The Ontario Securities Commission

OSC Bulletin

October 5, 2017

Volume 40, Issue 40

(2017), 40 OSCB

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

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

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

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

ISSN 0226-9325

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Toronto, Ontario
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CSA Multilateral Staff Notice 58-309
Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices

Date: **October 5, 2017**

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1. Executive Summary

This staff notice (**Staff Notice**) reports the findings of staff of the securities regulatory authorities in Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon (**Participating Jurisdictions** or **we**) of our recent review of disclosure regarding women on boards and in executive officer positions as prescribed in National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) (the **WB/EP Rules**). This Staff Notice reports the findings based on a review sample of 660 issuers that had year-ends between December 31, 2016 and March 31, 2017 (**Year 3** or **2017** or **current year**).

This is the third consecutive annual review of this nature that we[1] have conducted. The findings from our first two annual reviews are set out in:

- CSA Multilateral Staff Notice 58-307 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices* published on September 28, 2015, which summarized our findings after reviewing the corporate governance disclosure of 722 issuers (**Year 1** or **2015**), and

- CSA Multilateral Staff Notice 58-308 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices* published on September 28, 2016, which summarized our findings after reviewing the corporate governance disclosure of 677 issuers (**Year 2** or **2016**).

[1] The Alberta Securities Commission did not participate in the 2015 and 2016 reviews as the WB/EP Rules had not yet been adopted in Alberta. The British Columbia Securities Commission has not adopted the WB/EP Rules. However, Alberta-based and BC-based TSX-listed issuers were included in the respective samples.

This Staff Notice highlights the trends we have observed in the three reviews as well as certain compliance findings.

Key findings and observed trends at a glance

The table below provides a snapshot of the key findings from our reviews:

Findings	Year 1	Year 2	Year 3
Board Representation			
Total board seats occupied by women	11%	12%	14%
Issuers with at least one woman on their board	49%	55%	61%
Issuers with three or more women on their board	8%	10%	11%
Board seats occupied by women for issuers with over $1 billion market capitalization	16%	18%	20%
Board seats occupied by women for issuers with over $10 billion market capitalization	21%	23%	24%
Board vacancies filled by women	--	--	26%[2]
Executive Officers			
Issuers with at least one woman in executive officer positions	60%	59%	62%
Policies			
Issuers that adopted a policy relating to the representation of women on their board	15%	21%	35%
Targets			
Issuers that adopted targets for the representation of women on their board	7%	9%	11%
Issuers that adopted targets for the representation of women in executive officer positions	2%	2%	3%
Identification and Nominating Process			
Issuers that considered the representation of women on their boards as part of the director identification and selection process	60%	66%	65%
Issuers that considered the representation of women in executive officer appointments	53%	58%	58%
Term Limits			
Issuers that adopted director term limits	19%	20%	21%

Year 3

14% board seats occupied by women

61% issuers with at least one woman on their board

24% board seats occupied by women (issuers with over $10 billion market capitalization)

62% issuers with at least one woman in executive officer positions

[2] Board vacancies filled by women were not included in our reporting in Year 1 and Year 2.

Compliance findings

In our review, we noted the following:

Topic	Findings
Representation of women	• 97% of issuers disclosed the number or percentage of women on their boards. • 94% of issuers disclosed the number or percentage of women in executive officer positions.
Policies	• 99% of issuers disclosed whether they had adopted a policy relating to the identification and nomination of women directors. • Of the issuers that disclosed that they had not adopted such a policy, 94% disclosed why they had not done so.
Targets	• 96% of issuers disclosed whether they had set targets for the representation of women on their boards. • 95% of issuers disclosed whether they had set targets for the representation of women in executive officer positions. • Where no such targets were set, 94% of issuers disclosed that fact and why they had not done so in connection with the representation of women on their board, while 93% did so in connection with the representation of women in executive officer positions.
Director term limits	• 98% of issuers disclosed whether they had adopted director term limits, other mechanisms of board renewal or both. • Of issuers that had not adopted these measures, 97% disclosed their reasons for not doing so.

While a qualitative assessment of disclosure was not the focus of our review, we noted instances where disclosure required by the WB/EP Rules was vague or boilerplate in nature. We have identified areas for improvement in section 5 *Disclosure Deficiencies* of this Staff Notice.

2. Background

Disclosure requirements

On December 31, 2014, the Participating Jurisdictions[3] implemented the WB/EP Rules, which require that, on an annual basis, a non-venture issuer disclose:

- the number and percentage of women on its board of directors (**board**) and in executive officer positions;
- whether it has a written policy relating to the identification and nomination of women directors;
- whether it has targets for the number or percentage of women on its board and in executive officer positions;
- if it considers the representation of women in its director identification and selection processes and in its executive officer appointments; and
- whether it has director term limits or other mechanisms of board renewal.

In the event that a non-venture issuer does not have a written policy relating to the identification and nomination of women directors; does not have targets for the number or percentage of women on its board and in executive officer positions; does not consider the representation of women in its director identification and selection processes and in its executive officer appointments; or does not have director term limits or other mechanisms of board renewal, the WB/EP Rules require the issuer to explain why not.

The WB/EP Rules are intended to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions, and the approach that specific issuers take in respect of such representation. This transparency is intended to assist investors when making investment and voting decisions.

Refer to **Appendix A**, which includes a summary of the disclosure requirements of Form 58-101F1 *Corporate Governance Disclosure* of NI 58-101 (**Form 58-101F1**) related to the WB/EP Rules.

[3] On December 31, 2014, the Participating Jurisdictions excluded the Alberta Securities Commission. The Alberta Securities Commission subsequently adopted the WB/EP Rules effective December 31, 2016.

3. Three Year Review

This is the third consecutive annual issue-oriented review of disclosure provided under the WB/EP Rules.

Sample

As of May 31, 2017, approximately 1,500 issuers were listed on the Toronto Stock Exchange (**TSX**), of which 788 were subject to NI 58-101.[4] Of these issuers, we reviewed the disclosure of the 660 issuers that had year-ends between December 31, 2016 and March 31, 2017, and filed information circulars or annual information forms by July 31, 2017.[5] To remain consistent with the scope of the reviews we conducted in Year 2 and in Year 1, we did not review the disclosure of issuers with year-ends outside of the December 31 to March 31 time frame. Because of this, our findings, and the comparisons between the current year, Year 2 and Year 1, provide only a partial picture. In particular, the larger Canadian banks, which are part of an industry that has generally been an early adopter of diversity initiatives, are not captured in our reviews.[6]

The issuers in the current year, Year 2 and Year 1 samples vary for several reasons including:

- issuers being delisted from the TSX;
- issuers' listings of securities being moved to the TSX-V;
- corporate reorganizations resulting in issuers no longer being listed on the TSX; and
- issuers filing information circulars after July 31, 2017.

These sample differences could have impacted our comparisons of findings between the current year, Year 2 and Year 1.

Once all issuers have filed their corporate governance disclosure required by the WB/EP Rules for three consecutive years, we intend to publish the data to complete the three year review.

[4] Issuers excluded from our review included: (i) approximately 650 exchange-traded funds or closed-end funds; (ii) issuers that moved the listing of their securities from the TSX Venture Exchange (**TSX-V**) to the TSX in 2017; and (iii) other issuers such as designated foreign issuers and SEC foreign issuers that are exempt from the requirements of NI 58-101.
[5] This approach is consistent with our Year 2 and Year 1 reviews.
[6] The six largest banks had an average of 35% of women on their boards based on their 2017 information circulars filed for their years ending October 31, 2016.

Market capitalization and industries in current sample

The market capitalization of the majority of the issuers in the sample was less than $1 billion (65%) as detailed in Figure 3.1 below. 40% of issuers in the sample had a market capitalization of less than $250 million.

Just over 40% of the issuers were in either the mining or oil and gas industries, with each of the remaining industries constituting between 4% to 13% of issuers as noted in Figure 3.2 below. Of the issuers in the mining and oil and gas industries, 77% and 65%, respectively, had a market capitalization of less than $1 billion.

The relationship between issuer size as measured by market capitalization and the adoption by issuers of initiatives to increase the representation of women on their boards and/or in executive officer positions has been consistent over the last three years.

Figure 3.1 – Market capitalization in sample (issuer breakdown)

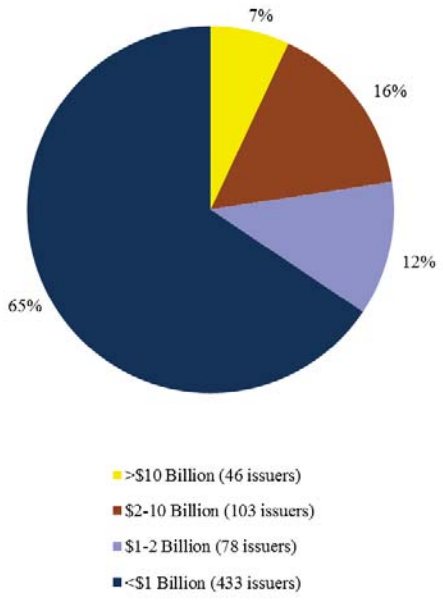
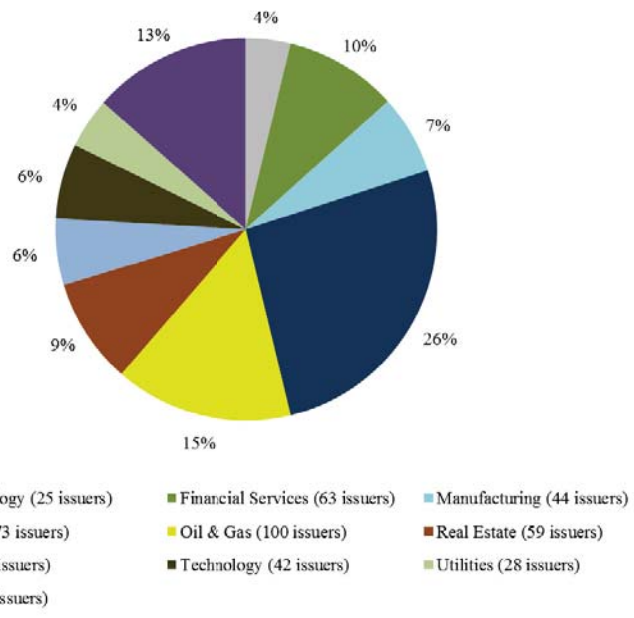


Figure 3.2 – Industries in sample



4. Findings

The following section summarizes our findings in each of the five key areas:	
A.	**Number of women on the board and in executive officer positions**
B.	**Policies regarding the representation of women on the board**
C.	**Issuer's targets regarding the representation of women on the board and in executive officer positions**
D.	**Consideration of the representation of women in the director identification and selection process and consideration of the representation of women in executive officer appointments**
E.	**Director term limits and other mechanisms of board renewal**

A. Number of women on the board and in executive officer positions[7]

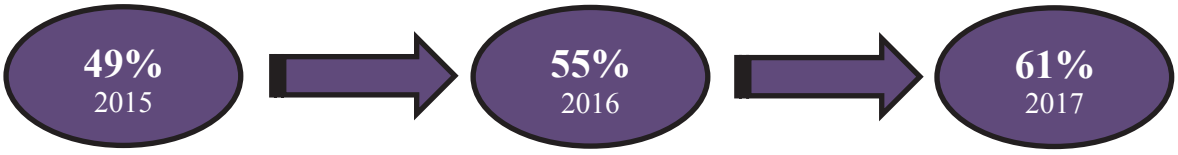
The number or percentage of women on their boards was disclosed by 97% of issuers in the sample and the number or percentage of women in executive officer positions was disclosed by 94% of issuers. Although this is an increase in disclosure over Year 2 and Year 1, we remind issuers that they must disclose both the number and percentage for the representation of women on their boards and in executive officer positions each year.[8]

Issuers must provide both the number and percentage of women on their board and in executive officer positions each year

(i) Board

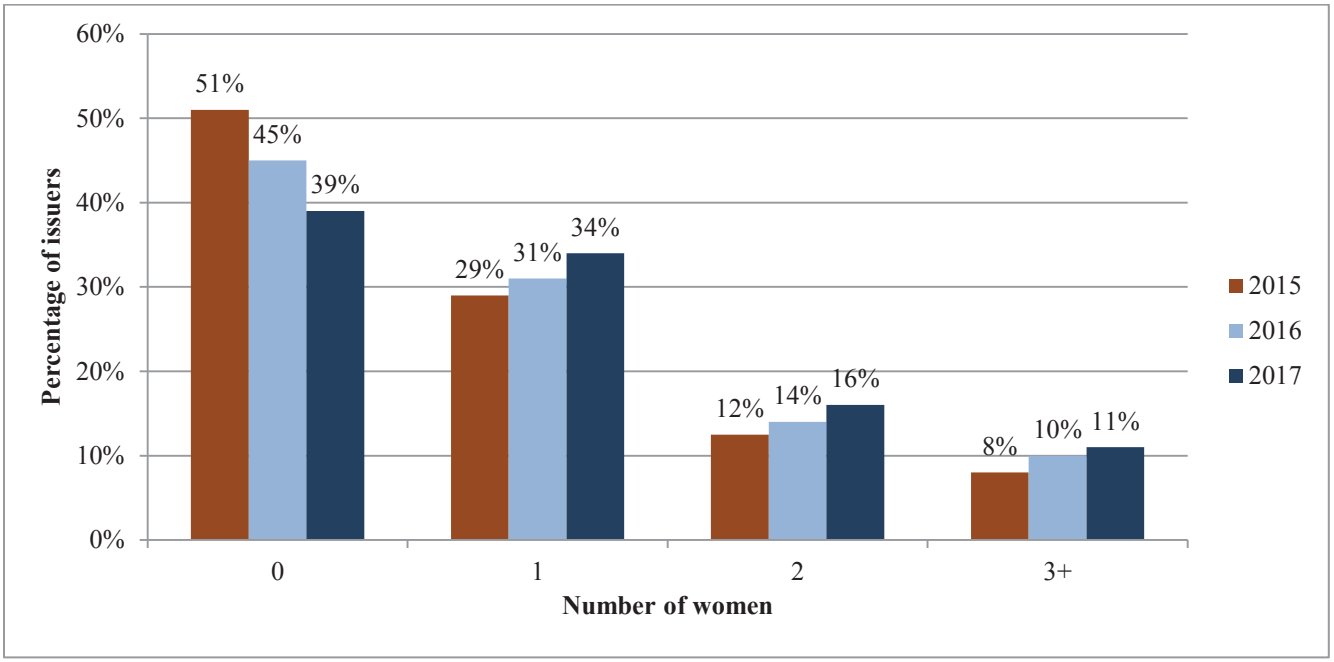
Figure 4.1 illustrates that 61% of issuers had at least one woman on their board, which represents a 6% increase over Year 2 and a 12% increase over Year 1. Further, the number of issuers with one, two, three or more women on their boards has increased each year over the three years covered by our reviews.

Percentage of issuers with at least one woman on their board



[7] Refer to Appendix A (Item 15 of Form 58-101F1).
[8] If an issuer discloses the number, but not the percentage, of its executive officers who are women, investors may not be able to readily determine the proportion of women in executive officer positions as the total number of the issuer's executive officers may not be disclosed.

Figure 4.1 – Number of women on boards (2015 – 2017)[9]



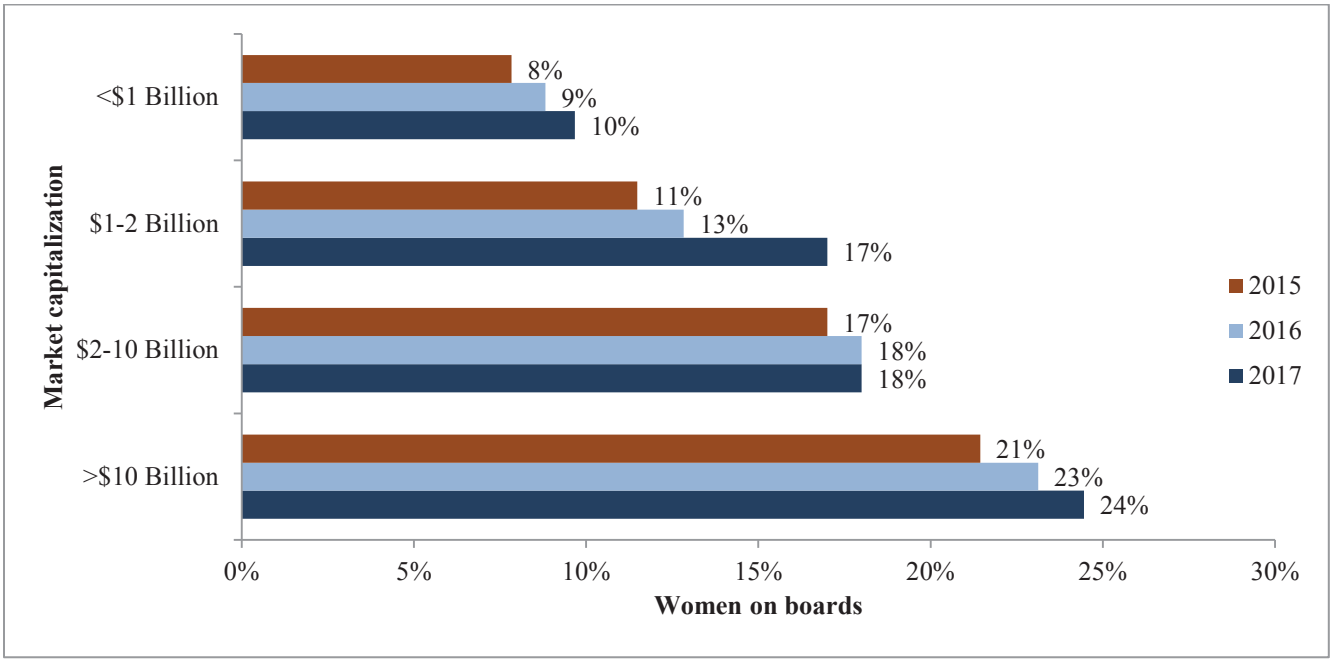
The overall percentage of board seats occupied by women was 14% compared to 12% in Year 2 and 11% in Year 1. Of the issuers in the sample, 15% added one or more women to their boards in the current year, compared to 10% in Year 2[10] and 15% in Year 1.[11]

Percentage of board seats occupied by women

Similar to Year 2, the number of women on boards increased with the size of the issuer. Figure 4.2 shows that the number of board seats occupied by women has increased in all categories of issuer sizes over the three years covered by our review. In the case of issuers with a market capitalization of greater than $10 billion, 24% of board seats are now held by women.

[9] Based on 722 issuers in 2015, 677 issuers in 2016 and 660 issuers in 2017.
[10] Based on 613 issuers that we reviewed in Year 2.
[11] Based on 649 issuers that we reviewed in Year 1.

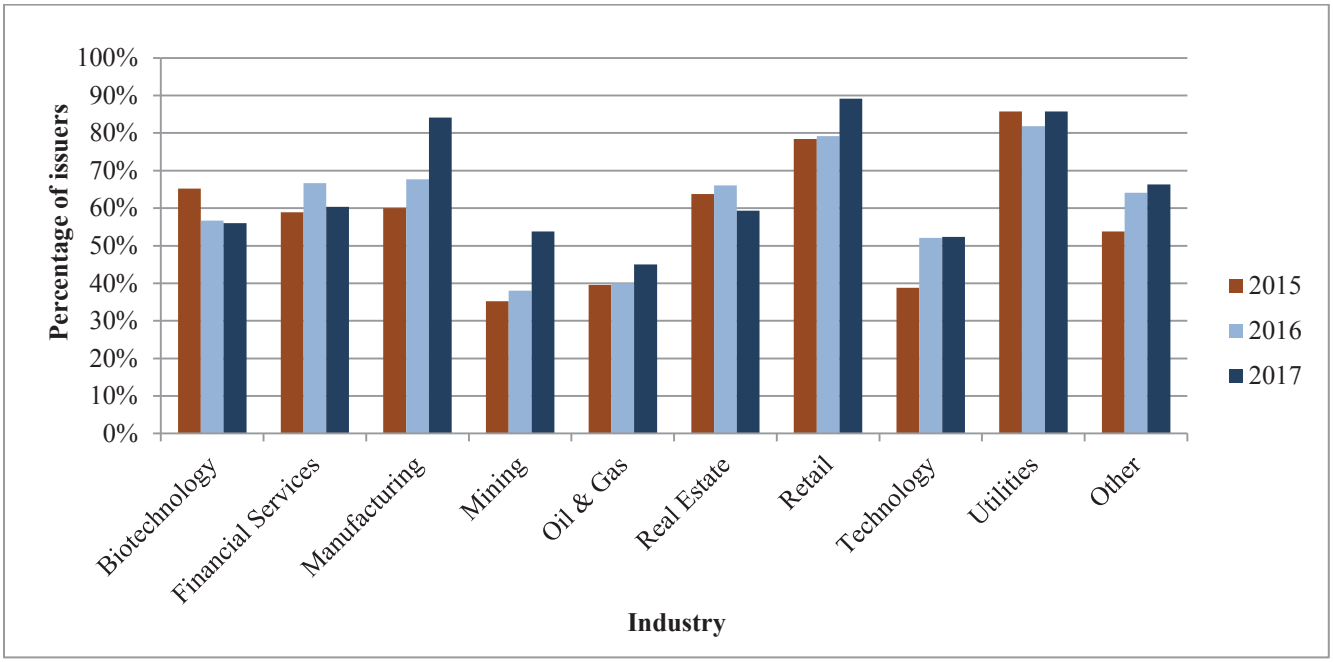
Figure 4.2 - Board seats occupied by women, by issuer size (2015 – 2017)



The number of women on boards varied significantly by industry. As noted in Figure 4.3, the retail industry had the greatest percentage of issuers with one or more women on their boards (89%), followed by the utilities industry (86%) and the manufacturing industry (84%), compared to 79%, 82% and 68% respectively in Year 2 and 78%, 86% and 60% respectively in Year 1. The retail and manufacturing industries both reported double digit increases over Year 2 and Year 1 in the percentage of issuers with one or more women on their boards.

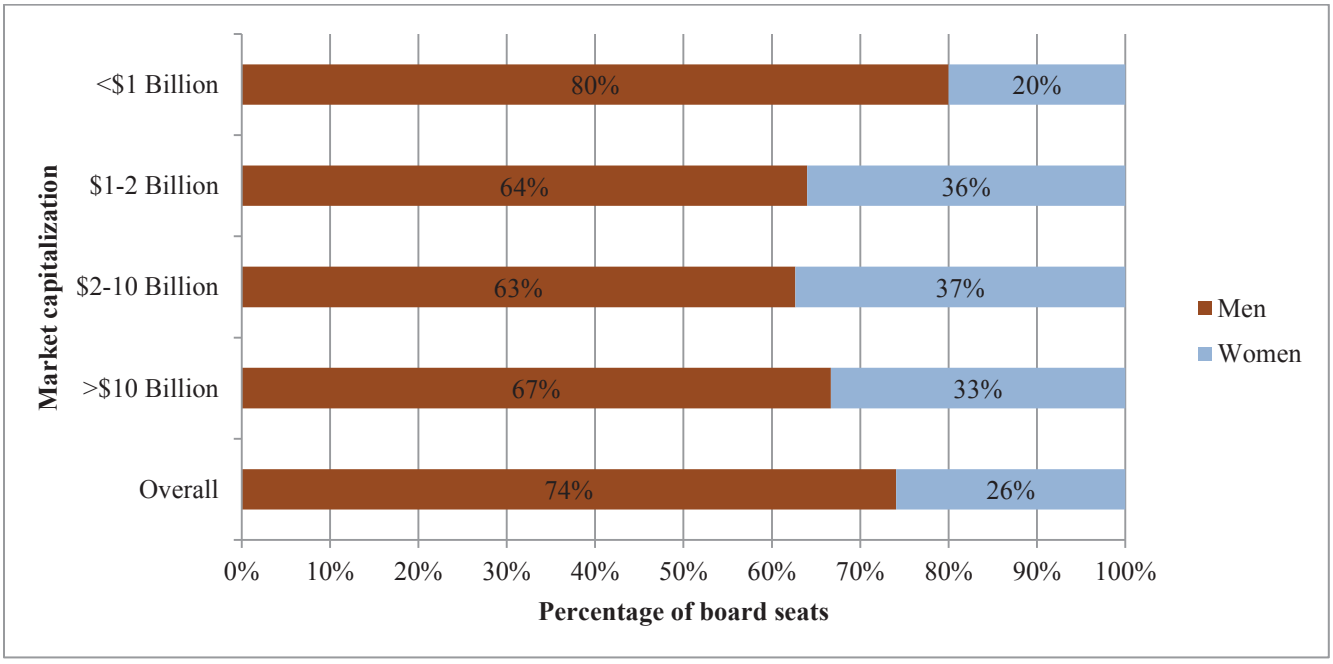
Mining issuers also reported double digit increases over Year 2 and Year 1 in the percentage of issuers with one or more women on their boards. Although there was an increase in the percentage of mining, oil and gas and technology issuers with one or more women on their boards, consistent with Year 2 and Year 1, these industries had the lowest percentages of issuers with one or more women on their boards. Specifically, of issuers in the mining and oil and gas industries, 54% and 45% respectively reported that they had one or more women on their boards, increasing from the 38% and 40% reported in Year 2 and from the 35% and 40% reported in Year 1. In the technology industry, 52% of issuers reported that they had one or more women on their boards, which is consistent with the percentage in Year 2. In Year 1, 39% of issuers in the technology industry reported that they had one or more women on their boards.

Figure 4.3 - Issuers with one or more women on their boards, by industry



As part of our year-over-year analysis, we also looked at each issuer to determine whether it filled any board vacancies during the year and, if so, the percentage of those positions that were filled by women. In our sample, 674 board seats were vacated during the year and 505 of those seats were filled. As noted in Figure 4.4, of these filled vacancies, 26% (131 seats) were filled by women and 74% (374 seats) were filled by men.

Figure 4.4 – Filled board vacancies, by issuer size



(ii) Executive officers

Figure 4.5 illustrates that 62% of issuers that disclosed executive officer information had at least one woman in an executive officer position, which remained relatively consistent with the 59% reported in Year 2 and 60% reported in Year 1. The percentages for those issuers that had two women in executive officer positions as well as those that had three or more in such positions were also relatively consistent over the three years that were reviewed.

Percentage of issuers with at least one woman in executive officer positions

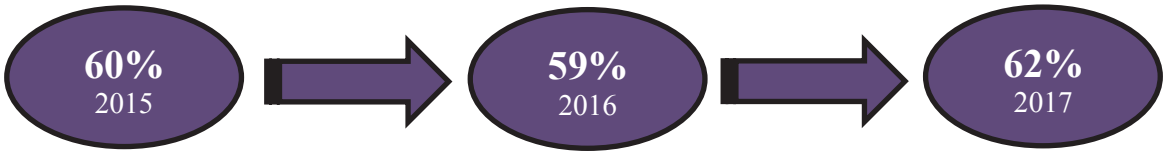
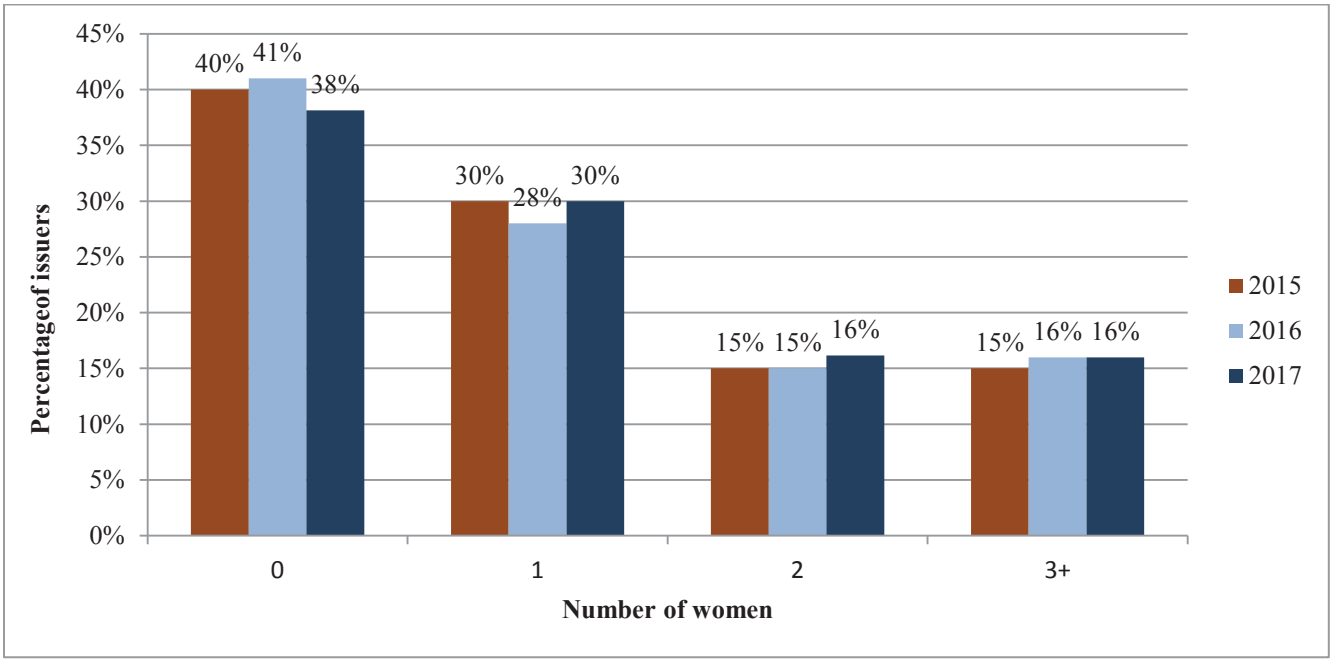


Figure 4.5 –Women in executive officer positions (2015 – 2017)[12]



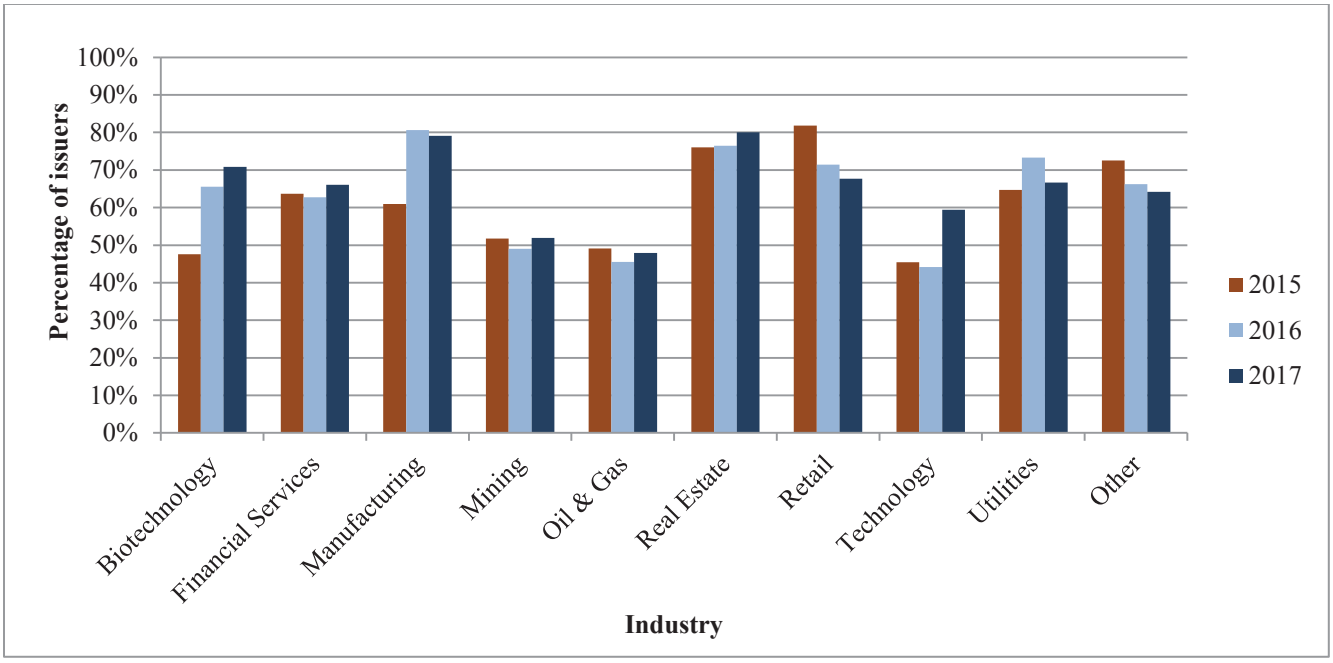
As illustrated in Figure 4.6, the real estate and manufacturing industries had the highest percentage of issuers with one or more women in executive officer positions, whereas the mining and oil and gas industries had the lowest percentage of issuers with one or more women holding such positions. Specifically, 80% and 79% of issuers in the real estate and manufacturing industries that disclosed executive officer information had one or more women in executive officer positions, as compared to 76% and 81% respectively in Year 2, and 76% and 61% respectively in Year 1. Of issuers in the mining

[12] Based on 598 issuers that provided the number of women in executive officer positions in 2015, 613 issuers in 2016, and 614 in 2017.

and oil and gas industries, 52% and 48% of issuers respectively had one or more women in executive officer positions compared to 49% and 46% in Year 2 and 52% and 49% in Year 1.

Figure 4.6 further illustrates that while there have been double digit increases since Year 1 in the percentage of issuers in the manufacturing industry with one or more women in executive officer positions, there has been a decrease in the percentage of issuers with one or more women in executive officer positions in certain industries, such as the retail industry.

Figure 4.6 – Issuers with one or more women in executive officer positions, by industry



B. Policies regarding the representation of women on the board[13]

Disclosure about a written policy, if adopted, must describe how it relates to the identification of women directors

Of the issuers in the sample, 99% disclosed whether they had adopted a policy relating to the identification and nomination of women directors. Of the issuers that disclosed that they had not adopted such a policy, 94% disclosed why they had not done so.[14]

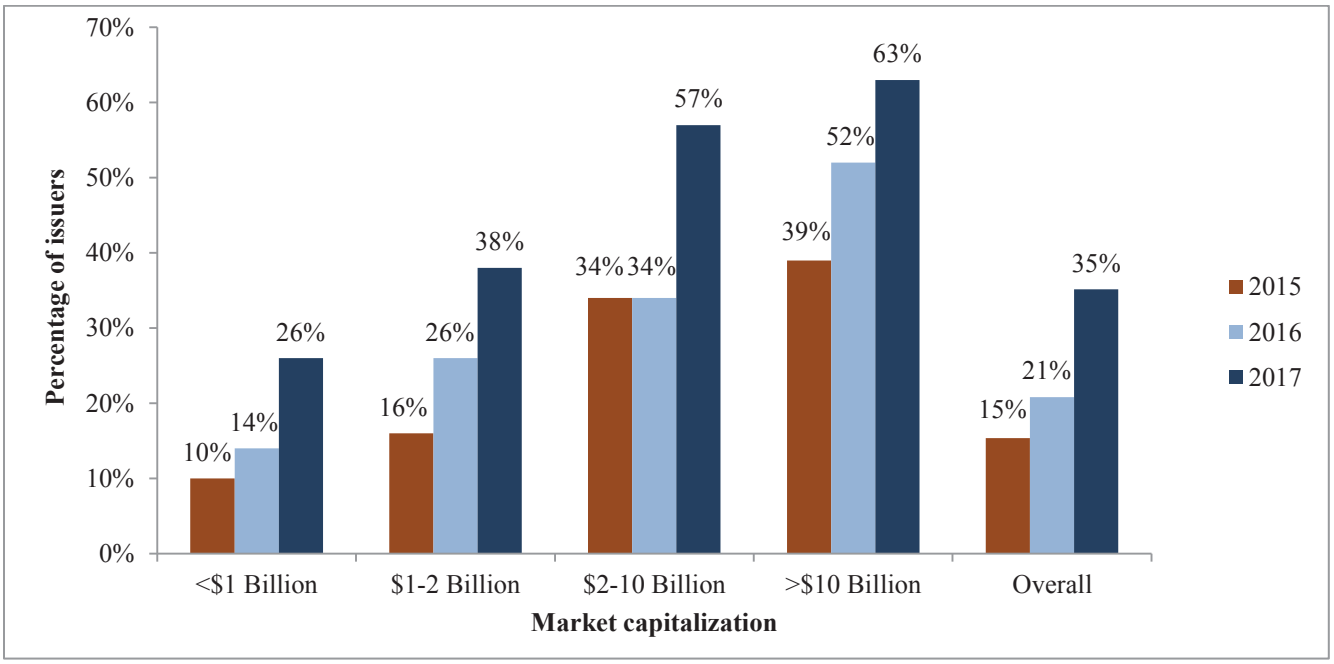
Figure 4.7 illustrates that 35% of issuers disclosed they had adopted a policy relating to the identification and nomination of women directors, representing a significant increase over 21% in Year 2 and 15% in Year 1.[15] Issuers with a market capitalization of greater than $1 billion were more likely to have adopted a policy than issuers with a market capitalization of less than $1 billion. Further, 26% of issuers with a market capitalization of less than $1 billion disclosed that

[13] Refer to Appendix A (Item 11 of Form 58-101F1).
[14] A qualitative assessment of the disclosure was not the focus of this review for all Participating Jurisdictions.
[15] While it was unclear from the disclosure whether the policies for a small number of these issuers were in written form, we have assumed this to be the case for the purposes of our review.

they had adopted a policy relating to the identification and nomination of women directors compared to 14% in Year 2 and 10% in Year 1.

We noted that 53% of issuers disclosed that they did not adopt a policy relating to the identification and nomination of women directors, compared to 59% in Year 2 and 65% in Year 1. Approximately 11% of issuers had broader diversity policies that encompassed a range of characteristics such as: age, ethnicity, race, religion and sexual orientation. However, these policies did not have specific provisions relating to the identification and nomination of women directors.

Figure 4.7 – Issuers adopting women on board policy, by issuer size



Figures 4.8 and 4.9 illustrate that regardless of issuer size, those issuers that had adopted a policy relating to the representation of women on their boards had a higher percentage of women on their boards compared to issuers without such a policy. The 232 issuers that had adopted a policy relating to the representation of women on their boards had an average of 19% of women on their boards compared to issuers with no such policy, which had an average of 10% of women on their boards. The relationship between the adoption of a policy and the higher representation of women on an issuer's board has been consistent over the last three years. In Year 2 and Year 1, issuers with a policy relating to the representation of women on their boards had an average of 18% of women on their boards compared to issuers with no such policy, which averaged 10% in Year 2 and 9% in Year 1.

Figure 4.8 - Policy setting and percentage of women on boards, by issuer size

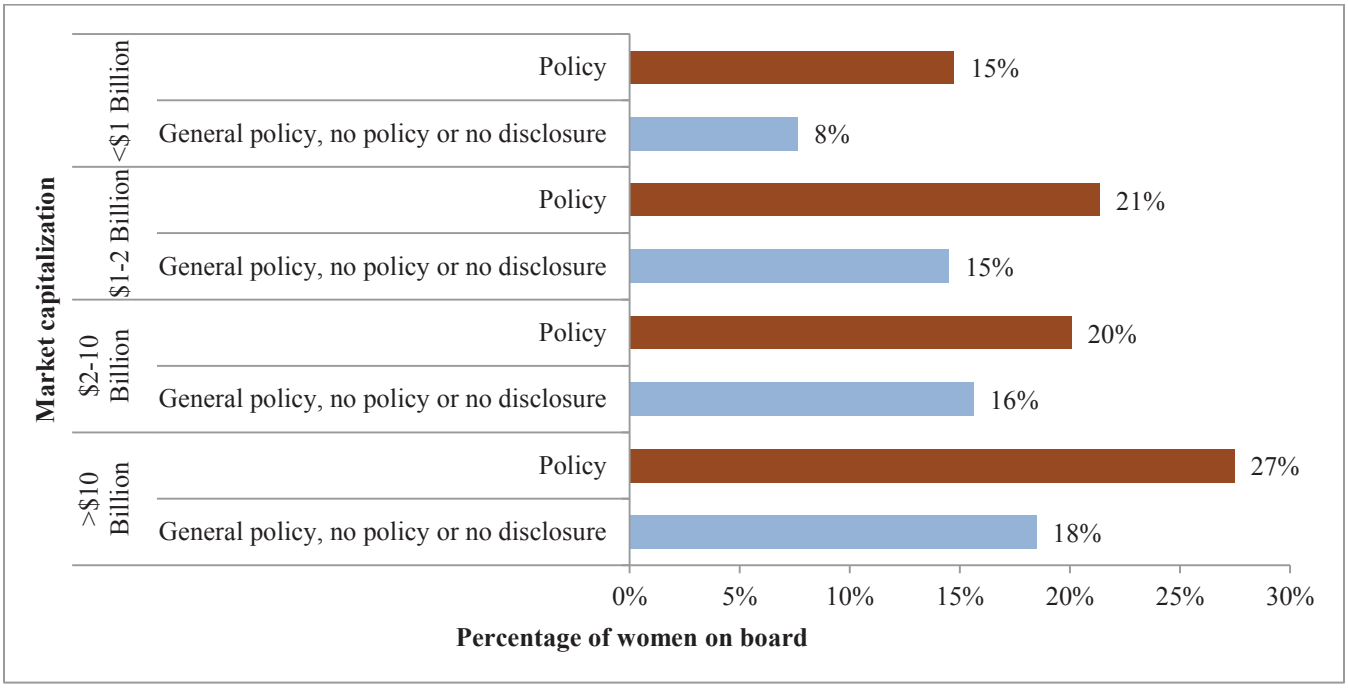
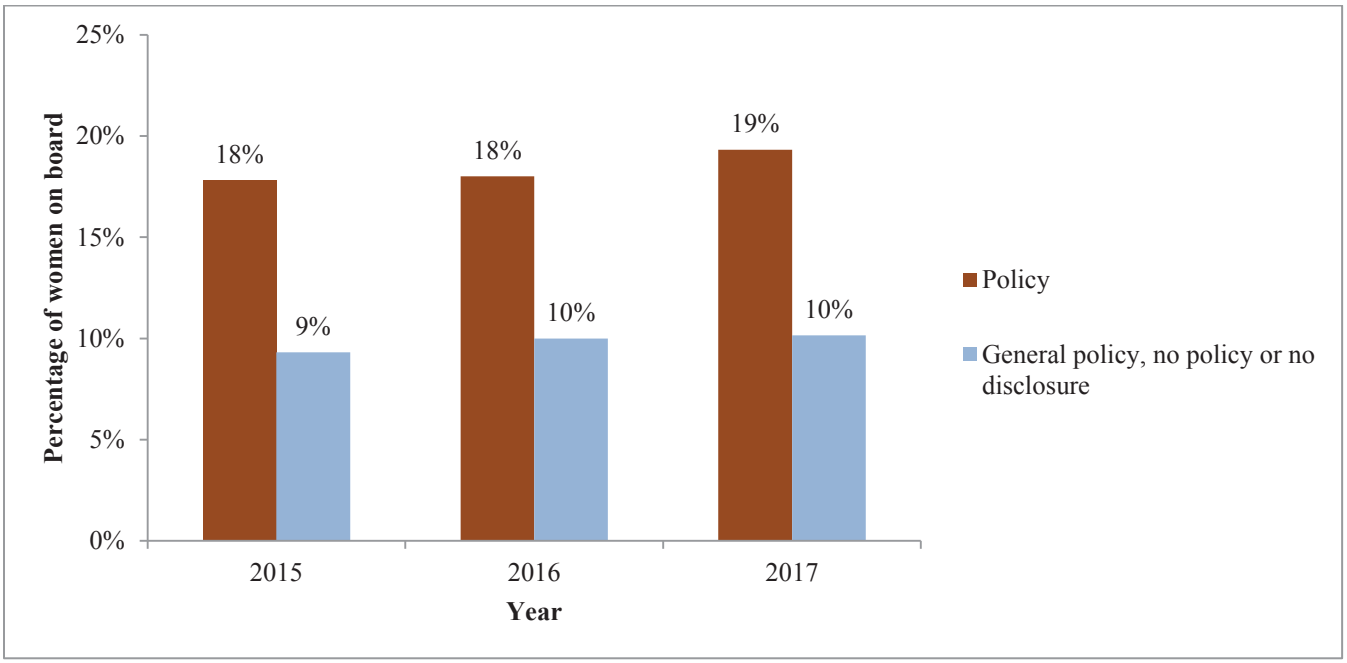


Figure 4.9 - Policy setting and percentage of women on boards, by year[16]



[16] The policy results in this figure are based on 232 issuers that had adopted a policy in 2017, 141 issuers in 2016 and 111 issuers in 2015.

C. Issuer's targets regarding the representation of women on the board and in executive officer positions[17]

Of the issuers sampled, 96% disclosed whether they had set targets for the representation of women on their boards, while 95% disclosed whether they did so for the representation of women in executive officer positions. Where no such targets were set, 94% of issuers disclosed that fact and why they had not done so in connection with the representation of women on their board, while 93% did so in connection with the representation of women in executive officer positions.[18]

As outlined in Figure 4.10, targets for the representation of women on their boards were set by 11% of issuers, representing an increase from 9% in Year 2 and 7% in Year 1. Issuers set various types of targets such as:

- percentage or number of female board members; and
- percentage or number of female independent directors.

Certain issuers also set staggered targets that extended over a period of years. Of issuers that set targets relating to the percentage of women on their boards, 90% set a target of 25% or greater.

Of issuers that adopted targets for the representation of women on their boards, 86% provided disclosure regarding their progress in achieving their targets. Of issuers with board targets, 57% had already achieved their stated target.

Figure 4.10 also illustrates the relationship between the market capitalization of issuers and the setting of targets for the representation of women on boards. Approximately one third of issuers with a market capitalization of greater than $10 billion adopted such targets compared to 6% of issuers with a market capitalization of less than $1 billion.

A variety of reasons were disclosed by issuers for not adopting targets for the representation of women on their boards and issuers often cited multiple reasons. The most common reasons cited include:

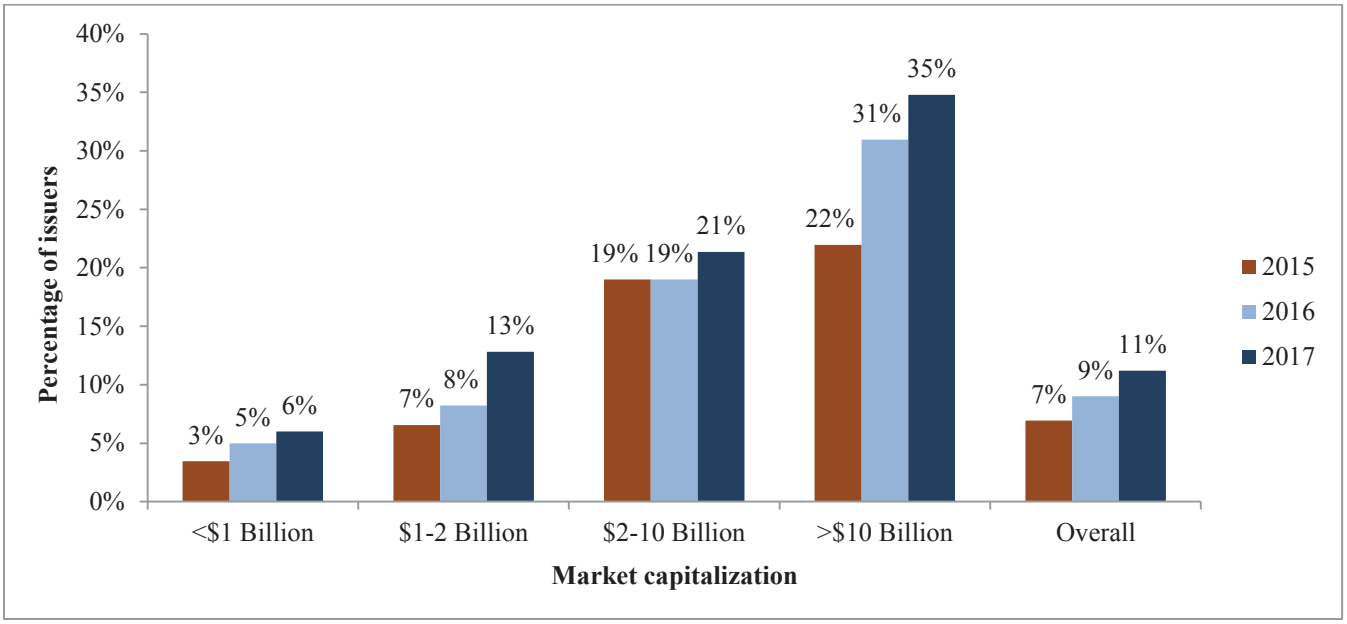
If the issuer has adopted a target, it must disclose the annual and cumulative progress in achieving the target

- candidates are selected based on merit (64%);
- targets would not be effective or are arbitrary (12%);
- targets are unduly restrictive (11%);
- the issuer wants to select candidates from the broadest talent pool (11%); and
- it would not be in the issuer's or shareholders' best interest (10%).

Formal targets for the representation of women in executive officer positions were set by 3% of issuers compared to 2% of issuers in Year 2 and Year 1.

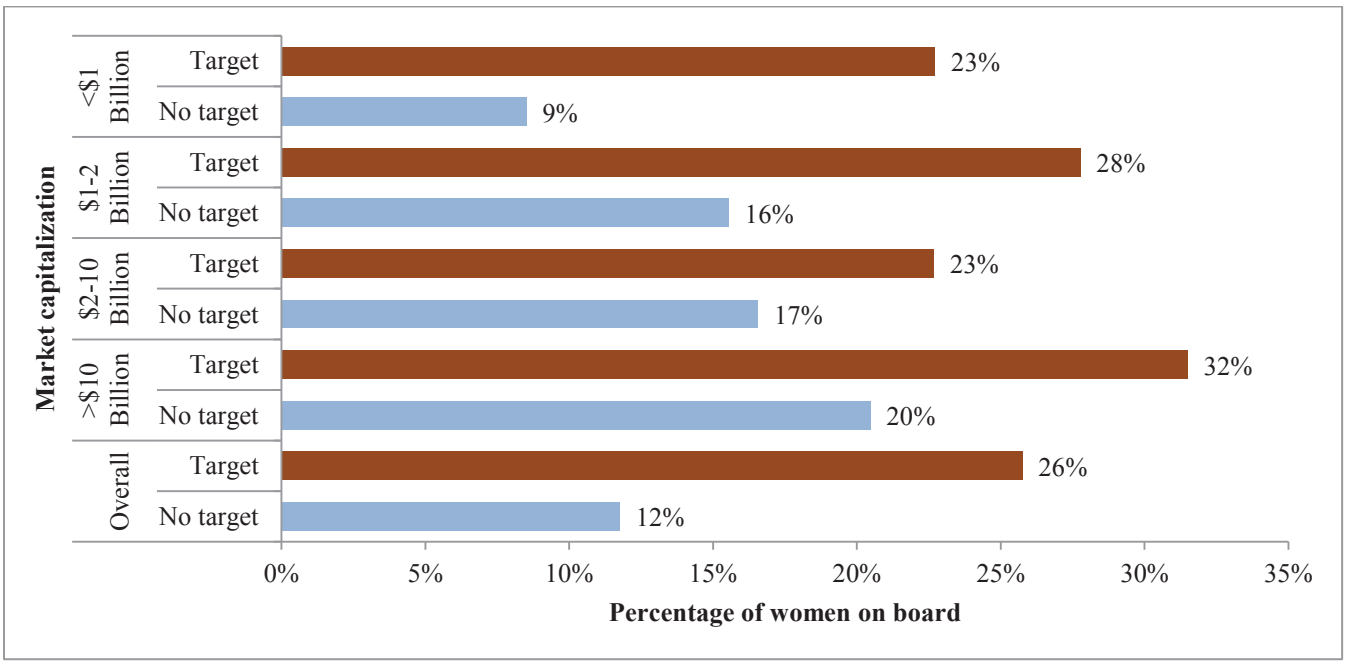
[17] Refer to Appendix A (Item 14 of Form 58-101F1).
[18] A qualitative assessment of the disclosure was not the focus of this review for all Participating Jurisdictions.

Figure 4.10 – Adopted targets for women on board, by issuer size



As illustrated in Figure 4.11, regardless of market capitalization, there was a higher representation of women on the boards of issuers that had adopted board targets, compared to issuers without targets. Issuers that had adopted board targets had an average of 26% of female representation on their boards, compared to issuers without targets that had an average of 12% of female representation on their boards. However, we also noted that the representation of women on boards of issuers that had not adopted targets increased from Year 2, except for issuers with a market capitalization of greater than $10 billion.

Figure 4.11 – Target setting and women on boards, by issuer size



D. Consideration of the representation of women in the director identification and selection process[19] and consideration of the representation of women in executive officer appointments[20]

If the issuer considers the representation of women, it must disclose how it is considered

Of the issuers in the sample, 87% disclosed whether they considered the level of representation of women on their boards, while 84% disclosed whether they considered the level of representation of women in executive officer positions. 37% of issuers that disclosed they consider the representation of women provided disclosure as to how it was considered for their boards, while 34% of issuers did so for their executive officer positions. Where the level of representation of women on their boards or in their executive officer positions was not considered, 99% of issuers disclosed the reasons for not doing so for their boards, while 96% did so for their executive officer positions.[21]

In our sample, 65% of issuers disclosed that they considered the representation of women on their boards as part of their director identification and nominating process compared to 66% in Year 2 and 60% in Year 1. For executive officer appointments, 58% of issuers disclosed that they considered the representation of women when making such appointments in both the current year and Year 2, compared to 53% of issuers in Year 1.

Similar to Year 2 and Year 1, the most common explanation provided by issuers that did not consider the representation of women in their board appointments (83%) or in their executive officer positions (80%) was that their selection was based on merit.

We continue to observe issuers simply disclosing that they consider the representation of women for both their board and executive officer positions without further elaboration. More clarification and detail of how they do so is necessary for the disclosure to be meaningful.

E. Director term limits and other mechanisms of board renewal[22]

Of the issuers sampled, 98% disclosed whether they had adopted director term limits, other mechanisms of board renewal or both. Of issuers that had not adopted these measures, 97% disclosed their reasons for not doing so.[23] The most common reason disclosed was that director terms limits may negatively impact the continuity and experience on the board.

If an issuer discloses that it has mechanisms for board renewal, it must describe them including how those mechanisms contribute to board renewal

In our sample, 21% of issuers disclosed that they had adopted director term limits, compared to 20% in Year 2 and 19% in Year 1. As illustrated by Figure 4.12, issuers adopted different forms of director term limits, with:

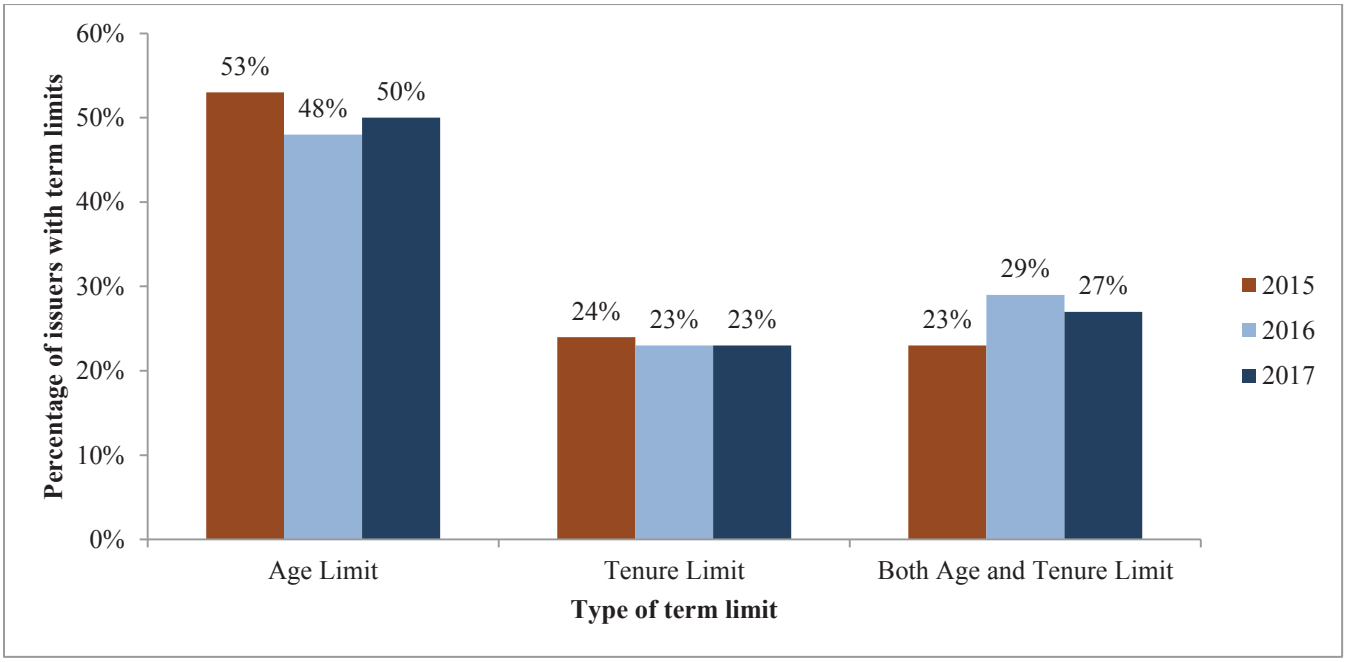
- 50% adopting age limits,
- 23% adopting tenure limits, and

[19] Refer to Appendix A (Item 12 of Form 58-101F1).
[20] Refer to Appendix A (Item 13 of Form 58-101F1).
[21] A qualitative assessment of the disclosure was not the focus of this review for all Participating Jurisdictions.
[22] Refer to Appendix A (Item 10 of Form 58-101F1).
[23] A qualitative assessment of the disclosure was not the focus of this review for all Participating Jurisdictions.

- 27% adopting both age and tenure limits.

In addition, many issuers continued to point out that they had other mechanisms of board renewal that they had adopted, but they did not adequately describe them. Many of these issuers disclosed that they conduct regular assessments of their boards and committees for effectiveness and contribution (as required under Item 9 of Form 58-101F1); however, they often did not explain how those assessments contribute to board renewal. An example would be disclosing that a negative assessment could contribute to board renewal by creating a vacancy.

Figure 4.12 - Types of term limits adopted



5. Disclosure Deficiencies

In our review, we noted disclosure deficiencies in five areas, where the disclosure was often vague or boilerplate in nature, or was not provided at all. We draw issuers' attention to the following disclosure requirements, where these deficiencies were noted:

- Disclosure of both the number and percentage of women on the issuer's board and in its executive officer positions each year.

- If the issuer discloses that it has adopted a written policy regarding the representation of women on its board, a description of that policy, including a clear explanation of how the policy applies to the identification of women directors.

- If the issuer discloses that it has adopted targets regarding the representation of women on its board and in its executive officer positions, annual and cumulative progress in achieving the targets.

- If the issuer discloses that it considers the representation of women in the director identification and selection process and/or when making executive officer appointments, a description of how it does so.

- If the issuer discloses that it has adopted term limits or other mechanisms of board renewal, a description of those limits or other mechanisms and how they contribute to board renewal.

Issuers must provide the disclosure required by the WB/EP Rules. Failure to comply with these requirements could result in regulatory action. We will continue to monitor issuers' corporate governance disclosure related to the representation of women on boards and in executive officer positions.

6. Conclusion and Questions

This Staff Notice reports the findings of our third review of corporate governance disclosure required by the WB/EP Rules. It also compares the findings of this review with the reviews we conducted in Year 2 and Year 1. The WB/EP Rules are intended to provide transparency to assist investors when making voting and investment decisions. This objective is most effectively achieved if the disclosure provides a clear description of the corporate governance practices that an issuer has adopted in relation to women on boards and in executive officer positions, or the reasons for not adopting such practices, as the case may be.

Please refer your questions to any of the following:

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Appendix A: Summary of Form 58-101F1 Corporate Governance Disclosure related to the WB/EP Rules

Item 10. Director Term Limits and Other Mechanisms of Board Renewal	Disclose whether or not the issuer has adopted term limits for the directors on its board or other mechanisms of board renewal and, if so, include a description of those director term limits or other mechanisms of board renewal. If the issuer has not adopted director term limits or other mechanisms of board renewal, disclose why it has not done so.
Item 11. Policies Regarding the Representation of Women on the Board	(a) Disclose whether the issuer has adopted a written policy relating to the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not done so. (b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy: (i) a short summary of its objectives and key provisions, (ii) the measures taken to ensure that the policy has been effectively implemented, (iii) annual and cumulative progress by the issuer in achieving the objectives of the policy, and (iv) whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.
Item 12. Consideration of the Representation of Women in the Director Identification and Selection Process	Disclose whether and, if so, how the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or reelection to the board. If the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer's reasons for not doing so.
Item 13. Consideration Given to the Representation of Women in Executive Officer Appointments	Disclose whether and, if so, how the issuer considers the level of representation of women in executive officer positions when making executive officer appointments. If the issuer does not consider the level of representation of women in executive officer positions when making executive officer appointments, disclose the issuer's reasons for not doing so.
Item 14. Issuer's Targets Regarding the Representation of Women on the Board and in Executive Officer Positions	(a) For purposes of this Item, a "target" means a number or percentage, or a range of numbers or percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date. (b) Disclose whether the issuer has adopted a target regarding women on the issuer's board. If the issuer has not adopted a target, disclose why it has not done so. (c) Disclose whether the issuer has adopted a target regarding women in executive officer positions of the issuer. If the issuer has not adopted a target, disclose why it has not done so.

	(d) If the issuer has adopted a target referred to in either (b) or (c), disclose: (i) the target, and (ii) the annual and cumulative progress of the issuer in achieving the target.
Item 15. Number of Women on the Board and in Executive Officer Positions	(a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women. (b) Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all major subsidiaries of the issuer, who are women.

Chapter 1

Notices / News Releases

1.1 Notices

1.1.1 CSA Multilateral Staff Notice 58-309 Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices

CSA Multilateral Staff Notice 58-309 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices* is reproduced on the following separately numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

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CSA Multilateral Staff Notice 58-309
Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices

Date: **October 5, 2017**

Table of Contents

1. Executive Summary

This staff notice (**Staff Notice**) reports the findings of staff of the securities regulatory authorities in Alberta, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Québec, Saskatchewan and Yukon (**Participating Jurisdictions** or **we**) of our recent review of disclosure regarding women on boards and in executive officer positions as prescribed in National Instrument 58-101 *Disclosure of Corporate Governance Practices* (**NI 58-101**) (the **WB/EP Rules**). This Staff Notice reports the findings based on a review sample of 660 issuers that had year-ends between December 31, 2016 and March 31, 2017 (**Year 3** or **2017** or **current year**).

This is the third consecutive annual review of this nature that we[1] have conducted. The findings from our first two annual reviews are set out in:

- CSA Multilateral Staff Notice 58-307 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices* published on September 28, 2015, which summarized our findings after reviewing the corporate governance disclosure of 722 issuers (**Year 1** or **2015**), and

- CSA Multilateral Staff Notice 58-308 *Staff Review of Women on Boards and in Executive Officer Positions – Compliance with NI 58-101 Disclosure of Corporate Governance Practices* published on September 28, 2016, which summarized our findings after reviewing the corporate governance disclosure of 677 issuers (**Year 2** or **2016**).

[1] The Alberta Securities Commission did not participate in the 2015 and 2016 reviews as the WB/EP Rules had not yet been adopted in Alberta. The British Columbia Securities Commission has not adopted the WB/EP Rules. However, Alberta-based and BC-based TSX-listed issuers were included in the respective samples.

This Staff Notice highlights the trends we have observed in the three reviews as well as certain compliance findings.

Key findings and observed trends at a glance

The table below provides a snapshot of the key findings from our reviews:

Findings	Year 1	Year 2	Year 3
Board Representation			
Total board seats occupied by women	11%	12%	14%
Issuers with at least one woman on their board	49%	55%	61%
Issuers with three or more women on their board	8%	10%	11%
Board seats occupied by women for issuers with over $1 billion market capitalization	16%	18%	20%
Board seats occupied by women for issuers with over $10 billion market capitalization	21%	23%	24%
Board vacancies filled by women	--	--	26%[2]
Executive Officers			
Issuers with at least one woman in executive officer positions	60%	59%	62%
Policies			
Issuers that adopted a policy relating to the representation of women on their board	15%	21%	35%
Targets			
Issuers that adopted targets for the representation of women on their board	7%	9%	11%
Issuers that adopted targets for the representation of women in executive officer positions	2%	2%	3%
Identification and Nominating Process			
Issuers that considered the representation of women on their boards as part of the director identification and selection process	60%	66%	65%
Issuers that considered the representation of women in executive officer appointments	53%	58%	58%
Term Limits			
Issuers that adopted director term limits	19%	20%	21%

Year 3

14% board seats occupied by women

61% issuers with at least one woman on their board

24% board seats occupied by women (issuers with over $10 billion market capitalization)

62% issuers with at least one woman in executive officer positions

[2] Board vacancies filled by women were not included in our reporting in Year 1 and Year 2.

Compliance findings

In our review, we noted the following:

Topic	Findings
Representation of women	• 97% of issuers disclosed the number or percentage of women on their boards. • 94% of issuers disclosed the number or percentage of women in executive officer positions.
Policies	• 99% of issuers disclosed whether they had adopted a policy relating to the identification and nomination of women directors. • Of the issuers that disclosed that they had not adopted such a policy, 94% disclosed why they had not done so.
Targets	• 96% of issuers disclosed whether they had set targets for the representation of women on their boards. • 95% of issuers disclosed whether they had set targets for the representation of women in executive officer positions. • Where no such targets were set, 94% of issuers disclosed that fact and why they had not done so in connection with the representation of women on their board, while 93% did so in connection with the representation of women in executive officer positions.
Director term limits	• 98% of issuers disclosed whether they had adopted director term limits, other mechanisms of board renewal or both. • Of issuers that had not adopted these measures, 97% disclosed their reasons for not doing so.

While a qualitative assessment of disclosure was not the focus of our review, we noted instances where disclosure required by the WB/EP Rules was vague or boilerplate in nature. We have identified areas for improvement in section 5 *Disclosure Deficiencies* of this Staff Notice.

2. Background

Disclosure requirements

On December 31, 2014, the Participating Jurisdictions[3] implemented the WB/EP Rules, which require that, on an annual basis, a non-venture issuer disclose:

- the number and percentage of women on its board of directors (**board**) and in executive officer positions;
- whether it has a written policy relating to the identification and nomination of women directors;
- whether it has targets for the number or percentage of women on its board and in executive officer positions;
- if it considers the representation of women in its director identification and selection processes and in its executive officer appointments; and
- whether it has director term limits or other mechanisms of board renewal.

In the event that a non-venture issuer does not have a written policy relating to the identification and nomination of women directors; does not have targets for the number or percentage of women on its board and in executive officer positions; does not consider the representation of women in its director identification and selection processes and in its executive officer appointments; or does not have director term limits or other mechanisms of board renewal, the WB/EP Rules require the issuer to explain why not.

The WB/EP Rules are intended to increase transparency for investors and other stakeholders regarding the representation of women on boards and in executive officer positions, and the approach that specific issuers take in respect of such representation. This transparency is intended to assist investors when making investment and voting decisions.

Refer to **Appendix A**, which includes a summary of the disclosure requirements of Form 58-101F1 *Corporate Governance Disclosure* of NI 58-101 (**Form 58-101F1**) related to the WB/EP Rules.

[3] On December 31, 2014, the Participating Jurisdictions excluded the Alberta Securities Commission. The Alberta Securities Commission subsequently adopted the WB/EP Rules effective December 31, 2016.

3. Three Year Review

This is the third consecutive annual issue-oriented review of disclosure provided under the WB/EP Rules.

Sample

As of May 31, 2017, approximately 1,500 issuers were listed on the Toronto Stock Exchange (**TSX**), of which 788 were subject to NI 58-101.[4] Of these issuers, we reviewed the disclosure of the 660 issuers that had year-ends between December 31, 2016 and March 31, 2017, and filed information circulars or annual information forms by July 31, 2017.[5] To remain consistent with the scope of the reviews we conducted in Year 2 and in Year 1, we did not review the disclosure of issuers with year-ends outside of the December 31 to March 31 time frame. Because of this, our findings, and the comparisons between the current year, Year 2 and Year 1, provide only a partial picture. In particular, the larger Canadian banks, which are part of an industry that has generally been an early adopter of diversity initiatives, are not captured in our reviews.[6]

The issuers in the current year, Year 2 and Year 1 samples vary for several reasons including:

- issuers being delisted from the TSX;
- issuers' listings of securities being moved to the TSX-V;
- corporate reorganizations resulting in issuers no longer being listed on the TSX; and
- issuers filing information circulars after July 31, 2017.

These sample differences could have impacted our comparisons of findings between the current year, Year 2 and Year 1.

Once all issuers have filed their corporate governance disclosure required by the WB/EP Rules for three consecutive years, we intend to publish the data to complete the three year review.

[4] Issuers excluded from our review included: (i) approximately 650 exchange-traded funds or closed-end funds; (ii) issuers that moved the listing of their securities from the TSX Venture Exchange (**TSX-V**) to the TSX in 2017; and (iii) other issuers such as designated foreign issuers and SEC foreign issuers that are exempt from the requirements of NI 58-101.
[5] This approach is consistent with our Year 2 and Year 1 reviews.
[6] The six largest banks had an average of 35% of women on their boards based on their 2017 information circulars filed for their years ending October 31, 2016.

Market capitalization and industries in current sample

The market capitalization of the majority of the issuers in the sample was less than $1 billion (65%) as detailed in Figure 3.1 below. 40% of issuers in the sample had a market capitalization of less than $250 million.

Just over 40% of the issuers were in either the mining or oil and gas industries, with each of the remaining industries constituting between 4% to 13% of issuers as noted in Figure 3.2 below. Of the issuers in the mining and oil and gas industries, 77% and 65%, respectively, had a market capitalization of less than $1 billion.

The relationship between issuer size as measured by market capitalization and the adoption by issuers of initiatives to increase the representation of women on their boards and/or in executive officer positions has been consistent over the last three years.

Figure 3.1 – Market capitalization in sample (issuer breakdown)

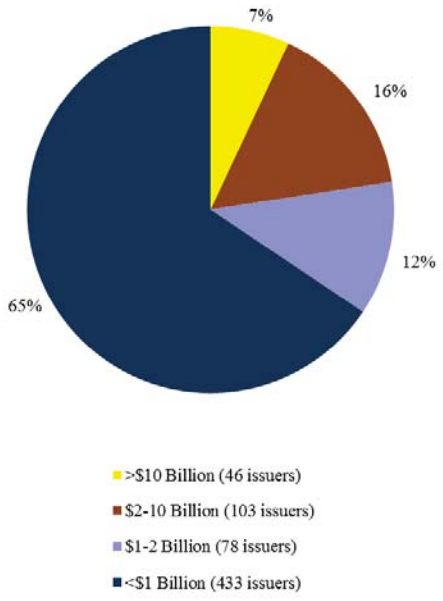
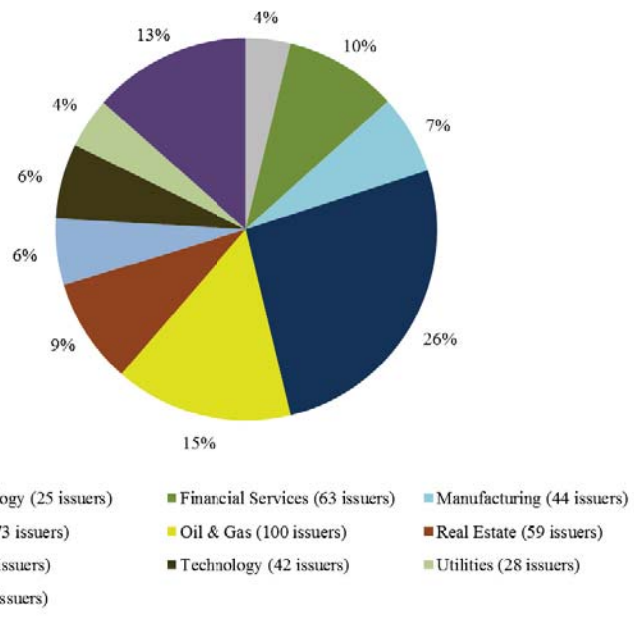


Figure 3.2 – Industries in sample



4. Findings

The following section summarizes our findings in each of the five key areas:	
A.	**Number of women on the board and in executive officer positions**
B.	**Policies regarding the representation of women on the board**
C.	**Issuer's targets regarding the representation of women on the board and in executive officer positions**
D.	**Consideration of the representation of women in the director identification and selection process and consideration of the representation of women in executive officer appointments**
E.	**Director term limits and other mechanisms of board renewal**

A. Number of women on the board and in executive officer positions[7]

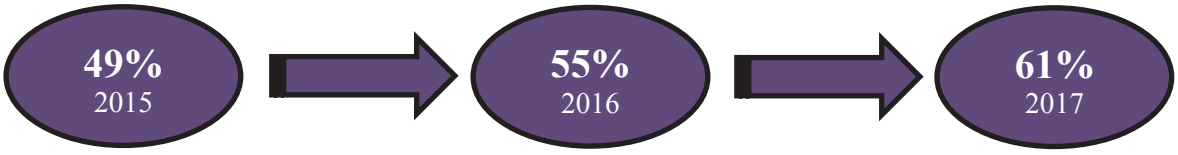
The number or percentage of women on their boards was disclosed by 97% of issuers in the sample and the number or percentage of women in executive officer positions was disclosed by 94% of issuers. Although this is an increase in disclosure over Year 2 and Year 1, we remind issuers that they must disclose both the number and percentage for the representation of women on their boards and in executive officer positions each year.[8]

Issuers must provide both the number and percentage of women on their board and in executive officer positions each year

(i) Board

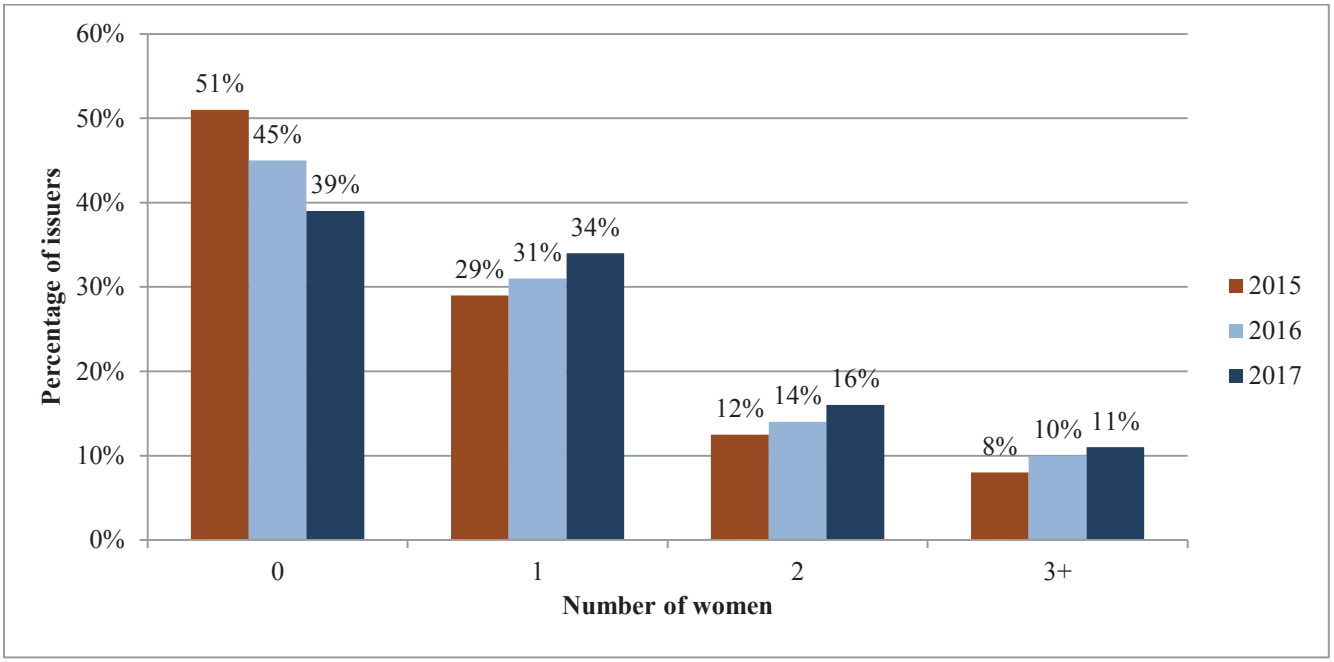
Figure 4.1 illustrates that 61% of issuers had at least one woman on their board, which represents a 6% increase over Year 2 and a 12% increase over Year 1. Further, the number of issuers with one, two, three or more women on their boards has increased each year over the three years covered by our reviews.

Percentage of issuers with at least one woman on their board



[7] Refer to Appendix A (Item 15 of Form 58-101F1).
[8] If an issuer discloses the number, but not the percentage, of its executive officers who are women, investors may not be able to readily determine the proportion of women in executive officer positions as the total number of the issuer's executive officers may not be disclosed.

Figure 4.1 – Number of women on boards (2015 – 2017)[9]



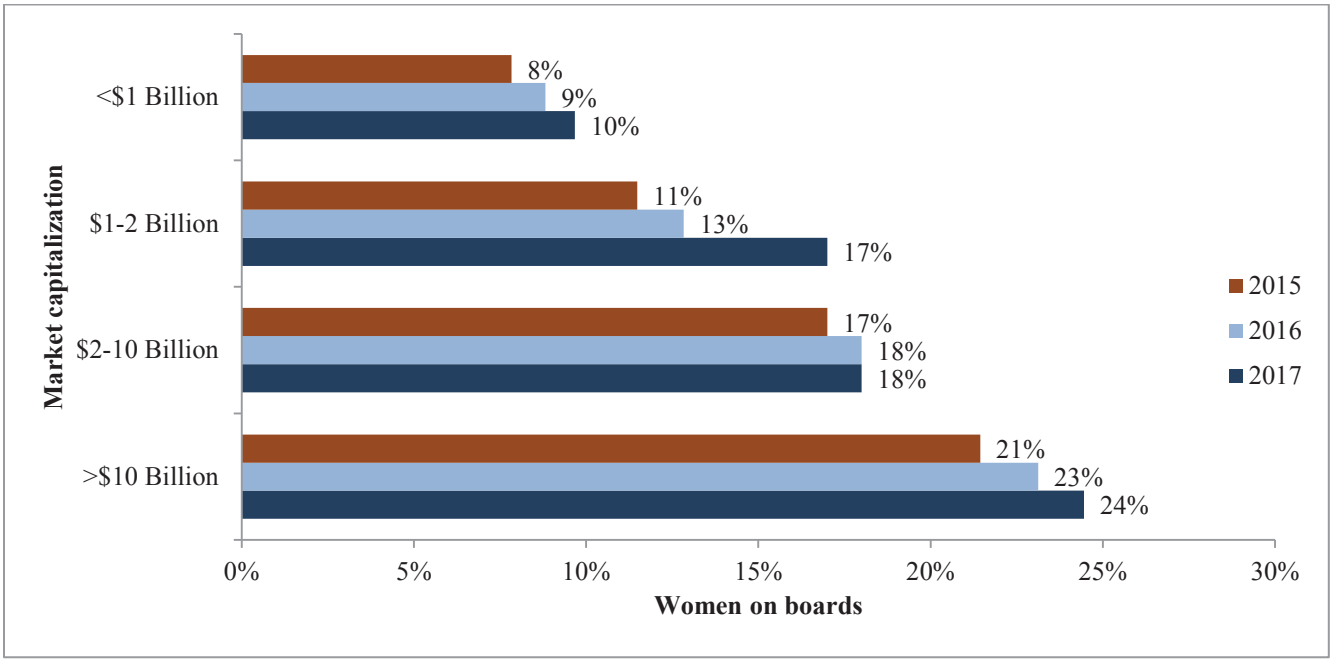
The overall percentage of board seats occupied by women was 14% compared to 12% in Year 2 and 11% in Year 1. Of the issuers in the sample, 15% added one or more women to their boards in the current year, compared to 10% in Year 2[10] and 15% in Year 1.[11]

Percentage of board seats occupied by women

Similar to Year 2, the number of women on boards increased with the size of the issuer. Figure 4.2 shows that the number of board seats occupied by women has increased in all categories of issuer sizes over the three years covered by our review. In the case of issuers with a market capitalization of greater than $10 billion, 24% of board seats are now held by women.

[9] Based on 722 issuers in 2015, 677 issuers in 2016 and 660 issuers in 2017.
[10] Based on 613 issuers that we reviewed in Year 2.
[11] Based on 649 issuers that we reviewed in Year 1.

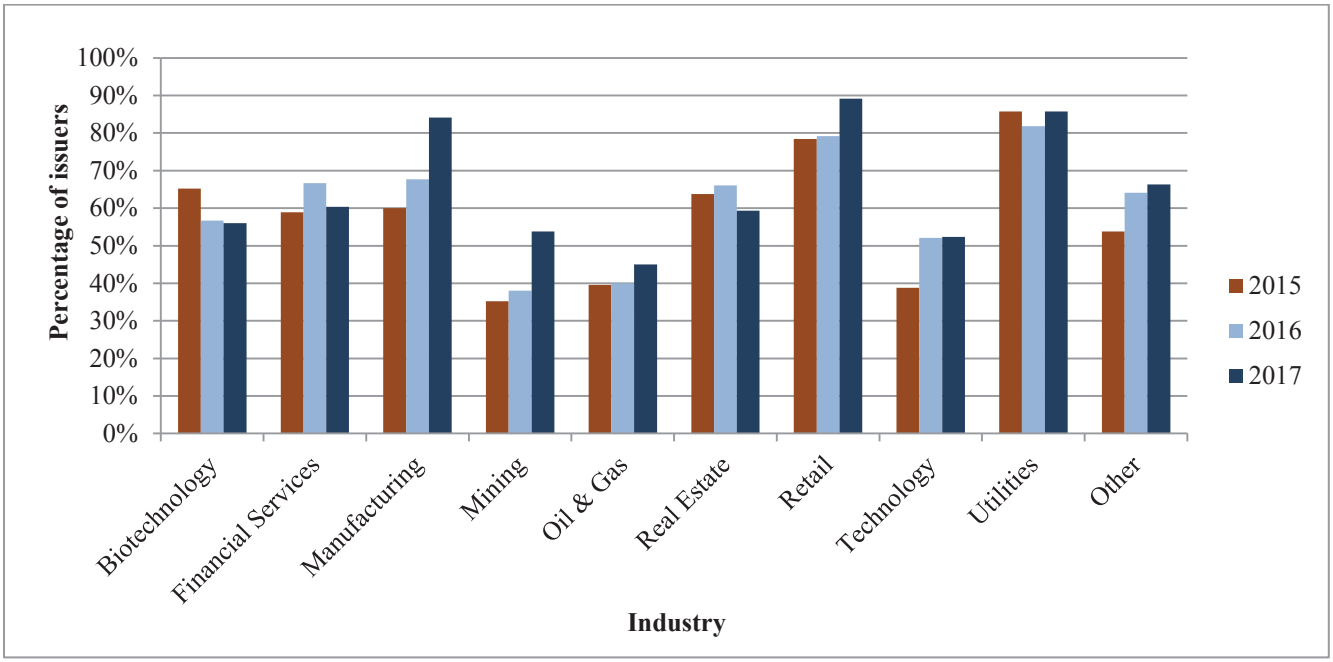
Figure 4.2 - Board seats occupied by women, by issuer size (2015 – 2017)



The number of women on boards varied significantly by industry. As noted in Figure 4.3, the retail industry had the greatest percentage of issuers with one or more women on their boards (89%), followed by the utilities industry (86%) and the manufacturing industry (84%), compared to 79%, 82% and 68% respectively in Year 2 and 78%, 86% and 60% respectively in Year 1. The retail and manufacturing industries both reported double digit increases over Year 2 and Year 1 in the percentage of issuers with one or more women on their boards.

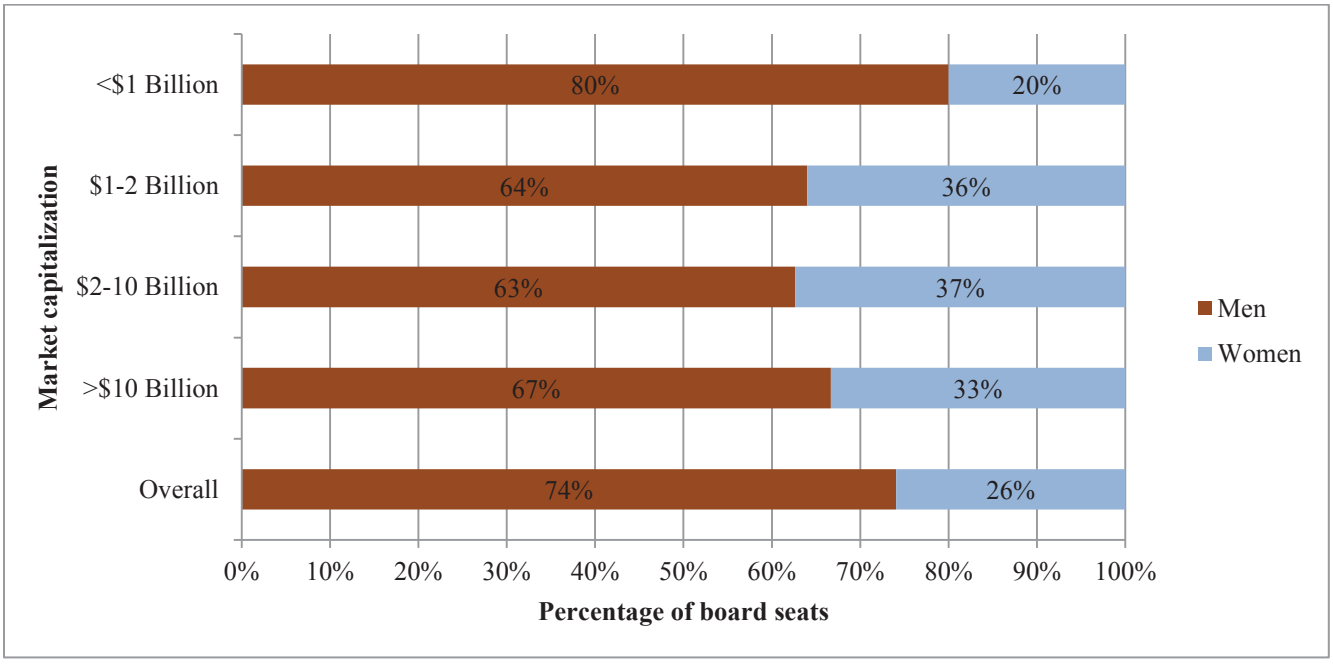
Mining issuers also reported double digit increases over Year 2 and Year 1 in the percentage of issuers with one or more women on their boards. Although there was an increase in the percentage of mining, oil and gas and technology issuers with one or more women on their boards, consistent with Year 2 and Year 1, these industries had the lowest percentages of issuers with one or more women on their boards. Specifically, of issuers in the mining and oil and gas industries, 54% and 45% respectively reported that they had one or more women on their boards, increasing from the 38% and 40% reported in Year 2 and from the 35% and 40% reported in Year 1. In the technology industry, 52% of issuers reported that they had one or more women on their boards, which is consistent with the percentage in Year 2. In Year 1, 39% of issuers in the technology industry reported that they had one or more women on their boards.

Figure 4.3 - Issuers with one or more women on their boards, by industry



As part of our year-over-year analysis, we also looked at each issuer to determine whether it filled any board vacancies during the year and, if so, the percentage of those positions that were filled by women. In our sample, 674 board seats were vacated during the year and 505 of those seats were filled. As noted in Figure 4.4, of these filled vacancies, 26% (131 seats) were filled by women and 74% (374 seats) were filled by men.

Figure 4.4 – Filled board vacancies, by issuer size



(ii) Executive officers

Figure 4.5 illustrates that 62% of issuers that disclosed executive officer information had at least one woman in an executive officer position, which remained relatively consistent with the 59% reported in Year 2 and 60% reported in Year 1. The percentages for those issuers that had two women in executive officer positions as well as those that had three or more in such positions were also relatively consistent over the three years that were reviewed.

Percentage of issuers with at least one woman in executive officer positions

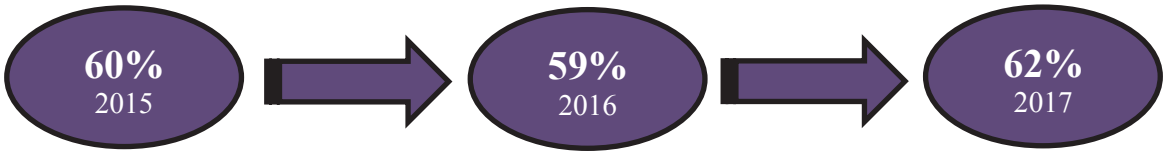
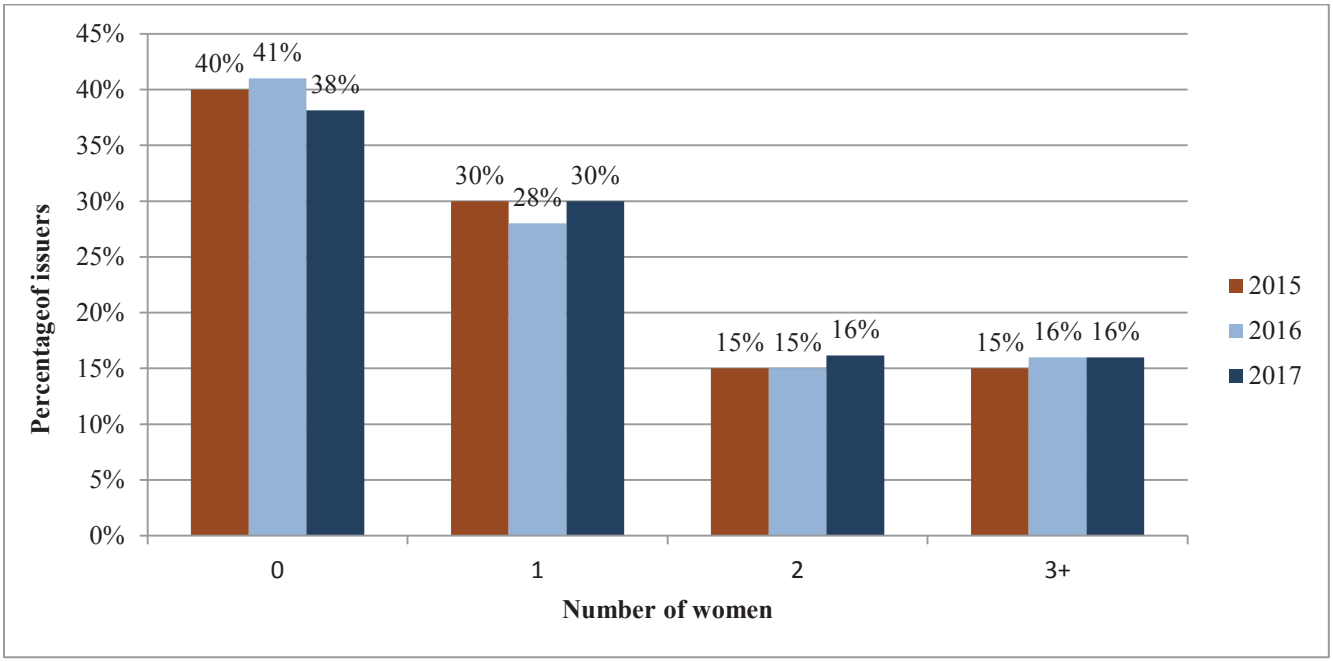


Figure 4.5 –Women in executive officer positions (2015 – 2017)[12]



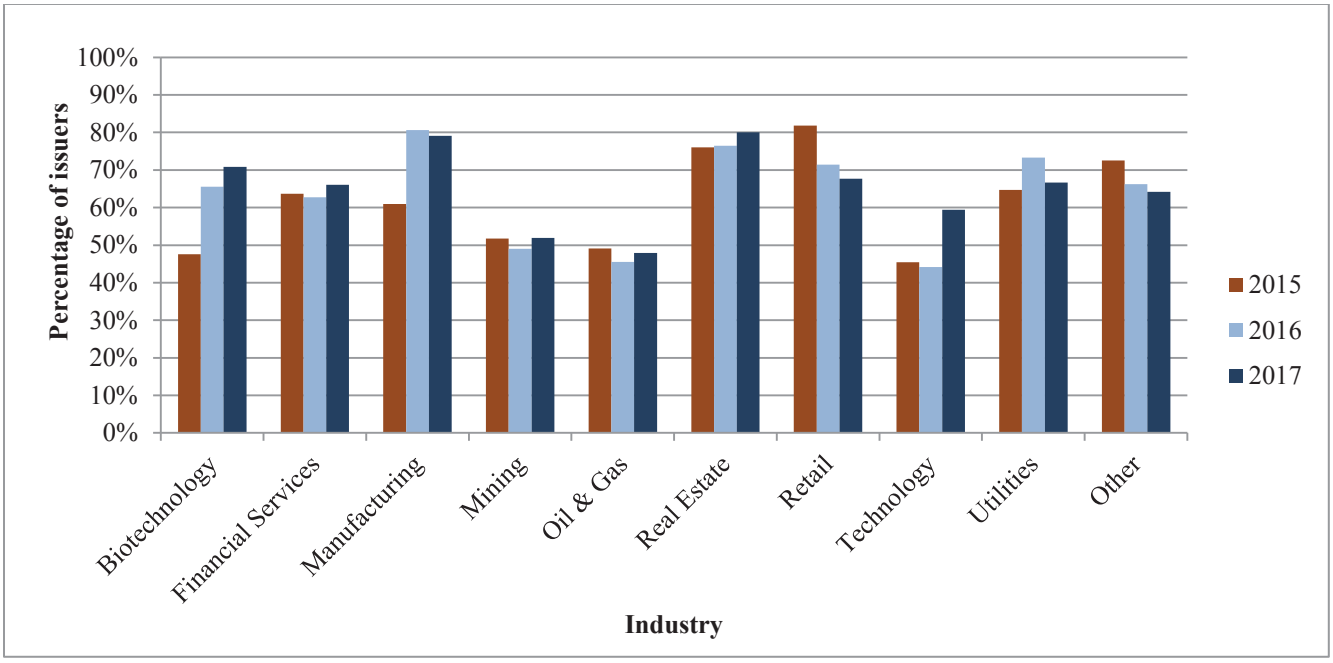
As illustrated in Figure 4.6, the real estate and manufacturing industries had the highest percentage of issuers with one or more women in executive officer positions, whereas the mining and oil and gas industries had the lowest percentage of issuers with one or more women holding such positions. Specifically, 80% and 79% of issuers in the real estate and manufacturing industries that disclosed executive officer information had one or more women in executive officer positions, as compared to 76% and 81% respectively in Year 2, and 76% and 61% respectively in Year 1. Of issuers in the mining

[12] Based on 598 issuers that provided the number of women in executive officer positions in 2015, 613 issuers in 2016, and 614 in 2017.

and oil and gas industries, 52% and 48% of issuers respectively had one or more women in executive officer positions compared to 49% and 46% in Year 2 and 52% and 49% in Year 1.

Figure 4.6 further illustrates that while there have been double digit increases since Year 1 in the percentage of issuers in the manufacturing industry with one or more women in executive officer positions, there has been a decrease in the percentage of issuers with one or more women in executive officer positions in certain industries, such as the retail industry.

Figure 4.6 – Issuers with one or more women in executive officer positions, by industry



B. Policies regarding the representation of women on the board[13]

Disclosure about a written policy, if adopted, must describe how it relates to the identification of women directors

Of the issuers in the sample, 99% disclosed whether they had adopted a policy relating to the identification and nomination of women directors. Of the issuers that disclosed that they had not adopted such a policy, 94% disclosed why they had not done so.[14]

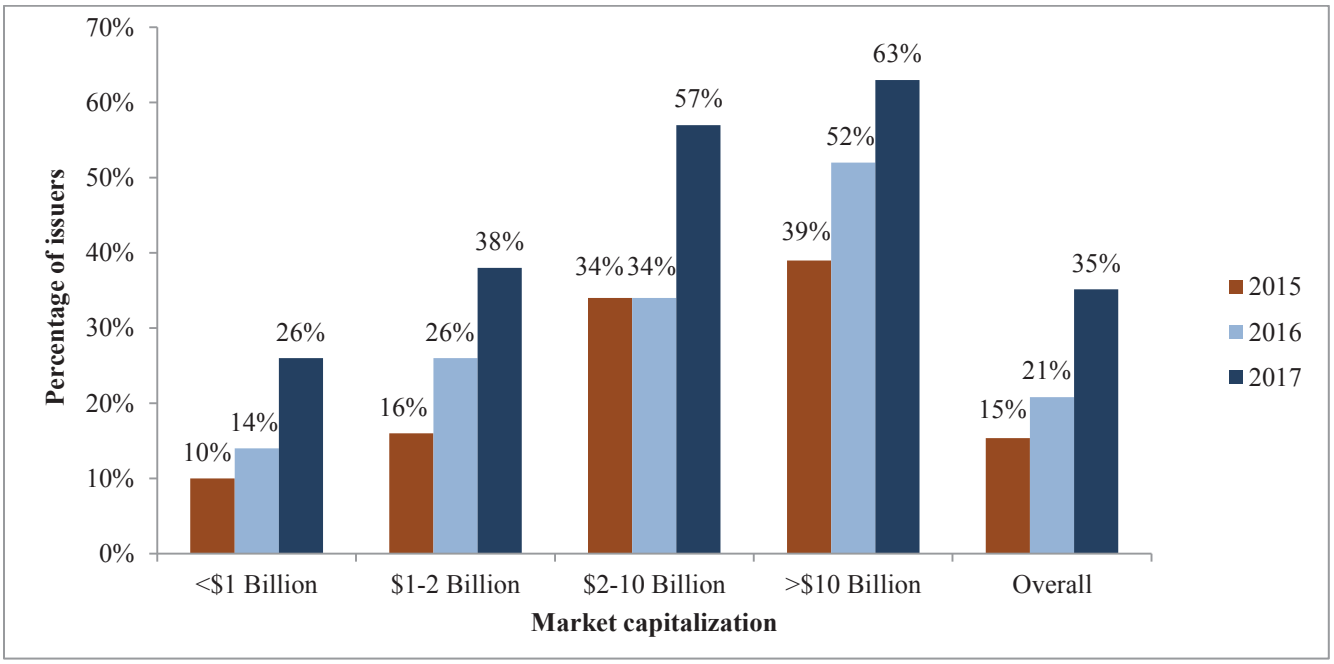
Figure 4.7 illustrates that 35% of issuers disclosed they had adopted a policy relating to the identification and nomination of women directors, representing a significant increase over 21% in Year 2 and 15% in Year 1.[15] Issuers with a market capitalization of greater than $1 billion were more likely to have adopted a policy than issuers with a market capitalization of less than $1 billion. Further, 26% of issuers with a market capitalization of less than $1 billion disclosed that

[13] Refer to Appendix A (Item 11 of Form 58-101F1).
[14] A qualitative assessment of the disclosure was not the focus of this review for all Participating Jurisdictions.
[15] While it was unclear from the disclosure whether the policies for a small number of these issuers were in written form, we have assumed this to be the case for the purposes of our review.

they had adopted a policy relating to the identification and nomination of women directors compared to 14% in Year 2 and 10% in Year 1.

We noted that 53% of issuers disclosed that they did not adopt a policy relating to the identification and nomination of women directors, compared to 59% in Year 2 and 65% in Year 1. Approximately 11% of issuers had broader diversity policies that encompassed a range of characteristics such as: age, ethnicity, race, religion and sexual orientation. However, these policies did not have specific provisions relating to the identification and nomination of women directors.

Figure 4.7 – Issuers adopting women on board policy, by issuer size



Figures 4.8 and 4.9 illustrate that regardless of issuer size, those issuers that had adopted a policy relating to the representation of women on their boards had a higher percentage of women on their boards compared to issuers without such a policy. The 232 issuers that had adopted a policy relating to the representation of women on their boards had an average of 19% of women on their boards compared to issuers with no such policy, which had an average of 10% of women on their boards. The relationship between the adoption of a policy and the higher representation of women on an issuer's board has been consistent over the last three years. In Year 2 and Year 1, issuers with a policy relating to the representation of women on their boards had an average of 18% of women on their boards compared to issuers with no such policy, which averaged 10% in Year 2 and 9% in Year 1.

Figure 4.8 - Policy setting and percentage of women on boards, by issuer size

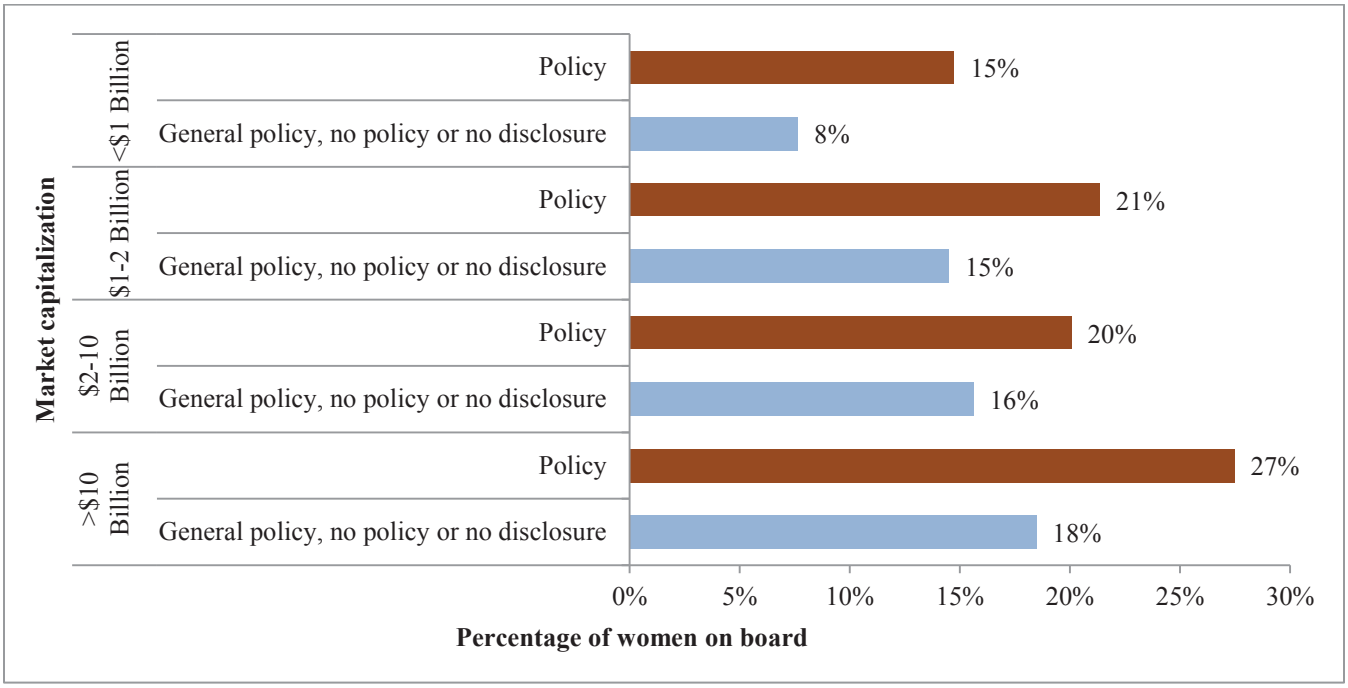
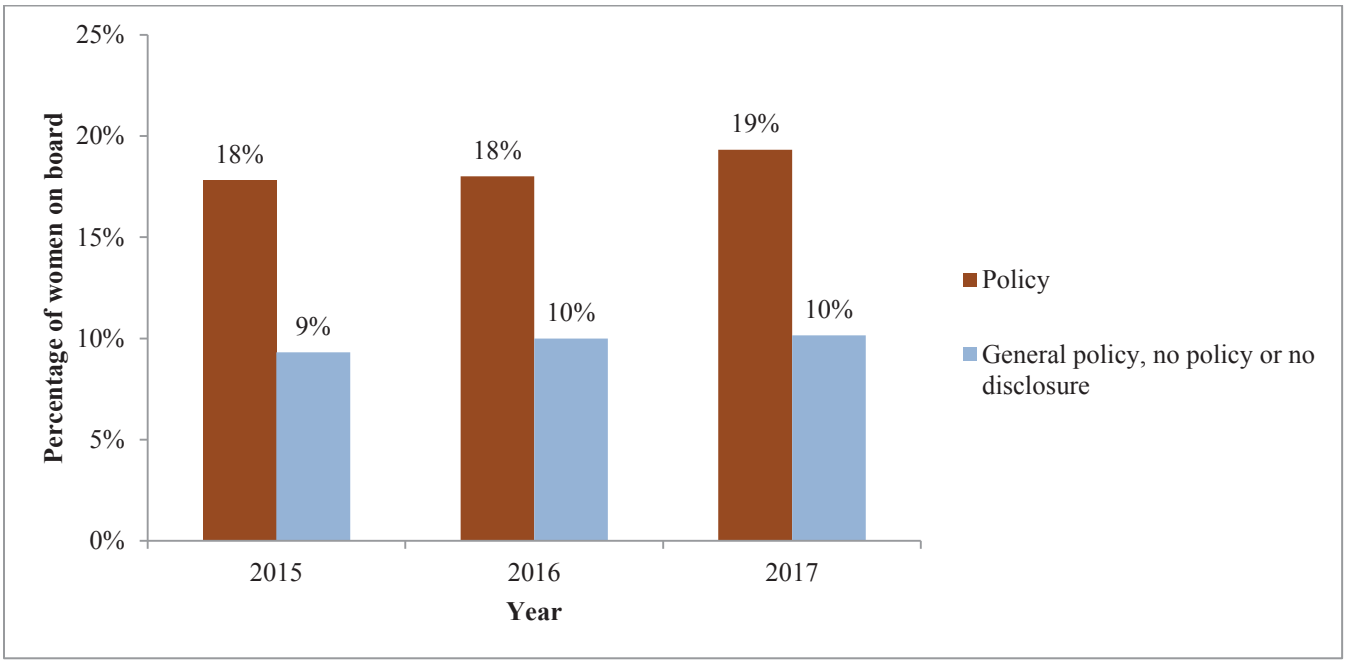


Figure 4.9 - Policy setting and percentage of women on boards, by year[16]



[16] The policy results in this figure are based on 232 issuers that had adopted a policy in 2017, 141 issuers in 2016 and 111 issuers in 2015.

C. Issuer's targets regarding the representation of women on the board and in executive officer positions[17]

Of the issuers sampled, 96% disclosed whether they had set targets for the representation of women on their boards, while 95% disclosed whether they did so for the representation of women in executive officer positions. Where no such targets were set, 94% of issuers disclosed that fact and why they had not done so in connection with the representation of women on their board, while 93% did so in connection with the representation of women in executive officer positions.[18]

As outlined in Figure 4.10, targets for the representation of women on their boards were set by 11% of issuers, representing an increase from 9% in Year 2 and 7% in Year 1. Issuers set various types of targets such as:

- percentage or number of female board members; and
- percentage or number of female independent directors.

Certain issuers also set staggered targets that extended over a period of years. Of issuers that set targets relating to the percentage of women on their boards, 90% set a target of 25% or greater.

Of issuers that adopted targets for the representation of women on their boards, 86% provided disclosure regarding their progress in achieving their targets. Of issuers with board targets, 57% had already achieved their stated target.

Figure 4.10 also illustrates the relationship between the market capitalization of issuers and the setting of targets for the representation of women on boards. Approximately one third of issuers with a market capitalization of greater than $10 billion adopted such targets compared to 6% of issuers with a market capitalization of less than $1 billion.

A variety of reasons were disclosed by issuers for not adopting targets for the representation of women on their boards and issuers often cited multiple reasons. The most common reasons cited include:

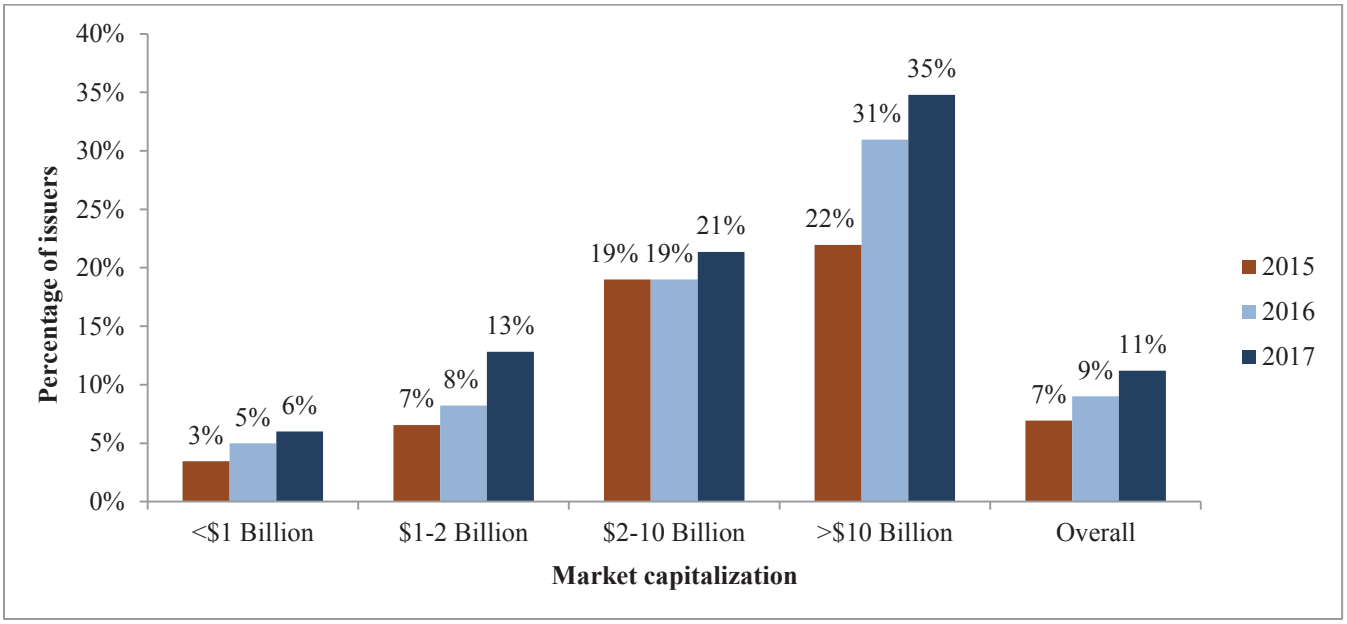
If the issuer has adopted a target, it must disclose the annual and cumulative progress in achieving the target

- candidates are selected based on merit (64%);
- targets would not be effective or are arbitrary (12%);
- targets are unduly restrictive (11%);
- the issuer wants to select candidates from the broadest talent pool (11%); and
- it would not be in the issuer's or shareholders' best interest (10%).

Formal targets for the representation of women in executive officer positions were set by 3% of issuers compared to 2% of issuers in Year 2 and Year 1.

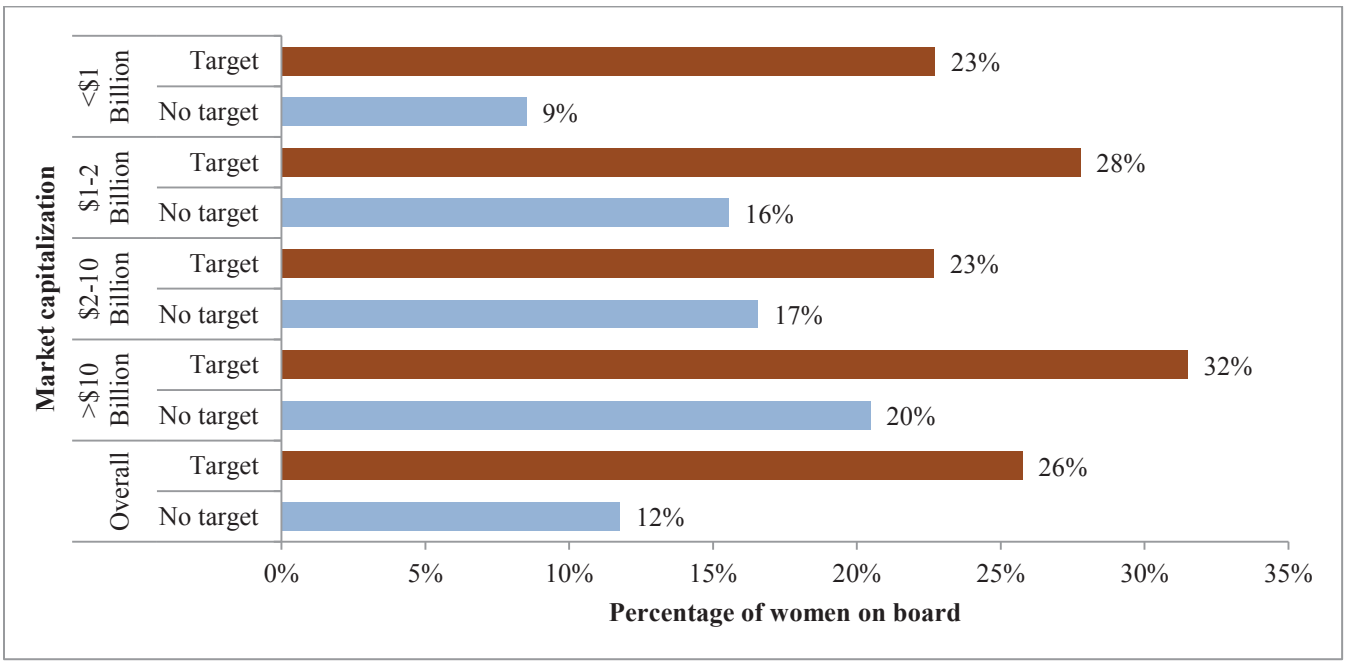
[17] Refer to Appendix A (Item 14 of Form 58-101F1).
[18] A qualitative assessment of the disclosure was not the focus of this review for all Participating Jurisdictions.

Figure 4.10 – Adopted targets for women on board, by issuer size



As illustrated in Figure 4.11, regardless of market capitalization, there was a higher representation of women on the boards of issuers that had adopted board targets, compared to issuers without targets. Issuers that had adopted board targets had an average of 26% of female representation on their boards, compared to issuers without targets that had an average of 12% of female representation on their boards. However, we also noted that the representation of women on boards of issuers that had not adopted targets increased from Year 2, except for issuers with a market capitalization of greater than $10 billion.

Figure 4.11 – Target setting and women on boards, by issuer size



D. Consideration of the representation of women in the director identification and selection process[19] and consideration of the representation of women in executive officer appointments[20]

If the issuer considers the representation of women, it must disclose how it is considered

Of the issuers in the sample, 87% disclosed whether they considered the level of representation of women on their boards, while 84% disclosed whether they considered the level of representation of women in executive officer positions. 37% of issuers that disclosed they consider the representation of women provided disclosure as to how it was considered for their boards, while 34% of issuers did so for their executive officer positions. Where the level of representation of women on their boards or in their executive officer positions was not considered, 99% of issuers disclosed the reasons for not doing so for their boards, while 96% did so for their executive officer positions.[21]

In our sample, 65% of issuers disclosed that they considered the representation of women on their boards as part of their director identification and nominating process compared to 66% in Year 2 and 60% in Year 1. For executive officer appointments, 58% of issuers disclosed that they considered the representation of women when making such appointments in both the current year and Year 2, compared to 53% of issuers in Year 1.

Similar to Year 2 and Year 1, the most common explanation provided by issuers that did not consider the representation of women in their board appointments (83%) or in their executive officer positions (80%) was that their selection was based on merit.

We continue to observe issuers simply disclosing that they consider the representation of women for both their board and executive officer positions without further elaboration. More clarification and detail of how they do so is necessary for the disclosure to be meaningful.

E. Director term limits and other mechanisms of board renewal[22]

Of the issuers sampled, 98% disclosed whether they had adopted director term limits, other mechanisms of board renewal or both. Of issuers that had not adopted these measures, 97% disclosed their reasons for not doing so.[23] The most common reason disclosed was that director terms limits may negatively impact the continuity and experience on the board.

If an issuer discloses that it has mechanisms for board renewal, it must describe them including how those mechanisms contribute to board renewal

In our sample, 21% of issuers disclosed that they had adopted director term limits, compared to 20% in Year 2 and 19% in Year 1. As illustrated by Figure 4.12, issuers adopted different forms of director term limits, with:

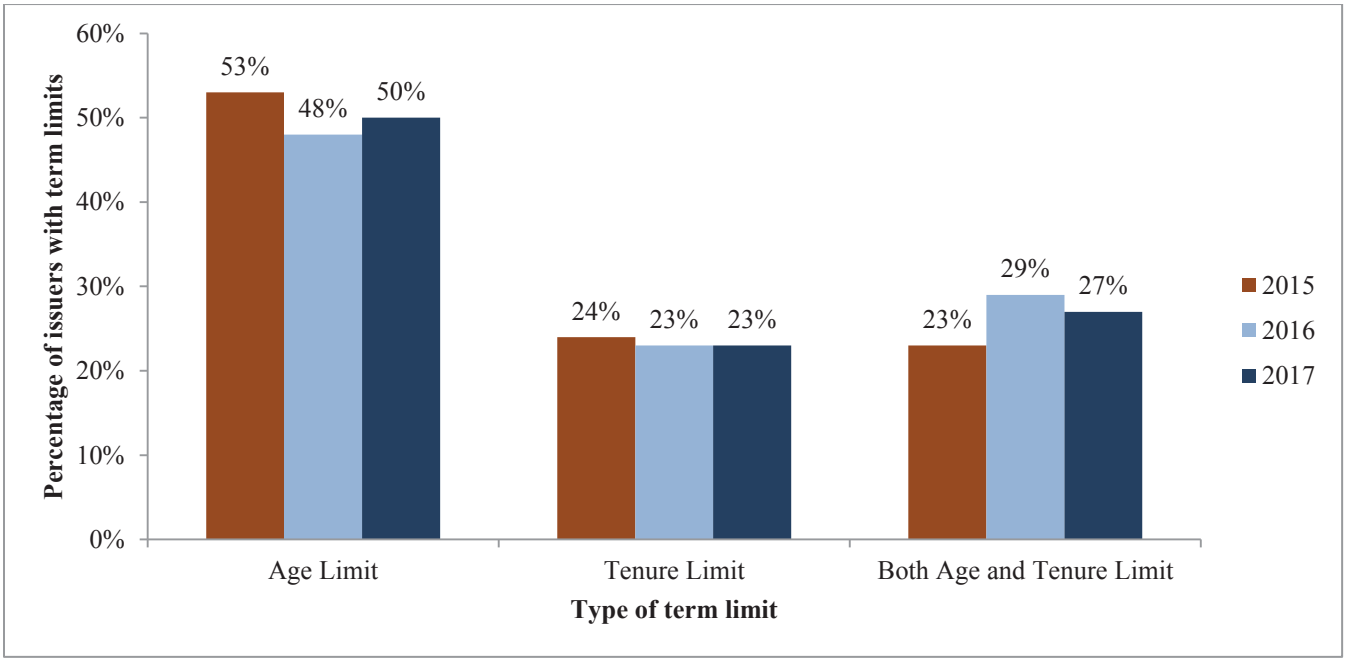
- 50% adopting age limits,
- 23% adopting tenure limits, and

[19] Refer to Appendix A (Item 12 of Form 58-101F1).
[20] Refer to Appendix A (Item 13 of Form 58-101F1).
[21] A qualitative assessment of the disclosure was not the focus of this review for all Participating Jurisdictions.
[22] Refer to Appendix A (Item 10 of Form 58-101F1).
[23] A qualitative assessment of the disclosure was not the focus of this review for all Participating Jurisdictions.

- 27% adopting both age and tenure limits.

In addition, many issuers continued to point out that they had other mechanisms of board renewal that they had adopted, but they did not adequately describe them. Many of these issuers disclosed that they conduct regular assessments of their boards and committees for effectiveness and contribution (as required under Item 9 of Form 58-101F1); however, they often did not explain how those assessments contribute to board renewal. An example would be disclosing that a negative assessment could contribute to board renewal by creating a vacancy.

Figure 4.12 - Types of term limits adopted



5. Disclosure Deficiencies

In our review, we noted disclosure deficiencies in five areas, where the disclosure was often vague or boilerplate in nature, or was not provided at all. We draw issuers' attention to the following disclosure requirements, where these deficiencies were noted:

- Disclosure of both the number and percentage of women on the issuer's board and in its executive officer positions each year.

- If the issuer discloses that it has adopted a written policy regarding the representation of women on its board, a description of that policy, including a clear explanation of how the policy applies to the identification of women directors.

- If the issuer discloses that it has adopted targets regarding the representation of women on its board and in its executive officer positions, annual and cumulative progress in achieving the targets.

- If the issuer discloses that it considers the representation of women in the director identification and selection process and/or when making executive officer appointments, a description of how it does so.

- If the issuer discloses that it has adopted term limits or other mechanisms of board renewal, a description of those limits or other mechanisms and how they contribute to board renewal.

Issuers must provide the disclosure required by the WB/EP Rules. Failure to comply with these requirements could result in regulatory action. We will continue to monitor issuers' corporate governance disclosure related to the representation of women on boards and in executive officer positions.

6. Conclusion and Questions

This Staff Notice reports the findings of our third review of corporate governance disclosure required by the WB/EP Rules. It also compares the findings of this review with the reviews we conducted in Year 2 and Year 1. The WB/EP Rules are intended to provide transparency to assist investors when making voting and investment decisions. This objective is most effectively achieved if the disclosure provides a clear description of the corporate governance practices that an issuer has adopted in relation to women on boards and in executive officer positions, or the reasons for not adopting such practices, as the case may be.

Please refer your questions to any of the following:

Ontario Securities Commission

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Sandra Heldman
Senior Accountant, Corporate Finance
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Rick Whiler
Senior Accountant, Corporate Finance
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Katie DeBartolo
Accountant, Corporate Finance
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Alberta Securities Commission

Kari Horn
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Alison Trollope
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Cheryl McGillivray
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Financial and Consumer Affairs Authority of Saskatchewan

Tony Herdzik
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The Manitoba Securities Commission

Wayne Bridgeman
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Ella-Jane Loomis
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Heidi Schedler
Senior Enforcement Counsel
902-424-7810
Toll-free: 1-855-424-2499
heidi.schedler@novascotia.ca

Appendix A: Summary of Form 58-101F1 Corporate Governance Disclosure related to the WB/EP Rules

Item 10. Director Term Limits and Other Mechanisms of Board Renewal	Disclose whether or not the issuer has adopted term limits for the directors on its board or other mechanisms of board renewal and, if so, include a description of those director term limits or other mechanisms of board renewal. If the issuer has not adopted director term limits or other mechanisms of board renewal, disclose why it has not done so.
Item 11. Policies Regarding the Representation of Women on the Board	(a) Disclose whether the issuer has adopted a written policy relating to the identification and nomination of women directors. If the issuer has not adopted such a policy, disclose why it has not done so. (b) If an issuer has adopted a policy referred to in (a), disclose the following in respect of the policy: (i) a short summary of its objectives and key provisions, (ii) the measures taken to ensure that the policy has been effectively implemented, (iii) annual and cumulative progress by the issuer in achieving the objectives of the policy, and (iv) whether and, if so, how the board or its nominating committee measures the effectiveness of the policy.
Item 12. Consideration of the Representation of Women in the Director Identification and Selection Process	Disclose whether and, if so, how the board or nominating committee considers the level of representation of women on the board in identifying and nominating candidates for election or reelection to the board. If the issuer does not consider the level of representation of women on the board in identifying and nominating candidates for election or re-election to the board, disclose the issuer's reasons for not doing so.
Item 13. Consideration Given to the Representation of Women in Executive Officer Appointments	Disclose whether and, if so, how the issuer considers the level of representation of women in executive officer positions when making executive officer appointments. If the issuer does not consider the level of representation of women in executive officer positions when making executive officer appointments, disclose the issuer's reasons for not doing so.
Item 14. Issuer's Targets Regarding the Representation of Women on the Board and in Executive Officer Positions	(a) For purposes of this Item, a "target" means a number or percentage, or a range of numbers or percentages, adopted by the issuer of women on the issuer's board or in executive officer positions of the issuer by a specific date. (b) Disclose whether the issuer has adopted a target regarding women on the issuer's board. If the issuer has not adopted a target, disclose why it has not done so. (c) Disclose whether the issuer has adopted a target regarding women in executive officer positions of the issuer. If the issuer has not adopted a target, disclose why it has not done so.

	(d) If the issuer has adopted a target referred to in either (b) or (c), disclose: (i) the target, and (ii) the annual and cumulative progress of the issuer in achieving the target.
Item 15. Number of Women on the Board and in Executive Officer Positions	(a) Disclose the number and proportion (in percentage terms) of directors on the issuer's board who are women. (b) Disclose the number and proportion (in percentage terms) of executive officers of the issuer, including all major subsidiaries of the issuer, who are women.

1.5 Notices from the Office of the Secretary

1.5.1 Khalid Walid Jawhari

FOR IMMEDIATE RELEASE
September 27, 2017

IN THE MATTER OF
KHALID WALID JAWHARI

TORONTO – The Commission issued an Order in the above named matter which provides that the hearing is adjourned to a date no later than October 13, 2017, to be set by the Office of the Secretary.

A copy of the Order dated September 26, 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 David Gregor McClure

FOR IMMEDIATE RELEASE
September 27, 2017

IN THE MATTER OF
DAVID GREGOR McCLURE

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

A copy of the Order dated September 26, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.5.3 TCM Investments Ltd. et al.

FOR IMMEDIATE RELEASE
September 28, 2017

IN THE MATTER OF
TCM INVESTMENTS LTD.
carrying on business as OPTIONRALLY,
LFG INVESTMENTS LTD.,
AD PARTNERS SOLUTIONS LTD. and
INTERCAPITAL SM LTD.

TORONTO – The Commission issued an Order in the above named matter which provides that pursuant to subsection 127(8) of the Act, that paragraph 1 of the Temporary Order, which prohibits all trading in any securities by the Respondents, is extended until November 16, 2017.

A copy of the Order dated September 28, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.5.4 TCM Investments Ltd. et al.

FOR IMMEDIATE RELEASE
September 28, 2017

IN THE MATTER OF
TCM INVESTMENTS LTD.
carrying on business as OPTIONRALLY,
LFG INVESTMENTS LTD.,
AD PARTNERS SOLUTIONS LTD. and
INTERCAPITAL SM LTD.

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

1. Staff of the Commission shall file its written submissions on sanctions and costs by no later than October 31, 2017; and

2. The hearing on sanctions and costs shall be held on November 15, 2017, commencing at 10:00 a.m., or such other date as may be set by the Office of the Secretary.

A copy of the Order dated September 28, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
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For investor inquiries:

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1.5.5 Pro-Financial Asset Management Inc. et al.

FOR IMMEDIATE RELEASE
September 28, 2017

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.,
STUART MCKINNON and
JOHN FARRELL

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

1. Staff's Motion to dismiss the Section 144 Application is granted, with reasons to follow, and

2. the hearing scheduled on October 11, 2017 with respect to the Section 144 Application is vacated.

A copy of the Order dated September 28, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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1.5.6 Dennis L. Meharchand and Valt.X Holdings Inc.

FOR IMMEDIATE RELEASE
September 29, 2017

IN THE MATTER OF
DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.

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

1. The Respondents' motion shall be heard on October 27, 2017 at 10:00 a.m. and the parties shall adhere to the following timeline for the delivery of the motion materials:

   a. the Respondents shall serve and file moving motion materials by no later than October 2, 2017;

   b. Staff shall serve and file responding motion materials by no later than October 16, 2017; and

   c. the Respondents shall serve and file reply materials, if any, by no later than October 20, 2017.

2. A further pre-hearing conference shall be heard on October 27, 2017, immediately following the hearing of the Respondents' motion; and

3. The motion hearing and pre-hearing conference date of October 16, 2017 is vacated.

A copy of the Order dated September 29, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
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For media inquiries:

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1.5.7 Sital Singh Dhillon

FOR IMMEDIATE RELEASE
September 29, 2017

IN THE MATTER OF
SITAL SINGH DHILLON

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

1. by October 26, 2017, Mr. Dhillon shall serve on Staff and file with the Office of the Secretary his Application for hearing and review, pursuant to Rule 14.2 of the Commission's *Rules of Procedure*; and

2. the hearing is adjourned to November 1, 2017 at 10:00 a.m.

A copy of the Order dated September 29, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

For media inquiries:

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416-593-8314
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1.5.8 EagleMark Ventures, LLC et al.

FOR IMMEDIATE RELEASE
October 3, 2017

IN THE MATTER OF
EAGLEMARK VENTURES, LLC,
FALCON HOLDINGS, LLC,
RICHARD LIAN
(also known as RICHARD TERRY RUUSKA) and
ENNA M. KELLER

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

A copy of the Reasons and Decision and the Order dated October 2, 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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1.5.9 David Gregor McClure

FOR IMMEDIATE RELEASE
October 3, 2017

IN THE MATTER OF
DAVID GREGOR McCLURE

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

A copy of the Reasons for Decision dated October 2, 2017 is 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:

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

1.5.10 Crystal Wealth Management System Limited et al.

FOR IMMEDIATE RELEASE
October 3, 2017

IN THE MATTER OF
CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED,
CLAYTON SMITH,
CLJ EVEREST LTD,
1150752 ONTARIO LIMITED,
CRYSTAL WEALTH MEDIA STRATEGY,
CRYSTAL WEALTH MORTGAGE STRATEGY,
CRYSTAL ENLIGHTENED RESOURCE & PRECIOUS METAL FUND,
CRYSTAL WEALTH MEDICAL STRATEGY,
CRYSTAL WEALTH ENLIGHTENED FACTORING STRATEGY,
ACM GROWTH FUND,
ACM INCOME FUND,
CRYSTAL WEALTH HIGH YIELD MORTGAGE STRATEGY,
CRYSTAL ENLIGHTENED BULLION FUND,
ABSOLUTE SUSTAINABLE DIVIDEND FUND,
ABSOLUTE SUSTAINABLE PROPERTY FUND,
CRYSTAL WEALTH ENLIGHTENED HEDGE FUND,
CRYSTAL WEALTH INFRASTRUCTURE STRATEGY,
CRYSTAL WEALTH CONSCIOUS CAPITAL STRATEGY and
CRYSTAL WEALTH RETIREMENT ONE FUND

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

1. pursuant to subsection 127(8) of the Act, the Temporary Order is extended until April 10, 2018, or until further order of the Commission, without prejudice to the right of any of the parties to seek to vary the Temporary Order on application to the Commission, with the following modifications:

    a. the portions of paragraphs 4 and 5 of the order dated April 7, 2017, referring to Smith in his capacity as advising representative are struck, given that Smith is no longer acting in the capacity of an advising representative at Crystal Wealth Management System Limited, as his registration was automatically suspended when he was terminated by the Receiver; and

2. the hearing of this matter is adjourned until April 9, 2018 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 October 2, 2017 is available at www.osc.gov.on.ca.

OFFICE OF THE SECRETARY
GRACE KNAKOWSKI
SECRETARY TO THE COMMISSION

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 CI Investments Inc. and Assante Capital Management Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Revocation of prior relief – Relief granted from the requirement in s. 3.2(2), NI 81-101 to deliver a fund facts document to investors for purchases of mutual fund securities of certain series under automatic switching programs – Tiered series offering lower combined management and administration fees than the introductory fee-based or initial sale charge series, as applicable, that the investor initially purchased securities in, based on the size of a fund investment – Investment fund manager initiating automatic switches in and out of tiered series on behalf of investors when their investments satisfy or cease to meet eligibility requirements of tiered series – Automatic switches between series of a fund triggering a distribution of securities which requires delivery of a fund facts document – Relief granted from the requirement to deliver a fund facts document to investors for purchases of series securities made under automatic switching programs subject to compliance with certain notification and disclosure requirements in the simplified prospectus and fund facts document – Relief granted from the requirement to prepare a fund facts document for each series of securities of a mutual fund in accordance with the form requirements in Form 81-101F3 and the requirement that the fund facts document contain only information that is specifically required or permitted to be in Form 81-101F3 so that the fund facts document delivered to investors in the automatic switching program will provide disclosure relating to the automatic switching program and the tiered series of the fund, subject to certain conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.
National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2.01, 4.1(3)(a) and (d), 6.1.

August 22, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
CI INVESTMENTS INC.
(CI)

AND

IN THE MATTER OF
THE FUNDS
(as defined below)

AND

IN THE MATTER OF
ASSANTE CAPITAL MANAGEMENT LTD.
(the Representative Dealer, and together with CI, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from CI on behalf of each existing mutual fund managed by it (the **Existing Funds**) and any mutual fund that CI may establish in the future (the **Future Funds**, and together with the Existing Funds, the **Funds**), and the Representative Dealer for a decision, under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting:

(a) each dealer who trades in securities of the Funds (a **Dealer**) from the requirement in the Legislation for a dealer to deliver or send the most recently-filed fund facts document (a **Fund Facts**) before the dealer accepts an instruction from the purchaser for the purchase of the security (the **Pre-Sale Fund Facts Delivery Requirement**) in respect of purchases of mutual fund securities that are made pursuant to the Automatic Switches (as defined below) (the **Fund Facts Delivery Relief);** and

(b) the Funds from the requirement in section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) to prepare a Fund Facts in the form of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), to permit the Funds to deviate from certain requirements in Form 81-101F3 in order to prepare a Multiple Fund Facts Document (as defined below) that includes the Program Disclosure (as defined below) (the "**Multiple Fund Facts Relief**").

(the **Multiple Fund Facts Relief**, and together with the Fund Facts Delivery Relief, the **Exemption Sought**).

CI also requests, that the Original Decision (as defined below) be revoked and replaced with the Exemption Sought (the **Revocation**).

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

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

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

Interpretation

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

Representations

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

CI

1. CI is a corporation subsisting under the laws of the Province of Ontario with its head office located in Toronto, Ontario.

2. CI is registered as follows:

   (a) in all provinces as a portfolio manager;

   (b) in Ontario, Québec, and Newfoundland and Labrador as an investment fund manager;

   (c) in Ontario as an exempt market dealer; and

   (d) under the *Commodity Futures Act* (Ontario) as a commodity trading counsel and a commodity trading manager.

3. CI is, or will be, the investment fund manager of the Funds.

4. CI is not in default of securities legislation in any of the Jurisdictions.

The Funds

5. Each Fund is, or will be, an open-end mutual fund trust created under the laws of Ontario, or an open-end mutual fund that is a class of shares of a mutual fund corporation incorporated under the laws of Ontario.

6. Each Fund is, or will be, a reporting issuer under the laws of all of the provinces and territories of Canada and subject to National Instrument 81-102 *Investment Funds*. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a simplified prospectus, Fund Facts and annual information form that have been, or will be, prepared, filed and receipted in accordance with NI 81-101.

7. Securities of the Existing Funds are currently offered under simplified prospectuses, Fund Facts and annual information forms dated July 27, 2017, and are separated into two main fund families, namely CI Funds (the **CI Funds**) and United Funds (the **United Funds**).

8. The CI Funds are currently offered in multiple classes of securities, including Class A, AT5 and AT8 (collectively, the **CI A Classes**) and F, FT5 and FT8 (collectively, the **CI F Classes**).

9. The United Funds are currently offered in multiple classes of securities, including Class E and ET8 (collectively, the **United E Classes**, and together with the CI A Classes, the **A/E Classes**) and F. CI also offers Class FT8 in United Funds (together with Class F offered in United Funds and CI F Classes, the **F Main Classes**, and together with the A/E Classes, the **Main Classes**).

10. Securities in the A/E Classes are currently offered on an initial sales charge (**ISC**) basis (**ISC Option Main Class Securities**) or on a deferred sales charge (**DSC**) basis (**DSC Option Main Class Securities**), at the option of the investor. Investors in the A/E Classes under the ISC purchase option (the **ISC Option Main Classes**) pay a commission to their Dealer at the time they purchase securities. Investors in the A/E Classes under the DSC purchase options (the **DSC Option Main Classes**) do not pay a commission at the time of purchase, but the investor will be required to pay a redemption fee if he or she redeems within seven years from the date of purchase (under the standard DSC and intermediate DSC options) or three years from the date of purchase (under the low load DSC option) (each a **DSC Period**, and collectively, the **DSC Periods**). Trailing commissions are paid to Dealers who sell securities in the A/E Classes.

11. CI will automatically convert DSC Option Main Class Securities into ISC Option Main Class Securities of the same Fund, respectively, once qualifying investors have held their DSC Option Main Class Securities for the DSC Period. The conversion from DSC Option Main Class Securities into ISC Option Main Class Securities is a change of sales charge option within the same class and is therefore not a switch involving a redemption and a purchase of securities.

12. Class AT5 and Class AT8 securities have the same attributes as Class A securities, except that Class AT5 and Class AT8 are designed to provide tax efficient cash flow to investors by making monthly distributions of an amount comprised of a return of capital and/or net income. The only difference between Class AT5 and Class AT8 is in the value of the monthly distribution amounts. Similarly, Class ET8 has the same attributes as Class E securities, except that Class ET8 is designed to provide tax efficient cash flow to investors by making monthly distributions of an amount comprised of a return of capital and/or net income.

13. Securities in the F Main Classes (**F Main Class Securities**, and together with the ISC Option Main Class Securities and DSC Option Main Class Securities, the **Main Class Securities**) have, or will have, lower fees than securities in CI A Classes or United E Classes, as applicable, and are, or will be, purchased by investors who have fee-based accounts with Dealers who sign an eligibility agreement with CI. Instead of paying sales charges, investors pay, or will pay, their Dealer a fee for investment advice and other services they provide. In addition, CI does not, or will not, pay any commission or trailing commission to Dealers who sell F Main Class Securities.

14. Class FT5 and Class FT8 securities in CI Funds have the same attributes as Class F securities in CI Funds, as applicable, except that Class FT5 and Class FT8 in CI Funds are designed to provide tax efficient cash flow to investors by making monthly distributions of an amount comprised of a return of capital and/or net income. The only difference between Class FT5 and Class FT8 in CI Funds is in the value of the monthly distribution amounts. Similarly, Class FT8 securities in United Funds will have the same attributes as Class F securities in United Funds, except that Class FT8 in United Funds is designed to provide tax efficient cash flow to investors by making monthly distributions of an amount comprised of a return of capital and/or net income.

15. Other than the Funds that are offered for purchase in U.S. dollars only, the Funds are offered for purchase in Canadian dollars. In addition, certain classes of the Funds offered for purchase in Canadian dollars may also be purchased in U.S. dollars (the **U.S. Dollar Purchase Option**).

16. The Existing Funds are not in default of securities legislation in any of the Jurisdictions.

The Representative Dealer

17. Securities of the CI Funds are, or will be, distributed through Dealers who may or may not be affiliated with CI, including the Representative Dealer. Securities of the United Funds are, or will be, distributed exclusively through two Dealers, namely the Representative Dealer and Assante Financial Management Ltd., as principal distributors.

18. The Representative Dealer is a member of the Investment Industry Regulatory Organization of Canada and is registered in the category of investment dealer in the Jurisdictions.

19. Each Dealer is, or will be, registered as a dealer in one or more of the provinces and territories of Canada. Other than Dealers who are registered as exempt market dealers, the Dealers are, or will be, members of either the Investment Industry Regulatory Organization of Canada or the Mutual Fund Dealers Association of Canada.

20. The Representative Dealer is not in default of securities legislation in any of the Jurisdictions.

The Automatic Switching Program

21. CI currently offers three sets of classes of securities which offer tiered management and administration fees for holders of F Main Class Securities. The first set includes Classes F1, F2, F3, F4 and F5 (collectively, the **Class F Fee Tier Classes**) and corresponds to Class F of each of CI Funds and United Funds (together with the Class F Fee Tier Classes, the **Class F Set**). The second set includes Classes F1T5, F2T5, F3T5, F4T5 and F5T5 (collectively, the **Class FT5 Fee Tier Classes**) and corresponds to Class FT5 of CI Funds (together with the Class FT5 Fee Tier Classes, the **Class FT5 Set**). The third set includes Classes F1T8, F2T8, F3T8, F4T8 and F5T8 (collectively, the **Class FT8 Fee Tier Classes**, and together with the Class F Fee Tier Classes and Class FT5 Fee Tier Classes, the **F Fee Tier Classes**) and corresponds to Class FT8 of each of CI Funds and United Funds (together with the Class FT8 Fee Tier Classes, the **Class FT8 Set**).

22. In addition, CI currently offers five sets of classes of securities which offer tiered management and administration fees for holders of ISC Option Main Class Securities. The first set includes Classes A1, A2, A3, A4 and A5 (collectively, the **Class A Fee Tier Classes**) and corresponds to Class A of CI Funds (together with the Class A Fee Tier Classes, the **Class A Set**). The second set includes Classes A1T5, A2T5, A3T5, A4T5 and A5T5 (collectively, the **Class AT5 Fee Tier Classes**) and corresponds to Class AT5 of CI Funds (together with the Class AT5 Fee Tier Classes, the **Class AT5 Set**). The third set includes Classes A1T8, A2T8, A3T8, A4T8 and A5T8 (collectively, the **Class AT8 Fee Tier Classes**) and corresponds to Class AT8 of CI Funds (together with the Class AT8 Fee Tier Classes, the **Class AT8 Set**). The fourth set includes Classes E1, E2, E3, E4 and E5 (collectively, the **Class E Fee Tier Classes**) and corresponds to Class E of United Funds (together with the Class E Fee Tier Classes, the **Class E Set**). The fifth set includes Classes E1T8, E2T8, E3T8, E4T8 and E5T8 (collectively, the **Class ET8 Fee Tier Classes**, and together with the Class A Fee Tier Classes, Class AT5 Fee Tier Classes, Class AT8 Fee Tier Classes and Class E Fee Tier Classes, the **ISC Fee Tier Classes**, and together with the F Fee Tier Classes, the **Fee Tier Classes**) and corresponds to Class ET8 of United Funds (together with the Class ET8 Fee Tier Classes, the **Class ET8 Set**, and together with the Class F Set, Class FT5 Set, Class FT8 Set, Class A Set, Class AT5 Set, Class AT8 Set and Class E Set, the **Program Sets** and each, individually, a **Program Set**).

23. Each set of tiered classes, consisting of the Class F Fee Tier Classes, Class FT5 Fee Tier Classes, Class FT8 Fee Tier Classes, Class A Fee Tier Classes, Class AT5 Fee Tier Classes, Class AT8 Fee Tier Classes, Class E Fee Tier Classes and Class ET8 Fee Tier Classes (collectively, the **Tiered Sets** and each, individually, a **Tiered Set**), offers progressively lower combined management and administration fees than the corresponding ISC Option Main Class or F Main Class based on the value of holdings of the Funds in an investor's account or, in certain instances, the group of related accounts of which an investor is a member (the **Asset Level**). On a weekly basis, CI automatically switches qualifying holders of ISC Option Main Class Securities or F Main Class Securities into and out of the various corresponding ISC Fee Tier Classes or F Fee Tier Classes in the corresponding Tiered Set based on the investor's Asset Level without the Dealer or investor having to initiate the trade (the **Automatic Switching Program**).

24. All or certain Fee Tier Classes are, or will be, offered for each of the Funds. Where an investor qualifies for a particular Fee Tier Class that is not available for a Fund, the investor's securities are automatically switched to the Fee Tier Class with the next lowest combined management and administration fee that is available for such Fund. If a Fee Tier Class with a lower combined management and administration fee for which the investor is eligible is launched at a later date, the investor's securities will be automatically switched to that Fee Tier Class. CI may, in the future, offer additional Fee Tier Classes to the Funds which only offer certain Fee Tier Classes. CI may, in the future, offer additional fee tier classes to the Program Sets.

25. The introduction of additional fee tier classes to a Tiered Set will not cause the Program Disclosure to detract from the readability and comprehension of the Multiple Fund Facts Document.

26. In a situation where fund performance reduces the investor's Asset Level below the particular Fee Tier Class' minimum threshold for which the investor previously qualified, the investor would continue to enjoy the benefit of the lower management and administration fees associated with such Fee Tier Class.

27. The U.S. Dollar Purchase Option is offered in certain Fee Tier Classes. The U.S. Dollar Purchase Option was initially offered in Fee Tier Classes for which there were investors who would be eligible at the time the Automatic Switching Program was introduced (the "**Implementation Date**") for the automatic switches of Main Class Securities purchased under the U.S. Dollar Purchase Option to the corresponding Fee Tier Classes. Each Fee Tier Class has the same minimum threshold in Canadian dollars across all Funds, including Funds with a U.S. Dollar Purchase Option. CI may offer the U.S. Dollar Purchase Option in respect of additional Funds or Fee Tier Classes in the future.

28. Investors may only access the F Fee Tier Classes of a Fund by initially purchasing the corresponding F Main Class Securities of the Fund or if they already hold the particular F Fee Tier Class of the same Fund or other Fund(s). Investors may only access the ISC Fee Tier Classes of a Fund by initially purchasing the corresponding ISC Option Main Class Securities of the Fund, if they already hold the particular ISC Fee Tier Class of the same Fund or other Fund(s), or by acquiring the corresponding ISC Option Main Class Securities of that Fund upon the conversion of those ISC Option Main Class Securities from qualifying DSC Option Main Class Securities after the expiration of the applicable DSC Period.

29. For accounts with securities in the ISC Option Main Classes or F Main Classes that have qualified for any of the corresponding Fee Tier Classes, CI automatically switches:

    (a) securities in F Main Class or ISC Option Main Class into the appropriate F Fee Tier Class or ISC Fee Tier Class, as the case may be, of the same Fund;

    (b) securities, once in an F Fee Tier Class or ISC Fee Tier Class, among the appropriate classes in the applicable Tiered Set of the same Fund based on increases in Asset Level, including as a result of additional purchases and/or positive fund performance; and

    (c) securities to the applicable higher cost F Fee Tier Class or ISC Fee Tier Class, as the case may be, or from an F Fee Tier Class or ISC Fee Tier Class back into the corresponding F Main Class or ISC Option Main Class, as the case may be, of the same Fund, where the account(s) no longer meet the applicable Asset Level threshold as a result of redemptions

    (each an **Automatic Switch**).

30. Following an Automatic Switch, an investor continues to hold securities in the same Fund(s) but in a different class, with the only material difference to the investor being that the combined management and administration fees of each Fee Tier Class in a Tiered Set are progressively lower than those charged for the corresponding F Main Class or ISC Option Main Class. In no event will: (a) an investor who qualifies for an F Fee Tier Class be subject to a higher combined management and administration fee than that of the F Main Class for which he or she initially subscribed; or (b) an investor who qualifies for an ISC Fee Tier Class be subject to a higher combined management and administration fee than that of the ISC Option Main Class for which he or she initially subscribed or acquired upon a conversion of those ISC Option Main Class Securities from DSC Option Main Class Securities.

31. There are no embedded commissions or trailing commissions in the F Fee Tier Classes. In addition, there are no sales charges associated with the F Fee Tier Classes.

32. Sales charges and trailing commissions may apply to the ISC Fee Tier Classes. The rates of sales charges and trailing commissions attached to each ISC Fee Tier Class will not exceed the rates associated with the corresponding ISC Option Main Class.

33. The Automatic Switches will have no adverse tax consequences on investors under current Canadian tax legislation.

Multiple Fund Facts Relief

34. CI prepares, for each of their Funds, a consolidated Fund Facts for each Program Set (a **Multiple Fund Facts Document**).

35. Each Multiple Fund Facts Document includes the information required by Form 81-101F3 for each of the classes in the applicable Program Set, except for the past performance section, which only discloses past performance data of the applicable Main Class, as the case may be, as further described in representations 36(h) and (i) below.

36. Specifically, for each Multiple Fund Facts Document, CI deviates from the following requirements in Form 81-101F3:

(a) General Instructions (10) and (16), to permit the Multiple Fund Facts Document to be the Fund Facts for, and disclose information relating to, each of the classes in the applicable Program Set, except as further described below;

(b) Item 1 (c.1) of Part I, to permit the Multiple Fund Facts Document to name each of the classes in the applicable Program Set in the heading;

(c) Instruction (0.1) of Item 2 of Part I, to permit the Multiple Fund Facts Document to identify the fund codes of each of the classes in the applicable Program Set;

(d) Instruction (1) of Item 2 of Part I, to permit the Multiple Fund Facts Document to list the date that each of the classes in the applicable Program Set first became available to the public;

(e) Instruction (3) of Item 2 of Part I, to permit the Multiple Fund Facts Document to disclose the management expense ratio (the **MER**) of only the applicable Main Class in the applicable Program Set;

(f) Instruction (6) of Item 2 of Part I, to permit the Multiple Fund Facts Document to specify the minimum investment amount and the additional investment amount for only the applicable Main Class in the applicable Program Set;

(g) General Instruction (8), to permit the Multiple Fund Facts Document to include a footnote under the "Quick Facts" table that:

(i) states that the Fund Facts pertains to all of the classes in the applicable Program Set;

(ii) cross-references the "How much does it cost?" section of the Fund Facts for further details about the Automatic Switching Program;

(iii) states that the U.S. Dollar Purchase Option is available for certain of the classes in the applicable Program Set and cross-references the simplified prospectus for further details; and

(iv) cross-references the fee decrease table under the sub-heading "Fund expenses" of the Fund Facts for further details about the minimum investment amount applicable to each of the Fee Tier Classes in the applicable Program Set; and

(v) cross-references the fund expenses table under the sub-heading "Fund expenses" of the Fund Facts for the management expense ratio (the MER) of each of the Fee Tier Classes in the applicable Program Set.

(h) Item 5(1) of Part I, to permit the Multiple Fund Facts Document to:

(i) reference only the applicable Main Class in the introduction under the heading "How has the fund performed?"; and

(ii) include, as a part of the introduction, disclosure explaining that the performance for each of the applicable Fee Tier Classes in the Program Set would be similar to the performance of the corresponding Main Class, but would vary as a result of the difference in fees compared to the corresponding Main Class, as set out in the fee decrease table under the sub-heading "Fund expenses";

(i) Instruction (4) of Item 5 of Part I, to permit a Multiple Funds Facts Document to show the required performance data under the sub-headings "Year-by-year returns," "Best and worst 3-month returns," and "Average return" relating only to the applicable Main Class;

(j) Item 1(1.1) of Part II, to permit a Multiple Fund Facts Document to:

(i) refer to all of the classes in the applicable Program Set in the introductory statement under the heading “How much does it cost?”; and

(ii) include, as a part of the introductory statement, a summary of the Automatic Switching Program, consisting of:

a. a statement explaining that the Automatic Switching Program offers separate classes of securities that charge progressively lower combined management and administration fees than the corresponding Main Class;

b. a statement explaining the scenarios in which the Automatic Switches will be made, including for holders of DSC Option Main Class Securities and including Automatic Switches made due to the investor no longer meeting the eligibility requirements for a particular Fee Tier Class;

c. a statement explaining that an investor will not pay higher combined management and administration fees than those charged to the applicable Main Class as a result of the Automatic Switches;

d. a cross-reference to the fee decrease table under the sub-heading “Fund expenses”;

e. a cross-reference to specific sections of the simplified prospectus of the Funds for more details about the Automatic Switching Program; and

f. a statement disclosing that investors should speak to their representative for more details about the Automatic Switching Program;

(k) Instruction (1) of Item 1 of Part II, to permit a Multiple Fund Facts Document to refer to all of the classes in the applicable Program Set in the introduction under the sub-heading “Sales charges”, if applicable;

(l) Item 1(1.3)(2) of Part II, to permit a Multiple Fund Facts Document, where the applicable Fund is not new, to:

(i) disclose the MER and fund expenses of each of the classes in the applicable Program Set, and where certain information is not available for a particular class, to state “not available” in the corresponding part of the table; and

(ii) add a row in the table:

a. in which the first column states “For every $1,000 invested, this equals:”; and

b. which discloses the respective equivalent dollar amounts of the fund expenses of each class included in the table for each $1,000 investment;

(m) Item 1(1.3)(3) of Part II, to permit a Multiple Fund Facts Document, where the applicable Fund and all classes in the applicable Program Set are not new, to include, instead of the mandated statement above the fund expenses table:

(i) a statement explaining that the applicable Main Class has the highest combined management and administration fees among all of the classes in the applicable Program Set; and

(ii) a statement stating “As of [the date of the most recently-filed management report of fund performance], the fund expenses were as follows:”;

(n) Item 1(1.3)(3) of Part II, to permit a Multiple Fund Facts Document, where the applicable Fund is not new but where some of the classes in the applicable Program Set are new, to include, instead of the mandated statement above the fund expenses table:

(i) a statement explaining that the applicable Main Class has the highest combined management and administration fees among all of the classes in the applicable Program Set;

(ii) a statement disclosing that the fund expenses information below is not available for certain classes because they are new, as indicated below; and

(iii) a statement stating "As of [the date of the most recently filed management report of fund performance], the fund expenses were as follows:";

(o) Item 1(1.3)(4) of Part II, to permit a Multiple Fund Facts Document, where the applicable Fund is new, to:

(i) include disclosure explaining that the applicable Main Class has the highest combined management and administration fees among all of the classes in the applicable Program Set;

(ii) disclose the rates of the management fee and administration fee of only the applicable Main Class; and

(iii) for only the applicable Main Class, disclose that the operating expenses and trading costs are not available because it is new; and

(p) General Instruction (8), to permit a Multiple Fund Facts Document to include, at the end of the disclosure under the sub-heading "Fund expenses":

(i) a table that discloses:

a. the name of, and qualifying investment amounts associated with, each of the classes in the applicable Program Set; and

b. the combined management and administration fee decrease of each of the Fee Tier Classes in the applicable Program Set from the combined management and administration fee of the applicable Main Class, shown in percentage terms; and

(ii) an introduction to the table stating that the table sets out the combined management and administration fee decrease of each of the Fee Tier Classes in the applicable Program Set from the combined management and administration fee of the applicable Main Class

(collectively, the **Program Disclosure**).

37. CI submits that, given that each of the Main Classes and Fee Tier Classes belong to the Automatic Switching Program, and an investor in the Automatic Switching Program would make one investment decision at the outset by purchasing the Main Class Securities of a Fund or, if eligible, securities of a Fee Tier Class of a Fund, a Multiple Fund Facts Document containing the Program Disclosure provides investors with a more comprehensive disclosure about the Automatic Switching Program and each of the classes in the applicable Program Set compared to disclosure in separate Fund Facts for each of the classes in the applicable Program Set.

38. Since, if the Fund Facts Delivery Relief described below is granted, the Fund Facts for each of the Fee Tier Classes would not be delivered in connection with an Automatic Switch, CI submits that there is little benefit to preparing separate Fund Facts for each of the classes in the applicable Program Set. CI submits that the Multiple Fund Facts Document containing the Program Disclosure, which is currently delivered to investors before their initial investment of Main Class Securities of a Fund or, if eligible, securities of a Fee Tier Class of a Fund, provides investors with better disclosure than if investors received the Fund Facts pertaining only to the applicable Main Class or Fee Tier Class under the Automatic Switching Program.

Fund Facts Delivery Relief

39. Each Automatic Switch entails a redemption of securities of the applicable ISC Option Main Class, F Main Class, ISC Fee Tier Class or F Fee Tier Class, as the case may be, immediately followed by a purchase of securities of the applicable ISC Option Main Class, F Main Class, ISC Fee Tier Class or F Fee Tier Class, as the case may be. Each purchase of securities completed as part of the Automatic Switch is a "distribution" under the Legislation that triggers the Pre-Sale Fund Facts Delivery Requirement.

40. The Multiple Fund Facts Document containing the Program Disclosure is delivered to investors before their first purchase of Main Class Securities of a Fund or, if eligible, securities of a Fee Tier Class of a Fund in accordance with the Pre-Sale Fund Facts Delivery Requirement.

41. However, while CI initiates each trade completed as part of the Automatic Switches, each Dealer does not propose to deliver the applicable Multiple Fund Facts Document to investors in connection with the purchase of securities made pursuant to Automatic Switches since:

    (a) at no time will:

        (i) an investor who qualifies for an F Fee Tier Class be subject to a higher combined management and administration fee than that of the F Main Class for which he or she initially subscribed; or

        (ii) an investor who qualifies for an ISC Fee Tier Class be subject to a higher combined management and administration fee than that of the ISC Option Main Class for which he or she initially subscribed or acquired upon the conversion of those ISC Option Main Class Securities from DSC Option Main Class Securities; and

    (b) in all cases:

        (i) all holders of Main Class Securities as at the Implementation Date (the "**Existing Investors**") have received a prospectus or Fund Facts Document disclosing the higher level of fees which applied to the particular class or classes for which they initially subscribed; and

        (ii) after the Implementation Date, all new purchasers of Main Class Securities of a Fund or, if eligible, securities of Fee Tier Classes of a Fund, would have, upon their initial purchase of such securities, received a Multiple Fund Facts Document incorporating all relevant information about all classes of the applicable Program Set, and investors would derive little benefit from receiving a further Multiple Fund Facts Document for each Automatic Switch.

42. Details of the changes in classes of securities pursuant to the Automatic Switches are reflected in the account statements sent to investors by their Dealer pursuant to the Legislation.

43. The SP Disclosure (as defined below) is included in the simplified prospectuses of the Funds dated July 27, 2017. The related Multiple Fund Facts Documents contain the Program Disclosure for each of the Funds.

44. CI has communicated with Dealers and their advisors about the Automatic Switches so that Dealers and their advisors are equipped to appropriately notify Existing Investors in the Main Classes of the changes applying to their investments and to appropriately advise new investors of the Automatic Switching Program. CI has also communicated directly to investors about the Automatic Switching Program by way of press releases and website postings.

45. In the absence of the Exemption Sought:

    (a) CI would be required to prepare separate Fund Facts for each of the Main Classes and Fee Tier Classes; and

    (b) each Dealer would be required to deliver the applicable Fund Facts to investors in connection with the purchase of securities made pursuant to each Automatic Switch.

The Original Decision

46. CI was previously granted the Multiple Fund Facts Relief and the Fund Facts Delivery Relief pursuant to a decision dated February 10, 2017, *In the Matter of CI Investments Inc. et. al.*, (the **Original Decision**).

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:

1. the Revocation is granted; and

2. the Multiple Fund Facts Relief is granted provided that each Multiple Fund Facts Document contains the Program Disclosure; and

3. the Fund Facts Delivery Relief is granted provided that:

   (a) CI incorporates disclosure in the simplified prospectus for each Fund participating in the Automatic Switching Program that describes the Automatic Switching Program, including setting out (collectively, the **SP Disclosure**):

      (i) the eligibility requirements for the applicable Main Classes and Fee Tier Classes;

      (ii) the fees applicable to investments in the applicable Main Classes and Fee Tier Classes; and

      (iii) that if investors cease to meet the eligibility requirements of a specific Fee Tier Class, their investment will be switched (i) to a Fee Tier Class with higher combined management and administration fees which will not exceed the combined management and administration fees of the corresponding Main Class, or (ii) back to the corresponding Main Class;

   (b) CI, together with Dealers and their advisors, devise a notification plan regarding the Automatic Switches to Existing Investors with holdings of Main Class Securities with an Asset Level of $125,000 or more to communicate the following:

      (i) that their investment may be automatically switched to a Fee Tier Class with lower fees upon meeting applicable eligibility requirements;

      (ii) that, other than a difference in fees, there will be no other material difference among the applicable Main Class and the corresponding Fee Tier Classes of the same Fund;

      (iii) that if they cease to meet the eligibility requirements of a specific Fee Tier Class, their investment will be switched (i) to a Fee Tier Class with higher combined management and administration fees which will not exceed the combined management and administration fees of the corresponding Main Class, or (ii) back to the corresponding Main Class; and

      (iv) that they will not receive a Multiple Fund Facts Document when they purchase securities further to an Automatic Switch, but that:

         a. they may request the most recently-filed Multiple Fund Facts Document by calling a specified toll-free number or by sending a request via email to a specified address or email address;

         b. the most recently-filed Multiple Fund Facts Document will be sent or delivered to them at no cost, if requested;

         c. the most recently-filed Multiple Fund Facts Document may be found either on the SEDAR website or on CI's website; and

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

   (c) for investors who purchase Main Class Securities of a Fund or, if eligible, securities of Fee Tier Classes of a Fund after the Implementation Date, the Multiple Fund Facts Document containing the Program Disclosure is delivered to investors before their first purchase of the Main Class Securities of a Fund or, if eligible, securities of Fee Tier Classes of a Fund, in accordance with the Pre-Sale Fund Facts Delivery Requirement;

   (d) for investors invested in Fee Tier Classes, CI sends to these investors an annual reminder notice advising them that they will not receive the Multiple Fund Facts Document when they purchase securities further to an Automatic Switch, but that:

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

      (ii) the most recently-filed Multiple Fund Facts Document will be sent or delivered to them at no cost, if requested;

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

(iv) they will not have a Withdrawal Right in respect of a purchase of securities made pursuant to an Automatic Switch, but they will have the right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant class contains a misrepresentation, whether or not they request the Fund Facts;

(e) CI provides to the principal regulator, on an annual basis, beginning 60 days after the date upon which the Fund Facts Delivery Relief is first relied upon by a Dealer, either:

(i) a current list of all such Dealers that are relying on the Fund Facts Delivery Relief; or

(ii) an update to the list of such Dealers or confirmation that there has been no change to such list; and

(f) prior to a Dealer relying on the Fund Facts Delivery Relief, CI provides to the Dealer a disclosure statement informing the Dealer of the implications of this decision.

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

2.1.2 The European Stability Mechanism and the European Financial Stability Facility

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Subsection 74(1) – Application for exemption from prospectus requirements in connection with distribution of debt securities of the issuers – conditions of the exemption under paragraph 2.34(2)(b) of National Instrument 45-106 Prospectus Exemptions not satisfied as debt securities not issued by a foreign government – debt securities are financially-backed by multiple foreign governments – relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1).
National Instrument 45-106 Prospectus Exemptions, s. 2.34(2)(b).

September 19, 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
THE EUROPEAN STABILITY MECHANISM AND
THE EUROPEAN FINANCIAL STABILITY FACILITY
(the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirement (as set out in subsection 53(1) of the Legislation) to file and obtain a receipt for a preliminary prospectus and a prospectus in respect of a trade in certain debt securities issued by the Filers if the trade would be a distribution of the security (the **Exemption Sought**).

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filers have selected the OSC as the principal regulator because they expect Ontario will be the Jurisdiction in which there is the greatest interest, among the Canadian provinces and territories, in purchasing securities issued by them.

2. The EFSF was created as a temporary crisis resolution mechanism by the member states of the euro area on June 7, 2010. It was set up in the wake of the euro area sovereign debt crisis as a means of providing financial assistance to euro area member states experiencing or threatened by financing difficulties. Financial assistance provided by the EFSF was financed through the issuance of bonds and other debt instruments in the capital markets.

3. The EFSF is a limited liability company (*société anonyme*) incorporated under Luxembourg law and having its office in Luxembourg. It has 17 shareholders, which are Austria, Belgium, Cyprus, Estonia, Finland, France, Germany, Greece, Ireland, Italy, Luxembourg, Malta, The Netherlands, Portugal, Slovakia, Slovenia and Spain (together, the **EFSF Member States**).

4. Principal and interest on debt securities issued by the EFSF are fully guaranteed by the EFSF Member States. The contribution keys of each guarantee combined are equal to 100% of EFSF's liabilities. The guarantee mechanism is designed to avoid a situation where the EFSF would default if an EFSF Member State to which it was providing financial assistance defaulted on its payments. Each EFSF Member State is a guarantor, unless it is a beneficiary of financial assistance from the EFSF or ESM, in which case it may "step out" of the guarantee structure for future issuances. Greece, Ireland and Portugal, which have received financial assistance from the EFSF, and Cyprus, which has received financial assistance from the ESM, have stepped out as guarantors of the debt securities of the EFSF. The guarantees are issued on a several (not a joint and several) basis and all guarantors rank equally and pari passu amongst themselves.

5. If a guarantor does not meet its obligations under the EFSF guarantee mechanism, guarantees from the remaining guarantors are called upon to cover the shortfall by way of an over-guarantee structure. Under the over-guarantee structure, each guarantor provides an over-guarantee contribution of up to 165% of its contribution key percentage multiplied by the relevant EFSF liability. The actual over-guarantee percentage (**AOGP**) depends on the goal of the over-guarantee structure of ensuring that the over-guarantee contribution keys of the highly-rated guarantors alone cover 100% of each EFSF liability. Currently, the highly-rated guarantors are Austria, Finland, France, Germany, Luxembourg and The Netherlands, each of which has a credit rating for its long-term debt of AA or higher from Standard & Poor's and Fitch Ratings and Aa2 or higher from Moody's Service. The AOGP in respect of each EFSF liability is calculated as of the date on which that liability is assumed and is not affected by subsequent changes in the credit rating of any guarantor. The current AOGP (except for short-term instruments) is 160.4452452%.

6. In the event of guarantor credit ratings being downgraded in the future, it is possible that the AOGP could increase up to the limit of 165% and that the then highly-rated guarantors would no longer guarantee 100% of a future EFSF liability. In such a scenario, the list of highly-rated guarantors would be progressively extended to include guarantors having lower credit ratings until such point that 100% of the EFSF liability is covered.

7. The EFSF's long-term debt is currently rated AA by Standard & Poor's, Aa1 by Moody's and AA by Fitch Ratings.

8. Following the creation of the ESM in 2012, it was decided that any new requests for financial assistance would be handled by the ESM only. The period for EFSF to enter into new loan agreements ended on June 30, 2013, but its funding currently extends until 2048. As of July 1, 2013, the EFSF may no longer engage in new financing programs or enter into new loan facility agreements. From that date, the ESM is the sole and permanent mechanism for responding to new requests for financial assistance by the EFSF Member States, plus Latvia and Lithuania who joined the euro zone after the creation of the EFSF (together, the **ESM Member States**). The EFSF will remain active in order to (i) receive loan repayments from beneficiary countries, (ii) make interest and principal payments to holders of EFSF bonds, and (iii) roll over outstanding EFSF bonds, as the maturity of its outstanding loans is longer than the maturity of bonds issued by the EFSF. The EFSF will be dissolved and liquidated when all financial assistance provided to EFSF Member States and all funding instruments issued by the EFSF have been repaid in full. Under its current terms, financial assistance that has been provided by the EFSF may be outstanding until as long as 2054. The final maturity for the financial assistance provided by the EFSF is 2040 for Portugal, 2042 for Ireland, and 2054 for Greece.

9. The ESM is the permanent crisis resolution mechanism for the ESM Member States. Its purpose is to provide stability support through a number of financial assistance instruments to ESM Member States that are experiencing, or are threatened by, severe financing problems.

10. The ESM Member States signed an intergovernmental treaty establishing the ESM on February 2, 2012 (the **ESM Treaty**). The ESM was inaugurated on October 8, 2012.

11. The ESM is an intergovernmental organization under public international law, having its head office in Luxembourg. The shareholders of the ESM are the ESM Member States.

12. Following a request for stability support by an ESM Member State, the European Commission (in liaison with the European Central Bank) is mandated by the ESM to make an initial assessment of the application for financial assistance. They assess the risk to the applicant ESM Member State's financial stability, whether its public debt is sustainable (assessed, wherever appropriate, together with the International Monetary Fund), and its actual or potential financing needs. Based on this assessment, the Board of Governors of the ESM decides whether to grant (in principle) support in the form of a financial assistance facility. The Managing Director of the ESM then makes a proposal for adoption by the Board of Governors for a Financial Assistance Facility Agreement, including the terms of the financial assistance, the policy conditions, and the choice of instruments. Financial assistance is provided only after ensuring compliance with the policy conditions.

13. The ESM issues debt instruments in order to finance loans and other forms of financial assistance to the ESM Member States. The financial assistance is then used by the relevant ESM Member State for macroeconomic adjustment programs and/or bank recapitalization programs. Commitment to the applicable conditionality is a condition of financial assistance.

14. The ESM's total subscribed capital is €704.8 billion, which consists of paid-in capital of €80.55 billion and committed callable capital of €624.3 billion. For so long as the EFSF continues to exist, the consolidated maximum lending capacity of the ESM and EFSF, as set out in the ESM Treaty and subject to review by the ESM's Board of Governors, is €500 billion. Thus, the ESM's subscribed capital exceeds the consolidated maximum lending capacity set out in the ESM Treaty by more than 40%. The ESM's paid-in capital is not available for on-lending, but is maintained to protect creditors. Its committed callable capital is subject, among other safeguards, to an emergency capital call to avoid default on any ESM payment obligation, to be paid within seven days of receipt.

15. The ESM's long-term debt is currently rated Aa1 by Moody's and AAA by Fitch Ratings.

16. The default waterfall for both the EFSF and ESM is:

    (a) Cash on hand.

    (b) Issuance of new debt securities in the market.

    (c) Emergency liquidity sources, which are specific instruments that the EFSF and ESM have available in the event such an emergency situation arises.

    (d) Retained earnings.

    (e) In the case of the ESM, capital contributions.

    (f) Guarantees in the case of the EFSF and capital calls in the case of the ESM.

17. For the EFSF guarantees, each guaranteeing EFSF Member State is requested, 10 business days before funds are needed, to provide its proportionate share of the required funds, based on its contribution key, within 2 business days. If there is a shortfall, each guaranteeing EFSF Member State that provided funds following the first request is requested to provide its proportionate share of the shortfall, again based on its contribution key. This process continues until the EFSF has the required funds. The requests in each case are not limited to the EFSF Member States with high credit ratings that have an over-guarantee contribution key, although, as stated above, the intent is for all such over-guarantee contribution keys to cover, in aggregate, the total amount of the indebtedness.

18. The process for paragraph 16(f) in the case of the ESM is for a capital call to be made to each ESM Member State to provide funds in proportion to its initial capital contribution. In the event of a shortfall, this process is continued through additional capital calls to contributing ESM Member States in the same proportion until the ESM has all required funds. Although contributions by the ESM Member States with high credit ratings are not prescribed by an over-guarantee contribution key, the protection against defaults is, if anything, stronger in the case of the ESM than the EFSF due in part to the ESM's very high paid-in capital in excess of €80 billion. This stronger protection is reflected in the ESM's higher credit rating.

19. The Basel Committee on Banking Supervision has included the Filers in the list of entities receiving a 0% risk weight under the Basel capital Framework. The Filers' securities will also be included as Level 1 High Quality Liquid Assets (HQLA) under the Basel Committee's liquidity coverage ratio (LCR) framework. The European Banking Authority, under

its role in providing assessment on uniform definition on LCR, has recommended that euro notes issued by the Filers be considered as "Extremely High Quality Liquid Assets".

20. Paragraph 2.34(2)(b) of NI 45-106 provides an exemption from the prospectus requirement for a distribution of a debt security issued by or guaranteed by a government of a foreign jurisdiction if the debt security has a designated rating from a designated rating organization or its DRO affiliate.

21. The goal of the EFSF's over-guarantee structure is to ensure that the over-guarantee contribution keys of the highly-rated guarantors together guarantee, on a several basis, 100% of each liability of the EFSF. That goal is currently satisfied, with each such highly-rated guarantor having credit ratings for its long-term debt higher than the minimum level for a designated rating of A for Standard & Poor's, A2 for Moody's and A for Fitch. However, the EFSF is unable to rely on the exemption in paragraph 2.34(2)(b) of NI 45-106 because no foreign government having a designated rating guarantees the entire amount payable on a debt security issued by the EFSF. Instead the entire amount payable on such a debt security is guaranteed severally by multiple foreign governments each of which has a designated rating.

22. A capital call is not the same as a guarantee from a legal perspective. Consequently, the ESM is unable to rely on the exemption in paragraph 2.34(2)(b) of NI 45-106 even though ESM debt issuances have the backing of more than €80 billion of paid-in capital from European countries and other mechanisms, including capital calls, that offer comparable, or greater, protection.

23. The Filers are not in default of securities legislation in any Jurisdiction.

Decision

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

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

(a) the debt securities have a designated rating from a designated rating organization or its DRO affiliate; and

(b) the debt securities are distributed:

(i) only to "permitted clients" (as defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**)) other than individuals; and

(ii) to investors in a Jurisdiction only by dealers that are registered in that Jurisdiction as a dealer or are relying in that Jurisdiction on the international dealer exemption in section 8.18 of NI 31-103.

The Exemption Sought shall terminate on the earlier of (i) the date that is five years after the effective date of this Decision, and (ii) the coming into force of material amendments to paragraph 2.34(2)(b) of NI 45-106.

"Grant Vingoe"
Vice Chair

"Robert P. Hutchison"
Commissioner

2.1.3 Pentecostal Financial Services Group Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Application for exemptive relief to permit issuer and underwriter, acting as agent for the issuer, to enter into an equity distribution agreement to make "at the market" (ATM) distributions of common shares over the facilities of the TSX or other Canadian marketplace – ATM distributions to be made pursuant to shelf prospectus procedures in Part 9 of NI 44-102 Shelf Distributions – issuer will issue a press release and file agreements on SEDAR – application for relief from prospectus delivery requirement – delivery of prospectus not practicable in circumstances of an ATM distribution – relief from prospectus delivery requirement has effect of removing two-day right of withdrawal and remedies of rescission or damages for non-delivery of the prospectus – application for relief from certain prospectus form requirements – relief granted to permit modified forward-looking certificate language – relief granted on terms and conditions set out in decision document – decision will terminate 25 months after the issuance of a receipt for the shelf prospectus. Decision and application also held in confidence by decision makers until the earlier of the entering into of an equity distribution agreement, waiver of confidentiality or 90 days from the date of the decision.

Applicable Legislative Provisions

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

Applicable Ontario Rules

National Instrument 44-101 Short Form Prospectus Distributions, Part 8.
Form 44-101F1, Item 20.
National Instrument 44-102 Shelf Distributions, ss. 6.3 and 6.7, Part 9 and ss. 2.1 and 2.2 of Appendix A.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.

August 30, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Principal Jurisdiction)

AND

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

AND

IN THE MATTER OF
PENTECOSTAL FINANCIAL SERVICES GROUP INC.
(PFSG or the Issuer),
PENTECOSTAL SECURITIES CORP.
(PSC or the Dealer) and
THE PENTECOSTAL ASSEMBLIES OF CANADA
(the PAOC, and collectively with PFSG and PSC, the Filers)

DECISION

Background

For approximately 60 years, one or more of the Filers have operated the Note Program (defined below) in the PAOC Community for the purpose of making and administering mortgage loans for charitable purposes (e.g., building and renovating churches and bible colleges) and have funded these mortgage loans by issuing and distributing Notes (defined below) to members of the Pentecostal community. The Filers have historically operated this Note Program under an exemption from the prospectus and registration requirements available under securities legislation or a prior decision of certain of the Canadian securities regulatory authorities. In the last 10 years, there have been regulatory changes to the registration regime and expansion of the exempt market prospectus regime, which have changed the securities regulatory landscape for offering Notes under the Note Program. Accordingly, it is appropriate for PFSG, the PAOC and PSC (together, the **Filers**) to transition their business model to align with these regulatory changes. Specifically, PSC is seeking registration as a dealer and PFSG will rely on prospectus exemptions

available under securities legislation or under the terms and conditions of this decision (which are similar to the OM Exemption (as defined below)).

The principal regulator in the Principal Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Principal Jurisdiction (the **Legislation**) for the following exemptions for certain interim periods as provided for in this decision (collectively, the **Exemptions Sought**):

(a) an exemption from the dealer registration requirement in respect of any trade by PSC in any fixed income security issued by PFSG (a **Note**) to a Note Investor (as defined below) under the Note Program (the **Interim Dealer Registration Exemption Sought**);

(b) an exemption from the adviser registration requirement for any advice provided by PSC to a Note Investor where the advice is in connection with a trade by PSC in a Note (the **Interim Adviser Registration Exemption Sought**);

(c) an exemption from the dealer registration requirement for PFSG in respect of a trade in a Note where the trade is made through PSC (the **Interim Issuer Registration Exemption Sought**);

(d) an interim exemption from the prospectus requirement for PFSG to permit the distribution of a Renewal Note (as defined below) to a Legacy Investor (as defined below) where PFSG is unable to determine whether an existing prospectus exemption under securities legislation or the Ongoing Prospectus Relief Sought (as defined below) is available for that distribution, and in such cases the term of the Renewal Note will not extend beyond the Legacy Period (as defined below) (the **Interim Prospectus Relief Sought**); and

(e) an exemption from the prospectus requirement for PFSG to permit the distribution of any Note under the Note Program (as defined below) (the **Ongoing Prospectus Exemption Sought**), subject to terms and conditions as provided for in this decision (which include certain requirements that are similar to the OM Exemption (as defined below) where the terms and conditions of the OM Exemption (as defined below) cannot be met and another prospectus exemption under securities legislation is not available).

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 (the **Principal Regulator**); and

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

Interpretation

(1) For the purposes of this decision:

(a) **Acceptable Dealing Representative** means:

(i) an individual that is registered under the securities legislation of an Applicable Jurisdiction as a dealing representative of PSC who meets the EMD proficiency requirements (defined below) or has received an exemption therefrom; or

(ii) prior to the registration of PSC as a dealer in an Applicable Jurisdiction, an individual who:

(A) has submitted an Individual Registration Application (defined below) and that application has not been withdrawn,

(B) meets the EMD proficiency requirements (defined below), or has received legal advice at the time the Individual Registration Application was submitted that the individual is reasonably expected to qualify for an exemption therefrom, and

(C) only acts on behalf of PSC in respect of the Note Program under the terms of this decision;

(b) **EMD proficiency requirements** mean, for an individual, any of the requirements specified in paragraphs (a) through (e) of section 3.9 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), as modified by sections 3.2 and 3.3 of NI 31-103;

(c) **Firm Registration Application** means the application for registration that PSC has submitted in the Principal Jurisdiction, and that PSC has submitted, or is in the process of submitting, in the Non-Principal Jurisdictions, to become registered as a dealer;

(d) **Individual Registration Application** means the application for registration or reinstatement of registration that an individual has submitted in the Principal Jurisdiction, and who has submitted, or is in the process of submitting, in the Non-Principal Jurisdictions, to become registered as a dealing representative of PSC;

(e) **Legacy Investor** means a person or company that was the holder of a Legacy Note or Legacy Notes on June 21, 2017;

(f) **Legacy Note** means any Note that was issued and outstanding on or before the date of this decision and whose maturity date is during the Legacy Period;

(g) **Legacy Period** means the period from June 22, 2017 to November 30, 2017;

(h) **Offering Memorandum** means the offering memorandum prepared in compliance with this decision;

(i) OM Exemption means the prospectus exemption in section 2.9 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**), as amended from time to time;

(j) **PAOC Community** means congregants of the PAOC, pastors, ministry leaders and associated individuals, churches, colleges and camps within the PAOC, the Emergency Relief and Development Organization and any other registered charity administered by the PAOC, including the PAOC itself and any trust in respect of which the PAOC acts as trustee;

(k) **Renewal Note** means a Note resulting from the renewal of a Legacy Note at the maturity of the Legacy Note; and

(l) **Suitability Assessment** means, for a trade made by PSC to a Note Investor, compliance by PSC with the requirements that would be applicable to PSC under sections 13.2 and 13.3 of NI 31-103, if PSC were, at the relevant time, a registrant referred to in those sections.

(2) Terms used in this decision that are defined in National Instrument 14-101 *Definitions*, NI 45-106, NI 31-103 and MI 11-102 and not otherwise defined in this decision, shall have the same meaning as in NI 14-101, NI 45-106, NI 31-103, or MI 11-102 as applicable, unless the context otherwise requires.

Representations

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

The Filers

1. The PAOC is a registered charity incorporated under Part ll of the *Canada Corporations Act* and is a “charitable organization” for purposes of the *Income Tax Act* (Canada). The PAOC carries on its religious and charitable activities in various provinces and territories in Canada but maintains its head office in Ontario. Member congregations of the PAOC are located in each of the Applicable Jurisdictions.

2. PFSG is a corporation incorporated under the laws of Canada on March 29, 2005, and is wholly-owned by the PAOC.

3. PSC is a corporation incorporated under the laws of Canada on June 15, 2017 and is wholly-owned by the PAOC.

The Note Program

4. PFSG was established and exists for the purpose of, on the one hand, making and administering mortgage loans, and, on the other hand, issuing and distributing Notes (each of which is an unsecured promissory note) to the following persons and companies, or prospective persons and companies, (each a **Note Investor**) that are:

a. any individual within the PAOC Community, as well as any corporation, trust, partnership and estate associated with such individual (each a **Community Investor**),

b. any church within the PAOC Community, the Emergency Relief and Development Organization and any other registered charity within the PAOC Community, including the PAOC itself (each a **PAOC Charity**), and

c. any trust in respect of which the PAOC acts as trustee (each a **PAOC Trust**).

5. PFSG uses the proceeds from Notes to make mortgage loans to PAOC congregations and other PAOC organizations for charitable purposes, including building, renovating and repairing church buildings, school facilities and similar undertakings within the PAOC Community. The issuance and distribution of Notes to Note Investors and the subsequent mortgage loans made by PFSG to PAOC congregations and other PAOC organizations together comprise the **Note Program**.

6. PFSG enters into all mortgage and related security documents as the lender. All mortgage loans are funded by the proceeds PFSG receives from Notes pursuant to the Note Program. PFSG manages and administers the associated mortgage loans.

7. In order to mitigate risk in the Note Program, among other factors, the associated mortgage loans made by PFSG must:

a. be secured by first mortgages on real property in a jurisdiction of Canada;

b. have a commercial appraisal of land and buildings to cover market and fire sale liquidation values;

c. not exceed 65% of the appraised value of the property, except in very limited circumstances;

d. be insured under mortgage title insurance;

e. not exceed three times the annual revenue (e.g., donations) of the church or other mortgagor; and

f. be supported by a resolution of the local church membership at a duly called business meeting, with at least a 75% majority approving the decision to apply for the mortgage or a similar threshold of approval for non-church borrowers in the PAOC Community.

8. The business of PFSG is overseen by its board of directors and the day-to-day management is under the direction of its Executive Director.

9. The business and activities of PSC are restricted to acting as a dealer in order to facilitate any distributions or investments in Notes under the Note Program. PSC will not recommend, advise, or solicit a donation from any Note Investor to the PAOC or any entities related to the PAOC.

10. PFSG generates net profits from operating the Note Program. Substantially all such profits are paid to the PAOC for use by the PAOC exclusively in furtherance of its educational, charitable and religious activities, and this will be disclosed in the Offering Memorandum.

11. None of the Filers, or any of their officers, directors, employees or any other individuals acting on behalf of any Filer, will receive any form of commission or transaction-based compensation related to the Note Program.

12. None of the Filers, nor any of their officers, directors, employees or any other individuals acting on behalf of any Filer, will pay or receive any referral fees in respect of their activities related to the Note Program.

13. PFSG promotes the Note Program primarily through its website, in church bulletins and in a magazine published by the PAOC. The Note Program may also be promoted by PSC at certain PAOC events (at which the primary attendees are pastors within the PAOC Community) and PFSG may attend to provide factual information on the Note Program. Following the date of this decision, all such advertising will include a prominent reference to the Offering Memorandum and to the PSC contact information for those interested in pursuing an investment in Notes.

14. Prior to the establishment of PFSG and the launch of the Note Program, the PAOC itself ran a similar program for almost 50 years.

15. There have been no defaults on any of the Notes and no complaints from any Note Program participants in the ten years of operation of the Note Program under the Prior Decision (defined below). To the best of its knowledge, the PAOC is not aware of any such defaults or complaints in the 50 years that the PAOC itself ran a similar program.

Terms and Attributes of the Notes

16. As at the date hereof:

    (a) the aggregate principal amount of issued and outstanding Notes is approximately $48 million;

    (b) the number of Notes issued and outstanding is approximately 740; and

    (c) the number of Community Investors who hold Notes is approximately 237, and they hold approximately $31 million of the aggregate principal amount of issued and outstanding Notes.

17. The Notes are issued in principal amounts varying from $5,000 to several hundred thousand dollars. Interest on the Notes is paid semi-annually and the Notes are issued for terms to maturity ranging from one year to five years (at the Note Investor's option). During the last 10 years, PFSG has raised approximately $7 million per year from the issue of Notes and issued Notes to approximately 35 to 75 Note Investors per year (many of which were returning investors).

18. The interest rate payable under the Notes is determined based on biweekly assessments of current competitive lending rates in the market and may vary based on when an investment in the Notes is made and depending on the term of Notes selected by the Note Investor.

19. As a Note approaches its maturity date, the holder of the Note is given the option to receive repayment of the amount owing under the Note or to reinvest that amount in a new Note. In most cases, Note Investors opt to renew or reinvest their Notes. Historically, the Note renewal rate has been over 92%. As maturity dates are spread throughout the year, Notes are renewed throughout the year.

20. PFSG engages in short-term investing in guaranteed investment certificates (**GICs**) in order to manage the in-flow of the proceeds from the sale of Notes and the out-flow of proceeds by way of mortgage loans. Short-term investments in GICs last no longer than 30 days (and are only made to account for discrepancies between the date that funds are received from Note Investors and the date that a new mortgage loan is entered into for a PAOC project).

The Prior Decision and Activities

21. Prior to this decision, PFSG operated the Note Program by issuing, distributing and trading in Notes pursuant to an order from the Commission dated June 21, 2007, *In the Matter of Pentecostal Financial Services Group Inc.* (the **Prior Decision**) exempting PFSG from the dealer registration requirement and prospectus requirement on terms set out in the Prior Decision. The Prior Decision expired on June 21, 2017.

22. As required under the Prior Decision, PFSG has been providing an information statement in the form of repealed BC Form 32-901F to each Note Investor before that Note Investor agrees to purchase the Notes. The information statement described the Notes, described the relationship between PFSG and the PAOC, explained that PFSG is the entity issuing the Notes, and outlined the risks related to investments in Notes.

23. Each of PFSG, PSC, and the PAOC is not in default of securities legislation in any jurisdiction of Canada, except for the following activities that occurred between June 22, 2017 and the date of this decision:

    a. an individual that would satisfy the definition of "Acceptable Dealing Representative" has engaged in certain activity which constituted an act in furtherance of a trade in order to conduct a Suitability Assessment as will be required under this decision for certain Legacy Investors; and

    b. in order to avoid a disruption to the Note Program, and with prior disclosure to the Applicable Jurisdiction, three Renewal Notes were distributed to two Legacy Investors under an available prospectus exemption, but without an available registration exemption.

24. From June 22, 2017 until the date of this decision, PFSG has not issued any Notes to Note Investors other than the two Legacy Investors as described above. In addition, PFSG redeemed all Legacy Notes which matured during this period, other than the Legacy Notes for which three Renewal Notes were distributed as described above.

The Current Decision – the Exemptions Sought

25. Since the date of the Prior Decision (June 21, 2007), the Applicable Jurisdictions have modernized their approach to dealer registration and exemptions therefrom (including implementing NI 31-103 and amending NI 45-106 to eliminate certain registration exemptions that were previously available pursuant to NI 45-106). The Principal Regulator also adopted new prospectus exemptions (including the OM Exemption), and some Applicable Jurisdictions amended the OM Exemption.

26. Accordingly, the Filers require the Exemptions Sought to transition to the modernized registration regime by obtaining registration, transitioning to using available prospectus exemptions such as the accredited investor and minimum amount exemptions (set out in sections 2.3 and 2.10, respectively, of NI 45-106), and transitioning to using the Ongoing Prospectus Exemption Sought which is similar to the OM Exemption except as set out below.

The Current Decision – the Interim Prospectus Exemption Sought

27. While the Note Program will remain substantially unchanged, the requirements of certain prospectus exemptions (including the Ongoing Prospectus Exemption Sought which is similar to the OM Exemption) are more extensive than the terms of the Prior Decision. In addition, while PSC has filed its application to register in the category of restricted dealer, such registration is not yet complete and is subject to ongoing review by the regulator in the Applicable Jurisdictions. As a result, PFSG requires a limited amount of additional time to transition its business model while limiting disruption to the Note Program.

28. PSC will conduct Suitability Assessments in order to determine whether a prospectus exemption (under securities legislation or the Ongoing Prospectus Exemption Sought) is available for a distribution to a particular Note Investor. However, if PSC is unable to make this determination during the Legacy Period due to its business model transition, PFSG will require the Interim Prospectus Exemption Sought to renew Legacy Notes without the requirement for a prospectus. In these cases, the term to maturity of each Legacy Note will not extend beyond November 30, 2017. In effect, the Interim Prospectus Exemption Sought defers Suitability Assessments to December 1, 2017 for these Renewal Notes.

29. If PSC is able to conduct a full Suitability Assessment during the Legacy Period, and PFSG otherwise complies with an available prospectus exemption under securities legislation or the Ongoing Prospectus Exemption Sought, a Legacy Note may be renewed for a period of time determined at the discretion of the Legacy Investor. In these circumstances, the Interim Prospectus Exemption Sought is not required.

The Current Decision – the Ongoing Prospectus Exemption Sought

30. Following the date of this decision, PFSG will only distribute Notes to Note Investors either in accordance with prospectus exemptions available under securities legislation or in accordance with the terms and conditions of this decision.

31. PFSG requires the Ongoing Prospectus Exemption Sought in order to effectively modify certain terms and conditions of the OM Exemption to reflect the unique features of its business model and structure.

32. In particular, PFSG requires the Ongoing Prospectus Exemption Sought because PSC is, or will be, registered in the category of a restricted dealer and, therefore, does not meet the requirements of:

    a. subparagraph 2.9(2.1)(b)(iii) of NI 45-106 for purposes of determining whether the investment is suitable;

    b. subsection 2.9(5.2) for purposes of distributing OM marketing materials which have been approved in writing by the issuer; or

    c. various prescribed forms and applicable schedules, which are required under the conditions to the OM Exemption and, without the Ongoing Prospectus Exemption Sought, would not permit PFSG or PSC to include the category of restricted dealer in reference to registered firms when completing these forms and schedules.

33. As the Acceptable Dealing Representative is subject to the same proficiency requirements that a dealing representative of an exempt market dealer would be subject to under NI 31-103, the Acceptable Dealing Representative is appropriately qualified to provide the Suitability Assessment for purposes of subparagraph 2.9(2.1)(b)(iii) of NI 45-106.

34. PFSG also requires the Ongoing Prospectus Exemption Sought as certain PAOC Community entities may fall within the definition of a “promoter” under securities legislation and, as a result, would be required to sign the OM in

accordance with subsection 2.9(9)(c) of NI 45-106. However, these entities signing the OM as a promoter may potentially put certain charitable assets at risk if such assets were to be used to settle any potential claims for misrepresentation in the OM. The PAOC Community has undertaken to implement a number of additional investor protection measures (as described below) under the Note Program.

The Current Decision – the Interim Registration Exemptions Sought

35. In order to limit disruption to the Note Program, PSC and PFSG require relief from certain registration requirements. This relief will allow PSC, acting as an agent of PFSG, to trade in Notes to Note Investors (including conducting Suitability Assessments and providing advice in connection with these trades) prior to obtaining registration as a dealer in the category of restricted dealer. The restricted dealer category is being sought because PSC has a novel business model. Specifically:

    a. the Interim Dealer Registration Exemption Sought will allow PSC to trade a Note in relation to a distribution of a Note to a Note Investor where PFSG is relying on the Interim Prospectus Exemption Sought, the Ongoing Prospectus Exemption Sought, or any other available prospectus exemptions under securities legislation;

    b. the Interim Adviser Registration Exemption Sought, similar to the exemption from the adviser registration requirement in section 8.23 of NI 31-103, will allow PSC to also provide incidental advice in connection with these trades in Notes if the advice is not in respect of a managed account of a Note Investor; and

    c. the Interim Issuer Registration Exemption Sought, similar to the exemption from the dealer registration requirement in section 8.5 of NI 31-103, will provide PFSG with an exemption from the dealer registration requirement when a trade is made through PSC (prior to PSC obtaining registration), PSC is permitted to make this trade under the terms and conditions of the Interim Dealer Registration Exemption Sought, and PFSG does not solicit or contact any Note Investor directly in relation to the trade.

36. Once PSC is registered as a dealer in an Applicable Jurisdiction, PSC and PFSG will no longer require any of the interim registration exemptions noted above in that Applicable Jurisdiction.

Additional Investor Protection Measures and Solvency Matters

37. In operating the Note Program, PFSG follows strict guidelines for making investments in mortgage loans, as described above. Among other business risks, the business model of the Note Program requires PFSG to manage business risks associated with the difference in the term to maturity of the Notes (typically one to five years) and the term to maturity of the mortgage loans (typically five years). The difference in these terms to maturity may, from time to time, lead to the value of PFSG's current assets (e.g., mortgage loan repayments) being lower than the value of PFSG's current liabilities (e.g., Note payments). PFSG addresses this business risk by carefully managing the timing of the maturity dates of the Notes and mortgages, and by taking the steps outlined below.

38. PFSG attempts to align maturity dates of mortgages and Notes so that it has available funds should Note Investors choose to receive repayment of the amount owing under their Notes. In the event that cash-on-hand will or may be insufficient to repay the amounts due on Notes, PFSG and PSC will attempt to find new Note Investors to purchase Notes in the same aggregate principal amount and, if successful, will use the proceeds from the new issue to redeem the existing Notes.

39. PFSG has entered into a subordination agreement with the PAOC with respect to each PAOC Charity and each PAOC Trust (the **PAOC Related Investors**) such that the repayment of the interest and principal on each Note held by a PAOC Related Investor is subordinate to the repayment of the interest and principal on each Note held by a Community Investor in respect of any Notes having the same maturity date.

40. The PAOC invests in preferred shares of PFSG in order to build additional equity in PFSG to mitigate the business risks outlined above and the risk of any potential default in the payment of a mortgage loan. The PAOC has reinvested in PFSG in the form of preferred shares, which investment is currently approximately $1.8 million. The PAOC will increase its preferred share position to 10% of the mortgage portfolio operated by PFSG by committing 50% of the annual profits paid by PFSG to the PAOC to the preferred share capitalization until it reaches 10% of the total mortgage portfolio.

41. In respect of the preferred share capital provided to PFSG by the PAOC, by operation of corporate law and bankruptcy and insolvency law, this share capital may be available to creditors and any payments owing to the PAOC as a preferred shareholder will be subordinate to the claims of any creditors. In addition, PFSG will only make payments to the PAOC as a preferred shareholder when PFSG is profitable and the current assets of PFSG are greater than the current liabilities of PFSG at the date that a payment to preferred shareholders is payable.

42. The PAOC has qualified for, and has available to it, a line of credit from a bank listed in Schedule I of the *Bank Act* (Canada). The line of credit has a limit of $3 million dollars, all of which is currently available, as at the date of this decision. The PAOC has agreed that it will make the line of credit available to PFSG as required to meet its obligations to Community Investors under the Notes held by such investors.

43. The Offering Memorandum that will be provided to each Community Investor will describe PFSG's business and operation of the Note Program including its guidelines for making investments in mortgage loans. The Offering Memorandum will also describe among other risk factors material to PFSG and the Notes, the operating risks faced by PFSG due to the difference in the term to maturity of each Note and each mortgage as described above.

44. Annually, PFSG will provide to staff of the Principal Regulator a summary of any repayments, including any advance repayments, of principal in respect of Notes to PAOC Related Investors and a summary of any redemptions of preferred shares to the PAOC that have occurred in the prior 12 month period. At least quarterly, PFSG will provide to staff of the Principal Regulator a summary of Notes renewed, including overall Note renewal rates.

Additional Ongoing Trading and Distribution Activities

45. In respect of a distribution of any Note under the Note Program where PFSG is relying on the Ongoing Prospectus Exemption Sought, PFSG and PSC will adhere to the investment limits in condition I.b of the Ongoing Prospectus Exemption Sought in each Applicable Jurisdiction. Accordingly, if PFSG is relying on the Ongoing Prospectus Exemption Sought in respect of a distribution to a Community Investor that is an individual and also an eligible investor (as defined in NI 45-106), each such Community Investor will be subject to the same investment restrictions.

46. PFSG will continue its historical practice of providing disclosure about the Note Program to each Note Investor; however, this disclosure will be in an updated form. Specifically, PFSG and PSC will deliver an Offering Memorandum to each prospective Community Investor before the prospective Community Investor has agreed in writing to purchase a Note. The Offering Memorandum:

    a. will include relevant information including the key terms of the Notes; the relationship between PFSG, PSC and the PAOC; that PFSG is the entity issuing the Notes, and the relevant risks related thereto; and

    b. will contain a contractual right of rescission and a right of action for misrepresentation against PFSG unless such rights are otherwise provided under securities legislation where the Community Investor is resident.

47. PSC will record and maintain records in respect of any Suitability Assessments it conducts, including any discussions with Community Investors regarding the suitability of an investment in Notes.

48. The Filers will take reasonable steps to identify, and respond to, any material conflicts of interest between the Filers and the Note Investors. The Filers will manage these conflicts, and will avoid any conflicts that cannot be managed.

49. PSC will not make a recommendation in any medium of communication (e.g. verbal, written, etc.) to buy, sell or hold a Note issued by PFSG unless PSC discloses, in the same medium of communication, the nature and extent of the relationship or connection between PSC and PFSG (i.e., the Issuer).

50. PSC will not lend money, extend credit or provide margin to any Note Investor.

51. PSC does not expect to recommend that a Note Investor use borrowed money to finance any part of a purchase of a Note. However, if PSC ever has cause to recommend that a Note Investor should use borrowed money to finance any part of a purchase of a Note, PSC will, before the purchase, provide the Note Investor with a written statement that is substantially similar to the following:

> *Using borrowed money to finance the purchase of Notes involves greater risk than a purchase using cash resources only. If you borrow money to purchase Notes, your responsibility to repay the loan and pay interest as required by its terms remains the same even if the value of the Notes purchased declines.*

Decisions

The Principal Regulator is satisfied that these decisions meet the tests set out in the Legislation for the Principal Regulator to make these decisions.

Interim Dealer Registration Exemption Sought

The decision of the Principal Regulator under the Legislation is that the Interim Dealer Registration Exemption Sought is granted provided that at the time of the trade:

I. Where the trade consists of a purchase of the Note by the Note Investor, PSC has made the corresponding Suitability Assessment, and established a record of that Suitability Assessment, unless that Note Investor is a Legacy Investor whose Legacy Note is being renewed in accordance with the Interim Prospectus Exemption Sought in which case no Suitability Assessment is necessary;

II. In connection with the trade, PSC has dealt fairly, honestly and in good faith with the Note Investor;

III. No commission or other transaction-based remuneration is paid in respect of the trade;

IV. PSC has responded to any material conflict of interest between PSC and the Note Investor;

V. PSC has disclosed the nature and extent of the relationship or connection between PSC, PFSG and the PAOC;

VI. In connection with the trade, PSC has not lent money, extended credit or provided margin to the Note Investor; and

VII. The trade is made in an Applicable Jurisdiction on or before the date that is the earlier of:

a. the date on which PSC is registered as a dealer in that Applicable Jurisdiction, and

b. the date that is one year after the date of this decision.

Interim Adviser Registration Exemption Sought

The decision of the Principal Regulator under the Legislation is that the Interim Adviser Registration Exemption Sought is granted provided that:

I. The advice is given in connection with a trade made by PSC in accordance with the above decision in respect of the Interim Dealer Registration Exemption Sought;

II. The advice is not given in respect of a managed account of a Note Investor; and

III. This exemption will no longer be available in an Applicable Jurisdiction after the date that is the earlier of:

a. the date on which PSC is registered as a dealer in that Applicable Jurisdiction, and

b. the date that is one year after the date of this decision.

Interim Issuer Registration Exemption Sought

The decision of the Principal Regulator under the Legislation is that the Interim Issuer Registration Exemption Sought is granted provided that at the time of the trade:

I. The trade is made by PSC in accordance with the above decision in respect of the Interim Dealer Registration Exemption Sought;

II. In furtherance of the trade, PFSG did not solicit or contact directly the Note Investor in relation to the trade; and

III. The trade is made in an Applicable Jurisdiction on or before the date that is the earlier of:

a. the date on which PSC is registered as a dealer in that Applicable Jurisdiction, and

b. the date that is one year after the date of this decision.

Interim Prospectus Exemption Sought

The decision of the Principal Regulator under the Legislation is that the Interim Prospectus Exemption Sought is granted provided that during the Legacy Period all of the following conditions are met:

I. If PFSG is unable to determine whether a prospectus exemption was otherwise available under securities legislation or the Ongoing Prospectus Relief Sought:

a. the distribution is restricted to a Renewal Note to a Legacy Investor; and

b. the term to maturity of each Renewal Note must not extend beyond the end of the Legacy Period;

II. If PFSG is able to determine that a prospectus exemption was available under securities legislation or the Ongoing Prospectus Relief Sought:

a. the distribution will be made to any Note Investor provided that the Filers complied with the terms and conditions of the prospectus exemption under securities legislation or the Ongoing Prospectus Relief Sought; and

b. the term to maturity of each Note will be determined by the Note Investor; and

III. The distribution must be made on or before November 30, 2017.

Ongoing Prospectus Exemption Sought

The decision of the Principal Regulator under the Legislation is that the Ongoing Prospectus Exemption Sought is granted provided that all of the following conditions are met:

I. PFSG is distributing a Note where:

a. the Note Investor purchases the Note as principal;

b. the acquisition cost of all securities acquired by a Note Investor who is an individual under the OM Exemption or this decision in the preceding 12 months does not exceed the following amounts:

i. in the case of a Note Investor that is not an eligible investor, $10,000;

ii. in the case of a Note Investor that is an eligible investor, $30,000;

iii. in the case of a Note Investor that is an eligible investor and that received advice from a portfolio manager, investment dealer, exempt market dealer or the Acceptable Dealing Representative on behalf of PSC that the investment is suitable, $100,000,

c. at the same time or before the Note Investor signs the agreement to purchase the Note, PFSG:

i. delivers an offering memorandum to the Note Investor in compliance with conditions VI to XIII, and

ii. obtains a signed risk acknowledgement from the Note Investor in compliance with condition XV, and

d. the Note distributed by PFSG is an unsecured, fixed interest rate, non-convertible debt instrument of PFSG with a term of 5 years or less.

II. PFSG is not an investment fund.

III. The investment limits described in conditions I.b.ii and iii will not apply if the Note Investor is:

a. an accredited investor; or

b. a person described in subsection 2.5(1) of NI 45-106 [*Family, friends and business associates*].

IV. PFSG is not distributing a short-term securitized product under the Note Program.

V. No commission or finder's fee is paid to any person.

VI. The offering memorandum delivered to Note Investors must comply with the requirements of Form 45-106F2 – *Offering Memorandum for Non-Qualifying Issuers*, except that for purposes of Form 45-106F2 and the applicable schedules to Form 45-106F2, PFSG or PSC may include the category of restricted dealer where required.

VII. An offering memorandum delivered to a Note Investor in reliance on this decision:

a. must incorporate by reference, by way of a statement in the offering memorandum, OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective Note Investor before the termination of the distribution; and

b. is deemed to incorporate by reference OM marketing materials related to each distribution under the offering memorandum and delivered or made reasonably available to a prospective Note Investor before the termination of the distribution.

VIII. A portfolio manager, investment dealer, exempt market dealer or PSC must not distribute OM marketing materials unless the OM marketing materials have been approved in writing by PFSG.

IX. An offering memorandum delivered under this decision must provide the Note Investor with a contractual right to cancel the agreement to purchase the Note by delivering a notice to PFSG not later than midnight on the 2nd business day after the Note Investor signs the agreement to purchase the Note.

X. The offering memorandum delivered under this decision must contain a contractual right of action against PFSG for rescission or damages that

a. is available to the Note Investor if the offering memorandum, or any information or documents incorporated or deemed to be incorporated by reference into the offering memorandum, contains a misrepresentation, without regard to whether the Note Investor relied on the misrepresentation;

b. is enforceable by the Note Investor delivering a notice to PFSG;

i. in the case of an action for rescission, within 180 days after the Note Investor signs the agreement to purchase the Note; or

ii. in the case of an action for damages, before the earlier of

A. 180 days after the Note Investor first has knowledge of the facts giving rise to the cause of action, or

B. 3 years after the date the Note Investor signs the agreement to purchase the Note,

c. is subject to the defence that the Note Investor had knowledge of the misrepresentation;

d. in the case of an action for damages, provides that the amount recoverable

i. must not exceed the price at which the Note was offered, and

ii. does not include all or any part of the damages that PFSG proves does not represent the depreciation in value of the Note resulting from the misrepresentation, and

e. is in addition to, and does not detract from, any other right of the Note Investor.

XI. An offering memorandum delivered under this decision must contain a certificate that states the following:

"This offering memorandum does not contain a misrepresentation."

XII. The certificate required under condition XI of this decision must be signed

a. by PFSG's chief executive officer and chief financial officer or, if PFSG does not have a chief executive officer or chief financial officer, an individual acting in that capacity; and

b. on behalf of the directors of PFSG, by

i. any 2 directors who are authorized to sign, other than the persons referred to in paragraph (a), or

ii. all the directors of PFSG.

XIII. A certificate under condition XI must be true

a. at the date the certificate is signed; and

b. at the date the offering memorandum is delivered to the Note Investor.

XIV. If a certificate under condition XI ceases to be true after it is delivered to the Note Investor, PFSG cannot accept an agreement to purchase the Note from the Note Investor unless

a. the Note Investor receives an update of the offering memorandum;

b. the update of the offering memorandum contains a newly dated certificate signed in compliance with condition XII; and

c. the Note Investor re-signs the agreement to purchase the Note.

XV. A risk acknowledgement obtained under this decision must comply with the requirements of Form 45-106F4, including applicable schedules, except that for purposes of Form 45-106F4 and the applicable schedules to Form 45-106F4, PFSG or PSC may include the category of restricted dealer where required. PFSG must retain the signed risk acknowledgment for 8 years after the distribution.

XVI. PFSG must

a. hold in trust all consideration received from the Note Investor in connection with a distribution of a Note under this decision until midnight on the 2nd business day after the Note Investor signs the agreement to purchase the Note; and

b. return all consideration to the Note Investor promptly if the Note Investor exercises the right to cancel the agreement to purchase the Note described under condition IX.

XVII. PFSG must file a copy of an offering memorandum delivered under this decision and any update of a previously filed offering memorandum with the securities regulatory authority on or before the 10th day after the distribution under the offering memorandum or update of the offering memorandum.

XVIII. PFSG must file with the securities regulatory authority a copy of all OM marketing materials required or deemed to be incorporated by reference into an offering memorandum delivered under this decision,

a. if the OM marketing materials are prepared on or before the filing of the offering memorandum, concurrently with the filing of the offering memorandum; or

b. if the OM marketing materials are prepared after the filing of the offering memorandum, within 10 days of the OM marketing materials being delivered or made reasonably available to a prospective Note Investor.

XIX. OM marketing materials filed under condition XVIII must include a cover page clearly identifying the offering memorandum to which they relate.

XX. For purposes of financial statement reporting, PFSG must comply with subsections 2.9(17.5), (17.7) to (17.13), (17.15) to (17.17) and (17.19) of the OM Exemption as if PFSG had distributed securities under the OM Exemption.

XXI. PFSG must make reasonably available to each holder of a Note acquired under this decision a notice of each of the following events in accordance with Form 45-106F17, within 10 days of the occurrence of the event:

a. a discontinuation of PFSG's business;

b. a change in PFSG's industry;

c. a change of control of PFSG.

XXII. PFSG is required to make the disclosure required respectively by conditions XX (in respect of subsections 2.9(17.5) and (17.19) of the OM Exemption as referenced above) and XXI of this decision until the earlier of

a. the date PFSG becomes a reporting issuer in any jurisdiction of Canada; and

b. the date PFSG ceases to carry on business.

XXIII. In Ontario, PFSG is designated a market participant under the *Securities Act* (Ontario).

XXIV. For each distribution made in reliance on this decision, PFSG will file a completed Form 45-106F1 *Report of Exempt Distribution* (**Form 45-106F1**) in accordance with Part 6 of NI 45-106 within 10 days of the date of the distribution. For purposes of Form 45-106F1 and the applicable schedules to Form 45-106F1, PFSG or PSC may include the category of restricted dealer where required.

XXV. The first trade in securities distributed in reliance on this decision will be deemed to be a distribution that is subject to section 2.5 of National Instrument 45-102 *Resale of Securities*.

XXVI. The additional investor protection measures for the Note Program described in representations 37 to 44 above must remain in effect as of the date of distribution.

XXVII. The Ongoing Prospectus Exemption Sought will no longer be available after the date that is five years after the date of this decision.

DATED August 30, 2017.

"Grant Vingoe"
Commissioner
Ontario Securities Commission

"Tim Moseley"
Commissioner
Ontario Securities Commission

2.1.4 Sentry Investments Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – approval for change of control of manager under s. 5.5(1)(a.1) of National Instrument 81-102 Investment Funds and abridgement of securityholder notice period under s. 5.8(1)(a) of NI 81-102 to 38 days – acquirer has requisite experience and integrity to participate in Canadian capital markets – transaction will not result in any material changes to operations and management of the manager or the funds it manages.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 5.5(1)(a.1), 5.7(1)(a), 5.8(1), 19.1.

September 27, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
SENTRY INVESTMENTS INC.
(the Manager or Sentry)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Manager and CI Financial Corp. (**CI**, and together with the Manager, the **Filers**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for approval with respect to a proposed change of control of the Manager pursuant to section 5.5(1)(a.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Approval Sought**) and an abridgement to not less than 38 days of the time period prescribed by section 5.8(1)(a) of NI 81-102 for delivering notice to securityholders of the Sentry Funds (as defined below) of the change of control of the Manager resulting from the Proposed Transaction (as defined below) (the **Abridgement Relief**).

Under National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (**NP 11-203**) (for a passport application):

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

(b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each province and territory of Canada (the **Jurisdictions**).

Interpretation

Terms defined in NI 81-102, National Instrument 14-101 *Definitions*, NP 11-203 and MI 11-102 have the same meaning if used in this decision unless otherwise defined.

Representations

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

CI and CI Investments Inc.

1. CI, a corporation existing under the *Business Corporations Act* (Ontario) (**OBCA**), with its head office in Toronto, Ontario, is an independent Canadian-owned wealth management company. Through its principal operating subsidiaries, CI offers a broad range of investment products and services. CI is a reporting issuer in all of the provinces of Canada and its common shares are listed on the Toronto Stock Exchange (the **TSX**) under the trading symbol "CIX".

2. CI owns 100% of the issued and outstanding shares of CI Investments Inc. (the **CI Manager**).

3. The CI Manager, a corporation existing under the *Business Corporations Act* (Ontario) with its head office in Toronto, Ontario, manages a large number of mutual funds which are sold to the public under the family names CI Funds, Black Creek Funds, Cambridge Funds, Harbour Funds, Marret Funds, Signature Funds and Synergy Funds, as well as other investment products.

4. The CI Manager is registered as (i) an investment fund manager (**IFM**) in Ontario, Quebec and Newfoundland and Labrador; (ii) adviser in the category of portfolio manager (**PM**) in all provinces; (iii) a dealer in the category of exempt market dealer (**EMD**) in Ontario; and (iv) commodity trading counsel and commodity trading manager (**CTM**) in Ontario.

Sentry Investments Corp., Sentry and the Sentry Funds

5. Sentry Investments Corp. (**SIC**), a corporation existing under the OBCA with its head office in Toronto, Ontario, is a privately-owned investment management firm.

6. SIC, together with certain employee shareholders, owns 100% of Sentry.

7. Sentry, a corporation existing under the OBCA, has its head office in Toronto, Ontario.

8. Sentry is registered as (i) an IFM in Ontario, Quebec and Newfoundland and Labrador; (ii) an adviser in the category of PM in Alberta and Ontario; (iii) a dealer in the categories of EMD and mutual fund dealer in all of the provinces; and (iv) a CTM in Ontario.

The Sentry Funds

9. Sentry is the "manager" for purposes of NI 81-102 of all the mutual funds, flow-through funds and closed-end funds (collectively, the **Sentry Funds**) as set out in Schedule "A" hereto.

10. The Sentry Funds are reporting issuers in some or all provinces and territories of Canada.

11. Portfolio management of the Sentry Funds is provided by Sentry.

12. None of CI, the CI Manager, SIC, Sentry or the Sentry Funds is in default of any securities legislation in any of the Jurisdictions.

The Proposed Transaction

13. CI entered into a binding agreement on August 9, 2017 to purchase 100% of the issued and outstanding shares of SIC and all of the issued and outstanding shares of Sentry not owned by SIC in return for cash and common shares of CI (the **Proposed Transaction**).

14. CI and Sentry wish to close the Proposed Transaction on or about October 2, 2017 (the **Closing Date**), provided that, among other things, all necessary regulatory notices, non-objections, and approvals have been given and received. If completed as contemplated, following the Closing Date, CI will directly own 100% of the outstanding shares of SIC and directly and indirectly own 100% of the outstanding shares of Sentry.

15. A notice regarding the Proposed Transaction was delivered to the Compliance & Registrant Regulation branch of the OSC on August 16, 2017, pursuant to sections 11.9 and 11.10 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

Change of Control of Manager

16. As the share ownership of Sentry will change such that after the Closing Date, CI will directly own 100% of the outstanding shares of SIC and directly and indirectly own 100% of the outstanding shares of Sentry, the Proposed

Transaction will result in a change of control of Sentry and accordingly regulatory approval is required pursuant to section 5.5(1)(a.1) of NI 81-102.

Impact on the Manager and the Sentry Funds

17. Completion of the Proposed Transaction is not expected to result in any material adverse changes to, or impact on, the business, operations and affairs of the Sentry Funds, the securityholders of the Sentry Funds or Sentry.

18. CI currently intends to maintain Sentry as a separate corporate entity and there is no current intention to: (i) change the names or branding of Sentry or the Sentry Funds as a result of the Proposed Transaction; or (ii) immediately following the Closing Date, or within a foreseeable period of time, replace Sentry as the investment fund manager or portfolio manager of the Sentry Funds.

19. At closing, CI will elect as directors of Sentry current members of the executive or board of directors of CI or the CI Manager representing a majority of the board of directors of Sentry.

20. There is no current intention to merge or integrate the business operations of Sentry into CI or the CI Manager.

21. No final decisions have been made as to any duplication of personnel or systems.

22. There is no current intention to: (a) merge or otherwise change the structures, investment objectives or strategies of, any of the Sentry Funds; (b) change the fees and expenses that would be charged to the Sentry Funds; (c) make changes to fund accounting and other administrative functions undertaken by the current providers, both internal and external, to Sentry or the Sentry Funds; or (d) make changes to the custodians or trustees of the Sentry Funds.

23. The members of the Independent Review Committee (**IRC**) of the Sentry Funds will cease to be IRC members by operation of section 3.10(1)(c) of National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**). However, it is currently intended that immediately following the completion of the Proposed Transaction, the same members of the IRC will be re-appointed by Sentry.

24. CI confirms that from and after the date of closing of the Proposed Transaction, CI will cause Sentry to comply with the terms and conditions of the Settlement Agreement dated March 31, 2017 among Sentry, Sean Driscoll and the Ontario Securities Commission including the undertaking dated February 2, 2017, attached as Schedule “A” and the order dated April 5, 2017, attached as Schedule “B” thereto.

25. The Proposed Transaction is not expected to negatively impact the financial stability of Sentry or its ability to fulfill its regulatory obligations.

Notice Requirement

26. Written notice (the **Notice**) regarding the Proposed Transaction was sent to each securityholder of the Sentry Funds (other than securityholders of Sentry Select Primary Metals Corp.) on August 18, 2017, and to securityholders of Sentry Select Primary Metals Corp. in Canada on August 22, 2017 and in the United States on August 25, 2017, which in each case will be at least 38 days before the Closing Date, pursuant to section 5.8(1) of NI 81-102.

27. While the Proposed Transaction is pending, but not closed, there is uncertainty among clients and others regarding Sentry. To preserve the business and relationships of Sentry, it is strongly preferable to close the Proposed Transaction promptly with an abridgement to the 60-day notice period and minimize this period of uncertainty.

28. It is the Filers’ view that it would not be prejudicial to the securityholders of the Sentry Funds to abridge the notice period required under s. 5.8(1)(a) of NI 81-102 from 60 days to not less than 38 days for the following reasons:

    (a) the securityholders of the Sentry Funds will be sufficiently aware of the Proposed Transaction;

    (b) there are no immediate plans to increase the management fees that the Sentry Funds charge or the operating expenses that they pay, to change the structures, investment objectives or strategies of the Sentry Funds, or to change the role of Sentry as manager of the Sentry Funds;

    (c) the Proposed Transaction will not have any impact on the securityholders’ interest in the Sentry Funds and securityholders are not required to take any action; securityholders need only consider whether they wish to dispose of their securities of the Sentry Funds. The change of control of the Manager, by itself, will not trigger any other material change to the Sentry Funds; and

(d) Except for NCE Diversified Flow-Through (16) Limited Partnership (the **Flow-Through Fund**), the Sentry Funds calculate and publish their net asset value per security on a daily basis (apart from Precious Metals and Mining Trust and Sentry Select Primary Metals Corp., which calculate net asset value per security daily but only publish this information weekly) and either permit redemptions of securities of the Sentry Funds on a daily basis or are listed on the TSX, allowing securityholders of the Sentry Funds to immediately redeem or dispose of their securities upon receipt of the Notice if they so choose. With respect to the Flow-Through Fund, prior to a liquidity event, which involves a tax deferred roll-over into an existing open-end mutual fund managed by Sentry (currently intended to occur on or about January 5, 2018), securityholders can only redeem their limited partnership units upon death or if they cease to be a Canadian resident, and there is no secondary or gray market for their limited partnership units.

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:

(a) the Approval Sought is granted; and

(b) the Abridgement Relief is granted provided that

(i) the Notice is given to securityholders of the Sentry Funds at least 38 days before the Closing Date, and

(ii) no material changes will be made to the management, operations or portfolio management of the Sentry Funds for at least 60 days following the date the Notice was delivered.

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

Schedule "A"

LIST OF SENTRY FUNDS

Closed-End Funds
Precious Metals and Mining Trust
Sentry Select Primary Metals Corp.

Flow-Through Limited Partnership
NCE Diversified Flow-Through (16) Limited Partnership

Mutual Funds
Sentry All Cap Income Fund
Sentry Canadian Income Class
Sentry Canadian Income Fund
Sentry Diversified Equity Class
Sentry Diversified Equity Fund
Sentry Global Growth and Income Class
Sentry Global Growth and Income Fund
Sentry Global Infrastructure Fund
Sentry Global Mid Cap Income Fund
Sentry Growth and Income Fund
Sentry Small/Mid Cap Income Class
Sentry Small/Mid Cap Income Fund
Sentry U.S. Growth and Income Class
Sentry U.S. Growth and Income Currency Neutral Class
Sentry U.S. Growth and Income Fund
Sentry Canadian Resource Class
Sentry Energy Fund
Sentry Global REIT Class
Sentry Global REIT Fund
Sentry Precious Metals Class
Sentry Precious Metals Fund
Sentry Alternative Asset Income Fund
Sentry Conservative Balanced Income Class
Sentry Conservative Balanced Income Fund
Sentry Conservative Monthly Income Fund
Sentry Global Monthly Income Fund
Sentry U.S. Monthly Income Fund

Mutual Funds
Sentry Canadian Bond Fund
Sentry Corporate Bond Class
Sentry Corporate Bond Fund
Sentry Global High Yield Bond Class
Sentry Global High Yield Bond Fund
Sentry Money Market Class
Sentry Money Market Fund
Sentry Growth Portfolio
Sentry Growth and Income Portfolio
Sentry Balanced Income Portfolio
Sentry Conservative Income Portfolio
Sentry Defensive Income Portfolio
Sentry Canadian Equity Income Private Pool Class
Sentry Canadian Equity Income Private Trust
Sentry Global Equity Income Private Pool Class
Sentry International Equity Income Private Pool Class
Sentry International Equity Income Private Trust
Sentry U.S. Equity Income Private Pool Class
Sentry U.S. Equity Income Currency Neutral Private Pool Class
Sentry U.S. Equity Income Private Trust
Sentry Energy Private Trust
Sentry Global Infrastructure Private Trust
Sentry Global Real Estate Private Trust
Sentry Precious Metals Private Trust
Sentry Balanced Yield Private Pool Class
Sentry Global Balanced Yield Private Pool Class
Sentry Canadian Fixed Income Private Pool
Sentry Canadian Core Fixed Income Private Trust
Sentry Global Core Fixed Income Private Trust
Sentry Global High Yield Fixed Income Private Trust
Sentry Global Investment Grade Private Pool Class
Sentry Global Tactical Fixed Income Private Pool
Sentry Real Growth Pool Class
Sentry Real Long Term Income Pool Class
Sentry Real Long Term Income Trust
Sentry Real Mid Term Income Pool Class

Mutual Funds
Sentry Real Mid Term Income Trust
Sentry Real Short Term Income Pool Class
Sentry Real Short Term Income Trust
Sentry Real Income 1941-45 Class
Sentry Real Income 1946-50 Class
Sentry Real Income 1951-55 Class

2.1.5 IA Clarington Investments Inc. and Investia Financial Services Inc.

Headnote

Relief from the requirement in s.3.2.01 of NI 81-101 to deliver a fund facts document to investors who purchase mutual fund securities of a high net worth series pursuant to switches from a regular retail series upon meeting certain eligibility requirements based on the amount of the investor's investments – High net worth series securities are identical to regular retail series securities except that the high net worth series have lower combined management and administration fees – Investment fund manager initiating switches on behalf of investors when their investments satisfy eligibility requirements of high net worth series – Switches between series of a fund triggering a distribution of securities and the requirement to deliver a fund facts – Relief granted from requirement to deliver a fund facts to investors for purchases of high net worth series securities made pursuant to such switches subject to compliance with certain notification and prospectus/fund facts disclosure requirements.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 3.2.01, 6.1.

[Translation]

September 22, 2017

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

AND

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

AND

IN THE MATTER OF
IA CLARINGTON INVESTMENTS INC.
(the Filer)

AND

INVESTIA FINANCIAL SERVICES INC.
(the Representative Dealer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the requirement in the Legislation for a dealer to deliver or send the most recently filed fund facts document (**Fund Facts**) in the manner as required under the Legislation (the **Pre-sale Fund Facts Delivery Requirement**) in respect of the purchases of High Net Worth Series (as defined below) securities of the Funds (as defined below) that are made pursuant to Lower Fee Switches (as defined below) (the **Exemption Sought**).

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 section 4.7 (1) of *Regulation 11-102 respecting Passport System*, CQLR, c. V-1.1, r.1 (**Regulation 11-102**) is intended to be relied upon in the provinces of Canada other than the Jurisdictions; and

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, CQLR, c. V-1.1, r.3, Regulation 11-102, *Regulation 81-101 respecting Mutual Funds Prospectus Disclosure*, CQLR, c.V-1.1, r. 38 (**Regulation 81-101**) and *Regulation 81-102 respecting Investment Funds*, CQLR, c. V-1.1, r.39 (**Regulation 81-102**) have the same meaning if used in this decision, unless otherwise defined.

Representations

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

The Filer

1. The Filer's head office is in Québec City, Québec.

2. The Filer is registered as an investment fund manager in Québec, Ontario and Newfoundland and Labrador, as an exempt market dealer in the Jurisdictions, and as a portfolio manager in all of the provinces of Canada.

3. The Filer is the investment manager of certain mutual funds (the "**Existing Funds**"), each of which is subject to the requirements of Regulation 81-102. The Filer may in the future become the investment manager of additional mutual funds that are subject to the requirements of Regulation 81-102 (the "**Future Funds**", and together with the Existing Funds, the "**Funds**" and individually a "**Fund**").

4. The Representative Dealer is an affiliate of the Filer, registered as an exempt market dealer and a mutual fund dealer in the Jurisdictions.

5. Securities of the Funds are, or will be, distributed through dealers ("**Dealers**" or individually, a "**Dealer**") who may or may not be affiliated with the Filer, including the Representative Dealer. The Representative Dealer is an affiliate of the Filer.

6. Each Dealer is, or will be, registered as:

   (a) a dealer in the category of mutual fund dealer under the Legislation and, other than mutual fund dealers registered in Quebec, is also a member of the Mutual Fund Dealers Association of Canada; or

   (b) a dealer in the category of investment dealer under the Legislation and a member of the Investment Industry Regulatory Organization of Canada.

7. Neither the Filer nor the Representative Dealer is in default of securities legislation in any of the jurisdiction of Canada.

The Funds

8. Each Fund is, or will be, an open-end mutual fund trust or an open-end mutual fund that is a class of shares of a mutual fund corporation.

9. Each Fund is, or will be, a reporting issuer under the laws of the Jurisdictions.

10. The securities of the Funds have been, or will be qualified for distribution pursuant to a simplified prospectus, Fund Facts and annual information form that have been, or will be, prepared and filed in accordance with Regulation 81-101. The units and shares of the Funds are referred to herein collectively as "**Securities**" and individually as a "**Security**".

11. Certain Funds offer Series E and EF Securities that are offered for sale under a simplified prospectus, Fund Facts and annual information form dated June 20, 2017, as amended August 8, 2017. Series E and EF Securities, and any future applicable high net worth series securities (the "**High Net Worth Series**") of the Funds generally have, or will have, lower combined management and administration fees than Series A, F, L and T, and any future applicable retail series securities (the "**Retail Series**"). The High Net Worth Series are, or will be, only available to investors who have invested at least $100,000 in a Fund (the "**Eligibility Threshold**"), and where a High Net Worth Series is available for the applicable Fund.

12. The Existing Funds are not in default of securities legislation in any of the jurisdictions of Canada.

Automatic Switches

13. The Filer is starting a program effective on or about September 15, 2017 (the "**Implementation Date**"), whereby investors holding Retail Series will automatically be switched into the High Net Worth Series of the same Fund (where a High Net Worth Series is available) if they meet the Eligibility Threshold, subject to certain exceptions. The Filer will automatically switch these Retail Series investors into High Net Worth Series (the "**Lower Fee Switches**" or each a "**Lower Fee Switch**") without the Dealer or investor having to initiate the trade. If an investor holding High Net Worth Series ceases to meet the Eligibility Threshold, the Filer may switch the investor from High Net Worth Series to the applicable Retail Series without the Dealer or investor initiating the trade (the "**Higher Fee Switches**" or each a "**Higher Fee Switch**", and together with the Lower Fee Switches, the "**Automatic Switches**").

14. The Lower Fee Switches will generally take place when the investor purchases additional Securities or when positive market movement moves the investor's investment into High Net Worth Series eligibility.

15. The Higher Fee Switches may occur because of redemptions by the investor that decrease the amount of total investments with the Filer for purposes of calculating the investor's eligibility for High Net Worth Series. However, in no circumstance will market value declines lead to Higher Fee Switches.

16. Once an investor's Retail Series Investment in a Fund meets the Eligibility Threshold, the investor will receive lower fees associated with the applicable High Net Worth Series, even if fund performance reduces the account value below the Eligibility Threshold.

17. Investors may access High Net Worth Series of a Fund by (a) initially investing in High Net Worth Series if they meet the Eligibility Threshold or (b) initially investing in Retail Series and then, upon meeting the Eligibility Threshold, having those Retail Series switched to High Net Worth Series securities by way of a Lower Fee Switch.

18. Investors may access Retail Series of a Fund by (a) initially investing in Retail Series or (b) initially investing in High Net Worth Series and then, upon no longer meeting the Eligibility Threshold for the High Net Worth Series securities, having those High Net Worth Series be switched into Retail Series by way of a Higher Fee Switch.

19. The trailing commissions for the High Net Worth Series and Retail Series of the Existing Funds are identical. While the trailing commission may increase in certain circumstances for Future Funds, the total cost to the investor will always be lower as a result of the Lower Fee Switch.

Delivery requirements

20. An Automatic Switch will entail either (a) a redemption of the Retail Series, immediately followed by a purchase of the High Net Worth Series of the same Fund, or (b) a redemption of the High Net Worth Series, immediately followed by a purchase of the Retail Series of the same Fund. Each purchase of Securities done as part of an Automatic Switch will be a "distribution" under the Legislation, which triggers the Pre-Sale Fund Facts Delivery Requirement.

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

22. In the absence of the Exemption Sought, the Filer may not carry out the Lower Fee Switches without compliance with the Pre-Sale Fund Fact Delivery Requirement.

Reasons supporting the Exemption Sought

23. While the Filer will initiate each trade done as part of an Automatic Switch, each Dealer does not propose to deliver the Fund Facts to investors in connection with the purchase of High Net Worth Securities made pursuant to a Lower Fee Switch for the following reasons:

    (a) at no time will an investor that qualifies for High Net Worth Series securities pay combined management and administration fees at a rate higher than the rate of the combined management and administration fees of the Retail Series for which it initially subscribed;

    (b) subsequent to each Lower Fee Switch, an investor would continue to hold Securities in the same Fund(s) as before the Automatic Switch, with the only material difference to the investor being that the combined management and administration fees charged for the Higher Net Worth Series Securities would be lower than those charged for the Retail Series; and

(c) since Retail Series securityholders would have received a simplified prospectus or Fund Facts disclosing the higher level of fees, which applied to the Retail Series for which they initially subscribed, the investor would derive little benefit from receiving a further Fund Facts document for each Lower Fee Switch.

24. Although the maximum sales charge that may be charged upon an initial investment in Retail Series is higher than the maximum sales charge that may be charged upon an initial investment in High Net Worth Series, there are no sales charges, switch fees or other fees payable by the investor upon an Automatic Switch.

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

26. Based on current Canadian tax legislation, implementation of the Automatic Switch between series of the same Fund will have no adverse tax consequences on investors.

27. For Higher Fee Switches , the Fund Facts for the applicable Retail Series will be required to be delivered in accordance with the Pre-Sale Fund Fact Delivery Requirement.

Decision

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

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

1. the Filer will provide to the Principal Regulator on an annual basis beginning 60 days after the date upon which the Exemption Sought is first relied upon by a Dealer, either

   (a) a current list of all such Dealers that are relying on the Exemption Sought, or

   (b) an update to the list of such Dealers or confirmation that there has been no change to such list;

2. prior to a Dealer relying on this Decision, the Filer provides to the Dealer a disclosure statement informing the Dealer of the implications of this Decision,.

3. For investors invested in Retail Series prior to the Implementation Date of the Automatic Switches, the Filer will liaise with Dealers to devise a notification plan for such investors regarding the Automatic Switches that addresses the following:

   (a) that their investment may be switched to a High Net Worth Series with lower fees upon meeting the applicable Eligibility Threshold;

   (b) that other than a difference in fees, there may be no other material difference between the Retail Series and the High Net Worth Series;

   (c) that if they cease to meet the Eligibility Threshold for High Net Worth Series, their investment may be switched into a series with higher management and administration fees which will not exceed Retail Series Fees; and

   (d) that they will not receive the Fund Facts when they purchase Securities further to a Lower Fee Switch, but that:

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

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

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

      iv. they will not have the right to withdraw from an agreement of purchase and sale in respect of a purchase of series securities made pursuant to a Lower Fee Switch, but they will have the right of action for damages or rescission in the event any Fund Facts or document

incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts.

4. The Filer incorporates disclosure in the prospectus for the Retail Series and the High Net Worth Series that sets out the following:

   (a) the eligibility requirements for both the Retail Series and the High Net Worth Series;

   (b) the fees applicable to investments in both the Retail Series and the High Net Worth Series; and

   (c) in the event investors cease to meet the Eligibility Threshold of a specified High Net Worth Series, that their investment may be switched into a series with higher management and administration fees which will not exceed the applicable Retail Series fees.

5. Each Fund Facts for the Retail Series:

   (a) discloses a summary of the eligibility requirements and the fee discounts applicable to the High Net Worth Series;

   (b) discloses that, if investors cease to meet the eligibility requirements of a specified High Net Worth Series, their investment may be switched into corresponding Retail Series, with higher management and administration fees; and

   (c) contains a cross-reference to the more detailed disclosure in the simplified prospectus;

6. The Retail Series Fund Facts containing the disclosure described in paragraph 5 above will be delivered to investors at the time of first purchase of Retail Series in accordance with the Pre-sale Fund Facts Delivery Requirement.

7. The Filer will send the Retail Series investors an annual reminder notice advising that they will not receive the Fund Facts when they purchase High Net Worth Series securities further to a Lower Fee Switch, but that:

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

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

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

   (d) they will not have a withdrawal right in respect of a purchase of series securities made pursuant to a Lower Fee Switch, but they will have a right of action for damages or rescission in the event any Fund Facts or document incorporated by reference into a simplified prospectus for the relevant series contains a misrepresentation, whether or not they request the Fund Facts.

"Gilles Leclerc"
Superintendent, Securities Markets

2.1.6 Pattern Energy Group Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 The Multijurisdictional Disclosure System so that investment dealers acting as underwriters or selling group members of an issuer are permitted to use standard term sheets and marketing materials and conduct road shows (each as defined under National Instrument 41-101 General Prospectus Requirements) in connection with future offerings under an MJDS base shelf prospectus – NI 71-101 does not contain equivalent provisions to Part 9A of National Instrument 44-102 Shelf Distributions – relief granted, provided that any road shows, standard term sheets and marketing materials would comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102, as applicable.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53, 74(1)2.
National Instrument 71-101 The Multijurisdictional Disclosure System, s. 11.3.

August 18, 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
PATTERN ENERGY GROUP 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 (the **Legislation**), pursuant to paragraph 74(1)2 of the *Securities Act* (Ontario), for an exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 *The Multijurisdictional Disclosure System* so that investment dealers acting as underwriters (as defined in the Legislation) or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer are permitted to (i) use Standard Term Sheets (as defined below) and Marketing Materials (as defined below), and (ii) conduct Road Shows (as defined below) in connection with future offerings under a Final Canadian MJDS Shelf Prospectus (as defined below) to be filed by the Filer in each of the provinces and territories of Canada (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 each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, the Northwest Territories and Nunavut (together with the Jurisdiction, the **Jurisdictions**).

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of Delaware.

2. The principal executive offices of the Filer are located at Pier 1, Bay 3, San Francisco, California 94111.

3. As of the date hereof, the Filer is a reporting issuer in each of the Jurisdictions and is a "SEC foreign issuer" as defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*. The Filer is not in default of securities legislation in any of the Jurisdictions.

4. The Filer has filed a registration statement on Form S-3 with the U.S. Securities and Exchange Commission on August 14, 2017 (the **Registration Statement**). The Registration Statement contains a shelf prospectus (the **U.S. Shelf Prospectus**) and registers for sale in the United States, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, shares of the Filer's Class A common stock, shares of the Filer's preferred stock, debt securities and certain other types of permitted securities.

5. The Filer also has filed a preliminary MJDS prospectus dated August 14, 2017, and intends to file a final MJDS prospectus, in the Jurisdictions pursuant to National Instrument 71-101 *The Multijurisdictional Disclosure System* (**NI 71-101**) which includes or will include, respectively, the U.S. Shelf Prospectus (the preliminary MJDS prospectus is referred to in this decision as the **Preliminary Canadian MJDS Shelf Prospectus** and the final MJDS prospectus is referred to in this decision as the **Final Canadian MJDS Shelf Prospectus**) and will qualify the distribution in the Jurisdictions, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, of shares of the Filer's Class A common stock, shares of the Filer's preferred stock, debt securities and certain other types of permitted securities.

6. National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) sets out the requirements for a distribution under a (non-MJDS) shelf prospectus in Canada, including requirements with respect to advertising and marketing activities. In particular, Part 9A of NI 44-102 permits the conduct of "road shows" and the use of "standard term sheets" and "marketing materials" (as such terms are defined in National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**)) following the issuance of a receipt for a final base shelf prospectus provided the approval, content, use and other applicable conditions and requirements of Part 9A are complied with. NI 71-101 does not contain provisions that are equivalent to those of Part 9A of NI 44-102.

7. In connection with marketing an offering in Canada under the Final Canadian MJDS Shelf Prospectus, investment dealers acting as underwriters or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer may wish to conduct road shows (**Road Shows**) and utilize one or more standard term sheets (**Standard Term Sheets**) and marketing materials (**Marketing Materials**), as such terms are defined in NI 41-101. Any such Road Shows, Standard Term Sheets and Marketing Materials would comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102, as applicable.

8. Canadian purchasers, if any, of securities offered under the Final Canadian MJDS Shelf Prospectus will only be able to purchase those securities through an investment dealer registered in the Jurisdiction of residence of the purchaser.

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 the conditions and requirements set out in Part 9A of NI 44-102 for Standard Term Sheets, Marketing Materials and Road Shows are complied with for any future offering under the Final Canadian MJDS Shelf Prospectus in the manner in which those conditions and requirements would apply if the Final Canadian MJDS Shelf Prospectus were a final base shelf prospectus under NI 44-102.

"Deborah Leckman"
Commissioner
Ontario Securities Commission

"Philip Anisman"
Commissioner
Ontario Securities Commission

2.1.7 The Royal Bank of Scotland PLC and National Westminster Bank PLC

Headnote

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

Applicable Legislative Provisions

Ontario Securities Commission Rule 91-507 Trade Repositories and Derivatives Data Reporting, s. 42.

September 28, 2017

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

AND

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

AND

IN THE MATTER OF
THE ROYAL BANK OF SCOTLAND PLC

AND

NATIONAL WESTMINSTER BANK PLC
(THE APPLICANTS)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a "**Decision Maker**") has received an application from the Applicants for an order in Ontario pursuant to Part 6 of Ontario Securities Commission ("**OSC**") Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, in Québec pursuant to section 86 and section 111 of the *Derivatives Act* (Québec), CQLR, c. I-14.01, and in Manitoba pursuant to Part 6 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting*, varying a decision signed by the Director of the OSC dated September 28, 2016 (the "**Existing Relief Decision**") which provides relief from the following derivatives data reporting requirements in relation to new and existing transactions under Part 3 of OSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* (the "**OSC Reporting Provisions**"), Chapter 3 of the Autorité des marchés financiers' *Regulation 91-507 – respecting Trade Repositories and Derivatives Data Reporting* (the "**AMF Reporting Provisions**"), and Part 3 of MSC Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* (together with the AMF Reporting Provisions and the OSC Reporting Provisions, the "**Local Reporting Provisions**"):

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

(b) the requirement for a reporting counterparty to Report (i) Intra-Day Life-Cycle Event Data, and (ii) the "master agreement type" and "master agreement version" data fields, where the reporting counterparty has not established reporting systems and procedures that are sufficient to enable it to Report such information; and

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

The Existing Relief Decision with respect to the relief described under paragraphs (a) and (c) above ceases to be available after September 28, 2017 (the "**Sunset Provision**").

The Applicants have requested that the Existing Relief Decision be varied (collectively, the "**Variation Relief Sought**") so that the Sunset Provision in the Existing Relief Decision will be extended until September 28, 2018.

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

1. the OSC is the Principal Regulator for the application; and

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

Interpretation

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

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

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

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

"Subject Transaction" means a transaction that is subject to reporting in accordance with the applicable Local Reporting Provisions.

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

"Quarterly Compliance Report" means a report substantially in the form attached to this decision as "Exhibit A".

Representations

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

1. The Royal Bank of Scotland plc ("**RBS**") is a wholly-owned subsidiary of The Royal Bank of Scotland Group plc ("**RBS Group**") and National Westminster Bank plc ("**NatWest**") is a wholly-owned subsidiary of RBS.

2. RBS Group is a large banking and financial services operation that is ultimately controlled by the government of the United Kingdom ("**UK**") acting through HM Treasury, the UK government's economic and finance ministry, and primarily conducting its operations through RBS and NatWest;

3. When the Existing Relief Decision was signed, RBS was a full service foreign bank branch under the *Bank Act* (Canada) that carried on Business under the name The Royal Bank of Scotland plc, Canada Branch and as such was listed in Schedule III of the *Bank Act* (Canada);

4. The Office of the Superintendent of Financial Institutions approved the closure of The Royal Bank of Scotland plc, Canada Branch by way of a letter dated May 16, 2017;

5. NatWest is incorporated in England and Wales and its head office is located in London, England;

6. RBS conducts its global over-the-counter ("**OTC**") derivatives operations from its four core trading hubs located in London, Stamford, Singapore and Tokyo and enters into OTC derivatives with Canadian counterparties from those offices;

7. NatWest's global markets business trades and sells OTC derivative transactions primarily from the UK for its existing UK client base. A limited number of trades take place between NatWest and Canadian subsidiaries of entities that bank with NatWest. NatWest has no Canadian offices;

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

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

10. the Applicants have established or procured internal technology, systems and procedures that the Applicants believe should enable them to give effect to the Local Reporting Provisions;

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

12. ` the Applicants have engaged in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, many of the Applicants' Canadian counterparties have not provided some or all of the Required Counterparty Feedback.

In addition to the restated facts, the Applicants make the following representations:

13. the Applicants have continued to engage in diligent efforts to solicit Required Counterparty Feedback through direct client outreach and through industry efforts; however, despite these efforts, the Applicants have not received Required Counterparty Feedback from all of their counterparties;

14. the Applicants have established a policy that they will not enter into an OTC derivative transaction with a counterparty without obtaining the counterparty's LEI;

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

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

17. if the Variation Relief Sought is granted, the Applicants will continue to make diligent efforts to obtain the Required Counterparty Feedback from their counterparties;

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

19. the Applicants are not in default of securities legislation in any jurisdiction.

Decision

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

The decision of the Principal Regulator is that the Variation Relief Sought is granted and it orders that, in respect of each Subject Transaction, paragraphs 1, 2 and 3 of the Existing Relief Decision be varied on the foregoing basis and restated as set forth below:

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

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

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

   provided that the Applicant:

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

   (ii) prepares and delivers to the OSC no later than 45 days after the end of each quarter Quarterly Compliance Reports setting out (x) a list of all jurisdictions that it reasonably determines are subject to an applicable Blocking Law; and (y) a list of jurisdictions in respect of which the Applicant, having used reasonable efforts, has been unable to determine if an applicable Blocking Law exists;

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

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

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

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

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

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

   provided that the Applicant:

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

   (ii) prepares and delivers to the OSC no later than 45 days after the end of each quarter Quarterly Compliance Reports setting out (x) a list of all jurisdictions that it reasonably determines are jurisdictions in which an applicable Consent Requirement exists; and (y) a

list of jurisdictions in respect of which the Applicant, having used reasonable efforts, has been unable to determine if an applicable Consent Requirement exists;

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

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

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

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

(A) Counterparty Status as a Local Counterparty – if the transaction counterparty has not provided the Applicant with Required Counterparty Feedback sufficient to enable the Applicant to determine if the transaction counterparty is a "local counterparty" under the Local Reporting Provisions of the Jurisdiction, provided that the Applicant Reports the Subject Transaction to the jurisdiction in which the Applicant has its principal place of business and, if reasonably practicable, makes diligent efforts to use the information from its own systems to Report the Subject Transaction in the transaction counterparty's jurisdiction, in each case if and to the extent it is reportable by the Applicant in such jurisdiction, and provided further that the foregoing exemption detailed in this paragraph 3(A) shall not be available in respect of a Subject Transaction entered into by the Applicant on or after March 31, 2018 if the transaction counterparty is a person or company (a) that the Applicant determines (having made diligent efforts to use the information from its own systems) is organized under the laws of the Jurisdiction or has its head office or principal place of business in the Jurisdiction and (b) with whom the Applicant has no pre-existing contractual relationship relating to transacting in derivatives as of such date; or

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

provided that the Applicant:

(i) prepares and delivers to the OSC no later than 45 days after the end of each quarter, Quarterly Compliance Reports setting out its efforts to obtain Required Counterparty Feedback; and

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

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

4. Effectiveness of the Order – The exemptions provided pursuant to paragraphs 1, 2 and 3 shall cease to be available 1 year after the date hereof.

"Kevin Fine"
Director, Derivatives Branch
Ontario Securities Commission

Exhibit A

Form of Quarterly Compliance Report

(a) Definitions

Counterparty: A counterparty for the purposes of this compliance report is any counterparty to a derivative transaction that is principal (not agent) to the derivative (e.g. where a fund manager executes transactions on behalf of a number of underlying funds, each fund should be included in the compliance rate calculation).

All Counterparties: Counterparties to transactions reportable under Regulation/Rule 91-507 – *Trade Repositories and Derivatives Data Reporting* (**91-507**).

New Counterparties: Counterparties to transactions reportable under 91-507 that were entered into at any time during the relevant period but with whom the reporting counterparty had previously never entered into a reportable transaction.

Compliant Counterparties: Counterparties who have provided the Required Counterparty Feedback (as defined in the Exemptive Relief) to enable the reporting counterparty to meet its obligations under 91-507. This would include the counterparty's consent (if required by applicable law), the counterparty's LEI, the broker LEI (if applicable), and information to determine whether it is a local counterparty.

(b) Compliance Progress

Please see **Appendix A**.

(c) Consent Requirement & Blocking Law Jurisdictions

Please provide, at a minimum, the information below.

List of Consent Requirement (as defined in the Exemptive Relief) jurisdictions; please highlight jurisdictions added or removed since last report	•
List of Blocking Law (as defined in the Exemptive Relief) jurisdictions; please highlight jurisdictions added or removed since last report	•
List of Blocking Law or Consent Requirement jurisdictions not yet determined; please highlight jurisdictions added or removed since last report	•

(d) Efforts to Obtain Required Counterparty Feedback

Please provide information regarding your efforts to obtain the Required Counterparty Feedback.

Please provide information regarding efforts to obtain the Required Counterparty Feedback from New Counterparties and describe internal policies regarding acceptance of New Counterparties that are not Compliant Counterparties.

Please provide information regarding efforts to obtain Required Counterparty Feedback from existing non-compliant Counterparties.

Please provide information regarding efforts to correct any reporting made in relation to a transaction after Required Counterparty Feedback has been obtained; including the time required to backload and report the Required Counterparty Feedback once the previously unavailable information has been obtained.

(e) Any Additional Information

Please provide any additional information that would assist in explaining the rates of non-compliance. For example, compliance rates may be affected by the type of counterparty (e.g. sophistication, institutional vs. retail/commercial), geographic location of counterparty, or asset class (e.g. foreign exchange).

Please provide any other additional information you believe would assist in improving our understanding of the obstacles to full compliance.

Appendix A: Compliance Progress

	Canadian Counterparties				Foreign Counterparties			
	Q1 2018	Q2 2018	Q3 2017	Q4 2017	Q1 2018	Q2 2018	Q3 2017	Q4 2017
All Counterparties								
All Counterparties as at end of period		•	•	•		•	•	•
All Compliant Counterparties as at end of period		•	•	•		•	•	•
Compliance rate as at end of period		•	•	•		•	•	•
Blocking Laws & Consent Requirements								
Number of reportable transactions with identifiers masked as the result of Blocking Laws or Consent Requirements (as defined in the Exemptive Relief)						•	•	•

2.2 Orders

2.2.1 Novadaq Technologies Inc.

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).

September 27, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
NOVADAQ TECHNOLOGIES INC.
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions in Canada in which it is a reporting issuer (the **Order Sought**).

Under the Process for Cease to be a Reporting Issuer Applications (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 4C.5(1) of Multilateral Instrument 11-102 – *Passport System* ("**MI 11-102**") is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland.

Interpretation

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

Representations

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

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

2. 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;

3. 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;

4. 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; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

The Principal Regulator is satisfied that the order meets the test set out in the Legislation for the Principal Regulator to make the order.

The decision of the Principal Regulator under the Legislation that the Order Sought is granted.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

2.2.2 Khalid Walid Jawhari

IN THE MATTER OF
KHALID WALID JAWHARI

Philip Anisman, Chair of the Panel

September 26, 2017

ORDER

WHEREAS on September 26, 2017, the Ontario Securities Commission (the **Commission**) held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario;

ON HEARING the submissions of counsel for Staff of the Commission (**Staff**) requesting an adjournment to allow them to prepare an order for the consent of Khalid Walid Jawhari, who did not appear, although properly served as indicated by the Affidavit of Service filed by Staff, but with whom Staff had spoken;

IT IS ORDERED THAT the hearing is adjourned to a date no later than October 13, 2017, to be set by the Office of the Secretary.

"Philip Anisman"

2.2.3 David Gregor McClure – ss. 127(1), 127(10)

IN THE MATTER OF
DAVID GREGOR McCLURE

Philip Anisman, Chair of the Panel

September 26, 2017

ORDER
(Subsections 127(1) and 127(10) of the Securities Act, RSO 1990, c S.5)

WHEREAS on September 26, 2017, the Ontario Securities Commission (the **Commission**) held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, to consider an application by Staff of the Commission (**Staff**) for an order imposing sanctions pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

ON READING the Settlement Agreement and Undertaking between David Gregor McClure (**McClure**) and the Alberta Securities Commission dated August 16, 2017 (the **Settlement Agreement**);

AND ON READING a hearing brief filed by Staff and the Consent of McClure, through his counsel, dated September 19, 2017 and confirmed on September 25, 2017, and on hearing the submissions of the representative for Staff, appearing in person;

IT IS ORDERED pursuant to paragraphs 127(1)2, 2.1, 3, 7, 8, 8.2, 8.4 and 8.5 of the Act that:

1. until August 16, 2020, McClure shall not trade in securities or derivatives, except in an RRSP, RESP or other similar plan permitted under Canadian tax law where the plan is operated for his benefit or for the benefit of an immediate member of his family, so long as any trade is made through a registrant who has been given a copy of the Settlement Agreement and a copy of this Order;

2. until August 16, 2020, McClure shall not acquire securities (including any derivative that is a security), except in an RRSP, RESP or other similar plan permitted under Canadian tax law where the plan is operated for his benefit or for the benefit of an immediate member of his family, so long as any acquisition is made through a registrant who has been given a copy of the Settlement Agreement and a copy of this Order;

3. no exemption under Ontario securities law shall apply to McClure until August 16, 2020;

4. McClure shall resign any position he holds as a director or officer of an issuer;

5. McClure is prohibited from becoming or acting as a director or officer of an issuer until August 16, 2020;

6. McClure is prohibited from becoming or acting as a director or officer of a registrant, including an investment fund manager, until August 16, 2020; and

7. McClure is prohibited from becoming or acting as a registrant, including an investment fund manager, or a promoter until August 16, 2020.

”Philip Anisman”

2.2.4 TCM Investments Ltd. et al. – s. 127(8)

IN THE MATTER OF
TCM INVESTMENTS LTD.
carrying on business as OPTIONRALLY,
LFG INVESTMENTS LTD.,
AD PARTNERS SOLUTIONS LTD. and
INTERCAPITAL SM LTD.

Timothy Moseley, Chair of the Panel

September 28, 2017

ORDER
(Section 127(8) of the Securities Act, RSO 1990, c S.5)

WHEREAS on September 27, 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 consider Staff's application made pursuant to subsection 127(8) of the *Securities Act*, RSO 1990, c S.5 (the **Act**), for an extension of the temporary Order issued against the Respondents on May 10, 2017 (the Temporary Order); and

ON HEARING the submissions of the representative for Staff, no one appearing for the Respondents, although properly served as appears from the Affidavits of Service of Laura Filice sworn on May 15 and 24, 2017;

IT IS ORDERED, pursuant to subsection 127(8) of the Act, that paragraph 1 of the Temporary Order, which prohibits all trading in any securities by the Respondents, is extended until November 16, 2017.

“Timothy Moseley”

2.2.5 TCM Investments Ltd. et al. – s. 127(1)

IN THE MATTER OF
TCM INVESTMENTS LTD.
carrying on business as OPTIONRALLY,
LFG INVESTMENTS LTD.,
AD PARTNERS SOLUTIONS LTD. and
INTERCAPITAL SM LTD.

Timothy Moseley, Chair of the Panel

September 28, 2017

ORDER
(Subsection 127(1) of the
Securities Act, RSO 1990, c S.5)

WHEREAS on September 27, 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 consider the allegations set out in the Statement of Allegations dated August 24, 2017; and

ON HEARING the submissions of the representative for Staff of the Commission, no one appearing for the Respondents, and upon issuing an oral ruling, with Reasons to follow, finding that each of the Respondents contravened the *Securities Act*, RSO 1990, c S.5 (the **Act**) by engaging in the conduct alleged in paragraph 17 of the Statement of Allegations;

IT IS ORDERED THAT:

1. Staff of the Commission shall file its written submissions on sanctions and costs by no later than October 31, 2017; and

2. The hearing on sanctions and costs shall be held on November 15, 2017, commencing at 10:00 a.m., or such other date as may be set by the Office of the Secretary.

"Timothy Moseley"

2.2.6 Bitumen Capital Inc.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jusidictions – Application by an issuer for a revocation of cease trade orders issued by the Commission and Autorite des marches financiers – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – Ontario opt-in to revocation order issued by Autorite des Marches Financiers, as principal regulator.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127, 144.

Citation: 2017-IC-0016

September 21, 2017

REVOCATION ORDER
Under the securities legislation of
Québec and Ontario
(Legislation)

BITUMEN CAPITAL INC.
(the Filer)

Background

1. Bitumen Capital Inc. (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the regulator or securities regulatory authority in each of Québec (**Principal Regulator**) and Ontario (each a **Decision Maker**) respectively on May 8, 2017.

2. The Issuer has applied to each of the Decision Makers under *Policy Statement 11-207 respecting Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (**Policy Statement 11-207**) for an order revoking the FFCTOs.

3. The Issuer has filed the periodic continuous disclosure documents required under the Legislation.

4. This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, in *Regulation 14-501Q on definitions*, or National Policy 11-207 have the same meaning if used in this order, unless otherwise defined.

Order

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

6. The decision of the Decision Makers under the Legislation is that the FFCTO is revoked.

"Martin Latulippe"
Director, Continuous Disclosure
Autorité des marchés financiers

2.2.7 Pro-Financial Asset Management Inc. et al. – s. 144

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.,
STUART MCKINNON and
JOHN FARRELL

AnneMarie Ryan, Commissioner and Chair of the Panel
Timothy Moseley, Commissioner
Janet Leiper, Commissioner

September 28, 2017

ORDER
(Section 144 of the Securities Act, RSO 1990, c S.5)

WHEREAS on September 28, 2017, the Ontario Securities Commission (the "**Commission**") held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario to consider Staff of the Commission's ("**Staff**") motion ("**Staff's Motion**") to dismiss the Section 144 Application (the "**Section 144 Application**") of Stuart McKinnon and Pro-Financial Asset Management Inc.;

ON READING the materials filed by Staff of the Commission and Stuart McKinnon and Pro-Financial Asset Management Inc., and on hearing the oral submissions of Staff and Stuart McKinnon on his own behalf and on behalf of Pro-Financial Asset Management Inc., all appearing in person;

IT IS ORDERED THAT:

1. Staff's Motion to dismiss the Section 144 Application is granted, with reasons to follow, and

2. the hearing scheduled on October 11, 2017 with respect to the Section 144 Application is vacated.

"AnneMarie Ryan"

"Timothy Moseley"

"Janet Leiper"

2.2.8 CanAsia Financial Inc. – s. 144

Headnote

Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by Ontario securities law – default subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

Applicable Legislative Provisions

Securities Act , R.S.O. 1990, c. S.5, as am., ss. 127, 144.

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

AND

IN THE MATTER OF
CANASIA FINANCIAL INC.

ORDER
(Section 144 of the Act)

WHEREAS the securities of CanAsia Financial Inc. (the "**Filer**") are subject to a cease trade order dated May 10, 2016 issued by the Director of the Ontario Securities Commission (the "**Commission**"), pursuant to paragraph 2 of subsection 127(1) and subsection 127(4.1) of the Act (the "**Ontario Cease Trade Order**"), ordering that all trading in the securities of the Filer, whether direct or indirect, cease until the Ontario Cease Trade Order is revoked by the Director;

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

AND WHEREAS the Filer has applied to the Commission for a full revocation of the Ontario Cease Trade Order (the "**Application**") pursuant to section 144 of the Act;

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

1. The Filer is a corporation formed pursuant to the laws of Alberta pursuant to a Certificate of Incorporation issued June 26, 2008. The Filer's head office is located in Calgary, Alberta.

2. The Filer is a reporting issuer in the provinces of Ontario, Alberta, British Columbia and Saskatchewan and is not a reporting issuer or equivalent under the securities legislation of any other jurisdiction in Canada. The Filer's principal regulator is the Alberta Securities Commission ("**ASC**").

3. The Filer's authorized capital structure consists of an unlimited number of common shares ("**Common Shares**") without nominal or par value and an unlimited number of preferred shares ("**Preferred Shares**") without nominal or par value, of which 98,168,052 Common Shares (held by 36 registered shareholders (including CDS Inc.)) and 15,000,000 Preferred Shares (held by one holder) are issued and outstanding. The Filer also has 7,500,000 share purchase warrants ("**Warrants**") (held by one holder) issued and outstanding. Each Warrant is exercisable at $0.20 per share to acquire one Common Share of the Filer until September 9, 2018.

4. The Ontario Cease Trade Order was issued as a result of the Filer's failure to file the following continuous disclosure materials as required by Ontario securities law:

   a) audited annual financial statements for the year ended December 31, 2015;

   b) management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2015; and

   c) certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* ("**NI 52-109**")

   (collectively, the "**Required Filings**").

5. Subsequent to the issuance of the Ontario Cease Trade Order, the Filer also failed to file with the Commission, within the timeframe stipulated by the applicable legislation, its interim financial statements for the periods ended March 31, 2016, June 30, 2016, September 30, 2016 and March 31, 2017, the management's discussion and analysis relating to the interim financial statements for the periods ended March 31, 2016, June 30, 2016, September 30, 2016 and March 31, 2017 as well as the certification of the foregoing filings as required by NI 52-109 (collectively, the "**Interim Filings**").

6. The Filer is also subject to a cease trade order dated May 5, 2016 issued by the ASC (the "**Alberta Cease Trade Order**") and a cease trade order dated May 12, 2016 (the "**B.C. Cease Trade Order**") issued by the British Columbia Securities Commission (the "**BCSC**").

7. On June 23, 2017, the Filer filed on the System for Electronic Document Analysis and Retrieval ("**SEDAR**") the Required Filings and the Interim Filings.

8. On June 23, 2017, the Filer also filed on SEDAR its audited annual financial statements for the year

ended December 31, 2016, the management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2016, as well as the certification of the foregoing filings as required by NI 52-109.

9. On July 28, 2017, the Filer filed on SEDAR an amended management's discussion and analysis relating to the audited annual financial statements for the year ended December 31, 2015 and certification of the foregoing filing as required by NI 52-109.

10. On August 29, 2017, the Filer filed on SEDAR interim financial statements for the period ended June 30, 2017, the management's discussion and analysis relating to the interim financial statements for the period ended June 30, 2017 as well as the certification of the foregoing filings as required by NI 52-109.

11. The Filer has concurrently applied to the ASC for a full revocation of the Alberta Cease Trade Order and to the BCSC for a full revocation of the B.C. Cease Trade Order.

12. The Filer has paid all outstanding participation fees, filing fees and late fees owing to the Commission, the BCSC, the ASC and the Financial and Consumer Affairs Authority of Saskatchewan.

13. The Filer's SEDAR and SEDI profiles are up to date.

14. Other than the issues outlined in paragraphs 4 and 5, which have subsequently been remedied, the Filer is not in default of its continuous disclosure obligations under Ontario, Alberta, British Columbia or Saskatchewan securities laws.

15. In connection with the Application the Filer has given the Commission a written undertaking (the "**Undertaking**") that the Filer will hold an annual meeting of shareholders within three months of the date on which the Ontario Cease Trade Order is revoked. The last annual meeting of shareholders of the Filer was held on March 25, 2015.

16. Upon the issuance of this revocation order, the Filer will issue a news release and file a material change report on SEDAR to announce the revocation of the Ontario Cease Trade Order, which news release will also disclose a description of the aforementioned Undertaking.

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

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

IT IS ORDERED pursuant to section 144 of the Act, that the Cease Trade Order is revoked.

DATED this 27th day of September 2017.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.2.9 INNOVA Gaming Group Inc.

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).

September 28, 2017

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)

AND

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

AND

IN THE MATTER OF
INNOVA GAMING GROUP INC.
(the Filer)

ORDER

Background

The principal regulator in the Jurisdiction has received an application from the Filer for an order under the securities legislation of the Jurisdiction of the principal regulator (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 passport application):

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

2. 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, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, the North West Territories, Nova Scotia, Nunavut, Prince Edward Island, Quebec, Saskatchewan and the Yukon.

Interpretation

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

Representations

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

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

(b) 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;

(c) 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;

(d) 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; and

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

Order

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

"Winnie Sanjoto"
Manager, Corporate Finance
Ontario Securities Commission

2.2.10 Dennis L. Meharchand and Valt.X Holdings Inc. – s. 127(1)

IN THE MATTER OF
DENNIS L. MEHARCHAND and
VALT.X HOLDINGS INC.

Timothy Moseley, Chair of the Panel

September 29, 2017

ORDER
(Subsection 127(1) of the
Securities Act, RSO 1990, c S.5)

WHEREAS on September 29, 2017, the Ontario Securities Commission held a hearing at the offices of the Commission, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, at the request of the parties, to consider amending the schedule ordered for a motion to be brought by Dennis L. Meharchand and Valt.X Holdings Inc. (the **Respondents**); and

ON HEARING the submissions of the representative for Staff, no one appearing for the Respondents, and considering the email correspondence exchanged between the parties, which indicated the parties' consent to a revised schedule;

IT IS ORDERED THAT:

1. The Respondents' motion shall be heard on October 27, 2017 at 10:00 a.m. and the parties shall adhere to the following timeline for the delivery of the motion materials:
   a. the Respondents shall serve and file moving motion materials by no later than October 2, 2017;
   b. Staff shall serve and file responding motion materials by no later than October 16, 2017; and
   c. the Respondents shall serve and file reply materials, if any, by no later than October 20, 2017.
2. A further pre-hearing conference shall be heard on October 27, 2017, immediately following the hearing of the Respondents' motion; and
3. The motion hearing and pre-hearing conference date of October 16, 2017 is vacated.

"Timothy Moseley"

2.2.11 Sital Singh Dhillon

IN THE MATTER OF
SITAL SINGH DHILLON

Mark J. Sandler, Commissioner and Chair of the Panel
Deborah Leckman, Commissioner
AnneMarie Ryan, Commissioner

September 29, 2017

ORDER

WHEREAS on September 29, 2017, the Ontario Securities Commission (the **Commission**) held a hearing at 20 Queen Street West, 17th Floor, Toronto, Ontario, in respect of a request made by Sital Singh Dhillon for a hearing and review of a decision of a Director dated July 31, 2017 pursuant to section 8 of the Ontario *Securities Act*, RSO 1990 c S.5;

ON HEARING the submissions of Mr. Dhillon and of counsel for Staff of the Commission (**Staff**);

IT IS ORDERED that:

1. by October 26, 2017, Mr. Dhillon shall serve on Staff and file with the Office of the Secretary his Application for hearing and review, pursuant to Rule 14.2 of the Commission's *Rules of Procedure*; and
2. the hearing is adjourned to November 1, 2017 at 10:00 a.m.

"Mark J. Sandler"

"Deborah Leckman"

"AnneMarie Ryan"

2.2.12 Nodal Exchange, LLC – s. 144 of the Act and s. 78 of the CFA

Headnote

Section 144 of the Securities Act (Ontario) (OSA) and section 78 of the Commodity Futures Act (Ontario) (CFA) – variation of an order exempting Nodal Exchange, LLC ("Nodal Exchange") from the requirement to be registered as a commodity futures exchange under section 15 of the CFA and recognized as an exchange under section 21 of the OSA – definition of "Nodal Contract" changed from "cash settled commodity futures contracts offered by Nodal Exchange that are based on electric power and natural gas" to read "commodity futures contracts and commodity futures options offered by Nodal Exchange" – variation to allow Nodal Exchange to offer direct access to Ontario Participants that are exempted from the registration requirements in the CFA – minor non-substantive changes made to update the order.

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

AND

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED
(THE CFA)

AND

IN THE MATTER OF
NODAL EXCHANGE, LLC

ORDER
(Section 144 of the OSA and section 78 of the CFA)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated October 7, 2014 and varied and restated on August 5, 2016 (**Exemption Order**) exempting Nodal Exchange, LLC (**Nodal Exchange**) from the requirement to be recognized as an exchange under subsection 21(1) of the OSA and the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA (**Exchange Relief**);

AND WHEREAS the Exemption Order defines "Nodal Contracts" as "cash settled commodity futures contracts offered by Nodal Exchange that are based on electric power and natural gas;

AND WHEREAS Nodal Exchange may offer trading in commodity futures contracts based on other underlying commodities and in commodity futures options;

AND WHEREAS Nodal Exchange has filed an application under section 144 of the OSA and under section 78 of the CFA requesting that the Commission issue an order varying the Exemption Order to amend the definition of "Nodal Contract" in the Exemption Order, to allow Nodal to provide direct access to Ontario Participants (as defined in the Exemption Order) that have obtained an exemption from the requirement to be registered under the CFA, and to make minor changes to update the Exemption Order;

AND WHEREAS, based on the application and the representations made to the Commission by Nodal Exchange, the Commission has determined that it is not prejudicial to the public interest to vary the Exemption Order;

IT IS ORDERED, pursuant to section 144 of the Act and section 78 of the CFA, that the Exemption Order is varied and restated as follows:

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

AND

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20, AS AMENDED (THE CFA)

AND

IN THE MATTER OF
NODAL EXCHANGE, LLC

ORDER
(Section 147 of the OSA and sections 38 and 80 of the CFA)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order (**Exemption Order**) dated October 7, 2014 and varied and restated on August 5, 2016, exempting Nodal Exchange, LLC (**Nodal Exchange**) from the requirement to be recognized as an exchange under subsection 21(1) of the OSA and the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA (**Exchange Relief**);

AND WHEREAS the Exemption Order also exempts trades in Nodal Contracts (as defined below) by a "hedger" as defined in subsection 1(1) of the CFA (**Hedger**) from the registration requirement under section 22 of the CFA (**Hedger Relief**) and trades in Nodal Contracts by a bank listed in Schedule I of the *Bank Act* (Canada) (**Bank**) entering orders only for its own account from the registration requirement under section 22 of the CFA (**Bank Relief**, and, together with the Hedger Relief, **Registration Relief**);

AND WHEREAS the Exemption Order defines "Nodal Contracts" as "cash settled commodity futures contracts offered by Nodal Exchange that are based on electric power and natural gas";

AND WHEREAS Nodal Exchange may offer trading in commodity futures contracts based on other underlying commodities and in commodity futures options;

AND WHEREAS Nodal Exchange has filed an application under section 144 of the OSA and under section 78 of the CFA requesting that the Commission issue an order varying the Exemption Order to amend the definition of "Nodal Contracts," to allow Nodal to provide direct access to Ontario Participants (as defined in the Exemption Order) that have obtained an exemption from the requirement to be registered under the CFA, and to make other minor amendments to update the order;

AND WHEREAS OSC Rule 91-503 *Trades in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges Situate Outside of Ontario* (**Rule 91-503**) exempts trades of commodity futures contracts or commodity futures options made on commodity futures exchanges not registered with or recognized by the Commission under the CFA from sections 25 and 53 of the OSA;

AND WHEREAS the deemed rule titled *In the Matter of Trading in Commodity Futures Contracts and Commodity Futures Options Entered into on Commodity Futures Exchanges in the United States of America* provides that section 33 of the CFA does not apply to trades entered into a commodity futures exchange designated by the United States (**U.S.**) Commodity Futures Trading Commission (**CFTC**) under the U.S. *Commodity Exchange Act* (**CEA**);

AND WHEREAS Nodal Exchange has represented to the Commission that:

1. Nodal Exchange is a limited liability company organized under the laws of the State of Delaware in the U.S. and is a wholly owned subsidiary of Nodal Exchange Holdings, LLC, a privately held limited liability company organized under the laws of the State of Delaware. Nodal Exchange Holdings, LLC is ultimately wholly owned by the European Energy Exchange AG (**EEX**) headquartered in Leipzig, Germany. EEX is a member of Deutsche Börse Group;

2. Nodal Exchange receives a majority of its revenue from transaction fees, which include electronic trading fees, surcharges for privately-negotiated transactions and other volume-related charges for contracts executed through the Nodal Exchange trading venue;

3. Nodal Exchange Holdings, LLC, as the holding company for Nodal Exchange, does not have operations of its own, does not have employees, relies upon the profits paid by its subsidiary and has limited contractual arrangements. Nodal Exchange is the primary employer and retains operational control;

4. Nodal Exchange is a designated contract market (**DCM**) by the CFTC, within the meaning of that term under the CEA. Nodal Exchange is subject to regulatory supervision by the CFTC, a U.S. federal regulatory agency. Nodal Exchange is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces Nodal Exchange's adherence to the CEA and regulations thereunder on an ongoing basis, including DCM core principles (**DCM Core Principles**) relating to the operation and oversight of Nodal Exchange's markets, including financial resources, systems and controls, maintenance of an orderly market, execution and settlement of transactions, rule-making and investor protection;

5. The CFTC's Division of Market Oversight, Market Compliance Section conducts regular in-depth reviews of each DCM's ongoing compliance with CFTC regulations in order to enforce its rules, prevent market manipulation and customer and market abuses, and to ensure the recording and safe storage of trade information. The results of these rule enforcement reviews are in most cases summarized in reports by the CFTC which are made available to the public and posted on the CFTC's website;

6. Nodal Exchange provides or intends to provide trading services for sophisticated commercial entities in Ontario transacting in commodity futures contracts and commodity futures options offered by Nodal Exchange (**Nodal Contracts**). Currently, Nodal Exchange offers cash settled commodity futures contracts that are based on electric power and natural gas and, only in the United States, commodity futures options. In the future, Nodal Exchange may offer commodity futures contracts based on other underlying commodities in accordance with the CEA and the regulations thereunder. Nodal Exchange offers over 1,000 power futures contracts settling to monthly peak or off-peak hours for hub, zone, or node locations within the organized power markets in the U.S. Nodal Exchange's commercial customers are comprised of both buy and sell side investors, including commercial and investment banks, corporations, money managers, proprietary trading firms, hedge funds, and other institutional customers. Nodal Contracts are cleared through Nodal Clear, LLC (**Nodal Clear**), by Nodal Clear clearing members (**Nodal Clear Clearing Member**). Nodal Clear is currently carrying on business pursuant to an order of the Commission dated July 11, 2016 exempting it from the requirement to be recognized as a clearing agency under section 21.2 of the OSA. All Nodal Clear Clearing Members holding customer accounts to guarantee the trades of Nodal Exchange Participants under paragraph 10 are registered FCMs with the CFTC. Such Nodal Clear Clearing Members are subject to the compliance requirements of the CEA, the CFTC, and the National Futures Association as they relate to customer accounts, including various know-your-client, suitability, risk disclosure, anti-money laundering and anti-fraud requirements. These requirements, in conjunction with the margin requirements for Nodal Contracts applicable to Nodal Clear Clearing Members, and subsequently to their clients whose trades they guarantee, ensure that Ontario Participants seeking to become Nodal Exchange Participants that are not also Nodal Clear Clearing Members are subjected to appropriate due diligence procedures and fitness criteria;

7. Nodal Exchange maintains and operates an electronic trading system known as Nodal LiveTrade, that functions as the electronic central limit order book (**Trading System**) where entities trade Nodal Contracts on a principal-to-principal basis for their proprietary accounts without the capability to trade through an intermediary in a fiduciary capacity such as a dealer or futures commission merchant (**FCM**);

8. Nodal Exchange also performs clearing support services that are administrative processes that enable participants to access Nodal Clear in order to clear Nodal Contracts that were executed off-exchange (**Block Trades**) and on the Trading System. These clearing support services are administrative roles that consist of two primary functions: 1) verifying that each account holder's trading activity does not cause their account to exceed the trade risk limit (**TRL**) provided by the Nodal Clear Clearing Member and 2) systems support for position keeping and clearinghouse administration;

9. Nodal Exchange does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory;

10. Nodal Exchange offers direct access in Ontario to its Trading System and facilities to prospective participants in Ontario (**Ontario Participants**). To obtain direct access to the Trading System and facilities of Nodal Exchange, an Ontario Participant must execute (i) a participant agreement with Nodal Exchange that requires, among other things, compliance with the rules of Nodal Exchange and all applicable laws relating to the use of Nodal Exchange, and (ii) a clearing agreement with a Nodal Clear Clearing Member unless the Ontario Participant is a Nodal Clear Clearing Member clearing for their own proprietary account (such participants on Nodal Exchange shall herein be referred to as **Nodal Exchange Participants**). Nodal Exchange Participants can transmit orders and trades directly into Nodal Exchange with the guarantee of a Nodal Clear Clearing Member. Nodal Exchange Participants are responsible for, among other things, compliance with the rules of Nodal Exchange, as those rules relate to the entering and executing

of transactions, and to comply with all applicable laws pertaining to the use of Nodal Exchange. The rules of the Nodal Exchange are designed to promote fair and equitable trading and to protect the market and market participants from abusive practices;

11. Ontario Participants are certain Canadian financial institutions (within the meaning of such term in subsection 1.1(3) of National Instrument 14-101 *Definitions*) and certain other market participants that have a head office or principal place of business in Ontario, such as (i) dealers and other entities that are engaged in the business of trading commodity futures contracts in Ontario; (ii) utilities and other commercial enterprises that are exposed to risks attendant upon fluctuations in the price of a commodity; and (iii) institutional investors and proprietary trading firms. In each case, Ontario Participants are (i) dealers that are engaged in the business of trading commodity futures contracts and commodity futures options in Ontario for their proprietary accounts, (ii) Hedgers, or (iii) Banks;

12. Nodal Contracts fall within the definition of "commodity futures contract" and "commodity futures options" as defined in section 1 of the CFA. As a result, Nodal Exchange is considered a "commodity futures exchange" as defined in section 1 of the CFA. Therefore, Nodal Exchange is prohibited from carrying on business in Ontario unless it is registered or exempt from registration as a commodity futures exchange under subsection 15(1) of the CFA;

13. As Nodal Exchange provides Ontario Participants with access in Ontario to its Trading System and facilities to trade Nodal Contracts, Nodal Exchange is considered to be "carrying on business as a commodity futures exchange in Ontario";

14. Nodal Exchange is not registered with or recognized by the Commission as a commodity futures exchange under the CFA and none of the Nodal Contracts have been accepted by the Director (as defined in the OSA) under the CFA. As a result, Nodal Contracts are also considered "securities" under paragraph (p) of the definition of "security" in section 1 of the OSA and Nodal Exchange is considered to be an "exchange" under the OSA. Therefore, Nodal Exchange is prohibited from carrying on business in Ontario unless it is recognized or exempt from recognition under subsection 21(1) of the OSA;

15. Further, while Nodal Contracts are also considered "securities" under paragraph (p) of the definition of "security" in section 1 of the OSA for the reasons outlined in the preceding paragraph, Nodal Contracts would not be considered "securities" under any other paragraph contained in that definition, nor would any Nodal Contract be considered a "derivative" as defined in section 1(1) of the OSA;

16. Similar to paragraph 13 above, since Nodal Exchange provides Ontario Participants with access in Ontario to trade Nodal Contracts, Nodal Exchange is considered to be "carrying on business as an exchange in Ontario";

17. Additionally, the exemption from registration in subsection 32(a) of the CFA applies for trades "by a hedger through a dealer". This exemption will not be available for trades in Nodal Contracts by Ontario resident Hedgers that become Nodal Exchange Participants since they will have direct access to Nodal Exchange but will not be considered to be executing "through a dealer". For this reason, Nodal Exchange is seeking Commission approval for the Hedger Relief;

18. Section 35.1 of the OSA provides that financial institutions are exempt from the requirement to be registered under the OSA to act as dealers provided that the conditions of the exemption are met. However, there is no corresponding exemption from registration for trades by financial institutions in the CFA. For this reason, Nodal Exchange sought Commission approval for the Bank Relief;

19. Nodal Exchange ensures that all applicants to become Nodal Exchange Participants must satisfy certain criteria, including, among other things: validly organized and in good standing, good reputation, business integrity and adequate financial resources to assume the responsibilities and privileges of being a Nodal Exchange Participant;

20. Based on the facts set out in the Application, Nodal Exchange satisfies the criteria for exemption set out in Appendix 1 of Schedule A to this order;

AND WHEREAS Nodal Exchange has acknowledged to the Commission that the scope of and the terms and conditions imposed by the Commission attached hereto as Schedule "A" to this order, or the determination whether it is appropriate that Nodal Exchange continue to be exempted from the requirement to be recognized as an exchange, may change as a result of the Commission's monitoring of developments in international and domestic capital markets or Nodal Exchange's activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives, commodity futures contracts, commodity futures options or securities;

AND WHEREAS based on the Application, together with the representations made by and acknowledgements of Nodal Exchange to the Commission, the Commission has determined that:

a. Nodal Exchange satisfies the criteria for exemption set out in Appendix 1 of Schedule A;

b. The granting of the Exchange Relief would not be prejudicial to the public interest; and

c. The granting of the Registration Relief would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission that:

a. Pursuant to section 147 of the OSA, Nodal Exchange continues to be exempt from recognition as an exchange under subsection 21(1) of the OSA;

b. Pursuant to section 80 of the CFA, Nodal Exchange continues to be exempt from registration as a commodity futures exchange under subsection 15(1) of the CFA;

c. Pursuant to section 38 of the CFA, trades in Nodal Contracts by Hedgers who are Ontario Participants continue to be exempt from the registration requirement under section 22 of the CFA; and

d. Pursuant to section 38 of the CFA, trades in Nodal Contracts by Banks who are Ontario Participants entering orders only for their own accounts continue to be exempt from the registration requirement under section 22 of the CFA;

PROVIDED THAT

a. Nodal Exchange complies with the terms and conditions attached hereto as Schedule A.

b. The Bank Relief shall expire on the earliest of:

(i) the expiry of any transition period as provided by law, after the effective date of the repeal of the CFA;

(ii) six months, or such other transition period as provided by law, after the coming into force of any amendment to Ontario commodity futures law or Ontario securities law (as defined in the OSA) that affects the dealer registration requirements in the CFA; and

(iii) August 4, 2021.

DATED October 7, 2014, as varied and restated on August 5, 2016 and September 29, 2017.

“Janet Leiper”

“Anne-Marie Ryan”

SCHEDULE "A"

TERMS AND CONDITIONS

Meeting Criteria for Exemption

1. Nodal Exchange will continue to meet the criteria for exemption included in Appendix 1 to this schedule.

Regulation and Oversight of Nodal Exchange

2. Nodal Exchange will maintain its registration as a DCM with the CFTC and will continue to be subject to the regulatory oversight of the CFTC.

3. Nodal Exchange will continue to comply with the ongoing requirements applicable to it as a DCM registered with the CFTC.

4. Nodal Exchange must do everything within its control, which would include cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the OSA, as a commodity futures exchange exempted from registration under subsection 15(1) of the CFA, and in compliance with Ontario securities law and Ontario commodity futures law.

Access

5. Nodal Exchange will maintain and operate a Trading System where Nodal Exchange Participants trade on a principal-to-principal basis for their own proprietary accounts without the capability to trade through an intermediary in a fiduciary capacity such as a dealer or FCM.

6. Nodal Exchange will not provide direct access to an Ontario Participant unless the Ontario Participant is appropriately registered to trade in Nodal Contracts, has obtained an exemption from registration, is a Hedger, or is a Bank; in making this determination, Nodal Exchange may reasonably rely on a written representation from the Ontario Participant that specifies either that it is appropriately registered to trade in Nodal Contracts, has obtained an exemption from registration, is a Hedger, or is a Bank, and Nodal Exchange will notify such Ontario Participant that this representation is deemed to be repeated each time it enters an order for a Nodal Contract.

7. Each Ontario Participant that intends to rely on the Hedger Relief will be required to, as part of its application documentation or continued access to trading in Nodal Contracts:

   (a) represent that it is a Hedger;

   (b) acknowledge that Nodal Exchange deems the Hedger representation to be repeated by the Ontario Participant each time it enters an order for a Nodal Contract and that the Ontario Participant must be a Hedger for the purposes of each trade resulting from such an order;

   (c) agree to notify Nodal Exchange if it ceases to be a Hedger;

   (d) represent that it will only enter orders for its own account;

   (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements; and

   (f) acknowledge that its ability to continue to rely on the Hedger Relief in accessing trading on Nodal Exchange will be dependent on the Commission continuing to grant the relief and may be affected by changes to the terms and conditions imposed in connection with the Hedger Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities.

8. Each Ontario Participant that intends to rely on the Bank Relief will be required to, as part of its application documentation or continued access to trading in Nodal Contracts:

   (a) represent that it will only enter orders as principal and for its own account only;

   (b) represent that it is a Bank;

(c) acknowledge that the Bank Relief may be affected by changes to the terms and conditions imposed in connection with the Bank Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities; and

(d) represent that it is not engaging in activities prohibited by its governing legislation.

9. Nodal Exchange will require Ontario Participants to notify Nodal Exchange if their applicable registration or exemption from registration has been revoked, suspended or amended by the Commission or if they have ceased to be eligible for the Registration Relief and, following notice from the Ontario Participant or the Commission and subject to applicable laws, Nodal Exchange will promptly restrict the Ontario Participant's access to Nodal Exchange if the Ontario Participant is no longer appropriately registered with the Commission, or is no longer eligible for the Registration Relief.

10. Nodal Exchange must make available to Ontario Participants appropriate training for each person who has access to trade in Nodal Contracts.

Trading by Ontario Participants

11. Nodal Exchange will not provide access to an Ontario Participant to trading in exchange-traded products of an exchange other than those of Nodal Exchange, unless such other exchange has sought and received appropriate regulatory standing in Ontario.

12. Nodal Exchange will not provide access to an Ontario Participant to trading in Nodal Contracts other than those that meet the definition of "commodity futures contract" or "commodity futures option" as defined in subsection 1(1) of the CFA, and which also fall under paragraph (p) of the definition of "security" in subsection 1(1) of the OSA, without prior Commission approval.

Submission to Jurisdiction and Agent for Service

13. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of Nodal Exchange in Ontario, Nodal Exchange will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.

14. Nodal Exchange will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Commission's regulation and oversight of Nodal Exchange's activities in Ontario.

Disclosure

15. Nodal Exchange will provide to its Ontario Participants disclosure that states that:

(a) rights and remedies against Nodal Exchange may only be governed by the laws of the U.S., rather than the laws of Ontario, and may be required to be pursued in the U.S. rather than in Ontario; and

(b) the rules applicable to trading on Nodal Exchange may be governed by the laws of the U.S., rather than the laws of Ontario.

Filings with the CFTC

16. Nodal Exchange will promptly provide staff of the Commission copies of all material rules of Nodal Exchange, and material amendments to those rules, that it files with the CFTC under the regulations pertaining to self-certification and/or approval.

17. Nodal Exchange will promptly provide staff of the Commission copies of all material contract specifications and material amended contract specifications that it files with the CFTC under the regulations pertaining to self-certification and/or approval.

18. Nodal Exchange will promptly provide staff of the Commission the following information to the extent it is required to file such information with the CFTC:

(a) the annual Board of Directors' report regarding the activities of the Board and its committees;

(b) the annual financial statements of Nodal Exchange;

(c) details of any material legal proceeding instituted against Nodal Exchange;

(d) notification that Nodal Exchange has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate Nodal Exchange or has a proceeding for any such petition instituted against it; and

(e) the appointment of a receiver or the making of any voluntary arrangement with creditors.

Prompt Notice or Filing

19. Nodal Exchange will promptly notify staff of the Commission of any of the following:

(a) any material change to its business or operations or the information provided in the Application, including, but not limited to:

(i) changes to the regulatory oversight by the CFTC;

(ii) the corporate governance structure of Nodal Exchange;

(iii) the access model, including eligibility criteria, for Ontario Participants;

(iv) systems and technology; and

(v) the clearing and settlement arrangements for Nodal Exchange;

(b) any change in Nodal Exchange's regulations or the laws, rules and regulations in the U.S. relevant to futures and options where such change may materially affect its ability to meet the criteria set out in Appendix 1 to this schedule;

(c) any condition or change in circumstances whereby Nodal Exchange is unable or anticipates it will not be able to continue to meet the DCM Core Principles or any applicable requirements of the CEA or CFTC regulations;

(d) any revocation or suspension of, or amendment to, Nodal Exchange's registration as a DCM by the CFTC or if the basis on which Nodal Exchange's registration as a DCM was granted has significantly changed;

(e) any known investigations of, or disciplinary action against, Nodal Exchange by the CFTC or any other regulatory authority to which it is subject;

(f) any matter known to Nodal Exchange that may affect its financial or operational viability, including, but not limited to, any significant system failure or interruption, including any cybersecurity breach; and

(g) any default, insolvency, or bankruptcy of any Nodal Exchange Participant known to Nodal Exchange or its representatives that may have a material, adverse impact upon Nodal Exchange or any Ontario Participant.

20. Nodal Exchange will promptly file with staff of the Commission copies of any Rule Enforcement Review report regarding Nodal Exchange once issued as final by the CFTC.

Quarterly Reporting

21. Nodal Exchange will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a quarterly basis (within 30 days of the end of each calendar quarter), and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Participants, specifically identifying for each Ontario Participant:

(i) its status as a Nodal Exchange Participant for Nodal Exchange, and

(ii) the basis upon which it represented to Nodal Exchange that it could be provided with direct access (i.e., that it is appropriately registered to trade in Nodal Contracts, has obtained an exemption from registration, is a Hedger, or is a Bank);

(b) a list of all Ontario Participants against whom disciplinary action has been taken in the last quarter by Nodal Exchange or, to the best of Nodal Exchange's knowledge, by the CFTC with respect to such Ontario Participants' activities on Nodal Exchange;

(c) a list of all referrals to the Nodal Exchange Chief Regulatory Officer by the Nodal Exchange Surveillance Team concerning Ontario Participants;

(d) a list of all Ontario applicants for status as an Ontario Participant who were denied such status or access to Nodal Exchange during the quarter;

(e) a list of all new by-laws, rules, and contract specifications, and changes to by-laws, rules and contract specifications, not already reported under sections 15 and 16 of this schedule;

(f) a list of all Nodal Contracts available for trading during the quarter, identifying any additions, deletions or changes since the prior quarter;

(g) for each Nodal Contract,

(i) the total trading volume and value originating from Ontario Participants, presented on a per Ontario Participant basis, and

(ii) the proportion of worldwide trading volume and value on Nodal Exchange conducted by Ontario Participants, presented in the aggregate for such Ontario Participants; and

(h) a list outlining each incident of a significant system outage that occurred at any time during the quarter for any system impacting Ontario Participants' trading activity, including trading, routing or data, specifically identifying the date, duration and reason for the outage, and noting any corrective action taken.

Annual Reporting

22. Nodal Exchange will arrange to have the annual audited financial statements of Nodal Exchange filed with the Commission promptly after their issuance.

Reporting

23. If an IT Service Auditor's Report (Report) is prepared for Nodal Exchange, Nodal Exchange will promptly file with the Commission the Report after the Report is issued as final by its independent auditor.

Information Sharing

24. Nodal Exchange will provide information (including additional periodic reporting) as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

APPENDIX 1

CRITERIA FOR EXEMPTION

PART 1 REGULATION OF THE EXCHANGE

1.1 Regulation of the Exchange

The exchange is regulated in an appropriate manner in another jurisdiction by a foreign regulator (Foreign Regulator).

1.2 Authority of the Foreign Regulator

The Foreign Regulator has the appropriate authority and procedures for oversight of the exchange. This includes regular, periodic oversight reviews of the exchange by the Foreign Regulator.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange,

(b) that business and regulatory decisions are in keeping with its public interest mandate,

(c) fair, meaningful and diverse representation on the board of directors (Board) and any committees of the Board, including:

(i) appropriate representation of independent directors, and

(ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange,

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest, and

(e) there are appropriate qualifications, remuneration, limitation of liability and indemnity provisions for directors, officers and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

PART 3 REGULATION OF PRODUCTS

3.1 Review and Approval of Products

The products traded on the exchange and any changes thereto are reviewed by the Foreign Regulator, and are either approved by the Foreign Regulator or are subject to requirements established by the Foreign Regulator that must be met before implementation of a product or changes to a product.

3.2 Product Specifications

The terms and conditions of trading the products are in conformity with the usual commercial customs and practices for the trading of such products.

3.3 Risks Associated with Trading Products

The exchange maintains adequate provisions to measure, manage and mitigate the risks associated with trading products on the exchange including, but not limited to, margin requirements, intra-day margin calls, daily trading limits, price limits, position limits, and internal controls.

PART 4 ACCESS

4.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure

(i) participants are appropriately registered as applicable under Ontario securities laws or Ontario commodity futures laws, or exempted from these requirements,

(ii) the competence, integrity and authority of systems users, and

(iii) systems users are adequately supervised.

(b) The access standards and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

(c) The exchange does not unreasonably prohibit, condition or limit access by a person or company to services offered by it.

(d) The exchange does not

(i) permit unreasonable discrimination among participants, or

(ii) impose any burden on competition that is not reasonably necessary and appropriate.

PART 5 REGULATION OF PARTICIPANTS ON THE EXCHANGE

5.1 Regulation

The exchange has the authority, resources, capabilities, systems and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of its participants, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 6 RULEMAKING

6.1 Purpose of Rules

(a) The exchange has rules, policies and other similar instruments (Rules) that are designed to appropriately govern the operations and activities of participants.

(b) The Rules are not contrary to the public interest and are designed to

(i) ensure compliance with applicable legislation,

(ii) prevent fraudulent and manipulative acts and practices,

(iii) promote just and equitable principles of trade,

(iv) foster co-operation and co-ordination with persons or companies engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in the products traded on the exchange,

(v) provide a framework for disciplinary and enforcement actions, and

(vi) ensure a fair and orderly market.

PART 7 DUE PROCESS

7.1 Due Process

For any decision made by the exchange that affects a participant, or an applicant to be a participant, including a decision in relation to access, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 8 CLEARING AND SETTLEMENT

8.1 Clearing Arrangements

The exchange has appropriate arrangements for the clearing and settlement of transactions through a clearing house.

8.2 Regulation of the Clearing House

The clearing house is subject to acceptable regulation.

8.3 Authority of Regulator

A foreign regulator has the appropriate authority and procedures for oversight of the clearing house. This includes regular, periodic regulatory examinations of the clearing house by the foreign regulator.

8.4 Access to the Clearing House

(a) The clearing house has established appropriate written standards for access to its services.

(b) The access standards for clearing members and the process for obtaining, limiting and denying access are fair, transparent and applied reasonably.

8.5 Sophistication of Technology of Clearing House

The exchange has assured itself that the information technology used by the clearing house has been adequately reviewed and tested and provides at least the same level of safeguards as required of the exchange.

8.6 Risk Management of Clearing House

The exchange has assured itself that the clearing house has established appropriate risk management policies and procedures, contingency plans, default procedures and internal controls.

PART 9 SYSTEMS AND TECHNOLOGY

9.1 Systems and Technology

Each of the exchange's critical systems has appropriate internal controls to ensure completeness, accuracy, integrity and security of information, and, in addition, has sufficient capacity and business continuity plans to enable the exchange to properly carry on its business. Critical systems are those that support the following functions:

(a) order entry,

(b) order routing,

(c) execution,

(d) trade reporting,

(e) trade comparison,

(f) data feeds,

(g) market surveillance,

(h) trade clearing, and

(i) financial reporting.

9.2 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts and circuit breakers.

PART 10 FINANCIAL VIABILITY

10.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 11 TRANSPARENCY

11.1 Transparency

The exchange has adequate arrangements to record and publish accurate and timely trade and order information. This information is provided to all participants on an equitable basis.

PART 12 RECORD KEEPING

12.1 Record Keeping

The exchange has and maintains adequate systems in place for the keeping of books and records, including, but not limited to, those concerning the operations of the exchange, audit trail information on all trades, and compliance with, and/or violations of exchange requirements.

PART 13 OUTSOURCING

13.1 Outsourcing

Where the exchange has outsourced any of its key services or systems to a service provider, it has appropriate and formal arrangements and processes in place that permit it to meet its obligations and that are in accordance with industry best practices.

PART 14 FEES

14.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and do not have the effect of creating an unreasonable condition or limit on access by participants to the services offered by the exchange.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 15 INFORMATION SHARING AND OVERSIGHT ARRANGEMENTS

15.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, self-regulatory organizations, other exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

15.2 Oversight Arrangements

Satisfactory information sharing and oversight agreements exist between the Ontario Securities Commission and the Foreign Regulator.

PART 16 IOSCO PRINCIPLES

16.1 IOSCO Principles

To the extent it is consistent with the laws of the foreign jurisdiction, the exchange adheres to the standards of the International Organisation of Securities Commissions (IOSCO) including those set out in the “Principles for the Regulation and Supervision of Commodity Derivative Markets” (2011).

2.2.13 Nodal Clear, LLC – s. 144

Headnote

Section 144 of the Securities Act (Ontario) (OSA) – variation of an order exempting Nodal Clear, LLC from the requirement to be recognized as a clearing agency under section 21.2 of the OSA – definition of "Nodal Contract" changed from "cash settled commodity futures contracts offered by Nodal Exchange that are based on electric power and natural gas" to read "commodity futures contracts and commodity futures options offered by Nodal Exchange" – minor non-substantive changes made to update the order.

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

AND

IN THE MATTER OF
NODAL CLEAR, LLC

ORDER
(Section 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated July 11, 2016 exempting Nodal Clear, LLC from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act (**Exemption Order**);

AND WHEREAS the Exemption Order defines Nodal Contracts as commodity futures contracts offered by Nodal Exchange that are based on electric power and natural gas;

AND WHEREAS Nodal Clear may offer clearing and settlement services for commodity futures contracts on other underlying commodities and in commodity futures options;

AND WHEREAS Nodal Clear has filed an application (**Application**) with the Commission pursuant to section 144 of the Act requesting that the Commission issue an order varying the Exemption Order to amend the definition of "Nodal Contract" in the Exemption Order and to make minor changes to update the Exemption Order;

AND WHEREAS based on the Application and the representations made to the Commission by Nodal Clear, the Commission has determined that it is not prejudicial to the public interest to vary and restate the Exemption Order;

IT IS ORDERED pursuant to section 144 of the Act that the Exemption Order be varied and restated as follows:

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

AND

IN THE MATTER OF
NODAL CLEAR, LLC

ORDER
(Section 147 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated July 11, 2016 exempting Nodal Clear, LLC from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act (**Exemption Order**);

AND WHEREAS the Exemption Order defines **Nodal Contracts** as commodity futures contracts offered by Nodal Exchange that are based on electric power and natural gas;

AND WHEREAS Nodal Clear may offer clearing and settlement services for commodity futures contracts on other underlying commodities and in commodity futures options offered by Nodal Exchange, LLC (**Nodal Exchange**);

AND WHEREAS Nodal Clear has filed an application (**Application**) with the Commission pursuant to section 144 of the Act requesting that the Commission issue an order varying the Exemption Order to amend the definition of "Nodal Contracts" in the Exemption Order and to make minor changes to update the Exemption Order;

AND WHEREAS Nodal Clear has represented to the Commission that:

1. Nodal Clear is a limited liability company organized under the laws of the State of Delaware in the United States (**US**) and is a wholly owned subsidiary of Nodal Exchange), a limited liability company organized under the laws of Delaware that is a designated contract market within the meaning of that term under the US *Commodity Exchange Act* (**CEA**) subject to the regulatory supervision by the US Commodity Futures Trading Commission (**CFTC**), a US federal regulatory agency. Nodal Exchange was exempted from recognition as an exchange and from registration as a commodity futures exchange in Ontario by an order of the Commission pursuant to section 147 of the Act and sections 38 and 80 of the *Commodity Futures Act*, R.S.O. 1990, Chapter C.20, as amended;

2. Nodal Clear is a derivatives clearing organization (**DCO**), within the meaning of that term under the CEA, by order issued by the CFTC as of September 24, 2015 (**CFTC DCO Order**). Nodal Clear is subject to regulatory supervision by the CFTC and is obligated under the CEA to give the CFTC access to all records unless prohibited by law or such records are subject to solicitor-client privilege. The CFTC reviews, assesses and enforces a DCO's adherence to the CEA and the regulations thereunder on an ongoing basis, including but not limited to, the DCO's compliance with "Core Principles" relating to financial resources, participant and product eligibility, risk management, settlement procedures, treatment of funds, default rules and procedures, rule enforcement and system safeguards. Nodal Clear is subject to ongoing examination and inspection by the CFTC;

3. Although Nodal Clear has not been designated by the Financial Stability Oversight Council as a systematically important financial utility under Title VIII of the Dodd Frank Act, Nodal Clear elected to be subject to the provisions of Subpart C of Part 39 of the CFTC's regulations (**Subpart C election**);

4. On October 19, 2015, following Nodal Clear's registration as a DCO, Nodal Clear commenced clearing Nodal Contracts as a DCO upon the transfer of the existing open contracts from LCH.Clearnet Ltd, a clearing agency recognized by the Commission under section 21.2 of the Act, to Nodal Clear;

5. Pursuant to the CFTC DCO Order, Nodal Clear is permitted to clear only those contracts executed on or through Nodal Exchange. Nodal Exchange provides or intends to provide trading services for sophisticated commercial entities in Ontario transacting in commodity futures contracts and commodity futures options offered by Nodal Exchange. Currently, Nodal Exchange offers cash settled commodity futures contracts that are based on electric power and natural gas and, only in the US, commodity futures options. In the future, Nodal Exchange may offer commodity futures contracts based on other underlying commodities in accordance with the CEA and the regulations thereunder. Nodal Exchange offers over 1,000 power futures contracts settling to monthly peak or off-peak hours for hub, zone, or node locations within the organized power markets in the U.S. Nodal Exchange's commercial customers are comprised of

both buy and sell side investors, including commercial and investment banks, corporations, money managers, proprietary trading firms, hedge funds, and other institutional customers;

6. Clearing members of Nodal Clear that hold customer accounts to guarantee the clearing of Nodal Contracts are registered futures commission merchants (FCM) with the CFTC, while those that solely hold proprietary accounts are not required to be registered as FCMs (collectively, **Clearing Members**). FCMs are regulated by the CFTC typically for the purpose of conducting customer business in the US. Clearing Members generally consist of banks, financial institutions, and securities houses/investment banks;

7. Nodal Clear currently has one Clearing Member that has a head office or principal place of business in Ontario, with privileges to clear Nodal Contracts on its own behalf (**Ontario Clearing Member**);

8. Nodal Clear's risk model includes certain rules and procedures (and other aspects of its legal framework) governing Nodal Clear's role as central counterparty, as well as appropriate membership criteria that are risk-based. Nodal Clear operates a robust pricing and margining/collateral methodology. Nodal Clear also has in place appropriate banking and custody arrangements, default resources and management processes. These components are linked by daily monitoring and oversight, undertaken by an experienced risk management team, with appropriate oversight by the Risk Management Committee;

9. The membership requirements of Nodal Clear are publicly disclosed and are designed to permit fair and open access, while protecting Nodal Clear and its Clearing Members. The clearing membership requirements include fitness criteria, financial standards, operational standards and appropriate registration qualifications with applicable statutory regulatory authorities. Nodal Clear applies a due diligence process to ensure that all applicants meet the required criteria and conducts on-going monitoring of Clearing Members;

10. All applicants seeking to become a Clearing Member must complete an application for membership and make deposits into a Nodal Clear guaranty fund;

11. Nodal Clear does not have any offices or maintain other physical installations in Ontario or any other Canadian province or territory;

12. Nodal Clear implements and maintains a system of financial safeguards designed to anticipate potential market exposures and ensure sufficient resources are available to cover future obligations;

13. Nodal Clear submits that it does not pose a significant risk to the Ontario capital markets and is subject to an appropriate regulatory and oversight regime in a foreign jurisdiction;

AND WHEREAS Nodal Clear has agreed to the respective terms and conditions as set out in Schedule “A” to this order;

AND WHEREAS based on the Application and the representations Nodal Clear has made to the Commission, the Commission has determined that Nodal Clear is subject to regulatory requirements in the US that is comparable to the requirements set out in National Instrument 24-102 *Clearing Agency Requirements* and is subject to CFTC's supervision, and that granting an Order to exempt Nodal Clear from the requirement to be recognized as a clearing agency would not be prejudicial to the public interest;

AND WHEREAS Nodal Clear has acknowledged to the Commission that the scope of and the terms and conditions imposed by the Commission attached hereto as Schedule “A” to this order, or the determination whether it is appropriate that Nodal Clear continue to be exempted from the requirement to be recognized as a clearing agency, may change as a result of the Commission's monitoring of developments in international and domestic capital markets or Nodal Clear’s activities, or as a result of any changes to the laws in Ontario affecting trading in derivatives, commodity futures contracts, commodity futures options or securities;

IT IS HEREBY ORDERED by the Commission that, pursuant to section 147 of the Act, Nodal Clear is exempt from the requirement to be recognized as a clearing agency under subsection 21.2(0.1) of the Act;

PROVIDED THAT Nodal Clear complies with the terms and conditions attached hereto as Schedule “A”.

DATED July 11, 2016, as varied and restated on September 29, 2017.

“Janet Leiper”

“Anne-Marie Ryan”

SCHEDULE "A"

Terms and Conditions

Definitions

For the purposes of this Schedule "A":

"client clearing" means the ability of a Clearing Member to clear transactions at Nodal Clear for and on behalf of a client who is not a Clearing Member.

Unless the context requires otherwise, other terms used in this Schedule "A" shall have the meanings ascribed to them in Ontario securities law (including terms defined elsewhere in this Order).

Clearing agency activities

1. Nodal Clear's clearing agency activities in Ontario shall be limited to the clearing of Nodal Contracts for Ontario participants on Nodal Exchange.

Regulation of Nodal Clear

2. Nodal Clear shall maintain its registration, including its Subpart C election, with the CFTC as a DCO under the CEA, and continue to be subject to the regulatory oversight of the CFTC.

3. Nodal Clear shall continue to comply with its ongoing regulatory requirements as a DCO under the CEA.

Governance

4. Nodal Clear shall promote within Nodal Clear a governance structure that minimizes the potential for any conflict of interest between Nodal Clear and its shareholder(s) that could adversely affect the clearing of products cleared by Nodal Clear or the effectiveness of Nodal Clear's risk management policies, controls and standards.

Filings with CFTC

5. Nodal Clear will promptly provide staff of the Commission the following information, to the extent that it is required to file such information with the CFTC:

   (a) details of any material legal proceeding instituted against Nodal Clear;

   (b) notification that Nodal Clear has failed to comply with an undisputed obligation to pay money or deliver property to a Clearing Member for a period of thirty days after receiving notice from the Clearing Member of Nodal Clear's past due obligation;

   (c) notification that Nodal Clear has instituted a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate Nodal Clear or has a proceeding for any such petition instituted against it;

   (d) notification that Nodal Clear has initiated its recovery plan;

   (e) the appointment of a receiver or the making of any voluntary arrangement with creditors;

   (f) the entering of Nodal Clear into any resolution regime or the placing of Nodal Clear into resolution by a resolution authority; and

   (g) material changes to its bylaws and rules where such changes would impact Ontario Clearing Members or Ontario residents whose trades are cleared and settled through Clearing Members.

Prompt Notice

6. Nodal Clear shall promptly notify staff of the Commission of any of the following:

   (a) any material change or proposed material change to its status as a DCO or in its regulatory oversight by the CFTC;

(b) any material problems with the clearing and settlement of transactions that could materially affect the safety and efficiency of Nodal Clear;

(c) the admission of any new Ontario Clearing Members;

(d) any event of default by an Ontario Clearing Member or a Clearing Member that provides client clearing to Ontario residents; and

(e) any material system failure of a clearing service utilized by an Ontario Clearing Member including cybersecurity breaches.

Quarterly Reporting

7. Nodal Clear shall maintain and submit the following information to the Commission in a manner and form acceptable to the Commission on at least a quarterly basis within 30 days of the end of the quarter, and at any time promptly upon the request of staff of the Commission:

(a) a current list of all Ontario Clearing Members and their legal entity identifier (LEI);

(b) a list of all Ontario Clearing Members against whom disciplinary action has been taken in the quarter by Nodal Clear with respect to activities at Nodal Clear, or to the best of Nodal Clear's knowledge, by the CFTC or any other authority in the US that has or may have jurisdiction over Nodal Clear's Clearing Members with respect to such Ontario Clearing Members' clearing activities at Nodal Clear;

(c) a list of all investigations by Nodal Clear in the quarter relating to Ontario Clearing Members;

(d) a list of all Ontario-resident applicants who have been denied Clearing Member status in the quarter by Nodal Clear;

(e) the maximum and average daily open interest, number of transactions and notional value of Nodal Contracts cleared by type of Nodal Contract during the quarter, for each Ontario Clearing Member;

(f) the percentage of average daily open interest, number of transactions and the notional value of Nodal Contracts cleared by type of Nodal Contract during the quarter for all Clearing Members that represents the average daily open interest, total transactions and notional value of trades cleared during the quarter for each Ontario Clearing Member;

(g) the aggregate total margin amount required by Nodal Clear ending on the last trading day during the quarter for each Ontario Clearing Member;

(h) the portion of the total margin required by Nodal Clear ending on the last trading day of the quarter for all Clearing Members that represents the total margin required during the quarter for each Ontario Clearing Member; and

(i) the guaranty fund contribution, for each Ontario Clearing Member on the last trading day during the quarter, and its proportion of the total guaranty fund contributions;

(j) for each Clearing Member (identified by its LEI) offering client clearing to Ontario residents, the identity of the Ontario resident client (including LEI) receiving such services, and the value and volume by type of Nodal Contracts cleared during the quarter for and on behalf of each Ontario resident client; and

(k) a copy of Nodal Clear's bylaws and rules showing all cumulative changes made during the quarter.

Information Sharing

8. Nodal Clear shall promptly provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to applicable privacy or other laws governing the sharing of information and the protection of personal information.

9. Unless otherwise prohibited under applicable law, Nodal Clear shall share information relating to regulatory and enforcement matters and otherwise cooperate with other recognized and exempt clearing agencies on such matters, as appropriate.

2.2.14 EagleMark Ventures, LLC et al. – ss. 127(1), 127(10)

IN THE MATTER OF
EAGLEMARK VENTURES, LLC,
FALCON HOLDINGS, LLC,
RICHARD LIAN
(also known as RICHARD TERRY RUUSKA) and
ENNA M. KELLER

Mark J. Sandler, Chair of the Panel

October 2, 2017

ORDER
(Subsections 127(1) and 127(10) of the Securities Act, RSO 1990, c S.5)

WHEREAS the Ontario Securities Commission held a hearing in writing, in relation to an application by Staff of the Commission (**Staff**) for an order imposing sanctions pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

ON READING the materials filed by the representatives of Staff, no one participating for EagleMark Ventures, LLC (**EagleMark**), Falcon Holdings, LLC (**Falcon**), Richard Lian (also known as Richard Terry Ruuska) and Enna M. Keller, although properly served as appears from the Affidavit of Service of Lee Crann, sworn August 21, 2017;

IT IS ORDERED THAT:

1. against Lian:

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

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

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

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

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

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

2. against Keller:

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

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

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

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

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

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

3. against EagleMark:

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

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

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

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

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

4. against Falcon:

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

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

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

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

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

“Mark J. Sandler”

2.2.15 Crystal Wealth Management System Limited et al. – s. 127(8)

IN THE MATTER OF
CRYSTAL WEALTH MANAGEMENT SYSTEM LIMITED,
CLAYTON SMITH,
CLJ EVEREST LTD,
1150752 ONTARIO LIMITED,
CRYSTAL WEALTH MEDIA STRATEGY,
CRYSTAL WEALTH MORTGAGE STRATEGY,
CRYSTAL ENLIGHTENED RESOURCE & PRECIOUS METAL FUND,
CRYSTAL WEALTH MEDICAL STRATEGY,
CRYSTAL WEALTH ENLIGHTENED FACTORING STRATEGY,
ACM GROWTH FUND,
ACM INCOME FUND,
CRYSTAL WEALTH HIGH YIELD MORTGAGE STRATEGY,
CRYSTAL ENLIGHTENED BULLION FUND,
ABSOLUTE SUSTAINABLE DIVIDEND FUND,
ABSOLUTE SUSTAINABLE PROPERTY FUND,
CRYSTAL WEALTH ENLIGHTENED HEDGE FUND,
CRYSTAL WEALTH INFRASTRUCTURE STRATEGY,
CRYSTAL WEALTH CONSCIOUS CAPITAL STRATEGY and
CRYSTAL WEALTH RETIREMENT ONE FUND

Janet Leiper, Commissioner

October 2, 2017

ORDER
(Subsection 127(8) of the Securities Act, RSO 1990, c S.5)

WHEREAS on October 2, 2017, the Ontario Securities Commission (the **Commission**) held a hearing at the offices of the Commission located at 20 Queen Street West, 17th Floor, Toronto, Ontario, with respect to an application by Staff of the Commission (**Staff**) to extend the temporary cease trade order initially issued on April 6, 2017, amended on April 7, 2017, and extended on April 13, 2017 and April 28, 2017 (the **Temporary Order**);

ON READING the materials filed by Staff, the consent email dated September 21, 2017 from counsel for the Receiver, Grant Thornton Limited which was appointed by order of the Ontario Superior Court of Justice (Commercial List) pursuant to section 129 of the *Securities Act*, RSO 1990, c S.5 (the **Act**) on April 26, 2017 (the **Receiver**), and the email of Clayton Smith (**Smith**), dated September 23, 2017 stating that Smith does not consent to the extension of the Temporary Order, and on considering the oral submissions of Staff, appearing in person, and no one appearing for the Receiver and no one appearing for Smith although properly served;

IT IS ORDERED that:

1. pursuant to subsection 127(8) of the Act, the Temporary Order is extended until April 10, 2018, or until further order of the Commission, without prejudice to the right of any of the parties to seek to vary the Temporary Order on application to the Commission, with the following modifications:

a. the portions of paragraphs 4 and 5 of the order dated April 7, 2017, referring to Smith in his capacity as advising representative are struck, given that Smith is no longer acting in the capacity of an advising representative at Crystal Wealth Management System Limited, as his registration was automatically suspended when he was terminated by the Receiver; and

2. the hearing of this matter is adjourned until April 9, 2018 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.

DATED at Toronto, this 2nd October, 2017.

"Janet Leiper"

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Chapter 3

Reasons: Decisions, Orders and Rulings

3.1 OSC Decisions

3.1.1 EagleMark Ventures, LLC et al. – ss. 127(1), 127(10)

IN THE MATTER OF
EAGLEMARK VENTURES, LLC,
FALCON HOLDINGS, LLC,
RICHARD LIAN
(also known as RICHARD TERRY RUUSKA) and
ENNA M. KELLER

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the Securities Act, RSO 1990, c S.5)

Citation: *EagleMark Ventures, LLC (Re)*, 2017 ONSEC 33

Date: 2017-10-02

Hearing:	In writing		
Decision:	October 2, 2017		
Panel:	Mark J. Sandler	–	Chair of the Panel
Appearances:	Keir D. Wilmut	–	For Staff of the Commission
	No submissions were made by or on behalf of the respondents		

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REASONS AND DECISION

I. OVERVIEW

[1] This is an application by Enforcement staff (**Staff**) of the Ontario Securities Commission (the **Commission**) for an order pursuant to subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5 (the **Act**) imposing certain sanctions on each of EagleMark Ventures, LCC (**EagleMark**), Falcon Holdings, LLC (**Falcon**), Richard Lian (also known as Richard Terry Ruuska) and Enna M. Keller.

[2] Staff relies on paragraph 4 of subsection 127(10) of the Act to reciprocate the order of the British Columbia Securities Commission (the **BCSC**) dated February 14, 2017 (*Re Eaglemark*, 2017 BCSECCOM 42) (the **Order**).

[3] In an earlier ruling in this proceeding, I held that each of the respondents had been properly served with notice of this application. I also granted Staff's unopposed request that the application be heard in writing in accordance with subsection 5.1(1) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22 (the **SPPA**).

[4] In deciding this matter, I have read the materials filed by Staff, including its helpful submissions. The respondents did not file any responding materials and have not otherwise participated in this proceeding.

[5] Subsection 7(2) of the SPPA authorizes a tribunal to proceed in the absence of a party when such party has been given notice of a written hearing and does not participate in the hearing. I am satisfied that the respondents were properly served and have notice of the written hearing and that the matter may proceed in their absence.

[6] In this written hearing, I must determine whether the respondents have been made subject to an order made by another securities regulatory authority in any jurisdiction that imposes sanctions, conditions, restrictions or requirements on them (**sanctions**) and whether it is in the public interest to make a reciprocal order in Ontario.

[7] For the reasons that follow, I grant the application on the terms proposed by Staff.

II. THE BCSC DECISION AND ORDER

[8] On August 22, 2016, a panel of the BCSC (the **BC panel**) found that each of the respondents had violated the British Columbia *Securities Act*, RSBC 1996, c 418 (the **BC Act**). More specifically, it concluded that Lian and Keller perpetrated a fraud, Keller traded in securities without registration and without any available exemptions and all respondents contravened a BCSC cease trade order and a BCSC temporary order, all in contravention of the BC Act. These findings are elaborated upon in the BC panel's Decision (*Re Eaglemark Ventures, LLC*, 2016 BCSECCOM 288). It is unnecessary for me to repeat that elaboration in these reasons.

[9] In the Order, the BC panel imposed a number of sanctions on each of the respondents.

III. LAW AND ANALYSIS

[10] Staff requests that the Commission impose sanctions similar to those imposed by the BC panel, to the extent possible under the Act. The precise terms of the inter-jurisdictional or reciprocal order requested by Staff are set out below at paragraph [19].

[11] As already indicated, paragraph 4 of subsection 127(10) of the Act authorizes an order under subsection (1) where respondents are subject to an order made by another securities regulatory authority in any jurisdiction that imposes sanctions on them. I am satisfied that this precondition has been met.

[12] Where the above precondition has been met, the Commission has the discretion whether to grant the application. In *Global 8 Environmental Technologies, Inc. (Re)*, 2017 ONSEC 31 at para 12 (***Global 8***), I summarized the applicable principles derived from the Act and the jurisprudence:

a. The Commission must be satisfied that the requested order is in the public interest;

b. The Commission should consider, in determining whether the requested order is in the public interest, whether the order is necessary to protect investors in Ontario and for the integrity of Ontario's capital markets;

c. Any connection between respondents or their contraventions and Ontario may inform the Commission's discretion, but such a connection is not a precondition to the exercise of the Commission's authority under section 127;

d. The purpose of the Commission's public interest jurisdiction is "neither remedial nor punitive; it is protective and preventative"; the purpose of a subsection 127(1) order "is to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets";

e. The purpose of a subsection 127(1) order "is to protect the public interest by removing from the capital markets those whose past conduct is so abusive as to warrant apprehension of future conduct detrimental to the integrity of the capital markets";

f. Deterrence, both specific and general, is a relevant consideration in whether a protective and preventative order should be made and what that order should include. Deterrence "is prospective in orientation and aims at preventing future conduct";

g. Pursuant to subsection 127(10), the findings of fact made by another regulatory authority stand as determinations of fact for the purpose of the Commission's exercise of discretion under subsection 127(1) of the Act;

h. An important factor for the Commission's consideration is whether the respondent's conduct, if it had been committed in Ontario or otherwise came within Ontario's jurisdiction, would have constituted a breach of

Ontario securities law, would have been regarded as contrary to the public interest and would have attracted the same or similar sanctions;

i. Paragraph 5 of section 2.1 of the Act provides that "[t]he integration of capital markets is supported and promoted by the sound and responsible harmonization and co-ordination of securities regulation regimes." In today's world, securities activities transcend provincial, territorial and, indeed, national boundaries. This reality and section 2.1 of the Act reinforce the importance of inter-jurisdictional cooperation and comity, which include, in this context, identifying and reciprocating orders made in other jurisdictions so as to promote the effectiveness of regulatory authorities and protect the public interest; and

j. In determining what sanctions are appropriate to incorporate into a section 127 order, subject to my comments contained in paragraph [14] below, the Commission must consider the particular circumstances as they relate to each respondent.

[13] There is no diminished burden of persuasion, in law, on Staff who requests that an inter-jurisdictional order be made. The ordinary burden of persuasion applies. However, as the Commission held in *New Futures Trading International Corporation (Re)*, 2013 ONSEC 21 at para 27:

> Comity requires that there not be barriers to recognizing and reciprocating the orders of other regulatory authorities when the findings of the foreign jurisdiction qualify under subsection 127(10) of the Act as a judgment that invokes the public interest. For comity to be effective and the public interest to be protected, the threshold for reciprocity must be low.

[14] Furthermore, comity supports an approach in which the Commission has due regard to the sanctions imposed by another regulatory authority when it considers whether or what appropriate sanctions should be imposed in Ontario.

[15] Each of the respondents engaged in serious misconduct. Fraud, involving dishonest deprivation, constitutes egregious conduct. All of the respondents' misconduct involved contraventions of core statutory provisions specifically designed to protect the public and promote the integrity of the capital markets. Having regard to the totality of the circumstances, including the nature and extent of the misconduct, a failure to make an inter-jurisdictional order would be contrary to the public interest and the integrity of the capital markets. As stated in Global 8 at para 42, such a failure "would undermine public confidence in the capital markets and the regulation of the securities industry. It would send the message that regulators are relatively powerless in their ability to restrain future misconduct when serious misconduct has occurred elsewhere."

[16] The respondents' misconduct, if committed in Ontario, would have contravened the Act. This is not a precondition to the making of an inter-jurisdictional order. However, it reinforces, as stated in *Global 8* at para 43, "the desirability of deterring not only the respondents, but other like-minded individuals from violating comparable provisions of Ontario securities law. It signals that securities violators should not feel immunized from global or, in this instance, national regulatory scrutiny …".

[17] I am satisfied that the evidence strongly supports the imposition of the requested order to restrain future conduct that is likely to be prejudicial to the public interest in fair and efficient capital markets. Staff is not required to prove that the misconduct is likely to occur in Ontario. In *Global 8*, I explained why this is so.

[18] The proposed order generally tracks the Order of the BC panel. Moreover, it represents the kinds of sanctions imposed in Ontario for similar misconduct.

IV. DISPOSITION

[19] For the above reasons, the application is allowed, and an order is made in the following terms:

a. with respect to Lian:

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

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Lian cease permanently;

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

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

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

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

b. with respect to Keller:

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

ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, the acquisition of any securities by Keller cease permanently;

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

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

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

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

c. with respect to EagleMark:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of EagleMark cease permanently;

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

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

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

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

d. with respect to Falcon:

i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities of Falcon cease permanently;

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

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

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

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

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

“Mark J. Sandler”

3.1.2 David Gregor McClure – ss. 127(1), 127(10)

IN THE MATTER OF
DAVID GREGOR McCLURE

REASONS FOR DECISION
(Subsections 127(1) and (10) of the Securities Act, RSO 1990, c S.5)

Citation: *McClure (Re)*, 2017 ONSEC 34

Date: 2017-10-02

Hearing:	September 26, 2017		
Reasons:	October 2, 2017		
Panel:	Philip Anisman	–	Commissioner
Appearances by:	Malinda N. Alvaro	–	For Staff of the Commission
	David Gregor McClure not appearing		

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REASONS FOR DECISION

I. INTRODUCTION

[1] Reciprocal orders represent a legislative recognition of the fact that Canada's securities markets are not constrained by provincial borders. The *Securities Act* of Ontario (the **Act**), for example, authorizes the Ontario Securities Commission (the **Commission**) to make an order under subsection 127(1) imposing sanctions on a person who has been convicted of an offence in or found to have contravened the laws of any jurisdiction for conduct relating to securities or derivatives or who has been sanctioned by another securities, derivatives or financial regulatory authority under an order made by or under an agreement with that authority.[1]

[2] Although a conviction, finding, order or agreement may provide a sufficient basis for the Commission to make an order under subsection 127(1), the Commission must determine the sanctions that are appropriate in the public interest. In a proceeding based on an order or agreement (s. 127(10)4 or 5), the sanctions will generally mirror the sanctions imposed by another provincial securities regulatory authority, but they may not result in "twin orders",[2] as the sanctions authorized by subsection 127(1) are not always identical to the sanctions available under the securities acts in other provinces.[3] As a result, it is frequently necessary to modify the terms of an order that is being reciprocated so that the Commission's reciprocating order both accomplishes the purpose of the original order to the extent necessary to protect investors and the securities market in Ontario and is within its jurisdiction under subsection 127(1).[4]

[3] This proceeding illustrates this process. On August 16, 2017, the respondent, David Gregor McClure (**McClure**), entered a settlement agreement and undertaking (**Settlement Agreement**) with the Alberta Securities Commission (ASC), in which he admitted that he traded in securities without being registered, distributed securities of four corporations that as a director, he managed and/or controlled, without filing a prospectus, and made

1 RSO 1990, c S.5, s. 127(10) (**OSA** or **Act**).

2 *McLean v. British Columbia (Securities Commission)*, [2013] 3 SCR 895 at para 15.

3 See e.g. *Re Dhanani* (2017), 40 OSCB 4457 at paras 8-9 and 13.

4 An order based on judicial proceedings, whether criminal or civil, is not reciprocal in the sense of mirroring an order of another regulator, but is based on the conviction or finding and the conduct underlying it; see e.g. *Re Banks* (2003), 26 OSCB 3377 at paras. 10-13, 92-93 and 126-128; *Re Drabinsky* (2017), 40 OSCB 5305.

misrepresentations to investors in connection with the sale of shares, contrary to the Alberta *Securities Act* (**ASA**) and the public interest.[5]

[4] In addition to his agreeing to pay $50,000 to the ASC as a settlement and $30,000 for ASC Staff's investigation and legal costs, McClure agreed to resign all positions he held as a director or officer of an issuer "that relies on any exemptions contained in Alberta securities laws or that distributes securities to the public" and to refrain for three years from becoming or acting as a director or officer of any such issuer, from trading or purchasing securities or derivatives other than in a tax-saving plan under Canadian tax law, and from relying on an exemption in Alberta securities law. He also agreed to refrain for three years from engaging in "investor relations activities", advising in securities or derivatives and "acting in a management or consultative capacity in connection with activities in the securities market." The former four non-monetary sanctions parallel express provisions in subsection 127(1); the latter three do not.[6]

II. THE ORDER

[5] The order made on September 26, 2017 (the **Order**), to which McClure consented, reciprocates the non-monetary sanctions in the Settlement Agreement with modifications reflecting the differences between subsection 127(1) and the ASA.

[6] Paragraphs 1 and 2 of the Order reflect the three-year prohibition in the Settlement Agreement against trading or purchasing securities or derivatives. The authority under the Act, however, is more limited than under the ASA.[7] While the Commission may prohibit trading in securities and derivatives, it can only prohibit the acquisition of securities.[8] Accordingly paragraph 2 of the Order prohibits the acquisition of securities, but makes clear that the prohibition applies to derivatives that are securities. It thus replicates the Settlement Agreement to the extent possible under the Act.

[7] The Settlement Agreement prohibits McClure from acting as a director or officer of an issuer that relies on an exemption in Alberta securities law or distributes securities to the public. As an issuer that distributes securities in Ontario must rely on an exemption or file a prospectus, the parallel prohibition in paragraphs 4 and 5 of the Order prohibits McClure from acting as a director or officer of any issuer.

[8] Subsection 127(1) of the Act does not refer to investor relations activities or acting in a management or consultative capacity and it does not authorize the Commission to prohibit advising.[9] The ASA defines "investor relations activities" as "any activities or oral or written communications, by or on behalf of an issuer or security holder of the issuer, that promote or reasonably could be expected to promote the purchase or sale of securities of the issuer".[10] Investor relations activities may thus constitute "trading"[11] and may include activities by a registrant, a promoter, an officer of an issuer, a consultant or another third party.

[9] The ASA does not define "acting in a management or consultative capacity". Although it defines "management contract" and "management company" in terms of providing investment advice,[12] the prohibition in the Settlement Agreement extends further. Managerial and consultative activities relating to the securities market may be performed by a director or officer of an issuer, a registrant, including an adviser, an investment fund manager, a promoter or a third party consultant.

[10] The Order addresses these sanctions in paragraphs 4 to 7.[13] It prohibits McClure from acting as a director or officer of an issuer or registrant (including an investment fund manager)[14] and from acting as a registrant[15] or promoter. Although the sanctions in the Settlement Agreement may be somewhat broader, the Order thus parallels them to the extent of the Commission's authority under the Act and effectively prohibits McClure from engaging in activities relating to the securities market in Ontario like those identified in the Settlement Agreement.

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5 *Re McClure*, 2017 ABASC 144; McClure's conduct contravened subsections 75(1), 92(4.1) and 110(1) of the *Securities Act*, RSA 2000, c S-4, as amended (**ASA**).

6 OSA, ss. 127(1)2, 2.1, 3, 7 and 8.

7 ASA, s. 198(1)(b) authorizes an order that a person "cease trading in or purchasing" securities or derivatives.

8 OSA, ss. 127(1)2 and 2.1.

9 Compare ASA, ss. 198(1)(c.1), (e.1) and (e.3). ASA, s. 1(a.1) defines "advising in securities or derivatives" as including "giving, offering or agreeing to give advice to another person or company about investing or buying or selling securities or derivatives".

10 ASA, s. 1(bb.3). The definition excludes specified activities that are not relevant here.

11 See OSA, s. 1(1) "trade" or "trading" (e) (conduct in furtherance of a sale of a security or of a derivatives transaction).

12 ASA, ss. 1(dd) and (ee); see also OSA, s. 1(1).

13 As well as in paragraph 1, which prohibits trading in securities and derivatives.

14 As an investment fund manager is also a registrant, the express inclusion results from repetition in subsection 127(1); see *Re Dhanani*, note 3, above, para 14.

15 A person may not engage in the business of advising without registration; OSA, s. 25(3). As the Order also provides that no exemption applies to McClure, it prohibits all such activity by him.

III. A NOTE ON PROCESS

[11] It should be noted that the process followed in this proceeding has been exemplary. The Statement of Allegations and the Notice of Hearing were issued on August 31, 2017, approximately two weeks after the Settlement Agreement was signed. Staff served the Notice of Hearing and the Statement of Allegations on McClure the following day, September 1, 2017, by email and courier, and on September 6, 2017 emailed the lawyer who had represented McClure before the ASC.[16]

[12] McClure's lawyer responded that he had instructions to accept service and advised that McClure would neither oppose nor appear. Staff served their materials on September 7[17] and their hearing brief on September 19, 2017.[18] The hearing brief contained a copy of a consent to a draft order signed by McClure's lawyer earlier that day.[19]

[13] These materials were filed and provided to me prior to the hearing. On September 25, 2017, at my request, the Registrar sent a revised draft order to Staff, asked them to send a copy of it to McClure's lawyer, and stated that any issues could be addressed at the hearing.[20] McClure's lawyer confirmed his consent to the revised draft order prior to the hearing.[21]

[14] The revised order was addressed at the hearing on September 26, 2017 and signed that day, approximately six weeks after the Settlement Agreement.

[15] As stated in *Dhanani*, in an ideal world, the sanctions in the Settlement Agreement would have become effective throughout Canada on August 16, 2017.[22] In this case, Staff followed its usual practice of requesting in the Notice of Hearing and Statement of Allegations that the proceeding be conducted in writing. McClure's consent permitted the Order to be made on the initial return date. A process like the one suggested in *Dhanani*,[23] in which Staff serves its materials and brief with the Notice of Hearing, would facilitate making reciprocal orders more expeditiously following a timeline like the one that occurred in this case.

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

"Philip Anisman"

16 Exhibit 1, Affidavit of Lee Crann, sworn September 20, 2017. Rule 1.5.1(2)(c) of the *OSC Rules of Procedure* provides that electronic service is effective on the day it is sent. Service by courier is effective on the earlier of the date of delivery and the second day after it is sent (Rule 1.5.1(2)(d)); Staff's materials were delivered on September 5, 2017 (Exhibit 1, Tab 2).

17 *Ibid*.

18 Exhibit 2, Affidavit of Lee Crann, sworn September 20, 2017.

19 Exhibit 3, Hearing Brief of Staff, Tab 1 (Consent) and Tab 4 (Draft Order).

20 Exhibit 4, Email from Lee Crann, September 25, 2017.

21 Exhibit 5, Email from Phil Lalonde, September 25, 2017.

22 *Re Dhanani*, note 3, above, para 11. *Dhanani* refers to four provinces in which protective orders by securities regulatory authorities in Canada automatically apply as of the date they are made. There are now five such provinces; see *Securities Act*, RSM 1988, c S50, ss 148.4(3)-(4), added by SM 2017, c 2, s 2 (effective June 2, 2017).

23 *Re Dhanani*, note 3, above, para 12.

3.2 Director's Decisions

3.2.1 Acker Finley Asset Management Inc. – s. 31

IN THE MATTER OF
STAFF'S RECOMMENDATION TO IMPOSE TERMS AND CONDITIONS ON
THE REGISTRATION OF
ACKER FINLEY ASSET MANAGEMENT INC.

OPPORTUNITY TO BE HEARD BY THE DIRECTOR
UNDER SECTION 31 OF THE SECURITIES ACT (ONTARIO)

Decision

1. For the reasons outlined below, my decision is to impose the terms and conditions on the registration of Acker Finley Asset Management Inc. (**AFAM** or the **Firm**) as recommended by staff (**Staff**) of the Compliance and Registrant Regulation Branch (**CRR**) of the Ontario Securities Commission (**OSC** or **Commission**) with the following changes noted below:

   a) delete paragraph 1 (a) (ii), and replace it with the following:

      (ii) provide a written report to the Firm and to Staff that explains how the Firm will establish a system of controls and supervision that achieves best execution for its clients, identifies and values soft dollar arrangements and complies with its conflicts of interest obligations on a go-forward basis.

   b) delete paragraph 1 (a) (iii), and replace it with the following:

      (iii) assist AFAM in comparing trade execution options and arrangements between NBCN, AFI and any other dealer to determine the most advantageous execution terms reasonably available on a go-forward basis.

2. The terms and conditions as amended to reflect these changes are set out in Appendix A.

3. My decision is based on the written submissions of Mark Skuce, Senior Legal Counsel, CRR and Michael Burns, of McMillan LLP., counsel for AFAM, the supporting affidavit evidence and other supporting materials, and responses to questions from the Director.

Background

4. AFAM is registered under the *Securities Act* (Ontario) (the **Act**) as a portfolio manager and an investment fund manager. The Firm's office is located in Toronto, and AFAM is registered only in Ontario.

5. AFAM states that it has a relatively small operation. According to AFAM's submissions, AFAM has approximately 50 clients with approximately 180 total accounts (the **Managed Accounts**)[1] with assets under management (**AUM**) of approximately $76 million.[2] In addition to the Managed Accounts, AFAM also operates two investment funds (the **AFAM Funds**) with an AUM of approximately $78 million.[3]

6. AFAM generally uses the services of a related dealer, Acker Finley Inc. (**AFI**), for trade execution purposes. AFAM is related to AFI by common ownership. AFI is registered under the Act as an investment dealer and is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**). AFAM and AFI operate out of the same office, and according to AFAM, the operations of the two firms are fully integrated for all intents and purposes.[4]

Compliance review

7. Beginning in September 2016, AFAM was the subject of a compliance review (the **Compliance Review**) by Staff, which was conducted pursuant to section 20 of the Act. The Compliance Review covered the period from September 1, 2015 to August 31, 2016.

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1 Written submissions of Acker Finley Asset Management Inc. (9 June 2017) at 1 [AFAM Response].

2 Written submissions of Staff of the Ontario Securities Commission (19 May 2017) at 2 [OSC Staff Submission].

3 *Ibid*.

4 *Ibid*.

8. The Compliance Review identified a number of deficiencies in AFAM's compliance with Ontario securities law, which are set out in the Compliance Field Review Report dated April 13, 2017 (the **Report**). The Report included nine significant deficiencies and 12 additional deficiencies for a total of 21 deficiencies. Among the issues identified as significant deficiencies were the following:[5]

- Failure to meet best execution obligation;
- Inadequate policies and procedures for conflicts of interest and inadequate response to conflicts of interest;
- Inadequate documentation of know your client (**KYC**) information and KYC information not current;
- Investments not in line with statement of investment objectives and policies (**SIOP**); and
- Inadequate compliance system, and Chief Compliance Officer (**CCO**) and Ultimate Designated Person (**UDP**) not adequately performing responsibilities.

Proposed regulatory action

9. As a result of the findings of the Compliance Review, on April 13, 2017, Staff informed AFAM that they intended to recommend to the Director that terms and conditions be imposed on AFAM's registration (the **Regulatory Action Letter**).

10. In its Regulatory Action Letter, Staff advised AFAM that its recommendation was based on its view that the Firm had failed to comply with Ontario securities law, and that it lacked the requisite proficiency for unconditional registration. Staff's letter stated that the recommendation was based on all of the findings of the Compliance Review, but it also outlined the specific compliance deficiencies that were of greatest concern to Staff, which it grouped into three categories: (i) deficiencies relating to AFAM's process for trade execution, (ii) deficiencies relating to AFAM's portfolio management, and (iii) AFAM's overall deficient compliance system.[6]

11. The proposed terms and conditions would require AFAM to retain an independent compliance consultant (**Consultant**) to assist the firm in developing a plan to rectify the deficiencies that had been identified through the Compliance Review.

12. This remediation process, as proposed by Staff, would expressly require a calculation and repayment of amounts that AFAM – through its use of AFI as its dealer – has allegedly overcharged clients by reason of its alleged failure to comply with its obligations relating to conflicts of interest and best execution.[7]

13. Pursuant to section 31 of the Act, AFAM is entitled to an opportunity to be heard (**OTBH**) before the Director decides whether to accept Staff's recommendations to impose the proposed terms and conditions. Counsel for AFAM subsequently advised Staff that it wished to request an OTBH before the Director under section 31 of the Act.

The Opportunity to be Heard

14. In May 2017, Staff submitted a memorandum with supporting materials to the Director in support of its recommendation that certain terms and conditions (the **Terms and Conditions**) be imposed on the registration of AFAM. The Terms and Conditions would require, among other things, AFAM to retain a Consultant and to perform specified remedial activities.

15. The Terms and Conditions as proposed by Staff are set out in Appendix A to this decision, but without consideration of the changes that I have reflected through the blacklining.

16. In Staff's submissions, Staff focused primarily on certain of the significant compliance deficiencies because in Staff's view these deficiencies represent high risk areas that AFAM has not properly addressed. However, Staff wished to reiterate that these are not the only deficiencies identified during the Compliance Review. The high-risk areas identified are:

    (a) AFAM's trade execution process appears to be non-compliant with at least three statutory obligations: best execution, responding to conflicts of interest and fair dealing with clients;

[5] *Ibid* at 3.
[6] *Ibid* at 4.
[7] *Ibid*.

(b) AFAM failed to comply with KYC and suitability obligations; and

(c) AFAM's overall compliance system lacks the proper system of controls and supervision.

AFAM's response

17. AFAM advised that it considers compliance to be an integral element of its business and is eager to address any issues identified by Staff during the Compliance Review. However, AFAM does not believe that the imposition of terms and conditions and the requirement to retain a compliance consultant would be beneficial in addressing Staff's concerns. AFAM claims that it has an experienced compliance team in place and believes that it can make all required changes to its compliance system to satisfy Staff's concerns with the help of its external legal counsel who is already familiar with the operations of AFAM, AFI and its client base.[8]

18. AFAM further submits that, having regard to the size and nature of its business, the most effective way to accomplish the remediation of the compliance deficiencies and an overall enhancement to their compliance systems is for AFAM to work with its external legal counsel to address the relevant points identified in the Compliance Review without the need for the appointment of a compliance consultant or the imposition of terms and conditions on its registration.[9]

The Director's authority to impose Terms and Conditions

19. The Director's authority to impose terms and conditions is found in section 28 of the Act. Section 28 of the Act establishes three distinct grounds upon which the Director may impose terms and conditions: (i) if the company is not suitable for registration, (ii) if the company has failed to comply with Ontario securities law, and (iii) if the registration of the company is otherwise objectionable.

20. In *Re Argosy Securities Inc. and Keybase Financial Group Inc.* (2016), 39 OSCB 4040 at para 49, the Commission said of the statutory grounds in section 28: "Each one of these tests, if satisfied, is a sufficient basis by itself for the imposition of terms and conditions."

21. The Commission has stated that when deciding whether to impose terms and conditions under section 28 of the Act, the Director is not conducting an enforcement proceeding, and this informs the level of proof required by the Director:

> [T]he Director (and by extension the Commission) may impose terms and conditions upon a registration if "it appears" that the registrant has failed to comply with Ontario securities law. This is not an enforcement proceeding, and we are not necessarily being asked to conclude, on a balance of probabilities, that the Applicants have contravened Ontario securities law. It is sufficient for us to conclude, as we do, that it appears that there has been a failure to comply with Ontario securities law. *Ibid* at para 179.

Issues

22. Accordingly, the questions before me are as follows:

(a) Based on my review of the entire record, does it appear that AFAM has failed to comply with Ontario securities law?

(b) If yes, does it appear that the Firm lacks the necessary proficiency for unconditional registration? In other words, is it necessary and appropriate to impose the Terms and Conditions as proposed by Staff to bring the Firm into compliance with Ontario securities law and to protect investors from the harm that may result from these failures to comply with Ontario securities law?

(c) If it is necessary and appropriate to impose the Terms and Conditions requiring the Firm to retain a Consultant, then should there be any restrictions on who can perform the duties of this role? For example, are there any concerns with the Firm's external legal counsel performing the duties of a Consultant?

23. While I have taken note of the other deficiencies identified by Staff in the Report, I have chosen to focus on the alleged high-risk significant deficiencies in this decision. These significant deficiencies include:

(a) AFAM's trade execution process, including compliance with the statutory obligations of best execution, responding to conflicts of interest and fair dealing with clients;

8 AFAM Response, *supra* note 1 at 1.

9 *Ibid* at 15.

(b) AFAM's compliance with KYC and suitability obligations; and

(c) AFAM's overall compliance system, and its system of controls and supervision.

Reasons for the Decision

a) AFAM's trade execution process

Best execution requirements

24. AFAM places its trades for individual clients with one of two dealers: AFI or NBCN Inc. (**NBCN**), and it places all of the AFAM Funds' trades with AFI. If an AFAM client has a brokerage account at AFI, which most do, trades in their account will be placed with AFI (which then settles and clears them with NBCN). If an AFAM client does not have an AFI account, their trades will be placed with NBCN directly.[10]

25. As noted above, AFAM is related to AFI by common ownership. AFAM and AFI operate out of the same office, and according to AFAM, the operations of the two firms are fully integrated for all intents and purposes.

26. Staff has submitted information that appears to demonstrate that AFAM clients paid higher commissions during the Compliance Review period from September 1, 2015 to August 31, 2016 because AFI trade commission costs are higher than NBCN.[11]

27. Staff calculated the commission charges that would have been paid by the AFAM Funds had their trades been placed with NBCN instead of AFI, and found the amount to be $148,120 (versus the $177,892 actually charged by AFI),[12] an estimated difference of $29,772.

28. Staff estimated that there was a potential monetary impact for Managed Account clients estimated to be $2,600, depending on which commission schedule is used and whether commissions were charged for the trades.[13]

29. AFAM disputes Staff's assertion that the commissions paid to AFI are materially higher than those paid to NBCN.[14] AFAM also argues that, to the extent they are higher, AFAM clients are not disadvantaged by paying a higher commission because AFAM receives research reports from AFI. Effectively, the higher commissions represent "soft dollars" as that term is used in National Instrument 23-102 *Use of Client Brokerage Commissions* (**NI 23-102**).

30. Section 4.2 of National Instrument 23-101 *Trading Rules* (NI 23-101) states:

> A dealer and an adviser must make reasonable efforts to achieve best execution when acting for a client.

31. Section 1.1 of NI 23-101 defines the term "best execution" as follows:

> "best execution" means the most advantageous execution terms reasonably available under the circumstances;

32. Section 4.1 of the Companion Policy to NI 23-101 further describes this obligation as follows:

> 4.1 **Best Execution**
>
> (2) Section 4.2 of the Instrument requires a dealer or adviser to make reasonable efforts to achieve best execution (the most advantageous execution terms reasonably available under the circumstances) when acting for a client. The obligation applies to all securities.
>
> (3) [Although] what constitutes "best execution" will vary depending on the particular circumstances … to meet the "reasonable efforts" test, a dealer or adviser should be able to demonstrate that it has, and has abided by, policies and procedures that (i) require it to follow the client's instructions and the objectives set, and (ii) outline the process it has designed toward the objective of achieving best execution. The policies and procedures should describe how the dealer or adviser evaluates

[10] OSC Staff Submission, *supra* note 2 at 2.

[11] *Ibid* at 2.

[12] *Ibid* at 4.

[13] Supplementary Affidavit of Susan Pawelek, sworn June 16, 2017, at para 16 [Pawelek Affidavit].

[14] AFAM Response, *supra* note 1 at 1, 3-6.

> whether best execution was obtained and should be regularly and rigorously reviewed. The policies outlining the obligations of the dealer or adviser will be dependent on the role it is playing in an execution ... An adviser should consider a number of factors, including assessing a particular client's requirements or portfolio objectives, selecting appropriate dealers and marketplaces and monitoring the results on a regular basis.

33. The rule requires a "reasonable efforts" test and the Companion Policy sets out guidance on some of the factors to be considered when determining if the dealer or adviser engaged in a reasonable effort to obtain best execution. Therefore, the determination of whether AFAM met the reasonable efforts test is dependent on a facts-and-circumstances analysis.

34. In order to assess whether AFAM complied with its regulatory best execution requirements, I first considered whether AFAM had policies and procedures (**Policy**) in place. Yes, AFAM has a very basic Policy that states that the Firm will select a broker based on best execution and price.[15]

35. Next, does the Policy outline a process designed to achieve best execution? Does the Policy describe how the adviser evaluates whether best execution was obtained and does it provide for a regular and rigorous review? Does it explain how appropriate dealers and marketplaces are selected?

36. No, AFAM's Policy does not describe the process it uses to evaluate best execution. It does not include any provision about selecting dealers or marketplaces, and it does not detail how to review trading to determine if best execution has been achieved. Finally, AFAM does not have a system to monitor results on a regular basis, let alone on a rigorous basis as suggested in the Companion Policy.

37. In support of AFAM's claim that it meets its best execution obligations, AFAM's advising representative stated in his affidavit that he

> … prefers to use AFI as a broker. This is a result of: (a) AFI's good execution; (b) AFI's provision of continuous access to the QSA system database …; (c) AFI's provision of access to their "Advent Axyx" system, which is portfolio management software used for, among other things, the production of client holding summaries, performance reporting and billing; and (d) Freedom of delivery against payment problems which may exist with other institutions.[16]

38. I am not prepared to accept, without any evidence or supporting analysis, the bald assertion that AFI provides best execution (or "good execution" in the words of AFAM's advising representative). AFAM has not submitted any information to demonstrate that it has conducted any kind of analysis or evaluation of trading to determine whether best execution has been obtained on any trade executed for AFAM clients.

39. Counsel for AFAM claims that

> Staff conducting the Compliance Audit only requested and received information concerning the trading commissions at AFI, NBCN and other brokers used by AFAM. The questions related to the amounts of the trading commissions, not research goods or services provided by AFI to AFAM.
>
> AFAM strongly disagrees with Staff's position that it has not complied with its best execution obligation. The research goods and services provided by AFI form an integral element of AFAM's investment decision making process. AFI is not merely executing trades on behalf of AFAM. The additional amounts over the base execution commission charged by NBCN and others cited in the Staff Submissions (which amount to an aggregate of $29,772 over the 12 month period of the Compliance Review) relate to the research goods and services provided to AFAM during that period.[17]

40. There is no dispute that the provisions of NI 23-101 make it clear that one must consider a number of factors, including, but not limited to, price, when considering whether the best execution obligation of an adviser has been met. However, Staff has submitted that "at no time during the compliance review did anyone from AFAM refer to QSA as the basis upon which AFAM was complying with its best execution obligations.[18] Further, Staff asked the Firm's CCO "… whether AFAM had any soft dollar arrangements and she said it did not."[19]

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15 OSC Staff Submission, *supra* note 2 at 2.

16 Affidavit of John Charles Cushing, sworn June 6, 2017, at para 16 [Cushing Affidavit].

17 AFAM Response, *supra* note 1 at 10.

18 Pawelek Affidavit, *supra* note 13 at para 20.

19 *Ibid* at para 21.

41. Further, AFAM does not have a Policy relating to soft dollars, so there is no ability to assess AFAM's compliance with NI 23-102.

42. Paragraph 3.1(2)(b) of NI 23-102 states that an adviser must ensure that "a good faith determination is made that the client or clients receive reasonable benefit considering both the use of the goods or services and the amount of client brokerage commission paid."

43. AFAM has not provided any evidence to support that they made any determination that the value of the research goods and services provided by AFI has been fairly valued, and that clients are receiving reasonable benefit from the goods and services to support a higher commission cost.

44. Also, section 4.1 of NI 23-102 sets out a list of items that must be disclosed to clients if a firm enters into soft dollar arrangements. AFAM has not provided any evidence to demonstrate that they complied with this disclosure obligation.

45. AFAM's advising representative, in his affidavit, stated that "… the difference in prices charged by AFI over the price charged by NBCN for execution-only services is explained by the value of the research goods and services supplied by AFI."[20]

46. Again, I am not prepared to accept, without any evidence or supporting analysis, the assertion that the difference in prices charged by AFI over the price charged by NBCN for execution-only services is explained by the value of the research goods and services supplied by AFI.

47. In order to address AFAM's claim that Staff did not request the relevant information during the Compliance Review, I put the following question to AFAM's counsel:

> "… Please provide a yes or no answer and an explanation to the following questions:
>
> Prior to the commencement of the compliance review, did AFAM conduct a review/analysis of their business operations/practices to determine if they were in compliance with Ontario securities laws in the following areas:
>
> a. best execution,
>
> b. soft dollar payments and approvals,
>
> c. conflicts of interest relating to all matters relating to its affiliated dealer Acker Finley Inc. (AFI),
>
> d. standard of care under section 116 of Securities Act (Ontario); and
>
> e. common law fiduciary duty for discretionary managed accounts.
>
> If a review/analysis was conducted prior to the commencement of the review period, please provide the specific date that the review was completed and documentation of the review that was created at the time of the review. Please do not re-submit materials that have already been provided in this OTBH."[21]

48. AFAM's response to this particular question is:

> "No, AFAM did not conduct a formal review or analysis of its business operations and practices that focused specifically on matters enumerated in Question 2 to determine if they were in compliance with Ontario securities laws.
>
> AFAM is aware of the regulatory requirements and its obligations as a registrant under applicable Ontario securities laws and is vigilant in ensuring that its conduct with respect to best execution, soft dollars, conflicts of interest and standard of care are in compliance with Ontario securities laws."[22]

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20 Cushing Affidavit, *supra* note 16 at para 17; AFAM Response, *supra* note 1 at 3.

21 Email from Director Debra Foubert to Michael Burns and Mark Skuce re "Confidential – Acker Finley Asset Management Inc. OTBH," dated August 8, 2017.

22 Written submissions of Acker Finley Asset Management Inc. (22 August 2017) at paras 7-8 [AFAM Response to Director Questions].

49. Based upon the entirety of the record provided, I am not satisfied that AFAM has complied with its obligations under section 4.2 of NI 23-101 to make reasonable efforts to achieve best execution for any trade made during the Compliance Review period.

50. Similarly, I am not satisfied that AFAM has complied with its obligations under paragraph 3.1(2)(b) of NI 23-102 to ensure that a good faith determination is made that clients receive reasonable benefit, considering both the use of the goods or services and the amount of client brokerage commission paid. Therefore, I conclude that AFAM's failure to comply with the requirements in NI 23-101 and NI 23-102 is a breach of Ontario securities law.

Potential monetary impact on clients resulting from failure to comply with best execution obligations

51. Staff and AFAM's counsel have submitted conflicting information as to whether there has been an adverse monetary impact on AFAM's clients for failing to comply with the best execution obligations.

52. Staff has provided evidence that alleges that AFAM Funds and Managed Account clients may have been overcharged by approximately $29,772 and $2,600, respectively, over the 12-month period of the Compliance Review.[23]

53. Staff provides that "Trades made by AFAM for most [of] its clients are executed by AFI as an introducing broker (if the client has an AFI account), or by NBCN (if the client does not have an AFI account). Even where a trade is executed by AFI, it is still settled and cleared by NBCN as AFI's carrying broker. In all of these cases, AFAM clients are ultimately receiving trading services from NBCN, but if the client also has an AFI account, AFI performs the trade execution, at what appears to be a higher commission than what NBCN charges. In this way, AFI has interposed itself as an unnecessary and expensive middleman between the client and NBCN, which has resulted in a potential overcharge to clients."[24]

54. As noted above, AFAM disputes Staff's methodology in making this comparison and also asserts that this comparison ignores the "vitally important research and other informational services provided by AFI that warrants the higher commissions charged for trades directed through AFI."[25]

55. On the basis of this contradictory evidence, I am not able to determine whether and to what extent there may have been an adverse monetary impact on clients as a result of the AFAM's failure to comply with its best execution obligations. There is a possibility that, notwithstanding AFAM's failure to make reasonable efforts to achieve best execution for its clients, there may have been little or no monetary impact on these clients. In the specific circumstances of this case, it is possible that the research goods and services provided by AFI, if fairly valued, could justify the higher commission costs, as permitted by NI 23-102.

56. However, I also accept that it is possible that there may have been an adverse monetary impact on clients, and potentially a significant adverse monetary impact, as a result of AFAM's failure to comply with its best execution obligations.

57. In the face of the contradictory submissions and evidence, I cannot make a finding that AFAM's clients sustained an adverse monetary impact. Considering the lack of review and analysis completed by AFAM regarding their trade execution practices, I am not confident that AFAM will be able to conduct a review and analysis of their trade execution practices without the assistance of a qualified Consultant.

58. Accordingly, I believe it is necessary to impose terms and conditions requiring AFAM to engage a Consultant to assist the Firm in comparing trade execution options and arrangements between NBCN, AFI and any other dealer to determine the most advantageous execution terms reasonably available on a go-forward basis.

59. Through the course of the comparative analysis review, if there is evidence that AFAM's clients have sustained an adverse monetary impact, then AFAM, acting reasonably, should take steps to remediate the adverse impact.

Conflicts of interest requirements

60. As noted above, Staff has also argued that AFAM's trade execution process, and in particular its practice of directing client trades to a related dealer, AFI, and paying higher commissions to the related dealer than would otherwise be payable to a dealer operating at arm's length from the Firm, represents a failure on the part of AFAM to respond to conflicts of interest with its clients.

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23 See paras 27-28, *above*.

24 OSC Staff Submission, *supra* note 2 at 4.

25 AFAM Response, *supra* note 1 at 8.

61. As noted above, AFAM is related to AFI by common ownership. AFAM and AFI operate out of the same office, and according to AFAM, the operations of the two firms are fully integrated for all intents and purposes.

62. According to AFAM's Policy, AFAM will select a broker based on best execution and price.[26] In addition, AFAM provides disclosure to clients in both the investment management agreements (the **IMAs**) for Managed Accounts and in the offering memoranda for the AFAM Funds stating that AFAM may direct the execution of portfolio transactions through AFI, provided that the services of AFI are delivered at prices and on terms that are comparable to those available elsewhere to AFAM and its clients.[27]

63. In practice, AFAM places its trades for individual clients with one of two dealers: AFI or NBCN, and it places all of the AFAM Funds' trades with AFI. If an AFAM client has a brokerage account at AFI, which most do, trades in their account will be placed with AFI (which then settles and clears them with NBCN). If an AFAM client does not have an AFI account, their trades will be placed with NBCN directly.

64. The material conflict is that AFAM appears to be conferring a benefit on its related dealer through the payment of commissions from its Managed Account clients and AFAM Funds, which ultimately confers a benefit on their common shareholder. Accordingly, directing trades to AFI gives rise to a material conflict of interest between AFAM and its client.

65. Section 13.4 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) requires a registered firm to take reasonable steps to identify and respond to existing and potential material conflicts of interest that may arise between the firm and a client. Section 13.4 of NI 31-103 provides as follows:

> 13.4 **Identifying and responding to conflicts of interest**
>
> (1) A registered firm must take reasonable steps to identify existing material conflicts of interest, and material conflicts of interest that the registered firm in its reasonable opinion would expect to arise, between the firm, including each individual acting on the firm's behalf, and a client.
>
> (2) A registered firm must respond to an existing or potential conflict of interest identified under subsection (1).
>
> (3) If a reasonable investor would expect to be informed of a conflict of interest identified under subsection (1), the registered firm must disclose, in a timely manner, the nature and extent of the conflict of interest to the client whose interest conflicts with the interest identified.

66. The Companion Policy to NI 31-103 explains that there are generally three methods of responding to a conflict of interest: avoidance, control, and disclosure.

67. In the IMAs for AFAM's Managed Account clients, AFAM did disclose the fact that it will permit its affiliated dealer, AFI, to execute trades for discretionary managed accounts and provide clients with the option to designate another broker to execute the trades at the client's direction. Similarly, in the offering memoranda for the AFAM Funds, AFAM did disclose that it is expected that brokerage services for the AFAM Funds will be provided by the AFAM affiliated dealer, AFI.

68. In both instances, there is language to state that the services of AFI will be provided at prices and upon terms that are comparable to those available elsewhere to AFAM and its clients.[28]

69. Although AFAM did correctly identify the material conflict as required in subsection 13.4(1) of NI 31-103 and has provided limited disclosure about the conflict in the relevant documents, AFAM does not appear to have taken any other steps to respond to the conflict as required in subsection 13.4(2) of NI 31-103.

70. In particular, I note that the IMAs include disclosure that suggests that AFAM's Managed Account clients may choose to have trades in their portfolio conducted by a dealer other than AFI:[29]

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[26] OSC Staff Submission, *supra* note 2 at 2.

[27] *Ibid* at 6; AFAM Response, *supra* note 1 at 11.

[28] OSC Staff Submission, *supra* note 2 at 6.

[29] *Ibid*.

> AFAM will permit Acker Finley Inc. to execute portfolio transactions with respect to accounts managed on a discretionary basis by AFAM, provided that a client does not object to same and has not given specific instructions as to whom is to undertake brokerage activities in respect of that client's portfolio and provided further than Acker Finley Inc. has adequate capability to execute such portfolio transactions and provides its services at prices and on terms that are comparable to those available elsewhere to AFAM and its clients.

71. In my view, where a material conflict of interest exists, and where AFAM's clients may be paying higher commissions than would otherwise be payable to an unrelated dealer, it is not sufficient to simply disclose to clients that an affiliated dealer will execute portfolio transactions unless the client objects.

72. AFAM has not provided any evidence to show that the potential consequences of the material conflict, namely, potentially higher commission rates, have been explained to the client. On the contrary, clients have been assured in the IMAs and the offering memoranda that the services of AFI are delivered at prices and on terms that are comparable to those available elsewhere to AFAM and its clients.

73. There was conflicting evidence put forward that NBCN charged commission fees that could be less than the fees charged by AFI, and AFAM appears to have conceded that this could be the case, in some cases at least, since it has sought to justify the difference in commissions by reference to the "vitally important research and other informational services provided by AFI that warrants the higher commissions charged for trades directed through AFI."[30]

74. AFAM has not been able to provide any evidence to support its position that AFI does in fact provide services at prices and upon terms that are comparable to those available elsewhere to AFAM and its clients.

75. Further, while there has been disclosure of the relationship between AFAM and AFI, there does not appear to have been any disclosure to clients that, in some cases, they may benefit from a lower commission rate by having their trades placed with NBCN directly.

76. Finally, AFAM's advising representative's assertion that AFI is providing "good execution" is not a reasonable response to a material conflict of interest.

77. Under the circumstances, I am not satisfied that a simple disclosure stating that AFI will execute trades unless the client objects is an effective response to a material conflict of interest. I am concerned that AFAM is simply relying on a limited "boiler plate"-type disclosure of the material conflict as a way to respond to the material conflict, and has not turned its mind as to whether this disclosure is an effective response to the conflict.

78. Based on the evidence presented throughout this OTBH, I am not satisfied that AFAM has effectively responded to this material conflict of interest, and have determined that AFAM has failed to comply with its obligation in subsection 13.4(2) of NI 31-103. Therefore, I conclude that AFAM's failure to comply is a breach of Ontario securities law.

Fair dealing requirements

79. Staff has also submitted that, by directing client account trades to a related dealer that appears to charge a higher commission for the same services as other dealers, AFAM failed to comply with its obligation to deal fairly, honestly and in good faith with its clients, as required by subsection 2.1(1) of OSC Rule 31-505 Conditions of Registration.

80. In the recent case of *Pro-Financial Asset Management et al*, 2017 ONSEC 9, (2017) 40 OSCB 3903, the constituent elements of this fundamental registrant obligation were described in paragraph 27 as follows:

> As the phrase "fairly, honestly and in good faith" is not defined in the Act, Staff points to the following definitions of "fairly" and "honest" found in *Webster's Encyclopaedic Dictionary* and the definition of "good faith" found in *Black's Law Dictionary* which provide a useful context for the discussion which follows:
>
> **Fairly:** in a just and equitable manner.
>
> **Honest:** never deceiving, stealing or taking advantage of the trust of others, sincere, truthful.
>
> **Good faith:** a state of mind consisting in (1) honesty in belief or purpose, (2) faithfulness to one's duty or obligation, (3) observance of reasonable commercial standards of fair dealing in a given

[30] AFAM Response, *supra* note 1 at 8.

> trade or business, or (4) absence of intent to defraud or to seek unconscionable advantage. [internal citations omitted].

81. As noted above, I have concluded that AFAM has failed to comply with:

- its obligations under section 4.2 of NI 23-101 to make reasonable efforts to achieve best execution;
- its obligations under subsection 3.1(2) of NI 23-102 to make a good faith determination that its clients receive a reasonable benefit from the use of client brokerage commissions; and
- its obligation in subsection 13.4(2) of NI 31-103 to respond to a material conflict of interest in an effective manner.

82. In addition, as described further below, I am not satisfied that AFAM has complied with its obligations under section 11.1 of NI 31-103 to "establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to … (a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation."

83. Based on the findings above, AFAM has not established, maintained or applied policies and procedures that establish a system of controls and supervision sufficient to provide reasonable assurance that the Firm and each individual acting on its behalf complies with the Firm's best execution obligations, use of client brokerage commissions or its obligation to respond to conflicts of interest.

84. In view of the foregoing, I believe it is reasonable to conclude that, in relation to its trade execution activities and conflicts of interest obligations, AFAM has not complied with its obligation to deal fairly with its clients. There is insufficient evidence to draw a conclusion on whether AFAM has dealt honestly and in good faith with its clients so I will not make a finding regarding those elements of this fundamental registrant obligation.

b) KYC and suitability obligations

85. During the Compliance Review, Staff identified missing or out-of-date KYC and suitability information, and investments not in line with the SIOP for a number of managed client accounts advised by one of AFAM's advising representatives.

86. AFAM stated that the clients with the out-of-date KYC and suitability information have been clients of one advising representative for decades and that, due to this longstanding relationship, the advising representative knows the clients intimately. That is all well and good, but that is not an appropriate means for complying with AFAM's KYC and suitability obligations.

87. In its submission, "AFAM acknowledges the importance of its KYC and suitability obligations."[31] Also, AFAM acknowledges that there is missing or out-of-date KYC and suitability information, and that they need to maintain records to demonstrate compliance with these requirements.[32]

88. AFAM has advised that it will undertake to address all KYC and suitability-related inconsistencies, and that AFAM will conduct a review and update of its Policy. It will also communicate its Policy to its advising representatives and staff to ensure that it complies with its KYC, suitability and record-keeping obligations.[33]

89. I accept AFAM's acknowledgement that there are deficiencies in their KYC and suitability processes, and accept their statements that they will remediate the deficiencies and implement a system of controls to maintain the appropriate records. So, it is unnecessary for me to make a finding on this ground.

90. Reporting on the progress of remediating AFAM's KYC and suitability deficiencies will be included in the Consultant's plan.

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31 *Ibid* at 12.

32 *Ibid* at 12-13.

33 *Ibid* at 13.

c) Compliance system

91. Section 11.1 of NI 31-103 sets out the requirements for a registered firm's compliance system as follows:

> 11.1 **Compliance system**
>
> A registered firm must establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to
>
> (a) provide reasonable assurance that the firm and each individual acting on its behalf complies with securities legislation, and
>
> (b) manage the risks associated with its business in accordance with prudent business practices.

92. AFAM has adopted a basic policy in relation to its best execution obligations, but it does not appear that AFAM has complied with it. Specifically, section 3.1 of AFAM's *Policies & Procedures Manual* states that all orders are to be placed with a qualified broker. Determination and selection of the broker is based on the broker's ability to provide the best price and best execution for the transaction. This must be evaluated and determined by the PM [portfolio manager].

93. AFAM has not provided any evidence to show that it or its portfolio manager conducted an evaluation of any broker used by AFAM. The only evidence that has been submitted is an assertion by one of AFAM's advising representatives that AFI provides "good execution."

94. Further, AFAM submits that the higher commission costs that it pays to its related dealer are permitted because NI 23-102 provides that client commission can be used to pay for research goods and services. However, AFAM does not have a soft dollar policy. Also, AFAM has not determined if the value of the research it receives from AFI provides reasonable benefit to its clients. Finally, some of the services it has identified as receiving from AFI may not qualify as permissible research goods and services.

95. As provided above, in response to the Director's question of whether AFAM had conducted a review and analysis of the areas that are covered in this decision to determine if it was in compliance with Ontario securities law, the response provided was:

> "No, AFAM did not conduct a formal review or analysis of its business operations and practices that focused specifically on matters enumerated in Question 2 to determine if they were in compliance with Ontario securities laws.[34]

96. In addition, and while not discussed in this decision, I have also considered the other deficiencies identified in the Report, which AFAM will need to remediate in order to satisfy the Terms and Conditions.

97. Based on my review, I am satisfied that there is sufficient evidence to determine that AFAM has failed to establish a system of controls and supervision sufficient to provide reasonable assurance that the Firm and each individual acting on its behalf are in compliance with securities law as required by section 11.1 of NI 31-103. Therefore, I conclude that AFAM has failed to comply with Ontario securities law.

Is it necessary to impose Terms and Conditions?

98. AFAM contends that "the correction of these issues can be accomplished by AFAM with the assistance of legal counsel and without the need for the appointment of a compliance consultant or the imposition of terms and conditions on its registration.[35]

99. On the other hand, Staff recommends that a Consultant be retained, as set out in the Terms and Conditions provided in Appendix A.

100. Terms and conditions are not intended to punish a registrant, but are a means of establishing a structured program for registrants to remediate the identified deficiencies and breaches of Ontario securities law. It is important that terms and conditions be made public so that any client or prospective client of the registrant has access to the information and is aware of the restrictions under which a firm is operating.

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[34] See para 48, *above*.

[35] AFAM Response, *supra* note 1 at 14.

101. Based on the totality of information provided throughout this OTBH, the findings I have made regarding the breaches of Ontario securities law, including the failings of AFAM's compliance system, I accept Staff's recommendation to impose the Terms and Conditions with the changes provided above and blacklined in Appendix A.

102. It is well established through Commission decisions that registration is a privilege and not a right.[36] While I am sympathetic to AFAM's claims that its operations are reasonably small and it will incur costs to remediate the deficiencies identified in the Report, I believe that it is appropriate for a Consultant to be hired to assist AFAM in remediating all of the deficiencies identified in the Report, in developing a compliance system to respond to conflicts of interest, and in developing a system to monitor best execution and the use of soft dollars.

Who can perform the duties of a compliance consultant?

103. AFAM's counsel submits that they are qualified and appropriately placed to help AFAM remediate the compliance deficiencies since they are already familiar with the operations of AFAM, AFI and its client base. They also submit that it would be costly for AFAM to engage a compliance consultant to assist the firm when AFAM can work diligently with its legal counsel to address all of the agreed upon deficiencies to Staff's satisfaction.[37]

104. When a compliance consultant is required as part of terms and conditions, the compliance consultant must have relevant securities knowledge and experience to assist a registrant with establishing, implementing and maintaining a system of controls and supervision that is required by section 11.1 of NI 31-103. The compliance consultant must have a strong understanding of internal controls as well as depth of knowledge of the relevant securities law and national instruments that are applicable to the registrant's business. The compliance consultant's knowledge and experience must be specific to the registrant's category of registration. This will enable the compliance consultant to assist the registrant with developing an effective internal control environment, strong supervisory procedures and tailored policies and procedures resulting in an effective compliance system.

105. Further, the compliance consultant's experience must include the development and implementation of comprehensive project plans that, once completed, will remediate the identified deficiencies. The project plan should describe the corrective action to address the identified deficiencies, detail the testing that will be completed to demonstrate that the corrective action is working effectively, and include expected completion dates and reporting timelines to Staff. The compliance consultant is expected to provide progress reports to Staff that summarize the results of the testing, procedures implemented, and how each deficiency has been rectified. Finally, the compliance consultant must be able to provide Staff with an attestation letter verifying that all identified compliance deficiencies have been rectified, and that the compliance consultant's recommendations have been implemented, tested, and are working effectively.

106. As part of the terms and conditions, a registrant is required to provide written authorization giving consent to unrestricted access by Staff to communicate with the compliance consultant regarding the registrant's progress with respect to any matter in relation to the terms and conditions.

107. An experienced securities law counsel may be qualified to perform the duties of an independent compliance consultant. However there are issues to consider if counsel, who is proposed as a compliance consultant, has an existing solicitor-client relationship with the registrant. There are concerns over whether the counsel may be truly independent and able to perform the duties of a compliance consultant. Issues to consider are whether solicitor-client privilege or the duty of loyalty to his/her client would prevent legal counsel from acting in the capacity of a compliance consultant. Or, would counsel be prohibited from providing the required information to Staff and/or completing the attestation that verifies the remediation of the compliance deficiencies.

108. A possible way to address these issues and others that may arise is for the law firm to designate another lawyer within the firm who is otherwise qualified to perform the duties of a compliance consultant, and who has not previously acted for the registrant.

109. If the law firm is able to demonstrate that it has established appropriate information barriers and ethical walls between the legal counsel representing the firm in the regulatory matter and legal counsel acting as the compliance consultant, and if the legal counsel has the requisite knowledge, experience and ability to perform the duties of a compliance consultant and is able to address the issues identified, then I am not opposed to legal counsel from the same firm being engaged as a compliance consultant. However, it will be the decision of the OSC Manager, after due consideration of all the factors that she/he considers relevant, to approve the appointment of a compliance consultant.

[36] *Re Istanbul* (2008), 31 OSCB 3799 at para 60.

[37] AFAM Response to Director Questions, *supra* note 22 at 13.

110. Regardless of whom AFAM proposes as the Consultant, it is my opinion that AFAM must engage a person that has expert knowledge regarding best execution and soft dollar practices to assist AFAM with establishing an effective compliance system.

Registrant's responsibility during a compliance review

111. AFAM has taken considerable effort in its submissions to attempt to call into question Staff's knowledge, understanding, judgment and accuracy on a number of matters. For example, AFAM contends that Staff did not take into account the value of research goods and services relating to best execution,[38] and that Staff had a fundamental misunderstanding of the dealer's commission schedule.[39]

> During a compliance review, it is the registrant's responsibility to respond to Staff's information requests fully and in a diligent manner. This includes providing documents to support its practices. If a registrant does not have the information that was requested or is unable to explain the information, then the registrant cannot reasonably later complain that Staff did not consider or understand all relevant information before completing their review.

112. In the present matter, I do not believe AFAM's comments towards Staff are warranted or productive.

113. Finally, while I have not considered this as part of my decision, I nevertheless believe it is important for AFAM to be cognizant of its potential obligations to its clients under common law and under section 116 of the Act as the fund manager to the AFAM Funds. I will not comment on these potential obligations further, and have limited my decision to a consideration of AFAM's potential obligations under the sections of Ontario securities law cited in this decision.

"Debra Foubert"
Director, Compliance and Registrant Regulation Branch
Ontario Securities Commission

September 26, 2017

[38] AFAM Response, *supra* note 1 at 11.

[39] Written surreply submissions of Acker Finley Asset Management Inc. (23 June 2017) at 2.

Appendix A – Staff Proposed Terms and Conditions

The proposed terms and conditions are as follows:

The registration of Acker Finley Asset Management Inc. (the "**Firm**") under the *Securities Act* (Ontario) (the "**Act**") is subject to the following terms and conditions, which were imposed by the Director pursuant to section 28 of the Act.

Compliance Consultant

1. Within ten business days of the date these terms and conditions are imposed, the Firm shall retain, at its own expense, the services of an independent [compliance] consultant (the "**Consultant**") that is acceptable to a Manager or Deputy Director in the Compliance and Registrant Regulation Branch of the Ontario Securities Commission (the "**OSC Manager**") to:

   (a) Prepare and assist the Firm in implementing a plan (the "**Plan**") to strengthen the Firm's "compliance system" within the meaning of section 11.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("**NI 31-103**"), including the expected dates of completion and person(s) responsible for the implementation.

      In the Plan, the Consultant will:

      (i) examine the Firm's operations, internal policies, practices and procedures and make recommendations for rectifying all identified compliance deficiencies in the compliance field review report dated April 13, 2017;

      ~~(ii) identify and implement a methodology for determining how much money clients of the Firm (both individual/corporate accounts and investment funds) have been overcharged as a result of the Firm's non compliance with its obligations relating to conflicts of interest in section 13.4 of NI 31-103, and its best execution obligation in section 4.2 of National Instrument 23-101 *Trading Rules* since September 1, 2014;~~

      ~~(iii) identify and implement a methodology for the Firm to notify affected clients that they have been overcharged and the amount of that overcharge, and to repay the overcharge amount to the affected clients;~~

      (ii) provide a written report to the Firm and to Staff that explains how the Firm will establish a system of controls and supervision that achieves best execution for its clients, identifies and values soft dollar arrangements and complies with its conflicts of interest obligations on a go-forward basis.

      (iii) assist AFAM in comparing trade execution options and arrangements between NBCN, AFI and any other dealer to determine the most advantageous execution terms reasonably available on a go-forward basis.

      (iv) assess whether sufficient resources have been allocated to compliance, including whether the compliance personnel have the proficiency to perform the activity competently, and make any recommendations regarding such resources, as may be necessary.

   (b) Review the Firm's progress with respect to implementation of the Plan.

   (c) Submit written progress reports ("**Progress Reports**") to the OSC Manager detailing the Firm's progress with respect to the implementation of the Plan and stating whether the specific recommendations included in the Plan have been implemented, and if not, the expected date of completion and person(s) responsible for the implementation.

2. The Firm shall immediately submit to Staff written authorization from the Firm giving consent to unrestricted access by Staff to communicate with the Consultant regarding the Firm's progress with respect to any matter in relation to these terms and conditions.

3. The Consultant shall provide the Plan to the OSC Manager for approval no later than 30 days from the date the Firm is notified by the OSC Manager that the Consultant retained by the Firm is acceptable to the OSC Manager.

4. The Plan and the Progress Reports must be reviewed and approved by the ultimate designated person ("**UDP**") and chief compliance officer ("**CCO**"), and signed by the UDP and CCO as evidence of their review and approval.

5. The Plan shall identify the date by which it is to be fully implemented, and shall also include a schedule pursuant to which the Consultant will submit Progress Reports to the OSC Manager. The Progress Reports shall be submitted no less frequently than every three months.

6. The Firm understands and acknowledges that Staff expects that substantial progress towards the implementation of the Plan will be demonstrated in each of the Progress Reports.

7. Upon the full implementation of the Plan, the Consultant shall submit an attestation letter for approval by the OSC Manager verifying that all identified compliance deficiencies have been rectified, and that the Consultant's recommendations have been implemented, tested, and are working effectively.

8. Until the OSC Manager has approved of the attestation letter submitted in accordance with paragraph 7 above, the Firm shall not terminate the Consultant's retainer without prior written approval by the OSC Manager.

These terms and conditions of registration constitute Ontario securities law, and a failure by the Firm to comply with these terms and conditions may result in further regulatory action against the firm, including a suspension of its registration.

Chapter 4

Cease Trading Orders

4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke

THERE IS NOTHING TO REPORT THIS WEEK.

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation

THERE IS NOTHING TO REPORT THIS WEEK.

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
The Canadian Bioceutical Corporation	01 August 2017	02 October 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	Date of Lapse
Katanga Mining Limited	15 August 2017	
Canada House Wellness Group Inc.	13 September 2017	
The Canadian Bioceutical Corporation	01 August 2017	02 October 2017

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Chapter 7

Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as as in Carswell's internet service SecuritiesSource (see www.carswell.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

Chapter 11

IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Mackenzie Canadian Balanced Fund
Mackenzie Emerging Markets Class
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 29, 2017
Received on September 29, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Quadrus Investment Services Ltd.
Quadrus Investment Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2621242

Issuer Name:
Big Pharma Split Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 25, 2017
NP 11-202 Preliminary Receipt dated September 26, 2017
Offering Price and Description:
$* (Maximum)
Up to * Preferred Shares and * Class A Shares
$10.00 per Preferred Share and $15.00 per Class A Share
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
GMP Securities LP
Raymond James Ltd.
Desjardins Securities Inc.
Echelon Wealth Partners Inc.
Industrial Alliance Securities Inc.
Mackie Research Capital Corporation
PI Financial Corp.
Promoter(s):
N/A
Project #2678093

Issuer Name:
Caldwell Canadian Value Momentum Fund
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 29, 2017
Received on October 2, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Caldwell Securities Ltd.
Promoter(s):
N/A
Project #2640739

Issuer Name:
Dynamic Value Fund of Canada
Dynamic Canadian Value Class
Dynamic Dividend Advantage Fund
Dynamic Dividend Advantage Class
Dynamic U.S. Dividend Advantage Fund
Dynamic Value Balanced Fund
Dynamic Value Balanced Class
Dynamic U.S. Monthly Income Fund
DMP Value Balanced Class
Dynamic Equity Income Fund
Dynamic Dividend Fund
Principal Regulator – Ontario
Type and Date:
Amendment #6 to Annual Information Form dated September 28, 2017
Received on September 28, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
GCIC Ltd.
Promoter(s):
1832 Asset Management L.P.
Project #2540701

Issuer Name:
Dynamic iShares Active Global Dividend ETF
Dynamic iShares Active U.S. Dividend ETF
Dynamic iShares Active Crossover Bond ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated September 27, 2017
Received on September 27, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2554513

Issuer Name:
European Focused Dividend Fund
Principal Regulator – Alberta (ASC)
Type and Date:
Preliminary Long Form Prospectus dated September 27, 2017
NP 11-202 Preliminary Receipt dated September 28, 2017
Offering Price and Description:
Maximum Offering: $*-* Units
Minimum Offering: $20,000,000 – 2,000,000 Units
Price: $10.00 per Unit
Minimum Purchase: $1,000 (100 Units)
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Middlefield Limited
Project #2678908

Issuer Name:
Excel Global Balanced Asset Allocation ETF
Excel Global Growth Asset Allocation ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated September 29, 2017
Received on October 2, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Excel Funds Management Inc.
Project #2591976

Issuer Name:
FÉRIQUE CONSERVATIVE Portfolio
FÉRIQUE MODERATE Portfolio
FÉRIQUE Balanced Portfolio
FÉRIQUE GROWTH Portfolio
FÉRIQUE AGGRESSIVE GROWTH Portfolio
Principal Regulator – Quebec
Type and Date:
Amendment #2 to Final Simplified Prospectus dated September 29, 2017
Received on September 29, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Services d'investissement FÉRIQUE
Promoter(s):
GESTION FÉRIQUE
Project #2610795

Issuer Name:
Financial 15 Split Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated September 28, 2017
NP 11-202 Preliminary Receipt dated September 29, 2017
Offering Price and Description:
Offering: $300,000,000 Preferred Shares and Class A Shares
Price: $10.03 per Preferred Shares and $10.42 per Class A Share
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2679500

Issuer Name:
Horizons Robotics and Automation Index ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 25, 2017
NP 11-202 Preliminary Receipt dated September 27, 2017
Offering Price and Description:
Class A units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Horizon ETFs Management (Canada) Inc.
Project #2678403

Issuer Name:
Mackenzie Canadian All Cap Dividend Class
Mackenzie Canadian All Cap Value Class
Mackenzie Canadian Bond Fund
Mackenzie Canadian Growth Class
Mackenzie Canadian Money Market Fund
Mackenzie Canadian Resource Fund
Mackenzie Canadian Short Term Income Fund
Mackenzie Canadian Small Cap Class
Mackenzie Corporate Bond Fund
Mackenzie Cundill Recovery Fund
Mackenzie Global Dividend Fund
Mackenzie Global Growth Class
Mackenzie Global Small Cap Fund
Mackenzie Global Tactical Bond Fund
Mackenzie Income Fund
Mackenzie Ivy Canadian Fund
Mackenzie Ivy International Fund
Mackenzie Monthly Income Balanced Portfolio
Mackenzie Monthly Income Conservative Portfolio
Mackenzie Strategic Bond Fund
Mackenzie Strategic Income Fund
Mackenzie US Mid Cap Growth Class
Symmetry Balanced Portfolio
Symmetry Balanced Portfolio Class
Symmetry Conservative Income Portfolio
Symmetry Conservative Income Portfolio Class
Symmetry Conservative Portfolio
Symmetry Conservative Portfolio Class
Symmetry Equity Portfolio Class
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Growth Portfolio Class
Symmetry Moderate Growth Portfolio
Symmetry Moderate Growth Portfolio Class
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated September 29, 2017
NP 11-202 Preliminary Receipt dated October 2, 2017
Offering Price and Description:
Series LB, LW, LW6 and LX securities
Underwriter(s) or Distributor(s):
LBC Financial Services Inc.
Promoter(s):
Mackenzie Financial Corporation
Project #2680408

Issuer Name:
NBI Canadian Equity Growth Fund
NBI Multiple Asset Class Private Portfolio
Principal Regulator – Quebec
Type and Date:
Amendment #3 dated October 2, 2017 to Final Simplified Prospectus, Annual Information Form and Fund Facts (NI 81-101) dated May 12, 2017
Received on October 2, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
National Bank Investments Inc.
Promoter(s):
National Bank Investments Inc.
Project #2626325

Issuer Name:
BlackRock All Bond Portfolio
BlackRock Balanced Portfolio
BlackRock Conservative Portfolio
BlackRock Defensive Portfolio
BlackRock Diversified Monthly Income Portfolio
BlackRock Growth Portfolio
BlackRock MaxGrowth Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated September 22, 2017
NP 11-202 Receipt dated September 26, 2017
Offering Price and Description:
Series A, Series D, Series F and Series I mutual fund units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2662267

Issuer Name:
Dynamic Value Fund of Canada
Dynamic Canadian Value Class
Dynamic Dividend Advantage Fund
Dynamic Dividend Advantage Class
Dynamic U.S. Dividend Advantage Fund
Dynamic Value Balanced Fund
Dynamic Value Balanced Class
Dynamic U.S. Monthly Income Fund
DMP Value Balanced Class
Dynamic Equity Income Fund
Dynamic Dividend Fund
Principal Regulator – Ontario
Type and Date:
Amendment #6 to Annual Information Form dated September 28, 2017
NP 11-202 Receipt dated October 2, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
1832 Asset Management L.P.
GCIC Ltd.
Promoter(s):
1832 Asset Management L.P.
Project #2540701

Issuer Name:
Dynamic iShares Active Global Dividend ETF
Dynamic iShares Active U.S. Dividend ETF
Dynamic iShares Active Crossover Bond ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated September 27, 2017
NP 11-202 Receipt dated September 27, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2554513

Issuer Name:
Frontenac Mortgage Investment Corporation
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated September 29, 2017
NP 11-202 Receipt dated October 2, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2663362

Issuer Name:
Horizons Intl Developed Markets Equity Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated September 20, 2017
NP 11-202 Receipt dated September 26, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Horizons ETFs Management (Canada) Inc.
Project #2651596

Issuer Name:
Maple Leaf Short Duration 2017-II Flow-Through Limited Partnership – National Class
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated September 28, 2017
NP 11-202 Receipt dated September 28, 2017
Offering Price and Description:
$15,000,000 (Maximum)
(600,000 Maple Leaf Short Duration 2017-II Flow-Through Limited Partnership – National Class Units)
$2,500,000 (Minimum)
(100,000 Maple Leaf Short Duration 2017-II Flow-Through Limited Partnership – National Class Units
Price per Unit: $25.00
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Industrial Alliance Securities Inc.
Manulife Securities Incorporated
Raymond James LTD.
Echelon Wealth Partners Inc.
Laurentian Bank Securities Inc.
Promoter(s):
Maple Leaf Short Duration Holdings LTD.
Maple Leaf Short Duration 2017-II Flow-Through Management Corp.
Project #2658561

Issuer Name:
Maple Leaf Short Duration 2017-II Flow-Through Limited Partnership – Quebec Class
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated September 28, 2017
NP 11-202 Receipt dated September 28, 2017
Offering Price and Description:
$10,000,000 (Maximum)
(400,000 Maple Leaf Short Duration 2017-II Flow-Through Limited Partnership – Québec Class Units)
$2,500,000 (Minimum)
(100,000 Maple Leaf Short Duration 2017-II Flow – Through Limited Partnership – Québec Class Units)
Price per Unit: $25.00
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
CIBC World Markets Inc.
National Bank Financial Inc.
BMO Nesbitt Burns Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Desjardins Securities Inc.
Industrial Alliance Securities Inc.
Manulife Securities Incorporated
Raymond James LTD.
Echelon Wealth Partners Inc.
Laurentian Bank Securities Inc.
Promoter(s):
Maple Leaf Short Duration Holdings LTD.
Maple Leaf Short Duration 2017-II Flow-Through Management Corp.
Project #2658559

Issuer Name:
Scotia Private U.S. Large Cap Growth Pool
Principal Regulator – Ontario
Type and Date:
Amendment #3 to Final Simplified Prospectus dated September 21, 2017
NP 11-202 Receipt dated September 28, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Scotia Capital Inc.
Scotia Securities Inc.
1832 Asset Management L.P.
Promoter(s):
1832 Asset Management L.P
Project #2540087

Issuer Name:
Sun Life MFS Canadian Equity Class
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated September 25, 2017
NP 11-202 Receipt dated October 2, 2017
Offering Price and Description:
Series A, AT5, F, O securities @ Net Asset Value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Sun Life Global Investments (Canada) Inc.
Project #2639053

Issuer Name:
Sun Life MFS Canadian Equity Fund
Sun Life MFS Canadian Equity Value Fund
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated September 25, 2017
NP 11-202 Receipt dated September 27, 2017
Offering Price and Description:
Series A, D, F, I, O securities @ Net Asset Value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
Sun Life Global Investments (Canada) Inc.
Project #2559217

Issuer Name:
UIT Alternative Health Fund (formerly UIT Global REIT Fund)
UIT Energy Producers Class
UIT Gold Developers & Producers Class
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated September 25, 2017
NP 11-202 Receipt dated September 27, 2017
Offering Price and Description:
Series A and F units and shares @ net asset value
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #2661879

NON-INVESTMENT FUNDS

Issuer Name:
Cenovus Energy Inc.
Principal Regulator – Alberta (ASC)
Type and Date:
Preliminary Shelf Prospectus dated September 28, 2017
NP 11-202 Preliminary Receipt dated September 28, 2017
Offering Price and Description:
US$7,500,000,000.00 – Debt Securities, Common Shares, Preferred Shares, Subscription Receipts, Warrants, Share Purchase Contracts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2679379

Issuer Name:
CUP Capital Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 26, 2017
NP 11-202 Preliminary Receipt dated September 27, 2017
Offering Price and Description:
Minimum Offering: $3.0 million/4,687,500 Units
Maximum Offering: $10.0 million/15,625,000 Units
Offering Price: $0.64 per Unit
Over-Allotment Option (as defined herein)
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
-
Project #2678520

Issuer Name:
Green Rise Capital Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus dated September 26, 2017
NP 11-202 Preliminary Receipt dated September 26, 2017
Offering Price and Description:
Minimum Offering: $200,000.00 (2,000,000 Common Shares)
Maximum Offering: $300,000.00 (3,000,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Haywood Securities Inc.
Promoter(s):
Vincent Narang
Project #2678241

Issuer Name:
Inceptus Capital Ltd.
Principal Regulator – British Columbia
Type and Date:
Amendment dated September 28, 2017 to Final CPC Prospectus dated June 29, 2017
Received on September 28, 2017
Offering Price and Description:
Minimum Offering – $200,000.00 (2,000,000 Common Shares)
Maximum Offering – $400,000.00 (4,000,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
Peter Yung Tan Chen
Project #2633235

Issuer Name:
Katipult Technology Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated September 26, 2017
NP 11-202 Preliminary Receipt dated September 27, 2017
Offering Price and Description:
$47,700.00
477,000 Common Shares Issuable on Exercise of Outstanding Special Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brock Murray
Pheak Meas
Thomas Lynch
Project #2678629

Issuer Name:
Paramount Gold Nevada Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary Short Form Prospectus dated October 2, 2017
NP 11-202 Preliminary Receipt dated October 2, 2017
Offering Price and Description:
US$ *
* Shares of Common Stock
Underwriter(s) or Distributor(s):
Canaccord Genuity Corp.
Cantor Fitzgerald Canada Corporation
Promoter(s):
-
Project #2680376

Issuer Name:
Roots Corporation
Principal Regulator – Ontario
Type and Date:
Amendment dated September 29, 2017 to Preliminary Long Form Prospectus dated September 13, 2017
NP 11-202 Preliminary Receipt dated October 2, 2017
Offering Price and Description:
$200,000,000.00
* Common Shares
Underwriter(s) or Distributor(s):
TD Securities Inc.
Credit Suisse Securities (Canada), Inc.
BMO Nesbitt Burns Inc.
Jefferies Securities, Inc.
RBC Dominion Securities Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
Canaccord Genuity Corp.
National Bank Financial Inc.
Promoter(s):
-
Project #2674913

Issuer Name:
Stelco Holdings Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated September 27, 2017
NP 11-202 Preliminary Receipt dated September 27, 2017
Offering Price and Description:
$*
(* Common Shares)
Underwriter(s) or Distributor(s):
Goldman Sachs Canada Inc.
BMO Nesbitt Burns Inc.
Promoter(s):
-
Project #2678797

Issuer Name:
Wow Unlimited Media Inc. (formerly, Rainmaker Entertainment Inc.)
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated September 27, 2017
NP 11-202 Preliminary Receipt dated September 28, 2017
Offering Price and Description:
$150,000,000.00 – Common Voting Shares, Variable Voting Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2678998

Issuer Name:
Cannabis Wheaton Income Corp.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Prospectus dated September 27, 2017
NP 11-202 Receipt dated September 27, 2017
Offering Price and Description:
20,252,203 Common Shares and 20,252,203 Common Share Purchase Warrants Issuable
on Exercise of 20,252,203 Special Warrants
-and-15,000,000 Common Shares Issuable
on Exercise of 15,000,000 Common Share Purchase Warrants
Comprising 30,000 Convertible Debenture Units
-and-30,000,000 Common Shares Issuable
on Conversion of $30,000,000.00 principal amount of Convertible Debentures
Comprising 30,000 Convertible Debenture Units
Underwriter(s) or Distributor(s):
Mackie Research Capital Corporation
Promoter(s):
-
Project #2673597

Issuer Name:
Golden Star Resources Ltd.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated September 28, 2017
NP 11-202 Receipt dated September 28, 2017
Offering Price and Description:
U.S.$250,000,000.00 – Common Shares, Preferred Shares, Subscription Receipts, Warrants, Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2675625

Issuer Name:
Prothelis Financial Holding Corp.
Type and Date:
Preliminary Long Form Prospectus dated February 28, 2017
Withdrawn on September 28, 2017
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2589307

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Ellementary Capital Ltd.	Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	September 26, 2017
Name Change	From: SPR & CO LLP To: NinePoint Partners LP	Portfolio Manager, Exempt Market Dealer and Investment Fund Manager	September 14, 2017
New Registration	Numus Capital Corp.	Exempt Market Dealer	September 28, 2017

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Chapter 13

SROs, Marketplaces, Clearing Agencies and Trade Repositories

13.2 Marketplaces

13.2.1 Nodal Exchange, LLC and Nodal Clear, LLC – Variation Orders – Notice of Commission Order

NODAL EXCHANGE, LLC

NODAL CLEAR, LLC

NOTICE OF COMMISSION ORDER

On September 29, 2017, the Commission issued a variation order pursuant to section 144 of the *Securities Act* (Ontario) (OSA) and section 78 of the *Commodity Futures Act* (Ontario) (CFA) (Exchange Variation Order) which varies the order exempting Nodal Exchange, LLC from the requirement to be recognized as an exchange (Exchange Exemption Order). The Exchange Variation Order:

- amends the definition of "Nodal Contract" in the Exchange Exemption Order;
- allows Nodal Exchange, LLC to provide direct access to Ontario Participants (as defined in the Exchange Exemption Order) that have obtained an exemption from the requirement to be registered under the CFA; and
- makes other minor non-substantive changes to update the Exchange Exemption Order.

The Commission also issued a variation order pursuant to section 144 of the OSA (Clearing Agency Variation Order) which varies the order exempting Nodal Clear, LLC from the requirement to be recognized as a clearing agency (Clearing Agency Exemption Order). The Clearing Agency Variation Order adopts the amended definition of Nodal Contract in the Exchange Variation Order, and makes other minor non-substantive changes to update the Clearing Agency Exemption Order.

Copies of the Exchange Variation Order and Clearing Agency Variation Order are published in Chapter 2 of this Bulletin.

13.3 Clearing Agencies

13.3.1 Nodal Exchange, LLC and Nodal Clear, LLC – Variation Orders – Notice of Commission Order

NODAL EXCHANGE, LLC

NODAL CLEAR, LLC

NOTICE OF COMMISSION ORDER

[Editor's Note: Please see the Notice of Commission Order for Nodal Exchange, LLC and Nodal Clear, LLC under the heading "Marketplaces" in Chapter 13 of this issue, page 8221.]

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