that arise as a result of their conduct. The request for a portion of the actual costs incurred, at hourly rates approved by the Commission, is reasonable and will form part of the order.

V. CONCLUSION AND ORDER

[76] For the reasons given above, we make the following order:

a. with respect to Furtak, Axton and STL:

i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, each of Furtak, Axton and STL shall cease trading in and acquiring securities for 10 years, with the exception that Furtak may trade and acquire securities for his RRSP accounts after the administrative penalty at subparagraph 76(a)(v) and disgorgements at subparagraphs 76(a)(vi), 76(c)(vi) and 76(e)(vi) ordered against him below are paid in full;

ii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of Furtak, Axton and STL for 10 years;

iii. pursuant to paragraph 6 of subsection 127(1) of the Act, each of Furtak, Axton and STL is reprimanded;

iv. pursuant to paragraph 8.5 of subsection 127(1) of the Act, each of Furtak, Axton and STL is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for 10 years;

v. pursuant to paragraph 9 of subsection 127(1) of the Act, Furtak, Axton and STL shall jointly and severally pay to the Commission an administrative penalty of $75,000, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2) of the Act;

vi. pursuant to paragraph 10 of subsection 127(1) of the Act, Furtak, Axton and STL shall jointly and severally disgorge to the Commission $180,298.66, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

vii. pursuant to section 127.1 of the Act, Furtak, Axton and STL shall jointly and severally pay $186,013.77 in respect of part of the costs of the Commission's investigation and hearings;

b. with respect to Furtak:

i. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Furtak shall resign any position he holds as a director or officer of an issuer, registrant or investment fund manager; and

ii. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Furtak is prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager for 10 years;

c. with respect to Olsthoorn and TAL:

i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, each of Olsthoorn and TAL shall cease trading in and acquiring securities for 8 years, with the exception that Olsthoorn may trade and acquire securities for his RRSP accounts after the administrative penalty at subparagraph 76(c)(v) and disgorgement at subparagraph 76(c)(vi) ordered against him below are paid in full;

ii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of Olsthoorn and TAL for 8 years;

iii. pursuant to paragraph 6 of subsection 127(1) of the Act, each of Olsthoorn and TAL is reprimanded;

iv. pursuant to paragraph 8.5 of subsection 127(1) of the Act, each of Olsthoorn and TAL is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for 8 years;

v. pursuant to paragraph 9 of subsection 127(1) of the Act, Olsthoorn and TAL shall jointly and severally pay to the Commission an administrative penalty of $35,000, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2) of the Act;

vi. pursuant to paragraph 10 of subsection 127(1) of the Act, Olsthoorn and TAL shall, on a joint and several basis with Furtak, Axton and STL, disgorge to the Commission $14,415, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

vii. pursuant to section 127.1 of the Act, Olsthoorn and TAL shall jointly and severally pay $139,510.33 in respect of part of the costs of the Commission's investigation and hearings;

d. with respect to Olsthoorn:

i. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Olsthoorn shall resign any position he holds as a director or officer of an issuer, registrant or investment fund manager; and

ii. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Olsthoorn is prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager for 8 years;

e. with respect to Allen and SMI:

i. pursuant to paragraphs 2 and 2.1 of subsection 127(1) of the Act, each of Allen and SMI shall cease trading in and acquiring securities for 6 years, with the exception that Allen may trade and acquire securities for his RRSP accounts after the administrative penalty at subparagraph 76(e)(v) and disgorgement at subparagraph 76(e)(vi) ordered against him below are paid in full;

ii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to each of Allen and SMI for 6 years;

iii. pursuant to paragraph 6 of subsection 127(1) of the Act, each of Allen and SMI is reprimanded;

iv. pursuant to paragraph 8.5 of subsection 127(1) of the Act, each of Allen and SMI is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for 6 years;

v. pursuant to paragraph 9 of subsection 127(1) of the Act, Allen and SMI shall jointly and severally pay to the Commission an administrative penalty of $25,000, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2) of the Act;

vi. pursuant to paragraph 10 of subsection 127(1) of the Act, Allen and SMI shall, on a joint and several basis with Furtak, Axton and STL, disgorge to the Commission $21,825, which amount shall be designated for allocation or use by the Commission in accordance with subsection 3.4(2)(b) of the Act; and

vii. pursuant to section 127.1 of the Act, Allen and SMI shall jointly and severally pay $139,510.33 in respect of part of the costs of the Commission's investigation and hearings;

f. with respect to Allen:

i. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Allen shall resign any position he holds as a director or officer of an issuer, registrant or investment fund manager; and

ii. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Allen is prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager for 6 years.

Dated at Toronto this 4th day of May, 2017.

"Janet Leiper"

"AnneMarie Ryan"

REASONS AND DECISION OF VICE-CHAIR VINGOE

[77] There are three remaining investors in the Strictrade Offering, all of whom were witnesses at the Merits Hearing. They are directly affected by the scope of the trading bans in this decision. One of the Respondents, Ronald Olsthoorn, is also a licensee in the offering.

[78] I agree with the majority on all sanctions against the Respondents for the reasons we have given, except as to the scope of the trading bans.

[79] The majority states that the unlawful offering must come to a complete end in all of its aspects, including the continuing obligations of the Respondents and the investors under the contracts constituting the Strictrade Offering. I agree that no new investors should be solicited for this investment, and none of the existing investors should be required to commit additional funds to the offering. At the Merits Hearing, violations of the prospectus and registration requirements were established. The scheme was difficult to understand and appeared designed to artificially seek to avoid these legal requirements.

[80] I would also implement the full trading bans. However, I would provide an exception, and related exemptions from subsections 25(1) and 53(1) of the Act, to allow any of the three remaining investors to affirmatively consent to Staff in writing to the continuation of their investments notwithstanding these measures within 30 days after the publication of these Reasons to enable them to consider terminating the arrangements at a time they consider beneficial in each of their circumstances.

[81] At the Merits Hearing, we reviewed the package of contracts constituting the Strictrade Offering in considerable detail. These contracts permit the investors to terminate the arrangements at any time by providing written notice and, more particularly for purposes of this analysis, to terminate the arrangements at a time of their choosing. Evidence was presented concerning several investors who had exercised this choice. Based on the representations and warranties of Axton, the specified events of default and the termination provisions in the contracts, additional rights of termination may also arise from the unlawful nature of the Strictrade Offering, which has been established by this Panel.

[82] The three remaining investors now have the benefit of the analysis in our Merits Decision and will have an opportunity to review these Reasons. In deciding whether to terminate these arrangements, the investors could reasonably be expected to consider our reasons in the Merits Decision, as well as these Reasons. They may also choose to consult with legal advisers regarding the legal risks of continuing performance under the agreements and the civil redress that may be available to them and with their accountants regarding the tax treatment that may arise from the termination of these arrangements and the timing of any such termination on their tax positions. The majority would take these decisions away from these investors and substitute January 30, 2017, being the date that this Panel ordered the Strictrade Offering cease pursuant to an interim cease trade order as the latest date these arrangements were terminated.[1] This date was not selected with the particular interests of the investors in mind, but was based on Staff's discovery during cross-examination of Mr. Furtak on the first day of the Sanctions Hearing that payments from these three investors were still being received under these arrangements notwithstanding the Merits Decision.[2] At no time prior to the Sanctions Hearing had Staff sought an interim cease trade order in this matter. Investors have increased their commitments to the Strictrade Offering during the investigation of this matter and the duration of the Merits Hearing. The remaining investors apparently hoped that they would receive the intended tax benefits, the trading report and bonus payments and that they would avoid recapture of prior claims for capital cost allowance that they had claimed. The opportunity for these outcomes has been brought to an end both by the Respondent's unlawful conduct and by the majority's decision not to enable these investors to preserve the contractual choices open to them.

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1 As an unlawful distribution, this scheme should have come to an end as of the date of the Merits Decision, November 24, 2016, unless we had granted specific exceptions at that time or an earlier date since we have determined that the Strictrade Offering was unlawful from its commencement. This illustrates the difficulty that investors confront if an unlawful offering is not halted at the earliest opportunity since investors' potential losses may mount in any offering as it continues. This is especially true in a case such as this where we have found that the only opportunity for any material gain arises from the potential tax attributes of the investment expected to unfold over a period of years.

2 The Material Time in the Statement of Allegations was January 2012 to July 2014. During the Merits hearing there was considerable evidence concerning the payments made by the investors and on behalf of Axton after that time. Staff's focus during the Merits hearing was, at least in major part, on whether the required payments were being made on a timely basis, and not on whether these payments should come to an end. Staff did not seek to amend its allegations to challenge these continuing payments. This delay and reframing of the alleged misconduct during the Sanctions Hearing are additional reasons for the exception I would order.

[83] As a result of this Panel's concern that the temporary cease trade order issued on January 30, 2017 would affect the three investors, we ordered that Staff give notice to these interested parties so that they would have the opportunity to make submissions concerning the Order. Staff tendered a letter from one of the investors expressing concern that the premature termination of the arrangements would have drastic, negative effects on that investor personally.

[84] We do not know if the intended tax treatment or the payments will pan out for the investors. We know with certainty, however, that if the trading bans and cease trade order have no exceptions for continuing performance if the investors so desire, the tax treatment sought by them will terminate and the prospective trading report and bonus payments will come to an end. The scope of the trading bans and cease trade order approved by the majority denies these three individual investors the ability to take actions to protect their own interests as they see fit. It orders a sanction with the effect of terminating these investors' participation in these continuing aspects of the offering that they could implement themselves at any time if they so choose.

[85] We should be cautious in implementing sanctions under subsection 127(1) of the Act, especially where terms may negatively affect the investors who were the subject of unlawful activity. The Strictrade Offering had both securities aspects on which we have rendered our decision, as well as continuing contractual aspects governed by commercial law and tax aspects, in respect of which we have limited insight. Where, as here, these investors have means available to them to terminate the arrangements in a manner similar to what would be accomplished by a complete trading ban and cease trade order, we should be very careful in imposing a sanction in a form that may interfere with these other aspects of the offering and which may deny these remaining investors choices that arise from these other regimes.

[86] The Supreme Court in Asbestos noted that in exercising our authority under section 127, it is "an error to focus only on the fair treatment of investors" (at para 41). I do not interpret that stricture as requiring that we disregard the effects of a sanctions order on individual investors in the scheme if the other public interest objectives for sanctions are otherwise clearly met. This language only requires that all of the elements of the Commission's mandate, including the fair treatment of investors, be considered. To read this quote instead to require us to disregard the interests of the remaining harmed investors in the Strictrade Offering is to take this quote out of the context in which it arose.

[87] The sanctions that are otherwise imposed on the Respondents in this matter are protective of Ontario capital markets by removing the Respondents from involvement in the capital markets for appropriate periods of time, among other sanctions, which, collectively, will both deter the Respondents and act as a general deterrent for those who may implement similar schemes. The investing public is protected since no one will be permitted to make a new investment in this scheme. I do not agree that enabling these three investors to decide when their investments will terminate compromises these principles. To the contrary, this exception promotes our mandate of investor protection by providing the opportunity for these investors to limit their losses or realize them at a time of their choosing. Allowing for the exception outlined above does not create a compensation scheme in the guise of a sanctions order but instead avoids an obstacle to the ability of the investors to protect their interests as they see fit. This exception provides the potential to avoid having the investors essentially harmed twice, first by the conduct of the Respondents and then by the timing of the sanctions order.

[88] The majority's view that these exceptions should not be allowed would be more appropriate if any of the Respondents had been found to have committed fraud. If Staff had alleged fraud, they would have been more likely to take measures to end all aspects of the Strictrade Offering at an earlier date. The one claim for misrepresentation alleged by Staff was rejected by us in our Merits Decision.

[89] In Universal Settlements International Inc. ((2006) 29 OSCB 7871), the Commission issued its Order pursuant to subsection 127(1) in circumstances where viatical settlements were found to be investment contracts under the Act and an unlawful distribution was found to have taken place. The respondent had effected a public offering of these securities notwithstanding warnings by Staff in an earlier public notice that these types of securities may be considered investment contracts, and inviting discussions with Staff. No fraud was alleged.

[90] Rather than bringing the offering to a complete end, the Commission's order in *Universal Settlements* provided an exemption from the prospectus and registration requirements to complete tasks relating to the existing investments that had already been committed to the life insurance policies of specific viators. This proviso served to protect the existing investors by allowing those investments to run their course as the life insurance policies were realized upon with the death of those whose lives were insured. To that degree, the Panel permitted continuing reliance by the investors on the performance of contractual obligations by the respondent notwithstanding its contraventions of the prospectus and registration requirements. This was protective of the existing investors, whose investments might otherwise have failed as a result of an overly broad order.

[91] In the case of the Strictrade Offering, such an exemption from the trading bans, at the election of any of the remaining investors, would also be protective of investors by preserving their ability to continue or terminate the arrangements in

accordance with the contracts governing the investment at a time of their own choosing rather than an arbitrary date arising from the way in which these proceedings have unfolded.

[92] The majority notes that, unlike *Universal Settlements*, this narrow subcategory of exceptions I would approve in this case involve continuing payments by the investors that may enrich the Respondents. A risk of loss through non-performance by the respondent in *Universal Settlements* also posed a substantial financial risk that cannot be definitively stated to be lesser than those risks faced by the three investors if we immediately terminate their investments. For the three investors in the Strictrade Offering, collectively, 70 licenses, computed in $10,000 increments, appear to remain outstanding. The net payment in each year for a $100,000 license, excluding the performance fee, is approximately $5,000 per $100,000 licence or an aggregate of $35,000 for all remaining licenses per year, bearing in mind that the investor is always prepaying amounts one year in advance. Each year, the investor could assess whether to continue or terminate the arrangement based on, among other factors, whether the trading report payments are made and whether the tax treatment is maintained. At the end of a five-year term, a performance fee is payable in an amount of approximately $30,000 per $100,000 licence. This payment, if made, more than offsets the net payments made by these investors over the remainder of this five period. These calculations are without regard to the tax benefits that may or may not be realized or the effect of different scenarios for terminating these arrangements. However, the impact of an immediate termination of these arrangements may well be a tax liability due to recapture of very large amounts for each investor, potentially involving losses of hundreds of thousands of dollars to them. I cannot agree that the consequences of an immediate termination of these existing investments by our order further the goal of investor protection.

[93] The majority argues that the Respondents are enriched by the continued payments to them by investors. I point out that, over the remaining period of the five-year term relevant to the performance fee, if all payments are made, the Respondents would be out of pocket and not enriched. If they were enriched, a disgorgement order could be considered to prevent this outcome. The majority has rejected that possibility.

[94] There are three additional considerations to be noted.

[95] First, the small number of remaining investors were intimately involved in these proceedings and acted as witnesses for Staff. They are now acutely aware of the violations of Ontario securities law in which the Respondents engaged and can be expected to take this into account in considering whether and when to terminate these arrangements. Staff need not be involved in supervising the activities arising from this very limited exception.

[96] Second, at the last minute in the Sanctions Hearing, Mr. Furtak agreed to be personally responsible for the contractual obligations of STL with regard to these three investors. Although still an unsecured obligation of Mr. Furtak, such a commitment may be advantageous to these investors. The majority's decision on this point removes this potential advantage to these investors.

[97] Finally, there was considerable discussion at the Sanctions Hearing about how Mr. Olsthoorn should be treated for purposes of the interim and any final cease trade order. It would be an unfortunate irony if he could continue to participate in the Strictrade Offering and potentially preserve his tax status and his ability to terminate in the future when the three investors could not. These restrictions should apply to him as well. However, I would go further and provide that if a cease trade order with the exception that I propose were issued, Mr. Olsthoorn's trading ban would also include an exception to enable him to continue his limited participation in the offering as described above but only after all his financial obligations under the Sanctions Order have been fully satisfied. This would provide him with an appropriate additional incentive to meet his financial obligations under the Sanctions Order.

[98] For these reasons, I concur and dissent in part from the majority on the scope of the trading bans.

Dated at Toronto this 4th day of May, 2017.

"D. Grant Vingoe"

APPENDIX A

COMPARISON OF FACTS IN THE MAY 2013 MEMORANDUM AND THE MERITS DECISION

Fact Assumed in May 2013 Memo	Commission Finding in the Merits Decision
"The Software has been in use by STL to trade for its own account with a leading cash and derivatives broker dealer ED &F Man London". (Page 1)	No account was opened until November 2013, six months after the May 2013 Memorandum was prepared. STL did not have the ability to trade until then. (Paras 61-62)
The Strictrade Offering was "to be offered to individuals through independent intermediaries". (Page 1)	Allen and Olsthoorn were the only individuals who marketed and sold the Strictrade Offering. (Paras 19-20, 24, 35, 101) They devised the structure of the Strictrade Offering and the marketing plan together with Furtak. (Para 15) Neither was independent, particularly Olsthoorn who worked for TAL, an entity co-owned by Furtak. (Para 13)
"The optional contracts allow the Licensee to observe the Software in action for a period of their choosing". (Page 1)	The contracts were not optional; the Strictrade Offering was a package, and was marketed as such to investors. (Paras 4, 25, 37) No investors ever saw or operated the Software. (Para 37) Moreover, they could not since it could not be used in Canada under the Terms of the License Agreement. (Para 5)
"ST[L] offers assistance with installation of the software and technical support as well as training courses in the Software's use." (Page 1)	None of the investors saw the Software, operated the Software, or was put forward as being capable of operating the Software. (Para 37) The Strictrade Offering contemplated that STL would operate the Software at their premises. (Para 5) Also, the License Agreement required that the Software be operated outside of Canada (para 5).
"The Licensing Agreement permits the Licensee to install and use the Software to trade directly." (Page 2)	The License Agreement required that the Software be operated outside of Canada. (Para 5)
The Credit Agreement and the Service Agreement with STL are referred to as "optional". (Page 2)	The Strictrade Offering was, and was marketed as, a package of three agreements. (Paras 4, 25, 37) All of the investors entered into all three agreements. (Para 37)
"The use of the License is controlled by the Licensee." (Page 5)	The investors never took delivery of the software, and therefore, never controlled its use. The Strictrade Offering was premised on the understanding that STL would operate the Software at their premises. (Para 5)
"Other than the interest on the Trading Software Financing (if any) in respect of the Software purchase price, the Licensee contributes no cash….The Licensee is paid a fixed fee for each trading instruction generated by his or her trading software as well as a contingent fee determined at the end of the contract. However, this potential upside is not the primary commercial thrust of the Strictrade Program and the Licensee contributes no additional cash to acquire it." (Page 6)	The investors' payments included: interest and a loan maintenance fee payable to Axton; and a service/hosting fee payable to STL. (Para 6) The Trading Report payments were either the primary or the only return that several investors received from the Strictrade Offering (Geraldine O and Moira O, para 41; Edna K and Warren K). (Paras 58-59) They were the main return for Daniel G, as any tax benefits were not generally worthwhile for those who were not in a 40% tax bracket. (Para 34)

Fact Assumed in May 2013 Memo	Commission Finding in the Merits Decision
The section "No common enterprise" assumes that STL has a trading account with ED & F Man and that STL is trading using Trading Reports generated by the Licensee's trading software. (Pages 7-8)	The brokerage account was not opened until November of 2013. (Paras 61-62) No such trading was occurring at the time the May 2013 Memorandum was drafted.
"Licensees will have full disclosure of tax and business risks and risks and the fundamental motivation for a buyer entering into a Strictrade License is the use of the Software and certain tax advantages." (Page 9)	The marketing for the Strictrade Offering represented that investors would be insulated from market volatility and risk. (Paras 8, 24) Geraldine O and Daniel G testified that they were attracted by the representations that it would have little or no risk. (Paras 39, 47) None of the investors was put forward as being capable of operating the Software. (Para 37)
"The trading instructions are generated exclusively by the software used by the licensees, not by the efforts of STL." (Page 9)	None of the investors used the software. (Para 37)

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
Orbus Pharma Inc.	10 May 2010		21 May 2010	03 May 2017

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Aida Minerals Corp.	05 May 2017	
AREV Nutrition Sciences Inc.	05 May 2017	
Axios Mobile Assets Corp.	05 May 2017	
Bitumen Capital Inc.	08 May 2017	
Biosenta Inc.	03 February 2017	03 May 2017
Captiva Verde Industries Ltd.	08 May 2017	
Carlyle Entertainment Ltd.	05 May 2017	
Colt Resources Inc.	08 May 2017	
Compel Capital Inc.	05 May 2017	
Dotodo Urban Logistics, Inc.	05 May 2017	
Emerald Bay Energy Inc.	08 May 2017	
Epic Fusion Corp.	05 May 2017	
Hudson River Minerals Ltd.	05 May 2017	
Hunt Mining Corp.	05 May 2017	
Hunter Oil Corp.	05 May 2017	
KGIC Inc.	05 May 2017	
Khot Infrastructure Holdings, Ltd.	05 May 2017	
Lightstream Resources Ltd.	08 May 2017	
OneRoof Energy Group, Inc.	05 May 2017	
Red Tiger Mining Inc.	08 May 2017	
Silk Road Finance Inc.	05 May 2017	
Synodon Inc.	08 May 2017	
Virginia Hills Oil Corp.	08 May 2017	
Xmet Inc.	05 May 2017	

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order
CHC Student Housing Corp.	05 May 2017
Ellipsiz Communications Ltd.	05 May 2017
Stompy Bot Corporation	04 May 2017

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		

Company Name	Date of Order
CHC Student Housing Corp.	05 May 2017
Ellipsiz Communications Ltd.	05 May 2017
Stompy Bot Corporation	04 May 2017

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:
Alignvest Acquisition II Corporation
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated May 4, 2017, Amending and Restating the Preliminary Prospectus dated May 1, 2017
NP 11-202 Preliminary Receipt dated May 5, 2017
Offering Price and Description:
$250,000,000.00 - 25,000,000 Class A Restricted Voting Units
Price: $10.00 per Class A Restricted Voting Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
UBS SECURITIES CANADA INC.
Promoter(s):
Alignvest II Corporation
Project #2618851

Issuer Name:
Alopex Gold Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 1, 2017
NP 11-202 Preliminary Receipt dated May 2, 2017
Offering Price and Description:
Maximum Offering: $10,000,000.00
Minimum Offering: $5,000,000.00.00
Price: $[*] per Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Canaccord Genuity Corp.
Promoter(s):
Arctic Resources Capital S.À R.L.
FBC Mining (Nalunaq) Limited
Project #2620110

Issuer Name:
Drone Delivery Canada Corp. (formerly Asher Resources Corporation)
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 3, 2017
NP 11-202 Preliminary Receipt dated May 5, 2017
Offering Price and Description:
Up to 31,144,000.00 Units Issuable upon Exercise of Special Warrants
Price: $0.35 per Special Warrant
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Promoter(s):
-
Project #2621636

Issuer Name:
Eclipse Residential Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated May 5, 2017
NP 11-202 Preliminary Receipt dated May 5, 2017
Offering Price and Description:
Offering: $150,000,000 - Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2622540

Issuer Name:
iLOOKABOUT Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 3, 2017
NP 11-202 Preliminary Receipt dated May 3, 2017
Offering Price and Description:
$5,000,000.00 - 20,000,000 Common Shares
Price; $0.25 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Beacon Securities Limited
Desjardins Securities Inc.
Promoter(s):
-
Project #2621212

Issuer Name:
Mogo Finance Technology Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 8, 2017
NP 11-202 Preliminary Receipt dated May 8, 2017
Offering Price and Description:
Up to $15,000,000.00 - 10% Convertible Senior Secured Debentures
Price: $1000.00 per Debenture
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Cormark Securities Inc.
Canaccord Genuity Corp.
Haywood Securities Inc.
M Partners Inc.
Promoter(s):
-
Project #2623119

Issuer Name:
Starlight U.S. Multi-Family (No. 1) Value-Add Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 2, 2017
NP 11-202 Preliminary Receipt dated May 3, 2017
Offering Price and Description:
Maximum: US$112,000,000.00 of Class A Units and/or Class U Units and/or Class D Units and/or Class E Units and/or Class F Units and/or Class H Units and/or Class C Units
Price: C$10.00 per Class A Unit
US$10.00 per Class U Unit
C$10.00 per Class D Unit
US$10.00 per Class E Unit
C$10.00 per Class F Unit
C$10.00 per Class H Unit
C$10.00 per Class C Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
National Bank Financial Inc.
Raymond James Ltd.
TD Securities Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Industrial Alliance Securities Inc.
Promoter(s):
Starlight Group Property Holdings Inc.
Project #2620921

Issuer Name:
Victory Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated May 5, 2017
NP 11-202 Preliminary Receipt dated May 8, 2017
Offering Price and Description:
Maximum Offering: $2,200,000.00 or 11,000,000 Common Shares
Minimum Offering: $400,000.00 or 2,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Gravitas Securities Inc.
Promoter(s):
-
Project #2622643

Issuer Name:
Aphria Inc. (formerly, Black Sparrow Capital Corp.)
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 3, 2017
NP 11-202 Receipt dated May 4, 2017
Offering Price and Description:
$75,000,120 - 11,538,480 Common Shares at a price of $6.50 per Offered Share
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Cormark Securities Inc.
Canaccord Genuity Corp.
PI Financial Corp.
Promoter(s):
-
Project #2613286

Issuer Name:
H&R Finance Trust
H&R Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 3, 2017
NP 11-202 Receipt dated May 4, 2017
Offering Price and Description:
$2,000,000,000.00 - Stapled Units, Preferred Units, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2614983

Issuer Name:
H&R Real Estate Investment Trust
H&R Finance Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 3, 2017
NP 11-202 Receipt dated May 4, 2017
Offering Price and Description:
$2,000,000,000.00 - Stapled Units, Preferred Units, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2614979

Issuer Name:
Real Matters Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 5, 2017
NP 11-202 Receipt dated May 5, 2017
Offering Price and Description:
C$156,730,418.00 - 12,056,186 Common Shares
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns, Inc.
INFOR Financial Inc.
Merrill Lynch Canada Inc.
Scotia Capital Inc.
TD Securities Inc.
Wells Fargo Securities Canada, Ltd.
Canaccord Genuity Corp.
National Bank Financial Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #2610439

Issuer Name:
Toronto Hydro Corporation
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 8, 2017
NP 11-202 Receipt dated May 8, 2017
Offering Price and Description:
$1,000,000,000.00 - DEBENTURES
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #2611617

NON-INVESTMENT FUNDS

Issuer Name:
Alignvest Acquisition II Corporation
Principal Regulator - Ontario
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated May 4, 2017, Amending and Restating the Preliminary Prospectus dated May 1, 2017
NP 11-202 Preliminary Receipt dated May 5, 2017
Offering Price and Description:
$250,000,000.00 - 25,000,000 Class A Restricted Voting Units
Price: $10.00 per Class A Restricted Voting Unit
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CITIGROUP GLOBAL MARKETS CANADA INC.
BMO NESBITT BURNS INC.
TD SECURITIES INC.
UBS SECURITIES CANADA INC.
Promoter(s):
Alignvest II Corporation
Project #2618851

Issuer Name:
Alopex Gold Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 1, 2017
NP 11-202 Preliminary Receipt dated May 2, 2017
Offering Price and Description:
Maximum Offering: $10,000,000.00
Minimum Offering: $5,000,000.00.00
Price: $[*] per Share
Underwriter(s) or Distributor(s):
Paradigm Capital Inc.
Canaccord Genuity Corp.
Promoter(s):
Arctic Resources Capital S.À R.L.
FBC Mining (Nalunaq) Limited
Project #2620110

Issuer Name:
Drone Delivery Canada Corp. (formerly Asher Resources Corporation)
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 3, 2017
NP 11-202 Preliminary Receipt dated May 5, 2017
Offering Price and Description:
Up to 31,144,000.00 Units Issuable upon Exercise of Special Warrants
Price: $0.35 per Special Warrant
Underwriter(s) or Distributor(s):
GMP Securities L.P.
Promoter(s):
-
Project #2621636

Issuer Name:
Eclipse Residential Mortgage Investment Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated May 5, 2017
NP 11-202 Preliminary Receipt dated May 5, 2017
Offering Price and Description:
Offering: $150,000,000 - Common Shares
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2622540

Issuer Name:
iLOOKABOUT Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated May 3, 2017
NP 11-202 Preliminary Receipt dated May 3, 2017
Offering Price and Description:
$5,000,000.00 - 20,000,000 Common Shares
Price; $0.25 per Common Share
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Beacon Securities Limited
Desjardins Securities Inc.
Promoter(s):
-
Project #2621212

Issuer Name:
Mogo Finance Technology Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated May 8, 2017
NP 11-202 Preliminary Receipt dated May 8, 2017
Offering Price and Description:
Up to $15,000,000.00 - 10% Convertible Senior Secured Debentures
Price: $1000.00 per Debenture
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Cormark Securities Inc.
Canaccord Genuity Corp.
Haywood Securities Inc.
M Partners Inc.
Promoter(s):
-
Project #2623119

Issuer Name:
Starlight U.S. Multi-Family (No. 1) Value-Add Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated May 2, 2017
NP 11-202 Preliminary Receipt dated May 3, 2017
Offering Price and Description:
Maximum: US$112,000,000.00 of Class A Units and/or Class U Units and/or Class D Units and/or Class E Units and/or Class F Units and/or Class H Units and/or Class C Units
Price: C$10.00 per Class A Unit
US$10.00 per Class U Unit
C$10.00 per Class D Unit
US$10.00 per Class E Unit
C$10.00 per Class F Unit
C$10.00 per Class H Unit
C$10.00 per Class C Unit
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
Scotia Capital Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
National Bank Financial Inc.
Raymond James Ltd.
TD Securities Inc.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Industrial Alliance Securities Inc.
Promoter(s):
Starlight Group Property Holdings Inc.
Project #2620921

Issuer Name:
Victory Capital Corp.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated May 5, 2017
NP 11-202 Preliminary Receipt dated May 8, 2017
Offering Price and Description:
Maximum Offering: $2,200,000.00 or 11,000,000 Common Shares
Minimum Offering: $400,000.00 or 2,000,000 Common Shares
Price: $0.20 per Common Share
Underwriter(s) or Distributor(s):
Gravitas Securities Inc.
Promoter(s):
-
Project #2622643

Issuer Name:
Aphria Inc. (formerly, Black Sparrow Capital Corp.)
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated May 3, 2017
NP 11-202 Receipt dated May 4, 2017
Offering Price and Description:
$75,000,120 - 11,538,480 Common Shares at a price of $6.50 per Offered Share
Underwriter(s) or Distributor(s):
Clarus Securities Inc.
Cormark Securities Inc.
Canaccord Genuity Corp.
PI Financial Corp.
Promoter(s):
-
Project #2613286

Issuer Name:
H&R Finance Trust
H&R Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 3, 2017
NP 11-202 Receipt dated May 4, 2017
Offering Price and Description:
$2,000,000,000.00 - Stapled Units, Preferred Units, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2614983

Issuer Name:
H&R Real Estate Investment Trust
H&R Finance Trust
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 3, 2017
NP 11-202 Receipt dated May 4, 2017
Offering Price and Description:
$2,000,000,000.00 - Stapled Units, Preferred Units, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2614979

Issuer Name:
Real Matters Inc.
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated May 5, 2017
NP 11-202 Receipt dated May 5, 2017
Offering Price and Description:
C$156,730,418.00 - 12,056,186 Common Shares
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns, Inc.
INFOR Financial Inc.
Merrill Lynch Canada Inc.
Scotia Capital Inc.
TD Securities Inc.
Wells Fargo Securities Canada, Ltd.
Canaccord Genuity Corp.
National Bank Financial Ltd.
Raymond James Ltd.
Promoter(s):
-
Project #2610439

Issuer Name:
Toronto Hydro Corporation
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated May 8, 2017
NP 11-202 Receipt dated May 8, 2017
Offering Price and Description:
$1,000,000,000.00 - DEBENTURES
Underwriter(s) or Distributor(s):
CIBC World Markets Inc.
TD Securities Inc.
BMO Nesbitt Burns Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Promoter(s):
-
Project #2611617

Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Broadview Capital Management Inc.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	May 2, 2017
New Registration	Overbay Capital Inc.	Exempt Market Dealer	May 3, 2017
Consent to Suspension (Pending Surrender)	Pan Asset Management Ltd.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	May 5, 2017
Voluntary Surrender	Everest Financial Planning Inc.	Mutual Fund Dealer	May 5, 2017

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Canadian Securities Exchange − Significant Change Subject to Public Comment − Amendments to Trading System Functionality & Features − Notice and Request for Comment

Notice 2017-009

April 27, 2017

CANADIAN SECURITIES EXCHANGE

SIGNIFICANT CHANGE SUBJECT TO PUBLIC COMMENT

AMENDMENTS TO TRADING SYSTEM FUNCTIONALITY & FEATURES

NOTICE AND REQUEST FOR COMMENT

The Exchange is filing this Notice and Exhibit E to Form 21-101F1 in accordance with the process for the Review and Approval of Rules and Information Contained in Form 21-101F1 and the Exhibits Thereto attached as Appendix B to the Exchange's recognition order ("Protocol").

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

The Canadian Securities Exchange ("CSE" or the "Exchange") is implementing changes to add price protection and reduce price volatility of oddlot trades.

For securities with a designated market maker (MM), tradeable oddlot orders currently execute automatically against the market maker's account at the National Best Bid or Offer (NBBO, comprised of protected market quotes). Oddlot orders on securities without a MM will seek out oddlot orders in the book, matching on an "any part" basis (as opposed to the "all-or-none" matching on other marketplaces).

Rather than individual price protection (i.e. "50 tick limit") on oddlot orders, the trading engine will restrict oddlot trades to at or between the NBBO. Oddlot orders will trade or book at or between the NBBO, with better limit orders being repriced to the opposite side. When one or both sides of the NBBO are absent, a Single Oddlot Price ("SOP") will be calculated, and odd lot orders will trade or book at that single price.

Detailed proposed changes to the oddlot functionality are blacklined, below.

- Oddlot orders and trades are considered Special Terms trades, in accordance with UMIR.
- Oddlots will only trade at or between the NBBO
- Oddlot orders trade any part ~~and can match outside the board lot bid/ask.~~
- ~~Regular odd lot orders are included in the 50 tick bid/ask protection limit. The price tick protection parameters are set off the first trade of market orders and better price limit orders~~
- ~~Active odd lot orders will be protected by trading or booking at their limit price up to the freeze parameter limit as specified on the security. This protection is in effect in continuous trading~~
- Oddlot Price Protection: Market or better limit oddlot orders may be repriced based on the following Oddlot Price Protection (OPP) requirements:
    a) NBBO – oddlot orders that are priced at or better than the opposite side of the NBBO will be repriced to that price. They will interact with existing oddlot orders at or better than that price, then the balance will trade with the Market Maker or will book there, as applicable. Oddlot orders priced between the NBBO will book or trade at their limit or better, depending on oddlot orders in the book.
    b) For a one-sided market, the SOP will be a calculation based on the existing bid or offer, and the last sale price
        i. If the bid < last sale, or ask > last sale, use last sale price;
        ii. If the bid > last sale, or ask < last sale, use the bid/ask
    c) If there is no NBBO then the SOP will be the last sale price.

- Oddlot Market and Mixed lot market orders are accepted in preopen
- Oddlot orders will be held in a queue in pre-open, and after the market opens (with or without boardlot trades) oddlot orders in queue will enter the continuous trading session in order of original entry (by time priority) and trade at the NBBO or SOP
- On GMF enabled stocks (i.e. those with a Market Maker), as the NBBO changes, booked Oddlots that would be tradeable at the current NBBO will become active and autotrade at the current NBBO with the Market Maker
- ~~For securities that are enabled GMF, odd lot orders will be auto traded at the CSE bid/ask with the designated market maker responsible for the security if they cannot be filled by odd lots in the book at or better than the bid/ask board lot market.~~
- If there is no NBBO, oddlots will only trade at a Single Oddlot Price (SOP). Oddlots priced at or better than the SOP will book or trade at the SOP.
- For GMF enabled stocks Oddlot orders will trade with the book the then Market Maker will fill balance at the NBBO OR the Single Oddlot Price.
- Oddlots trade by price/time priority.
- Oddlots trade only with other odd lots or the market maker for stocks that are enabled with GMF.
- Oddlot trades will not affect the Last Sale Price.
- ~~Are subject to Thresholds.~~
- Oddlot orders may have all the regular attributes of board lots (e.g. Anonymous, Short, NCIB etc.).
- Oddlot orders may be any duration ~~except for FOK.~~

B. Expected Implementation Date: September, 2017

Availability for testing in the CSE GTE was announced January 31, 2017 and testing commenced on March 6, 2017. The functionality will not be part of the May 2017 release and has been removed from the GTE until after that release.

C. Rationale and Analysis

Oddlot orders that are entered as market orders or with deep price limits can match well outside the displayed quote, resulting in poor fill quality.

IIROC, in an attempt to curb the practice of entering oddlot order with deep price limits, published a Rules Notice[1] ("Notice") that stated IIROC would no longer rule on oddlot trades, and participants must not pass on poor fills to clients, but rather make an adjustment in the client's favour at their own expense. In principal, the Notice was intended to modify the behaviour that caused the poor fills. In practice, IIROC's Guidance has led to some confusion about whether the absence of a ruling on certain trades represents a tacit approval of the trades, or whether the marketplaces now have the authority to cancel erroneous oddlot trades.

The CSE has determined the most appropriate approach to preventing such trades is to implement price restrictions on oddlot executions that will be effective with or without a MM, and with or without a full NBBO.

D. Expected Impact

The changes are being implemented in response to customer demand, and to improve the quality of oddlot fills and maintain the integrity of the price discovery mechanism.

E. Systemic Risk

The CSE does not believe that any increase in systemic risk would be introduced with the approval of the proposals.

F. Compliance with Ontario Securities Law

There will be no impact on the CSE's compliance with Ontario securities law. The changes do not alter any of the requirements for fair access or the maintenance of fair and orderly markets.

G. Consultation

The CSE has consulted with a number of dealers and industry stakeholders and considered the feedback received during informal dialogue.

[1] IIROC Rules Notice 13-0297 Variation and Cancellation of Odd Lot Trades, http://www.iiroc.ca/Documents/2013/f9404291-d1fa-4ca8-889f-0c7a61a11fe2_en.pdf

H. Technology Changes

CSE is not aware of any technological changes that will be required by participants or vendors.

I. Alternatives

The Exchange considered variations of price limits, as well as cancelling oddlot order with significantly better limits than the NBBO. Also under consideration was the ability to have a flexible Exchange-defined premium or discount to the NBBO. Restricting trades to within the NBBO is the solution that most accurately reflects the desired quality and integrity of the market.

J. Other Markets or Jurisdictions

Other exchanges (TSX, TSX-Alpha, TSX Venture Exchange, Aequitas Neo) and Nasdaq Canada's CX2 have facilities that include the automatic execution of odd lot trades against the account of an individual/participant/subscriber (a "Specialist") that has been appointed by the exchange or marketplace for that purpose. To promote quality of fills, the other exchanges rely on the fact that the majority of securities are assigned to a Specialist. For those securities that are not assigned, odd lot orders may book at the opposite side of the market (market orders) or their price limit. If price information is not available, the order may book at the last sale price. In the case of CX2, only tradable IOC orders are accepted.

K. Comments

Submit comments on the proposed amendments no later than June 12, 2017 to:

Mark Faulkner
Vice President, Listings and Regulation
CNSX Markets Inc.
220 Bay Street, 9th Floor
Toronto, ON, M5J 2W4
Fax: 416.572.4160
Email: Mark.Faulkner@thecse.com

Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, ON, M5H 3S8
Fax: 416.595.8940
Email: marketregulation@osc.gov.on.ca

13.2.2 Canadian Securities Exchange – Significant Change Subject to Public Comment – Amendments to Trading System Functionality & Features – Notice and Request for Comment

Notice 2017-010

May 11, 2017

CANADIAN SECURITIES EXCHANGE

SIGNIFICANT CHANGE SUBJECT TO PUBLIC COMMENT

AMENDMENTS TO TRADING SYSTEM FUNCTIONALITY & FEATURES

NOTICE AND REQUEST FOR COMMENT

The Exchange is filing this Notice and an amended Exhibit E to Form 21-101F1 in accordance with the process for the Review and Approval of Rules and Information Contained in Form 21-101F1 and the Exhibits Thereto attached as Appendix B to the Exchange's recognition order ("Protocol").

A. DESCRIPTION OF THE PROPOSED AMENDMENTS

The Canadian Securities Exchange ("CSE" or the "Exchange") intends to reactivate "On-Stop" orders.

On-Stop Orders (often referred to as "Stop Loss")

The On-Stop order type will be reactivated in the CSE trading system. The following describes how On-Stop orders are processed.

On-Stop orders are limit or market orders that are inactive and undisplayed until the market price (National Last Sale Price) hits or passes through a specified trigger price.

When a security trades at or through the trigger price, the On-Stop order becomes an active buy/sell order. It will be evaluated for OPR compliance and traded, booked, repriced and booked, or cancelled based on OPR logic, user preference and market conditions. On-Stop orders may be entered with a fixed trigger price, or a trailing price, offset from the last sale price.

All aspects of the On-Stop are the same with a fixed trigger price or trailing offset price, except that the offset trigger price is calculated and moves with the market, whereas the basic on-stop the trigger is specified by the user at the time of entry and remains fixed. The calculated trigger price is based on the National Last Sale Price adjusted by a user defined offset specified at the time of entry as a dollar value.

The initial trigger price is calculated as National Last Sale Price minus the offset for Sell orders or as National Last Sale Price plus the offset for Buy orders. With each change of the National Last Sale Price the calculated trigger price is re-evaluated. If the calculated value would result higher calculated trigger price of a sell order, or a lower trigger price in the case of a Buy, the calculated trigger price will be adjusted.

Conditions

- On-Stop orders must have a trigger price or offset greater than zero.
- Unpriced On-Stop orders will not be accepted (must be marked Mkt or Limit with a specified limit price).
- On-Stop orders will not be accepted unless marked OPR Reprice or OPR CXL.
- Sell orders must have a fixed or calculated trigger price at or below the last sale price and equal to or greater than the limit price.
- Buy orders must have a fixed or calculated trigger price at or above the last sale price and equal to or lower than the limit price.
- On-Stop orders will be triggered immediately on receipt if the trigger price is equal to National Last Sale Price at the time of receipt.

B. Expected Implementation Date: September, 2017

Availability for testing in the CSE GTE was announced January 31, 2017 and testing commenced on March 6, 2017. The functionality will not be part of the May 2017 release and has been removed from the GTE until after that release.

C. Rationale and Analysis

On stop orders have been available for decades. CSE Dealers have requested the reinstatement of this specific order type on behalf of their retail clients.

D. Expected Impact

The reinstatement of on stop orders will provide additional risk management capabilities. The changes are being implemented in response to customer demand.

E. Systemic Risk

The CSE does not believe that any increase in systemic risk would be introduced with the approval of the proposal.

F. Compliance with Ontario Securities Law

There will be no impact on the CSE's compliance with Ontario securities law. The changes do not alter any of the requirements for fair access or the maintenance of fair and orderly markets.

G. Consultation

The CSE has consulted with a number of dealers and industry stakeholders and considered the feedback received during informal dialogue.

H. Technology Changes

CSE is not aware of any technological changes that will be required by participants or vendors. The basic order type exists on other marketplaces and the offset price will use an existing FIX tag.

I. Alternatives

No alternatives were considered.

J. Oher Markets or Jurisdictions

TMX Group (TSX, TSX-V, TSX-Alpha): An On-stop order is a limit priced order which resides undisplayed in the On-Stop book until its limit price is "triggered" at which time it becomes a regular limit order in the Continuous Limit Order Book (CLOB). An undisplayed On Stop Sell order is triggered when TSX (or TSX-V or Alpha, the exchange on which the order is booked) prices trade down to or through the limit specified on the On-Stop order. An On Stop Buy order is triggered when TSX/V prices trade up to or through the limit specified on the On-Stop order. Once triggered the On-Stop order will trade in the CLOB subject to its limit with any untraded volume fully displayed at its limit price. TMX On-Stop orders Trigger price is always equal to its limit price.

K. Comments

Please submit comments on the proposed amendments no later than June 12, 2017 to:

Mark Faulkner
Vice President, Listings and Regulation
CNSX Markets Inc.
220 Bay Street, 9th Floor
Toronto, ON, M5J 2W4
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Market Regulation Branch
Ontario Securities Commission
20 Queen Street West, 20th Floor
Toronto, ON, M5H 3S8
Fax: 416.595.8940
Email: marketregulation@osc.gov.on.ca

13.2.3 Aequitas NEO Exchange Inc. – Amendments to Trading Policies – Auto Execution Facility – Update

On January 26, 2017, the Commission approved amendments to the Aequitas NEO Exchange (NEO) Trading Policies to add Auto-Execution Facility (AEF) requirements. NEO has informed the Commission that during the life cycle of this proposal it received a range of feedback, including some formal comments during the comment process, but in the 90 day implementation period it received further feedback from a number of members of the institutional trading community, in Canada and abroad, raising concerns about order flow segmentation in the Canadian markets. In response to these growing concerns NEO has decided not to implement the AEF at this time.

Any final decision by NEO to proceed with or withdraw the AEF functionality will be made by Friday, July 28, 2017.

13.2.4 TSX – Amendments to Parts IV, VI, and IX, Form 12 and Appendix B of the TSX Company Manual – Notice of Housekeeping Amendments

TORONTO STOCK EXCHANGE

NOTICE OF HOUSEKEEPING RULE AMENDMENTS TO THE TSX COMPANY MANUAL

Introduction

In accordance with the Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 (the "**Protocol**"), Toronto Stock Exchange ("**TSX**") has adopted, and the Ontario Securities Commission has approved, certain housekeeping amendments (the "**Amendments**") to Parts IV, VI, and IX, Form 12 – *Notice of Intention to make a Normal Course Issuer Bid* ("**Form 12**"), and Appendix B of the TSX Company Manual (the "**Manual**"). The Amendments are Housekeeping Rules under the Protocol and therefore have not been published for comment. The Ontario Securities Commission has not disagreed with the categorization of the Amendments as Housekeeping Rules.

Reasons for the Amendments

The Amendments relate to non-public interest changes and include fixing typographical errors, clarifying provisions, updating references to securities legislation and section of the Manual, amending language to reflect changes in technology, and the addition of a newly authorized newswire service provider.

Summary of the Non-Public Interest Amendments

	Section of the Manual	Amendment	Rationale
1.	406 – Timely Disclosure – Introduction.	Amend language to correct typographical errors, and update references to securities legislation.	Correct typographical errors, and update references to securities legislation.
2.	411 – Timely Disclosure – Developments to be Disclosed.	Update references to securities legislation.	Update references to securities legislation.
3.	412 – Market Surveillance – Monitoring Trading.	Amend language to correct typographical errors.	Correct typographical errors.
4.	416 – Timely Disclosure – Announcements of Material Information – Pre-Notification to Exchange.	Update the manner in which listed issuers may deliver copies of press releases to Market Surveillance for pre-notification purposes by allowing for delivery via e-mail and through TSX SecureFile, and delete the reference to manual delivery.	Improve delivery efficiency and simplify the process by which a listed issuer may deliver copies of press releases to Market Surveillance and reflect changes in technology and electronic communication.
5.	417 – Timely Disclosure – Announcements of Material Information – Dissemination.	Amend language to correct typographical error.	Correct typographical error.
6.	423.4 – Timely Disclosure – Insider Trading – Law.	Amend language to correct typographical error.	Correct typographical error
7.	423.9 – Timely Disclosure – Electronic Communications Disclosure Guidelines.	Update language relating to the Internet. Amend incorrect references to Parts II and III of the Manual to reflect the appropriate sections.	Update language relating to the Internet. Part II of the Manual has been repealed. The reference to Part III of the Manual (Original Listing Requirements) is not the correct section applicable to the subject matter of Section 423.9 (Electronic Communications Disclosure Guidelines).

	Section of the Manual	Amendment	Rationale
8.	423.10 – Timely Disclosure – Electronic Communications Disclosure Guidelines.	Amend language to correct typographical error, amend language relating to disclosure on a listed issuer's website, and update language relating to SEDAR.	Amend reference to "AIF" to "Annual Information Form". Simplify language relating to disclosure on a listed issuer's website. SEDAR is no longer operated by CDS.
9.	423.11 – Timely Disclosure – Applicable Disclosure Standards.	Amend language to update references to securities legislation.	Update references to securities legislation.
10.	423.12 2(a), 2(d), 3(a), 5, and footnote – Timely Disclosure – Electronic Communication Guidelines.	Amend language to correct typographical errors, update references to securities legislation, and update language relating to the Internet.	Correct typographical errors, and update references to securities legislation. Amend language to reflect changes in technology and Internet use by including social media as a form of Internet use and electronic communication, and, consequently, include definition of "social media" in the definitions footnote.
11.	423.14 – Timely Disclosure – TSX Monitoring of the Internet.	Update language relating to the Internet.	Amend language to reflect changes in technology and Internet use by including social media as a form of Internet use and electronic communication.
12.	607(f)(v) – Private Placements.	Amend language to clarify that with respect to successive private placements and whether security holder approval is required for a proposed private placement, the calculation of a listed issuer's number of securities outstanding must be made on the date that is prior to the date of closing of the first private placement during the three (3) month period.	Amend the language to reflect, and provide clarity on, the practice used by the TSX with respect to calculating the number of securities of a listed issuer with respect to successive private placements, and the intent of the rule.
13.	611(c) and 611(d) – Distributions of Securities of a Listed Class – Acquisitions.	Delete Section 611(d) and corresponding reference in Section 611(c).	Subject matter (investment funds) is governed by Part XI of the Manual and the various sections of the Manual specifically referenced therein. Section 611(d) is not referenced in Part XI and is therefore not applicable to investment funds.
14.	629(f) – Normal Course Issuer Bids – Special Rules Applicable to Normal Course Issuer Bids ("**NCIB**").	Amend language to require a listed issuer to disclose additional information in its public announcement of an NCIB with respect to an NCIB in the previous 12 month period relating to the maximum number of securities sought and approved for purchase, and the manner in which the securities under the prior NCIB were acquired.	Improve transparency in the disclosure provided by listed issuers in their public announcements of an NCIB relating to any securities purchased under an NCIB in the previous 12 months.

	Section of the Manual	Amendment	Rationale
15.	906 – Notifying the Financial Media.	Update language to reflect the manner in which listed issuers may deliver copies of press releases to Market Surveillance by allowing for delivery via e-mail and through TSX SecureFile, and delete reference to manual delivery. Update Market Surveillance contact information.	Improve delivery efficiency and simplify the process by which a listed issuer may deliver copies of press releases to Market Surveillance and to reflect changes in technology and electronic communication. Update Market Surveillance contact information to include TSX SecureFile, e-mail address and fax number.
16.	910(A) – News Services and Publication.	Update section to include the name of a newly authorized and approved newswire service provider.	Include the addition of a newly authorized newswire service provider.
17.	Form 12.	Update Item 7 on Form 12 to disclose additional information with respect to an NCIB in the previous 12 month period relating to the maximum number of securities sought and approved for purchase and the manner in which the securities under the prior NCIB were acquired.	Improve transparency in the disclosure provided by listed issuers relating to any securities purchased under an NCIB in the previous 12 months.
18.	Appendix B – 1.1 – Disclosure Standards for Companies in Engaged in Mineral Exploration, Development & Production – News Releases.	Update language to reflect the manner in which listed issuers may make certain information available by allowing for such information to be obtained by e-mail. Amend language to correct typographical error.	Improve delivery efficiency and simplify the process by which a listed issuer may make certain information available by e-mail and to reflect changes in technology and electronic communication. Correct typographical error.

Text of the Amendments

The Amendments are set out as blacklined text at **Appendix A**. For ease of reference, a clean version of the Amendments are set out at **Appendix B**.

Effective Date

The Amendments become effective on May 11, 2017.

APPENDIX A

BLACKLINES OF
NON-PUBLIC INTEREST AMENDMENTS TO THE TSX COMPANY MANUAL

Change #1

B. Timely Disclosure

Introduction

Sec. 406.

It is a cornerstone policy of the Exchange that all persons investing in securities listed on the Exchange have equal access to information that may affect their investment decisions. Public confidence in the integrity of the Exchange as a securities market requires timely disclosure of material information concerning the business and affairs of companies listed on the Exchange, thereby placing all participants in the market on an equal footing.

The timely disclosure policy of the Exchange is the primary timely disclosure standard for all TSX listed issuers. National Policy 51-201 *Disclosure Standards* ~~of the CSA, "Disclosure Standards"~~, assists issuers in meeting their legislative disclosure requirements. While the legislative and Exchange timely disclosure requirements differ somewhat, the CSA clearly state in National Policy 51-201 *Disclosure Standards* that they expect listed issuers to comply with the requirements of the Exchange.

To minimize the number of authorities that must be consulted in a particular matter, in the case of securities listed on the Exchange, the Exchange is the relevant contact. The issuer may, of course, consult with the government securities administrator of the particular jurisdiction. In the case of securities listed on more than one stock market, the issuer should deal with each market.

The requirements of the Exchange and National Policy 51-201 *Disclosure Standards* are in addition to any applicable statutory requirements. The Exchange enforces its own policy. Companies whose securities are listed on the Exchange are legally obligated to comply with the provisions on timely disclosure set out in section 75 of the OSA and the ~~Regulation~~regulation under the ~~Act~~OSA. Reference should also be made to National Instrument 71-102 ~~*continuous*~~*Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, National Instrument 55-102 *System for Electronic Disclosure by Insiders*, ~~and~~ National Instrument 62-103 *The Early Warning System and Related Take-Over bid and Insider Reporting Issues*, and National Instrument 62-104 *Take-Over Bids and Issuer Bids*.

In addition to the foregoing requirements, companies whose securities are listed on the Exchange and who engage in mineral exploration, development and/or production, must follow the "Disclosure Standards for Companies Engaged in Mineral Exploration, Development and Production" as outlined in Appendix B of this Manual for both their timely and continuous disclosure.

~~The~~ Market Surveillance ~~Division~~ monitors the timely disclosure policy on behalf of the Exchange.

Change #2

Developments to be Disclosed

[…]

Sec. 411.

Forecasts of earnings and other financial forecasts need not be disclosed, but where a significant increase or decrease in earnings is indicated in the near future, such as in the next fiscal quarter, this fact must be disclosed. Forecasts should not be provided on a selective basis to certain investors not involved in the management of the affairs of the company. If disclosed, they should be generally disclosed. Reference should be made to National ~~Policy 48 *Future-Oriented Financial Information* of the Canadian Securities Administrators (*Future-oriented Financial Information*~~Instrument 51-102 *Continuous Disclosure Obligations* (*FOFI and Financial Outlooks*).

Change #3

Market Surveillance

Monitoring Trading

Sec. 412.

Market Surveillance maintains a continuous stock watch ~~programme~~program which is designed to highlight unusual market activity, such as unusual price and volume changes in a stock relative to its historical pattern of trading. Where unusual trading activity takes place in a listed security, Market Surveillance attempts to determine the specific cause of such activity. If the specific cause cannot be determined immediately, company management will be contacted. Should this contact result in Market Surveillance staff becoming aware of a situation which requires a news release, the company will be asked to make an immediate announcement. Should the company be unaware of any undisclosed developments, Market Surveillance staff will continue to monitor trading and, if concerns continue, may ask the company to issue a statement that it is not aware of any undisclosed ~~devlopments~~developments that would account for the unusual trading pattern.

Change #4

Announcements of Material Information

Pre-Notification to Exchange

Sec. 416.

The Exchange's policy requires immediate release of material information except in unusual circumstances. While Market Surveillance may permit certain news releases to be issued after the close of trading, the policy of immediate disclosure frequently requires that news releases be issued during trading hours, especially when an important corporate development has occurred. If this is the case, it is absolutely essential that company officials notify Market Surveillance prior to the issuance of a news release. Market Surveillance staff will then be in a position to determine whether trading in any of the company's securities should be temporarily halted. Also, if the Exchange is not advised of news releases in advance, any subsequent unusual trading activity will generate enquiries and perhaps a halt in trading.

Regardless of when an announcement involving material information is released, Market Surveillance must be advised of its content and supplied with a copy in advance of its release. Market Surveillance must also be advised of the proposed method of dissemination. Market Surveillance must be advised by telephone in advance if an announcement is ready to be made during trading hours, and submission of a written copy of the release should follow. Where an announcement is to be released after the Exchange has closed, Market Surveillance staff should be advised before trading opens on the next trading day. Copies may be filed through TSX SecureFile, faxed or ~~hand-delivered~~e-mailed to Market Surveillance.

Market Surveillance coordinates trading halts with other exchanges and markets where a company's securities are listed or traded elsewhere. A convention exists that trading in a security traded in more than one market shall be halted and resumed at the same time in each market. Failing to pre-notify the Exchange of an imminent material announcement could disrupt this system.

Change #5

Dissemination

Sec. 417.

After notifying Market Surveillance, a news release must be transmitted to the media by the quickest possible method, and by one that provides the widest dissemination possible. To ensure that the entire financial community is aware of the news at the same time, a wire service or combination of services~~)~~ must be used which provides national and simultaneous coverage.

[…]

Change #6

Insider Trading

Law

Sec. 423.4.

Every listed company should have a firm rule prohibiting those who have access to confidential information from making use of such information in trading in the company's securities before the information has been fully disclosed to the public and a reasonable period of time for dissemination of the information has passed.

Insider trading is strictly regulated by Part XXI and sections 76 and 134 of the OSA and the Regulation under the Act. The securities laws of other provinces also regulate insider trading in their respective jurisdictions. Insider trading in the securities of companies incorporated under the ~~("~~*Canada Business Corporations Act* is also regulated by Part XI of that Act. The definition of an "insider" will vary from statute to statute, but in any case will include directors and senior officers of the company and large shareholders. In Ontario directors and senior officers of any company that is itself an insider of a second company are considered insiders of that second company. It is recommended that directors and officers of listed companies be fully conversant with all applicable legislation concerning insider trading.

[…]

Change #7

Electronic Communications Disclosure Guidelines

Sec. 423.9.

~~For financial markets, the Internet may be the greatest leap forward in providing information and analysis since the advent of electronic communications. It is putting~~The Internet allows for relevant information ~~at investors' fingertips—~~to be instantaneously and simultaneously available to an investor. But the Internet also poses regulatory challenges. In a world in which information is more readily available than ever, it is more important than ever that it be accurate, timely and up-to-date. With this in mind, TSX has developed these electronic communications guidelines to assist listed issuers to meet their investors' informational needs.

~~Part II~~Section 423.11 (Applicable Disclosure Guidelines) reminds issuers that applicable disclosure rules apply to all corporate disclosure through electronic communications and must be followed by each issuer. Disclosure of information by an issuer through its web site or e-mail will not satisfy the issuer's disclosure obligations. The ~~corporation~~issuer must continue to use traditional means of dissemination. ~~Part III sets~~Section 423.12 (Electronic Communications Guidelines) sets out the guidelines that apply directly to the Internet and other electronic media. The overall objective of the guidelines is to encourage the use of electronic media to make investor information accessible, accurate and timely. The challenge of regulating electronic media is to ensure that regulatory concerns are addressed without impeding innovation.

Change #8

Sec. 423.10.

These guidelines should be read with TSX's Timely Disclosure requirements and related guidelines ("TSX Timely Disclosure Policy").

Web sites, electronic mail ("e-mail") and other channels available on the Internet are media of communication available to listed issuers for corporate disclosure. Each of these media provides opportunities for an issuer to broadly disseminate investor relations information. There are, however, a number of issues that an issuer must consider when it goes online. Investor relations information that is disclosed electronically using these new media should be viewed by the issuer as an extension of its formal corporate disclosure record. As such, these electronic communications are subject to securities laws and TSX standards and should not be viewed merely as a promotional tool.

TSX strongly recommends that all listed issuers ~~maintain a corporate web site to~~ make investor relations information available ~~electronically~~on their web site.

Current securities filings of listed issuers such as financial statements, ~~AIFs~~Annual Information Forms, annual reports and prospectuses are maintained on ~~the~~ SEDAR ~~web site operated by CDS~~. In addition, TSX maintains a profile page on each listed issuer on its web site ("tsx.com"). Further, many news wire services post listed issuer news releases on their web sites. Since these various sites are not all connected, it may be difficult and time consuming for an investor to search the Internet and obtain

all relevant investor relations information about a particular issuer. If an issuer creates its own web site, it can ensure that all of its investor relations information is available through one site and can provide more information than is currently available online. For example, SEDAR contains only mandatory corporate filings, while an issuer's site may carry a wealth of supplemental information, such as fact sheets, fact books, slides of investor presentations, transcripts of investor relations conferences and webcasts.

Disclosure by the Internet alone will not meet an issuer's disclosure requirements and an issuer must continue to use traditional means of dissemination.

Electronic communications do not reach all investors. Investors who have access to the Internet will be unaware that new information is available unless the issuer notifies them of an update.

Change #9

Applicable Disclosure Standards

Sec. 423.11.

Distribution of information via a web site, e-mail or otherwise via the Internet is subject to the same laws as traditional forms of dissemination such as news releases. In establishing electronic communications, an issuer should have special regard to disclosure requirements under all applicable securities laws. Issuers should refer to TSX Timely Disclosure Policy, National Policy ~~No.~~ 51-~~201,~~ 201*Disclosure Standards*, National Policy 11-~~201,~~201 *Electronic Delivery of Documents* ~~by Electronic Means~~, and National Policy 47-~~201,~~201 *Trading Securities Using the Internet and Other Electronic Means*. Issuers should be aware of disclosure requirements in all jurisdictions in which they are reporting issuers. Also, there are constant developments regarding electronic disclosure of material information by issuers and issuers must be aware of the impact of all such developments on their disclosure practices.

These standards apply to all corporate disclosure through electronic communications and must be followed by each issuer.

[…]

Change #10

Electronic Communication Guidelines

Sec. 423.12.

[…]

2. What should be on the ~~Web~~web site~~'~~?

(a) *All corporate "timely disclosure" documents and other investor relations information*—TSX recommends that issuers take advantage of Internet technologies and make available through an issuer web site all corporate "timely disclosure" documents and other investor relations information that it deems appropriate. As stated, however, the posting of such documents and information on the web site does not fulfill the issuer's obligation to disseminate such information through a timely news release.

An issuer may either post its own investor relations information or establish links~~, frequently called "hyper-links",~~ to other web sites that also maintain publicly disclosed documents on behalf of the issuer such as news wire services, SEDAR and stock quote services. "Investor relations information" includes all material public documents such as: the annual report; annual and interim financial statements; the Annual Information Form; news releases; material change reports; information regarding DRIPs; declarations of dividends; redemption notices; management proxy circulars; and any other communications to shareholders.

TSX recommends that an issuer post its investor relations information, particularly its news releases, as soon as possible following dissemination. Documents that an issuer files on SEDAR should be posted concurrently on its web site, as suggested in National Policy 51-~~201,~~201 *Disclosure Standards* or the issuer could create a hyper-link to the SEDAR web site. If an issuer chooses to link to SEDAR or to a news wire web site, a link can be provided directly to the issuer's page on that site, provided that the terms and conditions of the site to which the link is provided do not place restrictions on "deep-linking" ~~as this practice is sometimes referred to~~, or object to "framing"[1]. An issuer providing deep-linking from its web site to a third party web site should consult its legal advisors to assess the legal issues surrounding deep-linking and to ensure the proposed link is effected properly. The practice of deep-linking has given rise to a number of legal issues, including whether

permission from the third party must be sought in order to access a web site other than through the homepage and whether the issuer may incur liability in sending a user to a third party site bypassing any disclaimers posted on the homepage of the third party site.

Links to other web sites should be checked regularly to ensure they still work, are up-to-date and accurate. In addition, a disclaimer should be included on the issuer's web site, preferably via a pop-up window, clearly stating that the viewer is leaving the issuer web site and that the issuer is not responsible for the content, accuracy or timeliness of the other site.

[…]

(d) *Online conferences*—TSX recommends that issuers hold analyst conference calls and industry conferences in a manner that enables any interested party to listen either by telephone and/or through a web cast, in accordance with s. 6.7(1) of National Policy ~~No.~~ 51-~~201,~~201 *Disclosure Standards*.

If an issuer chooses to participate in an online news or investor conference~~.~~, TSX suggests that participation by the issuer in such online conferences should be governed by the same policy that the issuer has established in respect of its participation in other conferences such as analyst conference calls.

3. What should not be distributed via electronic communications

(a) *Employee misuse of electronic communications*—Access to e-mail and the Internet can be valuable tools for employees to perform their jobs; however, TSX recommends that clear guidelines should be established as to how employees may use these ~~new~~ media. These guidelines should be incorporated into the issuer's disclosure, confidentiality and employee trading policy. Employees should be reminded that their corporate e-mail address is an issuer address and that all correspondence received and sent via e-mail is to be considered corporate correspondence.

Appropriate guidelines should be established about the type of information that may be circulated by e-mail. An issuer should prohibit its employees from participating in Internet chat rooms[2] ~~or~~[2], newsgroups[3A] or social media[3B] in discussions relating to the issuer or its securities. As stated in s. 6.13 of National Policy 51-~~201,~~201 *Disclosure Standards*, an issuer should also consider requiring employees to report to a designated issuer official any discussion pertaining to the issuer which they find on the Internet. Moreover, communications over the Internet via e-mail may not be secure unless the issuer has appropriate encryption technology. Employees should be warned of the danger of transmitting confidential information externally via unencrypted e-mail.

[…]

5. *Rumours on the Internet*—Rumours about the issuer may appear ~~on~~in chat rooms, ~~and~~ newsgroups, and on social media. Rumours may spread more quickly and more widely on the Internet than by other media. ~~IIROC~~ Market Surveillance monitors chat rooms ~~and~~, news groups ~~on the Internet~~, and social media to identify rumours about TSX listed issuers that may influence the trading activity of their stocks. TSX Timely Disclosure Policy addresses how an issuer should respond to rumours. An issuer is not expected to monitor chat rooms ~~or~~, news groups or social media for rumours about itself. Nevertheless, TSX recommends that the issuer's standard policy for addressing rumours apply to those on the Internet.

Whether an issuer should respond to a rumour depends on the circumstances. TSX suggests that the issuer should consider the market impact of the rumour and the degree of accuracy and significance to the issuer. In general, TSX recommends against an issuer participating ~~on~~in a chat room ~~or~~, newsgroup or social media to dispel or clarify a rumour as such action may give rise to selective disclosure concerns and may create the expectation that the issuer will always respond. Instead, the issuer should issue a news release to ensure widespread dissemination of its statement.

If an issuer becomes aware of a rumour ~~on~~in a chat room, newsgroup, or on social media or any other source that may have a material impact on the price of its stock, it should immediately contact Market Surveillance. If the information is false and is materially influencing the trading activity of the issuer's securities, it may consider issuing a clarifying news release. The issuer should contact Market Surveillance so that they can monitor trading in the issuer's securities. If Market Surveillance determines that trading is being affected by the rumour, it may require the issuer to issue a news release stating that there are no corporate developments to explain the market activity.

[…]

[1] Displaying the content or page(s) of a third party web site within the overall design of an issuer's web site, which gives the impression that the third party content is part of the issuer's site.

[2] A chat room is a live electronic forum for discussion among Internet participants.

[3A] A newsgroup is an electronic bulletin board on which internet participants may post information.

[3B] Social media includes electronic communication through which users create or participate in online communities to share information, ideas and other content, or to participate in social networking.

Change #11

TSX Monitoring of the Internet

Sec. 423.14.

TSX regularly monitors listed issuer web sites as well as chat rooms ~~and~~, news groups, and social media on the Internet. TSX has the capability to review alterations to listed issuer web sites and to perform random searches of the Internet to identify active discussions relating to listed issuers. However, such monitoring can never be exhaustive. Issuers are responsible for maintaining their web site and should continue to make Market Surveillance aware of significant rumours or problems relating to Internet discussions.

Change #12

Sec. 607. Private Placements

[…]

(f) For all private placements:

[…]

v) successive private placements will be aggregated for the purposes of Subsections 607(c)(ii) and 607(g)(i) if they are within the three (3) preceding months, have common placees and/or a common use of proceeds. For the purpose of Subsection 607(g)(i), the number of securities of the listed issuer which are outstanding, on a non-diluted basis, must be calculated prior to the date of closing of the first private placement during the three month period; and

[…]

Change #13

Sec. 611. Acquisitions

[…]

(c) ~~Subject to Subsection 611(d),~~ Security holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

(d) ~~Subject to Subsection 611(b), TSX will not require security holder approval where the acquiring listed issuer is an investment fund and all of the following conditions are met:~~ **[Deleted]**

~~**(i)** the issuer being acquired is an investment fund(s) that calculates and publishes its NAV at least once a month;~~

~~**(ii)** the consideration being offered for the acquisition does not exceed the NAV of the investment fund that is the subject of the acquisition;~~

~~**(iii)** the manager of the acquiring listed issuer has determined that the assets being acquired are consistent with the acquiring issuer's investment objectives, has made such representations to its IRC, and has referred the transaction to its IRC for approval;~~

~~(iv) the IRC of the acquiring listed issuer has approved the acquisition;~~

~~(v) the number of securities issued or issuable in payment of the purchase price for the acquisition does not exceed 100% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis; and~~

~~(vi) the investment funds participating in the transaction bear none of the costs and expenses associated with the transaction.~~

[…]

Change #14

Sec. 629. Special Rules Applicable to Normal Course Issuer Bids

[…]

(f) The listed issuer will issue a press release indicating its intention to make a normal course issuer bid, subject to TSX acceptance, prior to acceptance of the executed notice by TSX. The press release shall summarize the material aspects of the contents of the notice, including the number of securities the listed issuer intends to repurchase, the method of disposition of the securities, if applicable, the reason for the bid and details of any previous purchases in the preceding 12-month period, including the maximum number of securities that the listed issuer sought and obtained approval to purchase, the number of securities purchased, the manner in which the securities were purchased (i.e. on the market or pursuant to exemption orders issued by securities regulatory authorities), and the volume weighted average price paid. If a press release has not already been issued, a draft press release must be provided to TSX and the listed issuer shall issue a press release as soon as the notice is accepted by TSX. A copy of the final press release shall be filed with TSX.

Change #15

B. Notifying the Financial Media

Sec. 906.

Regardless of when an announcement involving material information is released, Market Surveillance must be advised of its content and supplied with a copy in advance of its release. Market Surveillance must also be advised of the proposed method of dissemination. Market Surveillance must be advised by telephone in advance if an announcement is ready to be made during trading hours, and submission of a written copy of the release must follow. Where an announcement is to be released after the Exchange has closed, Market Surveillance should be advised before trading opens on the next trading day. Copies may be filed through TSX SecureFile, faxed or ~~hand-delivered~~e-mailed to Market Surveillance, ~~145 King Street West, Suite 900, Toronto, Ontario, M5H 1J8.~~at https://secure.tsx.com, (416) 646-7263, or pr@iiroc.ca, respectively.

Change #16

News Services and Publications

Sec. 910

As a matter of routine procedure, all information of importance should be released as quickly as circumstances permit, and to as broad an audience as possible. After notification to Market Surveillance, a news release must be transmitted to the media by the quickest possible method, and by one that provides the widest dissemination possible. To ensure that the entire financial community is aware of the news at the same time, the Exchange's timely disclosure policy requires that a wire service (or combination of services) be used which provides national and simultaneous coverage of the full text of the release to the national financial press and daily newspapers that provide regular coverage of financial news, to all Participating Organizations and to all relevant regulatory bodies. If the officials of a listed company have any questions about the acceptability of a particular means of dissemination, they should contact Market Surveillance. A list of key segments of the news media is set out below.

A) Paid Distribution News Services (providing full text coverage)

CNW Group
Marketwire Inc.
GlobeNewswire, Inc.
Filing Services Canada Inc.

Marketwire Inc.
Business Wire
Newsfile Corp.

[…]

Change #17

Form 12 – Intention to make a Normal Course Issuer Bid

7. Previous Purchases – Where the issuer has purchased securities under a NCIB within the past 12 months, state the following:

method of acquisition:

_____

_____

_____

b) the number of securities sought and approved for purchase: _____

c) ~~b)~~ the number of securities actually purchased: _____

d) ~~c)~~ weighted average price paid per security: _____

[…]

Change #18

Appendix B Disclosure Standards for Companies Engaged in Mineral Exploration, Development & Production

[…]

a) News Releases

The standards herein provide guidelines for the content of news releases which when combined with the disclosure requirements of NI 43-101 require more comprehensive disclosure. While this may result in additional time and money being expended on news releases, it is intended that the public receive more and better information in order that it can make better informed investment decisions.

The prescribed information may be provided by reference to previous news releases or other documents, as long as they are readily obtainable from the company by e-mail, fax, mail or in a ~~Web~~web site. For instance, when a company first announces exploration results from a property, it must describe the geological environment of the property; however, it may not be necessary to repeat that information in every news release subsequently issued regarding the same property. The subsequent news releases may instead refer to previous releases or other documents and indicate how they may be obtained.

APPENDIX B

NON-PUBLIC INTEREST AMENDMENTS TO THE TSX COMPANY MANUAL

B. Timely Disclosure

Introduction

Sec. 406.

It is a cornerstone policy of the Exchange that all persons investing in securities listed on the Exchange have equal access to information that may affect their investment decisions. Public confidence in the integrity of the Exchange as a securities market requires timely disclosure of material information concerning the business and affairs of companies listed on the Exchange, thereby placing all participants in the market on an equal footing.

The timely disclosure policy of the Exchange is the primary timely disclosure standard for all TSX listed issuers. National Policy 51-201 *Disclosure Standards*, assists issuers in meeting their legislative disclosure requirements. While the legislative and Exchange timely disclosure requirements differ somewhat, the CSA clearly state in National Policy 51-201 *Disclosure Standards* that they expect listed issuers to comply with the requirements of the Exchange.

To minimize the number of authorities that must be consulted in a particular matter, in the case of securities listed on the Exchange, the Exchange is the relevant contact. The issuer may, of course, consult with the government securities administrator of the particular jurisdiction. In the case of securities listed on more than one stock market, the issuer should deal with each market.

The requirements of the Exchange and National Policy 51-201 *Disclosure Standards* are in addition to any applicable statutory requirements. The Exchange enforces its own policy. Companies whose securities are listed on the Exchange are legally obligated to comply with the provisions on timely disclosure set out in section 75 of the OSA and the regulation under the OSA. Reference should also be made to National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*, National Instrument 55-102 *System for Electronic Disclosure by Insiders*, National Instrument 62-103 *The Early Warning System and Related Take-Over bid and Insider Reporting Issues*, and National Instrument 62-104 *Take-Over Bids and Issuer Bids*.

In addition to the foregoing requirements, companies whose securities are listed on the Exchange and who engage in mineral exploration, development and/or production, must follow the "Disclosure Standards for Companies Engaged in Mineral Exploration, Development and Production" as outlined in Appendix B of this Manual for both their timely and continuous disclosure.

Market Surveillance monitors the timely disclosure policy on behalf of the Exchange.

Developments to be Disclosed

[…]

Sec. 411.

Forecasts of earnings and other financial forecasts need not be disclosed, but where a significant increase or decrease in earnings is indicated in the near future, such as in the next fiscal quarter, this fact must be disclosed. Forecasts should not be provided on a selective basis to certain investors not involved in the management of the affairs of the company. If disclosed, they should be generally disclosed. Reference should be made to National Instrument 51-102 *Continuous Disclosure Obligations* (*FOFI and Financial Outlooks*).

Market Surveillance

Monitoring Trading

Sec. 412.

Market Surveillance maintains a continuous stock watch program which is designed to highlight unusual market activity, such as unusual price and volume changes in a stock relative to its historical pattern of trading. Where unusual trading activity takes place in a listed security, Market Surveillance attempts to determine the specific cause of such activity. If the specific cause cannot be determined immediately, company management will be contacted. Should this contact result in Market Surveillance staff becoming aware of a situation which requires a news release, the company will be asked to make an immediate

announcement. Should the company be unaware of any undisclosed developments, Market Surveillance staff will continue to monitor trading and, if concerns continue, may ask the company to issue a statement that it is not aware of any undisclosed developments that would account for the unusual trading pattern.

Announcements of Material Information

Pre-Notification to Exchange

Sec. 416.

The Exchange's policy requires immediate release of material information except in unusual circumstances. While Market Surveillance may permit certain news releases to be issued after the close of trading, the policy of immediate disclosure frequently requires that news releases be issued during trading hours, especially when an important corporate development has occurred. If this is the case, it is absolutely essential that company officials notify Market Surveillance prior to the issuance of a news release. Market Surveillance staff will then be in a position to determine whether trading in any of the company's securities should be temporarily halted. Also, if the Exchange is not advised of news releases in advance, any subsequent unusual trading activity will generate enquiries and perhaps a halt in trading.

Regardless of when an announcement involving material information is released, Market Surveillance must be advised of its content and supplied with a copy in advance of its release. Market Surveillance must also be advised of the proposed method of dissemination. Market Surveillance must be advised by telephone in advance if an announcement is ready to be made during trading hours, and submission of a written copy of the release should follow. Where an announcement is to be released after the Exchange has closed, Market Surveillance staff should be advised before trading opens on the next trading day. Copies may be filed through TSX SecureFile, faxed or e-mailed to Market Surveillance.

Market Surveillance coordinates trading halts with other exchanges and markets where a company's securities are listed or traded elsewhere. A convention exists that trading in a security traded in more than one market shall be halted and resumed at the same time in each market. Failing to pre-notify the Exchange of an imminent material announcement could disrupt this system.

Dissemination

Sec. 417.

After notifying Market Surveillance, a news release must be transmitted to the media by the quickest possible method, and by one that provides the widest dissemination possible. To ensure that the entire financial community is aware of the news at the same time, a wire service or combination of services must be used which provides national and simultaneous coverage.

[…]

Insider Trading

Law

Sec. 423.4.

Every listed company should have a firm rule prohibiting those who have access to confidential information from making use of such information in trading in the company's securities before the information has been fully disclosed to the public and a reasonable period of time for dissemination of the information has passed.

Insider trading is strictly regulated by Part XXI and sections 76 and 134 of the OSA and the Regulation under the Act. The securities laws of other provinces also regulate insider trading in their respective jurisdictions. Insider trading in the securities of companies incorporated under the *Canada Business Corporations Act* is also regulated by Part XI of that Act. The definition of an "insider" will vary from statute to statute, but in any case will include directors and senior officers of the company and large shareholders. In Ontario directors and senior officers of any company that is itself an insider of a second company are considered insiders of that second company. It is recommended that directors and officers of listed companies be fully conversant with all applicable legislation concerning insider trading.

[…]

Electronic Communications Disclosure Guidelines

Sec. 423.9.

The Internet allows for relevant information to be instantaneously and simultaneously available to an investor. But the Internet also poses regulatory challenges. In a world in which information is more readily available than ever, it is more important than ever that it be accurate, timely and up-to-date. With this in mind, TSX has developed these electronic communications guidelines to assist listed issuers to meet their investors' informational needs.

Section 423.11 (Applicable Disclosure Guidelines) reminds issuers that applicable disclosure rules apply to all corporate disclosure through electronic communications and must be followed by each issuer. Disclosure of information by an issuer through its web site or e-mail will not satisfy the issuer's disclosure obligations. The issuer must continue to use traditional means of dissemination. Section 423.12 (Electronic Communications Guidelines) sets out the guidelines that apply directly to the Internet and other electronic media. The overall objective of the guidelines is to encourage the use of electronic media to make investor information accessible, accurate and timely. The challenge of regulating electronic media is to ensure that regulatory concerns are addressed without impeding innovation.

Sec. 423.10.

These guidelines should be read with TSX's Timely Disclosure requirements and related guidelines ("TSX Timely Disclosure Policy").

Web sites, electronic mail ("e-mail") and other channels available on the Internet are media of communication available to listed issuers for corporate disclosure. Each of these media provides opportunities for an issuer to broadly disseminate investor relations information. There are, however, a number of issues that an issuer must consider when it goes online. Investor relations information that is disclosed electronically using these new media should be viewed by the issuer as an extension of its formal corporate disclosure record. As such, these electronic communications are subject to securities laws and TSX standards and should not be viewed merely as a promotional tool.

TSX strongly recommends that all listed issuers make investor relations information available on their web site.

Current securities filings of listed issuers such as financial statements, Annual Information Forms, annual reports and prospectuses are maintained on SEDAR. In addition, TSX maintains a profile page on each listed issuer on its web site ("tsx.com"). Further, many news wire services post listed issuer news releases on their web sites. Since these various sites are not all connected, it may be difficult and time consuming for an investor to search the Internet and obtain all relevant investor relations information about a particular issuer. If an issuer creates its own web site, it can ensure that all of its investor relations information is available through one site and can provide more information than is currently available online. For example, SEDAR contains only mandatory corporate filings, while an issuer's site may carry a wealth of supplemental information, such as fact sheets, fact books, slides of investor presentations, transcripts of investor relations conferences and webcasts.

Disclosure by the Internet alone will not meet an issuer's disclosure requirements and an issuer must continue to use traditional means of dissemination.

Electronic communications do not reach all investors. Investors who have access to the Internet will be unaware that new information is available unless the issuer notifies them of an update.

Applicable Disclosure Standards

Sec. 423.11.

Distribution of information via a web site, e-mail or otherwise via the Internet is subject to the same laws as traditional forms of dissemination such as news releases. In establishing electronic communications, an issuer should have special regard to disclosure requirements under all applicable securities laws. Issuers should refer to TSX Timely Disclosure Policy, National Policy 51-201 *Disclosure Standards*, National Policy 11-201 *Electronic Delivery of Documents*, and National Policy 47-201 *Trading Securities Using the Internet and Other Electronic Means*. Issuers should be aware of disclosure requirements in all jurisdictions in which they are reporting issuers. Also, there are constant developments regarding electronic disclosure of material information by issuers and issuers must be aware of the impact of all such developments on their disclosure practices.

These standards apply to all corporate disclosure through electronic communications and must be followed by each issuer.

[…]

Electronic Communication Guidelines

Sec. 423.12.

[…]

2. What should be on the web site?

(a) *All corporate "timely disclosure" documents and other investor relations information*—TSX recommends that issuers take advantage of Internet technologies and make available through an issuer web site all corporate "timely disclosure" documents and other investor relations information that it deems appropriate. As stated, however, the posting of such documents and information on the web site does not fulfill the issuer's obligation to disseminate such information through a timely news release.

An issuer may either post its own investor relations information or establish links to other web sites that also maintain publicly disclosed documents on behalf of the issuer such as news wire services, SEDAR and stock quote services. "Investor relations information" includes all material public documents such as: the annual report; annual and interim financial statements; the Annual Information Form; news releases; material change reports; information regarding DRIPs; declarations of dividends; redemption notices; management proxy circulars; and any other communications to shareholders.

TSX recommends that an issuer post its investor relations information, particularly its news releases, as soon as possible following dissemination. Documents that an issuer files on SEDAR should be posted concurrently on its web site, as suggested in National Policy 51-201 *Disclosure Standards* or the issuer could create a hyper-link to the SEDAR web site. If an issuer chooses to link to SEDAR or to a news wire web site, a link can be provided directly to the issuer's page on that site, provided that the terms and conditions of the site to which the link is provided do not place restrictions on "deep-linking" , or object to "framing"[1]. An issuer providing deep-linking from its web site to a third party web site should consult its legal advisors to assess the legal issues surrounding deep-linking and to ensure the proposed link is effected properly. The practice of deep-linking has given rise to a number of legal issues, including whether permission from the third party must be sought in order to access a web site other than through the homepage and whether the issuer may incur liability in sending a user to a third party site bypassing any disclaimers posted on the homepage of the third party site.

Links to other web sites should be checked regularly to ensure they still work, are up-to-date and accurate. In addition, a disclaimer should be included on the issuer's web site, preferably via a pop-up window, clearly stating that the viewer is leaving the issuer web site and that the issuer is not responsible for the content, accuracy or timeliness of the other site.

[…]

(d) *Online conferences*—TSX recommends that issuers hold analyst conference calls and industry conferences in a manner that enables any interested party to listen either by telephone and/or through a web cast, in accordance with s. 6.7(1) of National Policy 51-201 *Disclosure Standards*.

If an issuer chooses to participate in an online news or investor conference, TSX suggests that participation by the issuer in such online conferences should be governed by the same policy that the issuer has established in respect of its participation in other conferences such as analyst conference calls.

3. What should not be distributed via electronic communications

(a) *Employee misuse of electronic communications*—Access to e-mail and the Internet can be valuable tools for employees to perform their jobs; however, TSX recommends that clear guidelines should be established as to how employees may use these media. These guidelines should be incorporated into the issuer's disclosure, confidentiality and employee trading policy. Employees should be reminded that their corporate e-mail address is an issuer address and that all correspondence received and sent via e-mail is to be considered corporate correspondence.

Appropriate guidelines should be established about the type of information that may be circulated by e-mail. An issuer should prohibit its employees from participating in Internet chat rooms[2], newsgroups[3A] or social media[3B] in discussions relating to the issuer or its securities. As stated in s. 6.13 of National Policy 51-201 *Disclosure Standards*, an issuer should also consider requiring employees to report to a designated issuer official any discussion pertaining to the issuer which they find on the Internet. Moreover, communications over

the Internet via e-mail may not be secure unless the issuer has appropriate encryption technology. Employees should be warned of the danger of transmitting confidential information externally via unencrypted e-mail.

[…]

5. *Rumours on the Internet*—Rumours about the issuer may appear in chat rooms, newsgroups, and on social media. Rumours may spread more quickly and more widely on the Internet than by other media. Market Surveillance monitors chat rooms, news groups, and social media to identify rumours about TSX listed issuers that may influence the trading activity of their stocks. TSX Timely Disclosure Policy addresses how an issuer should respond to rumours. An issuer is not expected to monitor chat rooms, news groups or social media for rumours about itself. Nevertheless, TSX recommends that the issuer's standard policy for addressing rumours apply to those on the Internet.

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If an issuer becomes aware of a rumour in a chat room, newsgroup, or on social media or any other source that may have a material impact on the price of its stock, it should immediately contact Market Surveillance. If the information is false and is materially influencing the trading activity of the issuer's securities, it may consider issuing a clarifying news release. The issuer should contact Market Surveillance so that they can monitor trading in the issuer's securities. If Market Surveillance determines that trading is being affected by the rumour, it may require the issuer to issue a news release stating that there are no corporate developments to explain the market activity.

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Sec. 607. Private Placements

[…]

(f) For all private placements:

[…]

v) successive private placements will be aggregated for the purposes of Subsections 607(c)(ii) and 607(g)(i) if they are within the three (3) preceding months, have common placees and/or a common use of proceeds. For the purpose of Subsection 607(g)(i), the number of securities of the listed issuer which are outstanding, on a non-diluted basis, must be calculated prior to the date of closing of the first private placement during the three month period; and

[…]

Sec. 611. Acquisitions

[…]

(c) Security holder approval will be required in those instances where the number of securities issued or issuable in payment of the purchase price for an acquisition exceeds 25% of the number of securities of the listed issuer which are outstanding, on a non-diluted basis.

(d) **[Deleted]**

[…]

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[…]

(f) The listed issuer will issue a press release indicating its intention to make a normal course issuer bid, subject to TSX acceptance, prior to acceptance of the executed notice by TSX. The press release shall summarize the material aspects of the contents of the notice, including the number of securities the listed issuer intends to repurchase, the method of disposition of the securities, if applicable, the reason for the bid and details of any previous purchases in the preceding 12-month period, including the maximum number of securities that the listed issuer sought and obtained approval to purchase, the number of securities purchased, the manner in which the securities were purchased (i.e. on the market or pursuant to exemption orders issued by securities regulatory authorities), and the volume weighted average price paid. If a press release has not already been issued, a draft press release must be provided to TSX and the listed issuer shall issue a press release as soon as the notice is accepted by TSX. A copy of the final press release shall be filed with TSX.

B. Notifying the Financial Media

Sec. 906.

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News Services and Publications

Sec. 910

As a matter of routine procedure, all information of importance should be released as quickly as circumstances permit, and to as broad an audience as possible. After notification to Market Surveillance, a news release must be transmitted to the media by the quickest possible method, and by one that provides the widest dissemination possible. To ensure that the entire financial community is aware of the news at the same time, the Exchange's timely disclosure policy requires that a wire service (or combination of services) be used which provides national and simultaneous coverage of the full text of the release to the national financial press and daily newspapers that provide regular coverage of financial news, to all Participating Organizations and to all relevant regulatory bodies. If the officials of a listed company have any questions about the acceptability of a particular means of dissemination, they should contact Market Surveillance. A list of key segments of the news media is set out below.

A) Paid Distribution News Services (providing full text coverage)

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Marketwire Inc.
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Business Wire
Newsfile Corp.

[…]

Form 12 – Notice of Intention to make a Normal Course Issuer Bid

[…]

7. Previous Purchases – Where the issuer has purchased securities under a NCIB within the past 12 months, state the following:

a) method of acquisition:

_____

_____

_____

b) the number of securities sought and approved for purchase: _____

c) the number of securities actually purchased: _____

d) the weighted average price paid per security: _____

[…]

Appendix B Disclosure Standards for Companies Engaged in Mineral Exploration, Development & Production

[…]

1.1 News Releases

The standards herein provide guidelines for the content of news releases which when combined with the disclosure requirements of NI 43-101 require more comprehensive disclosure. While this may result in additional time and money being expended on news releases, it is intended that the public receive more and better information in order that it can make better informed investment decisions.

The prescribed information may be provided by reference to previous news releases or other documents, as long as they are readily obtainable from the company by e-mail, fax, mail or in a web site. For instance, when a company first announces exploration results from a property, it must describe the geological environment of the property; however, it may not be necessary to repeat that information in every news release subsequently issued regarding the same property. The subsequent news releases may instead refer to previous releases or other documents and indicate how they may be obtained.

Chapter 25

Other Information

25.1 Approvals

25.1.1 eQuaTe Asset Management Inc. – s. 213(3)(b) of the LTCA

Headnote

Clause 213(3)(b) of the Loan and Trust Corporations Act – application by manager, with no prior track record acting as trustee, for approval to act as trustee of pooled funds and future pooled funds to be established and managed by the applicant and offered pursuant to a prospectus exemption.

Statutes Cited

Loan and Trust Corporations Act, R.S.O. 1990, c. L.25, as am., s. 213(3)(b).

May 2, 2017

Borden Ladner Gervais LLP
Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, Ontario
M5H 4E3

Attention: Matthew P. Williams

Dear Sirs/Mesdames:

Re: eQuaTe Asset Management Inc.

Application under Clause 213(3)(b) of the Loan and Trust Corporations Act (Ontario) for approval to act as trustee

Application No. 2017/0203

Further to your application dated April 4, 2017 (the **Application**) filed on behalf of eQuaTe Asset Management Inc. (the **Applicant**), and based on the facts set out in the Application and the representation by the Applicant that the assets of eQuaTe Asset Management MVP Fund and any future mutual fund trusts that the Applicant may establish and manage from time to time, the securities of which will be offered pursuant to prospectus exemptions, will be held in the custody of a trust company incorporated, and licensed or registered, under the laws of Canada or a jurisdiction, or a bank listed in Schedule I, II, or III of the *Bank Act* (Canada) or a qualified affiliate of such bank or trust company, the Ontario Securities Commission (the **Commission**) makes the following order:

Pursuant to the authority conferred on the Commission in clause 213(3)(b) of the *Loan and Trust Corporations Act* (Ontario), the Commission approves the proposal that the Applicant act as trustee of eQuaTe Asset Management MVP Fund and any future mutual fund trusts that may be established and managed by the Applicant from time to time, the securities of which will be offered pursuant to prospectus exemptions.

Yours truly,

"Mark Sandler"
Commissioner

"AnneMarie Ryan"
Commissioner

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