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Commodity Futures Act of Ontario (R.S.O. 1990, c. C.20)

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Notices / News Releases

1.1 Notices

1.1.1 The Investment Funds Practitioner – November 2014

OSC

THE INVESTMENT FUNDS PRACTITIONER

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

What is the Investment Funds Practitioner?

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

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

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

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

Request for Feedback

This is the 13th edition of the Practitioner. Previous editions of the Practitioner are available on the OSC website www.osc.gov.on.ca under *Investment Funds*. We welcome your feedback and any suggestions for topics that you would like us to cover in future editions. Please forward your comments by email to investmentfunds@osc.gov.on.ca.

Prospectuses

Fee-Based Series with Dual Dealer Compensation

Further to staff's continued focus on mutual fund fee structures and dealer compensation models, we have recently become aware of certain investment fund series intended for fee-based accounts that have a trailing commission embedded in the ongoing cost of the fund series.

In staff's view, a series intended for fee-based accounts with this type of dual compensation structure is inconsistent with a critical attribute of the fee-based series, namely the negotiation of the dealer's compensation, which is intended to provide investors with heightened transparency of the cost of the dealer's services and a clear expectation of the services to be rendered in exchange for the negotiated fee. Having a trailing commission embedded in a fee-based series, in staff's view, blurs the lines between the attributes of a fee-based series and the embedded fee (trailing commission) series and is potentially misleading for investors.

We have consulted with staff in the OSC's Compliance and Registrant Regulation Branch, who further note that this practice may raise the issue of double charging by dealers, which is contrary to a dealer's general duty to deal fairly, honestly and in good faith with its clients under OSC Rule 31-505 *Conditions of Registration*. Investment fund managers should be mindful of their duty to act in the best interests of their funds, and ultimately their investors, when structuring and establishing dealer compensation models.

We have indicated to filers our expectation that new funds with fee-based series not have an embedded trailing commission. Going forward, we anticipate that on the reviews of renewal prospectuses where such series are identified, staff will be asking

fund managers to tell us what would be a reasonable transition period needed to: (a) cease all new investments in the series, and (b) switch or redeem current investors out of this series or remove this dual compensation structure from the series.

We continue to review and monitor developments on mutual fund fee structures and dealer compensation models and will provide further guidance as needed. Issuers and their counsel are encouraged to contact staff in the planning stage of any structure that may give rise to questions concerning this issue.

Minimum and Maximum Offering Amounts

In the November 2012 edition of the Practitioner, we reminded filers that the disclosure requirements set out in Form 41-101F2 for long form prospectuses and Forms 81-101F1 and 81-101F2 for simplified prospectuses apply to both the preliminary prospectus and the final prospectus unless otherwise specifically stated. We noted preliminary prospectuses with bulleted placeholders for items that should be disclosed at the time of the preliminary filing, such as the auditor's name in an audit report, the minimum offering amount on the cover page of a long form prospectus, expenses and fees, and the name of the custodian. In the March 2014 edition of the Practitioner, we further clarified that the management fee payable by the investment fund was included in this list, and reiterated staff's view that a preliminary prospectus should contain all material information before it is receipted at the preliminary stage.

Staff continue to review preliminary long form prospectuses that do not specify the offering size. In every case, staff expect a minimum offering amount to be disclosed in the preliminary prospectus, even if this amount is the minimum listing requirement. Filing a preliminary prospectus without a specified minimum offering amount may delay the issuance of the preliminary receipt.

We understand that it may not be possible to disclose a maximum offering size at the time the preliminary prospectus is filed, but where an investment fund manager can reasonably anticipate an offering size, that amount should be disclosed. Where a maximum offering has not been disclosed, but the investment fund manager has made certain assumptions about the offering size for the purpose of other disclosure provided in the preliminary prospectus, staff is of the view that those assumptions should be very clearly disclosed in the preliminary prospectus.

Redemption of Closed-End Fund Securities

On September 22, 2014, subsection 10.3(4) of NI 81-102 *Investment Funds* (NI 81-102) came into force, which requires that the redemption price of a security of a non-redeemable investment fund (NRIF) not be a price that is more than the net asset value (NAV) of the security determined on a redemption date specified in the NRIF's prospectus or annual information form.

The purpose of this provision is to prevent dilution of the value of the other securities of an NRIF when the redemption price paid is higher than NAV. Currently, certain NRIFs permit securityholders to request, on a monthly basis, that the NRIF redeem the securities tendered for redemption at a price determined with reference to the market price of the securities (the Monthly Redemption Amount). However, this type of pricing mechanism could result in the Monthly Redemption Amount being more than the NAV of the security redeemed and, in such a situation, the NRIF would contravene subsection 10.3(4) of NI 81-102 if it honoured the monthly redemption requests.

To ensure that the calculation of the Monthly Redemption Amount is consistent with subsection 10.3(4) of NI 81-102, staff have asked in recent prospectus reviews for newly launched NRIFs, that the disclosure regarding the Monthly Redemption Amount include a statement that, in any event, the Monthly Redemption Amount will not be an amount that is more than the NAV of the investment fund.[1]

In staff's view, such disclosure does not mean that the Monthly Redemption Amount is being calculated with reference to the NAV of the NRIF. Accordingly, an NRIF whose prospectus included such disclosure would not be considered by staff to be a 'mutual fund' under Ontario securities law.

Currency Hedging in Investment Objectives

Staff are aware that many investment funds employ currency hedging as a strategy to reduce foreign currency risk for investors. Sometimes the ability to employ currency hedging is discretionary and the investment fund's prospectus discloses that the portfolio manager may hedge the foreign currency exposure and that the hedge may be anywhere from 0% to 100% of the fund's foreign currency exposure. However, for other funds, the prospectus discloses that all or substantially all of the fund's foreign currency exposure will be hedged, and that the hedging is not at the portfolio manager's discretion.

In the second scenario discussed above, staff's view is that the currency hedging described is an essential feature of the investment fund, and, therefore, should be disclosed in the fund's investment objectives (as required by Instruction (3) to Item 6

[1] For an example of such disclosure, see the prospectus of *Energy Leaders Plus Income Fund* dated September 24, 2014.

of Form 81-101F1 and Instruction (3) to Item 5.1 of Form 41-101F2). Accordingly, in our prospectus reviews, we have been indicating this expectation to filers.

T+2 Settlement Cycle for European Securities

On October 6, 2014, the majority of European Economic Area markets moved to a T+2 settlement cycle for all transactions executed on trading venues. This move was made in anticipation of the implementation of new Central Securities Depositories Regulation which will require T+2 settlement in Europe as of January 1, 2015.

Since transactions in Canadian investment fund securities settle on a T+3 basis, the move to T+2 in Europe creates a time discrepancy between the settlement of transactions at the fund level and the settlement of transactions in underlying portfolio securities exchanged on European markets. This mismatch between the respective settlement cycles may raise liquidity management issues for investment funds.

We expect investment fund managers to be evaluating their ability to accommodate T+2 settlement of transactions in European securities. Specifically, investment fund managers should be mindful of the leverage restriction in paragraph 2.6(a) of NI 81-102 which limits an investment fund's borrowings to settle portfolio transactions to no more than 5% of the fund's net asset value. The provision further requires that each borrowing effected for this purpose be a temporary measure.

In consultation with staff in the OSC's Compliance and Registrant Regulation Branch, we have conveyed to filers that we are of the view that borrowings effected by a fund within the 5% limit of paragraph 2.6(a) of NI 81-102 specifically to settle trades in European securities, and that as a whole, cause the fund to be in a state of overdraft over a prolonged period of time, will not be offside the restriction in paragraph 2.6(a). If, however, the borrowings effected in connection with T+2 settlement are expected to cause a fund to exceed the 5% borrowing restriction in paragraph 2.6(a), staff expect the fund to seek exemptive relief. We will consider applications for such exemptive relief on a case-by-case basis.

Staff request that as investment fund managers and portfolio managers gain experience and data operating under the T+2 settlement cycle for European securities, they share their experiences with us in order that we may better assess the impact of this change on Canadian investment funds and determine whether any regulatory action is necessary.

Disclosure of Securities Lending

On September 22, 2014, new prospectus and annual information form disclosure requirements with respect to securities lending by investment funds came into force.[2] These requirements apply to both mutual funds and non-redeemable investment funds and mandate disclosure of, among other items, the identity of the fund's securities lending agent, whether the securities lending agent is an affiliate or associate of the fund's manager, and the essential terms of the fund's securities lending agreement(s). We remind investment funds and their managers of these new requirements and advise that staff will be reviewing prospectus filings for this disclosure.

Continuous Disclosure

IFRS Release No. 1

In September 2014, staff commenced an issue-oriented continuous disclosure review focusing on the transition to International Financial Reporting Standards (IFRS). We reviewed the first IFRS financial statements required to be filed under National Instrument 81-106 *Investment Fund Continuous Disclosure*, which were the interim financial reports of investment funds with a calendar year-end. On September 30, 2014, staff issued IFRS Release No. 1 (the Release) to provide guidance to investment funds that had yet to file their first IFRS interim financial reports and related MRFPs. The Release outlined the types of deficiencies that had been identified in the course of our continuous disclosure review.

The Release is the first in a series of releases expected to be issued by staff. Upon completion of this first phase of our reviews, staff will publish our findings either by way of a release, an OSC staff notice, or another appropriate form of communication. As we expand our reviews by examining the interim financial reports of other investment funds with non-calendar year-ends and audited annual financial statements, we will issue further releases with additional guidance, as needed, in order to assist investment funds and their advisers with their IFRS filings.

[2] For the prospectus disclosure requirements, see the amendments to (i) Item 5(1) of Part A of Form 81-101F1, (ii) Item 4(1) of Part B of Form 81-101F1, and (iii) Item 3.4(1) of Form 41-101F2, as well as the new Item 19.11 of Form 41-101F2. For the annual information form disclosure requirements, see the new Item 10.9.1 of Form 81-101F2.

Asset Classes Susceptible to Liquidity Concerns

The continuous disclosure review program in the Investment Funds and Structured Products Branch uses a risk-based approach in selecting issuers for review and determining areas of focus. Our program aims to be responsive to current market conditions and trends. As market conditions change, we target areas where we foresee a potential change in risk exposure. Staff are currently conducting a series of targeted reviews focused on asset classes that may be more susceptible to liquidity issues, and in particular, funds with exposure to high yield fixed income, small cap equity and emerging market issuers.

As part of our targeted reviews, we are asking fund managers to provide information about:

- their policies and procedures concerning the evaluation of liquidity levels of individual fund holdings and how the fund holdings fit within the illiquid asset restrictions for mutual funds under NI 81-102;
- the specific factors and metrics they use to assess liquidity levels, the steps that may be taken should any particular holdings run afoul of internal thresholds for such metrics, as well as information concerning the frequency of such monitoring;
- from a risk management perspective, any stress testing and scenario analysis fund managers may have conducted for their fund portfolios; and
- the valuation of illiquid assets, the valuation policies and procedures and whether there is any oversight by the fund's independent review committee.

Upon completion of our reviews, we expect to publish our findings and provide guidance on best practices for liquidity assessment protocol, portfolio risk management and disclosure.

Senior Loans

As part of our ongoing continuous disclosure reviews focused on fixed income investment funds, as mentioned in the March 2014 edition of the Practitioner, staff have also focused on funds with exposure to senior loans. We are increasingly focused on the liquidity of senior loans and how such assets appropriately fit within the regulatory framework for investment funds, given that senior loans are not investment grade debt and have longer transaction settlement times than traditional debt securities, which can result in a mismatch between the settlement time for a senior loan and the time in which the investment fund must settle redemption requests for its securities.

As a result of our CD reviews, on recent prospectus filings, staff have been focused on the following key areas:

1. **Textbox disclosure:** Investment funds that have a specific mandate or invest the majority of their assets in senior loans have been asked by staff to add a textbox to the cover page of the prospectus under the name of the fund. We would expect, at a minimum, the textbox to disclose that: (a) the investment fund invests in senior loans, which are not investment grade debt, (b) settlement periods for senior loan transactions may be longer than for other types of debt securities such as corporate bonds, and (c) senior loans are not an alternative to holding cash or money market securities. Staff may also ask that this textbox disclosure be added to the summary disclosure documents for these funds, such as the Fund Facts or the summary disclosure document for exchange-traded funds.

2. **Management liquidity assessments:** Staff expect fund managers and portfolio managers to tell us how they will actively assess the liquidity levels of senior loan holdings, including utilizing specific metrics that can be referenced to measure liquidity. Factors and metrics that may be used to assess liquidity levels of senior loan holdings may include: (a) the frequency of trades and quotes for the particular holding, (b) the size of bid-offer spreads, (c) data freshness, (d) the size of the loan issue, (e) the credit rating of the issue, (f) the number of dealers willing to purchase or sell the holding and the number of potential purchasers, and (g) the mechanics of the transfer.

3. **Stress testing and scenario analysis:** We expect fund managers and portfolio managers to engage in stress testing of individual fund holdings, as well as senior loans as an asset class. Investment funds should consider and be prepared to meet higher than normal redemption demands, especially at a time when the senior loan market may be dislocated or stressed. As such, fund managers should always consider including in the mutual fund's portfolio, assets that settle within three days or less, including cash, to minimize redemption settlement mismatches.

1.1.2 Ontario Securities Commission, Investment Funds and Structured Products Branch – IFRS Release No. 2

ONTARIO SECURITIES COMMISSION,
INVESTMENT FUNDS AND STRUCTURED PRODUCTS BRANCH – IFRS RELEASE NO. 2

AUDITOR'S INVOLVEMENT WITH INTERIM FINANCIAL REPORTS

Further to IFRS Release No. 1 issued on September 30, 2014 by the Investment Funds and Structured Products Branch of the Ontario Securities Commission (OSC), staff continues to review the first IFRS interim financial reports for the period ended June 30, 2014. This communication is to alert investment fund issuers and their advisers in a timely manner to staff findings to date.

The requirement relating to an auditor's involvement with interim financial reports is set out in section 2.12 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (NI 81-106). This is a long-standing requirement that came into effect in 2005. While NI 81-106 does not require an investment fund that is a reporting issuer to engage an auditor to review its interim financial report, it does require a reporting issuer to disclose in an accompanying notice if an interim review has not been performed by its auditor. In the course of our IFRS reviews, we have found non-compliance with this disclosure requirement and, in such cases, have requested that investment fund issuers refile their interim financial reports with the required disclosure.

For those investment funds that have yet to file their first IFRS interim financial reports, we encourage the fund, its manager and advisers to review this release to inform their first IFRS filings.

Investor Impact

When an investment fund issuer has not engaged its auditor to perform a review, it is critical that the investment fund issuer clearly disclose this fact in a notice accompanying its interim financial report. The notice is important as it alerts investors and other users of the financial statements that the investment fund's auditor did not complete a review of the interim financial report. With this disclosure, users of the financial statements are able to consider the degree of reliance they may wish to place on an investment fund's interim financial report when deciding to buy or sell investments throughout the year.

When the first IFRS interim financial reports are not accompanied by a notice, it implies that an auditor review was conducted and such review encompassed the transition from pre-changeover Canadian GAAP to IFRS. The absence of a notice not only implies that a review was conducted, but that such review was able to be completed and the auditor did not express a reservation. This information, in staff's view, is of particular importance at this time given that there has been a significant transition in accounting principles. In our view, the exclusion of a notice in the absence of a review is a material deficiency. We understand that there could also be a concern that some responsibility for the interim report incorrectly attaches to the auditor given the mistaken perception of auditor involvement.

Review Results

Where it appeared that the interim financial reports had been reviewed by the auditor, we asked investment funds to confirm that their interim financial reports had been reviewed in accordance with Section 7060 *Auditor Review of Interim Financial Statements* of the CPA Canada Handbook – Assurance (Section 7060 of the Handbook). Some investment funds confirmed that an auditor did not perform a review of their interim financial reports and yet these statements were not accompanied by a notice indicating that fact. The reasons cited for non-compliance by investment funds included: a general lack of awareness about their continuous disclosure obligations; confusion about what would constitute a review under securities legislation and Section 7060 of the Handbook; and, a misconception that clearly marking interim financial reports as "unaudited" would be sufficient to meet the requirements.

We remind financial statement preparers of section 3.4 of Companion Policy 81-106CP *Investment Fund Continuous Disclosure* which suggests that the notice normally should appear immediately before the interim financial report, in a manner similar to an auditor's report that accompanies annual financial statements. Item B-1 of CSA Staff Notice 81-315 *Frequently Asked Questions on NI 81-106 Investment Fund Continuous Disclosure*, published in 2005, also points out that the requirement to disclose that an auditor has not reviewed the interim financial report is not fulfilled by marking the financial statements as "unaudited".

Regulatory Consequences and Remedies

We believe that investors and other users of the financial statements need to be able to discern the level of auditor involvement in an investment fund's interim financial report when making investment decisions. Accordingly, staff has requested investment fund issuers to refile their interim financial reports for the period ended June 30, 2014 with the required notice, and accompanied by a news release explaining the information being filed.

It is the responsibility of every investment fund issuer to meet its continuous disclosure reporting obligations. We remind investment fund managers that an investment fund that has filed financial statements or management reports of fund

performance that do not comply with securities legislation or IFRS, could be placed on the list of defaulting reporting issuers maintained on the OSC website until the default is remedied. A content deficiency in any such documents could also lead to the reporting issuer being placed on the default list. For more information, please refer to OSC Policy 51-601 *Reporting Issuer Defaults* and OSC Staff Notice 51-711 *List of Refilings and Corrections of Errors as a Result of Regulatory Reviews*.

Conclusion

We will continue to monitor investment fund issuers' compliance with the disclosure requirements relating to the auditor's involvement with interim financial reports. Over the next year, this will form part of our financial examiner's process of reviewing continuous disclosure filings. We urge investment fund issuers and their audit committees, if applicable, to consult with their auditors to confirm the scope of the auditor's review engagement and determine whether a notice is required to be attached to the interim financial reports.

We will issue further releases with additional observations as our reviews continue, in order to assist investment fund issuers and their advisers with their IFRS filings.

Questions

Questions may be referred to the following staff members of the Investment Funds and Structured Products Branch:

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Sovener Yu
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syu@osc.gov.on.ca

November 26, 2014

1.4 Notices from the Office of the Secretary

1.4.1 Bigfoot Recreation & Ski Area Ltd. and Ronald Stephen McHaffie

FOR IMMEDIATE RELEASE
November 20, 2014

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

AND

IN THE MATTER OF
BIGFOOT RECREATION & SKI AREA LTD.
and RONALD STEPHEN MCHAFFIE

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

(1) Staff's application to proceed by way of written hearing is granted;

(2) Staff's materials in respect of the written hearing shall be served and filed no later than 10 days following the issuance of this order;

(3) the Respondents' responding materials, if any, shall be served and filed no later than 4 weeks from the effective date of service of Staff's materials; and

(4) Staff's reply materials, if any, shall be served and filed no later than 2 weeks from effective date of service of the Respondents' materials.

A copy of the Order dated November 19, 2014 is available at www.osc.gov.on.ca.

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JOSÉE TURCOTTE
SECRETARY

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media_inquiries@osc.gov.on.ca

For investor inquiries:

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1.4.2 Pro-Financial Asset Management Inc.

FOR IMMEDIATE RELEASE
November 21, 2014

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

AND

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.

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

1. The hearing is adjourned to January 14, 2015 at 9:00 a.m.

2. The Temporary Order as amended by previous Commission orders is extended to January 16, 2015.

A copy of the Order dated November 20, 2014 is available at www.osc.gov.on.ca.

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1.4.3 TG Residential Value Properties Ltd.

FOR IMMEDIATE RELEASE
November 24, 2014

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

AND

IN THE MATTER OF
TG RESIDENTIAL VALUE PROPERTIES LTD.

TORONTO – The Commission issued an Order in the above named matter which provides that, pursuant to subsection 127(7) the TCTO be extended until December 4, 2014; and the hearing in this matter be adjourned until December 1, 2014, at 10:00 a.m.

A copy of the Order dated November 21, 2014 is available at www.osc.gov.on.ca.

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Chapter 2

Decisions, Orders and Rulings

2.1 Decisions

2.1.1 Next Edge Capital Corp. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from the investment fund self-dealing restrictions in the Securities Act (Ontario) to allow a pooled fund to invest in securities of an underlying fund under common management – relief subject to certain conditions.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., ss. 111(2)(b), 111(3) and (4), 113, 117(1)(a), 117(2).

November 7, 2014

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
NEXT EDGE CAPITAL CORP.
(the "Filer")

AND

IN THE MATTER OF
NEXT EDGE PRIVATE DEBT FUND, NEXT EDGE COMMERCIAL TRUST
and NEXT EDGE PRIVATE DEBT LP

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Next Edge Capital Corp. (the **Manager**), on behalf of each of Next Edge Private Debt Fund (the **Fund**) and Next Edge Commercial Trust (the **Sub Trust**) (together, the **Top Funds**) and the Next Edge Private Debt Fund LP (the **Partnership**), for a decision under the securities legislation of Ontario (the **Legislation**) pursuant to:

a) section 113 of the *Securities Act* (Ontario) (Act) for relief from the following provisions:

   i. paragraph 111(2)(b) of the Act, which prohibits an investment fund from knowingly making an investment in any person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder;

   ii. subsection 111(3) of the Act, which prohibits a mutual fund in Ontario or its management company or its distribution company against knowingly holding an investment described in (i) above;

iii. subsection 111(4) of the Act, which prohibits an investment fund from knowingly holding an investment described in (i) above made on or after July 24, 2014; and

b) subsection 117(2) of the Act for relief from the requirement under paragraph 117(1)1 of the Act to file a report of every transaction of purchase or sale of securities between a mutual fund and any related person or company (collectively, the **Requested Relief**).

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

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

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

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation formed under the laws of Ontario. The principal place of business of the Manager is 1 Toronto Street, Suite 200, Toronto, Ontario M5C 2V6.

2. The Filer is registered as an Investment Fund Manager in Ontario, Québec and Newfoundland and Labrador, as an adviser in the category of Portfolio Manager in Ontario and Alberta and as a dealer in the category of Exempt Market Dealer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia.

3. The Filer is not a reporting issuer in any jurisdiction of Canada and is not in default of securities legislation of any jurisdiction of Canada.

The Fund

4. Next Edge Private Debt Fund is to be established as an open ended investment fund which will be formed and organized under the laws of the Province of Ontario pursuant to a trust agreement (the **Trust Agreement**). The Fund's head office is located in Toronto, Ontario.

5. The Filer will be the trustee of the Fund and will continue in that capacity until it resigns or is replaced by the Fund in accordance with the Trust Agreement.

6. The investment objective of the Fund is to achieve consistent risk-adjusted returns with minimal volatility and low correlation to most traditional asset classes.

7. The Fund intends to achieve its investment objective by investing substantially all of its net assets in the Sub Trust, which will invest substantially all of its assets in the Partnership.

8. Pursuant to a management agreement to be entered into between the Fund and the Filer, the Filer will be the manager and investment adviser of the Fund.

9. An investment in the Fund is to be represented by an unlimited number of authorized trust units (the **Units**). Units of the Fund are to be offered in each of the provinces and territories in Canada by prospectus exemption in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**).

10. The Fund will not be a reporting issuer under the Act and is not in default of securities legislation of any jurisdiction of Canada.

The Sub Trust

11. The Sub Trust is an unincorporated open-ended limited purpose trust to be established under the laws of the Province of Ontario pursuant to a trust indenture (the **Sub Trust Indenture**).

12. The Filer will be the trustee of the Sub Trust and will continue in that capacity until it resigns or is replaced by the Sub Trust in accordance with the Sub Trust Indenture.

13. The Sub Trust's sole function will be to own units of the Partnership following the closing of the offering of units of the Fund.

14. Pursuant to a management agreement to be entered into between the Sub Trust and the Filer, the Filer will be the manager and investment adviser of the Sub Trust.

15. The Fund will be the sole securityholder of the Sub Trust.

16. The Sub Trust will not be a reporting issuer under the Act and is not in default of securities legislation of any jurisdiction of Canada.

The Partnership and General Partner

17. The Partnership was established under the laws of Ontario pursuant to a Declaration of Limited Partnership dated September 16, 2014 under the *Limited Partnerships Act* (Ontario). Next Edge General Partner (Ontario) Inc. (the **General Partner**) was incorporated under the *Business Corporations Act* (Ontario) on September 15, 2014.

18. The Partnership will be governed by a limited partnership agreement (the **Limited Partnership Agreement**) made between the General Partner and the Sub Trust. The principal place of business of the Partnership and the General Partner is 1 Toronto Street, Suite 200, Toronto, Ontario, Canada M5C 2V6.

19. The investment objective of the Partnership is to achieve consistent risk-adjusted returns with minimal volatility and low correlation to most traditional asset classes by investing primarily in a portfolio of private debt securities.

20. The Partnership intends to achieve its investment objective by allocating capital to a number of specialist loan originators and managers of credit pools (**Credit Managers**) to take advantage of opportunities in the private debt markets.

21. The Partnership will invest in both senior and subordinated debt, subject to the advice and recommendations of seasoned Credit Managers, with the intent of building a portfolio (the **Portfolio**), either directly or indirectly, of private income generating securities.

22. Initially, the Portfolio is expected to consist primarily of short term receivables. It will also be investing in, but will not be limited to, first and second lien senior loans and term mezzanine debt and bridge loans. The securities initially comprising the Portfolio will be over-collateralized and have an average term to maturity of 50-60 days. The investment strategies of the Partnership, however, provide the Partnership with the flexibility to invest other investment funds, exchange-traded funds and mutual funds and, to a lesser extent, derivatives such as forward currency agreement and options, may also be used on an opportunistic basis in order to meet the Partnership's investment objectives. The General Partner may, on 30 days' prior written notice, change the investment strategies of the Partnership to adapt to changing circumstances.

23. The General Partner is generally responsible for management and control of the business and affairs of the Partnership in accordance with the terms of the Limited Partnership Agreement. Pursuant to a management agreement, the General Partner has engaged the Filer to carry out its duties, including management of the Partnership on a day-to-day basis, management of the Portfolio and distribution of the units of the Partnership, but remains responsible for supervising the Filer's activities on behalf of the Partnership.

24. The General Partner's investment in the Partnership will be nominal.

25. The Sub Trust will be the sole Limited Partner of the Partnership.

26. The Partnership is not a reporting issuer under the Act and is not in default of securities legislation of any jurisdiction of Canada.

Fund-on-Fund Structure

27. The Fund allows investors to obtain exposure to the investment portfolio of the Partnership and its investment strategies through direct investment by the Fund in securities of the Sub Trust and direct investment by the Sub Trust in the securities of the Partnership (the **Fund-on-Fund Structure**).

28. For the units of the Fund to be offered to deferred income plans, it is necessary that the Fund qualify as a "mutual fund trust" under the *Income Tax Act* (Canada). In order to qualify as a "mutual fund trust", amongst other conditions, the sole undertaking of the Fund must be investing of its funds in property. The Partnership, amongst its activities, intends to acquire interests in factoring participation agreements. While those investments will be passive, the nature of the participation is such that it may be argued from a tax perspective to constitute an undertaking by the Fund (assuming it participated directly) other than merely investing its funds in property which may be viewed as putting the Fund offside the definition of "mutual fund trust" for the purposes of the *Income Tax Act* (Canada).

29. The interposition of the Sub Trust between the Fund and the Partnership further strengthens this position, since in some cases a partner of a limited partnership may be considered to itself be carrying on the activities of the Partnership.

30. An investment in the Sub Trust by the Fund will be compatible with the investment objectives of the Fund, and an investment in the Partnership by the Sub Trust will be compatible with the investment objectives of the Sub Trust.

31. The amount invested in the Partnership by the Sub-Trust, both managed by the Filer, will exceed 20% of the outstanding voting securities of the Partnership. Accordingly, the Sub-Trust will be a substantial securityholder of the Partnership.

32. The amount invested in the Sub-Trust by the Fund, both managed by the Filer, will exceed 20% of the outstanding voting securities of the Sub-Trust. Accordingly, the Fund will be a substantial securityholder of the Sub-Trust.

33. The Top Funds and the Partnership are related funds by virtue of the common management of these funds by the Filer.

34. The Filer is entitled to receive a management fee, payable in consideration of the services provided to the Fund and the Partnership. The Filer will ensure that the arrangements between the Fund, the Sub Trust and the Partnership in respect of an investment in the Fund-on-Fund Structure will avoid the duplication of management fees and incentive fees. Other than the management fee payable by the Fund to the Filer, which will be utilized to pay the servicing commissions, the Filer and its affiliates do not charge, and will not charge, any management fee or incentive fee to the Fund or the Sub Trust.

35. There will be no sales fees or redemption fees payable by the Top Funds in respect of an acquisition, disposition or redemption of securities of the Partnership.

36. Prior to the time of purchase of Units of the Fund, an investor will be provided with an offering memorandum of the Fund which contains disclosure about the relationships, aggregate fee disclosure and potential conflicts of interest between the Top Funds and the Partnership.

37. The offering memorandum will describe the Fund's intent, or ability, to invest in securities of the Sub Trust and the Sub Trust's intent, or ability, to invest in securities of the Partnership. The offering memorandum will also disclose that the Sub Trust and the Partnership are managed by the Filer.

38. Each of the Top Funds and the Partnership will prepare annual audited financial statements and interim financial reports in accordance with National Instrument 81-106 *Investment Funds Continuous Disclosure* (**NI 81-106**) and will otherwise comply with the applicable requirements of NI 81-106.

39. Unitholders of the Fund will receive, on request, a copy of the Fund's audited annual financial statements and interim financial reports. The financial statements of the Fund will disclose its holdings of units in the Sub Trust.

40. Unitholders of the Fund will receive, on request, a copy of the audited annual financial statements and interim financial reports of the Sub Trust and the Partnership. The financial statements of the Sub Trust will disclose its holdings of securities of the Partnership.

41. Each of the Fund, the Sub Trust and the Partnership has matching valuation dates and are valued on a monthly basis.

42. Units of the Fund can be redeemed on any valuation date.

43. The Filer manages or will manage the portfolio of the Partnership to ensure there is sufficient liquidity to provide for redemptions of units by unitholders of the Fund.

44. Each of the Fund and the Sub trust is a "clone fund" as defined in National Instrument 81-102 *Investment Funds* (**NI 81-102**).

Generally

45. Since neither the Fund nor the Sub Trust is a reporting issuer, they are not subject to NI 81-102 and, therefore, the Top Funds are unable to rely upon the exemption codified in subsection 2.5(7) of NI 81-102.

46. In the absence of the Requested Relief, the Fund would be precluded from investing in the Sub Trust, and the Sub Trust would be precluded from investing in the Partnership, due to the investment prohibitions in paragraph 111(2)(b) and subsections 111(3) and 111(4) of the Act.

47. In the absence of the Requested Relief, the Filer would be required to file a report for every transaction between the Top Fund and the Partnership under paragraph 117(1)(a) of the Act.

48. The Fund's investments in the Partnership through the Sub Trust represent the business judgment of responsible persons uninfluenced by considerations other than the best interests of the investment funds concerned.

Decision

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

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

(a) securities of the Fund are distributed in Canada solely pursuant to exemptions from the prospectus requirements in NI 45-106;

(b) the investment by the Fund in the Sub Trust and the investment by the Sub Trust in the Partnership is compatible with the fundamental objectives of the Fund and the Sub Trust, respectively;

(c) the Sub Trust will not purchase or hold securities of the Partnership unless, at the time of the purchase of securities of the Partnership, the Partnership holds no more than 10% of its net assets in securities of other investment funds other than securities

(i) of a "money market fund" (as defined in NI 81-102), or

(ii) that are "index participation units" (as defined in NI 81-102) issued by an investment fund;

(d) no management fees or incentive fees are payable by the Fund that, to a reasonable person, would duplicate a fee payable by the Sub Trust or the Partnership for the same service;

(e) no management fees or incentive fees are payable by the Sub Trust that, to a reasonable person, would duplicate a fee payable by the Partnership for the same service;

(f) no sales fees or redemption fees are payable by (i) the Fund in relation to its purchases or redemptions of securities of the Sub Trust, or (ii) the Sub Trust in relation to its purchases or redemptions of securities of the Partnership;

(g) the Filer will provide to investors in the Fund an offering memorandum (or other similar document), which discloses:

(i) that the Fund will purchase units of the Sub Trust and the Sub Trust will purchase units of the Partnership;

(ii) the fact that the Sub Trust and the Partnership are also managed and advised by the Filer;

(iii) the fact that substantially all of the assets of the Fund are invested in securities of the Sub Trust and that substantially all of the assets of the Sub Trust are invested in securities of the Partnership; and

(iv) the process or criteria used to select the Partnership's investments;

(h) investors in the Fund will be informed that they are entitled to receive from the Filer, on request and free of charge, the annual financial statements and interim financial reports of the Fund, the Sub Trust and the Partnership;

(i) the Filer does not cause the units of the Sub Trust held by the Fund to be voted at any meeting of holders of such units, except that the Filer may arrange for the units the Fund holds of the Sub Trust to be voted by the beneficial holders of units of the Fund;

(j) the Filer does not cause the units of the Partnership held by the Sub Trust to be voted at any meeting of holders of such units, except that the Filer may arrange for the units the Sub Trust holds of the Partnership to be voted by the beneficial holders of units of the Fund;

(k) the Fund is the only securityholder of the Sub Trust and the Sub Trust is the only limited partner of the Partnership;

(l) the General Partner's investment in the Partnership is nominal; and

(m) each of the Fund and the Sub Trust is a "clone fund" as defined in NI 81-102.

"Edward P. Kerwin"
Commissioner
Ontario Securities Commission

"Anne Marie Ryan"
Commissioner
Ontario Securities Commission

2.1.2 Franklin Templeton Investments Corp. et al.

Headnote

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

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, s. 5.5(1)(b).

November 5, 2014

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
FRANKLIN TEMPLETON INVESTMENTS CORP.
(the Filer)

AND

FRANKLIN BISSETT BOND YIELD CLASS,
FRANKLIN BISSETT BOND CORPORATE CLASS,
FRANKLIN BISSETT CANADIAN SHORT TERM BOND YIELD CLASS,
FRANKLIN BISSETT CORPORATE BOND YIELD CLASS,
TEMPLETON GLOBAL BOND HEDGED YIELD CLASS
(each, a Terminating Fund and collectively, the Terminating Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Terminating Funds for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) approving the mergers (the **Mergers**) of the Terminating Funds into the Continuing Funds (defined below) pursuant to paragraph 5.5(1)(b) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Approval 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, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut (collectively, the **Passport 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. The following additional terms shall have the following meanings:

Bond Fund Merger means the merger of Franklin Bissett Bond Corporate Class into Franklin Bissett Bond Fund;

Continuing Funds means Franklin Bissett Bond Fund, Franklin Bissett Canadian Short Term Bond Fund, Franklin Bissett Corporate Bond Fund and Templeton Global Bond Fund;

FTCCL means Franklin Templeton Corporate Class Ltd;

Funds means collectively, the Terminating Funds and the Continuing Funds, and Fund means any one of the Terminating Funds or the Continuing Funds;

IRC means the independent review committee for the Funds;

Tax Act means the *Income Tax Act* (Canada);

Yield Class means each of Templeton Global Bond Hedged Yield Class, Franklin Bissett Bond Yield Class, Franklin Bissett Canadian Short Term Bond Yield Class and Franklin Bissett Corporate Bond Yield Class; and

Yield Class Mergers means, collectively, the merger of (i) Templeton Global Bond Hedged Yield Class into Templeton Global Bond Fund; (ii) Franklin Bissett Bond Yield Class into Franklin Bissett Bond Fund; (iii) Franklin Bissett Canadian Short Term Bond Yield Class into Franklin Bissett Canadian Short Term Bond Fund; and (iv) Franklin Bissett Corporate Bond Yield Class into Franklin Bissett Corporate Bond Fund.

Representations

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

The Filer

1. The Filer is a corporation existing under the laws of Ontario having its registered head office in Toronto, Ontario.

2. The Filer is registered as an investment fund manager, portfolio manager, exempt market dealer and mutual fund dealer in the Jurisdiction and is registered as a portfolio manager, exempt market dealer and mutual fund dealer in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Quebec, Saskatchewan and Yukon and as an investment fund manager in each of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia and Quebec.

3. The Filer is the investment fund manager of each of the Funds.

The Funds

4. FTCCL is an open-end mutual fund corporation incorporated under the laws of Alberta on June 1, 2001. Each of the Terminating Funds is a separate class of special shares of FTCCL.

5. Each of the Continuing Funds is a trust established under the laws of Ontario.

6. Securities of the Funds are currently qualified for sale by a simplified prospectus, annual information form and Fund Facts dated May 29, 2014, which have been filed and receipted in Ontario and each of the Passport Jurisdictions (collectively, the **Jurisdictions**).

7. Each of the Funds is a reporting issuer in the Jurisdictions.

8. Neither the Filer nor any Fund is in default under the securities legislation in the Jurisdictions.

9. Other than circumstances in which the securities regulatory authorities of the Jurisdictions has expressly exempted a Fund therefrom, each of the Funds follows the standard investment restrictions and practices established under NI 81-102.

Rationale for Mergers

10. The Terminating Funds, other than Franklin Bissett Bond Corporate Class, currently provide tax-efficient fixed income offerings by investing in different types of securities and entering into forward contracts to provide investment returns similar to those generated by certain reference funds that invest in fixed income securities (**Reference Funds**).

11. The favourable tax treatment of the above arrangements will be eliminated by new rules in the Tax Act, announced on March 21, 2013, that affect the tax treatment of returns earned under "derivative forward agreements".

12. As a result of this change in the Tax Act, the Filer has determined that it will no longer be possible to provide securityholders of the Terminating Funds with their desired exposure to their Reference Funds on a tax-advantaged basis and so the Filer proposes to effect the Mergers.

Approval of the Proposed Mergers

13. The Mergers will not constitute a material change for the Continuing Funds.

14. Securityholders of the Terminating Funds will be asked to approve the relevant Mergers at special meetings expected to be held on or about November 28, 2014.

15. The Filer, as the sole Class A common shareholder of FTCCL will approve the Mergers, as required under the *Business Corporations Act* (Alberta).

16. Subject to receipt of securityholder approval and the Approval Sought, the Mergers are expected to occur on or about December 12, 2014 (the **Effective Date**).

17. If securityholder approval is not received at the special meeting in respect of a Fund, then the relevant Merger will not proceed and the relevant Terminating Fund will be terminated on or about January 9, 2015.

Merger Steps

18. It is proposed that the following steps will be carried out to effect the Mergers:

    (a) In respect of the proposed Bond Fund Merger:

        (i) As the Terminating Fund's investment portfolio currently consists of units of its Continuing Fund, on the Effective Date, the Terminating Fund will redeem its outstanding shares and distribute the units of the Continuing Fund owned by the Terminating Fund to shareholders of the Terminating Fund, in exchange for all such shareholders' existing shares of the Terminating Fund, on a series-for-series and dollar-for-dollar basis; and

        (ii) As soon as reasonably possible following the Merger, the articles of FTCCL will be amended to authorize the cancellation of the issued and unissued special shares of the Terminating Fund.

    (b) In respect of the Yield Class Mergers:

        (i) Each Terminating Fund's investment portfolio currently consists of a common share portfolio and forward contracts and may also include fixed income securities. Prior to the Effective Date, any fixed income securities held by a Terminating Fund will be liquidated for cash;

        (ii) On or about December 2, 2014 (the **Settlement Date**), each Terminating Fund will settle the forward contract with its applicable counterparty (the **Counterparty**). The Counterparty will pay the settlement amount by redeeming its investment in the applicable Continuing Fund and directing the Continuing Fund to pay the redemption proceeds to the Terminating Fund. Each Terminating Fund will subscribe for units of its applicable Continuing Fund in an amount equal to the value of its assets less an amount required to satisfy the liabilities of the Terminating Fund and in payment thereof, the Terminating Fund will direct the Continuing Fund to use the amount owing to it from the Counterparty. The Terminating Fund will then deliver its common share portfolio to the Counterparty;

        (iii) On the Effective Date, each Terminating Fund will use any remaining cash in its portfolio to subscribe for additional units of its applicable Continuing Fund and then each Terminating Fund will redeem its outstanding shares and distribute the units of the Continuing Fund held by the Terminating Fund to shareholders of the Terminating Fund, in exchange for all such shareholders' existing shares of the Terminating Fund, on a series-for-series and dollar-for-dollar basis, except for:

            (1) Series R, S and T shares of Templeton Global Bond Hedged Yield Class, which will be exchanged for Series O, F and A units, respectively of Templeton Global Bond Fund, and

(2) Series T shares of Franklin Bissett Corporate Bond Yield Class, which will be exchanged for Series A units of Franklin Bissett Corporate Bond Fund; and

(iv) As soon as reasonably possible following the Mergers, the articles of FTCCL will be amended to authorize the cancellation of the issued and unissued special shares of each Terminating Fund.

19. As soon as reasonably possible following the Mergers, the Terminating Funds will be wound up and the Continuing Funds will continue as publically offered open-end mutual funds.

20. Costs and expenses associated with the Mergers, including the costs of the Meetings, will be borne by the Manager and will not be charged to the Funds. The costs of the Mergers include legal, printing, mailing and regulatory fees, as well as proxy solicitation costs.

Comparison of Terminating Funds and Continuing Funds

21. The Mergers satisfy all of the requirements for pre-approved reorganizations and transfers set out in section 5.6(1) of NI 81-102, except the requirement set out in subsection 5.6(1)(b) that the Mergers be "qualifying exchanges" within the meaning of section 132.2 of the Tax Act or tax-deferred transactions under subsections 85(1), 85.1(1), 86(1) or 87(1) of the Tax Act.

22. No sales charges will be payable by securityholders of the Funds in connection with the Mergers.

Securityholder Disclosure

23. A press release describing the proposed Mergers has been issued and the press release, material change report and amendments to the simplified prospectus, annual information form and Fund Facts, which give notice of the proposed Mergers, have been filed via SEDAR.

24. A notice of meeting, management information circular, proxy and Fund Facts of the applicable series of each Continuing Fund (the **Meeting Materials**) will be mailed to securityholders of each Terminating Fund commencing on or about November 4, 2014 and will be filed via SEDAR.

25. The Meeting Materials will contain a description of the proposed Mergers, information about the Terminating Funds and the Continuing Funds and income tax considerations for securityholders of the Terminating Funds. The Meeting Materials will also describe the various ways in which investors can obtain a copy of the simplified prospectus and annual information form of the Continuing Funds, as well as the most recent interim and annual financial statements and management reports of fund performance for the Continuing Funds.

Securityholder Purchases and Redemptions

26. Securityholders of each Terminating Fund will continue to have the right to redeem securities of the Terminating Fund for cash or switch into securities of another Franklin Templeton mutual fund (including on a tax-deferred basis to a fund that is a class of FTCCL) at any time up to the close of business on the business day immediately before the Effective Date of the applicable Merger.

27. The Terminating Funds are currently closed to investment, except Franklin Bissett Bond Corporate Class, which permits certain pre-authorized purchase plans only. The Terminating Funds will remain closed to all purchase-type transactions until they are merged with the Continuing Funds on the Effective Date, except for Franklin Bissett Bond Corporate Class which will continue to permit certain pre-authorized purchase plans until December 11, 2014. Systematic withdrawal programs shall remain unaffected until the business day immediately before the Effective Date of the applicable Merger.

28. Following the Mergers, all systematic programs that had been established with respect to the Terminating Funds will be re-established on a series-for-series basis in the applicable Continuing Funds (subject to the exceptions noted in paragraph 18(b)(iii) above), unless securityholders advise the Filer otherwise.

29. Securityholders may change or cancel any systematic program at any time and securityholders of the Terminating Funds who wish to establish one or more systematic programs in respect of their holdings in the Continuing Funds may do so following the Mergers.

IRC Review

30. The Filer has presented the proposed Mergers to the IRC and has obtained a positive recommendation that each Merger, if implemented, would achieve a fair and reasonable result for the Funds.

31. A summary of the IRC's recommendation will be included in the notice of special meeting sent to securityholders of the Terminating Funds as required by subsection 5.1(2) of National Instrument 81-107 *Independent Review Committee for Investment Funds*.

Benefits of Mergers

32. The Filer believes that the Mergers will benefit securityholders of the Terminating Funds in the following ways:

    (a) the proposed Mergers will facilitate an improved after-tax outcome for securityholders, especially after consideration of the other options of: (i) leaving securityholders in the soon to be ineffective Terminating Funds; or (ii) simply winding down the Terminating Funds;

    (b) once the transitional arrangements for derivative forward agreements under the Tax Act cease to apply, there is no reasonably foreseeable reason why a securityholder would be better off in a Terminating Fund relative to its Continuing Fund, as securityholders will receive a fund with substantially similar investment objectives;

    (c) management and administration fees will not increase and management expense ratios (**MER**) of each Continuing Fund will remain substantially the same as or, in some cases, be moderately lower than, the MER of its corresponding Terminating Fund; and

    (d) the risk profile of each Continuing Fund is the same as that of its corresponding Terminating Fund, except for each Yield Class where, in addition, the risk and cost associated with the forward contracts is not borne by the Continuing Fund.

Reason for Approval Sought

33. Regulatory approval of the Mergers is required because the Mergers do not satisfy one of the criteria for pre-approved reorganizations and transfers set out in section 5.6 of NI 81-102 in that the Mergers will not be implemented as "qualifying exchanges" within the meaning of section 132.2 of the Tax Act or as tax-deferred transactions under subsections 85(1), 85.1(1), 86(1) or 87(1) of the Tax Act.

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 Approval Sought is granted, provided that the Filer obtains the prior approval of the securityholders of the Terminating Funds for the Mergers at the special meetings held for that purpose, or any adjournments thereof.

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

2.1.3 Nexans S.A.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Dual application for Exemptive Relief Applications – Application for relief from the prospectus and registration requirements for certain trades made in connection with an employee share offering by a French issuer – The issuer cannot rely on the employee exemption in section 2.24 of Regulation 45-106 respecting prospectus and registration exemptions as the securities are not being offered to Canadian employees directly by the issuer but rather through special purpose entities – Canadian participants will receive disclosure documents – The special purpose entities are subject to the supervision of the local securities regulator – Canadian employees will not be induced to participate in the offering by expectation of employment or continued employment – There is no market for the securities of the issuer in Canada – The number of Canadian participants and their share ownership are *de minimis* – Relief granted, subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1), 74.
Regulation 45-106 respecting prospectus and registration exemptions, s. 2.24.

October 27, 2014

TRANSLATION

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

AND

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

AND

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

DECISION

Background

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

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

   (a) Trades in units (the "**Units**") of Nexans Plus 2014 B (the "**Compartment**"), a compartment of an FCPE named Nexans Plus 2014 (the "**Fund**"), which is a *fonds commun de placement d'entreprise* or "FCPE" (a form of collective shareholding vehicle of a type commonly used in France for the conservation or custodianship of shares held by employee-investors) made pursuant to the Employee Share Offering (as defined below) to or with Qualifying Employees (as defined below) of Canadian Affiliates (as defined below) resident in the Filing Jurisdictions and in Alberta, Saskatchewan, Manitoba and Nova Scotia (collectively, the "**Canadian Employees**") who elect to participate in the Employee Share Offering (such Canadian Employees who subscribe for Units, the "**Canadian Participants**");

   (b) trades in ordinary shares of the Filer (the "**Shares**") by the Compartment and another FCPE named Actionnariat Nexans (the "**Transfer Fund**") to or with Canadian Participants upon the redemption of Units and Transfer Fund Units (as defined below), respectively, as requested by Canadian Participants;

(c) trades in Transfer Fund Units made pursuant to the Employee Share Offering to or with Canadian Participants, including upon a transfer of the Canadian Participants' assets in the Compartment to the Transfer Fund at the end of the Lock-Up Period (as defined below);

2. an exemption from the dealer registration requirements of the Legislation (the "**Registration Relief**") so that such requirements do not apply to the Nexans Group (as defined below), the Compartment, the Transfer Fund and the Fund, as applicable, and BNP Asset Management (the "**Management Company**") in respect of the following:

   (a) trades in Units made pursuant to the Employee Share Offering to or with Canadian Participants not resident in Ontario and Manitoba;

   (b) trades in Shares by the Compartment and the Transfer Fund to or with Canadian Participants upon the redemption of Units and Transfer Fund Units, respectively, as requested by Canadian Participants; and

   (c) trades in Transfer Fund Units made pursuant to the Employee Share Offering to or with Canadian Participants, including upon a transfer of the Canadian Participants' assets in the Compartment to the Transfer Fund at the end of the Lock-Up Period;

   the Prospectus Relief and the Registration Relief, collectively, the "**Offering Relief**").

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

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

   (b) the Filer has provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* ("**Regulation 11-102**") is intended to be relied upon in Alberta, Saskatchewan, Manitoba and Nova Scotia (collectively the "**Other Jurisdictions**" and, together with the Filing Jurisdictions, 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*, *Regulation 45-102 respecting resale of securities*, *Regulation 45-106 respecting Prospectus and Registration Exemptions* and Regulation 11-102 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

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

2. Certain affiliates of the Filer, including Nexans Canada Inc. and AmerCable Incorporated (collectively, the "**Canadian Affiliates**" and, together with the Filer and other affiliates of the Filer, the "**Nexans Group**"), employ Canadian Employees.

3. Each of the Canadian Affiliates is a direct or indirect controlled subsidiary of the Filer and is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the Other Jurisdictions. The Canadian Affiliates are not in default of the Legislation or the securities legislation of the Other Jurisdictions.

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

5. The Filer has established a global employee share offering for employees of the Nexans Group (the "**Employee Share Offering**"). The Employee Share Offering involves an offering of Shares to be subscribed through the Compartment.

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

7. The Compartment was established for the purpose of implementing the Employee Share Offering and the Transfer Fund was especially established in order to receive assets transferred, at the end of the applicable lock-up period, from other compartments of the Fund established within the framework of employee share plans implemented by the Filer similar to the Employee Share Offering. The Compartment and the Transfer Fund have limited liability under French law. There is no current intention for the Compartment or the Transfer Fund to become a reporting issuer under the Legislation or the securities legislation of the Other Jurisdictions.

8. The Fund, the Compartment and the Transfer Fund have been registered with, and approved by, the Autorité des marchés financiers in France (the "**French AMF**").

9. Under the Employee Share Offering, Canadian Participants will subscribe for Units, and the Compartment will then subscribe for Shares using the Employee Contribution (as described below) and certain financing made available by Société Générale (the "**Bank**"), which is a bank governed by the laws of France.

10. The subscription price for the Shares will be the average of the opening price of the Shares (expressed in Euros) on NYSE Euronext Paris on the 20 trading days preceding the date of the fixing of the subscription price by the Chief Executive Officer of the Filer, acting on the authority of the Board of Directors of the Filer (the "**Reference Price**"), less a 20% discount.

11. Canadian Participants will contribute the Canadian dollar equivalent of 16.66% of the price of each Share (expressed in Euros) they wish to subscribe for to the Compartment (the "**Employee Contribution**"). The Compartment will enter into a swap agreement (the "**Swap Agreement**") with the Bank. Under the terms of the Swap Agreement, the Bank will contribute the remaining 83.34% of the price of each Share (expressed in Euros) to be subscribed for by the Compartment (the "**Bank Contribution**").

12. The Compartment will apply the cash received from the Employee Contribution and the Bank Contribution to subscribe for Shares.

13. The Canadian Participants will receive Units in the Compartment entitling him or her to the Euro amount of the Employee Contribution and a multiple of the average increase in the Share price of the Shares subscribed on behalf of Canadian Participants (including the Shares financed by the Bank Contribution).

14. The Units will be subject to a hold period of five years (the "**Lock-Up Period**"), subject to certain exceptions prescribed by French law and adopted under the Employee Share Offering in Canada (such as death, disability or involuntary termination of employment).

15. Under the terms of the Swap Agreement, the Compartment will remit to the Bank an amount equal to the net amounts of any dividends paid on the Shares held in the Compartment during the Lock-Up Period. At the end of the Lock-Up Period, the Compartment will owe to the Bank an amount equal to A - [B+C], where

    a) "A" is the market value of all the Shares at the end of the Lock-Up Period that are held in the Compartment (as determined pursuant to the terms of the Swap Agreement),

    b) "B" is the aggregate amount of all Employee Contributions,

    c) "C" is an amount (the "**Appreciation Amount**") equal to

        i) approximately 2.5 (or some other multiple, the final value of which will be determined and communicated to Canadian Participants prior to the finalization of their subscriptions) times the amount, if any, by which the Average Trading Price is greater than the Reference Price, where "**Average Trading Price**" is the average price of the Shares based on 60 monthly readings of the closing price of the Shares over the Lock-Up Period. In the event a closing price is less than the Reference Price, it will be substituted by the Reference Price;

    and further multiplied by

        ii) the number of Shares held in the Compartment.

16. If, at the end of the Lock-Up Period, the market value of the Shares held in the Compartment is less than 100% of the Employee Contributions, the Bank will, pursuant to the terms and conditions of a guarantee contained in the Swap Agreement, make a contribution to the Compartment to make up any shortfall.

17. At the end of the Lock-Up Period, the Swap Agreement will terminate after the final swap payments. A Canadian Participant may then request the redemption of his or her Units in consideration for cash or Shares with a value representing:

    (a) the Canadian Participant's Employee Contribution; and

    (b) the Canadian Participant's portion of the Appreciation Amount, if any

    (the "**Redemption Formula**")

18. If a Canadian Participant does not request the redemption of his or her Units in the Compartment at the end of the Lock-Up Period, his or her investment in the Compartment will be transferred to the Transfer Fund (subject to the decision of the supervisory board of the Fund and the approval of the French AMF). Units of the Transfer Fund (the "**Transfer Fund Units**") will be issued to such Canadian Participants in recognition of the assets transferred to the Transfer Fund. Canadian Participants may request the redemption of the Transfer Fund Units whenever they wish. Once a Canadian Participant becomes a unitholder of the Transfer Fund, he or she will be able to request the redemption of Transfer Fund Units at any time in consideration of the underlying Shares or a cash payment equal to the then market value of the Shares held by the Transfer Fund. However, following a transfer to the Transfer Fund, the Employee Contribution and the Appreciation Amount will not be covered by the Swap Agreement (including the Bank's guarantee contained therein).

19. Pursuant to the terms of the guarantee contained in the Swap Agreement, a Canadian Participant will be entitled to receive 100% of his or her Employee Contribution (in Euro) at the end of the Lock-Up Period or in the event of an early unwind resulting from the Canadian Participant exercising one of the exceptions to the Lock-Up Period. The Management Company is permitted to cancel the Swap Agreement (which will have the effect of cancelling the guarantee) in certain strictly defined conditions where it is in the best interests of the holders of Units. The Management Company is required under French law to act in the best interests of the holders of the Units. In the event that the Management Company cancelled the Swap Agreement and this was not in the best interests of the holders of the Units, then such holders would have a right of action under French law against the Management Company. Under no circumstances will a Canadian Participant be responsible to contribute an amount greater than his or her Employee Contribution.

20. In the event of an early unwind resulting from the Canadian Participant satisfying one of the exceptions to the Lock-Up Period and meeting the applicable criteria, a Canadian Participant may request the redemption of Units from the Compartment. The value of the Units will be calculated in accordance with the Redemption Formula. The measurement of the increase, if any, from the Reference Price will be carried out in accordance with similar rules to those applied to redemption at the end of the Lock-up Period, but it will be measured using values of the Shares at the time of the unwind instead.

21. Under no circumstances will a Canadian Participant be liable to any of the Compartment, the Transfer Fund, the Bank or the Filer for any amounts in excess of his or her Employee Contribution under the Employee Share Offering.

22. For Canadian federal income tax purposes, a Canadian Participant should be deemed to receive all dividends paid on the Shares financed by either the Employee Contribution or the Bank Contribution at the time such dividends are paid to the Compartment, notwithstanding the actual non-receipt of the dividends by the Canadian Participants.

23. The declaration of dividends on the Shares (in the ordinary course or otherwise) is strictly decided by the shareholders of the Filer on the proposition of the Board of Directors. The Filer has not made any commitment to the Bank as to any minimum payment of dividends during the term of the Lock-Up Period.

24. To respond to the fact that, at the time of the initial investment decision relating to participation in the Employee Share Offering, Canadian Participants will be unable to quantify their potential income tax liability resulting from such participation, the Filer or the Canadian Affiliates are prepared to indemnify each Canadian Participant for all tax costs to the Canadian Participants associated with the payment of dividends in excess of a specified amount of Euros per calendar year per Share during the Lock-Up Period such that, in all cases, a Canadian Participant will, at the time of the original investment decision, be able to determine his or her maximum tax liability in connection with dividends received by the Compartment on his or her behalf under the Employee Share Offering.

25. At the time the Compartment's obligations under the Swap Agreement are settled, the Canadian Participant will realize a capital gain (or capital loss) by virtue of having participated in the Swap Agreement to the extent that amounts received by the Compartment, on behalf of the Canadian Participant, from the Bank exceed (or are less than) amounts paid by the Compartment, on behalf of the Canadian Participant, to the Bank. Any dividend amounts paid to the Bank under the Swap Agreement will serve to reduce the amount of any capital gain (or increase the amount of any capital loss) that the Canadian Participant would have realized. Capital losses (gains) realized by a Canadian Participant may generally be offset against (reduced by) any capital gains (losses) realized by the Canadian Participant on a disposition of the Shares, in accordance with the rules and conditions under the *Income Tax Act* (Canada) or comparable provincial legislation (as applicable).

26. The Compartment's portfolio will almost exclusively consist of Shares as well as the rights and associated obligations under the Swap Agreement. The Compartment may also hold cash or cash equivalents pending investments in Shares and for the purposes of facilitating Unit redemptions.

27. Any dividends paid on the Shares held in the Transfer Fund will be contributed to the Transfer Fund and used to purchase additional Shares on the stock market. To reflect this reinvestment, either new Transfer Fund Units (or fractions thereof) will be issued to Canadian Participants or no additional Transfer Fund Units will be issued and the net asset value of Transfer Fund will be increased.

28. The Transfer Fund's portfolio will almost entirely consist of Shares, and may also include, from time to time, cash in respect of dividends paid on the Shares which will be reinvested in additional Shares as well as cash or cash equivalents held for the purpose of investing in the Shares and redeeming Transfer Fund Units.

29. The Management Company is a portfolio management company governed by the laws of France. The Management Company is registered with the French AMF as an investment manager and complies with the rules of the French AMF. The Management Company is obliged to act in the best interests of the Canadian Participants and is liable to them, jointly and severally with the Depositary (as defined below), for any violation of the rules and regulations governing the FCPE, any violation of the rules of the FCPE, or for any self-dealing or negligence. To the best of the Filer's knowledge, the Management Company is not, and has no current intention of becoming, a reporting issuer under the Legislation or the securities legislation of the Other Jurisdictions.

30. The Management Company's portfolio management activities in connection with the Employee Share Offering and the Compartment are limited to subscribing for Shares from the Filer, selling such Shares as necessary in order to fund redemption requests, investing available cash in cash equivalents, and such activities as may be necessary to give effect to the Swap Agreement. The Management Company's portfolio management activities in connection with the Transfer Fund will be limited to purchasing Shares from the Filer using Canadian Participants' entitlement under the Employee Share Offering at the end of the Lock-Up Period (i.e. a Canadian Participant's Employee Contribution plus his or her portion of the Appreciation Amount, if any, based on the Redemption Formula), selling Shares held by the Transfer Fund as necessary in order to fund redemption requests, and investing available cash in cash equivalents.

31. The Management Company is also responsible for preparing accounting documents and publishing periodic informational documents in respect of the Compartment and the Transfer Fund. The Management Company's activities will not affect the value of the Shares.

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

33. Shares issued under the Employee Share Offering will be deposited in the Compartment's accounts or the Transfer Fund's accounts, as the case may be, with BNP Paribas Securities Services (the "**Depositary**"), a large French commercial bank subject to French banking legislation.

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

35. The total amount that may be invested by a Canadian Participant in the Employee Share Offering cannot exceed 25% of a Canadian Participant's estimated gross annual compensation (the 25% investment limit takes into account the Bank Contribution).

36. The Shares, Units and Transfer Fund Units are not currently listed for trading on any stock exchange in Canada and there is no intention to have the Shares, Units or Transfer Fund Units so listed. As there is no market for the Shares in Canada, and as none is expected to develop, any first trades of Shares by Canadian Participants will be effected through the facilities of, and in accordance with, the rules and regulations of an exchange outside of Canada.

37. The Filer will retain a securities dealer registered as a broker/investment dealer (the "**Registrant**") under the securities legislation of Ontario and Manitoba to provide advisory services to Canadian Employees resident in such provinces who express an interest in the Employee Share Offering and to make a determination, in accordance with industry practices, as to whether an investment in the Employee Share Offering is suitable for each such Canadian Employee based on his or her particular financial circumstances.

38. Canadian Employees will receive an information package in the French or English language, according to their preference, which will include a description of the terms of the Employee Share Offering and a description of Canadian income tax consequences of subscribing to and holding the Units and redeeming Units for cash or Shares at the end of the Lock-Up Period. The information package will also include a risk statement which will describe certain risks associated with an investment in Units. Canadian Employees may also consult the Filer's *Document de Référence* (in French and English) filed with the French AMF in respect of the Shares and a copy of the Compartment's rules (which are analogous to company by-laws). Canadian Employees will also have access to copies of the continuous disclosure materials relating to the Filer that are furnished to holders of Shares generally.

39. Canadian Participants will receive an initial statement of their holdings under the Employee Share Offering together with an updated statement at least once per year.

40. As of the date of the application of the Filer, there were approximately 571 Qualifying Employees resident in Canada, with the largest number residing in the Province of Ontario (approximately 320), and the remainder in the provinces of Alberta, Saskatchewan, Manitoba, Quebec and Nova Scotia, who represent, in the aggregate, approximately 2.2% of the number of employees in the Nexans Group worldwide.

41. The Filer is not, and none of the Canadian Affiliates are, in default of the Legislation or the securities legislation of the Other Jurisdictions. To the best of the Filer's knowledge, the Management Company is not in default of the Legislation or the securities legislation of the Other Jurisdictions.

Decision

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

The decision of the Decision Makers under the Legislation is that the Offering Relief is granted provided that:

1. the prospectus requirements of the Legislation will apply to the first trade in any Units or Shares acquired by Canadian Participants pursuant to this Decision, unless the following conditions are met:

    a) the issuer of the security

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

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

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

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

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

    c) the first trade is made:

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

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

"Lucie J. Roy"
Senior Director, Corporate Finance

2.1.4 American Bonanza Gold Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for a decision that the issuer is not a reporting issuer under applicable securities laws – issuer in default of its obligation to file and deliver its financial statements and related management's discussion and analysis – requested relief granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).
CSA Staff Notice 12-307 Applications for a Decision that an Issuer is not a Reporting Issuer.

November 19, 2014

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ALBERTA, SASKATCHEWAN, MANITOBA, ONTARIO, QUEBEC,
NEW BRUNSWICK AND NEWFOUNDLAND & LABRADOR
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
AMERICAN BONANZA GOLD CORP.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the Filer is not a reporting issuer (the **Exemptive Relief Sought**).

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

(a) the Ontario Securities Commission is the Principal Regulator for this application; and

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

Interpretation

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

Representations

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

1. The Filer was incorporated pursuant to the *Business Corporations Act* (British Columbia) on December 10, 2004.

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

3. The Filer is currently a reporting issuer in each of the Jurisdictions and is not a reporting issuer or the equivalent in any other jurisdiction of Canada.

4. The authorized share capital of the Filer consists of an unlimited number of common shares.

5. On June 27, 2014, pursuant to a plan of arrangement among Kerr Mines Inc. (**Kerr Mines**), 0999415 B.C. Ltd. (**Kerr Subco**), a wholly-owned subsidiary of Kerr Mines and the Filer, Kerr Mines acquired ownership and control of 1,121,186,339 common shares of the Filer, being all of the issued and outstanding common shares of the Filer, in consideration for 594,228,760 common shares of Kerr Mines.

6. On June 27, 2014, by articles of amalgamation certified by the Province of British Columbia Registrar of Companies, Kerr Subco and the Filer amalgamated to form American Bonanza Gold Corp. As a result of the amalgamation the Filer is a wholly-owned subsidiary of Kerr Mines.

7. The common shares of the Filer were delisted from the Toronto Stock Exchange at the close of business on July 7, 2014.

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

9. Effective August 4, 2014, the Filer successfully surrendered its status as a reporting issuer in British Columbia pursuant to BC Instrument 11-102 *Voluntary Surrender of Reporting Issuer Status*.

10. 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.

11. The Filer is not in default of any of its obligations under the Legislation as a reporting issuer, other than an obligation to file on or before August 15, 2014, its interim financial statements and management discussion and analysis in respect of such statements for the period ended June 30, 2014, as required under National Instrument 51-102 – *Continuous Disclosure Obligations* and the related certificates as required under National Instrument 52-109 – *Certification of Disclosure in Issuer's Annual and Interim Filings* (collectively, the **Filings**).

12. The Filer is applying for a decision that it is not a reporting issuer in all of the Jurisdictions.

13. The Filer is not eligible to use the simplified procedure under CSA Staff Notice 12-307 – *Applications for a Decision that an Issuer is not a Reporting Issuer* as it is in default for failure to file the Filings.

14. The Filer has no current intention to seek public financing by way of an offering of securities.

15. The Filer, upon the receipt of the decision and the granting of the Exemptive Relief Sought, will no longer be a reporting issuer or the equivalent thereof in any jurisdiction in Canada.

Decision

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

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

"Edward P. Kerwin"
Ontario Securities Commission

"Judith Robertson"
Ontario Securities Commission

2.1.5 TransCanada PipeLines Limited and TransCanada Trust

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – trust to be established by filer to issue securities to the public – structure created in order to obtain favourable ratings treatment – trust not currently a reporting issuer – filer will be credit supporter to trust – trust exempted from eligibility requirements to file a short form prospectus and 10-day notice requirement – trust to meet section 2.4 of NI 44-101 except for the requirement that the securities be non-convertible, and other conditions – order confidential until the earlier of the filing of a preliminary prospectus by the trust or 90 days from the date of the decision.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.1(1), 2.1(2), 2.8, 8.1.

Citation: Re TransCanada PipeLines Limited, 2014 ABASC 322

August 20, 2014

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

AND

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

AND

IN THE MATTER OF
TRANSCANADA PIPELINES LIMITED
(the Filer or TCPL)

AND

TRANSCANADA TRUST
(the Trust)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision (the **Exemptions Sought**) under the securities legislation of the Jurisdictions (the **Legislation**) that the Trust be exempted from the following requirements of National Instrument 44-101 *Short Form Prospectus Distributions* **(NI 44-101**) in connection with offerings by the Trust (each, an **Offering**) from time to time of Trust Notes (as defined herein):

(a) subsection 2.1(1);

(b) subsection 2.1(2), to the extent that it requires qualification under any of sections 2.2 through 2.6; and

(c) that part of section 2.8 that requires a 10 business day period.

Furthermore, the Decision Makers have received a request from the Filer for a decision that the application and this decision be kept confidential and not made public until the earlier of: (i) the date that the Trust files its first preliminary short form prospectus in respect of an Offering; and (ii) 90 days from the date of this Decision (the **Confidentiality Sought**).

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

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

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

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

Interpretation

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

Representations

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

TCPL and TransCanada Corporation

1. TCPL is a corporation incorporated under the *Canada Business Corporations Act* (the CBCA). The head office of TCPL is in Calgary, Alberta.

2. TCPL is a leading North American energy infrastructure company whose business is focused on natural gas pipelines, oil pipelines and energy. Its natural gas pipelines and oil pipelines are principally comprised respectively of pipelines in Canada, the United States and Mexico as well as regulated natural gas storage operations in the United States. Its energy business includes power operations and the non-regulated natural gas storage business in Canada.

3. TCPL's authorized share capital consists of an unlimited number of: (i) common shares; (ii) first preferred shares; and (iii) second preferred shares. As at the date hereof, TCPL's issued and outstanding shares consist of common shares.

4. All of TCPL's issued and outstanding common shares are owned directly by TransCanada Corporation (**TCC**). None of TCPL's issued securities are listed or traded on a public market.

5. TCC is a corporation incorporated under the CBCA. The head office of TCC is in Calgary, Alberta. TCC's common shares are listed on the Toronto Stock Exchange and the New York Stock Exchange. In addition, TCC has outstanding five series of cumulative redeemable first preferred shares which are also listed on the Toronto Stock Exchange.

6. Each of TCPL and TCC is a reporting issuer in each province and territory of Canada and is not in default of securities legislation in any jurisdiction.

7. TCPL is qualified under section 2.3 of NI 44-101 to use the short form prospectus system. TCC is qualified under section 2.2 of NI 44-101 to use the short form prospectus system.

The Trust and the Trust Notes

8. The Trust will be established under the laws of the Province of Ontario pursuant to a declaration of trust.

9. As a newly-formed entity, the Trust will have no operating history. The Trust will issue voting trust units (the **Voting Trust Units**), which will be the only equity securities issued by the Trust. All of the Voting Trust Units will be held, directly or indirectly, by TCPL.

10. TCPL will covenant that it will maintain direct or indirect ownership of 100% of the outstanding Voting Trust Units.

11. The Trust proposes to conduct an initial public offering of subordinated notes of the Trust to be designated "Trust Notes – Series 2014-A" (the **Trust Notes – Series 2014-A**). The Trust proposes to file a prospectus relating to the initial public offering in certain jurisdictions of Canada, including Alberta and Ontario, and to conduct the same primarily in the United States under a registration statement on Form F-10 filed with the SEC under the multijurisdictional disclosure system available to Canadian issuers. In addition, the Trust may, from time to time, issue further series of similar trust notes (together with the Trust Notes – Series 2014-A, **Trust Notes**) in either or both of Canada and the United States.

12. As a result of the initial public offering, the Trust will become a reporting issuer in each province or territory of Canada in which a receipt for a prospectus is obtained.

13. The purpose of the Trust will be to effect offerings of Trust Notes in order to provide TCPL with funds for general corporate purposes by means of: (i) creating and selling Trust Notes; and (ii) acquiring and holding assets, which will consist primarily of one or more junior subordinated unsecured notes issued by TCPL to the Trust (**TCPL Sub Notes**, and together with the other assets of the Trust, the **Trust Assets**). The Trust Assets will generate funds for distribution to holders of Trust Notes and Voting Trust Units. The Trust will not carry on any operating activity other than in connection with Offerings and in connection with acquiring and holding the Trust Assets.

14. The terms of each particular series of Trust Notes will be described in detail in the applicable prospectus.

15. The Trust Notes - Series 2014-A will be denominated in U.S. dollars and will require the Trust to pay interest on such date(s) (**Interest Payment Dates**) as may be described in the prospectus pertaining thereto. The Trust Notes - Series 2014-A will mature in 2074.

16. The Trust Notes – Series 2014-A will be automatically exchanged, without the consent of the holder, for the right to be issued a new series of cumulative first preferred shares of TCPL (**TCPL Exchange Preferred Shares**) upon the occurrence of certain events relating to the insolvency of TCC or TCPL (an **Automatic Exchange**).

17. The structure of the Trust and the Trust Notes is intended to result in certain treatment from credit rating organizations. Specifically, due to this structure, it is expected that credit rating organizations will treat the Trust Notes as 50% equity and 50% debt, as opposed to 100% debt. The features of the Trust Notes, including the issuance of TCPL Exchange Preferred Shares upon an Automatic Exchange and the issuance of TCPL Deferral Preferred Shares (as defined below) upon a Deferral Event (as defined below), are designed to satisfy the requirements of credit rating organizations to qualify for the desired treatment.

Credit Support

18. TCPL will guarantee, on a subordinated basis, the due and punctual payment of the principal amount of and interest on (including interest on the amount in default) the Trust Notes – Series 2014-A and performance by the Trust of all the Trust's obligations to the holders of the Trust Notes – Series 2014-A.

19. TCPL's outstanding senior unsecured debt is currently rated "A (low)" by DBRS Limited (**DBRS**), "A3" by Moody's Investor Service, Inc. (**Moody's**) and "A-" by Standard and Poor's Ratings Services (**S&P**), and its outstanding junior subordinated notes are currently rated "BBB (high)" by DBRS, "Baa1" by Moody's and "BBB" by S&P.

20. With respect to the initial public offering, the Trust and TCPL will meet the requirements of section 2.4 of NI 44-101, except for the possibility that the Trust Notes – Series 2014-A could be considered to be convertible, because of the possibility of either a Deferral Event (as defined below) or an Automatic Exchange.

21. By virtue of TCPL's credit support, the Trust will be subject to Item 12 of Form 44-101F1 *Short Form Prospectus*. With respect to ongoing disclosure after the initial public offering, the Trust expects to rely on the exemption for credit support issuers set out in section 13.4 of National Instrument 51-102 *Continuous Disclosure Obligations*.

Other Information

22. Under the terms of an assignment and set-off agreement (the **Assignment and Set-Off Agreement**) to be entered into among the Trust, TCC, TCPL and an indenture trustee, it is possible that under certain circumstances holders of the Trust Notes – Series 2014-A will receive a new series of preferred shares (**TCPL Deferral Preferred Shares**) instead of interest (any such instance being a **Deferral Event**). However, it is in the interest of each of TCC and TCPL to ensure that, to the extent within their respective control, the Trust pays interest to holders of the Trust Notes – Series 2014-A in cash on the Interest Payment Date. This is because the Assignment and Set-Off Agreement provides, among other things, that should a Deferral Event occur and be continuing, TCC and TCPL will not declare dividends on their respective outstanding preferred shares or, if no such preferred shares are outstanding, their respective common shares.

23. Because of TCPL's credit support, the terms of the Trust Notes, and the fact that the assets of the Trust will consist primarily of TCPL Sub Notes, information concerning the business and affairs of TCPL, as opposed to those of the Trust, is most meaningful to holders of Trust Notes.

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.

1. The decision of the Decision Makers under the Legislation is that the Exemptions Sought are granted in respect of each Offering, provided that in respect of each Offering:

   (a) TCPL remains the direct or indirect owner of all of the outstanding Voting Trust Units;

   (b) the Trust has minimal assets, operations, revenues or cash flows other than those related to acquiring, holding and administering Trust Assets or issuing, administering or repaying Trust Notes;

   (c) the Trust, TCPL and the Trust Notes will meet the requirements of section 2.4 of NI 44-101, except for the requirement that the Trust Notes be non-convertible;

   (d) the features of the Assignment and Set-Off Agreement described in this decision apply, whether pursuant to the Assignment and Set-Off Agreement or pursuant to another similar agreement; and

   (e) TCPL, as holder of the Voting Trust Units, will not propose changes to the terms and conditions of any outstanding Trust Notes offered and sold pursuant to a short form prospectus of the Trust filed in reliance on this decision that would result in securities other than TCPL first preferred shares being issued in exchange for Trust Notes or as payment to a holder of Trust Notes.

2. Furthermore, the decision of the Decision Makers is that the Confidentiality Sought is granted.

"Denise Weeres"
Manager, Legal
Corporate Finance

2.1.6 1832 Asset Management L.P.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
1832 ASSET MANAGEMENT L.P.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from 1832 Asset Management L.P. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.7 Aegon Fund Management Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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
AEGON FUND MANAGEMENT INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Aegon Fund Management Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.8 AlphaPro Management Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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
ALPHAPRO MANAGEMENT INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from AlphaPro Management Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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Manager, Investment Funds and Structured Products
Ontario Securities Commission

2.1.9 Blackrock Asset Management Canada Limited

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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
BLACKROCK ASSET MANAGEMENT CANADA LIMITED

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Blackrock Asset Management Canada Limited (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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Manager, Investment Funds and Structured Products
Ontario Securities Commission

2.1.10 BMO Asset Management Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
BMO ASSET MANAGEMENT INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from BMO Asset Management Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.11 BMO Harris Investment Management Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
BMO HARRIS INVESTMENT MANAGEMENT INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from BMO Harris Investment Management Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.12 BMO Investments Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
BMO INVESTMENTS INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from BMO Investments Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.13 CIBC Asset Management Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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
CIBC ASSET MANAGEMENT INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from CIBC Asset Management Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 Investment Funds (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper’s programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund’s success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds’ historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds’ historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds’ historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.14 Canadian Imperial Bank of Commerce

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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
CANADIAN IMPERIAL BANK OF COMMERCE

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Canadian Imperial Bank of Commerce (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.15 Fidelity Investments Canada ULC

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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
FIDELITY INVESTMENTS CANADA ULC

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Fidelity Investments Canada ULC (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.16 Franklin Templeton Investments Corp.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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
FRANKLIN TEMPLETON INVESTMENTS CORP.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Franklin Templeton Investments Corp. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper’s programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund’s success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds’ historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds’ historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds’ historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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Manager, Investment Funds and Structured Products
Ontario Securities Commission

2.1.17 Horizons ETFs Management (Canada) Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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
HORIZONS ETFS MANAGEMENT (CANADA) INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Horizons ETFs Management (Canada) Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.18 Invesco Canada Ltd.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
INVESCO CANADA LTD.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Invesco Canada Ltd. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.19 Mackenzie Financial Corporation

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
MACKENZIE FINANCIAL CORPORATION

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Mackenzie Financial Corporation (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.20 Manulife Asset Management Limited

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
MANULIFE ASSET MANAGEMENT LIMITED

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Manulife Asset Management Limited (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.21 MD Physician Services Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
MD PHYSICIAN SERVICES INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from MD Physician Services Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.22 RBC Global Asset Management Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
RBC GLOBAL ASSET MANAGEMENT INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from RBC Global Asset Management Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.23 Sentry Investments Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Sentry Investments Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.24 TD Asset Management Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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

AND

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

AND

IN THE MATTER OF
TD ASSET MANAGEMENT INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from TD Asset Management Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.25 Vanguard Investments Canada Inc.

Headnote

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

Applicable Legislative Provisions

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

November 3, 2014

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
VANGUARD INVESTMENTS CANADA INC.

DECISION

Background

The principal regulator in the Jurisdiction has received an application from Vanguard Investments Canada Inc. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the Jurisdictions. The head office of the Filer is located in Ontario.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable Jurisdiction. Each of the Funds is, or will be, a reporting issuer in one or more of the Jurisdictions. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the Jurisdictions.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award).

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named

Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section

15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

Decision

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

The decision of the principal regulator under the Legislation is that the Exemption Sought is granted to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

   (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

   (e) a statement that Lipper Leader ratings are subject to change every month;

   (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

   (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

   (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

   (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

   (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

   (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

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

2.1.26 ATB Investment Management Inc. et al.

Headnote

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

Applicable Legislative Provisions

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

Citation: Re ATB Investment Management Inc., 2014 ABASC 435

November 4, 2011

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

AND

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

AND

IN THE MATTER OF
ATB INVESTMENT MANAGEMENT INC., CANOE FINANCIAL LP,
HESPERIAN CAPITAL MANAGEMENT LTD.
AND MAWER INVESTMENT MANAGEMENT LTD.
(each a Filer and collectively, the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers on behalf of existing mutual funds and future mutual funds of which a Filer is or becomes the investment fund manager (or of which an affiliate of a Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

(together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

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

Interpretation

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

Representations

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

1. Each Filer is the investment fund manager of the applicable Funds and is registered as an investment fund manager in one or more of the jurisdictions of Canada. The head office of each Filer is located in Alberta.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. Securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable jurisdiction of Canada. Each of the Funds is, or will be, a reporting issuer in one or more of the jurisdictions of Canada. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filers and the Funds are not in default of the securities legislation in any of the jurisdictions of Canada.

4. The Filers wish to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award.)

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical

total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filers submit that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filers submit that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section 15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

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 to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

(a) the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

  (iii) the name of the ranking entity, i.e., Lipper;

  (iv) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

  (v) a statement that Lipper Leader ratings are subject to change every month;

  (vi) in the case of a Lipper Award, a brief overview of the Lipper Awards;

  (vii) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

  (viii) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from presented for each period for which standard performance data is required other than the one year and since inception periods;

  (ix) where a Lipper Leader rating is referenced, the Lipper Leader ratings presented for each period for which standard performance data is required other than the one year and since inception periods;

  (x) the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category); and

  (xi) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

(b) the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

(c) the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

"Denise Weeres"
Manager, Legal
Corporate Finance

2.1.27 I.G. Investment Management, Ltd.

Headnote

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

Applicable Legislative Provisions

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

November 4, 2014

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

AND

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

AND

IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from I.G. Investment Management, Ltd. (the **Filer**) on behalf of existing mutual funds and future mutual funds of which the Filer is or becomes the investment fund manager (or of which an affiliate of the Filer becomes the investment fund manager) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (each a **Fund** and collectively, the **Funds**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption from the requirements set out in sections 15.3(4)(c) and 15.3(4)(f) of NI 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

  (b) not more than three months before the date of first publication of any other sales communication in which it is included (together, the **Exemption Sought**), to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds.

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is the investment fund manager of the Funds and is registered as an investment fund manager in one or more of the jurisdictions of Canada. The head office of the Filer is located in Manitoba.

2. Each of the Funds is, or will be, an open-ended mutual fund established under the laws of Canada or a jurisdiction of Canada. The securities of each of the Funds are, or will be, qualified for distribution pursuant to a prospectus that has been, or will be, prepared and filed in accordance with the securities legislation of each applicable jurisdiction of Canada. Each of the Funds is, or will be, a reporting issuer in one or more of the jurisdictions of Canada. Each of the Funds is or will be subject to NI 81-102, including Part 15 of NI 81-102, which governs sales communications.

3. The Filer and the Funds are not in default of the securities legislation in any of the jurisdictions of Canada.

4. The Filer wishes to include in sales communications of the Funds references to Lipper Leader ratings and Lipper Awards (where such Funds have been awarded a Lipper Award.)

5. Lipper, Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying mutual fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

6. One of Lipper's programs is the Lipper awards program. This program highlights funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall. Currently the Lipper awards take place in approximately 13 countries.

7. In Canada, the Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

8. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

9. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper Ratings provide an instant measure of a fund's success against a specific set of key metrics, and can be useful to investors in identifying funds that meet particular characteristics.

10. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (reflecting funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (reflecting funds' historical total return performance relative to funds in the same classification) and for Preservation (reflecting funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named Lipper Leaders for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

11. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

12. When a Fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

13. The Lipper Leader ratings are performance ratings or rankings under NI 81-102 and Lipper Awards for Funds may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of NI 81-102.

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

15. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the "matching" requirement contained in section 15.3(4)(c) of NI 81-102 because a rating is not available for the one year period. Relief from section 15.3(4)(c) of NI 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

16. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards, which are based on the Lipper Leader ratings, must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the matching requirement contained in section 15.3(4)(c) of NI 81-102.

17. The exemption in section 15.3(4.1) of NI 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because section 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of section 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the matching requirement in section 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in section 15.3(4.1) unavailable. Relief from section 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

19. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, section 15.3(4)(f) of NI 81-102 will prohibit it from publishing news of the award altogether.

20. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

21. The Filer submits that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filer submits that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to section 15.2(1)(a) of NI 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

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 to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to a Fund provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of NI 81-102 other than as set out herein and contains the following disclosure in at least 10 point type:

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

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

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

    (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

    (e) a statement that Lipper Leader ratings are subject to change every month;

    (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

    (g) in the case of a Lipper Leader rating (other than Lipper Leader ratings referenced in connection with a Lipper Award), a brief overview of the Lipper Leader rating;

    (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

    (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

    (j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

    (k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

"Chris Besko"
Acting Director
Manitoba Securities Commission

2.1.28 Desjardins Investments Inc. et al.

Headnote

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

Applicable Legislative Provisions

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

(Translation)

November 5, 2014

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

AND

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

AND

IN THE MATTER OF
THE INVESTMENT FUND MANAGERS LISTED IN SCHEDULE A
(the Filers)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filers on behalf of the Funds (as defined below) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) for an exemption under section 19.1 of *Regulation 81-102 respecting Investment Funds* (c.V-1.1, r.39) (**Regulation 81-102**) from the requirements set out in paragraphs 15.3(4)(c) and 15.3(4)(f) of Regulation 81-102, which provide that a sales communication must not refer to a performance rating or ranking of a mutual fund or asset allocation service unless:

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

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

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

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

to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds (together, the **Exemption Sought**).

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

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

(b) the Filers have provided notice that section 4.7(1) of *Regulation 11-102 respecting Passport System* (c. V-1.1, r.1) (**Regulation 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut and, Northwest Territories, 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* (c. V-1.1, r.3), Regulation 11-102 and Regulation 81-102 have the same meaning if used in this decision, unless otherwise defined.

Funds means the existing mutual funds for which a Filer or a duly registered affiliate of a Filer acts as investment fund manager and any mutual fund subsequently established for which a Filer, or a duly registered affiliate of a Filer, will act as investment fund manager.

Representations

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

The Filers

1. Each of the Filers, or an affiliate of each of the Filers, acts or will act as the investment fund manager of Funds.

2. Each of the Filers is duly registered as an investment fund manager in one or more of the jurisdictions of Canada.

3. The head office of each of the Filers is located in Québec.

4. Each of the Filers is not in default of the securities legislation in any of the jurisdictions of Canada.

The Funds

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

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

7. Each of the Funds is, or will be, a reporting issuer in one or more of the jurisdictions of Canada and is or will be subject to the requirements of Regulation 81-102, including Part 15 of Regulation 81-102, which governs sales communications.

8. Each of the Funds is not in default of the securities legislation in any of the jurisdictions of Canada.

Reasons for the Exemption Sought

9. Lipper Inc. (**Lipper**) is a company that is not a member of the organization of the Funds. Lipper is part of the Thomson Reuters group of companies, and is a global leader in supplying fund information, analytical tools, and commentary. Lipper's fund data and analysis, fund awards designations and ratings information provide valuable insight to advisors, media and individual investors.

10. The Filers wish to include in sales communications of the Funds references to Lipper Leader ratings (which are performance ratings or rankings for funds issued by Lipper and include the Lipper Leader ratings for Consistent Return, Lipper Leader ratings for Total Return and Lipper Leader ratings for Preservation, which are described below) and Lipper Awards (as described below) where such Funds have been awarded a Lipper Award.

11. One of Lipper’s programs is the Lipper Awards Program. The Lipper Awards Program recognizes funds that have excelled in delivering consistently strong risk-adjusted performance relative to peers and also recognizes fund families with high average scores for all funds within a particular asset class or overall (Lipper Awards). Currently Lipper Awards take place in approximately 13 countries.

12. In Canada, Lipper Awards include the Lipper Fund Awards and Lipper ETF Awards (which will be awarded for the first time in Canada in 2014). For the Lipper Fund Awards, Lipper designates award-winning funds in most individual fund

classifications for three, five and ten year periods. For the Lipper ETF Awards, Lipper will designate award-winning funds in a number of individual fund classifications for the three year period, and it is expected that awards for the five and ten year periods will be given in the future.

13. The categories for fund classification used by Lipper for the Lipper Awards in respect of Canadian funds are those maintained by the Canadian Investment Funds Standards Committee (**CIFSC**) (or a successor to the CIFSC), a Canadian organization that is independent of Lipper. Only those CIFSC groups of ten or more unique funds will claim a Lipper Fund Award, and only those CIFSC groups of five or more unique ETFs (each of whom have a minimum of three years of performance history) will claim a Lipper ETF Award.

14. The Lipper Awards are based on a proprietary rating methodology prepared by Lipper, the Lipper Leader Rating System. The Lipper Leader Rating System is a toolkit that uses investor-centred criteria to deliver a simple, clear description of a fund's success in meeting certain goals, such as preserving capital, lowering expenses or building wealth. Lipper ratings provide an instant measure of a fund's success against a specific set of key metrics and can be useful to investors in identifying funds that meet particular characteristics.

15. In Canada, the Lipper Leader Rating System includes Lipper Leader ratings for Consistent Return (based on the Lipper Ratings for Consistent Return, which are ratings that reflect funds' historical risk-adjusted returns relative to funds in the same classification), for Total Return (based on the Lipper Ratings for Total Return, which are ratings that reflect funds' historical total return performance relative to funds in the same classification) and for Preservation (based on the Lipper Ratings for Preservation, which are ratings that reflect funds' historical loss avoidance relative to other funds in the same classification). In each case, the categories for fund classification used by Lipper for the Lipper Leader ratings are those maintained by CIFSC (or a successor to the CIFSC). Lipper Leader ratings are measured monthly over 36, 60 and 120 month periods, and an overall rating is also measured, which is an un-weighted average of the previous three periods. The highest 20% of funds in each category are named "Lipper Leaders" for that particular rating and receive a score of 5, the next 20% receive a score of 4, the middle 20% are scored 3, the next 20% are scored 2 and the lowest 20% are scored 1.

16. The Lipper Awards, awarded annually in Canada, are based on the Lipper Ratings for Consistent Return measure, which, as generally described above, is a risk-adjusted mutual fund return performance measure used by Lipper that takes into account both short- and long-term risk-adjusted performance relative to fund classification, together with a measure of a fund's consistency. In respect of the Lipper Awards for Canada, the Lipper Ratings for Consistent Return are measured over the 36, 60 and 120 month periods ending at the end of July of each year. As noted above, the highest 20% of funds in each classification are named Lipper Leaders for Consistent Return, and the highest Lipper Leader for Consistent Return in each applicable fund classification over these periods (currently, in the case of the Lipper ETF Awards, over the 36 month period only) wins a Lipper Award.

17. When a fund is awarded a Lipper Award, it may make reference to the award in sales communications subject to the terms of a license agreement with Lipper.

18. The Lipper Leader ratings are "performance ratings" or "rankings" as referred in section 15.3 of Regulation 81-102 and Lipper Awards may be considered to be performance ratings or rankings given that the awards are based on the Lipper Leader ratings as described above. Therefore, references to Lipper Leader ratings and Lipper Awards in sales communications relating to the Funds need to meet the applicable requirements in Part 15 of Regulation 81-102.

19. Paragraph 15.3(4)(c) of Regulation 81-102 requires that the performance ratings or rankings that are included in sales communications for funds must be provided for, or "match", each period for which standard performance data is required to be given for the fund except the period since the inception of the fund i.e., for one, three, five and ten year periods, as applicable (the Matching Requirements).

20. In Canada and elsewhere, Lipper Leader ratings are calculated only for 36, 60 and 120 month periods and are not calculated for a one year period. This means that a sales communication referencing a Lipper Leader rating cannot comply with the Matching Requirements contained in paragraph 15.3(4)(c) of Regulation 81-102 because a rating is not available for the one year period. Relief from paragraph 15.3(4)(c) of Regulation 81-102 is therefore required in order for Funds to reference Lipper Leader ratings in sales communications.

21. In addition, a sales communication referencing the overall Lipper Leader ratings and the Lipper Awards must disclose the corresponding Lipper Leader rating for each period for which standard performance data is required to be given. As noted above, because a rating for the one year period is not available for the Lipper Leader ratings, sales communications referencing the overall Lipper Leader ratings or Lipper Awards also cannot comply with the Matching Requirements contained in paragraph 15.3(4)(c) of Regulation 81-102.

22. The exemption in subsection 15.3(4.1) of Regulation 81-102 for references to overall ratings or rankings of funds cannot be relied upon to reference the overall Lipper Leader ratings or Lipper Awards in sales communications for the Funds because subsection 15.3(4.1) is available only if a sales communication "otherwise complies" with the requirements of subsection 15.3(4). As noted above, sales communications referencing the overall Lipper Leader ratings or Lipper Awards cannot comply with the Matching Requirements in subsection 15.3(4) because the underlying Lipper Leader ratings are not available for the one year period, rendering the exemption in subsection 15.3(4.1) unavailable. Relief from paragraph 15.3(4)(c) is therefore required in order for Funds to reference overall Lipper Leader ratings and the Lipper Awards in sales communications.

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

24. Because the evaluation of funds for the Lipper Awards will be based on data aggregated until the end of July in any given year and the results will be published in November of that year, by the time a Fund receives an award in November, paragraph 15.3(4)(f) of Regulation 81-102 will prohibit it from publishing news of the award altogether.

25. The Exemption Sought is required in order for Lipper Leader ratings and Lipper Awards to be referenced in sales communications relating to the Funds.

26. The Filers submit that the Lipper Awards provide an important tool for investors, as they provide investors with context when evaluating investment choices. The Filers submit that the nature of the Lipper Leader ratings and Lipper Awards alleviates any concern that references to the ratings and awards may be misleading and therefore contrary to paragraph 15.2(1)(a) of Regulation 81-102. The Lipper Leader Rating System underlying the Lipper Leader ratings and Lipper Awards ensures an objective, transparent and quantitative measure of performance that is based on the expertise of Lipper in fund analysis.

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 to permit the Lipper Awards and Lipper Leader ratings to be referenced in sales communications relating to the Funds provided that:

1. the sales communication that refers to the Lipper Award and Lipper Leader ratings complies with Part 15 of Regulation 81-102, other than as set out herein, and contains the following disclosure in at least 10 point type:

    (a) the name of the category (which is a category established by the CIFSC or a successor to the CIFSC) for which the Funds have received the award or rating;

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

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

    (d) the length of period and the ending date, or, the first day of the period and the ending date on which the Lipper Award or Lipper Leader rating is based;

    (e) a statement that Lipper Leader ratings are subject to change every month;

    (f) in the case of a Lipper Award, a brief overview of the Lipper Awards;

    (g) in the case of a Lipper Leader rating other than Lipper Leader ratings referenced in connection with a Lipper Award, a brief overview of the Lipper Leader rating;

    (h) where Lipper Awards are referenced, the corresponding Lipper Leader rating that the Lipper Award is derived from is presented for each period for which standard performance data is required other than the one year and since inception periods;

    (i) where a Lipper Leader rating is referenced, the Lipper Leader ratings are presented for each period for which standard performance data is required other than the one year and since inception periods;

(j) disclosure of the meaning of the Lipper Leader ratings from 1 to 5 (e.g., ranking of 5 indicates a fund is in the top 20% of its category);

(k) reference to Lipper's website (www.lipperweb.com) for greater detail on the Lipper Awards and Lipper Leader ratings, which includes the rating methodology prepared by Lipper;

2. the Lipper Awards being referenced must not have been awarded more than 365 days before the date of the sales communication; and

3. the Lipper Awards and Lipper Leader ratings being referenced are calculated based on comparisons of performance of investment funds within a specified category established by the CIFSC (or a successor to the CIFSC).

"Josée Deslauriers"
Senior Director, Investment Funds and Continuous Disclosure
Autorité des marchés financiers

SCHEDULE A

Investment Fund Managers

Desjardins Investments Inc.
National Bank Investments Inc.
Standard Life Mutual Funds Ltd.
Gestion FÉRIQUE

2.1.29 ITG Canada Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to dealer from the prospectus delivery requirement – Relief granted from requirement to deliver prospectus subject to dealer sending or delivering a prescribed summary disclosure document to purchasers with trade confirmation when acting as agent of the purchaser – Relief conditional on implementing alternative prospectus delivery requirement – Relief subject to sunset clause – Securities Act (Ontario).

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 71(1), 147.

November 18, 2014

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
ITG CANADA CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Act**) for exemptive relief from the Prospectus Delivery Requirement (as defined below) in connection with distributions of an ETF Security (as defined below) (the **Exemption Sought**).

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

(a) the Ontario Securities Commission 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 British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (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 application, unless otherwise defined.

Authorized Dealer means a registered dealer that has entered, or intends to enter, into an agreement with the manager of an ETF (an "**ETF Manager**") authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more ETFs on a continuous basis from time to time.

Designated Broker means a registered dealer that has entered, or intends to enter, into an agreement with an ETF Manager to perform certain duties in relation to the ETF, including posting a liquid two-way market for the trading of the ETF's listed securities on an exchange or another marketplace.

ETF means an open end mutual fund that has listed a class of securities on an exchange in Canada.

ETF Security means a listed security of an ETF.

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

Prospectus Right of Rescission means the right of action, given to a purchaser under the Act, for rescission or damages against a dealer, for failure of the dealer to send or deliver a prospectus to a purchaser of a security or its agent to whom a prospectus and any amendment was required to be sent or delivered but was not sent or delivered in compliance with the Prospectus Delivery Requirement. In Québec, such a purchaser may apply to have the transaction rescinded or the price revised, at the purchaser's option, without prejudice to the purchaser's claim for damages. Collectively, these rights are referred to as the **Prospectus Rights of Rescission**.

Right of Withdrawal means the right, given to a purchaser under the Act, to withdraw from an agreement of purchase and sale for a security to which the Prospectus Delivery Requirement applies if the dealer from which the purchaser purchases the security receives written notice evidencing the intention of the purchaser not to be bound by the agreement within two business days of receipt of the latest prospectus and any amendment. In Québec, this right is called a right to rescind. Collectively, these rights are referred to as the Rights of Withdrawal.

Trade Confirmation Right of Rescission means the right, given to a purchaser of an ETF Security under the Act in certain circumstances, to rescind the purchase within 48 hours after receiving confirmation of the purchase.

Representations

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

1. The Filer is currently and actively registered as investment dealers in the Jurisdictions.

2. The Filer is a registered Investment Industry Regulatory Organization of Canada dealer member that trades securities, including ETF Securities, for institutional clients.

3. The head offices of the Filer is located in Toronto, Ontario.

4. ETF Securities are, or will be, distributed on a continuous basis in one or more of the Jurisdictions pursuant to a prospectus. ETF Securities are generally only subscribed for or purchased directly from the ETF by Authorized Dealers or Designated Brokers. Investors are generally expected to purchase ETF Securities through dealers executing trades using the facilities of an exchange or another marketplace. ETF Securities may also be issued directly to ETF investors upon the reinvestment of distributions of income or capital gains.

5. The Filer is an Authorized Dealer and/or Designated Broker, depending on the ETF in question, that from time to time subscribes for and purchases newly issued ETF Securities (**Creation Units**) directly from one or more ETFs. The Filer is also generally engaged in purchasing and selling ETF Securities of the same class as the Creation Units in the secondary market. Transactions involving ETF Securities are an important part of the Filer's business.

6. Creation Units are generally commingled with ETF Securities purchased in the secondary market. As such, it is not practicable for the Filer to determine whether a particular re-sale of ETF Securities involves Creation Units or ETF Securities purchased in the secondary market.

7. The Filer acts as a market-maker with respect to certain ETFs for which ETFs it has certain underwriting obligations for. The Filer also has market-making obligations for ETFs it acts as a Designated Broker for. The Filer distributes Creation Units in connection with its market-making obligations.

8. The Filer may not be able to efficiently fulfill a client's order for ETF Securities solely through the secondary market therefore the Filer often has to transact in Creation Units for such ETFs which they act as Authorized Dealer or Designated Broker for. When the Filer sells ETF Securities for their clients on an exchange or another marketplace it does not know the identity of the purchaser.

9. The Filer may also be engaged in purchasing and selling, in the secondary market, ETF Securities of ETFs for which they are not an Authorized Dealer or Designated Broker.

Prospectus Delivery Requirement

10. The Filer is aware that the principal regulator takes the view that the first re-sale of a Creation Unit on an exchange or another marketplace in Canada will generally constitute a distribution of Creation Units under the Act and that the Filer is subject to the Prospectus Delivery Requirement in connection with such re-sales. Furthermore, the Filer is aware that the Prospectus Delivery Requirement applies to Creation Units sold pursuant to the Filer's market-making responsibilities for a particular ETF as a result of the Filer's obligations as a Designated Broker and otherwise as describe herein, as applicable. Re-sales of ETF Securities purchased by the Filer in the secondary market, that are not Creation Units, would not ordinarily constitute a distribution of ETF Securities.

11. Compliance with the Prospectus Delivery Requirement is not practicable in the circumstances of re-sales of Creation Units on an exchange or another marketplace by a Filer as the Filer will often not know the identity of a purchaser and will generally not know whether a sale involves Creation Units.

12. The Prospectus Delivery Requirement affects investors in ETF Securities differently depending upon whether their purchase order is filled through the re-sale of Creation Units or through a secondary market trade. The Prospectus Delivery Requirement also affects investors in ETF Securities differently from investors in conventional mutual funds because, unlike sales of conventional mutual funds, only sales of ETF Securities that are Creation Units are distributions under the Act.

13. The Filer, when acting for a purchaser of an ETF Security, is required under the Act to deliver a trade confirmation to the purchaser in connection with each trade of an ETF Security, unless the Filer is exempt from the requirement in respect of a particular trade. Investors in ETF Securities will be better served if the Filer sends or delivers a prescribed summary disclosure document to all purchasers of ETF Securities who are customers of the Filer at the same time as they deliver the trade confirmation, regardless of whether the purchaser's order is filled through the re-sale of a Creation Unit, or through the re-sale of an ETF Security purchased in the secondary market.

14. Various ETF Managers have obtained exemptive relief from their principal regulator from the requirements to include an underwriter's certificate and to include a statement respecting purchasers' statutory rights of withdrawal and rescission in an ETF's prospectus (the "**ETF Relief**"). Conditions of the ETF Relief include that an ETF must file a prescribed summary disclosure document with the applicable Jurisdictions on the System for Electronic Document Analysis and Retrieval (the "**Summary Document**").

Civil Liability for Prospectus Misrepresentations

15. The liability under the prospectus civil liability provisions of the Act, of an ETF or its investment fund manager for a misrepresentation in a prospectus, will not be affected by the grant of an exemption from the Prospectus Delivery Requirement. Under such provisions, purchasers of Creation Units offered by a prospectus during the period of distribution have a right of action for damages against the ETF and its investment fund manager without regard to whether the purchaser relied on the misrepresentation and whether or not the purchaser in fact received a copy of the prospectus. Under the secondary market disclosure civil liability provisions of the Act, purchasers of ETF Securities that are not Creation Units and, therefore, are not offered by prospectus during the period of distribution, have a similar right of action for damages for misrepresentation in a prospectus against the ETF and its investment fund manager without regard to whether the purchaser relied on the misrepresentation and whether or not the purchaser in fact received a copy of the prospectus.

16. The Filer takes the view, in the circumstances, that they are not underwriters within the meaning of the Act. The Filer does not provide the same services in connection with a distribution of Creation Units as would typically be provided by an underwriter in a conventional underwriting. They are not involved in the preparation of an ETF's prospectus, do not incur any marketing costs or receive any underwriting fees or commissions from the ETFs or the ETF Managers in connection with the distribution of Creation Units. ETF Managers generally conduct their own marketing, advertising and promotion of the ETFs. The Filer generally seek to profit from its ability to create and redeem ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in ETF Securities. In the circumstances, the Filer take the view that a purchaser of an ETF Security will not be entitled to exercise a statutory right of action for rescission or damages against an Authorized Dealer or Designated Broker in the event that the prospectus contains a misrepresentation.

Right of Withdrawal

17. Under the Act, if the Prospectus Delivery Requirement applies in respect of a sale of Creation Units, the purchaser of the Creation Units has a Right of Withdrawal.

18. It is not practicable for the Filer to provide purchasers of Creation Units on an exchange or another marketplace with a prospectus in accordance with the Prospectus Delivery Requirement as the Filer will often not know the identity of a purchaser and will generally not know whether the sale involves Creation Units.

19. Where the Exemption Sought is being relied upon by the Filer in respect of a re-sale of Creation Units, the Right of Withdrawal will not be available to the purchaser of Creation Units if a prospectus is not required to be sent or delivered. Under the ETF Relief, an ETF will state in its prospectus or amendment to its prospectus that the Right of Withdrawal will not be available in such circumstances. Under the ETF Relief, an ETF will state in its Summary Document that under the securities legislation of some of the Jurisdictions an investor has the Trade Confirmation Right of Rescission and other rights and remedies if the Summary Document or prospectus contains a misrepresentation.

Prospectus Right of Rescission

20. Under the Act, if a dealer is subject to the Prospectus Delivery Requirement in respect of a sale of Creation Units, the purchaser of the Creation Units has the Prospectus Right of Rescission.

21. Where the Exemption Sought is being relied upon by the Filer in respect of a re-sale of Creation Units, the Prospectus Right of Rescission will not be available to the purchaser of Creation Units because the Prospectus Delivery Requirement will not apply. Under the ETF Relief, an ETF will state in its prospectus or amendment to its prospectus that the Prospectus Right of Rescission will not be available in such circumstances.

Trade Confirmation Right of Rescission

22. In applicable Jurisdictions, purchasers of ETF Securities will continue to have the Trade Confirmation Right of Rescission as it is not affected by the grant of an exemption from the Prospectus Delivery Requirement.

Decision

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

The decision of the principal regulator under the Act is that the Exemption Sought is granted, provided that and so long as:

1. The Filer undertakes to the principal regulator that it will, unless the Filer has previously done so, send or deliver to each purchaser of an ETF Security who is a customer of the Filer, and to whom a trade confirmation is required under the Act to be sent or delivered by the Filer in connection with the purchase, the latest Summary Document filed in respect of the ETF Security not later than midnight on the second day, exclusive of Saturdays, Sundays and holidays, after the purchase of the ETF Security.

2. The Filer provides to each ETF Manager of an ETF for which it is an Authorized Dealer or Designated Broker, an executed acknowledgement:

    (a) acknowledging receipt of a copy of this decision;

    (b) agreeing to send or deliver the Summary Document in accordance with this decision;

    (c) undertaking that the Filer will attach or bind one ETF's Summary Document with another ETF's Summary Document only if the documents are being sent or delivered under this decision at the same time to an investor purchasing ETF Securities of each such ETF; and

    (d) confirming that the Filer has in place written policies and procedures to ensure that there is compliance with the conditions of this decision.

3. The Filer provides to each ETF Manager of an ETF in whose ETF Securities it is generally engaged in purchasing and selling in the secondary market on behalf of its customers, but for which it is not an Authorized Dealer or Designated Broker, an executed acknowledgement:

    (a) acknowledging receipt of a copy of this decision;

    (b) agreeing to send or deliver the Summary Document in accordance with this decision;

(c) undertaking that the Filer will attach or bind one ETF's Summary Document with another ETF's Summary Document only if the documents are being sent or delivered under this decision at the same time to an investor purchasing ETF Securities of each such ETF; and

(d) confirming that the Filer has in place written policies and procedures to ensure that there is compliance with the conditions of this decision.

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

5. The Exemption Sought terminates on September 1, 2015.

"Judith N. Robertson"
Commissioner
Ontario Securities Commission

"Christopher Portner"
Commissioner
Ontario Securities Commission

2.2 Orders

2.2.1 Bigfoot Recreation & Ski Area Ltd. and Ronald Stephen McHaffie – ss. 127(1), 127(10)

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

AND

IN THE MATTER OF
BIGFOOT RECREATION & SKI AREA LTD. and RONALD STEPHEN MCHAFFIE

ORDER
(Subsections 127(1) and 127(10) of the Securities Act)

WHEREAS on September 22, 2014, the Ontario Securities Commission (the "Commission") issued a Notice of Hearing pursuant to subsections 127(1) and 127(10) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") in respect of Bigfoot Recreation & Ski Area Ltd. ("Bigfoot") and Ronald Stephen McHaffie ("McHaffie") (collectively, the "Respondents");

AND WHEREAS on September 22, 2014, Staff of the Commission ("Staff") filed a Statement of Allegations in respect of the same matter;

AND WHEREAS on October 24, 2014, Staff appeared before the Commission and brought an application to convert this matter to a written hearing;

AND WHEREAS on October 24, 2014, Staff filed an affidavit of service sworn by Lee Crann, a Law Clerk with the Commission, which documented steps taken by Staff to serve the Respondents with the Notice of Hearing, Statement of Allegations and Staff's disclosure materials, and made submissions to the Commission;

AND WHEREAS the Respondents did not appear;

AND WHEREAS on October 24, 2014, the Commission ordered that:

(1) the Respondents shall advise of any objections they have to proceeding by way of written hearing within 5 days following service of the October 24, 2014 order; and

(2) once Staff has advised the Office of the Secretary that the period for objections has passed, the Commission will issue an order addressing Staff's application;

AND WHEREAS both of the Respondents received service of the October 24, 2014 order no later than November 4, 2014;

AND WHEREAS Staff received no communication from the Respondents in relation to Staff's application to proceed by way of written hearing within the time allotted by the Commission's Rules of Procedure;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED THAT:

(1) Staff's application to proceed by way of written hearing is granted;

(2) Staff's materials in respect of the written hearing shall be served and filed no later than 10 days following the issuance of this order;

(3) the Respondents' responding materials, if any, shall be served and filed no later than 4 weeks from the effective date of service of Staff's materials; and

(4) Staff's reply materials, if any, shall be served and filed no later than 2 weeks from effective date of service of the Respondents' materials.

DATED at Toronto this 19th day of November, 2014.

"Mary G. Condon"

2.2.2 Pro-Financial Asset Management Inc.

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

AND

IN THE MATTER OF
PRO-FINANCIAL ASSET MANAGEMENT INC.

ORDER

WHEREAS on May 17, 2013, the Commission issued a temporary order (the "Temporary Order") with respect to Pro-Financial Asset Management Inc. ("PFAM") pursuant to subsections 127(1) and (5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act") ordering that:

(i) pursuant to paragraph 1 of subsection 127(1) of the Act, the registration of PFAM as a dealer in the category of exempt market dealer be suspended and the following terms and conditions apply to the registration of PFAM as an adviser in the category of portfolio manager ("PM") and to its operation as an investment fund manager ("IFM"):

a. PFAM's activities as a PM and IFM shall be applied exclusively to the Managed Accounts (as defined in the Temporary Order) and to the Pro-Hedge Funds and Pro-Index Funds (as defined in the Temporary Order); and

b. PFAM shall not accept any new clients or open any new client accounts of any kind in respect of the Managed Accounts;

(ii) pursuant to subsection 127(6) of the Act, the Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Commission;

AND WHEREAS on May 28, 2013, the Commission ordered: (i) the Temporary Order be extended to June 27, 2013; (ii) the hearing to consider whether to further extend the terms of the Temporary Order and/or to make any further order as to PFAM's registration proceed on June 26, 2013 at 10:00 a.m.;

AND WHEREAS on June 26, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 15, 2013; and (ii) the affidavit of Michael Denyszyn sworn May 24, 2013 not be marked as an exhibit until the next appearance in the absence of a Commission order to the contrary; and the hearing to consider this matter proceed on July 12, 2012;

AND WHEREAS on July 11, 2013, the Commission ordered that: (i) the Temporary Order be extended to July 22, 2013; (ii) the hearing be adjourned to July 18, 2013 at 11:00 a.m.; and (iii) the hearing date of July 12, 2013 at 10:00 a.m. be vacated;

AND WHEREAS on July 18, 2013, PFAM brought a motion (the "First PFAM Motion") that the hearing be held *in camera* and that the affidavits of Michael Denyszyn sworn May 24 and June 24, 2013 and the affidavit of Michael Ho sworn July 17, 2013 (collectively the "Staff Affidavits") either not be admitted as evidence or else be treated as confidential documents and the parties agreed that the motion should be heard *in camera*;

AND WHEREAS on July 18, 2013, PFAM's counsel filed supporting documents (the "PFAM Materials") in support of the First PFAM Motion and counsel for PFAM and Staff made oral submissions and filed written submissions;

AND WHEREAS on July 22, 2013, the Commission ordered:

(i) the Temporary Order be extended to August 26, 2013;

(ii) leave be granted to the parties to file written submissions in respect of the First PFAM Motion;

(iii) the Staff Affidavits, the transcript of the PFAM motion, the PFAM Materials, written submissions filed by Staff and PFAM and other documents presented during the course of the First PFAM Motion shall be treated as confidential documents until further direction or order of the Commission; and

(iv) the hearing be adjourned to August 23, 2013 at 10:00 a.m.;

AND WHEREAS on August 23, 2013, Staff filed with the Commission the affidavit of Michael Ho sworn August 22, 2013 and PFAM's counsel filed the affidavit of Stuart McKinnon dated August 23, 2013 but the parties did not seek to mark these affidavits as exhibits;

AND WHEREAS on August 23, 2013, Staff and counsel for PFAM advised the Commission that the parties had agreed on the terms of a draft order;

AND WHEREAS on August 23, 2013, PFAM requested that the hearing be held *in camera* so PFAM's submissions on certain confidentiality issues could be heard and Staff did not oppose PFAM's request;

AND WHEREAS on August 27, 2013, the Commission ordered:

(i) the Temporary Order be extended to October 11, 2013;

(ii) the affidavit of Michael Ho sworn August 22, 2013 and the affidavit of Stuart McKinnon sworn August 23, 2013 be treated as confidential documents until further order of the Commission;

(iii) PFAM will deliver to Staff the final principal protected note ("PPN") reconciliation report by 4:30 p.m. on September 30, 2013; and

(iv) the hearing to consider whether to: (i) make any further order as to PFAM's registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM's ongoing capital deficiency; and/or (ii) otherwise vary or extend the terms of the Temporary Order, proceed on October 9, 2013 at 11:00 a.m.;

AND WHEREAS on October 9, 2013, PFAM brought a second motion (the "Second PFAM Motion") for an order that the hearing be held *in camera* and for a confidentiality order treating as confidential documents: (i) the Staff and PFAM affidavits; (ii) all facta and correspondence exchanged by Staff and PFAM; and (iii) any transcript of this and prior *in camera* proceedings;

AND WHEREAS on October 9, 2013, PFAM's counsel filed written submissions dated October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013 and the affidavit of Kenneth White sworn October 7, 2013 in support of the Second PFAM Motion and Staff filed written submissions dated October 9, 2013 and the affidavit of Michael Ho sworn October 8, 2013 and opposed the request for an *in camera* hearing and for the confidentiality order;

AND WHEREAS on October 9, 2013, the Commission heard submissions from counsel on the Second PFAM Motion *in camera* and the Commission requested the parties to prepare a draft order that, among other matters, addressed the confidentiality of documents filed with the Commission and permitted BNP Paribas Canada ("BNP") and Société Générale Canada ("SGC") (collectively the "Banks") to review certain documents attached to Staff affidavits dealing substantively with the PPN reconciliation process, provided the Banks treated such documents as confidential;

AND WHEREAS on October 11, 2013, the Commission ordered that:

(i) the Temporary Order be extended to December 15, 2013;

(ii) the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 be treated as confidential documents until further order of the Commission; and

(iii) the hearing to consider whether to: (i) make any further order as to PFAM's registration as an adviser in the category of PM or in respect of its operation as an IFM, as a result of PFAM's ongoing capital deficiency; and/or (ii) otherwise vary or extend the terms of the Temporary Order, shall proceed on December 12, 2013 at 10:00 a.m.;

AND WHEREAS on October 17, 2013, the Commission ordered (the "October 17, 2013 Order") that:

(i) the affidavit of Michael Ho sworn October 8, 2013, the affidavit of Stuart McKinnon sworn October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the written submissions of the parties dated October 8 and 9, 2013 be treated as confidential documents until further order of the Commission;

(ii) the previous orders as to confidentiality made by the Commission on July 22, 2013 and August 27, 2013 remain in force until further order or direction of the Commission; and

(iii) documents related to the PPN reconciliation process listed on Schedule "A" to the October 17, 2013 Order be provided to counsel for the Banks on condition that the Banks treat those documents as confidential documents and not provide copies to any third party without further direction or order of the Commission;

AND WHEREAS on September 30, 2013, PFAM agreed to sell to another portfolio manager (the "Purchaser") PFAM's interest in all of the investment management contracts for the Pro-Index Funds and the Managed Accounts (the "First Transaction"). In a second transaction, an investor agreed to purchase through a corporation (the "Investor") all of the shares of the Purchaser (the "Second Transaction"):

AND WHEREAS on October 22, 2013, the Purchaser and PFAM filed a notification letter providing Compliance and Registrant Regulation Branch ("CRR Branch") Staff with notice ("Notice") of the application filed under section 11.9 and 11.10 of National Instrument 31-103 – *Registration Requirements, Exemptions and Ongoing Registrant Obligations* ("NI 31-103") relating to the First Transaction and the Second Transaction (collectively, the "Transactions");

AND WHEREAS on November 5, 2013, the staff member of the CRR Branch conducting the review of the Notice requested copies of the affidavits of Michael Denyszyn sworn May 24 and June 24, 2013, the affidavits of Michael Ho sworn July 17, August 22 and October 8, 2013, the affidavits of Stuart McKinnon sworn July 17, August 23 and October 7, 2013, the affidavit of Kenneth White sworn October 7, 2013 and the submissions of Staff and Pro-Financial Asset Management Inc. ("PFAM") (collectively, the "Confidential Documents");

AND WHEREAS on November 12, 2013, PFAM filed an application with the Investment Funds Branch ("IF Branch") of the Commission for an order under section 5.5 of National Instrument 81-102 – *Mutual Funds* ("NI 81-102") for approval of the Purchaser as investment fund manager of the Pro-Index Funds and the Purchaser applied on October 24, 2013 for registration in the investment fund manager category for this purpose;

AND WHEREAS on November 13, 2013, Staff filed a Notice of Motion returnable on a date to be determined by the Secretary's office seeking an Order that Staff of the Enforcement Branch be permitted to provide some or all of the Confidential Documents to certain staff members of the CRR Branch and the IF Branch;

AND WHEREAS on November 25, 2013, the Commission ordered that:

(i) Staff of the Enforcement Branch be permitted to provide the Confidential Documents to the following persons:

a. the staff members of the CRR Branch assigned to review the Notice;

b. the staff member who has been designated to act in the capacity of the Director on behalf of the CRR Branch for the purposes of deciding whether to object to the Notice;

c. the staff members of the IF Branch who have been assigned to review the application made by PFAM or the Purchaser under section 5.5 of NI 81-102; and

d. the staff member who has been designated to act in the capacity of the "Director" for the purposes of deciding whether to approve the application under section 5.5 of NI 81-102;

(ii) The CRR staff members assigned to review the Notice be permitted to provide relevant information derived from the Confidential Documents ("Relevant Information") to PFAM, the Purchaser and their counsel involved in the Notice as part of the CRR staff members' review and analysis of the Notice on condition that the recipients of such information treat it as confidential and not provide it to any third party without further direction or order of the Commission;

(iii) The IF staff members assigned to review the application for change of fund manager be permitted to provide Relevant Information to PFAM, the Purchaser and their counsel involved in the application filed under NI 81-102 as part of the Investment Funds staff members' review and analysis of the application on condition that the recipients of such information treat it as confidential and not provide it to any third party without further direction or order of the Commission;

(iv) The CRR staff members assigned to review the Notice be permitted to provide Relevant Information to the Investor or its counsel with the consent of PFAM; and

(v) The parties may seek direction from the Commission in the event that the CRR staff members and PFAM cannot agree on whether Relevant Information should be provided to the Investor or its counsel;

AND WHEREAS Staff has filed an affidavit of Michael Ho sworn December 10, 2013 attaching a letter from counsel to The Investment Administration Solution Inc. ("IAS"), PFAM's recordkeeper for the PPNs, requesting a copy of the PPN reconciliation report submitted by PFAM to Staff;

AND WHEREAS PFAM's counsel provided to Staff and to the Commission and made submissions based on an affidavit of Stuart McKinnon sworn December 11, 2013 which was not marked as an exhibit on December 12, 2013 at the Commission hearing held that day;

AND WHEREAS on December 12, 2013, Staff and counsel for PFAM appeared before the Commission and made submissions on: (i) the appropriate form of order to govern the provision of the Confidential Documents to other members of Staff of the Commission; and (ii) whether IAS should receive copies of the PPN reconciliation reports submitted by PFAM to Staff;

AND WHEREAS by Commission Order dated December 13, 2013, the Commission ordered that:

(i) the Confidential Documents may be provided to any member of Staff of the Commission, as necessary in the course of their duties;

(ii) the Temporary Order be extended to January 24, 2014;

(iii) the hearing be adjourned to January 21, 2014 at 11:00 a.m.; and

(iv) Staff shall be entitled to provide a copy of each document relating to the PPN reconciliation process listed on Schedule "A" of the October 13, 2013 order to counsel for IAS on the conditions that: (a) IAS treat those documents as confidential and not provide them to any third party without further direction or order of the Commission; and (b) IAS may use the documents for the purpose of assisting Staff in resolving the PPN discrepancy, and for no other purpose;

AND WHEREAS on January 15, 2014, PFAM's counsel advised Staff that the prospectus for the distribution of securities of the Pro- Index Funds had passed its lapse date on January 14, 2014 and PFAM's counsel requested a lapse date extension of 40 days from Staff;

AND WHEREAS on January 17, 2014, PFAM's counsel filed a pre-hearing conference memorandum ("PFAM's Pre-Hearing Memorandum") with the Secretary's office to discuss various issues and seek an Order granting an extension to the lapse date for the Pro-Index Funds under subsection 62(5) of the Act (the "Lapse Date Relief");

AND WHEREAS PFAM filed the affidavit of Stuart McKinnon sworn January 19, 2014 with the Secretary's office and Staff filed the affidavit of Susan Thomas sworn January 20, 2014 with the Secretary's office but neither party marked either affidavit as an exhibit at the appearance on January 21, 2014;

AND WHEREAS on January 21, 2014, Staff and PFAM's counsel appeared before the Commission and Staff advised the Commission that: (i) Staff's review of the Notice was expected to take another three to four weeks; (ii) the parties agreed that the prior confidentiality orders should be revised to permit Staff to provide the Confidential Documents or excerpts therefrom to the Purchaser, the Investor and their counsel as Staff determines necessary in the course of their duties and on the condition that the recipients treat such documents as confidential and not disclose them to any third party without further direction or order of the Commission; and (iii) the parties agreed that the Temporary Order should be extended;

AND WHEREAS on January 21, 2014, PFAM's counsel requested that submissions relating to the issues raised in PFAM's Pre-Hearing Memorandum be made *in camera* pursuant to Rule 6 of the Commission's *Rules of Procedure*, Staff opposed PFAM's request, and the Commission directed and the parties made submissions *in camera* on the Lapse Date Relief;

AND WHEREAS on January 21, 2014, the Commission ordered that: (i) the Temporary Order be extended to February 24, 2014; (ii) the hearing be adjourned to February 21, 2014 at 2:00 p.m.; (iii) Staff who have received the Confidential Documents be permitted to provide the Confidential Documents or an excerpt of the Confidential Documents to the Purchaser, the Investor and their counsel as set out in the Order; and (iv) PFAM be granted the Lapse Date Relief under subsection 62(5) of the Act to extend the lapse date for the Pro-Index Funds to February 24, 2014 on the conditions set out in the Order;

AND WHEREAS on February 14, 2014, PFAM's counsel served on Staff and filed a pre-hearing conference memorandum with the Secretary's office and requested a confidential pre-hearing conference during the week of February 24, 2014;

AND WHEREAS on February 21, 2014, PFAM's counsel was unavailable to attend before the Commission so the Commission ordered: (i) the Temporary Order be extended to March 6, 2014; (ii) the hearing be adjourned to March 3, 2014 at 11:00 a.m.; and (iii) a confidential pre-hearing conference proceed on February 25, 2014 at 3:30 p.m.;

AND WHEREAS PFAM's counsel requested in his prehearing conference memorandum an extension to the lapse date for the Pro-Index Funds which was previously extended to February 24, 2014 by Commission order dated January 21, 2014 (the "Further Lapse Date Relief");

AND WHEREAS in connection with a confidential pre-hearing conference on February 25, 2014 and the appearance on March 3, 2014, Staff filed the affidavit of Michael Ho sworn February 24, 2014 and written submissions dated February 28, 2014 to oppose the request for the Further Lapse Date Relief and PFAM's counsel filed the affidavits of Stuart McKinnon sworn February 21, 2014 and March 3, 2014 and a factum dated March 3, 2014 in support of the Further Lapse Date Relief;

AND WHEREAS on March 3, 2014, counsel for PFAM requested that submissions relating to the Further Lapse Date Relief be heard *in camera* and the Commission agreed to this request and the parties made oral submissions *in camera* on the issue of whether the Commission should grant the Further Lapse Date Relief;

AND WHEREAS on March 3, 2014, the Commission ordered that the Further Lapse Date Relief would be granted until April 7, 2014 subject to: (i) PFAM issuing a news release, in a form satisfactory to Staff, to ensure that investors receive full disclosure of the matters identified by Staff as set out below; and (ii) PFAM only being permitted to distribute securities of the Pro-Index Funds to existing securityholders of the Pro-Index Funds;

AND WHEREAS on March 3, 2014, the Commission advised, in the public portion of the hearing, that there had been two Director decisions recently made affecting PFAM (the "Director Decisions") and PFAM's counsel advised that the affected parties would seek a hearing and review under subsection 8(2) of the Act of both of the Director Decisions on an expedited basis;

AND WHEREAS on March 4, 2014, the Commission ordered: (i) the terms and conditions imposed on PFAM's registration by the Temporary Order be deleted and replaced with new terms and conditions which provided that PFAM shall not accept any new clients or open any new client accounts of any kind in respect of its Managed Accounts and that PFAM may only distribute securities of the Pro-Index Funds to existing securityholders of the Pro-Index Funds (the "Distribution Restriction"); (ii) PFAM be granted the Further Lapse Date Relief under subsection 62(5) of the Act to extend the lapse date for the Pro-Index Funds to April 7, 2014 subject to the conditions that: (a) PFAM issue a news release by March 6, 2014, in a form satisfactory to Staff, providing disclosure about the specific items set out in the March 4, 2014 order; and (b) PFAM comply with the terms of the March 4, 2014 order; (iii) the hearing be adjourned to April 7, 2014 at 10:00 a.m.; and (iv) the Temporary Order be extended to April 10, 2014;

AND WHEREAS on March 6, 2014, a confidential prehearing conference was held to consider a motion by counsel to the Purchaser and the Investor to vary the Distribution Restriction imposed by the Commission in the March 4, 2014 order, so that PFAM could continue distributing securities until April 7, 2014 to new investors after issuing the press release provided for in the March 4 order (the "Variation Motion");

AND WHEREAS on March 6, 2014, the Commission was of the view that the hearing of the Variation Motion should proceed only after a notice of the Variation Motion has been filed with the Secretary's office so that the public could be advised of the hearing;

AND WHEREAS on March 6, 2014, the Commission ordered that: (i) portions of the Commission decision of March 3, 2014 imposing the Distribution Restriction and deleting and replacing the terms and conditions on PFAM's registration and operation be stayed until March 11, 2014; (ii) PFAM be granted lapse date relief to extend the lapse date for the Pro-Index Funds to March 11, 2014; (iii) the Purchaser and the Investor file notice of the Variation Motion with the Secretary's office; and (iv) the Variation Motion be adjourned to March 11, 2014 at 1:00 p.m.;

AND WHEREAS the Purchaser and Investor's counsel filed the affidavit of Diego Beltran sworn March 5, 2014, the affidavit of Stuart McKinnon sworn March 11, 2014 and written submissions dated March 6, 2014 in support of the Variation Motion and Staff filed the affidavit of Michael Ho sworn March 10, 2014 and written submissions dated March 10, 2014 to oppose the Variation Motion;

AND WHEREAS on March 11, 2014, the Purchaser and the Investor's counsel made a request that the hearing of the Variation Motion proceed *in camera* and Staff opposed the request and the Purchaser and Investor's counsel and Staff made oral submissions and the Commission denied the request that the hearing proceed *in camera*;

AND WHEREAS on March 11, 2014, Staff opposed the Variation Motion and the Purchaser and Investor's counsel and Staff made oral submissions on the Variation Motion and Staff advised that a separate order will be required to cease the distribution of securities of the Pro-Index Funds to new investors as of March 11, 2014 if the Variation Motion is dismissed;

AND WHEREAS on March 11, 2014, the Commission ordered that: (i) the Variation Motion be dismissed; and (ii) the distribution of securities of the Pro-Index Funds to new investors be ceased as of the end of the day on March 11, 2014;

AND WHEREAS PFAM filed the affidavit of Stuart McKinnon sworn April 4, 2014 in support of its request for a further lapse date extension (the "Third Lapse Date Extension Request") and requested that the affidavit be treated on a confidential basis and Staff filed an affidavit of Mostafa Asadi sworn April 4, 2014 and opposed the Third Lapse Date Extension Request on the basis that PFAM has not filed the annual audited financial statements or the annual management reports of fund performance for the Pro-Index Funds which were due on March 31, 2014;

AND WHEREAS on April 7, 2014, PFAM's counsel requested that the submissions of the parties be heard *in camera* and Staff opposed the request and the Commission directed PFAM's counsel and Staff to make oral submissions *in camera*;

AND WHEREAS on April 7, 2014, Staff requested permission to provide a copy of the affidavit of Stuart McKinnon sworn April 4, 2014 to IAS or its legal counsel prior to the argument of PFAM's Third Lapse Date Request and PFAM's counsel opposed Staff's request;

AND WHEREAS on April 7, 2014, the parties made submissions *in camera* and the Commission directed that the affidavit of Stuart McKinnon sworn April 4, 2014 shall not be received on a confidential basis and directed that the correspondence between Staff and PFAM's counsel be treated as confidential;

AND WHEREAS on April 7, 2014, the Commission ordered that: (i) the lapse date for the Pro-Index Funds be extended to April 21, 2014; (ii) the affidavit of Stuart McKinnon sworn April 4, 2014 shall appear on the public record except for exhibits containing the correspondence between Staff and PFAM's counsel, including enclosures; (iii) Staff shall be entitled to provide a copy of the affidavit of Stuart McKinnon sworn April 4, 2014 to IAS or IAS' legal counsel subject to the conditions that IAS shall treat as confidential all correspondence between PFAM and Staff forming part of the affidavit and IAS shall only use the affidavit to assist Staff in the ongoing proceeding; (iv) the Temporary Order be extended to April 21, 2014; and (v) the hearing be adjourned to April 17, 2014 at 11:00 a.m. to argue the Third Lapse Date Extension Request.

AND WHEREAS on April 17, 2014, Staff filed the affidavit of Michael Ho sworn April 11, 2014 to oppose the Third Lapse Date Extension Request and PFAM filed the affidavit of Stuart McKinnon sworn April 16, 2014 in support of the Third Lapse Date Extension Request;

AND WHEREAS on April 17, 2014, PFAM's counsel requested that the submissions of the parties on the Third Lapse Date Extension Request be heard *in camera* and Staff opposed PFAM's request and the Commission directed that the parties' submissions on the Third Lapse Date Extension Request would not be heard *in camera*;

AND WHEREAS on April 17, 2014, PFAM's counsel made oral submissions and filed written submissions dated April 7 and 17, 2014 in support of the Third Lapse Date Extension Request and Staff made oral and filed written submissions dated April 14, 2014 to oppose PFAM's request and after hearing the parties' submissions, the Commission reserved its decision and adjourned the hearing to April 21, 2014 at 2:00 p.m.;

AND WHEREAS on April 21, 2014, the Commission dismissed the Third Lapse Date Extension Request and provided oral reasons for its decision;

AND WHEREAS on April 21, 2014, the Commission ordered that: (i) the Third Lapse Date Extension Request be dismissed without prejudice to PFAM bringing an application under section 144 to vary or revoke this order if the audited financial statements and management reports of fund performance for the Pro-Index Funds are filed with the Commission; (ii) notwithstanding that the lapse date for the Pro-Index Funds was previously extended to April 21, 2014, the distribution of securities of the Pro-Index Funds shall cease as of the end of the day on April 21, 2014; (iii) the Temporary Order be extended to May 27, 2014; and (iv) the hearing be adjourned to May 23, 2014 at 10:00 a.m.;

AND WHEREAS on May 23, 2014, Staff filed the affidavit of Michael Ho sworn May 22, 2014 to: (i) update the Commission on the payments by PFAM on March 31, April 7 and 8, 2014 of maturity proceeds for certain series of PPNs to an escrow agent as arranged by the Banks and agreed to by PFAM; and (ii) confirm that the current discrepancy between the records of the recordkeeper and the trustee remains unchanged and indicates that the total cash obligation to PPN noteholders exceeds the amount in the trustee's records by $1,222,549.45;

AND WHEREAS on May 23, 2014, the Commission ordered that: (i) the term and condition on PFAM's registration which stated that "PFAM may only distribute securities of the Pro-Index Funds to existing security holders of the Pro-Index

Funds" be deleted and replaced with "PFAM shall not distribute securities of the Pro-Index Funds"; (ii) a confidential pre-hearing conference be held on June 5, 2014 at 10:00 a.m.; (iii) the hearing be adjourned to July 2, 2014 at 10:00 a.m.; and (iv) the Temporary Order be extended to July 4, 2014;

AND WHEREAS the Secretary's office advised the parties that the Commission was not available on July 2, 2014 and the parties agreed to adjourn the hearing to July 9, 2014 at 10:00 a.m. and to extend the Temporary Order to July 11, 2014;

AND WHEREAS on June 11, 2014, the Commission ordered that: (i) a confidential pre-hearing conference in respect of the section 8 hearing and review of the Director Decisions be held on June 26, 2014 at 2:00 p.m.; (ii) the hearing be adjourned to July 9, 2014 at 10:00 a.m.; and (iii) the Temporary Order be extended to July 11, 2014;

AND WHEREAS on July 9, 2014, the Commission ordered that: (i) the hearing be adjourned to August 8, 2014 at 10:00 a.m.; and (ii) the Temporary Order as amended by previous Commission orders be extended to August 11, 2014;

AND WHEREAS on July 9 and 10, 2014, the Commission held a hearing and review under subsection 8(2) of the Act to consider the decision of the Director of the CRR Branch to object to the Transactions;

AND WHEREAS on July 16, 2014, the Commission approved the Transactions under subsections 11.9(5) and 11.10(6) of NI 31-103 subject to nine terms and conditions;

AND WHEREAS on August 8, 2014, counsel for PFAM requested a short adjournment to permit counsel with carriage of the PFAM matter to attend before the Commission to make submissions on the affidavit of Michael Ho sworn August 7, 2014;

AND WHEREAS on August 8, 2014, the Commission ordered that the Temporary Order be extended to August 29, 2014 and the hearing be adjourned to August 26, 2014 at 10:00 a.m. to hear submissions from the parties;

AND WHEREAS on August 26, 2014, Staff filed the affidavit of Michael Ho sworn August 7, 2014 to update the Commission on the complaints received by Staff from PPN noteholders and advisers to PPN noteholders and to set out Staff's information that: (i) in June 2014, PFAM resigned as administrator for the PPNs issued by the Banks; (ii) eight of the nine series of PPNs have matured; (iii) two series of PPNs have been paid out to PPN noteholders at maturity in 2010 and 2011; (iv) in March and April, 2014, the maturity proceeds for five series of PPNs which matured between December 2012 and March 31, 2014 inclusive were paid to escrow accounts at the BMO Trust Company ("BMO Trust"); (v) one series of PPNs matured on June 30, 2014 and the maturity proceeds have been paid to BMO Trust; (vi) BNP has advised Staff that BNP intends to fund the shortfall and to pay the PPN noteholders the full redemption amounts on the matured series of PPNs issued by BNP; (vii) SGC has advised Staff that SGC has paid the full proceeds payable upon maturity for the matured series of PPNs issued by SGC and such funds are being held in escrow at BMO Trust; (viii) BNP has advised Staff that BNP is currently making the necessary administrative arrangements to make payments to PPN noteholders directly; and (ix) SGC has advised Staff that SGC is carefully reviewing the registers and other records available to identify PPN noteholders and SGC will make arrangement for payment once sufficient reliable information is available;

AND WHEREAS on August 26, 2014, the Commission ordered that the Temporary Order be extended to October 1, 2014 and the hearing be adjourned to September 29, 2014 at 10:00 a.m.;

AND WHEREAS on September 24, 2014, the Commission rescheduled the PFAM hearing from September 29, 2014 at 10:00 a.m. to September 30, 2014 at 12:30 p.m.;

AND WHEREAS on September 30, 2014, the Commission ordered that the Temporary Order be extended to November 24, 2014 and the hearing be adjourned to November 20, 2014 at 10:00 a.m.;

AND WHEREAS on November 20, 2014, Staff updated the Commission on: (i) the efforts of SGC and IAS to reach an agreement for access to IAS's PPN noteholder records; and (ii) the status of PFAM's and KCC's change of manager application;

AND WHEREAS on November 20, 2014, Staff and PFAM's counsel advised that the parties consent to the adjournment of the hearing to January 14, 2015 and to the extension of the Temporary Order to January 16, 2015 and the Commission advised that the matter should be brought back before the Commission earlier than January 14, 2015 if: (i) SGC and IAS fail to reach an agreement within two weeks; and/or (ii) PFAM's and KCC's change of manager application is not approved;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS HEREBY ORDERED that:

1. The hearing is adjourned to January 14, 2015 at 9:00 a.m.

2. The Temporary Order as amended by previous Commission orders is extended to January 16, 2015.

DATED at Toronto this 20th day of November, 2014

"James E. A. Turner"

2.2.3 TG Residential Value Properties Ltd. – ss. 127(7), 127(8)

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

AND

IN THE MATTER OF
TG RESIDENTIAL VALUE PROPERTIES LTD.

ORDER
(Subsections 127(7) and 127(8))

WHEREAS the British Columbia Securities Commission (the "BCSC") issued a Cease Trade Order on November 5, 2014, ordering that all the trading in the securities of TG Residential Value Properties Ltd. (the "Reporting Issuer"), cease due to a failure to file the following required continuous disclosure documents:

(i) comparative financial statement for its financial year ended June 30, 2014; and

(ii) the management discussion and analysis for the period ended June 30, 2014.

AND WHEREAS the order of the BCSC remains in effect until the Executive Director of the BCSC revokes the order or the Reporting Issuer completes the required filings;

AND WHEREAS the Director of the Corporate Finance Branch of the Ontario Securities Commission (the "Commission"), issued a Notice of Hearing and a Temporary Cease Trade Order (the "TCTO") on November 10, 2014, pursuant to paragraph 2 of subsection 127(1) and subsection 127(5) of the *Securities Act*, R.S.O. 1990, c. S.5, as amended (the "Act"), reciprocating the order of the BCSC, and ordering that, effective immediately, all trading in the securities of the Reporting Issuer, whether direct or indirect, shall cease for a period of 15 days from the date of the TCTO;

AND WHEREAS a Hearing was held on November 21, 2014, in writing, to consider whether the TCTO should be extended;

AND WHEREAS the Commission considered the consent of the Reporting Issuer and Staff of the Commission and submissions of the Reporting Issuer and Staff of the Commission;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED THAT Pursuant to subsection 127(7) the TCTO be extended until December 4, 2014;

IT IS FURTHER ORDERED THAT the hearing in this matter be adjourned until December 1, 2014, at 10:00 a.m.

DATED at Toronto this 21st day of November, 2014

"Mary G. Condon"

2.2.4 TMX Group Limited et al. – s. 147

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

AND

IN THE MATTER OF
TMX GROUP LIMITED

AND

TMX GROUP INC.

AND

TSX INC.

AND

ALPHA TRADING SYSTEMS LIMITED PARTNERSHIP

AND

ALPHA EXCHANGE INC.

ORDER
(Section 147 of the Act)

WHEREAS the Ontario Securities Commission ("**Commission**") issued an order dated April 3, 2000 (the "**2000 Order**"), recognizing each of TSX Group Inc., which later changed its name to TMX Group Inc. ("**TMX Group**"), and TSX Inc. ("**TSX**") as a stock exchange pursuant to section 21 of the *Securities Act* (Ontario) (the "**Act**"), which order has been amended from time to time;

AND WHEREAS the Commission issued an order dated December 8, 2011, recognizing each of Alpha Trading Systems Limited Partnership ("**Alpha LP**") and Alpha Exchange Inc. ("**Alpha Exchange**") as an exchange pursuant to section 21 of the Act (the "**2011 Alpha Order**"), which order has been amended from time to time;

AND WHEREAS, in connection with the take-over bid and a subsequent arrangement, the result of which would be the acquisition by TMX Group Limited, then known as the Maple Group Acquisition Corporation ("**Maple**"), of all of the issued and outstanding voting securities of TMX Group, the holding company parent of TSX, pursuant to section 144 of the Act, the Commission issued an order (the "**Maple Order**") dated July 4, 2012 revoking the 2000 Order and the 2011 Alpha Order and pursuant to section 21 of the Act recognizing each of Maple, TMX Group, TSX, Alpha LP and Alpha Exchange (collectively the "**Recognized Exchanges**") as an exchange;

AND WHEREAS the Recognized Exchanges have applied to the Commission for exemptive relief pursuant to section 147 of the Act from complying with the following requirements (together, the "**Reporting Requirements**") at:

a) subsection 2(c) of Schedule 2;

b) subsection 2(a) of Appendix A of Schedule 2;

c) subparagraph 34(b)(iii) of Schedule 5;

d) subparagraph 52(b)(iii) of Schedule 7; and

e) subsection 62(b) of Schedule 8

of the Maple Order (the "**Application**");

AND WHEREAS based on the Application and the representations that the Recognized Exchanges have made to the Commission, the Commission has determined that it is not prejudicial to the public interest to exempt the Recognized Exchanges from complying with the Reporting Requirements;

IT IS HEREBY ORDERED that pursuant to section 147 of the Act, the Recognized Exchanges are exempted from the Reporting Requirements.

DATED this 14th day of November 2014.

"Edward P. Kerwin"

"Deborah Leckman"

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
Five Nines Ventures Ltd.	10 November 14	21 November 14	21 November 14	
Galileo Webtrack Systems Corp.	11 November 14	24 November 14		25 November 14
NovaDx Ventures Corp.	10 November 14	21 November 14	21 November 14	
Sonde Resources Corp.	25 November 14	08 December 14		
TG Residential Value Properties Ltd.	10-November-14	21-November-14*		

* The Temporary order issued on November 10, 2014 was extended by the Commission on November 21, 2014 to December 1, 2014.

4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Northland Resources SE	21 November 14	3 December 14			

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
Besra Gold Inc.	10 October 14	22 October 14	22 October 14		
Northland Resources SE	21 November 14	3 December 14			

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Chapter 5

Rules and Policies

5.1.1 Notice of Amendments to OSC Rule 45-501 Ontario Prospectus and Registration Exemptions

The Notice of Amendments to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Notice.

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NOTICE OF AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS

November 27, 2014

Introduction

We, the Ontario Securities Commission (OSC or we), are implementing amendments (the Rule Amendments) to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* (OSC Rule 45-501).

We are also implementing:

- policy changes (the Policy Changes) to Companion Policy 45-501CP to OSC Rule 45-501 (45-501CP), and
- consequential amendments (the Consequential Amendments) to National Instrument 45-102 *Resale of Securities*.

The OSC published the Rule Amendments, along with other proposed prospectus exemptions and proposed reports of exemption distribution, for comment on March 20, 2014. On November 4, 2014, the OSC:

- made the Rule Amendments and the Consequential Amendments pursuant to section 143 of the *Securities Act* (Ontario) (the Act), and
- adopted the Policy Changes to 45-501CP pursuant to section 143.8 of the Act.

The Rule Amendments, Policy Changes and Consequential Amendments (collectively, the Final Amendments) were delivered to the Minister of Finance on November 26, 2014. Provided Ministerial approval is obtained, the Final Amendments will come into force on February 11, 2015.

Substance and Purpose of the Rule Amendments

The Final Amendments set out a prospectus exemption for distributions by a reporting issuer (other than an investment fund) listed on a specified exchange to its existing security holders (the Existing Security Holder Prospectus Exemption or the Exemption).

Many small and medium-sized enterprises (SMEs) continue to face challenges raising capital after becoming reporting issuers and obtaining a listing on an exchange. Furthermore, retail security holders often have less opportunity to invest in primary offerings by listed issuers, even if they have already made an investment decision to acquire an issuer's securities in the secondary market. The Existing Security Holder Prospectus Exemption will provide investors, who have already acquired securities of a listed issuer, with the opportunity to participate in primary offerings of that issuer. The Exemption is available to reporting issuers with equity securities listed on the Toronto Stock Exchange (TSX), the TSX Venture Exchange (TSXV), the Canadian Securities Exchange (CSE) or Aequitas NEO Exchange (Aequitas) (collectively, the Exchanges).

Background

The OSC engaged in a broad review of the exempt market (the Exempt Market Review) to consider whether to introduce new prospectus exemptions that would facilitate capital raising for business enterprises, particularly SMEs, while protecting the interests of investors.

In connection with the Exempt Market Review, on March 20, 2014, the OSC published for comment, proposals for four new capital raising prospectus exemptions in Ontario (the Proposed Exemptions):

- an offering memorandum prospectus exemption,
- a family, friends and business associates prospectus exemption,
- the Existing Security Holder Prospectus Exemption, and
- a crowdfunding prospectus exemption in addition to regulatory requirements applicable to a crowdfunding portal.

The OSC also published a proposal for two new reports of exempt distribution for use in Ontario and certain other jurisdictions (the Proposed Reports):

- Form 45-106F10 *Report of Exempt Distribution For Investment Fund Issuers (Alberta, New Brunswick, Ontario and Saskatchewan)*, and
- Form 45-106F11 *Report of Exempt Distribution For Issuers Other Than Investment Funds (Alberta, New Brunswick, Ontario and Saskatchewan).*

Additional background information on the Proposed Exemptions and the Proposed Reports is available in the notice we published on March 20, 2014. The comment period for these proposals expired on June 18, 2014 and OSC staff are currently reviewing the comments related to the other Proposed Exemptions and the Proposed Reports.

As noted above, the Existing Security Holder Prospectus Exemption (the Proposed Amendments) was published for comment as one of the Proposed Exemptions in Ontario only on March 20, 2014. All other CSA jurisdictions (other than Newfoundland and Labrador) published a similar exemption in final form on March 13, 2014 (the CSA Existing Security Holder Prospectus Exemption). The CSA Existing Security Holder Prospectus Exemption has been adopted by rule in each of Alberta and Québec, and as a blanket order in each of British Columbia, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, Yukon, the Northwest Territories and Nunavut. See Multilateral CSA Notice 45-313 *Prospectus Exemption for Distributions*.

In developing the Final Amendments (and in connection with the Exempt Market Review), we conducted consultations with various stakeholders including OSC advisory committees. To facilitate harmonization between the CSA Existing Security Holder Prospectus Exemption and the Existing Security Holder Prospectus Exemption, we also consulted with other CSA members. As a result, the Existing Security Holder Prospectus Exemption is similar to and substantially harmonized with the CSA Existing Security Holder Prospectus Exemption.

Framework of the Existing Security Holder Prospectus Exemption

The Existing Security Holder Prospectus Exemption permits listed issuers to distribute securities to their existing security holders, subject to a number of conditions. The key conditions are set out below:

Element of exemption	Details
Issuer restrictions	
Qualification criteria	• Reporting issuers with a class of equity securities listed on one or more of the Exchanges • Not available to investment funds
Distribution details	
Types of securities	• The Exemption applies to a distribution by an issuer of securities of its own issue • Offering can consist only of the class of equity securities listed on one or more of the Exchanges, or units consisting of the listed security and a warrant to acquire the listed security

Element of exemption	Details
Offering parameters	• An offering cannot result in an increase of more than 100% of the outstanding securities of the same class • Issuer must permit each person who, as of the record date, held a listed security of the issuer of the same class and series as the listed security to be distributed under the Exemption, to subscribe for securities distributed under the Exemption • No requirement that an issuer must allocate existing security holders a pro rata portion of the offering
Registrants	• There are no restrictions that limit the type of registrant that may participate in an offering under the Exemption
Investor protection measures	
Investor qualifications	• Each investor must represent in writing to the issuer that as at the record date the investor held, and continues to hold, the type of listed security that the investor is acquiring under the Exemption • The record date must be at least one day prior to the day that an issuer issues an offering news release
Investment limits	Either: • The aggregate of the acquisition cost to the purchaser of securities to be purchased from the issuer under the distribution, when added to the acquisition cost to the purchaser of all other securities of the issuer acquired in reliance on the Exemption in the 12-month period immediately preceding the distribution, does not exceed $15,000, or • The purchaser has obtained advice regarding the suitability of the investment and, if the purchaser is a resident of a jurisdiction of Canada, that advice is from a person registered in that jurisdiction as an investment dealer
Risk acknowledgement form	• A risk acknowledgement form is not required
Point of sale disclosure	• Issuer is not required to provide an offering document • Issuer must issue an offering news release that includes reasonable detail of the proposed distribution, the proposed use of proceeds and a description of how the issuer intends to allocate securities • Issuer must file any offering materials (other than the subscription agreement) on the same day the issuer provides materials to purchasers
Statutory rights in the event of a misrepresentation	• Secondary market civil liability provisions in Part XXIII.1 of the Act (Secondary Market Disclosure Liability) applies in relation to securities purchased under the Existing Security Holder Prospectus Exemption
Right of withdrawal	• No right of withdrawal is available to investors
Resale restrictions	• Securities of a reporting issuer are subject to a four month hold period (subject to certain other conditions being met)
Ongoing disclosure	• Reporting issuers must comply with continuous disclosure obligations
Reporting	
Reporting of distribution	• Report of exempt distribution in Form 45-106F1 *Report of Exempt Distribution* (Form 45-106F1) must be filed for a distribution

Summary of Written Comments Received by the OSC

The comment period for the Proposed Amendments ended on June 18, 2014. We received written submissions on the Proposed Amendments from 14 commenters. We have considered the comments received and thank all of the commenters for their comments. The names of the commenters are contained in Appendix A and a summary of their comments, together with our responses, is contained in Appendix B. The comment letters can be viewed on the OSC website at www.osc.gov.on.ca.

Summary of Changes to the Proposed Amendments

After considering the comments received on the Proposed Amendments and the comments we received during our informal consultations, we have made some revisions to the Proposed Amendments. Those revisions are reflected in the Final Amendments that we are publishing concurrently with this notice. As these changes are not material, we are not republishing the Final Amendments for a further comment period.

A summary of notable changes between the Proposed Amendments and the Final Amendments is set out below in items (i) – (vi).

(i) Seasoning requirement for issuers

The Proposed Amendments contemplated that an issuer must be a reporting issuer for not less than 12 months or have become a reporting issuer by filing a prospectus before the offering (the Seasoning Requirement). The purpose of the Seasoning Requirement was to ensure that the issuer has a base disclosure record since the premise for the Exemption is to permit an existing security holder to rely on the issuer's disclosure record to make purchasing decisions. However, this requirement resulted in a difference between the Existing Security Holder Prospectus Exemption and the CSA Existing Security Holder Prospectus Exemption.

We have removed the Seasoning Requirement after further consideration of the disclosure record of new reporting issuers available to security holders and to harmonize the Final Amendments with the CSA Existing Security Holder Prospectus Exemption.

(ii) Pro rata allocation among existing security holders

In an effort to harmonize with the CSA Existing Security Holder Prospectus Exemption, we removed the requirement that the issuer must allocate a pro rata portion of the offering to existing security holders. Instead, we have added companion policy guidance to 45-501CP in order to clarify certain matters relating to the fair and equal treatment of existing security holders. Specifically, the guidance clarifies that while there is no pro rata requirement, the OSC takes the position that in order to support the fair treatment of all security holders, an issuer should establish, maintain and apply policies and procedures that provide reasonable assurance that the issuer, and, if applicable, each registrant participating in an offering, fairly allocate investment opportunities among all of the issuer's security holders. We are of the view that these revisions will prevent the use of the Existing Security Holder Prospectus Exemption in a manner that results in security holders suffering significant dilution without the opportunity to participate in the distribution.

(iii) Security holders rights if misrepresentation

The Proposed Amendments contemplated requiring that a subscription agreement between the issuer and investor provide for contractual rights against the issuer if there is a misrepresentation in the issuer's disclosure record (Contractual Liability). We also noted in the notice and request for comment published with the Proposed Amendments that, as an alternative to Contractual Liability, we were considering prescribing that Secondary Market Disclosure Liability apply.

The Final Amendments prescribe that Secondary Market Disclosure Liability applies, which provides purchasers of securities under the Existing Security Holder Prospectus Exemption with rights of action for damages, under section 138.3 of the Act, relating to:

- misrepresentations contained in documents released on behalf of an issuer,
- misrepresentations in public oral statements by certain persons, and
- failure of an issuer to make timely disclosure.

However, unlike Contractual Liability, we note that Secondary Market Disclosure Liability does not provide investors with a statutory right of rescission.

We believe that there are a number of advantages to providing for Secondary Market Disclosure Liability rather than Contractual Liability, including:

- Under the Secondary Market Disclosure Liability regime, investors have rights of action for damages that are not available under Contractual Liability, namely, in relation to misrepresentations in public oral statements and failure of an issuer to make timely disclosure.
- Rights under the Secondary Market Disclosure Liability regime are enforceable against a broader group of persons, including directors, officers, control persons and experts; whereas, Contractual Liability only applies against the issuer.
- Under a Contractual Liability regime, there is a potential risk that an issuer would not set out the prescribed provisions in a subscription agreement. There is also a risk that provisions in a subscription agreement would not be consistent from issuer to issuer or from offering to offering.

(iv) Report of exempt distribution

The Proposed Amendments required an issuer relying on the Existing Security Holder Prospectus Exemption to file a Form 45-106F11. However, since the Proposed Reports are not yet in place, we have made drafting changes to require that a Form 45-106F1 be used to report a distribution under the Existing Security Holder Prospectus Exemption until the Proposed Reports are finalized.

(v) Amendments to OSC Rule 13-502 Fees

The Proposed Amendments contemplated an amendment to OSC Rule 13-502 *Fees* (OSC Rule 13-502). Specifically, we proposed that issuers that relied on the Existing Security Holder Prospectus Exemption would pay an activity fee of $500 at the time of filing either of the Proposed Reports, which includes the proposed Form 45-106F11. As noted above, a Form 45-106F1 is required to be filed under the Final Amendments until the Proposed Reports are finalized.

Accordingly, an issuer who relies on the Existing Security Holder Prospectus Exemption will pay the activity fee of $500, as currently required under Part B of Appendix C of OSC Rule 13-502 when filing Form 45-106F1.

(vi) Aequitas

On November 13, 2014, the OSC recognized Aequitas as an exchange in accordance with section 21 of the Act. As such, we have updated the Rule Amendments to permit reporting issuers with a class of equity securities listed on Aequitas to use the Exemption after the effective date of the recognition order for Aequitas.

Summary of differences between the CSA Exiting Security Holder Prospectus Exemption and the Final Amendments

One difference between the CSA Existing Security Holder Prospectus Exemption and the Final Amendments is that, under the CSA Existing Security Holder Prospectus Exemption, there is no carve-out for investment funds. However, investment fund issuers in Ontario cannot rely on the Existing Security Holder Prospectus Exemption. The exclusion of investment funds is consistent with the focus of the policy initiative of the Exempt Market Review to facilitate capital raising for SMEs.

The Final Amendments also require that a distribution of listed securities or units by an issuer must not result in an increase of more than 100 percent in the number of outstanding listed securities of the same class.

Text of the Final Amendments

The text of the Final Amendments is included at Appendix C.

Questions

Please refer your questions to any of:

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APPENDIX A

LIST OF COMMENTERS

1. Advocis
2. AUM Law
3. Canadian Advocacy Council for Canadian CSA Institute Societies
4. Canadian Securities Exchange
5. Davies Ward Phillips & Vineberg LLP
6. Equity Crowdfunding Alliance of Canada
7. Canadian Foundation for Advancement of Investor Rights
8. Investment Industry Association of Canada
9. National Crowdfunding Association of Canada
10. Northcrest Partners Inc.
11. Private Capital Markets Association of Canada
12. Siskinds LLP
13. Stikeman Elliott LLP
14. TMX Group Limited

APPENDIX B

SUMMARY OF COMMENTS AND OSC RESPONSES

No.	Topic	Comments	OSC Response
Harmonization			
1.	Support for CSA harmonization	Six commenters supported harmonization between the Existing Security Holder Prospectus Exemption and the CSA Existing Security Holder Prospectus Exemption for the following reasons: • differences between the exemptions may impede issuers, particularly SMEs, from optimizing capital raising opportunities, • inconsistent regulation creates unnecessary friction, regulatory and investor confusion, and increased costs, and • the majority of the comment letters received in connection with the CSA Existing Security Holder Prospectus Exemption supported that exemption. The CSA Existing Security Holder Prospectus Exemption was adopted by rule in each of Alberta and Québec, and as a blanket order in each of British Columbia, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, Yukon, the Northwest Territories and Nunavut published in final form on March 13, 2014.	We have consulted with other CSA members and have harmonized the Exemption to the extent possible.
General			
2.	Support for the scope of the Exemption	Four commenters generally supported the Existing Security Holder Prospectus Exemption.	We acknowledge these comments of support.

No.	Topic	Comments	OSC Response
3.	Opposition to the Exemption	One commenter was opposed to the Existing Security Holder Prospectus Exemption. This commenter was of the view that by introducing the Exemption and other prospectus exemptions, the OSC is neglecting the interest of investors in favour of issuers.	We disagree with this comment. The Existing Security Holder Prospectus Exemption allows investors who have already acquired securities of an issuer to acquire additional securities based on the issuer's 0disclosure record. We note that the Existing Security Holder Prospectus Exemption incorporates an important investor protection mechanism by prescribing that Secondary Market Disclosure Liability applies to securities acquired under the Exemption. The application of this regime provides purchasers of securities under the Exemption with a right of action for damages relating to: • misrepresentations contained in documents released on behalf of an issuer, • misrepresentations in public oral statements by certain persons, and • failure of an issuer to make timely disclosure.
Qualification criteria			
4.	Support for limiting the use of the Existing Security Holder Prospectus Exemption to listed reporting issuers only	One commenter supported the availability of the Exemption to listed reporting issuers only.	We acknowledge this comment of support.
5.	Exclusion of investment funds	Two commenters expressed that they did not understand the policy rationale for excluding investment funds from using the Existing Security Holder Prospectus Exemption.	Investment funds sold to retail investors are subject to a significant and robust regulatory framework that addresses subsequent purchases of securities of mutual funds in continuous distribution and subsequent offerings of securities of closed-end investment funds. To permit investment funds to sell to retail investors under the

No.	Topic	Comments	OSC Response
			Exemption without the benefit of the disclosure and product regulation that applies to retail investment funds would be inconsistent with the principles underlying this framework and with three ongoing investment fund policy initiatives: modernization of investment fund regulation, point of sale disclosure for mutual funds and the review of the cost of ownership of mutual funds. Further, the exclusion of investment funds is consistent with the objective of this OSC policy project to introduce new prospectus exemptions that would facilitate capital raising for business enterprises, particularly SMEs.
6.	Exclusion of closed-end investment funds	One commenter expressed that the absence of the Existing Security Holder Prospectus Exemption for investment funds will result in closed-end funds relying on rights offerings or a subsequent market offering to raise capital in Ontario, at a much greater expense and time than other listed issuers.	We note that amendments to National Instrument 81-102 *Investment Funds* published July 19, 2014 and effective September 22, 2014 restrict an investment fund from issuing warrants or rights. As noted above, to permit investment funds to sell to retail investors under the Existing Security Holder Prospectus Exemption without the benefit of the disclosure and product regulation that applies to retail investment funds would be inconsistent with the principles underlying existing rules and with three ongoing investment fund policy initiatives: modernization of investment fund regulation, point of sale disclosure for mutual funds and the review of the cost of ownership of mutual funds.
7.	Support for Seasoning Requirement for reporting issuers	One commenter supported inclusion of the Seasoning Requirement. The commenter noted that as a current security holder, the investor has a pre-existing degree of familiarity with the issuer and, because of the Seasoning Requirement, there would be considerable degree of investor protection afforded by disclosure.	We acknowledge this comment; however we have removed the Seasoning Requirement in the interest of harmonization.

No.	Topic	Comments	OSC Response
8.	Opposition to the Seasoning Requirement	Two commenters did not support the Seasoning Requirement. The commenters were of the view that the Seasoning Requirement would create a difference between the Existing Security Holder Prospectus Exemption and the CSA Existing Security Holder Prospectus Exemption. Additionally, one commenter noted that the Seasoning Requirement does not allow for issuers that have filed a prospectus-like disclosure document required by the TSXV for either a qualifying transaction or a reverse takeover bid to use the Exemption if it has been a reporting issuer for less for a year. One commenter was of the view that the incremental benefit of a minimum reporting history is not a sufficient reason to deviate from the CSA Existing Security Holder Prospectus Exemption.	As noted above, we have removed the Seasoning Requirement.
9.	Support for allowing any issuer listed on TSX, TSXV or CSE to use the Existing Security Holder Prospectus Exemption	Eight commenters agreed with the provision that permits issuers listed on the TSX, TSXV or CSE to use the Existing Security Holder Prospectus Exemption since these exchanges have a disclosure regime. One commenter was of the view that the TSX and TSXV have rules, policies and review processes in place with respect to private placements that aim to protect existing security holders and the quality of the market.	We acknowledge these comments.
10.	Support for allowing new recognized exchanges to use the Existing Security Holder Prospectus Exemption	One commenter submitted that the Existing Security Holder Prospectus Exemption should also permit the distribution of equity securities listed on newly recognized exchanges.	On November 13, 2014, the OSC recognized Aequitas as an exchange in accordance with section 21 of the Act. As such, we have updated the Proposed Amendments to permit reporting issuers with a class of equity securities listed on Aequitas to use the Exemption after the effective date of the recognition order for Aequitas.

No.	Topic	Comments	OSC Response
11.	Support for guidance as to whether an issuer listed on NEX could use the Existing Security Holder Prospectus Exemption	One commenter suggested that guidance should be provided as to whether securities listed on NEX would qualify for issuance under the Existing Security Holder Prospectus Exemption given that NEX is a separate board of the TSXV.	We do not propose to allow issuers listed on NEX to use the Exemption at this time. We note that the CSA Existing Security Holder Prospectus Exemption is available to issuers listed on the TSX, TSXV or CSE.
12.	Support for allowing issuers listed on non-Canadian exchanges to use the Existing Security Holder Prospectus Exemption	One commenter was of the view that the OSC should consider expanding the exchanges upon which issuers can be listed to include non-Canadian exchanges with disclosure rules substantively similar to those governing issuers listed on Canadian exchanges.	We do not propose to allow issuers listed solely on non-Canadian exchanges to use the Existing Security Holder Prospectus Exemption at this time.
Types of securities that can be offered under the Exemption			
13.	Support for equity securities being listed on TSX, TSXV or CSE or units consisting of the listed security and a warrant to acquire the listed security	Two commenters were of the view that equity securities must be listed on the TSX, TSXV or CSE, as this allows for harmonization with the CSA Existing Security Holder Prospectus Exemption and provides investor protection.	We acknowledge these comments.
Offering parameters			
14.	Support for pro rata allocation and limit on overall dilution	Five commenters supported the requirement that the issuer must allocate existing security holders a pro rata portion of the offering. The majority of these commenters were of the view that the condition supports the fair treatment of all security holders in terms of (i) the security holder as a member of an identifiable class or group deserving of investor protection; and (ii) security holders' rights relative to one another. These commenters noted that requiring that the offer be open on a pro rata basis: • offers anti-dilution protection to security holders, and	We acknowledge these comments. In an effort to harmonize with the CSA Existing Security Holder Prospectus Exemption, we have removed the requirement that the issuer must allocate existing security holders a pro rata portion of the offering. We have addressed concerns regarding the fair and equal treatment of security holders with companion policy guidance in 45-501CP. Specifically, the guidance clarifies that, while there is no pro rata requirement, we take the position that in order to support the fair treatment of all security holders, an issuer should establish, maintain and apply policies and procedures that provide reasonable assurance that the issuer and each registrant (if applicable) fairly

No.	Topic	Comments	OSC Response
		• could help alleviate concerns that an investor could purchase a nominal number of shares prior to the announcement of the offering by the issuer where such investor might not exercise the appropriate level of due diligence for a more substantial investment in the issuer.	allocate investment opportunities among all of the issuer's security holders. We are of the view that the guidance will mitigate the risk of the Existing Security Holder Prospectus Exemption being used in a manner that results in security holders suffering a significant dilution without the opportunity to participate in the distribution.
15.	Support for additional pro rata allocation provisions	One commenter suggested that an investor should have the ability to purchase additional securities consistent with their existing security holdings. This would help ensure that the investor has the wherewithal to make the investment and, more importantly, protect investors from potential manipulation by less scrupulous actors. Another commenter noted that the private placement rules of the TSXV should be made an integral part of the Existing Security Holder Prospectus Exemption so as to be enforceable by the regulators. One commenter noted that if the OSC proceeds with the pro rata requirement, in order to lessen the complexity of compliance, listed issuers should be able to rely on a written representation from the investor regarding the number of securities held as at the record date, similar to the confirmation being proposed regarding assurance that the investor is a security holder as at the record date. Another commenter indicated that if the OSC required pro rata allocation, in order to allow issuers to rely on an investor certificate representing the investor's security holdings as of the record date, 45-106CP should include additional language to exempt issuers from the obligation to perform diligence to ensure that an investor is qualified to rely on the Exemption to purchase the number of securities for which the investor has subscribed.	We acknowledge these comments. Please see response 14 above.

No.	Topic	Comments	OSC Response
16.	Opposition to pro rata allocation	Five commenters did not support the issuer allocating existing security holders a pro rata portion of the offering. The majority of these commenters were of the view that the Existing Security Holder Prospectus Exemption should be harmonized with the CSA Existing Security Holder Prospectus Exemption in order to ensure that issuers and existing investors have the opportunity to use this capital raising tool in an efficient and effective way. Some of these commenters were of the view that the pro rata allocation requirement: • is one of the reasons reporting issuers do not use the existing rights offering exemption in Canada, • is timely and costly for small issuers, and • could put Ontario-based issuers and investors at a disadvantage or otherwise make the Exemption unattractive since the Existing Security Holder Prospectus Exemption is different from the CSA Existing Security Holder Prospectus Exemption. One commenter indicated that under the current private placement regime, there is no requirement dictating from whom and to what extent listed issuers can accept subscriptions, provided that a valid prospectus exemption under National Instrument 45-106 *Prospectus and Registration Exemptions* (NI 45-106) is relied upon, and if applicable, that the private placement is compliant with the relevant stock exchange's requirements. Additionally, another commenter stated that it would be difficult to implement the pro rata requirement in the context of private placements since a significant number of security holders are objecting beneficial owners and given the current restrictions regarding listed issuers' ability to communicate directly with objecting beneficial owners, it may not be possible to undertake a private placement on a pro rata basis in a timely and cost-efficient matter	We acknowledge these comments. Please see response 14 above.

No.	Topic	Comments	OSC Response
		based on a list of security holders as at the record date. Two commenters expressed concern that given the $15,000 individual investment limit, it is unlikely that the resulting issue will apply on a pro rata basis to all security holders.	
17.	Opposition to differentiating between a security holder that bought securities in the secondary market one day before the announcement of the offering and a security holder that bought the securities some longer period before the announcement of the offering	One commenter indicated that it is not necessary to differentiate between a security holder that bought securities in the secondary market one day before the announcement of the offering and a security holder that bought the securities at a longer period before the announcement of the offering because conceptually, their positions are substantively identical.	We acknowledge this comment.
18.	Opposition to a limit on overall dilution	One commenter was of the view that it would be duplicative and unnecessary for the OSC to adopt requirements regarding maximum dilution for the Existing Security Holder Prospectus Exemption, as both the TSX and TSXV have rules and requirements in place that support the fair treatment of security holders and support the quality of the Canadian market. No other exemption under NI 45-106 imposes a 100% dilution limit on reporting issuers.	We acknowledge these comments. We are of the view that the overall dilution should not exceed 100%. We believe a dilution limit is appropriate as we do not think that offerings under the Exemption should result in significant dilution of security holder holdings. A 100% dilution limit is also consistent with the proposed amendments to the rights offering prospectus exemption and will allow issuers to raise a significant amount of capital. We do not believe that the dilution limit is overly restrictive as issuers are not limited to the number of times that they may use the Exemption in a 12 month period, except as constrained by an investor's investment limit, and may also use other prospectus exemptions. Please also see response 14 above.

No.	Topic	Comments	OSC Response
19.	Opposition to requirement that any securities that are not taken up by existing security holders can be allocated at the issuer's discretion to other existing security holders	One commenter was concerned that the ability of an issuer to allocate undersubscribed portions of offerings under the Existing Security Holder Prospectus Exemption at its discretion has the potential for abuse. This commenter was of the view that existing security holders should rather be permitted to subscribe for unsubscribed securities in proportion to their pro rata share in order to minimize the risk of abuse of the Existing Security Holder Prospectus Exemption.	We acknowledge this comment. Please see response 14 above.
20.	Opposition to no requirements on the length of time the offering can remain open	One commenter suggested implementing a five business day minimum period during which the offer should be open in order to ensure a more meaningful offer is made to all existing security holders.	We do not think it is necessary to implement a five business day minimum period during which the offer should be made open as part of the Existing Security Holder Prospectus Exemption. We note that this condition is not in the CSA Existing Security Holder Prospectus Exemption. A condition of the Exemption requires issuers to make the offer available to all security holders. If the issuer were to set a very short offering period, it may call into question whether an issuer met the requirement to make the offer available to all security holders.
Investor qualifications			
21.	Support for the requirement that each investor must represent in writing to the issuer that as of the record date the investor held, and continues to hold, the type of listed security that the investor is acquiring under the Existing Security Holder Prospectus Exemption	One commenter was in favour of the requirement that each investor must represent in writing to the issuer that as of the record date the investor held, and continues to hold, the type of listed security that the investor is acquiring under the Existing Security Holder Prospectus Exemption.	We acknowledge this comment.

No.	Topic	Comments	OSC Response
22.	Concern with the language "continues to hold"	One commenter suggested that further guidance should be provided as to why an investor must represent in writing to the issuer that the investor "continues to hold" the type of security being acquired under the Existing Security Holder Prospectus Exemption.	Each investor must represent in writing to the issuer that as at the record date the investor held, and continues to hold, the type of listed security that the investor is acquiring under the Exemption. We are of the view that additional guidance is not necessary.
23.	Concern with commentary that any efforts by an issuer to solicit investors to purchase shares in the market in order to use the Existing Security Holder Prospectus Exemption will be treated as "improper"	One commenter was of the view that the Existing Security Holder Prospectus Exemption should be clarified and should expressly state any prohibition that the OSC wishes to impose on the use of the Exemption. The commenter was of the view that there is uncertainty as to the intent of the Proposed Amendments.	We would treat, as improper, any effort to solicit investors to purchase shares in the secondary market in order to rely on the Exemption. We are of the view that additional guidance is not necessary at this time. However, we will monitor the use of the Exemption and will consider providing additional guidance if needed.
24.	Support for record date being at least one day prior to the day that an issuer issues an offering news release	Three commenters supported that the record date must be at least one day prior to the day that an issuer issues an offering news release for the following reasons: • the provision is consistent with the CSA Existing Security Holder Prospectus Exemption, • a longer requirement is too subjective and would exclude certain existing security holders for no substantive reason, and • an investor who is already a security holder of an issuer will be well positioned to make an informed decision about an additional investment in the issuer.	We acknowledge these comments.
25.	Opposition to the record date being at least one day prior to the day that an issuer issues an offering news release	Three commenters were of the view that the record date should be more than one day before the announcement of the offering since it may not be possible for the issuer to conduct sufficient due diligence; and that if securities are held for only one day investors do not have advance notice. One commenter	We acknowledge these comments. In addition to being harmonized with the CSA Existing Security Holder Prospectus Exemption, we are of the view that it is not necessary to require that a security holder be a holder of the issuer's security on a date that is more than one day before the announcement of the offering.

No.	Topic	Comments	OSC Response
		suggested that investors should hold securities of the issuer for a minimum of one calendar day so that the investor can experience the volatility of the security's price on the exchange, the issuer's track record of disclosure and shareholder communications. One commenter recommended that the record date should be 30 days prior to the date of the announcement to prevent potential abuse by market participants, particularly by persons close to the issuer who may have access to information about the proposed offering. One commenter indicated that advance notice be provided as of the record date similar to what is required for a dividend issuance (e.g. 7 days).	
Investment limits			
26.	Support for investment limits of $15,000 in the previous 12 months for individuals who have not obtained advice regarding the suitability of the investment	One commenter supported the investment limit of $15,000 in the previous 12 months unless the purchaser has obtained advice regarding the suitability of the investment, and if the purchaser is a resident of a jurisdiction of Canada, that advice is from a person registered in the jurisdiction as an investment dealer. The commenter was of the view that the annual limit and the requirement for suitability advice provide investor protection.	We acknowledge this comment.
27.	Opposition to investment limits for individuals who have not obtained advice regarding the suitability of the investment	Five commenters did not support the investment limit of $15,000 in the previous 12 months unless the purchaser has obtained advice regarding the suitability of the investment, and if the purchaser is a resident of a jurisdiction of Canada, that advice is from a person registered in the jurisdiction as an investment dealer for the following reasons: • $15,000 limit is arbitrary and may make the Exemption unattractive to issuers listed on senior markets,	We acknowledge these comments. In addition to being harmonized with the CSA Existing Security Holder Prospectus Exemption, we are of the view that an investment limit of $15,000 for individuals who have not obtained advice regarding suitability is an important investor protection measure. We believe that investment limits serve two important functions by: 1. mitigating the risk of loss for the investor, and 2. encouraging asset class diversification. Furthermore, an investor's option to obtain suitability advice

No.	Topic	Comments	OSC Response
		• suitability advice may be impractical and/or time consuming to obtain, • investors are not otherwise limited to invest any particular amount on the secondary market, • suitability should not be an issue for existing security holders given that they already hold securities of the issuer, • given that an offering is permitted to result in an increase of 100% of the outstanding securities of the class, investments should be limited to an investor's pro rata ownership of securities of the issuer so as to permit the investor to maintain its pro rata position in an issuer, • the requirement for pro rata, in combination with the $15,000 investment limit in the absence of suitability advice, may not support the fair treatment of all security holders, since security holders holding greater than $15,000 worth of securities prior to the time of the financing will be at a disadvantage compared to security holders holding less than that amount when it comes to retaining pro rata position in the issuer, and • accredited investors are not otherwise subject to any limits on the amount they can invest. In the alternative, one commenter suggested that the requirement should be broadened to permit advice, not only from investment dealers, but from exempt market dealers and appropriate categories of restricted dealers in Canada.	in order to exceed the investment limit provides flexibility to investors for whom it may be appropriate to exceed the limit. We note that the suitability obligation is considered a fundamental investor protection for all investors, including accredited investors. Consistent with the CSA Existing Security Holder Prospectus Exemption, the Exemption contemplates advice from an investment dealer.
Point of sale disclosure			
28.	Support for requirement to issue an offering news release disclosing the proposed offering that includes reasonable	Two commenters stated that the offering news release should have additional disclosure requirements. Specifically, the offering news release should disclose: • the holdings of insiders and whether the insiders intend to subscribe for the offering in full or in part,	We acknowledge these comments. We are of the view that the disclosure requirements will inform investors of the material terms of the offering in a simple and transparent manner. The offering news release sets out the core elements of the offering which we think the investor requires

No.	Topic	Comments	OSC Response
	detail of proposed distribution and proposed use of proceeds	• a warning to investors that an increase in their security holdings results in increasing their exposure to high risk investments and they should consider whether, in light of their portfolio of holdings, it is appropriate or not to do so, • the most current information, and • that such investments are speculative, high risk and the investors should consider whether purchasing additional holdings in the issuer would be appropriate for them, given their portfolio of investments (as some investors will have purchased the securities through a discount brokerage rather than through an investment dealer with "know-your-product" and "know-your-client" obligations).	in order to make an informed investment decision and it is incumbent upon the issuer to provide additional information that the investor requires to make an informed investment decision. The Exemption requires an issuer to represent that there is no material fact or material change related to the issuer which has not been generally disclosed. Moreover, additional disclosure is available in the material change report that will have to be filed in connection with an offering.
Investor rights			
29.	Opposition to Secondary Market Disclosure Liability	One commenter stated that Contractual Liability is preferable to prescribing the Existing Security Holder Prospectus Exemption under section 138.2(b) of the Act. While Contractual Liability is available only against the issuer, the commenter stated that it is preferable to the rights of action under Part XXIII.1 of the Act which sets out the Secondary Market Disclosure Liability regime because under a Contractual Liability regime: • there is a rescission remedy, • there is no requirement to obtain leave of a court to enforce the right of action, • the issuer's liability is not subject to a liability limit (damages cap), and • the only defence available to the issuer is that the purchaser had knowledge of the misrepresentation. The commenter was of the view that consideration must be given to how the contractual and statutory remedies will interact because the characteristics of the rights of action are markedly different (in contrast to, for example, the statutory and contractual remedies for	We acknowledge this comment. We believe that there are a number of advantages for prescribing Secondary Market Disclosure Liability rather than Contractual Liability, including: • Under the Secondary Market Disclosure Liability regime, investors have rights of action for damages that are not available under Contractual Liability, namely, in relation to misrepresentations in public oral statements and failure of an issuer to make timely disclosure; • Rights under the Secondary Market Disclosure Liability regime are enforceable against a broader group of persons including directors, officers, control persons and experts than Contractual Liability, which only applies against the issuer; and • Under a Contractual Liability regime, there is a potential risk that an issuer would not set out the prescribed provisions in a subscription agreement. There is also a risk that provisions in a subscription agreement will not be consistent from issuer to issuer or from offering to offering.

No.	Topic	Comments	OSC Response
		misrepresentation in an offering memorandum). Given the board range of what may be a "core document" or a "document", the requirement would import exposure similar to that under the Secondary Market Disclosure Liability regime into the Existing Security Holder Prospectus Exemption without the same procedural safeguards.	Further, no disclosure document is being prescribed; reliance is being placed on the continuous disclosure regime. Accordingly, it is appropriate to prescribe that Secondary Market Disclosure Liability applies. Please also see response 3 above.
Resale restrictions			
30.	Support for securities of a reporting issuer being subject to a four-month hold period	Seven commenters believed that a four-month hold period should apply to the securities distributed under the Existing Security Holder Prospectus Exemption for the following reasons: • it would be helpful to ensure that investors are purchasing as principal, • investors who are existing shareholders would be free to trade their existing securities of the issuer held on the record date during the four-month hold period for the newly issued securities, and • a four-month hold period would help discourage retail investors from using the Existing Security Holder Prospectus Exemption for speculation purposes, particularly with respect to securities of more junior issuers. The majority of these commenters were of the view that this provision should be consistent with the CSA Existing Security Holder Prospectus Exemption and with all other prospectus exemptions.	We acknowledge these comments.
31.	Opposition to securities of a reporting issuer being subject to a four-month hold period	Two commenters stated that securities distributed under the Exemption should be freely tradable because removing the four-month hold period will reduce the discount that issuers must offer and ultimately reduce dilution to security holders who do not participate while reducing the cost of the capital of the issuer.	We are of the view that it is appropriate to take an approach that is consistent with the resale restrictions for other capital raising exemptions such as the accredited investor exemption. Additionally, the CSA Existing Security Holder Prospectus Exemption also has resale restrictions.

No.	Topic	Comments	OSC Response
		One commenter noted that the existing level of investor protection for any securities distributed under the Exemption is sufficient to allow them to be freely tradable among retail investors. Secondly, in the interests of capital raising, the securities distributed under the Exemption should be able to replicate or mirror as closely as possible the original securities from which they are, in essence, derived. Lastly, the issue of harmonization is always a concern, so the regulator should consider the need to maintain consistency with how freely the newly purchased securities would be allowed to be traded in other jurisdictions.	
Reporting of distribution			
32.	Support for requirement to file report of exempt distribution on Form 45-106F11	One commenter supported requiring a report of exempt distribution when a distribution is made relying on the Existing Security Holder Prospectus Exemption so as to gather information on the use of the Exemption and to monitor compliance with it.	We acknowledge this comment. We note that we have made drafting changes to OSC Rule 45-501 and 45-501CP to address the requirement that a Form 45-106F1 *Report of Exempt Distribution* must be used to report any distributions under the Existing Security Holder Prospectus Exemption.

APPENDIX C

AMENDMENTS TO OSC RULE 45-501 *ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS*

AND

CHANGES TO COMPANION POLICY 45-501CP TO OSC RULE 45-501

ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS

Attached to this appendix are:

Annex C-1	Amending instrument for OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*
Annex C-2	Changes to Companion Policy 45-501CP to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions*
Annex C-3	Amending instrument for National Instrument 45-102 *Resale Of Securities*

ANNEX C-1

EXISTING SECURITY HOLDER PROSPECTUS EXEMPTION

AMENDING INSTRUMENT FOR OSC RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS

1. OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* is amended by this Instrument.

2. The Rule is amended by adding the following section:

2.9 Distributions to existing security holders

(1) In this section,

"announcement date" means the day that an issuer issues an offering news release;

"investment dealer" has the same meaning as in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;

"listed security" means an equity security of an issuer of a class listed on the Toronto Stock Exchange, the TSX Venture Exchange, the Canadian Securities Exchange or the Aequitas NEO Exchange;

"offering material" means a document purporting to describe the business and affairs of an issuer that has been prepared primarily for delivery to and review by a prospective purchaser so as to assist the prospective purchaser to make an investment decision in respect of securities being sold in a distribution under this section;

"offering news release" means a news release of an issuer announcing its intention to conduct a distribution under this section;

"record date" means the date determined by an issuer that intends to conduct a distribution under this section that is at least one day prior to the announcement date;

"warrant" means a warrant of an issuer that entitles the holder to acquire a listed security or a fraction of a listed security of the same issuer;

"unit" means a listed security and a warrant.

(2) The prospectus requirement does not apply to a distribution by an issuer of a listed security or a unit of its own issue to a security holder of the issuer purchasing as principal if all of the following apply:

(a) the issuer

(i) is a reporting issuer in at least one jurisdiction of Canada with a class of listed securities, and

(ii) is not an investment fund;

(b) the issuer has filed in each jurisdiction of Canada in which it is a reporting issuer all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as and when required

(i) under applicable securities legislation,

(ii) pursuant to an order issued by the regulator or securities regulatory authority, or

(iii) pursuant to an undertaking to the regulator or securities regulatory authority;

(c) the issuer has issued and filed an offering news release describing in reasonable detail the proposed distribution, including, without limitation,

(i) the minimum and maximum number of securities proposed to be distributed under this section and the minimum and maximum aggregate gross proceeds of the distribution,

(ii) the proposed principal uses, including estimated dollar amounts, of the gross proceeds of the distribution, assuming both the minimum and maximum offering, and

(iii) a description of how the issuer intends to allocate securities;

(d) subject to applicable securities laws, the issuer permits each person who, as of the record date, held a listed security of the issuer of the same class and series as the listed securities to be distributed under this section to subscribe for securities in the distribution;

(e) the purchaser has represented in writing to the issuer that the purchaser held at the record date, and continues to hold, a listed security of the issuer of the same class and series as the listed securities to be distributed under this section;

(f) the issuer or any salesperson acting on behalf of the issuer in connection with a distribution under this section does not reasonably believe that the representation of the purchaser, referred to in paragraph (e), is untrue;

(g) either:

(i) the purchaser has obtained advice regarding the suitability of the investment and, if the purchaser is a resident of a jurisdiction of Canada, that advice is from a person registered in that jurisdiction as an investment dealer, or

(ii) the aggregate of the acquisition cost to the purchaser of securities to be purchased from the issuer under the distribution, when added to the acquisition cost to the purchaser of all other securities of the issuer acquired in reliance on this section in the 12-month period immediately preceding the distribution, does not exceed $15,000.

(3) The issuer must represent to the purchaser in the subscription agreement that

(a) the issuer's “core documents” and “documents”, as those terms are defined in section 138.1 of the Act, do not contain a misrepresentation, and

(b) there is no material fact or material change related to the issuer which has not been generally disclosed.

(4) A distribution of listed securities or units by an issuer under subsection (2) must not result in an increase of more than 100 percent in the number of outstanding listed securities of the same class.

(5) The exemption in subsection (2) is not available for a distribution of a listed security if the class of listed security has been suspended from trading for failure to comply with the ongoing requirements of the applicable exchange.

(6) Part XXIII.1 of the Act applies to a security distributed under this section.

(7) Other than the subscription agreement, any offering material prepared in connection with a distribution under this section must be filed with the securities regulatory authority by the issuer no later than the day that the offering material was first provided to a potential purchaser.

3. Section 6.1 is deleted and replaced with the following:

6.1 Report of exempt distribution – (1) An issuer that distributes its own securities must file a report if it makes the distribution under

(a) section 2.1 [Government incentive security], or

(b) section 2.9 [Distributions to existing security holders].

(2) The issuer must file the report no later than 10 days after the distribution**.**

4. Section 6.2 is deleted and replaced with the following:

6.2 Required form of report of exempt distribution – (1) The required form of report under paragraph 6.1(1)(a) [Report of exempt distribution] is Form 45-501F1.

(2) The required form of report of exempt distribution under paragraph 6.1(1)(b) [Report of exempt distribution] is Form 45-106F1 *Report of Exempt Distribution*.**.**

5. This instrument comes into force on February 11, 2015.

ANNEX C-2

EXISTING SECURITY HOLDER PROSPECTUS EXEMPTION

CHANGES TO COMPANION POLICY 45-501CP TO OSC RULE 45-501
ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS

1. **The changes to Companion Policy 45-501CP to OSC Rule 45-501 *Ontario Prospectus and Registration Exemptions* are set out in this Annex.**

2. **Section 6.1 is deleted and replaced with the following**:

   6.1 Report of exempt distribution – (1) Section 6.1 of the Rule requires an issuer that has distributed a security of its own issue under section 2.1 [*Government incentive security*] or section 2.9 [*Distributions to existing security holders*] of the Rule to file a report of exempt distribution in the required form, on or before the 10th day after the distribution..

3. **The following is added after Part 7:**

   PART 8: EXISTING SECURITY HOLDER PROSPECTUS EXEMPTION

   Distributions to existing security holders

   8.1 General – All security holders of the same class of securities must be treated fairly and in a manner that is perceived to be fair in connection with a distribution under section 2.9 of the Rule. The Commission recognizes that distributions to existing security holders are capable of being abusive or unfair. Accordingly, issuers and others who benefit from access to the capital markets have an obligation to treat security holders fairly, and the fulfillment of this obligation is essential to the protection of the public interest in maintaining capital markets that operate efficiently, fairly and with integrity.

   8.2 Anti-dilution – While an offer must be made available to all persons who, as of the record date, held a listed security of the issuer of the same class and series as the listed security to be distributed under section 2.9 of the Rule, there is no requirement that an issuer make the offer on a pro rata basis to its security holders. For the purposes of a distribution under section 2.9 of the Rule, if security holders have an identical opportunity under the distribution, then they are considered to be treated identically.

   While there is no pro rata requirement, the Commission takes the position that in order to support the fair treatment of all security holders, an issuer should establish, maintain and apply policies and procedures that provide reasonable assurance that the issuer, and, if applicable, each registrant, fairly allocate investment opportunities among the issuer's security holders. However, any distribution under section 2.9 of the Rule cannot result in an increase of more than 100% of the outstanding securities of the same class and section 2.9 of the Rule should not be used in a manner that results in security holders suffering significant dilution.

   8.3 Minimum Subscription Amount – Under section 2.9 of the Rule, there is no requirement that an issuer accept all subscriptions from each existing security holder. However, if an issuer were to reject a subscription that was in all respects a valid subscription, it could call into question whether the offering was made available to all security holders of the issuer. While an issuer might not want to accept small subscription amounts because of the administrative burden, for transparency purposes, an issuer should consider clearly disclosing the minimum subscription amount in the offering news release..

ANNEX C-3

EXISTING SECURITY HOLDER PROSPECTUS EXEMPTION

AMENDING INSTRUMENT FOR NATIONAL INSTRUMENT 45-102 *RESALE OF SECURITIES*

1. **National Instrument 45-102 *Resale of Securities* is amended by this Instrument.**

2. **APPENDIX D is amended by:**

(a) Replacing the definition of "2009 OSC Rule 45-501" with the following:

""2009 OSC Rule 45-501" means the Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemption* that came into force on the later of (a) September 28, 2009 and (b) the day on which sections 5 and 11, subsection 12(1) and section 13 of Schedule 26 of the *Budget Measures Act, 2009*, were proclaimed into force, as amended on February 11, 2015;**",**

(b) by replacing "Section 2.2 of the 2005 OSC Rule 45-501 and 2009 OSC Rule 45-501.**" in paragraph 3(b) with the following:**

"Section 2.2 of the 2005 OSC Rule 45-501 and 2009 OSC Rule 45-501;

Section 2.9 of the 2009 OSC Rule 45-501.**".**

Chapter 6

Request for Comments

6.1.1 Proposed NI 24-102 Clearing Agency Requirements and Related Companion Policy 24-102CP

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

Notice and Request for Comment on Proposed National Instrument 24-102 *Clearing Agency Requirements* and Related Companion Policy 24-102CP

November 27, 2014

I. Introduction

The Canadian Securities Administrators (the CSA or we) are publishing the following documents for a 75 day comment period:

- Proposed National Instrument 24-102 – *Clearing Agency Requirements* (Instrument), and
- Proposed Companion Policy 24-102CP – to National Instrument 24-102 – *Clearing Agency Requirements* (Companion Policy).

The comment period will end on February 10, 2015. The Instrument and Companion Policy are revised versions of the Local Rules and Local CPs published last year in the provinces of Québec, Manitoba and Ontario described below under "II. *Background*".

The texts of the Instrument (together with Forms 24-102F1 and F2) and Companion Policy are contained in Appendix "C" of this Notice and are also available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca
www.gov.ns.ca/nssc
www.fcnb.ca
www.osc.gov.on.ca
www.fcaa.gov.sk.ca
www.msc.gov.mb.ca

II. Background

On December 18, 2013, the Autorité des marchés financiers (AMF), Manitoba Securities Commission (MSC) and Ontario Securities Commission (OSC) each published for comment the following documents, in substantially similar form, in their respective jurisdictions:

- a proposed local rule 24-503 regarding clearing agency requirements (Local Rule);[1]
- a related proposed local companion policy 24-503CP (Local CP); and
- a notice and request for comments on the proposed Local Rule and Local CP (Local Request Notice).

[1] The proposed Local Rules that were published for comment are the following: AMF *Regulation 24-503 Respecting Clearing House, Central Securities Depository and Settlement System Requirements;* MSC Rule 24-503 *Clearing Agency Requirements*; and OSC Rule 24-503 *Clearing Agency Requirements*(see Notice and Request for Comment on Proposed OSC Rule 24-503 *Clearing Agency Requirements* and Related Companion Policy, December 19, 2013 (2013), 36 OSCB 12209).

In addition, concurrent to the publication of the Local Request Notices and proposed Local Rules and CPs, provincial securities regulatory authorities in Alberta, British Columbia, New Brunswick, Nova Scotia and Saskatchewan published Multilateral Staff Notice 24-309 (the Multilateral Notice).[2] The purpose of the Multilateral Notice was to inform the public that such authorities had also begun the development of, and intended to publish at a later date, a proposed multilateral instrument and companion policy (Multilateral Instrument and CP) substantially similar to the Local Rules and CPs.

The Local Rules and CPs had several purposes. They had set out certain requirements in connection with the application process for recognition as a clearing agency under securities legislation, or for an application to be exempt from the recognition requirement. The Local CPs contained guidance on the regulatory approaches to applications for recognition or exemption. The Local Rules had also set forth on-going requirements for *recognized* clearing agencies that operate as a central counterparty (CCP), central securities depository (CSD) or securities settlement system (SSS). These requirements were based largely on international standards applicable to financial market infrastructures (FMIs) described in the April 2012 report *Principles for financial market infrastructures* (as the context requires, the "PFMIs" or "PFMI report") published by the Committee on Payments and Market Infrastructures (CPMI)[3] and the International Organization of Securities Commissions (IOSCO).[4] A key objective of the proposed Local Rules and CPs was to adopt, in Canada, the CPMI-IOSCO international standards governing FMIs set out in the PFMI report. Implementation of the standards was intended to enhance the safety and efficiency of FMIs, limit systemic risk, and foster financial stability. It was also intended to complement the work of the CSA Derivatives Committee to develop a comprehensive regulatory framework for the trading and clearing of derivatives in Canada.

We received nine comment letters and published a summary of the comments in CSA Notice 24-310 on July 17, 2014 (Notice 24-310).[5] As discussed in Notice 24-310, stakeholders requested that provincial securities regulators take a unified approach to implementing the PFMIs. As a result, the CSA have developed the Instrument and Companion Policy to achieve essentially the same objectives as the Local Rules and CPs and Multilateral Instrument and CP. We have provided general responses to the comments summarized in Notice 24-310 in Appendix "A" to this Notice.

III. Substance and Purpose of Instrument and Companion Policy

As with the Local Rules and CPs, the main purpose of the Instrument and Companion Policy is to implement the PFMIs as clearing agency rule requirements in Canada. Part 3 of the Instrument generally incorporates the text of the PFMI report's relevant principles and their key considerations. Part 4 of the Instrument separately sets out certain other requirements that are in addition to the PFMIs. The Companion Policy largely contains supplementary guidance (Joint Supplementary Guidance) jointly developed by the CSA and the Bank of Canada in interpreting and applying the PFMIs.

Overall, the Instrument and Companion Policy are intended to enhance the regulatory framework for recognized clearing agencies operating or seeking to operate in a Canadian jurisdiction. As discussed more fully below under "VIII. *Anticipated Costs and Benefits*", this regulatory framework will facilitate ongoing observance by a recognized clearing agency of international minimum standards applicable to FMIs. The CSA believe that the Instrument will support resilient and cost-effective clearing agency operations.

We discuss key elements of the Instrument and Companion Policy below under "IV. *Summary of Instrument and Companion Policy and Ongoing Policy Matters"*. We also discuss certain ongoing policy matters that may need to be clarified in the Instrument or Companion Policy. We are seeking comment on any aspect of the Instrument and Companion Policy and the ongoing policy matters. Please see below under "X. *Comment Process*" for information on how to provide comments.

IV. Summary of Instrument and Companion Policy and Ongoing Policy Matters

The Instrument is divided into seven parts.

(a) Part 1 – Definitions, Interpretation and Application

We have removed certain defined terms in the Local Rules from Part 1 of the Instrument. We believe that terms defined in the Local Rules that were derived almost verbatim from the PFMI report's glossary of terms do not need to be defined in the Instrument. As noted in the Companion Policy, regard should be had to the PFMI report in interpreting and applying the Instrument. This includes how the PFMI report defines or describes the specialized terminology it uses, which are also used in the Instrument.

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2 The Multilateral Notice can be found on certain websites of such authorities. For example, see on the Website of the British Columbia Securities Commission (BCSC) at: https://www.bcsc.bc.ca/Securities_Law/Policies/Policy2/24-309_Publication_of_Clearing_Agency_Requirements_in_Ontario__Quebec_and_Manitoba__CSA_Multilateral_Staff_Notice_/

3 Prior to September, 2014, CPMI was known as the Committee on Payment and Settlement Systems (CPSS).

4 The PFMI report is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

5 See CSA Staff Notice 24-310 Status Update on Proposed Local Rules 24-503 *Clearing Agency Requirements* and Related Companion Policies, July 17, 2014, (2014), 37 OSCB 6677.

Part 1 of the Instrument contains additional interpretive provisions, such as the typical meanings of affiliated entity, controlled entity and subsidiary entity that are based on the notion of *de jure* control of an entity. Consistent with the PFMIs,[6] there is also an extended *de facto*-control meaning of "affiliate" for limited purposes. These provisions will ensure that the terms are interpreted uniformly in all CSA jurisdictions.

We have included additional provisions in Part 1 of the Instrument that clarify the scope of various parts of the Instrument. For example, Part 3 of the Instrument applies to a recognized clearing agency that operates as a CCP, CSD or SSS, while Part 4 of the Instrument generally applies to a recognized clearing agency whether or not it operates as a CCP, CSD or SSS.

Subsection 1.4(2) of the Local Rules has been removed in the Instrument. The intent of the provision was to address any potential conflict or inconsistency between Part 3 of the Local Rules and a provision of proposed *Model Provincial Rule on Derivatives: Customer Clearing and Protection of Customer Collateral and Positions* published for comment on January 16, 2014 in CSA Staff Notice 91-304 (Model Rule 91-304). At this time, we do not believe that such a conflict provision will be necessary. The CSA Derivatives Committee is currently revising proposed Model Rule 91-304 (Revised Model Rule 91-304), which is expected to be republished for comment subsequent to the date of this Notice. Revised Model Rule 91-304 will include requirements on clearing agencies operating as a CCP for the clearing and settlement of trades in over-the-counter (OTC) derivatives, including requirements governing a CCP's segregation and portability arrangements to protect customer positions and associated collateral in the event of a participant's failure. See the discussion below under "(c) Part 3 – *International Standards Applicable to Recognized Clearing Agencies – (iii) Segregation and portability*".

(b) Part 2 – Clearing Agency Recognition and Exemption from Recognition

Part 2 of the Instrument is mostly unchanged from the Local Rules. We have modified some of the requirements governing the filing of financial statements by clearing agencies, including allowing statements that are prepared in accordance with the generally accepted accounting principles of the foreign jurisdiction in which the clearing agency is incorporated, organized or located.

(c) Part 3 – International Standards Applicable to Recognized Clearing Agencies

(i) Implementation of the PFMIs as rule requirements

We have significantly modified Part 3 of the Local Rules, by dividing it into two parts in the Instrument:

- Part 3 – *International Standards Applicable to Recognized Clearing Agencies,* and
- Part 4 – *Other Requirements of Recognized Clearing Agencies.*

Part 3 of the Instrument incorporates by way of an appendix to the Instrument (Appendix A to the Instrument) clearing agency standards (Standards) that are substantially similar to the PFMI report's 23 principles (Principles) and their respective key considerations (Key Considerations) that are relevant to CCPs, SSSs and CSDs. Specifically, section 3.1 of the Instrument requires recognized clearing agencies to establish, implement and maintain rules, procedures, policies or operations designed to ensure that they meet or exceed the Standards in Appendix A to the Instrument with respect to their clearing, settlement and depository activities. Requiring clearing agencies to implement rules, procedures, policies or operations to meet or exceed the Standards is consistent with a flexible and principles-based approach to regulation. Among other reasons, a principles-based approach anticipates that a clearing agency's rules, procedures, policies and operations will need to evolve over time so that it can adequately respond to changes in technology, legal requirements, the needs of its participants and their customers, trading volumes, trading practices, linkages between financial markets, and the financial instruments traded in the markets that a clearing agency serves.

The Standards in Appendix A to the Instrument generally reproduce the text of the 23 Principles and their respective Key Considerations. Differences between the text of the Standards and the Principles and Key Considerations are minimal. We include in Appendix "B" of this Notice a black-lined version of the Standards that reflects the changes that we have made to the text of the Principles and Key Considerations in drafting the Standards. We also discuss below the following Standards (including ongoing policy matters):

- a clearing agency's recovery or orderly wind-down plans (see section 3.4 of Standard 3: *Framework for the comprehensive management of risks* and section 15.3 of Standard 15: *General business risk*);
- a clearing agency's segregation and portability arrangements for customer positions and collateral (see Standard 14: *Segregation and portability*);

[6] See footnote 39 of the PFMI report, at p. 38.

- the resumption of operations of a clearing agency's critical information technology systems within two hours following disruptive events (see section 17.6 of Standard 17: *Operational risks*); and

- tiered participation arrangements in using a clearing agency's services (see Standard 19: *Tiered participation arrangements*).

(ii) Recovery or orderly wind-down plans

Section 3.4 of Standard 3: *Framework for the comprehensive management of risks* requires a clearing agency to identify scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern, and assess the effectiveness of a full range of options for recovery or orderly wind-down. It also notes that the clearing agency should prepare appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Moreover, where applicable, the clearing agency is expected to provide relevant authorities with the information needed for purposes of resolution planning. Section 15.3 of Standard 15: *General business risk* requires a clearing agency, among other things, to maintain a viable recovery or orderly wind-down plan and hold sufficient liquid net assets funded by equity to implement the plan.

The CSA, together with the Bank of Canada, have decided to defer the implementation of these Standards because additional guidance on these Standards has only recently been published by the CPMI and IOSCO,[7] and we have not yet completed proposed Joint Supplementary Guidance on such Standards. We will be expecting clearing agencies to develop recovery plans in two stages, due to the complexity of recovery planning and the need to assess what recovery tools are appropriate for Canadian FMIs. Canadian authorities will expect a clearing agency's first-generation recovery plan to identify critical services, recovery triggers, stress scenarios, structural weaknesses and processes for orderly wind-down. Second-generation plans, due from clearing agencies by the end of 2016, should additionally specify the concrete recovery tools the clearing agency plans to deploy in specific recovery scenarios. We will update stakeholders on proposed transitional dates for implementing the various stages of these Standards in 2015.

(iii) Segregation and portability

Standard 14: *Segregation and portability* requires a CCP to have rules and procedures that enable the segregation and portability[8] of positions and related collateral of a CCP participant's customers, particularly to protect the customers from the default or insolvency of the participant. Standard 14 mirrors Principle 14 and its Key Considerations in the PFMI report.

The CSA and Bank of Canada are continuing to assess certain policy considerations in implementing Standard 14 for our domestic CCPs serving cash and exchange-traded derivatives markets.[9] Currently, the vast majority of participants in such CCPs, who clear for customers, are investment dealers and members of the Investment Industry Regulatory Organization of Canada (IIROC).[10] IIROC dealer-members holding client assets are required to contribute to the Canadian Investor Protection Fund (CIPF), an investor compensation protection fund that is sponsored by IIROC and approved by the CSA. We are having ongoing discussions with stakeholders, particularly domestic CCPs, IIROC and CIPF, to determine the scope of implementing Standard 14 for domestic CCPs serving exchange-traded derivatives markets. As a result, we have decided, together with the Bank of Canada, to defer the implementation of this Standard. The CSA will update stakeholders on a proposed transitional period for implementing Standard 14 in 2015. We discuss some of the ongoing policy matters below.

(A) Alternate approach for CCPs serving cash markets

As discussed in the Local Request Notices, the explanatory notes in the PFMI report offer an "alternate approach" to meeting Principle 14. The report notes that, in certain jurisdictions, cash market CCPs operate in legal regimes that facilitate segregation and portability to achieve protection of customer assets by alternate means that offer the same degree of protection as the approach in Principle 14.[11] We highlighted the features of the alternate approach in the Local Request Notices,[12] and sought

7 See the CPMI-IOSCO's October 2014 report *Recovery of financial market infrastructures*, which is available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

8 Portability refers to the operational aspects of the transfer of contractual positions, funds, or securities from one party to another party. See paragraph 3.14.3 of the PFMI report.

9 As discussed above, the CSA Derivatives Committee is separately developing a regulatory framework that will implement Principle 14 for CCPs serving the OTC derivatives markets.

10 Investment dealers are firms registered in the category of "investment dealer" under provincial securities legislation. Investment dealers are required to be members of IIROC. See section 9.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*.

11 See paragraph 3.14.6 of the PFMI report, at p. 83.

12 Features of such legal regimes are that, if a participant fails, (a) the customer positions can be identified in a timely manner, (b) customers will be protected by an investor protection scheme designed to move customer accounts from the failed or failing participant to another participant in a timely manner, and (c) customer assets can be restored. As an example, the PFMIs suggest that domestic law may subject participants to explicit and comprehensive financial responsibility and customer protection requirements that obligate participants to make

feedback on how to apply Principle 14 and the alternate approach. We stated that, particularly for certain cash market CCPs, such as the continuous net settlement (CNS) service offered by CDS Clearing and Depository Services Inc. (CDS), once netting and novation have been completed, the CCP is unable to track customer positions directly. To do otherwise would require fundamental changes to the operations, and potentially the effectiveness of, these CCPs, as well as impact the market structure more broadly. We said that imposing a prescriptive CCP-level segregation and portability model on cash-market CCPs may have, in certain circumstances, unintended consequences for existing customer protection frameworks. Many stakeholders agreed with this view, noting in particular that the customer asset protection regime applicable to investment dealers (IIROC-CIPF regime) is an appropriate alternative framework for customers of investment dealers who are direct participants of a cash-market CCP.

We believe that the IIROC-CIPF regime meets the criteria for the alternate approach for CCPs serving certain domestic cash markets, such as CDS' CNS service, because:

- IIROC's requirements governing, among other things, an investment dealer's books and records, capital adequacy, internal controls, client account margining, and segregation of client securities and cash help ensure that customer positions and collateral can be identified timely,
- customers of an investment dealer are protected by CIPF, and
- through a combination of IIROC's member rules and oversight powers, CIPF's role in the administration of the bankruptcy of a dealer, and the overarching policy objectives of Part XII of the federal *Bankruptcy and Insolvency Act* (BIA) (discussed below), customer accounts can be moved from a failing dealer to another dealer in a timely manner and customers' assets can be restored.

Part XII of the BIA sets out a special bankruptcy regime for administering the insolvency of a securities firm. The regime generally provides for all cash and securities of a bankrupt securities firm, whether held for its own account and for its customers, to vest in the appointed trustee in bankruptcy. The trustee, in turn, is directed to pool such assets into a "customer pool fund" for the benefit of the customers, which are entitled to a pro rata share of the customer pool fund according to their respective "net equity" claims as a priority claim before the general creditors are paid. To the extent there is a shortfall in customer recovery from the customer pool fund and any remaining assets in the insolvent estate, the assets are allocated among the customers on a pro rata basis. CIPF, which works in conjunction with IIROC and the bankruptcy trustee,[13] provides protection to eligible customers for losses up to $1 million per account.[14]

We have not added any provision in the Instrument or Companion Policy to explicitly govern the use of the alternate approach for CCPs serving cash markets to meet the requirements of Standard 14. The CSA are considering the need for an explicit rule provision in the Instrument, or for special guidance in the Companion Policy, to accommodate and govern the availability of the alternate approach in the cash markets. We agree with commenters' views that a rule provision or special guidance should not be framed as an exemption to the requirements of Standard 14. This is because the PFMIs acknowledge that the outcomes of the Principles can generally be achieved using different means.[15] Moreover, the Companion Policy expressly states that regard is to be given to the explanatory notes in the PFMI report, as appropriate, in interpreting and implementing the Standards. This would include paragraph 3.14.6 of the PFMI report, which describes the alternate approach for CCPs serving certain cash markets as a means to meet Principle 14.

(B) Standard 14 for domestic CCPs serving futures and other exchange-traded derivatives markets – Policy considerations

The PFMI report does not contemplate the availability of the alternate approach in respect of CCPs serving non-cash markets, such as futures and other exchange-traded markets. CSA regulators are considering the need to require enhanced CCP-level segregation and portability frameworks for customer positions and collateral held in omnibus customer account structures in

frequent determinations (for example, daily) that they maintain possession and control of all customers' fully paid and excess margin securities and to segregate their proprietary activities from those of their customers. Under these types of regimes, pending securities purchases do not belong to the customer; thus there is no customer trade or position entered into the CCP. As a result, participants who provide collateral to the CCP do not identify whether the collateral is provided on behalf of their customers regardless of whether they are acting on a principal or agent basis, and the CCP is not able to identify positions or the assets of its participants' customers.

13 CIPF is a "customer compensation body" for the purposes of Part XII of the BIA. Where the accounts of a securities firm are protected (in whole or in part) by CIPF, the trustee in bankruptcy is required to consult with CIPF on the administration of the bankruptcy, and CIPF may designate an inspector to act on its behalf. See section 264 of the BIA.

14 The losses must be in respect of a claim for the failure of the dealer to return or account for securities, cash balances, commodities, futures contracts, segregated insurance funds or other property received, acquired or held by the dealer in an account for the customer.

15 See paragraph 1.19 of the PFMI report, at p. 12.

such markets, such as requiring the CCP to collect customer margin on a gross basis.[16] According to the PFMI report, gross margining enhances the feasibility of portability for the CCP.[17] A number of commenters on the Local Rules and CPs raised concerns about the application of Principle 14 on CCPs serving the futures markets.

CSA regulators are continuing to review the implications of requiring enhanced CCP-level customer segregation and portability rules and procedures for CCPs serving the exchange-traded derivatives markets, particularly on CCPs, investment dealers, the IIROC-CIPF regime, and the pro rata distribution scheme of Part XII of the BIA.[18]

(C) Standard 14 for CCPs serving the OTC derivatives markets

As we note above under "(a) Part 1 – *Definitions, Interpretation and Application*", the CSA Derivatives Committee is separately developing a regulatory framework that will implement Principle 14 for CCPs serving the OTC derivatives markets. Proposed Revised Model Rule 91-304 is expected to require such CCPs to have detailed segregation and portability rules and arrangements that are more stringent than the Key Considerations of Principle 14.

(iv) Resumption of operations within two hours of disruptive events

Section 17.6 of Standard 17: *Operational risks* requires a recognized clearing agency to have a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption. The plan should incorporate the use of a secondary site and should be designed to ensure that critical information technology (IT) systems can resume operations within two hours following disruptive events. In the Local Request Notices we had recognized that, currently, a two hour timeframe for resuming operations from a disruptive event may pose operational difficulties for certain clearing agencies. However, we also noted that a recognized clearing agency that performs any of the services of a CCP, CSD or SSS should maintain a reasonable business continuity plan that is designed to meet the two hour resumption period, in line with the emerging industry objective. We had sought feedback on a clearing agency's current abilities and future prospects to meet the objective of recovering and resuming critical systems and processes within two hours of a disruptive event. One commenter suggested that the proposed timeframe appears arbitrary and may not be the appropriate recovery objective in Canada.

We continue to believe that a CCP, CSD or SSS should maintain a reasonable business continuity plan that is designed to meet the two hour resumption period, in line with the emerging industry trend. The Instrument maintains this requirement, but as a principles-based rule. Section 3.1 of the Instrument requires a clearing agency to have rules, procedures, policies or operations designed to ensure that the clearing agency meets or exceeds Standard 17 (including section 17.6 of the Standard).

(v) Tiered participation arrangements

Standard 19: *Tiered participation arrangements* requires a recognized clearing agency to identify, monitor, and manage the material risks to the clearing agency arising from any tiered participation arrangements. A tiered participation arrangement occurs when firms (indirect participants) rely on the services provided by other firms – who are direct participants of a clearing agency – to use the clearing agency's services. In the Local Request Notices, we had asked, among other questions, to what extent can a CCP identify and gather information about a tiered (indirect) participant. Stakeholders generally responded by saying that it is challenging for Canadian clearing agencies to identify or gather meaningful information pertaining to indirect/tiered participants, due to the lack of legal or other contractual relationship between the clearing agency and the indirect participant. Currently, clearing agencies utilize omnibus account structures which enable the clearing agency to distinguish proprietary and client assets, but more granular detail would be needed to permit the clearing agency to identify and measure the activity of indirect participants. Clearing agencies currently have limited recourse to require the necessary information disclosures from indirect participants.

Owing to the significant work that remains for clearing agencies to obtain meaningful information on tiered participation arrangements, the CSA, together with the Bank of Canada, have decided to defer the implementation of Standard 19. We are

[16] Collecting margin on a gross basis means that the amount of margin a participant must post to the CCP on behalf of its customers is the sum of the amounts of margin required for each such customer. See footnote 123 of the PFMI report, at p. 84. ICE Clear Canada has recently implemented a gross customer margin segregation and portability framework to enhance customer protection and its ability to port customer positions and collateral in the event of a participant default in accordance with Principle 14. It collects gross margin on futures positions held in dealer customer accounts, a process which requires clearing participants to submit customer level position data daily to the clearing agency. ICE Clear Canada, Inc is a wholly-owned subsidiary of, and designated clearinghouse for ICE Futures Canada, Inc., an electronic trading facility for agricultural futures and options contracts on canola, milling wheat, durum wheat and barley.

[17] For a discussion of the benefits and costs of gross margining of customer positions at the CCP level, see the explanatory notes at paragraphs 3.14.7 to 3.14.13 of the PFMI report.

[18] The IIROC-CIPF regime and insolvency law for investment dealers provide a customer asset protection regime that applies on a "universal" basis. That is, the IIROC-CIPF regime and Part XII of the BIA protect customers against losses arising from an investment dealer's insolvency in respect of client assets that are both cash products and derivatives products which IIROC members are permitted to hold on behalf of customers.

proposing to develop Joint Supplementary Guidance on the Standard, and will update stakeholders on a proposed transitional period for implementing the Standard in 2015.

(d) Part 4 – Other Requirements of Recognized Clearing Agencies

Some commenters raised concerns about certain requirements in the Local Rules and CPs that appeared different from, or were supplementary to, the PFMIs' Principles and Key Considerations. They noted that it was unclear how and where *other* requirements in the Local Rules went beyond, modified, or replaced the PFMI requirements.

We have moved these other requirements into a separate Part 4 of the Instrument, as well as clarified and simplified them. Provisions in the Local Rules that were substantially derived from the PFMIs' explanatory notes only (i.e., not based on a Principle or Key Consideration) have been removed from the Instrument. Other requirements, which are not derived from the PFMIs, such as rules that are based on other CSA instruments,[19] have been retained in the Instrument.

We discuss below a number of the provisions in Part 4 of the Instrument.

(i) Independent director

Section 4.1 of the Instrument requires that a recognized clearing agency's board of directors include appropriate representation by individuals who are independent of the clearing agency, and are not employees or executive officers of a participant or their immediate family members. Paragraph 3.2(4)(b) of the Local Rules contained a similar provision. We have added provisions in the Instrument (subsections 4.1(3) to (9)) that describe when an individual is considered to be "independent" of a clearing agency, which are generally consistent with its meaning in securities legislation and in the PFMIs.

(ii) Provisions modelled on NI 21-101

A number of provisions in the Local Rules that were modelled on NI 21-101 were maintained in the Instrument, and are contained in Part 4. They are the following sections: 4.6 – *Systems requirements* (formerly subsection 3.17(5) of the Local Rules); 4.7 – *Systems reviews* (formerly subsections 3.17(6) and (7) of the Local Rules); 4.8 – *Clearing agency technology requirements and testing facilities* (formerly subsections 3.17(8) to (11) of the Local Rules); 4.9 – *Testing of business continuity plans* (formerly paragraph 3.17(12)(d) of the Local Rules); and 4.10 – *Outsourcing* (formerly subsection 3.17(15) of the Local Rules).

In April 2014 the CSA proposed amendments to update NI 21-101 to reflect developments that have occurred since 2012, including updating the requirements applicable to marketplaces' systems and business continuity planning (BCP).[20] The proposed amendments relating to systems and BCP requirements are intended to help ensure that marketplace systems are reliable, robust and have adequate controls. We are of the view that certain of these amendments may be equally applicable to recognized clearing agencies due to their criticality to our capital markets, specifically:

- Business continuity testing – clarification that testing of BCPs should be conducted according to prudent business practices; and an expectation that the clearing agency facilitates and participates in industry-wide BCP tests;
- Security breaches – new requirement to notify regulators of any material security breach; and
- Expansion of scope of independent systems reviews (ISRs) – a requirement that the scope of the annual ISRs include review of the information security controls of the entity's auxiliary systems.

The CSA are currently reviewing comments received on the proposed amendments to NI 21-101. To the extent the above requirements are finalized and included in NI 21-101, we will consider including equivalent requirements for this Instrument and Companion Policy as well.

(iii) CCP skin-in-the-game requirement

Section 4.5 of the Instrument requires a recognized clearing agency that operates as a CCP to dedicate and use a reasonable portion of its own capital to cover losses resulting from one or more participant defaults prior to applying the collateral of, or other prefunded financial resources contributed by, the non-defaulting participants. A similar provision was contained in subsection 3.13(8) of the Local Rules. A commenter expressed the view that, while the proposed Local Rule would require "skin

[19] For example, National Instrument 21-101 – *Marketplace Operation* (NI 21-101) and local Rules 91-507 – *Trade Repositories and Derivatives Data Reporting*.

[20] See CSA Notice and Request for Comment – Proposed Amendments to NI 21-101 *Marketplace Operation* and NI 23-101 *Trading Rules*, April 24, 2014, (2014), 37 OSCB 4197.

in the game" to motivate a clearing agency to act in a manner that would minimize loss and risk to all, given the reputational risk the clearing agency has at stake as the market watches its response to a default, it is unnecessary to add any additional motivating factor.

While this is not a requirement of the PFMIs, we believe that this skin-in-the-game requirement represents international best practice, particularly for CCPs that are operated on a for-profit basis. It promotes risk culture and is a positive signal to the clearing agency's participants that the owners of the CCP have an equal stake in ensuring the robustness of CCP's risk management. The Companion Policy provides some guidance on section 4.5 of the Instrument.

(e) Part 5 – Books and Records and Legal Entity Identifier

Section 5.1 of the Instrument is new. While it largely reflects requirements that are, for the most part, already contained in securities legislation, not all books and records requirements in securities legislation of CSA jurisdictions apply necessarily to recognized and exempt clearing agencies.

Section 5.2 of the Instrument, which requires a clearing agency to identify itself by means of a single legal entity identifier, was moved from Part 2 in the Local Rules.

(f) Part 6 – Exemption

Part 6 of the Instrument contains the usual provisions in a CSA national instrument authorizing a regulator or securities regulatory authority, as the case may be, to grant an exemption from any provision of the Instrument.

(g) Part 7 – Effective Dates and Transition

The dates and transition periods proposed in the Local Rules have not been retained in the Instrument, due in large part to the time required to develop the Instrument, and the time that will be required for clearing agencies to address risk management and other gaps to meet the Standards.

We expect that the Instrument will be in force by October 2015. However, the PFMIs represent a substantial strengthening of the previous CPMI-IOSCO standards on SSSs and CCPs. We recognize that clearing agencies may need more time to implement certain aspects of the Standards. Therefore, as discussed above under "(c) Part 3 – *International Standards Applicable to Recognized Clearing Agencies*"***,*** we are proposing longer transition periods for implementing certain Standards. The CSA will update stakeholders on proposed transitional periods for implementing these Standards at a later time.

(h) Companion Policy

In developing the Companion Policy, the CSA have substantially modified the Local CPs. The Local CPs had contained most of the text comprising the PFMI report's explanatory notes. We have removed such text, as we believe that reproducing the PFMI report's explanatory notes in the Companion Policy is unnecessary. However, the removal of such text does not mean that the explanatory notes do not play an important role in interpreting and applying the Standards in the Instrument. On the contrary, as noted in section 3.1 of the Companion Policy, regard is to be given to the explanatory notes in the PFMI report, as appropriate, in interpreting and implementing the Standards. Therefore, the CSA is not intending any policy change by not reproducing the explanatory notes.

Given the above, the content of the Companion Policy has been significantly reduced compared to the Local CPs. The Companion Policy now consists mostly of the Joint Supplementary Guidance developed by the CSA and the Bank of Canada. The Joint Supplementary Guidance is intended to provide additional clarity on certain aspects of some of the Standards within the Canadian context. It is directed at recognized *domestic* clearing agencies that are also regulated by the Bank of Canada. It is included in separate text boxes in the Companion Policy under the relevant headings of the Standards. We note that other recognized domestic clearing agencies should assess the applicability of the Joint Supplementary Guidance to their respective operations as well.

Joint Supplementary Guidance related to governance standards (Standard 2) was published for comment in the Local CPs. The CSA and Bank of Canada have developed further Joint Supplementary Guidance related to the Standards governing collateral (Standard 5), liquidity risk (Standard 7), general business risk (Standard 15), investment risk (Standard 16), and disclosure of an FMI's rules, key procedures and market data (Standard 23). Over time, the CSA and Bank of Canada will propose Joint Supplementary Guidance on certain other Standards as well, such as on recovery and orderly wind down plans (Standards 3 and 15) and tiered participation (Standard 19).

V. Authority for Instrument

In those jurisdictions in which the Instrument is to be adopted, the securities legislation provides the securities regulatory authority with rule-making or regulation-making authority in respect of the subject matter of the Instrument.

VI. Alternatives to Instrument Considered

The CSA considered, as general alternatives, adopting the Principles and Key Considerations in a policy, or including them on a case-by-case basis as terms and conditions to a recognition order of a clearing agency. The CSA decided against these alternatives because they believe the PFMIs should be contained in a rule to provide for greater transparency of clearing agency requirements and to promote consistency across all recognized clearing agencies that operate as a CCP, CSD or SSS in carrying on business in a jurisdiction in Canada.

VII. Unpublished Materials

In proposing the Instrument and Companion Policy, the CSA did not rely on any significant unpublished study, report, or other material.

VIII. Anticipated Costs and Benefits

As mentioned in Notice 24-310, the Instrument will enhance the regulatory framework for recognized clearing agencies operating or seeking to operate in a Canadian jurisdiction. This regulatory framework will facilitate ongoing observance by recognized clearing agencies of international minimum standards applicable to FMIs. The CSA believe that the Instrument will support resilient and cost-effective clearing agency operations. It will promote transparency and support confidence among market participants in the ability of clearing agencies to provide efficient and safe clearance and settlement services, which in turn will facilitate capital formation, limit systemic risk, and foster financial stability. Also, the Instrument will further facilitate the efforts of Canadian CCPs to meet the "qualifying CCP" (QCCP) status under the Basel III and Canadian banking guidelines. Canadian and foreign banks that have certain counterparty exposures to Canadian CCPs would be subject to higher capital requirements if these CCPs do not meet the QCCP status.[21]

The CSA also believe the proposed clearing agency regulatory framework should enhance confidence in the market and better serve market participants. With the adoption of the Instrument, clearing agencies may be better positioned to withstand market volatility and evolve with market developments and technological advancements. Establishing rules that are consistent with current practice and international standards provides a good starting point for promoting appropriate risk management practices.

Finally, the Standards are intended to support the initiatives of the Group of Twenty Finance Ministers and Central Bank Governors (G20) and the Financial Stability Board (FSB) to strengthen core financial infrastructures and markets. To promote consistent global enforcement, the PFMIs are considered minimum requirements, and it is expected that members of CPMI and IOSCO apply the PFMI standards to the fullest extent possible.[22] The global and uniform implementation of the PFMIs is considered to be crucial to meeting the G20 commitments for derivative markets regulatory reforms, including requirements for centralized clearing and data reporting.

The CSA acknowledge that implementing the Standards will entail costs for the industry. Recognized clearing agencies in Canada have begun the transition to the new Standards by conducting detailed self-assessments against the Principles and Key Considerations and identifying their current gaps in observance. They are currently developing plans to address those gaps, but it will take some time for them to meet all the Standards. As noted previously, we are therefore proposing longer transition periods for implementing certain Standards.

IX. Regulations or Other Instruments to be Amended or Revoked (Ontario only)

OSC Staff Notice 24-702 *Regulatory Approach to Recognition and Exemption from Recognition of Clearing Agencies* will be withdrawn upon the implementation of the Instrument and Companion Policy.

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21 See CSA Multilateral Staff Notice 24-311 *Qualifying Central Counterparties*, July 28, 2014, at http://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20140728_24-311_sn-qualifying-central-counterparties.htm.

22 CPMI and IOSCO have stated that they expect full, timely and consistent implementation of the PFMIs by the authorities in all member-jurisdictions. In this regard, they have established an international task force to monitor implementation of the PFMIs by relevant authorities. Reports on PFMI implementation by CPMI and IOSCO members, including the OSC, AMF, BCSC and Bank of Canada, are available on the Bank for International Settlements' website (http://www.bis.org/cpss/index.htm) and the IOSCO website (http://www.iosco.org/library/index.cfm?section=pubdocs).

X. Comment Process

Please submit your comments in writing on or before February 10, 2015. If you are not sending your comments by email, please include a CD containing the submissions. Address your submission to the following CSA member commissions:

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

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining CSA member jurisdictions.

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

Me Anne-Marie Beaudoin
Corporate Secretary
Autorité des marchés financiers
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Please note that comments received will be made publicly available and posted on the Websites of certain CSA jurisdictions. We cannot keep submissions confidential because securities legislation requires that a summary of the written comments received during the comment period be published. In this context, you should be aware that some information which is personal to you, such as your e-mail and address, may appear in the websites. It is important that you state on whose behalf you are making the submission.

Additionally, where comments pertain specifically to the Joint Supplementary Guidance (as presented in text boxes within the Companion Policy), we request that these particular comments also be sent to the Bank of Canada at the following email address:

PFMI-consultation@bankofcanada.ca

Questions with respect to this Notice, or the Instrument and Companion Policy, may be referred to:

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APPENDIX "A"

SUMMARY OF COMMENTS TO PROPOSED LOCAL RULES 24-503 *CLEARING AGENCY REQUIREMENTS* AND RELATED LOCAL CPS, AND CSA GENERAL RESPONSES TO COMMENTS[1]

1. Theme/question[2]	2. Summary of comments	3. General responses
General		
Purposes of the proposed Local Rule and approach to drafting	One commenter disagrees with the drafting approach chosen to achieve the purposes of the proposed Local Rule (i.e. adopting the PFMIs in a rule). The commenter feels that differences, however modest, between the PFMIs and the proposed Local Rule would require complex, time consuming and costly analyses of such differences (including what, if any, non-PFMI provisions have been added to the proposed Local Rule). The commenter enumerates several possible consequences resulting from the approach (which necessitates analyses of possible differences from the PFMIs): • it may deter participants and clearing agencies from entering/expanding in the Canadian market, leading to less competition, liquidity and stability as a whole; • clearing agencies that have begun self-assessments according to PFMI standards would have to reconsider the proposed Local Rule requirements; • domestic clearing agencies held to more rigorous provincial requirements than those based in foreign jurisdictions would be disadvantaged by an uneven playing field; • CPMI-IOSCO implementation monitoring efforts of the PFMIs would be confused by potentially different standards imposed on Canadian clearing agencies; • foreign regulators would have difficulty assessing equivalency of the proposed Local Rule to their own PFMIs-based requirements; and • assessment as a "qualifying CCP" (QCCP) could be made more difficult and uncertain, should the Local Rule's	We have addressed this concern. See "IV. Summary of Instrument and Companion Policy" in the Notice.

[1] Columns 1 and 2 are reproduced from Appendix "B" to Notice 24-310. Column 3 is new.

[2] A reference to a provision (i.e., section, subsection, paragraph, etc.) is a reference to a provision of the proposed Local Rule, unless otherwise indicated.

1. Theme/question[2]	2. Summary of comments	3. General responses
	requirements be seen as different from, or potentially imposing lower standards than, the PFMIs. The commenter expresses that the stated purposes of the proposed Local Rule could be achieved by requiring direct compliance with the international standards, and only adding to a proposed Local Rule the additional requirements that would be unique to a province.	
Unified approach to rule-drafting	A commenter is concerned that the complexity of analyzing the differences between the proposed Local Rule and the PFMIs would be magnified by the impact of each jurisdiction enacting its own rule. The commenter calls for a unified approach to drafting and implementing the proposed Local Rule amongst the provincial/territorial regulators.	We have addressed this concern by proposing a National Instrument.
Requirements pursuant to existing terms and conditions	One commenter says that it was unclear whether certain recognized/exempt clearing agencies would be required to continue to comply with an existing term and condition that requires compliance with the PFMIs, possibly in addition to the proposed Local Rule.	We note that Part 3 of the Instrument, which implements the Standards/PFMIs, will apply to recognized clearing agencies only. For the most part, we would exempt foreign clearing agencies carrying on business in Canada. As such, we would rely on the regulations governing, and the oversight of, the clearing agency in its home jurisdiction, including the local rules or policies that implement the PFMIs. Where a foreign clearing agency is recognized by us because, for example, we judge it to be systemically important to our capital markets, Part 3 of the Instrument will apply. However, in view of the principles-based approach and drafting of the Standards that mirror the Principles and Key Considerations, we do not believe that compliance with Part 3 will be a burden. As such, a foreign clearing agency should not experience duplication and inefficiency of cross-border regulation. To the extent that a recognized foreign clearing agency faces a conflict or inconsistency between the requirements of sections 2.2, 2.5 and Part 4 of the Instrument and the terms and conditions of its existing order, Part 6 of the Instrument provides that the securities regulatory authority may grant an exemption from a provision of the Instrument, in whole or in part, subject to appropriate conditions or restrictions.
Foreign-based entities' compliance with proposed Local Rule, and equivalence and mutual recognition approaches	A commenter is concerned that the proposed Local Rule is not clear whether foreign-based clearing agencies that are recognized in a province will be required to comply with all new provisions, or may continue to abide by terms and conditions in their existing recognition orders. The commenter notes that adhering to the proposed Local Rule's Part 3 provisions	See response above.

1. Theme/question[2]	2. Summary of comments	3. General responses
	would be duplicative and inefficient when considering the regulation in a home jurisdiction, whereas current terms and conditions already address the balance with the home jurisdiction's regulation.	
	Two commenters highlight a need for access to third-country markets / clearing agencies under the concepts of equivalence and mutual recognition. One commenter suggests that an equivalence test be based on transparent, proportionate, fair and objective grounds, and should be judged on an outcome-determinative basis that looks to the PFMIs for guidance, so as to recognize the differences in legal and regulatory structures around the world. The commenters advocate for a process similar to the EMIR scheme for the recognition of third country CCPs, which relies on an equivalence assessment of the home country's legal and regulatory structure and an MOU between ESMA and the relevant regulator. The commenters also note that terms and conditions would have to be appropriate in light of the supervision and oversight being carried out in multiple jurisdictions, and that reliance should be placed on the regulations in the home jurisdictions to implement the PFMIs in place of direct application of CSA requirements on third country CCPs.	See response above. We do not believe that an equivalency regime and process similar to the EMIR regime is necessary at this time. Part 3 of the Instrument, which implements the Standards/PFMIs, will apply to recognized clearing agencies only. For the most part, we would exempt foreign clearing agencies carrying on business in Canada. As such, we would rely on the regulations governing, and the oversight of, the clearing agency in its home jurisdiction, including the local rules or policies that implement the PFMIs. Where a foreign clearing agency is recognized by us because, for example, we judge it to be systemically important to our capital markets, Part 3 of the Instrument will apply. However, in view of the principles-based approach and drafting of the Standards that mirror the Principles and Key Considerations, we do not believe that compliance with Part 3 will be a burden.
Part 2: Clearing agency recognition or exemption from recognition		
Request Notice question 1: Are there other factors that could be considered in determining systemic importance of a clearing agency to the relevant province? If so, please describe such factors and your reasons for including them. Subsections 2.0(2)-(5) of the proposed CP – systemic importance	A commenter notes that the proposed definition should include (a) the extent to which failure of a clearing agency would require the use of public funds to maintain the stability of Canada's financial infrastructure, and (b) the impact a clearing agency failure would have on Canada's financial infrastructure.	The Companion Policy describes a broad range of guiding factors in determining the systemic importance of a clearing agency. These factors are non-exhaustive. They inherently would include scenarios described by the commenter.
	A commenter notes that it would be useful to view the criteria within the context of the currencies in which an FMI's obligations are denominated, since any effects in Canada may depend on the value of an FMI's CDN dollar-denominated transactions.	See response above.
	A commenter suggests that the linkages between the clearing agency and other CCPs should be considered, including instances in which they assume exposure to one or more CCPs, as well as how such	See response above.

1. Theme/question[2]	2. Summary of comments	3. General responses
	exposures are managed.	
	A commenter suggests that any risk exposure of the clearing agency to counterparties that are not residents of a relevant province but are systemically important to those residents should be considered.	See response above.
	A commenter highlights the absence of an appeal mechanism for parties who wish to have their determination of systemic importance reviewed.	Canadian securities legislation generally provides for appeal mechanisms for reviewing a decision made by a regulator or securities regulatory authority.[3]
Significant changes and other changes in information Section 2.2	A commenter notes that the advanced approval requirement for significant changes and notification of fee changes is inconsistent with international regulations and thus puts domestic clearing agencies on an uneven playing field relative to foreign-based clearing agencies, who may make such changes more quickly. The commenter describes that CFTC regulations for derivatives clearing agencies, for example, require only self-certification of rule changes with the CFTC ten business days in advance of the change. The commenter requests aligning the requirements with those of the CFTC.	Subsection 2.2(2) of the Instrument prohibits a recognized clearing agency from implementing a "material change" without obtaining the prior written approval of the securities regulatory authority. However, the provision does not contain any timeline or process for obtaining such approval. We note that, typically, the terms and conditions of a recognition decision will contain provisions governing the process and timelines for obtaining prior approval of a material change. To the extent possible, the securities regulatory authority will consider the rule approval or self-certification process of another jurisdiction's regulations to which the clearing agency is subject when imposing the terms and conditions. This consideration may be carried out in concert with Part 6 of the Instrument, which provides that a securities regulatory authority may grant an exemption from a provision of the Instrument, in whole or in part, subject to appropriate conditions or restrictions.
Filing of initial audited financial statements Section 2.4	A commenter notes that while it plans to adopt the use of IFRS in the near future, it currently prepares its financial statements in accordance with UK GAAP, as per its home regulator's requirements. It requests confirmation that the provincial/territorial regulators will flexibly implement s. 2.4 to allow conformation with local regulatory requirements and that the provision will not negatively impact its operations in the relevant province.	We have addressed this concern. See section 2.4 of the Instrument.
Filing of annual audited and interim financial statements Section 2.5	A commenter urges the provincial/territorial regulators to extend the approach taken under s. 2.2 – to allowing alternate means to meeting the provision's requirement for foreign-based entities, as specified in its recognition/exemption order – to the requirements of s. 2.5. The commenter notes that some home country regimes do not require interim financial statements to	See subsection 2.5(2) of the Instrument.

[3] In Ontario, see sections 8 and 9 of the OSA. In Quebec, see sections 169.1 and 322 of the *Securities Act* (Quebec) and sections 14 and 113 of the *Derivatives Act* (Quebec).

1. Theme/question[2]	2. Summary of comments	3. General responses
	be audited.	
Part 3: On-going requirements applicable to recognized clearing agencies		
Section 3.2 – Governance		
Joint Supplementary Guidance Box 2, Item 1 Subsection 3.2(2) of the proposed CP	A commenter felt that the statement "the FMI functions should be legally separated from other functions performed by the consolidated entity in order to maximize bankruptcy remoteness of the FMI functions" does not align with the PFMIs paragraph 3.2.6. The commenter interprets that the PFMIs describe legal separation as a consideration when services present a distinct risk profile from, or pose additional risks to, its existing functions. So, whereas legal separation may be effective for multi-functional risks on a case-by-case basis, it is just one mechanism, in addition to, for example, effective governance and containment of risk through contractual terms.	The Joint Supplementary Guidance has been amended. It now provides for an option: where an FMI is part of a larger consolidated entity, it must either: (i) legally separate FMI-related functions from non-FMI-related functions performed by the consolidated entity in order to maximize bankruptcy remoteness of the FMI-related functions; or (ii) have satisfactory policies and procedures in place to manage additional risks resulting from the non-FMI-related functions appropriately to ensure the FMI's financial and operational viability.
Role of the chief compliance officer Paragraph 3.2(7)(d)	A commenter feels that the requirement could impose significant effort and cost on a clearing agency registered in multiple jurisdictions. Alternatively, the commenter proposes that recognized foreign clearing agencies be able to leverage similar information/reports provided to other regulators or information in its CPMI-IOSCO FMI Disclosure Framework Document.	This provision has been substantially retained in section 4.3 of the Instrument, which governs the requirements for having a Chief Risk Officer and Chief Compliance Officer. To the extent a recognized foreign clearing agency is subject to requirements of its home jurisdiction that achieve equivalent regulatory outcomes, Part 6 of the Instrument provides that a securities regulatory authority may grant an exemption from a provision of the Instrument, in whole or in part, subject to appropriate conditions or restrictions.
Transparency of major decisions Subsection 3.2(13)	A commenter proposes that, before a major decision that has a potential broad market impact is published, the clearing agency should be permitted to make a case for non-publication on the grounds of possible negative impact to financial stability in any of the jurisdictions in which it operates. Also, the publication should be made only with the approval of a relevant home-jurisdiction regulator and/or regulator of any other impacted jurisdiction.	This requirement is essentially retained in section 2.7 of Standard 2. We believe that a principles-based approach to this standard would provide the flexibility to the clearing agency to make a case for non-publication on the grounds of possible negative impact to financial stability, and to consult with, and seek the approval of, its home-jurisdiction regulator and/or the regulator of any other impacted jurisdiction.
	A commenter also notes that it would make sense that ss. 3.2(13) should only apply to determinative decisions of a clearing agency's Board, since other (more preliminary or interim) resolutions may be confusing, misleading or inappropriately market-moving.	We agree that section 2.7 of Standard 2 applies only to major decisions made by the board of directors of the clearing agency.

1. Theme/question[2]	2. Summary of comments	3. General responses
Section 3.5 – Collateral and Section 3.7 – Liquidity risk		
Collateral – general principle Subsection 3.5(1)	A commenter says it is essential that letters of credit be perceived as permitted collateral, notwithstanding that the wording of the provision does not specifically suggest otherwise. The commenter requests positive clarity that letters of credit are intended to be included.	Consistent with footnote 63 of the PFMI report, in general we do not believe that letters of credit or other forms of guarantees are acceptable collateral. However, guarantees that are fully backed by collateral may be acceptable in rare circumstances, subject to regulatory approval. See also the Joint Supplementary Guidance on collateral.
Collateral and liquidity risk Sections 3.5, 3.7	A commenter requests flexibility in the eligible collateral a clearing agency can accept, as certain financial industries, such as the life insurance industry, tend to hold long-dated corporate securities to support the long-term nature of their activities. The commenter suggests that such participants would incur significant costs in obtaining more liquid assets to post as collateral with a clearing agency. It requests that long term assets, such as high grade corporate bonds, be considered eligible.	See the Joint Supplementary Guidance on collateral. However, we note that such guidance is applicable to recognized *domestic* clearing agencies only. If a foreign clearing agency is unwilling to accept long-dated Canadian corporate bonds and other securities, we do not believe it is appropriate for us to intervene to encourage them to accept such types of securities if they are not acceptable from a risk-management perspective.
Qualifying liquid resources Subsections 3.7(8) and (9)	With respect to par. 3.7(8)(a), a commenter notes that there is minimal liquidity risk with respect to major currencies and any potential concerns could be addressed through a foreign haircut allowance, if necessary. The commenter interprets that PFMIs paragraph 3.7.10 contemplates holding liquid resources in more than one currency, but does not strictly require that the currency of liquid resources must exactly match the currency of the obligations. Further, if highly marketable collateral held in investments are permitted, given the standardization and marketability of major currencies, it does not seem reasonable to require that cash must be held in the same currency of the obligation.	We do not agree. The Joint Supplementary Guidance on liquidity risk makes it clear that an FMI must have qualifying liquid resources for liquidity exposures *denominated in the same currency* as the resources.
	With respect to par. 3.7(8)(b), a commenter requests that committed lines of credit be expanded to include letters of credit, as they are committed obligations of an underwriting bank.	If a particular letter of credit would be considered a committed line of credit by an underwriting bank, it would qualify.
	With respect to par. 3.7(8)(e) and the posting of bonds as collateral, a commenter notes that it is not clear what is included as “highly marketable collateral” or what funding arrangements would qualify as prearranged and highly reliable. The commenter is concerned that should customers not be able to post bonds as collateral with clearing members, because they in turn cannot post bonds to a clearing agency, customers or clearing members will be required to enter into repurchase	See the Joint Supplementary Guidance on collateral. See also, above, our comment on the acceptability of long-dated Canadian corporate bonds and other securities by a foreign clearing agency.

1. Theme/question[2]	2. Summary of comments	3. General responses
	transactions to raise cash to post, which may impose additional costs without reducing systemic risk.	
Section 3.13 – Participant default rules and procedures		
Use and sequencing of financial resources Subsection 3.13(3)	A commenter asserts that it is not practical for a clearing agency to pre-commit to use particular liquidity resources in a specific order; rather the use of various resources to meet time-sensitive needs will depend on the details of a default situation. Also, the inclusion of such a hierarchy in publicly disclosed rules (or only to members) could make the clearing agency vulnerable to gaming by market participants. Accordingly, any plan for using liquidity resources should remain confidential, or at least disclosed only at a high level.	This provision in the Local Rules has not been retained in the Instrument. We note, however, that the requirement was consistent with the explanatory note in par. 3.13.3 of the PFMI report.
Testing of default procedures Subsection 3.13(6)	A commenter requests that only entities that clear positions for their clients' futures commission merchant (FCM) services or that are involved in loss mutualization be involved as the required participants and stakeholders for the testing of a clearing agency's default rules and procedures. The commenter explains that for clearing members of a private, non-mutualized clearing agency, clearing members are clearing for their own accounts, and do not provide services typically afforded by FCMs. Accordingly, in the event of a default and close out, non-defaulting participants are neither impacted nor included in the process. As such, these members are unwilling to, and see little value in being involved in the testing and review of relevant procedures.	We believe this concern is addressed through the explanatory notes of the PFMIs. Paragraph 3.13.7 of the PFMI report expressly contemplates that tests should include all "relevant parties or an appropriate subset" that would likely be involved in the default procedures, such as members of the appropriate board committees, participants, linked or interdependent FMIs, relevant authorities, and any related service providers. Moreover, a principles-based approach to applying section 13.4 of Standard 13 would provide some flexibility in determining the relevant "stakeholders" for the testing of a clearing agency's default rules and procedures.
Use of own capital Subsection 3.13(8)	A commenter expresses that, while the PFMIs contemplate that an FMI using its own resources is an option for the management of a default, it is not actually required. Further, while the proposed Local Rule may require 'skin in the game' to motivate a clearing agency to act in a manner that would minimize loss and risk to all, given the reputational risk the clearing agency has at stake as the market watches its response to a default, it is unnecessary to add any additional motivating factor.	See the discussion in the Notice on section 4.5 of the Instrument under "IV. Summary of Instrument and Companion Policy and Ongoing Policy Matters, (d) Part 4 – Other Requirements of Recognized Clearing Agencies, (iii) CCP skin-in-the-game requirement".
Section 3.14 – Segregation and portability		
General comments	A commenter expresses concern that, in the context of a securities firm insolvency, the application of Principle 14 to all markets	See the discussion in the Notice on segregation and portability under "IV. Summary of Instrument and Companion Policy and Ongoing Policy Matters, (c)

1. Theme/question[2]	2. Summary of comments	3. General responses
	may impede or negate the ability of a trustee in bankruptcy, as well as investor protection funds, from returning the firm's client funds, and will only move the Canadian framework closer to the US model, in spite of the well-received Canadian performances to date. Whereas collateral would have to be held on a gross basis by the CCP, CIPF coverage would be impacted because assets held at the CCP would not vest with the CIPF trustee. Indeed, the principle of pooling assets for pro-rata distribution – the cornerstone of Part XII of the *Bankruptcy and Insolvency Act* – would no longer be applied to all clients.	Part 3 – International Standards Applicable to Recognized Clearing Agencies, (iii) Segregation and portability".
	A commenter notes that in the particularly complex area of open futures positions, the application of Principle 14 would negatively affect the ability of CIPF to provide customer protection, if the CCP has custody of clients' assets and it does not vest in a trustee.	See response above.
	A commenter expresses concern about the impact to IIROC members when applying Principle 14. Such members would not have the same degree of collateral available to them for their use, where there is a different margin requirement by the CCP vs. the clearing member.	See response above.
	A commenter expresses concern about the operational issues and impacts related to a CCP undertaking the responsibility to move client assets, especially because the CCP may not have client account information which is held by a clearing member.	See response above.
Customer account structures and transfer of positions and collateral Subparagraph 3.14(4)(a)(ii)	A commenter suggests to replace "or" with "and/or" to accommodate clearing members who clear for a combination of clients that include both individual and omnibus accounts.	See the discussion in the Notice under "IV. Summary of Instrument and Companion Policy and Ongoing Policy Matters, (c) Part 3 – International Standards Applicable to Recognized Clearing Agencies, (i) Implementation of the PFMIs as rule requirements". The Standards in Appendix A to the Instrument are largely a reproduction of the text of the 23 Principles and their respective Key Considerations.
Request Notice question 2: Do you agree with the current drafting approach of section 3.14 of the Rule, i.e., requiring all CCPs to meet Principle 14 in its entirety (without referencing the alternate approach), and granting	Three commenters argue that CCPs serving the cash markets should not be required to obtain an "exemption" from section 3.14, as the wording of Principle 14 should be understood to allow, as a matter of course, the application of its "alternate approach" to cash market CCPs that provide the same protections as those envisioned by the Principle (as explained in	See the discussion in the Notice on segregation and portability under "IV. Summary of Instrument and Companion Policy and Ongoing Policy Matters, (c) Part 3 – International Standards Applicable to Recognized Clearing Agencies, (iii) Segregation and portability".

1. Theme/question[2]	2. Summary of comments	3. General responses
exemptions on a case-by-case basis to those CCPs for which the alternate approach is appropriate?	PFMIs paragraph 3.14.6). The commenters express that an "exemption" may imply that the CCP employs a weaker approach to investor protection than that which is otherwise required by the PFMIs.	
	A commenter is unsure whether timely portability could be achieved without supporting legislation to ensure a release of funds within a certain period.	See response above.
Request Notice question 3: Should all CCPs serving the Canadian cash markets be able to avail themselves of the alternate approach to implementation of Principle 14? How could such CCPs demonstrate that customer assets and positions are protected to the same degree envisioned by Principle 14?	Three commenters conclude that cash market CCPs should be able to demonstrate how they fit within the alternate approach, if they satisfy the criteria set out in paragraph 3.4.16 of the PFMIs. The combination of IIROC rules, CIPF customer protection (that extends to all assets held in a customer's account, including securities, cash balances, commodities, futures contracts, segregated insurance funds or other property) and the Part XII *Bankruptcy and Insolvency Act* scheme, in the Canadian regulatory environment should be conducive to satisfying this alternate approach. At least one commenter feels that the alternate approach should extend to all CCPs not serving the OTC derivatives markets.	See response above.
	Two commenters argue that unintended consequences would be severe if CCPs serving markets other than the OTC derivatives markets were not able to avail themselves of the alternate approach.	See response above.
	A commenter describes several consequences that might arise if the alternate approach is unavailable for non-OTC market CCPs: (1) the efficiencies achieved by netting trades would be lost as segregation and portability requirements would force CCPs to decompose netted trades, thereby increasing costs to the CCP and reducing the risk reduction provided by netting; (2) costly changes would be required to the CCP's margining system, in order to margin positions at a gross level; (3) for CCPs without cross-product margining, the introduction of portability could result in higher margin requirements for legitimate market activity; (4) CCPs would have to develop a communication mechanism to inform investors of their collateral/positions in the event of a CCP participant insolvency; and (5) market participants would be negatively impacted by having to undertake significant reconciliation efforts, as each trade would	See response above.

1. Theme/question[2]	2. Summary of comments	3. General responses
	have to be individually inspected to note the client and its corresponding collateral.	
	A commenter suggests that CCPs could demonstrate their protection of customer assets and positions through disclosure of: (i) the nature of the information held in respect of individual clients; (ii) the roles and responsibilities of surviving participants under default scenarios; and (iii) the processes and procedures to be followed by the CCP and its surviving participants in these circumstances. It is also suggested that for CCPs obligated to test default management processes, the processes enabling portability of positions and collateral should also be tested.	See response above.
Section 3.15 – General business risk		
Determining sufficiency of liquid net assets Subsection 3.15(3)	A commenter requests that the last sentence of PFMI key consideration 15.3 be included in section 3.15(3) in order to avoid duplicate capital requirements by permitting the inclusion of equity held under international risk-based capital standards, where appropriate.	We have added such sentence in section 15.3 of Standard 15 in Appendix A to the Instrument.
Section 3.16 – Custody and investment risks		
Investment strategy Subsection 3.16(4)	A commenter is concerned that public disclosure of its investment strategies could negatively impact its ability to invest large amounts of cash on a daily basis. It requests that investment strategies only be disclosed at a high level and only to participants.	Section 16.4 of Standard 16 in Appendix A to the Instrument says that a clearing agency should "fully disclose" its investment strategy to its participants. We do not believe that the same type of disclosure would be required for the public. See also Standard 23, which governs certain types of public disclosures.
Section 3.17 – Operational risks		
Operational capacity, systems requirements, and incident management Paragraph 3.17(5)(e)	A commenter suggests that an alternative should be available for foreign-based recognized clearing agencies. It requests that this alternative be provided in the clearing agency's recognition order or 'notice and approval protocol'.	This requirement is now contained in Part 4 of the Instrument, which applies only to recognized clearing agencies. To the extent that a recognized foreign clearing agency is subject to requirements in its home jurisdiction that achieve equivalent regulatory outcomes, Part 6 of the Instrument provides that a securities regulatory authority may grant an exemption from a provision of the Instrument, in whole or in part, subject to appropriate conditions or restrictions.
Operational capacity, systems requirements, and incident management Subsections 3.17(8), (9)	A commenter requests that public disclosure under these subsections not include detailed proprietary information.	We have clarified this in section 4.8 of the Companion Policy.

1. Theme/question[2]	2. Summary of comments	3. General responses
Operational capacity, systems requirements, and incident management Subsection 3.17(11):	In respect of paragraph (b), one commenter suggests that the provision should allow a foreign-based recognized clearing agency to meet the requirement in a manner described in the terms and conditions of its recognition order or 'notice and approval protocol'. In respect of paragraph (c), one commenter expresses concern that the scope of this disclosure requirement is too broad. It suggests that it be narrowed to only include non-sensitive information that is not proprietary in nature.	See previous two responses above.
Request Notice question 4: What are a clearing agency's current abilities and future prospects to meet the objective of recovering and resuming critical systems and processes within two hours of a disruptive event? Should recovery and resumption-time objectives differ according to critical importance of markets? Subparagraph 3.17(12)(c)(i)	A commenter requests further clarity with respect to whether (i) the ability of a clearing agency to meet the two hour requirement would impact how the requirement is applied, and (ii) whether more than two hours may be permitted, if necessary. The commenter notes that the proposed timeframe appears arbitrary and may not be the appropriate recovery objective in Canada.	See the discussion in the Notice under "IV. Summary of Instrument and Companion Policy and Ongoing Policy Matters, (c) Part 3 – International Standards Applicable to Recognized Clearing Agencies, (iv) Resumption of operation within two hours after disruptive events".
	A commenter notes that recovery and resumption time objectives should not differ from market to market, based on critical importance.	See response above.
Section 3.19 – Tiered participation arrangements		
Request Notice question 5: To what extent can a CCP identify and gather information about a tiered (indirect) participant? Section 3.19	A commenter requests further clarity as to whether (i) the ability of the clearing agency to meet the requirement would impact how the requirement is applied, and (ii) the type and extent of the information that would be required to be gathered.	See the discussion in the Notice under "IV. Summary of Instrument and Companion Policy and Ongoing Policy Matters, (c) Part 3 – International Standards Applicable to Recognized Clearing Agencies, (v) Tiered participation arrangements".
	A commenter submits that it is challenging for Canadian CCPs to identify or gather meaningful information pertaining to indirect/tiered participants, due to the lack of legal or other contractual relationship between the CCP and the indirect participant, and more generally, because Canadian clearing models are founded on the 'principal model'. The model utilizes omnibus account structures which enable the CCP to distinguish proprietary and client assets, but more granular detail would be needed to permit the CCP to identify and measure the activity of indirect participants. CCPs have limited recourse to require the necessary information disclosures from indirect participants.	See response above.

1. Theme/question[2]	2. Summary of comments	3. General responses
	A commenter notes that CCPs are able to gather sufficient information about their indirect participants to be able to manage the risks they pose.	See response above.
Request Notice question 6: In Canada, what types of risks (such as credit, liquidity, and operational risks) arise in tiered participation arrangements between customers and direct participants or between customers and other intermediaries that provide clearing services to such customers?	A commenter agreed that all cited risks are present in tiered participation arrangements.	See response above.
Request Notice question 7: How can a clearing agency properly manage the risks posed by tiered participation arrangements?	A commenter described that the control, mitigation and management of risks would require, at a minimum, the disclosure of client accounts and/or securities positions by direct CCP participants. Doing so would allow the CCP to meet the minimum standards of Principle 14 and would allow a CCP to modify or calibrate its risk model towards the effective management of the credit and liquidity risks that tiered participants introduce to the clearing system.	See response above.
	A commenter suggests two layers of controls to help manage risks posed by tiered participation arrangements: (i) require the clearing agency to gather detailed information on the direct participant's customer activity in order to identify relationships and positions at the indirect participant level, and (ii) require the clearing agency to act on the information within a risk policy framework that identifies, signals and monitors risks and risk concentrations and which, where appropriate, provides incentives for participants to reduce these risks and concentrations.	See response above.
Section 3.23 – Transparency		
Changes to rules and procedures Subsection 3.23(5)	A commenter requests that a clearing agency's disclosure of changes to its rules and procedures be limited to only what is required by its recognition order or 'notice and approval protocol'. It also expresses its belief that disclosure should be limited to services over which the regulatory authority possesses jurisdiction.	While this provision has not been retained in the Instrument, section 23.1 of Standard 23 in Appendix A to the Instrument requires a recognized clearing agency to adopt clear and comprehensive rules and procedures that are fully disclosed to participants. It also requires that relevant rules and key procedures be publicly disclosed.

1. Theme/question[2]	2. Summary of comments	3. General responses
		We note, however, that the requirement was consistent with the explanatory note in par. 3.23.3 of the PFMI report, which says that a clearing agency should have a clear and fully disclosed process for proposing and implementing changes to its rules and procedures and for informing participants and relevant authorities of these changes.
Part 5: Effective dates and transition		
Section 5.1	A commenter requests that, where a clearing agency has already carried out preparatory work or has dedicated resources to PFMIs implementation plans (that have been approved by its regulators), the transition periods should take such efforts into account. The commenter also requests that where the CSA's implementation of the PFMIs differ from CPMI-IOSCO, that the CSA provide a mechanism through which PFMI requirements that are substantively similar to the CSA requirements be grandfathered under the proposed Local Rule.	Effective dates and transition periods have been significantly modified in the Instrument. See the discussion in the Notice under "IV. Summary of Instrument and Companion Policy and Ongoing Policy Matters, (g) Part 7 – Effective Dates and Transition".
	In respect of the interaction of CSA Staff Notices 91-303 and 91-304, one commenter notes that there are significant operational implications and unknowns for customers, in terms of setting up procedures to deal with derivatives clearing agencies (DCAs) and clearing members. Accordingly, there will need to be transition time once DCAs are established and before all clearing requirements are implemented. The commenter also expresses concern that it is unclear how many DCAs will exist and how they will be differentiated, leading to the possibility that transactions that would otherwise net to zero may be required to clear at different derivatives clearing agencies, thereby resulting in exposures that are not being offset.	This comment has been referred to the CSA Derivatives Committee, which is working on Revised Model Rule 91-304.
Subsection 5.1(2)	A commenter suggests that sections 3.4-3.7 should have the same effective date as CSA Staff Notices 91-303 and 91-304 in order to ensure customers have the protection of risk management tools when clearing trades.	We will raise this comment with the CSA Derivatives Committee.
Request Notice question 8: Are the above transition periods appropriate? If yes, please give your reasons. If not, what alternative transition	A commenter notes that successful implementation under the proposed timeline may be difficult.	See the discussion in the Notice under "IV. Summary of Instrument and Companion Policy and Ongoing Policy Matters, (g) Part 7 – Effective Dates and Transition".

1. Theme/question[2]	2. Summary of comments	3. General responses
periods would balance the CPMI-IOSCO's expectation of timely implementation of the PFMIs and the practical implementation needs of our markets? Subsection 5.1(3)		

APPENDIX "B"

COMPARISON OF THE STANDARDS IN APPENDIX A TO NI 24-102 AND TEXT OF THE PRINCIPLES AND KEY CONSIDERATIONS IN PFMI REPORT

Disclaimer

This document provides a comparison between the Standards in Appendix A to NI 24-102 and the text of the 23 relevant Principles and their respective Key Considerations in the PFMI report. It is intended to assist readers of the Standards in understanding where the CSA have amended the text of the Principles and their Key Considerations in drafting the Standards. An automated process was used in generating the comparison. While the CSA have used due care in preparing this document, it is possible that the comparison contains errors, omissions and inaccuracies introduced through use of the automated process. This document should therefore be used as an aid only. Readers should refer directly to the text of the Standards and the Principles and Key Considerations in order to fully understand the requirements of and differences between the two.

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~~**Principles for financial market infrastructures**~~
Appendix A

Risk Management Standards Applicable to Recognized Clearing Agencies

~~*Principle*~~**Standard 1:** *Legal basis*~~An FMI should have~~ – A recognized clearing agency has a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

~~**Key considerations**~~

~~*1.*~~ 1.1 The legal basis ~~*should provide*~~provides a high degree of certainty for each material aspect of ~~*an FMI*~~the clearing agency's activities in all relevant jurisdictions.

~~*2. An FMI should have*~~1.2 The clearing agency has rules, procedures~~,~~ and contracts that are clear, understandable~~,~~ and consistent with relevant laws and regulations.

~~*3. An FMI should be able to articulate*~~1.3 The clearing agency articulates the legal basis for its activities to relevant authorities, participants, and, where relevant, participants' customers, in a clear and understandable way.

~~*4. An FMI should have*~~1.4 The clearing agency has rules, procedures~~,~~ and contracts that are enforceable in all relevant jurisdictions. There ~~*should be*~~is a high degree of certainty that actions taken by the ~~*FMI*~~clearing agency under ~~*such*~~its rules and procedures will not be voided, reversed~~,~~ or subject to stays.

~~*5. An FMI conducting*~~1.5 If the clearing agency conducts business in multiple jurisdictions ~~*should identify*~~, it identifies and ~~*mitigate*~~mitigates the risks arising from any potential ~~*conflict*~~conflicts of laws across jurisdictions.

~~*Principle*~~**Standard 2:** *Governance* ~~An FMI should have~~ – A recognized clearing agency has governance arrangements that are clear and transparent, promote the safety and efficiency of the ~~FMI, and~~clearing agency, support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

~~**Key considerations**~~

~~*1. An FMI should have*~~ 2.1 The clearing agency has objectives that place a high priority on the safety and efficiency of the ~~*FMI*~~clearing agency and explicitly support financial stability and other relevant public interest considerations.

~~*2. An FMI should have*~~2.2 The clearing agency has documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements ~~*should be*~~are disclosed to owners, relevant authorities, participants, and, at a more general level, the public.

~~*3.*~~ 2.3 The roles and responsibilities of ~~*an FMI*~~the clearing agency's board of directors ~~*(or equivalent) should be*~~are clearly specified, and there ~~*should be*~~are documented governance procedures for its functioning, including procedures to identify, address~~,~~ and manage member conflicts of interest. The board ~~*should review*~~of directors reviews both its overall performance and the performance of its individual board members regularly.

4. 2.4 The board *should contain*of directors contains suitable members with the appropriate skills and incentives to *fulfil*fulfill its multiple roles. This typically requires the inclusion of non-executive board member(s).

5. 2.5 The roles and responsibilities of management *should be*are clearly specified. *An FMI*The clearing agency's management *should have*has the appropriate experience, a mix of skills, and the integrity necessary to discharge *their*its responsibilities for the operation and risk management of the *FMI*clearing agency.

6. 2.6 The board *should establish*of directors establishes a clear, documented risk-management framework that includes the *FMI*clearing agency's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies. Governance arrangements *should* ensure that the risk-management and internal control functions have sufficient authority, independence, resources, and access to the board. of directors.

2.7 *7.* The board *should ensure*of directors ensures that the *FMI*clearing agency's design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Major decisions *should be*are clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.

*Principle***Standard 3:** *Framework for the comprehensive management of risks*An FMI should have – A recognized clearing agency has a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational, and other risks.

Key considerations

*1. An FMI should have*3.1 The clearing agency has risk-management policies, procedures, and systems that enable it to identify, measure, monitor, and manage the range of risks that arise in or are borne by *the FMI. Risk*it. The risk-management *frameworks should be*framework is subject to periodic review.

*2. An FMI should provide*3.2 The clearing agency provides incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the *FMI.* clearing agency.

*3. An FMI should*3.3 The clearing agency regularly *review*reviews the material risks it bears from and poses to other entities (such as other *FMIs*clearing agencies, payments systems, trade repositories, settlement banks, liquidity providers, and service providers) as a result of interdependencies and *develop*develops appropriate risk-management tools to address these risks.

*4. An FMI should identify*3.4 The clearing agency identifies scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and *assess*assesses the effectiveness of a full range of options for recovery or orderly wind-down. *An FMI should prepare*The clearing agency prepares appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Where applicable, *an FMI should*the clearing agency also *provide*provides relevant authorities with the information needed for purposes of resolution planning.

*Principle***Standard 4:** *Credit risk* An FMI should – A recognized clearing agency that operates as a central counterparty or securities settlement system effectively measure, monitormeasures, monitors, and managemanages its credit exposures to participants and those arising from its payment, clearing, and settlement processes. An FMI should maintainThe clearing agency maintains sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, a CCPthe clearing agency, if it operates as a central counterparty, that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions should maintainmaintains additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the CCPclearing agency in extreme but plausible market conditions. All other CCPs shouldclearing agencies that operate as a central counterparty maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the CCPclearing agency in extreme but plausible market conditions.

Key considerations

*1. An FMI should establish*4.1 The clearing agency establishes a robust framework to manage its credit exposures to its participants and the credit risks arising from its payment, clearing, and settlement processes. Credit exposure may arise from current exposures, potential future exposures, or both.

~~*2. An FMI should identify*~~4.2 The clearing agency identifies sources of credit risk, routinely ~~*measure*~~measures and ~~*monitor*~~monitors its credit exposures, and ~~*use*~~uses appropriate risk-management tools to control these risks.

~~*3. A payment system or SSS should cover*~~4.3 The clearing agency, if it operates as a securities settlement system, covers its current exposures and, where they exist, potential future exposures to each participant fully with a high degree of confidence using collateral and other equivalent financial resources ~~*(see Principle 5 on collateral). In the case of a DNS payment system or DNS SSS*~~. Where the clearing agency operates as a deferred net settlement system, in which there is no settlement guarantee but where its participants face credit exposures arising from its payment, clearing~~,~~ and settlement processes, ~~*such an FMI should maintain*~~the clearing agency maintains, at a minimum, sufficient resources to cover the exposures of the two participants and their affiliates that would create the largest aggregate credit exposure in the system.

~~*4. A CCP should cover*~~4.4 The clearing agency that operates as a central counterparty covers its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources ~~*(see Principle 5 on collateral and Principle 6 on margin)*~~. In addition, ~~*a CCP*~~the clearing agency that operates as a central counterparty and that is involved in activities with a more-complex risk profile or ~~*that*~~ is systemically important in multiple jurisdictions ~~*should maintain*~~maintains additional financial resources to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure ~~*for*~~to the ~~*CCP*~~clearing agency in extreme but plausible market conditions. All other ~~*CCPs should*~~clearing agencies that operate as a central counterparty maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure for the ~~*CCP*~~clearing agency in extreme but plausible market conditions. In all cases, ~~*a CCP should document*~~the clearing agency that operates as a central counterparty documents its supporting rationale for, and ~~*should have*~~has appropriate governance arrangements relating to, the amount of total financial resources it maintains.

~~*5. A CCP should determine*~~4.5 The clearing agency that operates as a central counterparty determines the amount and regularly ~~*test*~~tests the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions through rigorous stress testing. ~~*A CCP should have*~~The clearing agency has clear procedures to report the results of its stress tests to appropriate decision makers at the ~~*CCP*~~clearing agency and to use these results to evaluate the adequacy of and adjust its total financial resources. Stress tests ~~*should be*~~are performed daily using standard and predetermined parameters and assumptions. On at least a monthly basis, ~~*a CCP should perform*~~the clearing agency performs a comprehensive and thorough analysis of stress testing scenarios, models, and underlying parameters and assumptions used to ensure they are appropriate for determining the ~~*CCP*~~clearing agency's required level of default protection in light of current and evolving market conditions. ~~*A CCP should perform*~~The clearing agency performs this analysis of stress testing more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by ~~*a CCP*~~the clearing agency's participants increases significantly. A full validation of ~~*a CCP*~~the clearing agency's risk- management model ~~*should be*~~is performed at least annually.

~~*6.*~~ 4.6 In conducting stress testing, ~~*a CCP should consider*~~the clearing agency that operates as a central counterparty considers the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods. Scenarios ~~*should*~~ include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

~~*7. An FMI should establish*~~4.7 The clearing agency establishes explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the ~~*FMI*~~clearing agency. These rules and procedures ~~*should*~~ address how potentially uncovered credit losses would be allocated, including the repayment of any funds ~~*an FMI*~~the clearing agency may borrow from liquidity providers. These rules and procedures ~~*should*~~ also indicate the ~~*FMI*~~clearing agency's process to replenish any financial resources that the ~~*FMI*~~clearing agency may employ during a stress event, so that the ~~*FMI*~~clearing agency can continue to operate in a safe and sound manner.

~~*Principle*~~**Standard 5:** *Collateral* ~~An FMI that~~ A recognized clearing agency that operates as a central counterparty or securities settlement system and requires collateral to manage its or its participants' credit exposure ~~should accept~~, accepts collateral with low credit, liquidity, and market risks. ~~An FMI should~~The clearing agency also ~~set~~sets and ~~enforce~~enforces appropriately conservative haircuts and concentration limits.

Key considerations

*1. An FMI should*5.1 The clearing agency generally *limit*limits the assets it (routinely) accepts as collateral to those with low credit, liquidity, and market risks.

*2. An FMI should establish*5.2 The clearing agency establishes prudent valuation practices and *develop*develops haircuts that are regularly tested and take into account stressed market conditions.

3. 5.3 In order to reduce the need for procyclical adjustments, *an FMI should establish*the clearing agency establishes stable and conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practicable and prudent.

*4. An FMI should avoid*5.4 The clearing agency avoids concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects.

*5. An FMI that*5.5 Where the clearing agency accepts cross-border collateral *should mitigate*, it mitigates the risks associated with its use and *ensure*ensures that the collateral can be used in a timely manner.

*6. An FMI should use*5.6 The clearing agency uses a collateral management system that is well-designed and operationally flexible.

*Principle***Standard 6:** *Margin* A CCP should cover A recognized clearing agency that operates as a central counterparty covers its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.

Key considerations

*1. A CCP should have*6.1 The clearing agency has a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio, and market it serves.

*2. A CCP should have*6.2 The clearing agency has a reliable source of timely price data for its margin system. *A CCP should*The clearing agency also *have*has procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.

*3. A CCP should adopt*6.3 The clearing agency adopts initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Initial margin *should meet*meets an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure. For a *CCP*clearing agency that calculates margin at the portfolio level, this requirement applies to each portfolio's distribution of future exposure. For a *CCP*clearing agency that calculates margin at more-granular levels, such as at the subportfolio level or by product, the requirement *must be*is met for the corresponding distributions of future exposure. The model *should* (a) *use*uses a conservative estimate of the time horizons for the effective hedging or close out of the particular types of products cleared by the *CCP*clearing agency (including in stressed market conditions), (b) *have*has an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products, and (c) to the extent practicable and prudent, *limit*limits the need for destabilising, procyclical changes.

*4. A CCP should mark*6.4 The clearing agency marks participant positions to market and *collect*collects variation margin at least daily to limit the build-up of current exposures. *A CCP should have*The clearing agency has the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants.

6.5 *5.* In calculating margin requirements, *a CCP*the clearing agency may allow offsets or reductions in required margin across products that it clears or between products that it and another *CCP*central counterparty clear, if the risk of one product is significantly and reliably correlated with the risk of the other product. Where *two or more CCPs are authorised*the clearing agency is authorized to offer cross-margining, *they must* with one or more other central counterparties, it and the other central counterparties have appropriate safeguards and harmonised overall risk-management systems.

*6. A CCP should analyse*6.6 The clearing agency analyses and *monitor*monitors its model performance and overall margin coverage by conducting rigorous daily backtesting and at least monthly, and more *frequent* frequently where appropriate, sensitivity analysis. *A CCP should*The clearing agency regularly *conduct*conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears. In conducting sensitivity analysis of

the model's coverage, ~~*a CCP should take*~~the clearing agency takes into account a wide range of parameters and assumptions that reflect possible market conditions, including the most volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices.

~~*7. A CCP should*~~6.7 The clearing agency regularly ~~*review*~~reviews and ~~*validate*~~validates its margin system.

~~*Principle*~~**Standard 7:** *Liquidity risk*~~An FMI should effectively measure, monitor~~ – A recognized clearing agency that operates as a central counterparty or securities settlement system effectively measures, monitors, and ~~manage~~manages its liquidity risk. ~~An FMI should maintain~~The clearing agency maintains sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the ~~FMI~~clearing agency in extreme but plausible market conditions.

~~**Key considerations**~~

~~*1. An FMI should have*~~7.1 The clearing agency has a robust framework to manage its liquidity risks from its participants, settlement banks, *nostro* agents, custodian banks, liquidity providers, and other entities.

~~*2. An FMI should have*~~7.2 The clearing agency has effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity.

~~*3. A payment*~~7.3 The clearing agency that performs the services of a securities settlement system ~~*or SSS*~~, including one ~~*employing a DNS*~~that employs a deferred net settlement mechanism, ~~*should maintain*~~maintains sufficient liquid resources in all relevant currencies to effect same-day settlement, and where appropriate intraday or multiday settlement, of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation in extreme but plausible market conditions.

~~*4. A CCP should maintain*~~7.4 The clearing agency that operates as a central counterparty maintains sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments, and meet other payment obligations on time with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation to the ~~*CCP*~~clearing agency in extreme but plausible market conditions. In addition, ~~*a CCP*~~the clearing agency that operates as a central counterparty, and that is involved in activities with a more-complex risk profile or ~~*that*~~ is systemically important in multiple jurisdictions ~~*should consider*~~, considers maintaining additional liquidity resources sufficient to cover a wider range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would generate the largest aggregate payment obligation to the ~~*CCP*~~clearing agency in extreme but plausible market conditions.

7.5 ~~*5.*~~ For the purpose of meeting its minimum liquid resource requirement, ~~*an FMI*~~the clearing agency's qualifying liquid resources in each currency include cash at the central bank of issue ~~*and*~~or at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps, and committed ~~*repos*~~repurchase agreements, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions. If ~~*an FMI*~~the clearing agency has access to routine credit at the central bank of issue, the ~~*FMI*~~clearing agency may count such access as part of the minimum requirement to the extent it has collateral that is eligible for pledging to, ~~(~~or for conducting other appropriate forms of transactions with~~)~~, the relevant central bank. All such resources ~~*should be*~~are available when needed.

~~*6. An FMI*~~7.6 The clearing agency may supplement its qualifying liquid resources with other forms of liquid resources. If the ~~*FMI*~~clearing agency does so, then these liquid resources ~~*should be*~~are in the form of assets that are likely to be saleable or acceptable as collateral for lines of credit, swaps, or ~~*repos*~~repurchase agreements on an ad hoc basis following a default, even if this cannot be reliably prearranged or guaranteed in extreme market conditions. Even if ~~*an FMI*~~the clearing agency does not have access to routine central bank credit, it ~~*should*~~ still ~~*take*~~takes account of what collateral is typically accepted by the relevant central bank, as such assets may be more likely to be liquid in stressed circumstances. ~~*An FMI should*~~The clearing agency does not assume the availability of emergency central bank credit as a part of its liquidity plan.

~~*7. An FMI should obtain*~~7.7 The clearing agency obtains a high degree of confidence, through rigorous due diligence, that each provider of its minimum required qualifying liquid resources, whether a participant of the ~~*FMI*~~clearing agency or an external party, has sufficient information to understand and to manage its associated liquidity risks, and that it has the capacity to perform as required under its commitment. Where relevant to assessing a liquidity provider's performance reliability with respect to a particular currency, a liquidity provider's potential access to credit

from the central bank of issue may be taken into account. ~~*An FMI should*~~The clearing agency regularly ~~*test*~~tests its procedures for accessing its liquid resources at a liquidity provider.

~~*8. An FMI*~~7.8 The clearing agency with access to central bank accounts, payment services, or securities services ~~*should use*~~uses these services, where practical, to enhance its management of liquidity risk.

~~*9. An FMI should determine*~~7.9 The clearing agency determines the amount and regularly ~~*test*~~tests the sufficiency of its liquid resources through rigorous stress testing. ~~*An FMI should have*~~The clearing agency has clear procedures to report the results of its stress tests to appropriate decision makers at the ~~*FMI*~~clearing agency and to use these results to evaluate the adequacy of and adjust its liquidity risk-management framework. In conducting stress testing, ~~*an FMI should consider*~~the clearing agency considers a wide range of relevant scenarios. Scenarios ~~*should*~~ include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions. Scenarios ~~*should*~~ also take into account the design and operation of the ~~*FMI*~~clearing agency, include all entities that ~~*might*~~may pose material liquidity risks to the ~~*FMI*~~clearing agency (such as settlement banks, *nostro* agents, custodian banks, liquidity providers, and linked ~~*FMIs*~~clearing agencies, trade repositories and payment systems), and where appropriate, cover a multiday period. In all cases, ~~*an FMI should document*~~the clearing agency documents its supporting rationale for, and ~~*should have*~~has appropriate governance arrangements relating to, the amount and form of total liquid resources it maintains.

~~*10. An FMI should establish*~~7.10 The clearing agency establishes explicit rules and procedures that enable the ~~*FMI*~~clearing agency to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations on time following any individual or combined default among its participants. These rules and procedures ~~*should*~~ address unforeseen and potentially uncovered liquidity shortfalls ~~*and should*~~which aim to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. These rules and procedures ~~*should*~~ also indicate the ~~*FMI*~~clearing agency's process to replenish any liquidity resources it may employ during a stress event, so that it can continue to operate in a safe and sound manner.

~~*Principle*~~**Standard 8:** *Settlement finality*~~An FMI should provide~~ – A recognized clearing agency that operates as a central counterparty or securities settlement system provides clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, ~~an FMI should provide~~the clearing agency provides final settlement intraday or in real time.

~~**Key considerations**~~

~~*1. An FMI*~~8.1 The clearing agency's rules and procedures ~~*should*~~ clearly define the point at which settlement is final.

~~*2. An FMI should complete*~~8.2 The clearing agency completes final settlement no later than the end of the value date, and preferably intraday or in real time, to reduce settlement risk. ~~*An LVPS or SSS should consider adopting RTGS*~~The clearing agency that operates as a securities settlement system generally considers adopting real-time gross settlement or multiple-batch processing during the settlement day.

~~*3. An FMI should*~~8.3 The clearing agency clearly ~~*define*~~defines the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a participant.

~~*Principle*~~**Standard 9:** *Money settlements*~~An FMI should conduct~~ – A recognized clearing agency that operates as a central counterparty or securities settlement system conducts its money settlements in central bank money, where practical and available. If central bank money is not used, ~~an FMI should minimise~~the clearing agency minimizes and strictly ~~control~~controls the credit and liquidity risk arising from the use of commercial bank money.

~~**Key considerations**~~

~~*1. An FMI should conduct*~~9.1 The clearing agency conducts its money settlements in central bank money, where practical and available, to avoid credit and liquidity risks.

9.2 ~~2.~~ If central bank money is not used, ~~*an FMI should conduct*~~the clearing agency conducts its money settlements using a settlement asset with little or no credit or liquidity risk.

~~*3.*~~ 9.3 If ~~*an FMI*~~the clearing agency settles in commercial bank money, it ~~*should monitor, manage*~~monitors, manages, and ~~*limit*~~limits its credit and liquidity risks arising from the commercial settlement banks. In particular, ~~*an FMI should establish and monitor*~~the clearing agency establishes and monitors adherence to strict criteria for its settlement banks

that take account of, among other things, their regulation and supervision, creditworthiness, capitalisation, access to liquidity, and operational reliability. ~~*An FMI should*~~The clearing agency also ~~*monitor*~~monitors and ~~*manage*~~manages the concentration of credit and liquidity exposures to its commercial settlement banks.

~~*4.*~~ 9.4 If ~~*an FMI*~~the clearing agency conducts money settlements on its own books, it ~~*should minimise*~~minimizes and strictly ~~*control*~~controls its credit and liquidity risks.

~~*5. An FMI*~~9.5 The clearing agency's legal agreements with any settlement banks ~~*should*~~ state clearly when transfers on the books of individual settlement banks are expected to occur, that transfers are to be final when effected, and that funds received ~~*should*~~are to be transferable as soon as possible, at a minimum by the end of the day and ideally intraday, in order to enable the ~~*FMI*~~clearing agency and its participants to manage credit and liquidity risks.

~~*Principle*~~**Standard 10:** *Physical deliveries*~~An FMI should~~ – A recognized clearing agency clearly ~~state~~states its obligations with respect to the delivery of physical instruments or commodities and ~~should identify, monitor, and manage~~identifies, monitors and manages the risks associated with such physical deliveries.

~~**Key considerations**~~

~~*1. An FMI*~~10.1 The clearing agency's rules ~~*should*~~ clearly state its obligations with respect to the delivery of physical instruments or commodities.

~~*2. An FMI should identify, monitor,*~~10.2 The clearing agency identifies, monitors and ~~*manage*~~manages the risks and costs associated with the storage and delivery of physical instruments ~~*or*~~and commodities.

~~*Principle*~~**Standard 11:** *Central securities depositories*~~A CSD should have~~ – A recognized clearing agency that operates as a central securities depository has appropriate rules and procedures to help ensure the integrity of securities issues and ~~minimise~~minimizes and ~~manage~~manages the risks associated with the safekeeping and transfer of securities. ~~A CSD should maintain~~The clearing agency maintains securities in an ~~immobilised or dematerialised~~immobilized or dematerialized form for their transfer by book entry.

~~**Key considerations**~~

~~*1. A CSD should have*~~11.1 The clearing agency has appropriate rules, procedures~~,~~ and controls, including robust accounting practices, to safeguard the rights of securities issuers and holders, prevent the unauthorised creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains.

~~*2. A CSD should prohibit*~~11.2 The clearing agency prohibits overdrafts and debit balances in securities accounts.

~~*3. A CSD should maintain*~~11.3 The clearing agency maintains securities in an ~~*immobilised*~~immobilized or dematerialised form for their transfer by book entry. Where appropriate, ~~*a CSD should provide*~~the clearing agency provides incentives to ~~*immobilise*~~immobilize or dematerialise securities.

~~*4. A CSD should protect*~~11.4 The clearing agency protects assets against custody risk through appropriate rules and procedures consistent with its legal framework.

~~*5. A CSD should employ*~~11.5 The clearing agency employs a robust system that ensures segregation between ~~*the CSD's*~~its own assets and the securities of its participants and segregation among the securities of participants. Where supported by the legal framework, the ~~*CSD should*~~clearing agency also ~~*support*~~supports operationally the segregation of securities belonging to a participant's customers on the participant's books and ~~*facilitate*~~facilitates the transfer of customer holdings.

~~*6. A CSD should identify, measure, monitor*~~11.6 The clearing agency identifies, measures, monitors, and ~~*manage*~~manages its risks from other activities that it may perform; additional tools may be necessary in order to address these risks.

~~*Principle*~~**Standard 12:** *Exchange-of-value settlement systems*~~If an FMI~~ – Where a recognized clearing agency operates as a central counterparty or securities settlement system and settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it ~~should eliminate~~eliminates principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.

~~**Key consideration**~~

~~*1. An FMI*~~12.1 The clearing agency that is an exchange-of-value settlement system ~~*should eliminate*~~eliminates principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation also occurs, regardless of whether the ~~*FMI*~~clearing agency settles on a gross or net basis and when finality occurs.

~~*Principle*~~**Standard 13:** *Participant~~ default rules and procedures~~*An ~~FMI should have~~ – A recognized clearing agency has effective and clearly defined rules and procedures to manage a participant default. These rules and procedures ~~should be~~are designed to ensure that the ~~FMI~~clearing agency can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

~~**Key considerations**~~

~~*1. An FMI should have*~~13.1 The clearing agency has default rules and procedures that enable the ~~*FMI*~~clearing agency to continue to meet its obligations in the event of a participant default and that address the replenishment of resources following a default.

~~*2. An FMI should be*~~13.2 The clearing agency is well prepared to implement its default rules and procedures, including any appropriate discretionary procedures provided for in its rules.

~~*3. An FMI should*~~13.3 The clearing agency publicly ~~*disclose*~~discloses key aspects of its default rules and procedures.

~~*4. An FMI should involve*~~13.4 The clearing agency involves its participants and other stakeholders in the testing and review of the ~~*FMI*~~clearing agency's default procedures, including any close-out procedures. Such testing and review ~~*should be*~~is conducted at least annually or following material changes to the clearing agency's rules and procedures to ensure that they are practical and effective.

~~*Principle*~~**Standard 14:** *Segregation and portability*~~A CCP should have~~ – A recognized clearing agency that operates as a central counterparty has rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the ~~CCP~~clearing agency with respect to those positions.

~~**Key considerations**~~

~~*1. A CCP should*~~14.1 The clearing agency has, at a minimum, ~~*have*~~ segregation and portability arrangements that effectively protect a participant's customers' positions and related collateral from the default or insolvency of that participant. If the ~~*CCP*~~clearing agency additionally offers protection of such customer positions and collateral against the concurrent default of the participant and a fellow customer, the ~~*CCP should take*~~clearing agency takes steps to ensure that such protection is effective.

~~*2. A CCP should employ*~~14.2 The clearing agency employs an account structure that enables it readily to identify positions of a participant's customers and to segregate related collateral. ~~*A CCP should maintain*~~The clearing agency maintains customer positions and collateral in individual customer accounts or in omnibus customer accounts.

~~*3. A CCP should structure*~~14.3 The clearing agency structures its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting participant's customers will be transferred to one or more other participants.

~~*4. A CCP should disclose*~~14.4 The clearing agency discloses its rules, policies, and procedures relating to the segregation and portability of a participant's customers' positions and related collateral. In particular, the ~~*CCP should disclose*~~clearing agency discloses whether customer collateral is protected on an individual or omnibus basis. In addition, ~~*a CCP should disclose*~~ the clearing agency discloses any constraints, such as legal or operational constraints, that may impair its ability to segregate or port ~~a~~the participant's customers' positions and related collateral.

~~*Principle*~~**Standard 15:** *General business risk*~~An FMI should identify, monitor~~ – A recognized clearing agency identifies, monitors, and ~~manage~~manages its general business risk and ~~hold~~holds sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets ~~should~~are at all times ~~be~~ sufficient to ensure a recovery or orderly wind-down of critical operations and services.

~~**Key considerations**~~

~~*1. An FMI should have*~~15.1 The clearing agency has robust management and control systems to identify, monitor, and manage general business risks, including losses from poor execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses.

~~*2. An FMI should hold*~~15.2 The clearing agency holds liquid net assets funded by equity (such as common stock, disclosed reserves, or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets funded by equity ~~*an FMI should hold should be*~~the clearing agency holds is determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.

~~*3. An FMI should maintain*~~15.3 The clearing agency maintains a viable recovery or orderly wind-down plan and ~~*should hold*~~holds sufficient liquid net assets funded by equity to implement this plan. At a minimum, ~~*an FMI should hold*~~the clearing agency holds liquid net assets funded by equity equal to at least six months of current operating expenses. These assets are in addition to resources held to cover participant defaults ~~*or*~~and other risks required to be covered under the financial resources ~~*principles*~~Standards. However, equity held under international risk-based capital standards can be included where relevant and appropriate to avoid duplicate capital requirements.

~~*4.*~~ 15.4 Assets held to cover general business risk ~~*should be*~~are of high quality and sufficiently liquid in order to allow the ~~*FMI*~~clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.

~~*5. An FMI should maintain*~~15.5 The clearing agency maintains a viable plan for raising additional equity should its equity fall close to or below the amount needed. This plan ~~*should be*~~is approved by the board of directors and updated regularly.

~~*Principle*~~**Standard 16:** *Custody and investment risks*~~An FMI should safeguard~~ – A recognized clearing agency safeguards its own and its participants' assets and ~~minimise~~minimizes the risk of loss on and delay in access to these assets. ~~An FMI~~The clearing agency's investments ~~should be~~are in instruments with minimal credit, market, and liquidity risks.

~~**Key considerations**~~

~~*1. An FMI should hold*~~16.1 The clearing agency holds its own and its participants' assets at supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls that fully protect ~~*these*~~such assets.

~~*2. An FMI should have*~~16.2 The clearing agency has prompt access to its assets and the assets provided by participants, when required.

~~*3. An FMI should evaluate and understand*~~16.3 The clearing agency evaluates and understands its exposures to its custodian banks, taking into account the full scope of its relationships with each.

~~*4. An FMI*~~16.4 The clearing agency's investment strategy ~~*should be*~~is consistent with its overall risk-management strategy and fully disclosed to its participants, and investments ~~*should be*~~are secured by, or ~~*be*~~ claims on, high-quality obligors. These investments ~~*should*~~ allow for quick liquidation with little, if any, adverse price effect.

~~*Principle*~~**Standard 17:** *Operational ~~risk~~*~~An FMI should identify~~*risks* – A recognized clearing agency identifies the plausible sources of operational risk, both internal and external, and ~~mitigate~~mitigates their impact through the use of appropriate systems, policies, procedures, and controls. Systems ~~should be~~are designed to ensure a high degree of security and operational reliability and ~~should~~ have adequate, scalable capacity. Business continuity management ~~should aim~~aims for timely recovery of operations and ~~fulfilment~~fulfillment of the ~~FMI~~clearing agency's obligations, including in the event of a wide-scale or major disruption.

~~**Key considerations**~~

~~*1. An FMI should establish*~~17.1 The clearing agency establishes a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks.

~~*2. An FMI*~~17.2 The clearing agency's board of directors ~~*should*~~ clearly ~~*define*~~defines the roles and responsibilities for addressing operational risk and ~~*should endorse*~~endorses the ~~*FMI*~~clearing agency's operational risk-management

framework. Systems, operational policies, procedures, and controls ~~*should be*~~are reviewed, audited, and tested periodically and after significant changes.

~~*3. An FMI should have*~~17.3 The clearing agency has clearly defined operational reliability objectives and ~~*should have*~~has policies in place that are designed to achieve those objectives.

~~*4. An FMI should ensure*~~17.4 The clearing agency ensures that it has scalable capacity adequate to handle increasing stress volumes and to achieve its service-level objectives.

~~*5. An FMI should have*~~17.5 The clearing agency has comprehensive physical and information security policies that address all potential vulnerabilities and threats.

~~*6. An FMI should have*~~17.6 The clearing agency has a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption. The plan ~~*should incorporate*~~incorporates the use of a secondary site and ~~*should be*~~is designed to ensure that critical information technology (IT) systems can resume operations within two hours following disruptive events. The plan ~~*should be*~~is designed to enable the ~~*FMI*~~clearing agency to complete settlement by the end of the day of the disruption, even in ~~*case of*~~ extreme circumstances. The ~~*FMI should*~~clearing agency regularly ~~*test*~~tests these arrangements.

~~*7. An FMI should identify, monitor*~~17.7 The clearing agency identifies, monitors, and ~~*manage*~~manages the risks that key participants, other ~~*FMIs*~~clearing agencies, trade repositories, payment systems, and service and utility providers might pose to its operations. In addition, ~~*an FMI should identify, monitor, and manage*~~the clearing agency identifies, monitors, and manages the risks its operations might pose to other ~~*FMIs*~~clearing agencies, trade repositories, and payment systems.

~~*Principle*~~**Standard 18:** *Access and participation requirements* ~~An FMI should have~~ – A recognized clearing agency has objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

~~**Key considerations**~~

~~*1. An FMI should allow*~~ 18.1 The clearing agency allows for fair and open access to its services, including by direct and, where relevant, indirect participants and other ~~*FMIs*~~clearing agencies, payment systems and trade repositories, based on reasonable risk-related participation requirements.

~~*2. An FMI*~~18.2 The clearing agency's participation requirements ~~*should be*~~are justified in terms of the safety and efficiency of the ~~*FMI*~~clearing agency and the markets it serves, ~~*be*~~are tailored to and commensurate with the ~~*FMI*~~clearing agency's specific risks, and ~~*be*~~are publicly disclosed. Subject to maintaining acceptable risk control standards, ~~*an FMI should endeavour*~~the clearing agency endeavours to set requirements that have the least-restrictive impact on access that circumstances permit.

~~*3. An FMI should monitor*~~18.3 The clearing agency monitors compliance with its participation requirements on an ongoing basis and ~~*have*~~has clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a participant that breaches, or no longer meets, the participation requirements.

~~*Principle*~~**Standard 19:** *Tiered participation arrangements*~~An FMI should identify, monitor~~ – A recognized clearing agency identifies, monitors, and ~~manage~~manages the material risks to the ~~FMI~~clearing agency arising from any tiered participation arrangements.

~~**Key considerations**~~

~~*1. An FMI should ensure*~~19.1 The clearing agency ensures that its rules, procedures, and agreements allow it to gather basic information about indirect participation in order to identify, monitor, and manage any material risks to the ~~*FMI*~~clearing agency arising from such tiered participation arrangements.

~~*2. An FMI should identify*~~19.2 The clearing agency identifies material dependencies between direct and indirect participants that might affect the ~~*FMI.*~~ clearing agency.

~~*3. An FMI should identify*~~19.3 The clearing agency identifies indirect participants responsible for a significant proportion of transactions processed by the ~~*FMI*~~clearing agency and indirect participants whose transaction volumes or values are large relative to the capacity of the direct participants through which they access the ~~*FMI*~~clearing agency in order to manage the risks arising from these transactions.

~~*4. An FMI should*~~19.4 The clearing agency regularly ~~*review*~~reviews risks arising from tiered participation arrangements and ~~*should take*~~takes mitigating action when appropriate.

~~*Principle 20: FMI links*~~
An FMI**Standard 20**: *Links with other financial market infrastructures* – A recognized clearing agency that establishes a link with one or more ~~FMIs should identify, monitor, and manage~~clearing agencies or trade repositories identifies, monitors, and manages link-related risks.

~~**Key considerations**~~

~~*1.*~~ 20.1 Before entering into a link ~~*arrangement*~~ and on an ongoing basis once the link is established, ~~*an FMI should identify, monitor, and manage*~~the clearing agency identifies, monitors, and manages all potential sources of risk arising from the link~~ *arrangement. Link arrangements should be*~~. Links are designed such that ~~*each FMI*~~the clearing agency is able to observe the other ~~*principles in this report*~~Standards.

~~*2.*~~ 20.2 A link ~~*should have*~~has a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the ~~*FMIs*~~clearing agencies and trade repositories involved in the link.

20.3 ~~*3.*~~ Linked ~~*CSDs should*~~central securities depositories measure, monitor, and manage the credit and liquidity risks arising from each other. Any credit extensions between ~~*CSDs should be*~~central securities depositories are covered fully with high-quality collateral and ~~*be*~~are subject to limits. ~~*4.*~~

20.4 Provisional transfers of securities between linked ~~*CSDs should be*~~central securities depositories are prohibited or, at a minimum, the retransfer of provisionally transferred securities ~~*should be*~~are prohibited prior to the transfer becoming final.

~~*5.*~~ 20.5 An investor ~~*CSD should*~~central securities depository only ~~*establish*~~establishes a link with an issuer ~~*CSD*~~central securities depository if the ~~*arrangement*~~link provides a high level of protection for the rights of the investor ~~*CSD*~~central securities depository's participants.

20.6 ~~*6.*~~ An investor ~~*CSD*~~central securities depository that uses an intermediary to operate a link with an issuer ~~*CSD should measure, monitor, and manage*~~central securities depository measures, monitors, and manages the additional risks (including custody, credit, legal, and operational risks) arising from the use of the intermediary.

~~*7.*~~ 20.7 Before entering into a link with another ~~*CCP, a CCP should identify and manage*~~central counterparty, a central counterparty identifies and manages the potential spill-over effects from the default of the linked ~~*CCP*~~central counterparty. If a link has three or more ~~*CCPs, each CCP should identify, assess, and manage*~~central counterparties, each central counterparty identifies, assesses, and manages the risks of the collective link~~ *arrangement*~~.

~~*8.*~~ 20.8 Each ~~*CCP*~~central counterparty in a ~~*CCP*~~central counterparty link ~~*arrangement should be*~~is able to cover, at least on a daily basis, its current and potential future exposures to the linked ~~*CCP*~~central counterparty and its participants, if any, fully with a high degree of confidence without reducing the ~~*CCP*~~central counterparty's ability to ~~*fulfil*~~fulfill its obligations to its own participants at any time.

~~*9. A TR should carefully assess the additional operational risks related to its links to ensure the scalability and reliability of IT and related resources.*~~

~~*Principle*~~**Standard 21:** *Efficiency and effectiveness*~~An FMI should be~~ – A recognized clearing agency is efficient and effective in meeting the requirements of its participants and the markets it serves.

~~**Key considerations**~~

~~*1. An FMI should be*~~21.1 The clearing agency is designed to meet the needs of its participants and the markets it serves, in particular, with regard to choice of a clearing and settlement arrangement; operating structure; scope of products cleared, settled, or recorded; and use of technology and procedures.

~~*2. An FMI should have*~~21.2 The clearing agency has clearly defined goals and objectives that are measurable and achievable, such as in the areas of minimum service levels, risk-management expectations, and business priorities.

~~*3. An FMI should have*~~21.3 The clearing agency has established mechanisms for the regular review of its efficiency and effectiveness.

~~*Principle*~~**Standard 22:** *Communication procedures and standards*~~An FMI should use~~ – A recognized clearing agency uses, or at a minimum ~~accommodate~~accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, depository, and recording.

~~**Key consideration**~~

~~*1. An FMI should use*~~22.1 The clearing agency uses, or at a minimum ~~*accommodate*~~accommodates, internationally accepted communication procedures and standards.

~~*Principle*~~ **Standard 23:** *Disclosure of rules, key procedures, and market data*~~An FMI should have~~ – A recognized clearing agency has clear and comprehensive rules and procedures and ~~should provide~~provides sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the ~~FMI~~clearing agency. All relevant rules and key procedures ~~should be~~are publicly disclosed.

~~**Key considerations**~~

~~*1. An FMI should adopt*~~23.1 The clearing agency adopts clear and comprehensive rules and procedures that are fully disclosed to participants. Relevant rules and key procedures ~~*should*~~are also ~~*be*~~ publicly disclosed.

~~*2. An FMI should disclose*~~23.2 The clearing agency discloses clear descriptions of the ~~*system's*~~clearing agency's systems' design and operations, as well as the ~~*FMI's and participants'*~~ rights and obligations of the clearing agency and its participants, so that participants can assess the risks they would incur by participating in the ~~*FMI.*~~ clearing agency.

~~*3. An FMI should provide*~~23.3 The clearing agency provides all necessary and appropriate documentation and training to facilitate participants' understanding of the ~~*FMI*~~clearing agency's rules and procedures and the risks they face from participating in the ~~*FMI*~~clearing agency.

~~*4. An FMI should*~~23.4 The clearing agency publicly ~~*disclose*~~discloses its fees at the level of individual services it offers as well as its policies on any available discounts. The ~~*FMI should provide*~~clearing agency provides clear descriptions of priced services for comparability purposes.

~~*5. An FMI should complete*~~23.5 The clearing agency completes regularly and ~~*disclose*~~discloses publicly responses to the ~~*CPSS-IOSCO*~~PFMI Disclosure ~~framework for financial market infrastructures. *An FMI also should*~~Framework Document. The clearing agency also, at a minimum, ~~*disclose*~~discloses basic data on transaction volumes and values.

APPENDIX "C"

TEXTS OF PROPOSED NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*
(INCLUDING RELATED FORMS 24-102 F1 AND F2) AND
COMPANION POLICY 24-102CP TO NATIONAL INSTRUMENT 24-102 *CLEARING AGENCY REQUIREMENTS*

NATIONAL INSTRUMENT 24-102
CLEARING AGENCY REQUIREMENTS

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PART 1
DEFINITIONS, INTERPRETATION AND APPLICATION

Definitions

1.1 In this Instrument, including Appendix A to this Instrument,

"board of directors" means, in the case of a recognized clearing agency that does not have a board of directors, a group of individuals that acts for the clearing agency in a capacity similar to a board of directors;

"clearing agency" includes, in Quebec, a clearing house, central securities depository and settlement system within the meaning of the Quebec *Securities Act* and a derivatives clearing house and settlement system within the meaning of the Quebec *Derivatives Act*;

"central counterparty" means a person or company that interposes itself between the counterparties to securities or derivatives transactions in one or more financial markets, acting functionally as the buyer to every seller and the seller to every buyer or the counterparty to every party;

"central securities depository" means a person or company that provides centralized facilities as a depository of securities, including securities accounts, central safekeeping services, and asset services, which may include the administration of corporate actions and redemptions;

"executive officer" has the meaning ascribed to it in National Instrument 52-110 – *Audit Committee*;

"exempt clearing agency" means a clearing agency that has been granted a decision of the securities regulatory authority pursuant to securities legislation exempting it from the requirement in such legislation to be recognized by the securities regulatory authority as a clearing agency;

"immediate family member" has the meaning ascribed to it in National Instrument 52-110 – *Audit Committee*;

"initial margin", in relation to a clearing agency's margin system to manage credit exposures to its participants, means collateral that is required by the clearing agency to cover potential changes in the value of each participant's position (that is, potential future exposure) over an appropriate close-out period in the event the participant defaults;

"link" means, in relation to a clearing agency, a set of contractual and operational arrangements that directly or indirectly through an intermediary connects the clearing agency and one or more other systems or arrangements for the clearing, settlement or recording of securities or derivatives transactions;

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

"PFMI Disclosure Framework Document" means a disclosure document completed substantially in the form of *Annex A: FMI disclosure template* of the December 2012 report *Principles for financial market infrastructures: Disclosure framework and Assessment methodology* published by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions, as amended, supplemented or superseded from time to time or a similar disclosure document required to be completed regularly and disclosed publicly by a clearing agency in accordance with the regulatory requirements of a foreign jurisdiction in which the clearing agency is located;

"product", when used in relation to a clearing agency's depository, clearance or settlement services, means a security or derivative, or class of securities or derivatives, or, where the context so requires, a trade or other transaction in or related to a security or derivative, or class of securities or derivatives, that is eligible for such services;

"securities settlement system" means a system that enables securities to be transferred and settled by book entry according to a set of predetermined multilateral rules;

"Standard" means a standard set out in Appendix A to this Instrument that is based on international standards governing financial market infrastructures developed by the Committee on Payment and Settlement Systems and the International Organization of Securities Commissions;

"stress test" or "stress testing" means, except in section 4.13, a test conducted periodically by a clearing agency that operates as a central counterparty or securities settlement system to estimate credit and liquidity exposures that would result from the realization of extreme price changes to determine the amount and sufficiency of the clearing agency's total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions;

"variation margin", in relation to the margin system of a clearing agency that operates as a central counterparty to manage credit exposures to its participants for all products it clears, means funds that are collected and paid out on a regular and *ad hoc* basis by the clearing agency to reflect current exposures resulting from actual changes in market prices.

Interpretation – Meaning of Accounting Terms

1.2 In this Instrument, each of the following terms has the same meaning as in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*: "accounting principles", "auditing standards", and "publicly accountable enterprises".

Interpretation – Affiliated Entity, Controlled Entity and Subsidiary Entity

1.3 (1) In this Instrument, a person or company is considered to be an affiliated entity of another person or company if one is a subsidiary entity of the other or if both are subsidiary entities of the same person or company, or if each of them is a controlled entity of the same person or company.

(2) In this Instrument, a person or company is considered to be controlled by a person or company if

(a) in the case of a person or company,

(i) voting securities of the first-mentioned person or company carrying more than fifty percent of the votes for the election of directors are held, otherwise than by way of security only, by or for the benefit of the other person or company, and

(ii) the votes carried by the securities are entitled, if exercised, to elect a majority of the directors of the first-mentioned person or company;

(b) in the case of a partnership that does not have directors, other than a limited partnership, the second-mentioned person or company holds more than fifty percent of the interests in the partnership; or

(c) in the case of a limited partnership, the general partner is the second-mentioned person or company.

(3) In this Instrument, a person or company is considered to be a subsidiary entity of another person or company if

(a) it is a controlled entity of,

(i) that other,

(ii) that other and one or more persons or companies each of which is a controlled entity of that other, or

(iii) two or more persons or companies, each of which is a controlled entity of that other; or

(b) it is a subsidiary entity of a person or company that is the other's subsidiary entity.

Interpretation – Extended Meaning of Affiliate

1.4 For the purposes of Standards 4, 5, 6 and 7 in Appendix A to this Instrument, a person or company is also considered to be an affiliate of a participant (in this section, the person or company and the participant each described as a "party") where,

(a) a party holds directly or indirectly, otherwise than by way of security only, voting securities of the other party carrying at least 20 percent of the votes for the election of directors; or

(b) in the event paragraph (a) is not applicable,

(i) a party holds directly or indirectly, otherwise than by way of security only, an interest in the other party that allows it to direct the management or operations of the other party; or

(ii) financial information in respect of both parties is consolidated for financial reporting purposes.

Application

1.5 (1) Part 3 applies to a recognized clearing agency that operates as any of the following:

(a) a central counterparty;

(b) a central securities depository; or

(c) a securities settlement system.

(2) Unless the context otherwise indicates, Part 4 applies to a recognized clearing agency whether or not it operates as a central counterparty, central securities depository or securities settlement system.

(3) In Quebec, if there is a conflict or an inconsistency between section 2.2 for implementing a material change and the provisions of the Quebec *Derivatives Act* governing the self-certification process,, the provisions of the Quebec *Derivatives Act* prevail.

PART 2
CLEARING AGENCY RECOGNITION
OR EXEMPTION FROM RECOGNITION

Application and initial filing of information

2.1 (1) An applicant for recognition as a clearing agency under securities legislation, or for exemption from the requirement to be recognized as a clearing agency pursuant to such securities legislation, must include in its application:

(a) where applicable, the applicant's most recently completed PFMI Disclosure Framework Document;

(b) sufficient information to demonstrate that the applicant is in compliance with,

(i) provincial and territorial securities legislation, or

(ii) the regulatory regime of a foreign jurisdiction in which the applicant's head office or principal place of business is located; and

(c) any additional relevant information sufficient to demonstrate that it is in the public interest for the securities regulatory authority to recognize or exempt the applicant, as the case may be.

(2) In addition to the requirement set out in subsection (1), an applicant whose head office or principal place of business is located in a foreign jurisdiction must,

(a) certify that it will assist the securities regulatory authority in accessing the applicant's books and records and in undertaking an onsite inspection and examination at the applicant's premises;

(b) certify that it will provide the securities regulatory authority, where requested by such authority, with an opinion of legal counsel that the applicant has, as a matter of law, the power and authority to,

(i) provide the securities regulatory authority with prompt access to its books and records; and

(ii) submit to onsite inspection and examination by the securities regulatory authority.

(3) In addition to the requirements set out in subsections (1) and (2), an applicant whose head office or principal place of business is located in a foreign jurisdiction must file a completed Form 24-102-F1 *Submission to Jurisdiction and Appointment of Agent for Service*.

(4) An applicant must inform the securities regulatory authority in writing of any material change to the information provided in its application, or if any of the information becomes materially inaccurate for any reason, as soon as the change occurs or the applicant becomes aware of any inaccuracy.

Material changes and other changes in information

2.2 (1) In this section, for greater certainty, a "material change" includes, in relation to a clearing agency,

(a) any change to the clearing agency's constating documents or by-laws;

(b) any change to the clearing agency's corporate governance or corporate structure, including any change of control of the clearing agency, whether directly or indirectly;

(c) any material change to an agreement among the clearing agency and participants in connection with the clearing agency's operations and services, including those agreements to which the clearing agency is a party and those agreements among participants to which the clearing agency is not a party, but which are expressly referred to in the clearing agency's rules or procedures and are made available by participants to the clearing agency;

(d) any material change to the clearing agency's rules, operating procedures, user guides, manuals, or other documentation governing or establishing the rights, obligations and relationships among the clearing agency and participants in connection with the clearing agency's operations and services;

(e) any material change to the design, operation or functionality of any of the clearing agency's operations and services;

(f) the establishment or removal of a link or any material change to an existing link;

(g) commencing to engage in a new type of business activity or ceasing to engage in a business activity in which the clearing agency is then engaged; and

(h) any other matter identified as a material change in the recognition terms and conditions.

(2) A recognized clearing agency must not implement a material change without obtaining the prior written approval of the securities regulatory authority.

(3) If a proposed material change would affect the information set out in its PFMI Disclosure Framework Document filed with the securities regulatory authority, a recognized clearing agency must complete and file with the securities regulatory authority, prior to implementing the material change, an appropriate amendment to the its PFMI Disclosure Framework Document.

(4) Where a recognized clearing agency proposes to modify a fee or introduce a new fee for any of its clearing, settlement or depository services, the clearing agency must notify in writing the securities regulatory authority of such fee change at least twenty business days before implementing the fee change.

(5) An exempt clearing agency must notify in writing the securities regulatory authority which granted the exemption of any material change to the information provided to the securities regulatory authority in its PFMI Disclosure Framework Document and related application materials, or if any of the information becomes materially inaccurate for any reason, as soon as the change occurs or the exempt clearing agency becomes aware of any inaccuracy.

Ceasing to carry on business

2.3 (1) A recognized clearing agency or exempt clearing agency that intends to cease carrying on business in Canada as a clearing agency must file a report on Form 24-102-F2 *Cessation of Operations Report for Clearing Agency* with the securities regulatory authority,

(a) at least 180 days before ceasing to carry on business if a significant reason for ceasing to carry on business relates to the clearing agency's financial viability or any other matter that is preventing, or may potentially prevent, it from being able to provide its operations and services as a going concern; or

(b) at least 90 days before ceasing to carry on business for any other reason.

(2) A recognized clearing agency or exempt clearing agency that involuntarily ceases to carry on business in Canada as a clearing agency must file a report on Form 24-102-F2 *Cessation of Operations Report for Clearing Agency* with the securities regulatory authority as soon as practicable after it ceases to carry on that business.

Filing of initial audited financial statements

2.4 (1) An applicant must file audited financial statements for its most recently completed financial year with the securities regulatory authority as part of its application under section 2.1.

(2) The financial statements referred to in subsection (1) must,

(a) be prepared in accordance with Canadian GAAP applicable to publicly accountable enterprises, IFRS or the generally accepted accounting principles of the foreign jurisdiction in which the person or company is incorporated, organized or located,

(b) identify in the notes to the financial statements the accounting principles used to prepare the financial statements,

(c) disclose the presentation currency, and

(d) be audited in accordance with Canadian GAAS, International Standards on Auditing or the generally accepted auditing standards of the foreign jurisdiction in which the person or company is incorporated, organized or located.

(3) The financial statements referred to in subsection (1) must be accompanied by an auditor's report that,

(a) expresses an unmodified or unqualified opinion,

(b) identifies all financial periods presented for which the auditor's report applies,

(c) identifies the auditing standards used to conduct the audit,

(d) identifies the accounting principles used to prepare the financial statements,

(e) is prepared in accordance with the same auditing standards used to conduct the audit, and

(f) is prepared and signed by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction, and that meets the professional standards of that jurisdiction.

Filing of annual audited and interim financial statements

2.5 (1) A recognized clearing agency or exempt clearing agency must file annual audited financial statements that comply with the requirements in subsections 2.4(2) and (3) with the securities regulatory authority no later than the 90th day after the end of its financial year.

(2) A recognized clearing agency or exempt clearing agency must file interim financial statements that comply with the requirements in paragraphs 2.4(2)(a) and (2)(b) with the securities regulatory authority no later than the 45th day after the end of each interim period.

PART 3
INTERNATIONAL STANDARDS APPLICABLE TO RECOGNIZED CLEARING AGENCIES

Standards

3.1 A recognized clearing agency must establish, implement and maintain rules, procedures, policies or operations designed to ensure that it meets or exceeds the Standards in Appendix A with respect to its clearing, settlement and depository activities.

PART 4
OTHER REQUIREMENTS OF RECOGNIZED CLEARING AGENCIES

Division 1 – Governance:

Board of directors

4.1 (1) A recognized clearing agency must have a board of directors.

(2) The board of directors must include appropriate representation by individuals who are

(a) independent of the clearing agency; and

(b) not employees or executive officers of a participant or their immediate family members.

(3) For the purposes of paragraph (2)(a), an individual is independent of a clearing agency if he or she has no direct or indirect material relationship with the clearing agency.

(4) For the purposes of subsection (3), a "material relationship" is a relationship which could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment.

(5) Despite subsection (4), the following individuals are considered to have a material relationship with a clearing agency:

(a) an individual who is, or has been within the last three years, an employee or executive officer of the clearing agency or any of its affiliates;

(b) an individual whose immediate family member is, or has been within the last three years, an executive officer of the clearing agency or any of its affiliates;

(c) an individual who beneficially owns, directly or indirectly, voting securities carrying more than ten per cent of the voting rights attached to all voting securities of the clearing agency or any of its affiliates for the time being outstanding;

(d) an individual whose immediate family member beneficially owns, directly or indirectly, voting securities carrying more than ten per cent of the voting rights attached to all voting securities of the clearing agency or any of its affiliates for the time being outstanding;

(e) an individual who is, or has been within the last three years, an executive officer of a person or company that beneficially owns, directly or indirectly, voting securities carrying more than ten per cent of the voting rights attached to all voting securities of the clearing agency or any of its affiliates for the time being outstanding; and

(f) an individual who accepts or who received during any 12 month period within the last 3 years, directly or indirectly, any audit, consulting, advisory or other compensatory fee from the clearing agency or any of its affiliates, other than as remuneration for acting in his or her capacity as a member of the board of directors or any board committee, or as a part-time chair or vice-chair of the board or any board committee.

(6) For the purposes of subsection (5), the indirect acceptance by an individual of any audit, consulting, advisory or other compensatory fee includes acceptance of a fee by

(a) an individual's immediate family member; or

(b) an entity in which such individual is a partner, a member, an officer such as a managing director occupying a comparable position or an executive officer, or occupies a similar position (except limited partners, non-managing members and those occupying similar positions who, in each case, have no active role in providing services to the entity) and which provides accounting, consulting, legal, investment banking or financial advisory services to the clearing agency or any of its affiliates.

(7) For the purposes of subsection (5), compensatory fees do not include the receipt of fixed amounts of compensation under a retirement plan (including deferred compensation) for prior service with the clearing agency if the compensation is not contingent in any way on continued service.

(8) For the purposes of subsection (5), an individual appointed to the board of directors or board committee of the clearing agency or any of its affiliates or of a person or company referred to in paragraph (5)(e) will not be considered to have a material relationship with the clearing agency solely because the individual acts, or has previously acted, as a chair or vice-chair of the board of directors or a board committee.

(9) If a clearing agency is a reporting issuer and there is a conflict or an inconsistency between this section 4.1 and the provisions of National Instrument 52-110 *Audit Committee* governing the audit committee members, the provisions of National Instrument 52-110 *Audit Committee* prevail.

Documented procedures regarding risk spill-overs

4.2 The board of directors and management of a recognized clearing agency must have documented procedures to manage possible risk spill over where the clearing agency provides services with a different risk profile than its depository, clearing, and settlement services.

Chief Risk Officer and Chief Compliance Officer

4.3 (1) A recognized clearing agency must designate a chief risk officer and a chief compliance officer, who must report directly to the board of directors or, if determined by the board of directors, to the chief executive officer of the clearing agency.

(2) The chief risk officer must,

(a) have full responsibility and authority to maintain, implement and enforce the risk management framework established by the clearing agency;

(b) make recommendations to the clearing agency's board of directors regarding the clearing agency's risk management framework;

(c) monitor the effectiveness of the clearing agency's risk management framework on an ongoing basis; and

(d) report to the clearing agency's board of directors on a timely basis upon becoming aware of any significant deficiency with the risk management framework.

(3) The chief compliance officer must,

(a) establish, implement, maintain and enforce written policies and procedures to identify and resolve conflicts of interest and ensure that the clearing agency complies with securities legislation;

(b) monitor compliance with the policies and procedures described under paragraph (a) on an ongoing basis;

(c) report to the board of directors of the clearing agency as soon as practicable upon becoming aware of any circumstance indicating that the clearing agency, or any individual acting on its behalf, is not in compliance with securities legislation and one or more of the following apply:

(i) the non-compliance creates a risk of harm to a participant,

(ii) the non-compliance creates a risk of harm to the broader financial system,

(iii) the non-compliance is part of a pattern of non-compliance, or

(iv) the non-compliance may have an impact on the ability of the clearing agency to carry on business in compliance with securities legislation;

(d) prepare and certify an annual report assessing compliance by the clearing agency, and individuals acting on its behalf, with securities legislation and submit the report to the board of directors; and

(e) report to the clearing agency's board of directors as soon as practicable upon becoming aware of a conflict of interest that creates a risk of harm to a participant or to the capital markets; and

(f) concurrently with submitting a report under paragraphs (c), (d) or (e), file a copy of such report with the securities regulatory authority.

Board or advisory committees

4.4 The board of directors of a recognized clearing agency must establish and maintain one or more committees on risk management, finance, audit and executive compensation, whose mandates must include, at a minimum, the following:

(a) providing advice and recommendations to the board of directors to assist it in fulfilling its risk management responsibilities, including reviewing and assessing the clearing agency's risk management policies and procedures, the adequacy of the implementation of appropriate procedures to mitigate and manage such risks, and the clearing agency's participation standards and collateral requirements;

(b) ensuring adequate processes and controls are in place over the models used to quantify, aggregate, and manage the clearing agency's risks;

(c) monitoring the financial performance of the clearing agency and providing financial management oversight and direction to the business and affairs of the clearing agency;

(d) implementing policies and processes to identify, address, and manage potential conflicts of interest of board members;

(e) regularly reviewing the board of directors' and senior management's performance and the performance of each individual member; and

(f) a requirement that these committees,

(i) where the committee is a board committee, be chaired by a sufficiently knowledgeable individual who is independent of the clearing agency,

(ii) subject to clause (iii), have an appropriate representation by individuals who are independent of the clearing agency; and

(iii) where the committee is the audit or risk committee, have an appropriate representation by individuals who are

(A) independent of the clearing agency, and

(B) not employees or executive officers of a participant or their immediate family members.

Division 2 – Default management:

Use of own capital

4.5 A recognized clearing agency that operates as a central counterparty must dedicate and use a reasonable portion of its own capital to cover losses resulting from one or more participant defaults prior to applying the collateral of, or other prefunded financial resources contributed by, the non-defaulting participants.

Division 3 – Operational risk:

Systems requirements

4.6 A recognized clearing agency must, for each of the systems that support its clearing, settlement and depository functions,

(a) develop and maintain,

(i) an adequate system of internal controls over its systems that support the clearing agency's operations and services, and

(ii) adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, change management, problem management, network support and system software support; and

(b) in accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually,

(i) make reasonable current and future capacity estimates, and

(ii) conduct capacity stress tests to determine the ability of those systems to process transactions in an accurate, timely and efficient manner, and

(c) promptly notify the regulator or, in Québec, the securities regulatory authority of any material systems failure, malfunction, delay or security breach and provide timely updates on the status of the failure, malfunction, delay or security breach, the resumption of service and the results of the clearing agency's internal review of the failure, malfunction, delay or security breach.

Systems reviews

4.7 (1) A recognized clearing agency must annually engage a qualified party to conduct an independent systems review and vulnerability assessment and prepare a report in accordance with established audit standards and best industry practices to ensure that the clearing agency is in compliance with paragraph 4.6(a) and section 4.9.

(2) The clearing agency must provide the report resulting from the review conducted under subsection (1) to,

(a) its board of directors, or audit committee, promptly upon the report's completion; and

(b) the regulator or, in Québec, the securities regulatory authority, within the earlier of 30 days of providing the report to its board of directors or the audit committee or 60 days after the calendar year end.

Clearing agency technology requirements and testing facilities

4.8 (1) A recognized clearing agency must make publicly available, in their final form, all technology requirements regarding interfacing with or accessing the clearing agency,

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(2) After complying with subsection (1), the clearing agency must make available testing facilities for interfacing with or accessing the clearing agency,

(a) if operations have not begun, sufficiently in advance of operations to allow a reasonable period for testing and system modification by participants, and

(b) if operations have begun, sufficiently in advance of implementing a material change to technology requirements to allow a reasonable period for testing and system modification by participants.

(3) The clearing agency must not begin operations until it has complied with paragraphs (1)(a) and (2)(a).

(4) Paragraphs (1)(b) and (2)(b) do not apply to the clearing agency if,

(a) the change to its technology requirements must be made immediately to address a failure, malfunction or material delay of its systems or equipment,

(b) the clearing agency immediately notifies the securities regulatory authority of its intention to make the change to its technology requirements, and

(c) the clearing agency publicly discloses the changed technology requirements as soon as practicable.

Testing of business continuity plans

4.9 A recognized clearing agency must test its business continuity plans, including its disaster recovery plans, according to prudent business practices and on a reasonably frequent basis and, in any event, at least annually.

Outsourcing

4.10 If a recognized clearing agency outsources a critical service or system to a service provider, including to an affiliate or associate of the clearing agency, the clearing agency must,

(a) establish, implement, maintain and enforce written policies and procedures to conduct suitable due diligence for selecting service providers to which a critical service and system may be outsourced and for the evaluation and approval of those outsourcing arrangements;

(b) identify any conflicts of interest between the clearing agency and the service provider to which a critical service and system is outsourced, and establish, implement, maintain and enforce written policies and procedures to mitigate and manage those conflicts of interest;

(c) enter into a written contract with the service provider to which a critical service or system is outsourced that,

(i) is appropriate for the materiality and nature of the outsourced activities,

(ii) includes service level provisions, and

(iii) provides for adequate termination procedures;

(d) maintain access to the books and records of the service provider relating to the outsourced activities;

(e) ensure that the securities regulatory authority has the same access to all data, information and systems maintained by the service provider on behalf of the clearing agency that it would have absent the outsourcing arrangements;

(f) ensure that all persons conducting audits or independent reviews of the clearing agency under this Instrument have appropriate access to all data, information and systems maintained by the service provider on behalf of the clearing agency that such persons would have absent the outsourcing arrangements,

(g) take appropriate measures to determine that the service provider to which a critical service or system is outsourced establishes, maintains and periodically tests an appropriate business continuity plan, including a disaster recovery plan;

(h) take appropriate measures to ensure that the service provider protects the clearing agency's proprietary information and participants' confidential information, including taking measures to protect information from loss, thefts, vulnerabilities, threats, and unauthorized access, copying, use, and modification, and discloses it only in circumstances where legislation or an order of a court or tribunal of competent jurisdiction requires the disclosure of such information; and

(i) establish, implement, maintain and enforce written policies and procedures to monitor the ongoing performance of the service provider's contractual obligations under the outsourcing arrangements.

Division 4 – Participation requirements:

Access requirements and due process

4.11 (1) A recognized clearing agency must not,

(a) unreasonably prohibit, condition or limit access by a person or company to the services offered by it;

(b) permit unreasonable discrimination among its participants or the customers of its participants;

(c) impose any burden on competition that is not reasonably necessary and appropriate;

(d) unreasonably require the use or purchase of another service for a person or company to utilize the clearing agency's services offered by it; and

(e) impose fees and other material costs on its participants that are unfairly and inequitably allocated among the participants.

(2) For any decision made by the clearing agency that adversely affects a participant or an applicant that applies to become a participant, the clearing agency must ensure that,

(a) the participant or applicant is given an opportunity to be heard or make representations; and

(b) it keeps records of, gives reasons for, and provides for reviews of its decisions, including, for each applicant, the reasons for granting access or for denying or limiting access to the applicant, as the case may be.

(3) Nothing in subsection (2) shall be construed as to limit or prevent the clearing agency from taking timely action in accordance with its rules and procedures to manage the default of one or more participants or in connection with the clearing agency's recovery or orderly wind-down, whether or not such action adversely affects a participant.

PART 5
BOOKS AND RECORDS AND LEGAL ENTITY IDENTIFIER

Books and records

5.1 (1) A recognized clearing agency or exempt clearing agency must keep such books and records and other documents as are necessary to account for the conduct of its clearing, settlement and depository activities, its business transactions and financial affairs and must keep such other books, records and documents as may otherwise be required under securities legislation.

(2) The clearing agency must retain the books and records maintained under this section

(a) for a period of seven years from the date the record was made or received, whichever is later;

(b) in a safe location and a durable form; and

(c) in a manner that permits it to be provided promptly to the securities regulatory authority upon request.

Legal Entity Identifier

5.2 (1) In this section,

"Global Legal Entity Identifier System" means the system for unique identification of parties to financial transactions developed by the Legal Entity Identifier System Regulatory Oversight Committee; and

"LEI Regulatory Oversight Committee" means the international working group established by the Finance Ministers and the Central Bank Governors of the Group of Twenty nations and the Financial Stability Board, under the Charter of the Regulatory Oversight Committee for the Global Legal Entity Identifier System dated November 5, 2012.

(2) For the purposes of any recordkeeping and reporting requirements required under securities legislation, a recognized clearing agency or exempt clearing agency must identify itself by means of a single legal entity identifier.

(3) Each of the following rules apply to legal entity identifiers:

(a) a legal entity identifier must be a unique identification code assigned to the clearing agency in accordance with the standards set by the Global Legal Entity Identifier System, and

(b) the clearing agency must comply with all applicable requirements imposed by the Global Legal Entity Identifier System.

(4) Despite subsection (3), if the Global Legal Entity Identifier System is unavailable to the clearing agency, all of the following rules apply:

(a) the clearing agency must obtain a substitute legal entity identifier which complies with the standards established by the LEI Regulatory Oversight Committee for pre-legal entity identifiers,

(b) the clearing agency must use the substitute legal entity identifier until a legal entity identifier is assigned to the clearing agency in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (3)(a), and

(c) after the holder of a substitute legal entity identifier is assigned a legal entity identifier in accordance with the standards set by the Global Legal Entity Identifier System as required under paragraph (3)(a), the clearing agency must ensure that it is identified only by the assigned identifier.

PART 6
EXEMPTIONS

Exemption

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

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

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

PART 7
EFFECTIVE DATES AND TRANSITION

Effective dates and transitions

7.1 (1) Except as provided in subsections (2) to (4), this Instrument comes into force on October ●, 2015.

(2) The requirement in section 3.1 to implement rules, procedures or operations designed to ensure that a recognized clearing agency meets or exceeds Standard 14 in Appendix A to this Instrument comes into force on ●.

(3) The requirement in section 3.1 to implement rules, procedures or operations designed to ensure that a recognized clearing agency meets or exceeds section 3.4 of Standard 3 and section 15.3 of Standard 15 in Appendix A to this Instrument comes into force on ●.

(4) The requirement in section 3.1 to implement rules, procedures or operations designed to ensure that a recognized clearing agency meets or exceeds Standard 19 in Appendix A to this Instrument comes into force on ●.

Appendix A

Risk Management Standards Applicable to Recognized Clearing Agencies

Standard 1: *Legal basis* – A recognized clearing agency has a well-founded, clear, transparent, and enforceable legal basis for each material aspect of its activities in all relevant jurisdictions.

1.1 The legal basis provides a high degree of certainty for each material aspect of the clearing agency's activities in all relevant jurisdictions.

1.2 The clearing agency has rules, procedures and contracts that are clear, understandable and consistent with relevant laws and regulations.

1.3 The clearing agency articulates the legal basis for its activities to relevant authorities, participants, and, where relevant, participants' customers, in a clear and understandable way.

1.4 The clearing agency has rules, procedures and contracts that are enforceable in all relevant jurisdictions. There is a high degree of certainty that actions taken by the clearing agency under its rules and procedures will not be voided, reversed or subject to stays.

1.5 If the clearing agency conducts business in multiple jurisdictions, it identifies and mitigates the risks arising from any potential conflicts of laws across jurisdictions.

Standard 2: *Governance* – A recognized clearing agency has governance arrangements that are clear and transparent, promote the safety and efficiency of the clearing agency, support the stability of the broader financial system, other relevant public interest considerations, and the objectives of relevant stakeholders.

2.1 The clearing agency has objectives that place a high priority on the safety and efficiency of the clearing agency and explicitly support financial stability and other relevant public interest considerations.

2.2 The clearing agency has documented governance arrangements that provide clear and direct lines of responsibility and accountability. These arrangements are disclosed to owners, relevant authorities, participants, and, at a more general level, the public.

2.3 The roles and responsibilities of the clearing agency's board of directors are clearly specified, and there are documented governance procedures for its functioning, including procedures to identify, address and manage member conflicts of interest. The board of directors reviews both its overall performance and the performance of its individual board members regularly.

2.4 The board of directors contains suitable members with the appropriate skills and incentives to fulfill its multiple roles. This typically requires the inclusion of non-executive board member(s).

2.5 The roles and responsibilities of management are clearly specified. The clearing agency's management has the appropriate experience, a mix of skills, and the integrity necessary to discharge its responsibilities for the operation and risk management of the clearing agency.

2.6 The board of directors establishes a clear, documented risk-management framework that includes the clearing agency's risk-tolerance policy, assigns responsibilities and accountability for risk decisions, and addresses decision making in crises and emergencies. Governance arrangements ensure that the risk-management and internal control functions have sufficient authority, independence, resources, and access to the board of directors.

2.7 The board of directors ensures that the clearing agency's design, rules, overall strategy, and major decisions reflect appropriately the legitimate interests of its direct and indirect participants and other relevant stakeholders. Major decisions are clearly disclosed to relevant stakeholders and, where there is a broad market impact, the public.

Standard 3: *Framework for the comprehensive management of risks* – A recognized clearing agency has a sound risk-management framework for comprehensively managing legal, credit, liquidity, operational and other risks.

3.1 The clearing agency has risk-management policies, procedures, and systems that enable it to identify, measure, monitor and manage the range of risks that arise in or are borne by it. The risk-management framework is subject to periodic review.

3.2 The clearing agency provides incentives to participants and, where relevant, their customers to manage and contain the risks they pose to the clearing agency.

3.3 The clearing agency regularly reviews the material risks it bears from and poses to other entities (such as other clearing agencies, payments systems, trade repositories, settlement banks, liquidity providers and service providers) as a result of interdependencies and develops appropriate risk-management tools to address these risks.

3.4 The clearing agency identifies scenarios that may potentially prevent it from being able to provide its critical operations and services as a going concern and assesses the effectiveness of a full range of options for recovery or orderly wind-down. The clearing agency prepares appropriate plans for its recovery or orderly wind-down based on the results of that assessment. Where applicable, the clearing agency also provides relevant authorities with the information needed for purposes of resolution planning.

Standard 4: *Credit risk* – A recognized clearing agency that operates as a central counterparty or securities settlement system effectively measures, monitors, and manages its credit exposures to participants and those arising from its clearing and settlement processes. The clearing agency maintains sufficient financial resources to cover its credit exposure to each participant fully with a high degree of confidence. In addition, the clearing agency, if it operates as a central counterparty, that is involved in activities with a more-complex risk profile or that is systemically important in multiple jurisdictions maintains additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the clearing agency in extreme but plausible market conditions. All other clearing agencies that operate as a central counterparty maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure to the clearing agency in extreme but plausible market conditions.

4.1 The clearing agency establishes a robust framework to manage its credit exposures to its participants and the credit risks arising from its payment, clearing, and settlement processes. Credit exposure may arise from current exposures, potential future exposures, or both.

4.2 The clearing agency identifies sources of credit risk, routinely measures and monitors its credit exposures, and uses appropriate risk-management tools to control these risks.

4.3 The clearing agency, if it operates as a securities settlement system, covers its current exposures and, where they exist, potential future exposures to each participant fully with a high degree of confidence using collateral and other equivalent financial resources. Where the clearing agency operates as a deferred net settlement system, in which there is no settlement guarantee but where its participants face credit exposures arising from its payment, clearing and settlement processes, the clearing agency maintains, at a minimum, sufficient resources to cover the exposures of the two participants and their affiliates that would create the largest aggregate credit exposure in the system.

4.4 The clearing agency that operates as a central counterparty covers its current and potential future exposures to each participant fully with a high degree of confidence using margin and other prefunded financial resources. In addition, the clearing agency that operates as a central counterparty and that is involved in activities with a more-complex risk profile or is systemically important in multiple jurisdictions maintains additional financial resources to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would potentially cause the largest aggregate credit exposure to the clearing agency in extreme but plausible market conditions. All other clearing agencies that operate as a central counterparty maintain additional financial resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would potentially cause the largest aggregate credit exposure for the clearing agency in extreme but plausible market conditions. In all cases, the clearing agency that operates as a central counterparty documents its supporting rationale for, and has appropriate governance arrangements relating to, the amount of total financial resources it maintains.

4.5 The clearing agency that operates as a central counterparty determines the amount and regularly tests the sufficiency of its total financial resources available in the event of a default or multiple defaults in extreme but plausible market conditions through rigorous stress testing. The clearing agency has clear procedures to report the results of its stress tests to appropriate decision makers at the clearing agency and to use these results to evaluate the adequacy of and adjust its total financial resources. Stress tests are performed daily using standard and predetermined parameters and assumptions. On at least a monthly basis, the clearing agency performs a comprehensive and thorough analysis of stress testing scenarios, models, and underlying parameters and assumptions used to ensure they are appropriate for determining the clearing agency's required level of default protection in light of current and evolving market conditions. The clearing agency performs this analysis of stress testing more frequently when the products cleared or markets served display high volatility, become less liquid, or when the size or concentration of positions held by the clearing agency's participants increases significantly. A full validation of the clearing agency's risk management model is performed at least annually.

4.6 In conducting stress testing, the clearing agency that operates as a central counterparty considers the effect of a wide range of relevant stress scenarios in terms of both defaulters' positions and possible price changes in liquidation periods. Scenarios include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions.

4.7 The clearing agency establishes explicit rules and procedures that address fully any credit losses it may face as a result of any individual or combined default among its participants with respect to any of their obligations to the clearing agency. These rules and procedures address how potentially uncovered credit losses would be allocated, including the repayment of any funds the clearing agency may borrow from liquidity providers. These rules and procedures also indicate the clearing agency's process to replenish any financial resources that the clearing agency may employ during a stress event, so that the clearing agency can continue to operate in a safe and sound manner.

Standard 5: *Collateral* – A recognized clearing agency that operates as a central counterparty or securities settlement system and requires collateral to manage its or its participants' credit exposure, accepts collateral with low credit, liquidity, and market risks. The clearing agency also sets and enforces appropriately conservative haircuts and concentration limits.

5.1 The clearing agency generally limits the assets it (routinely) accepts as collateral to those with low credit, liquidity and market risks.

5.2 The clearing agency establishes prudent valuation practices and develops haircuts that are regularly tested and take into account stressed market conditions.

5.3 In order to reduce the need for procyclical adjustments, the clearing agency establishes stable and conservative haircuts that are calibrated to include periods of stressed market conditions, to the extent practicable and prudent.

5.4 The clearing agency avoids concentrated holdings of certain assets where this would significantly impair the ability to liquidate such assets quickly without significant adverse price effects.

5.5 Where the clearing agency accepts cross-border collateral, it mitigates the risks associated with its use and ensures that the collateral can be used in a timely manner.

5.6 The clearing agency uses a collateral management system that is well-designed and operationally flexible.

Standard 6: *Margin* – A recognized clearing agency that operates as a central counterparty covers its credit exposures to its participants for all products through an effective margin system that is risk-based and regularly reviewed.

6.1 The clearing agency has a margin system that establishes margin levels commensurate with the risks and particular attributes of each product, portfolio and market it serves.

6.2 The clearing agency has a reliable source of timely price data for its margin system. The clearing agency also has procedures and sound valuation models for addressing circumstances in which pricing data are not readily available or reliable.

6.3 The clearing agency adopts initial margin models and parameters that are risk-based and generate margin requirements sufficient to cover its potential future exposure to participants in the interval between the last margin collection and the close out of positions following a participant default. Initial margin meets an established single-tailed confidence level of at least 99 percent with respect to the estimated distribution of future exposure. For a clearing agency that calculates margin at the portfolio level, this requirement applies to each portfolio's distribution of future exposure. For a clearing agency that calculates margin at more-granular levels, such as at the subportfolio level or by product, the requirement is met for the corresponding distributions of future exposure. The model (a) uses a conservative estimate of the time horizons for the effective hedging or close out of the particular types of products cleared by the clearing agency (including in stressed market conditions), (b) has an appropriate method for measuring credit exposure that accounts for relevant product risk factors and portfolio effects across products, and (c) to the extent practicable and prudent, limits the need for destabilising, procyclical changes.

6.4 The clearing agency marks participant positions to market and collects variation margin at least daily to limit the build-up of current exposures. The clearing agency has the authority and operational capacity to make intraday margin calls and payments, both scheduled and unscheduled, to participants.

6.5 In calculating margin requirements, the clearing agency may allow offsets or reductions in required margin across products that it clears or between products that it and another central counterparty clear, if the risk of one product is

significantly and reliably correlated with the risk of the other product. Where the clearing agency is authorized to offer cross-margining with one or more other central counterparties, it and the other central counterparties have appropriate safeguards and harmonised overall risk-management systems.

6.6 The clearing agency analyses and monitors its model performance and overall margin coverage by conducting rigorous daily backtesting and at least monthly, and more frequently where appropriate, sensitivity analysis. The clearing agency regularly conducts an assessment of the theoretical and empirical properties of its margin model for all products it clears. In conducting sensitivity analysis of the model's coverage, the clearing agency takes into account a wide range of parameters and assumptions that reflect possible market conditions, including the most volatile periods that have been experienced by the markets it serves and extreme changes in the correlations between prices.

6.7 The clearing agency regularly reviews and validates its margin system.

Standard 7: *Liquidity risk* – A recognized clearing agency that operates as a central counterparty or securities settlement system effectively measures, monitors, and manages its liquidity risk. The clearing agency maintains sufficient liquid resources in all relevant currencies to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the clearing agency in extreme but plausible market conditions.

7.1 The clearing agency has a robust framework to manage its liquidity risks from its participants, settlement banks, *nostro* agents, custodian banks, liquidity providers, and other entities.

7.2 The clearing agency has effective operational and analytical tools to identify, measure, and monitor its settlement and funding flows on an ongoing and timely basis, including its use of intraday liquidity.

7.3 The clearing agency that performs the services of a securities settlement system, including one that employs a deferred net settlement mechanism, maintains sufficient liquid resources in all relevant currencies to effect same-day settlement, and where appropriate intraday or multiday settlement, of payment obligations with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation in extreme but plausible market conditions.

7.4 The clearing agency that operates as a central counterparty maintains sufficient liquid resources in all relevant currencies to settle securities-related payments, make required variation margin payments, and meet other payment obligations on time with a high degree of confidence under a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate payment obligation to the clearing agency in extreme but plausible market conditions. In addition, the clearing agency that operates as a central counterparty, and that is involved in activities with a more-complex risk profile or is systemically important in multiple jurisdictions, considers maintaining additional liquidity resources sufficient to cover a wider range of potential stress scenarios that should include, but not be limited to, the default of the two participants and their affiliates that would generate the largest aggregate payment obligation to the clearing agency in extreme but plausible market conditions.

7.5 For the purpose of meeting its minimum liquid resource requirement, the clearing agency's qualifying liquid resources in each currency include cash at the central bank of issue or at creditworthy commercial banks, committed lines of credit, committed foreign exchange swaps, and committed repurchase agreements, as well as highly marketable collateral held in custody and investments that are readily available and convertible into cash with prearranged and highly reliable funding arrangements, even in extreme but plausible market conditions. If the clearing agency has access to routine credit at the central bank of issue, the clearing agency may count such access as part of the minimum requirement to the extent it has collateral that is eligible for pledging to, or for conducting other appropriate forms of transactions with, the relevant central bank. All such resources are available when needed.

7.6 The clearing agency may supplement its qualifying liquid resources with other forms of liquid resources. If the clearing agency does so, then these liquid resources are in the form of assets that are likely to be saleable or acceptable as collateral for lines of credit, swaps, or repurchase agreements on an ad hoc basis following a default, even if this cannot be reliably prearranged or guaranteed in extreme market conditions. Even if the clearing agency does not have access to routine central bank credit, it still takes account of what collateral is typically accepted by the relevant central bank, as such assets may be more likely to be liquid in stressed circumstances. The clearing agency does not assume the availability of emergency central bank credit as a part of its liquidity plan.

7.7 The clearing agency obtains a high degree of confidence, through rigorous due diligence, that each provider of its minimum required qualifying liquid resources, whether a participant of the clearing agency or an external party, has

sufficient information to understand and to manage its associated liquidity risks, and that it has the capacity to perform as required under its commitment. Where relevant to assessing a liquidity provider's performance reliability with respect to a particular currency, a liquidity provider's potential access to credit from the central bank of issue may be taken into account. The clearing agency regularly tests its procedures for accessing its liquid resources at a liquidity provider.

7.8 The clearing agency with access to central bank accounts, payment services, or securities services uses these services, where practical, to enhance its management of liquidity risk.

7.9 The clearing agency determines the amount and regularly tests the sufficiency of its liquid resources through rigorous stress testing. The clearing agency has clear procedures to report the results of its stress tests to appropriate decision makers at the clearing agency and to use these results to evaluate the adequacy of and adjust its liquidity risk-management framework. In conducting stress testing, the clearing agency considers a wide range of relevant scenarios. Scenarios include relevant peak historic price volatilities, shifts in other market factors such as price determinants and yield curves, multiple defaults over various time horizons, simultaneous pressures in funding and asset markets, and a spectrum of forward-looking stress scenarios in a variety of extreme but plausible market conditions. Scenarios also take into account the design and operation of the clearing agency, include all entities that may pose material liquidity risks to the clearing agency (such as settlement banks, *nostro* agents, custodian banks, liquidity providers, and linked clearing agencies, trade repositories and payment systems), and where appropriate, cover a multiday period. In all cases, the clearing agency documents its supporting rationale for, and has appropriate governance arrangements relating to, the amount and form of total liquid resources it maintains.

7.10 The clearing agency establishes explicit rules and procedures that enable the clearing agency to effect same-day and, where appropriate, intraday and multiday settlement of payment obligations on time following any individual or combined default among its participants. These rules and procedures address unforeseen and potentially uncovered liquidity shortfalls which aim to avoid unwinding, revoking, or delaying the same-day settlement of payment obligations. These rules and procedures also indicate the clearing agency's process to replenish any liquidity resources it may employ during a stress event, so that it can continue to operate in a safe and sound manner.

Standard 8: *Settlement finality* – A recognized clearing agency that operates as a central counterparty or securities settlement system provides clear and certain final settlement, at a minimum by the end of the value date. Where necessary or preferable, the clearing agency provides final settlement intraday or in real time.

8.1 The clearing agency's rules and procedures clearly define the point at which settlement is final.

8.2 The clearing agency completes final settlement no later than the end of the value date, and preferably intraday or in real time, to reduce settlement risk. The clearing agency that operates as a securities settlement system generally considers adopting real-time gross settlement or multiple-batch processing during the settlement day.

8.3 The clearing agency clearly defines the point after which unsettled payments, transfer instructions, or other obligations may not be revoked by a participant.

Standard 9: *Money settlements* – A recognized clearing agency that operates as a central counterparty or securities settlement system conducts its money settlements in central bank money, where practical and available. If central bank money is not used, the clearing agency minimizes and strictly controls the credit and liquidity risk arising from the use of commercial bank money.

9.1 The clearing agency conducts its money settlements in central bank money, where practical and available, to avoid credit and liquidity risks.

9.2 If central bank money is not used, the clearing agency conducts its money settlements using a settlement asset with little or no credit or liquidity risk.

9.3 If the clearing agency settles in commercial bank money, it monitors, manages, and limits its credit and liquidity risks arising from the commercial settlement banks. In particular, the clearing agency establishes and monitors adherence to strict criteria for its settlement banks that take account of, among other things, their regulation and supervision, creditworthiness, capitalisation, access to liquidity, and operational reliability. The clearing agency also monitors and manages the concentration of credit and liquidity exposures to its commercial settlement banks.

9.4 If the clearing agency conducts money settlements on its own books, it minimizes and strictly controls its credit and liquidity risks.

9.5 The clearing agency's legal agreements with any settlement banks state clearly when transfers on the books of individual settlement banks are expected to occur, that transfers are to be final when effected, and that funds received are to be transferable as soon as possible, at a minimum by the end of the day and ideally intraday, in order to enable the clearing agency and its participants to manage credit and liquidity risks.

Standard 10: *Physical deliveries* – A recognized clearing agency clearly states its obligations with respect to the delivery of physical instruments or commodities and identifies, monitors and manages the risks associated with such physical deliveries.

10.1 The clearing agency's rules clearly state its obligations with respect to the delivery of physical instruments or commodities.

10.2 The clearing agency identifies, monitors and manages the risks and costs associated with the storage and delivery of physical instruments and commodities.

Standard 11: *Central securities depositories* – A recognized clearing agency that operates as a central securities depository has appropriate rules and procedures to help ensure the integrity of securities issues and minimizes and manages the risks associated with the safekeeping and transfer of securities. The clearing agency maintains securities in an immobilized or dematerialized form for their transfer by book entry.

11.1 The clearing agency has appropriate rules, procedures and controls, including robust accounting practices, to safeguard the rights of securities issuers and holders, prevent the unauthorised creation or deletion of securities, and conduct periodic and at least daily reconciliation of securities issues it maintains.

11.2 The clearing agency prohibits overdrafts and debit balances in securities accounts.

11.3 The clearing agency maintains securities in an immobilized or dematerialised form for their transfer by book entry. Where appropriate, the clearing agency provides incentives to immobilize or dematerialise securities.

11.4 The clearing agency protects assets against custody risk through appropriate rules and procedures consistent with its legal framework.

11.5 The clearing agency employs a robust system that ensures segregation between its own assets and the securities of its participants and segregation among the securities of participants. Where supported by the legal framework, the clearing agency also supports operationally the segregation of securities belonging to a participant's customers on the participant's books and facilitates the transfer of customer holdings.

11.6 The clearing agency identifies, measures, monitors, and manages its risks from other activities that it may perform; additional tools may be necessary in order to address these risks.

Standard 12: *Exchange-of-value settlement systems* – Where a recognized clearing agency operates as a central counterparty or securities settlement system and settles transactions that involve the settlement of two linked obligations (for example, securities or foreign exchange transactions), it eliminates principal risk by conditioning the final settlement of one obligation upon the final settlement of the other.

12.1 The clearing agency that is an exchange-of-value settlement system eliminates principal risk by ensuring that the final settlement of one obligation occurs if and only if the final settlement of the linked obligation also occurs, regardless of whether the clearing agency settles on a gross or net basis and when finality occurs.

Standard 13: *Participant default rules and procedures* – A recognized clearing agency has effective and clearly defined rules and procedures to manage a participant default. These rules and procedures are designed to ensure that the clearing agency can take timely action to contain losses and liquidity pressures and continue to meet its obligations.

13.1 The clearing agency has default rules and procedures that enable the clearing agency to continue to meet its obligations in the event of a participant default and that address the replenishment of resources following a default.

13.2 The clearing agency is well prepared to implement its default rules and procedures, including any appropriate discretionary procedures provided for in its rules.

13.3 The clearing agency publicly discloses key aspects of its default rules and procedures.

13.4 The clearing agency involves its participants and other stakeholders in the testing and review of the clearing agency's default procedures, including any close-out procedures. Such testing and review is conducted at least annually or following material changes to the clearing agency's rules and procedures to ensure that they are practical and effective.

Standard 14: *Segregation and portability* – A recognized clearing agency that operates as a central counterparty has rules and procedures that enable the segregation and portability of positions of a participant's customers and the collateral provided to the clearing agency with respect to those positions.

14.1 The clearing agency has, at a minimum, segregation and portability arrangements that effectively protect a participant's customers' positions and related collateral from the default or insolvency of that participant. If the clearing agency additionally offers protection of such customer positions and collateral against the concurrent default of the participant and a fellow customer, the clearing agency takes steps to ensure that such protection is effective.

14.2 The clearing agency employs an account structure that enables it readily to identify positions of a participant's customers and to segregate related collateral. The clearing agency maintains customer positions and collateral in individual customer accounts or in omnibus customer accounts.

14.3 The clearing agency structures its portability arrangements in a way that makes it highly likely that the positions and collateral of a defaulting participant's customers will be transferred to one or more other participants.

14.4 The clearing agency discloses its rules, policies, and procedures relating to the segregation and portability of a participant's customers' positions and related collateral. In particular, the clearing agency discloses whether customer collateral is protected on an individual or omnibus basis. In addition, the clearing agency discloses any constraints, such as legal or operational constraints, that may impair its ability to segregate or port the participant's customers' positions and related collateral.

Standard 15: *General business risk* – A recognized clearing agency identifies, monitors, and manages its general business risk and holds sufficient liquid net assets funded by equity to cover potential general business losses so that it can continue operations and services as a going concern if those losses materialise. Further, liquid net assets are at all times sufficient to ensure a recovery or orderly wind-down of critical operations and services.

15.1 The clearing agency has robust management and control systems to identify, monitor, and manage general business risks, including losses from poor execution of business strategy, negative cash flows, or unexpected and excessively large operating expenses.

15.2 The clearing agency holds liquid net assets funded by equity (such as common stock, disclosed reserves, or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets funded by equity the clearing agency holds is determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.

15.3 The clearing agency maintains a viable recovery or orderly wind-down plan and holds sufficient liquid net assets funded by equity to implement this plan. At a minimum, the clearing agency holds liquid net assets funded by equity equal to at least six months of current operating expenses. These assets are in addition to resources held to cover participant defaults and other risks required to be covered under the financial resources Standards. However, equity held under international risk-based capital standards can be included where relevant and appropriate to avoid duplicate capital requirements.

15.4 Assets held to cover general business risk are of high quality and sufficiently liquid in order to allow the clearing agency to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.

15.5 The clearing agency maintains a viable plan for raising additional equity should its equity fall close to or below the amount needed. This plan is approved by the board of directors and updated regularly.

Standard 16: *Custody and investment risks* – A recognized clearing agency safeguards its own and its participants' assets and minimizes the risk of loss on and delay in access to these assets. The clearing agency's investments are in instruments with minimal credit, market, and liquidity risks.

16.1 The clearing agency holds its own and its participants' assets at supervised and regulated entities that have robust accounting practices, safekeeping procedures, and internal controls that fully protect such assets.

16.2 The clearing agency has prompt access to its assets and the assets provided by participants, when required.

16.3 The clearing agency evaluates and understands its exposures to its custodian banks, taking into account the full scope of its relationships with each.

16.4 The clearing agency's investment strategy is consistent with its overall risk-management strategy and fully disclosed to its participants, and investments are secured by, or claims on, high-quality obligors. These investments allow for quick liquidation with little, if any, adverse price effect.

Standard 17: *Operational risks* – A recognized clearing agency identifies the plausible sources of operational risk, both internal and external, and mitigates their impact through the use of appropriate systems, policies, procedures, and controls. Systems are designed to ensure a high degree of security and operational reliability and have adequate, scalable capacity. Business continuity management aims for timely recovery of operations and fulfillment of the clearing agency's obligations, including in the event of a wide-scale or major disruption.

17.1 The clearing agency establishes a robust operational risk-management framework with appropriate systems, policies, procedures, and controls to identify, monitor, and manage operational risks.

17.2 The clearing agency's board of directors clearly defines the roles and responsibilities for addressing operational risk and endorses the clearing agency's operational risk-management framework. Systems, operational policies, procedures, and controls are reviewed, audited, and tested periodically and after significant changes.

17.3 The clearing agency has clearly defined operational reliability objectives and has policies in place that are designed to achieve those objectives.

17.4 The clearing agency ensures that it has scalable capacity adequate to handle increasing stress volumes and to achieve its service-level objectives.

17.5 The clearing agency has comprehensive physical and information security policies that address all potential vulnerabilities and threats.

17.6 The clearing agency has a business continuity plan that addresses events posing a significant risk of disrupting operations, including events that could cause a wide-scale or major disruption. The plan incorporates the use of a secondary site and is designed to ensure that critical information technology (IT) systems can resume operations within two hours following disruptive events. The plan is designed to enable the clearing agency to complete settlement by the end of the day of the disruption, even in extreme circumstances. The clearing agency regularly tests these arrangements.

17.7 The clearing agency identifies, monitors, and manages the risks that key participants, other clearing agencies, trade repositories, payment systems, and service and utility providers might pose to its operations. In addition, the clearing agency identifies, monitors, and manages the risks its operations might pose to other clearing agencies, trade repositories, and payment systems.

Standard 18: *Access and participation requirements* – A recognized clearing agency has objective, risk-based, and publicly disclosed criteria for participation, which permit fair and open access.

18.1 The clearing agency allows for fair and open access to its services, including by direct and, where relevant, indirect participants and other clearing agencies, payment systems and trade repositories, based on reasonable risk-related participation requirements.

18.2 The clearing agency's participation requirements are justified in terms of the safety and efficiency of the clearing agency and the markets it serves, are tailored to and commensurate with the clearing agency's specific risks, and are publicly disclosed. Subject to maintaining acceptable risk control standards, the clearing agency endeavours to set requirements that have the least-restrictive impact on access that circumstances permit.

18.3 The clearing agency monitors compliance with its participation requirements on an ongoing basis and has clearly defined and publicly disclosed procedures for facilitating the suspension and orderly exit of a participant that breaches, or no longer meets, the participation requirements.

Standard 19: *Tiered participation arrangements* – A recognized clearing agency identifies, monitors, and manages the material risks to the clearing agency arising from any tiered participation arrangements.

19.1 The clearing agency ensures that its rules, procedures, and agreements allow it to gather basic information about indirect participation in order to identify, monitor, and manage any material risks to the clearing agency arising from such tiered participation arrangements.

19.2 The clearing agency identifies material dependencies between direct and indirect participants that might affect the clearing agency.

19.3 The clearing agency identifies indirect participants responsible for a significant proportion of transactions processed by the clearing agency and indirect participants whose transaction volumes or values are large relative to the capacity of the direct participants through which they access the clearing agency in order to manage the risks arising from these transactions.

19.4 The clearing agency regularly reviews risks arising from tiered participation arrangements and takes mitigating action when appropriate.

Standard 20: *Links with other financial market infrastructures* – A recognized clearing agency that establishes a link with one or more clearing agencies or trade repositories identifies, monitors, and manages link-related risks.

20.1 Before entering into a link and on an ongoing basis once the link is established, the clearing agency identifies, monitors, and manages all potential sources of risk arising from the link. Links are designed such that the clearing agency is able to observe the other Standards.

20.2 A link has a well-founded legal basis, in all relevant jurisdictions, that supports its design and provides adequate protection to the clearing agencies and trade repositories involved in the link.

20.3 Linked central securities depositories measure, monitor, and manage the credit and liquidity risks arising from each other. Any credit extensions between central securities depositories are covered fully with high-quality collateral and are subject to limits.

20.4 Provisional transfers of securities between linked central securities depositories are prohibited or, at a minimum, the retransfer of provisionally transferred securities are prohibited prior to the transfer becoming final.

20.5 An investor central securities depository only establishes a link with an issuer central securities depository if the link provides a high level of protection for the rights of the investor central securities depository's participants.

20.6 An investor central securities depository that uses an intermediary to operate a link with an issuer central securities depository measures, monitors, and manages the additional risks (including custody, credit, legal, and operational risks) arising from the use of the intermediary.

20.7 Before entering into a link with another central counterparty, a central counterparty identifies and manages the potential spill-over effects from the default of the linked central counterparty. If a link has three or more central counterparties, each central counterparty identifies, assesses, and manages the risks of the collective link.

20.8 Each central counterparty in a central counterparty link is able to cover, at least on a daily basis, its current and potential future exposures to the linked central counterparty and its participants, if any, fully with a high degree of confidence without reducing the central counterparty's ability to fulfill its obligations to its own participants at any time.

Standard 21: *Efficiency and effectiveness* – A recognized clearing agency is efficient and effective in meeting the requirements of its participants and the markets it serves.

21.1 The clearing agency is designed to meet the needs of its participants and the markets it serves, in particular, with regard to choice of a clearing and settlement arrangement; operating structure; scope of products cleared, settled, or recorded; and use of technology and procedures.

21.2 The clearing agency has clearly defined goals and objectives that are measurable and achievable, such as in the areas of minimum service levels, risk-management expectations, and business priorities.

21.3 The clearing agency has established mechanisms for the regular review of its efficiency and effectiveness.

Standard 22: *Communication procedures and standards* – A recognized clearing agency uses, or at a minimum accommodates, relevant internationally accepted communication procedures and standards in order to facilitate efficient payment, clearing, settlement, depository, and recording.

22.1 The clearing agency uses, or at a minimum accommodates, internationally accepted communication procedures and standards.

Standard 23: *Disclosure of rules, key procedures, and market data* – A recognized clearing agency has clear and comprehensive rules and procedures and provides sufficient information to enable participants to have an accurate understanding of the risks, fees, and other material costs they incur by participating in the clearing agency. All relevant rules and key procedures are publicly disclosed.

23.1 The clearing agency adopts clear and comprehensive rules and procedures that are fully disclosed to participants. Relevant rules and key procedures are also publicly disclosed.

23.2 The clearing agency discloses clear descriptions of the clearing agency's systems' design and operations, as well as the rights and obligations of the clearing agency and its participants, so that participants can assess the risks they would incur by participating in the clearing agency.

23.3 The clearing agency provides all necessary and appropriate documentation and training to facilitate participants' understanding of the clearing agency's rules and procedures and the risks they face from participating in the clearing agency.

23.4 The clearing agency publicly discloses its fees at the level of individual services it offers as well as its policies on any available discounts. The clearing agency provides clear descriptions of priced services for comparability purposes.

23.5 The clearing agency completes regularly and discloses publicly responses to the PFMI Disclosure Framework Document. The clearing agency also, at a minimum, discloses basic data on transaction volumes and values.

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FORM 24-102F1
NATIONAL INSTRUMENT 24-102 – *CLEARING AGENCY REQUIREMENTS*

CLEARING AGENCY SUBMISSION TO JURISDICTION AND APPOINTMENT OF AGENT FOR SERVICE OF PROCESS

1. Name of clearing agency (the "Clearing Agency"):

   _____

2. Jurisdiction of incorporation, or equivalent, of Clearing Agency:

   _____

3. Address of principal place of business of Clearing Agency:

   _____

4. Name of the agent for service of process for the Clearing Agency (the "Agent"):

   _____

5. Address of Agent for service of process in _____[province of local jurisdiction]:

   _____

6. The _____ [name of securities regulatory authority] ("securities regulatory authority") issued an order recognizing the Clearing Agency as a clearing agency pursuant to securities legislation, or the securities regulatory authority issued an order exempting the Clearing Agency from the requirement to be recognized as a clearing agency pursuant to such legislation, on _____.

7. The Clearing Agency designates and appoints the Agent as its agent upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the activities of the Clearing Agency in _____ [province of local jurisdiction]. The Clearing Agency hereby irrevocably waives any right to challenge service upon its Agent as not binding upon the Clearing Agency.

8. The Clearing Agency agrees to unconditionally and irrevocably attorn to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of _____ [province of local jurisdiction] and (ii) any proceeding in any province or territory arising out of, related to, concerning or in any other manner connected with the regulation and oversight of the activities of the Clearing Agency in _____ [province of local jurisdiction].

9. The Clearing Agency shall file a new submission to jurisdiction and appointment of agent for service of process in this form at least 30 days before the Clearing Agency ceases to be recognized or exempted by the securities regulatory authority, to be in effect for six years from the date it ceases to be recognized or exempted unless otherwise amended in accordance with section 10.

10. Until six years after it has ceased to be a recognized or exempted by the securities regulatory authority, the Clearing Agency shall file an amended submission to jurisdiction and appointment of agent for service of process at least 30 days before any change in the name or above address of the Agent.

11. This submission to jurisdiction and appointment of agent for service of process shall be governed by and construed in accordance with the laws of _____ [province of local jurisdiction].

Dated: _____

_____
Signature of the Clearing Agency

_____
Print name and title of signing officer of the Clearing Agency

AGENT

CONSENT TO ACT AS AGENT FOR SERVICE

I, _____ (name of Agent in full; if Corporation, full Corporate name) of _____ (business address), hereby accept the appointment as agent for service of process of _____ (insert name of Clearing Agency) and hereby consent to act as agent for service pursuant to the terms of the appointment executed by _____ (insert name of Clearing Agency) on _____ (insert date).

Dated: _____

_____
Signature of Agent

_____
Print name of person signing and, if Agent is not an individual, the title of the person

FORM 24-102F2
NATIONAL INSTRUMENT 24-102 – *CLEARING AGENCY REQUIREMENTS*

CESSATION OF OPERATIONS REPORT FOR CLEARING AGENCY

1. Identification:

   A. Full name of the recognized or exempted clearing agency:

   B. Name(s) under which business is conducted, if different from item 1A:

2. Date clearing agency proposes to cease carrying on business as a clearing agency:

3. If cessation of business was involuntary, date clearing agency has ceased to carry on business as a clearing agency:

Exhibits

File all Exhibits with the Cessation of Operations Report. For each exhibit, include the name of the clearing agency, the date of filing of the exhibit and the date as of which the information is accurate (if different from the date of the filing). If any Exhibit required is inapplicable, a statement to that effect shall be furnished instead of such Exhibit.

Exhibit A

The reasons for the clearing agency ceasing to carry on business as a clearing agency.

Exhibit B

A list of all participants in Canada during the last 30 days prior to ceasing business as a clearing agency.

Exhibit C

A description of the alternative arrangements available to participants in respect of the services offered by the clearing agency immediately prior to the cessation of business as a clearing agency.

Exhibit D

A description of all links the clearing agency had immediately prior to the cessation of business as a clearing agency with other clearing agencies or trade repositories.

CERTIFICATE OF CLEARING AGENCY

The undersigned certifies that the information given in this report is true and correct.

DATED at _____ this _____ day of _____ 20 _____

_____
(Name of clearing agency)

_____
(Name of director, officer or partner – please type or print)

_____
(Signature of director, officer or partner)

_____
(Official capacity – please type or print)

COMPANION POLICY

TO

NATIONAL INSTRUMENT 24 – 102
CLEARING AGENCY REQUIREMENTS

TABLE OF CONTENTS

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PART 1
GENERAL COMMENTS

Introduction

1.1 (1) This Companion Policy (CP) sets out how the Canadian Securities Administrators (the CSA or we) interpret or apply provisions of National Instrument 24-102 *Clearing Agency Requirements* (the Instrument) and related securities legislation.

(2) Except for Part 1 and the *text boxes* in Part 3 of this CP, the numbering of Parts, sections and subsections in this CP generally corresponds to the numbering in the Instrument. Any general guidance or introductory comments for a Part appears immediately after the Part's name. Specific guidance on a section or subsection in the Instrument follows any general guidance. If there is no guidance for a Part, section or subsection, the numbering in this CP will skip to the next provision that does have guidance.

(3) Unless otherwise stated, any reference to a Part, section, subsection, paragraph, defined term or Appendix in this CP is a reference to the corresponding Part, section, subsection, paragraph, defined term or Appendix in the Instrument.

Background and overview

1.2 (1) Securities legislation in certain Jurisdictions of Canada requires an entity seeking to carry on business as a clearing agency in the jurisdiction to be (i) recognized by the securities regulatory authority in that jurisdiction, or (ii) exempted from the recognition requirement.[1] Accordingly, Part 2 sets out certain requirements in connection with the application process for recognition as a clearing agency or exemption from the recognition requirement. Guidance on the CSA's regulatory approach to such an application is set out in this CP.

(2) Parts 3 and 4 set out on-going requirements applicable to a recognized clearing agency. Whereas Part 3 applies only to a clearing agency that operates as a central counterparty (CCP), securities settlement system (SSS) or central securities depository (CSD), Part 4 applies to a clearing agency whether or not it operates as a CCP, SSS or CSD. The Standards in Appendix A are based on international standards governing financial market infrastructures (FMIs) set forth in the April 2012 report *Principles for financial market infrastructures* (the PFMIs or PFMI Report, as the context requires). The PFMIs were developed jointly by the Committee on Payments and Market Infrastructures (CPMI)[2] and the International Organization of Securities Commissions (IOSCO).[3] The PFMIs harmonize and strengthen previous international standards for FMIs.[4]

(3) Part 3 incorporates the Standards that are relevant to a clearing agency that operates as a CCP, CSD and SSS. Part 3 of this CP includes supplementary guidance in *text boxes* that applies to recognized domestic clearing agencies that are also regulated by the Bank of Canada (BOC). The supplementary guidance (Joint Supplementary Guidance) was prepared jointly by the CSA and BOC to provide additional clarity on certain aspects of the Standards within the Canadian context.

Definitions, interpretation and application

1.3 (1) Unless defined in the Instrument or this CP, defined terms used in the Instrument and this CP have the meaning given to them in the securities legislation of each jurisdiction or in National Instrument 14-101 *Definitions*.

(2) The terms "clearing agency" and "recognized clearing agency" are generally defined in securities legislation. For the purposes of the Instrument, a clearing agency includes, in Quebec, a clearing house, central securities depository and settlement system within the meaning of the Québec *Securities Act* and a derivatives clearing house and settlement system within the meaning of the Québec *Derivatives Act.* The CSA notes that, while Part 3 applies only to a recognized clearing agency that operates as a CCP, CSD or SSS, the term "clearing agency" may incorporate certain other centralized post-trade functions that are not necessarily limited to those of a CCP, CSD or SSS, e.g. an entity that provides centralized facilities for comparing data respecting the terms of settlement of a trade or transaction may be considered a clearing agency, but would not be considered a CCP, CSD or SSS. Except in Québec, such an entity would be required to apply either for recognition as a

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1 In certain jurisdictions, the entity is prohibited from carrying on business as a clearing agency unless recognized or exempted.

2 Prior to September 1, 2014, CPMI was known as the Committee on Payment and Settlement Systems (CPSS).

3 See the CPMI-IOSCO *Principles for Financial Market Infrastructures* Report, published in April 2012, available on the Bank for International Settlements' website (www.bis.org) and the IOSCO website (www.iosco.org).

4 See (i) 2001 CPMI report *Core principles for systemically important payment systems*, (ii) 2001 CPMI-IOSCO report *Recommendations for securities settlement systems* (together with the 2002 CPMI-IOSCO report *Assessment methodology for Recommendations for securities settlement systems*); and (iii) 2004 CPMI-IOSCO report *Recommendations for central counterparties*. All of these reports are available on the Bank for International Settlements' website (www.bis.org). The CPMI-IOSCO reports are also available on IOSCO website (www.iosco.org).

clearing agency or an exemption from the requirement to be recognized. Whether applying for recognition or for an exemption, the entity would become subject to certain provisions in Part 2 and all of Parts 4 and 5, but not Part 3.[5]

(3) A clearing agency may serve either or both the securities and derivatives markets. A clearing agency serving the securities markets can be a CCP, CSD or SSS. A clearing agency serving the derivatives markets is typically only a CCP.

(4) In this CP, FMI means a financial market infrastructure, which the PFMI Report describes as follows: payment systems, CSDs, SSSs, CCPs and trade repositories.

PART 2
CLEARING AGENCY RECOGNITION OR EXEMPTION FROM RECOGNITION

Recognition and exemption

2.0 (1) An entity seeking to carry on business as a clearing agency in certain jurisdictions in Canada is required under the securities legislation of such jurisdictions to apply for recognition or an exemption. For greater clarity, a foreign-based clearing agency that provides or will provide its services or facilities to a person or company resident in a jurisdiction would be considered to be carrying on business in that jurisdiction.

– Recognition of a clearing agency

(2) Generally, we take the view that a clearing agency that is systemically important to a jurisdiction's capital markets or that is not subject to comparable regulation by another regulatory body should be recognized by a securities regulatory authority. A securities regulatory authority may consider the systemic importance of a clearing agency to its capital markets based on the following list of guiding factors: value and volume of transactions processed, cleared and settled by the clearing agency;[6] risk exposures (particularly credit and liquidity) of the clearing agency to its participants; complexity of the clearing agency;[7] and centrality of the clearing agency with respect to its role in the market, including its substitutability, relationships, interdependencies and interactions.[8] The list of guiding factors is non-exhaustive, and no single factor described above will be determinative in an assessment of systemic importance. A securities regulatory authority retains the ability to consider additional quantitative and qualitative factors as may be relevant and appropriate.[9]

– Exemption from recognition

(3) Depending on the circumstances, a clearing agency may be granted an exemption from recognition pursuant to securities legislation and subject to appropriate terms and conditions, where it is not considered systemically important or where it does not otherwise pose significant risk to the capital markets. For example, such an approach may be considered for an entity that provides limited services or facilities, thereby not warranting full regulation, such as a clearing agency that does not perform the functions of a CCP, CSD or SSS. However, in such cases, terms and conditions may be imposed. In addition, a foreign-based clearing agency that is already subject to a comparable regulatory regime in its home jurisdiction may be granted an exemption from the recognition requirement as full regulation may be duplicative and inefficient when imposed in addition to the regulation of the home jurisdiction. The exemption may be subject to certain terms and conditions, including reporting requirements and prior notification of certain material changes to information provided to the securities regulatory authority.

Application and initial filing of information

2.1 The application process for both recognition and exemption from recognition as a clearing agency is similar. The entity that applies will typically be the entity that operates the facility or performs the functions of a clearing agency. The application for recognition or exemption will require completion of appropriate documentation. This will include the items listed in subsection 2.1(1). Together, the application materials should present a detailed description of the history, regulatory structure (if any), and business operations of the clearing agency. A clearing agency that operates as a CCP, CSD or SSS will need to describe how it

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5 In Québec, an entity that provides such centralized facilities for comparing data would be required to apply either for recognition as a matching service utility or for an exemption from the recognition requirement, in application of the provisions of National Instrument 24-101 *Institutional Trade Matching and Settlement*.

6 We would consider, for example, the current aggregate monetary values and volumes of such transactions, as well as the entity's potential for growth.

7 We would look, for example, to the nature and complexity of the clearing agency, taking into account an analysis of the various products it processes, clears or settles.

8 We would consider, for example, the centrality or importance of the clearing agency to the particular market or markets it serves, based on the degree to which it critically supports, or that its failure or disruption would affect, such markets or the entire Canadian financial infrastructure.

9 Additional factors may be based on the characteristics of the clearing agency under review, such as the nature of its operations, its corporate structure, or its business model.

meets or will meet the requirements of Parts 3 and 4. An applicant based in a foreign jurisdiction should also provide a detailed description of the regulatory regime of its home jurisdiction and the requirements imposed on the clearing agency, including how such requirements are similar to the requirements in Parts 3 and 4.

Where specific information items of the PFMI Disclosure Framework Document are not relevant to an applicant because of the nature or scope of its clearing agency activities, its structure, the products it clears or settles, or its regulatory environment, the application should explain in reasonable detail why the information items are not relevant.

The application filed by an applicant will generally be published for public comment for a 30-day period. Other materials filed with the application, which the applicant wishes to maintain confidential, will generally be kept confidential in accordance with securities and privacy legislation. However, the clearing agency will be required to publicly disclose its PFMI Disclosure Framework Document. See Standard 23.5 in Appendix A.

Material changes and other changes in information

2.2 (2) Under subsection 2.2(2), a recognized clearing agency must receive prior written approval before implementing a material change, unless otherwise provided in the terms and conditions of the recognition decision. The term "material change" is defined in subsection 2.2(1). Any relevant procedures for notifying the securities regulatory authority of a material change and for the authority's review, approval and publication of the material change, are normally set out in the terms and conditions of the recognition decision.

(4) We recognize that a recognized clearing agency may frequently change their fees or fee structure and may need to implement fee changes within tight timeframes. To facilitate this process, subsection 2.2(4) provides that a recognized clearing agency need only notify the securities regulatory authority at least twenty business days before implementing the fee.

Ceasing to Carry on Business

2.3 A recognized or exempt clearing agency that ceases to carry on business in Canada as a clearing agency, either voluntarily or involuntarily, must file a completed Form 24-102F2 *Cessation of Operations Report for Clearing Agency* within the appropriate timelines. In certain jurisdictions, the clearing agency intending to cease carrying on business must also make an application to voluntarily surrender its recognition to the securities regulatory authority pursuant to securities legislation. The securities regulatory authority may accept the voluntary surrender subject to terms and conditions.[10]

PART 3
INTERNATIONAL STANDARDS APPLICABLE TO RECOGNIZED CLEARING AGENCIES

Introduction

3.0 The Standards in Appendix A are derived from the PFMIs. We have included in the Standards only those PFMIs that are relevant to clearing agencies operating as a CCP, CSD or SSS.[11]

Standards

3.1 In interpreting and implementing the Standards, regard is to be given to the explanatory notes in the PFMI Report, as appropriate. As discussed in subsection 1.2(3) of this CP, the CSA and BOC have together developed Joint Supplementary Guidance to provide additional clarity on certain aspects of some Standards within the Canadian context. The Joint Supplementary Guidance is directed at recognized domestic clearing agencies that are also regulated by the BOC. The Joint Supplementary Guidance is included in separate *text boxes* below under the relevant headings of the Standards. Other recognized domestic clearing agencies should assess the applicability of the Joint Supplementary Guidance to their respective entity as well.

[10] See, for example, section 21.4 of the *Securities Act* (Ontario).

[11] International standards that are relevant to payment systems and trade repositories, but not CCPs, SSSs and CSDs, have not been included in the Standards in Appendix A.

– ***Standard 2: Governance***

Box 1:
Joint Supplementary Guidance –
Financial Stability and Other Public Interest Considerations

Context

The PFMIs define governance as the set of relationships between an FMI's owners, board of directors (or equivalent), management, and other relevant parties, including participants, authorities, and other stakeholders (such as participants' customers, other interdependent FMIs, and the broader market). Governance provides the processes through which an organization sets its objectives, determines the means for achieving those objectives, and monitors performance against those objectives. This note provides supplementary regulatory guidance for Canadian FMIs on their governance arrangements as it relates to supporting relevant public interest considerations.

Public interest considerations in the context of the PFMIs

The PFMIs indicate that FMIs should "explicitly support financial stability and other relevant public interests." However, there may be circumstances where providing explicit support of relevant public interests conflict with other FMI objectives and therefore require appropriate prioritization and balancing. For example, addressing the potential trade-offs between protecting the participants and the FMI while ensuring the financial stability interests are upheld.

Guidance within the PFMIs

The following text has been extracted directly from the PFMIs. The pertinent information is in bold italics.

PFMI paragraph 3.2.2:

> ***Given the importance of FMIs and the fact that their decisions can have widespread impact, affecting multiple financial institutions, markets, and jurisdictions, it is essential for each FMI to place a high priority on the safety and efficiency of its operations and explicitly support financial stability and other relevant public interests. Supporting the public interest is a broad concept that includes, for example, fostering fair and efficient markets.*** *For example, in certain over the counter derivatives markets, industry standards and market protocols have been developed to increase certainty, transparency, and stability in the market. If a CCP in such markets were to diverge from these practices, it could, in some cases, undermine the market's efforts to develop common processes to help reduce uncertainty. An FMI's governance arrangements should also include appropriate consideration of the interests of participants, participants' customers, relevant authorities, and other stakeholders. (...) For all types of FMIs, governance arrangements should provide for fair and open access (see Principle 18 on access and participation requirements) and for effective implementation of recovery or wind-down plans, or resolution.*

PFMI paragraph 3.2.8:

> ***An FMI's board has multiple roles and responsibilities that should be clearly specified. These roles and responsibilities should include*** *(a) establishing clear strategic aims for the entity; (b) ensuring effective monitoring of senior management (including selecting its senior managers, setting their objectives, evaluating their performance, and, where appropriate, removing them); (c) establishing appropriate compensation policies (which should be consistent with best practices and based on long-term achievements, in particular, the safety and efficiency of the FMI); (d) establishing and overseeing the risk-management function and material risk decisions; (e) overseeing internal control functions (including ensuring independence and adequate resources); (f) ensuring compliance with all supervisory and oversight requirements;* ***(g) ensuring consideration of financial stability and other relevant public interests****; and (h) providing accountability to the owners, participants, and other relevant stakeholders.*

The CPMI-IOSCO PFMI Disclosure framework and Assessment methodology provides questions to guide the assessment of the FMI against the PFMIs. Questions related to public interest considerations are focused on ensuring that the FMI's objectives are clearly defined, giving a high priority to safety, financial stability and efficiency while also ensuring all other public interest considerations are identified and reflected in the FMI's objectives.

Supplementary Guidance for designated Canadian FMIs

By definition the PFMIs apply to systemically important FMIs, so safety and financial stability objectives should be given a high priority.

Efficiency is also a high priority that should contribute to (but not supersede) the safety and financial stability objectives.

Other public interest considerations such as competition and fair and open access should also be considered in the broader safety and financial stability context.

A framework (objectives, policies and procedures) should be in place for default and other emergency situations. The framework should articulate explicit principles to ensure financial stability and other relevant public interests are considered as part of the decision making process. For example, it should provide guidance on discretionary management decisions, consider the trade-offs between protecting the participants and the FMI while also ensuring the financial stability interests are upheld, and articulate a communication protocol with the board and regulators.

Practical questions/approaches to assessing the appropriateness of the framework include:

- Does the enabling legislation, articles of incorporation, corporate by-laws, corporate mission, vision statements, corporate risk statements/frameworks/methodology clearly articulate the objectives and are they appropriately aligned and communicated (transparent)?
- Do the objectives give appropriate priority to safety, financial stability, efficiency and other public interest considerations?
- Does the Board structure ensure the right mix of skills/experience and interests are in place to ensure the objectives are clear, appropriately prioritized, achieved and measured?
- What is the training provided to the Board and management to support the objectives?
- Do the service offerings and business plans support the objectives?
- Do the system design, rules, procedures support the objectives?
- Are the inter-dependencies and key dependencies considered and managed in the context of the broader financial stability objectives? For instance, do problem and default management policies and procedures appropriately provide for consideration of the broader financial stability interests and do they engage the key stakeholders and regulators?
- Are there procedures in place to get timely engagement of the Board to discuss emerging/current issues, consider scenarios, provide guidance and make decision?
- Does the framework ensure that the broader financial stability issues are considered in any actions relating to a participant suspension?

Box 2:
Joint Supplementary Guidance–
Vertically and Horizontally Integrated FMIs

Context

Consolidation, or integration, of FMI services may bring about benefits for merging FMIs; however it may also create new governance challenges. The PFMIs contain some general guidance regarding how FMIs should manage governance issues that arise in integrated entities. This note provides supplementary regulatory guidance for Canadian FMIs that either belong to an integrated entity or are considering consolidating with another entity to form one. The guidance applies to both vertically and horizontally integrated entities.

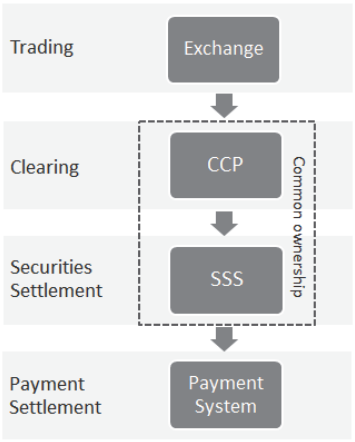
Vertical and horizontal integration in the context of FMIs

The PFMIs define a vertically integrated FMI group as one that brings together post-trade infrastructure providers under common ownership with providers of other parts of the value chain (for example, one entity owning and operating an exchange,

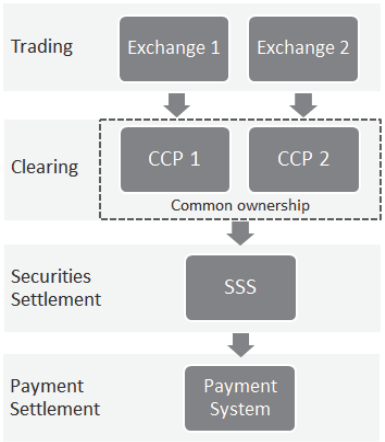
CCP and SSS) and a horizontally integrated group as one that provides the same post-trade service offerings across a number of different products (for example, one entity offering CCP services for derivatives and cash markets).[12] Examples are shown in Figure 1.

Figure 1: Examples of FMI integration in the value chain

a) Example of vertically integrated FMIs



b) Example of horizontally integrated FMIs



Guidance within the PFMIs

The following text has been extracted directly from the PFMIs. The pertinent information is in bold italics.

PFMI paragraph 3.2.5:

> *Depending on its ownership structure and organisational form, an FMI may need to focus particular attention on certain aspects of its governance arrangements.* ***An FMI that is part of a larger organisation, for example, should place particular emphasis on the clarity of its governance arrangements, including in relation to any conflicts of interests and outsourcing issues that may arise because of the parent or other affiliated organisation's structure. The FMI's governance arrangements should also be adequate to ensure that decisions of affiliated organisations are not detrimental to the FMI.[13] An FMI that is, or is part of, a for-profit entity may need to place particular emphasis on managing any conflicts between income generation and safety.***

PFMI paragraph 3.2.6:

> *An FMI may also need to focus particular attention on certain aspects of its risk-management arrangements as a result of its ownership structure or organisational form.* ***If an FMI provides services that present a distinct risk profile from, and potentially pose significant additional risks to, its payment, clearing, settlement, or recording function, the FMI needs to manage those additional risks adequately. This may include separating the additional services that the FMI provides from its payment, clearing, settlement, and recording function legally, or taking equivalent action.*** *The ownership structure and organisational form may also need to be considered in the preparation and implementation of the FMI's recovery or wind-down plans or in assessments of the FMI's resolvability.*

Supplementary guidance for designated Canadian FMIs

An FMI that is part of a larger entity faces additional risk considerations compared to stand-alone FMIs. While there are potential benefits from integrating services into one large entity, including potential risk reduction benefits, integrated entities could face additional risks such as a greater degree of general business risk. Examples of how this could occur include the following:

- losses in one function may spill-over to the entity's other functions;

[12] CPMI-IOSCO 2010. "Market structure developments in the clearing industry: implications for financial stability." CPMI-IOSCO Paper No 92. Available at: http://www.bis.org/publ/cpss92.htm.

[13] If an FMI is wholly owned or controlled by another entity, authorities should also review the governance arrangements of that entity to see that they do not have adverse effects on the FMI's observance of this principle.

- the consolidated entity may face high combined exposures across its functions; and
- the consolidated entity may face exposures to the same participants across its functions.

For a more extensive discussion of potentially heightened risks that integrated FMIs may face, see CPMI, "Market structure developments in the clearing industry: implications for financial stability" (2010).[14]

If an FMI belongs to a larger entity, or is considering consolidating with another entity, it should consider how its risk profile differs as part of the consolidated entity, and take appropriate measures to mitigate these risks.

In addition, FMIs that either belong to an integrated entity or are considering merging to form one should meet the following conditions.

1) Measures to protect critical FMI functions

- FMIs may be part of a larger consolidated entity. These FMIs must either:
  - legally separate FMI-related functions[15] from non-FMI-related functions performed by the consolidated entity in order to maximize bankruptcy remoteness of the FMI-related functions; or
  - have satisfactory policies and procedures in place to manage additional risks resulting from the non-FMI-related functions appropriately to ensure the FMI's financial and operational viability.
- If an FMI performs multiple FMI-related functions with distinct risk profiles within the same entity, the operator should effectively manage the additional risks that may result. The FMI should hold sufficient financial resources to manage the risks in all services it offers, including the combined or compounded risks that would be associated with offering the services through a single legal entity. If the FMI provides multiple services, it should disclose information about the risks of the combined services to existing and prospective participants to give an accurate understanding of the risks they incur by participating in the FMI. The FMI should carefully consider the benefits of offering critical services with distinct risk profiles through separate legal entities.
- If an FMI offers CCP services as part of its FMI-related functions, further conditions apply. CCPs take on more risk than other FMIs, and are inherently at higher risk of failure. Therefore, the FMI must either legally separate its CCP functions from other critical (non-CCP) FMI-related functions, or have satisfactory policies and procedures in place to manage additional risks appropriately to ensure the FMI's financial and operational viability.
- Legal separation of critical functions is intended to maximize their bankruptcy remoteness and would not necessarily preclude integration of common organizational management activities such as IT and legal services across functions as long as any related risks are appropriately identified and mitigated.

2) Independence of governance and risk management

- FMIs and non-FMIs may have different corporate objectives and risk management appetites which could conflict at the parent level. For example, non-FMI-related functions, such as trading venues, are generally more focused on profit generation than risk management and do not have the same risk profile as FMI-related functions. A trading venue in a vertically integrated entity may benefit from increased participation in its service if its associated clearing function lessens its participation requirements.
- To mitigate potential conflicts, in particular the ability of other functions to negatively influence the FMI's risk controls, each FMI subsidiary should have a governance structure and risk management decision-making process that is separate and independent from the other functions and should maintain an appropriate level of autonomy from the parent and other functions to ensure efficient decision making and effective management of any potential conflicts of interest. In addition, the consolidated entity's broad governance arrangements should be reviewed to ensure they do not impede the FMI-related function's observance of the CPMI-IOSCO principle on governance.

[14] Available at http://www.bis.org/cpmi/publ/d92.pdf.

[15] FMI-related functions are CCP, SSS, and CSD functions, including other aspects of clearing and settlement necessary to perform the CCP, SSS, and CDS functions (see the CPMI-IOSCO glossary definitions of "clearing" and "settlement", available at http://www.bis.org/cpmi/publ/d00b.pdf).

3) Comprehensive management of risks

- Although risk management governance and decision-making should remain independent, it is nonetheless necessary that the consolidated entity is able to manage risk appropriately across the entity. At a consolidated level, the entity should have an appropriate risk management framework that considers the risks of each subsidiary and the additional risks related to their interdependencies.

- An FMI should identify and manage the risks it bears from and poses to other entities as a result of interdependencies. Consolidated FMIs should also identify and manage the risks they pose to one another as a result of their interdependencies. Consolidated FMIs may have exposures to the same participants, liquidity providers, and other critical service providers across products, markets and/or functions. This may increase the entity's dependence on these providers and may heighten the systemic risk associated with the consolidated entity compared to a stand-alone FMI. Where possible, the consolidated entity and its FMIs should consider ways to mitigate risks arising from shared dependencies. The consolidated entity and its FMIs should also consider conducting entity-wide operational risk testing related to identifying and mitigating these risks.

4) Sufficient capital to cover potential losses

- Consolidated entities face the risk that a single participant defaults in more than one subsidiary simultaneously. This could result in substantial losses for the consolidated entity which will then also need to replenish resources for the FMIs to continue to operate. FMIs should consider such risks in developing their resource replenishment plan.

- Consolidated entities may face higher or lower business risk than individual FMIs depending on size, complexity and diversification across affiliates. Consolidated entities should consider these impacts in their general business risk profiles and in determining the appropriate level of liquid assets needed to cover their potential general business losses.[16]

– ***Standard 5: Collateral***

Box 3:
Joint Supplementary Guidance –
Collateral

Context

The PFMIs establish the form and attributes of collateral that an FMI holds to manage its own credit exposures or those of its participants. This note provides additional guidance for Canadian FMIs to meet the components of the collateral principle related to: (i) acceptance of collateral with low credit, liquidity and market risk; (ii) concentrated holdings of certain assets; and (iii) calculating haircuts. In certain circumstances, regulators may allow exceptions to the collateral policy on a case-by-case basis if the FMI demonstrates that the risks can be adequately managed.

(i) Acceptable collateral

The following text has been extracted directly from the PFMIs, from Principle 5 - Key Considerations 1 and 4:

> *An FMI should conduct its own assessment of risks when determining collateral eligibility. In general, collateral held to manage the credit exposures of the FMI or those of its participants should have minimal credit, liquidity and market risk, even in stressed market conditions. However, asset categories with additional risk may be accepted when subject to conservative haircuts and adequate concentration limits.*

The following clarifies regulators' expectations on what is acceptable collateral by specifying:

1) minimum requirements for all assets that are acceptable as collateral;

2) the asset categories that are judged to have minimal credit, liquidity and market risk; and

3) additional asset categories that could be acceptable as collateral if subject to conservative haircuts and concentration

[16] Liquid assets held for general business losses must be funded by equity (such as common stock, disclosed reserves, or retained earnings) rather than debt.

limits.

1) **An FMI should conduct its own internal assessment of the credit, liquidity and market risk of the assets eligible as collateral. The FMI should review its collateral policy at least annually, and whenever market factors justify a more frequent review. At a minimum, acceptable assets should:**

   i) **be freely transferable without legal, regulatory, contractual or any other constraints that would impair liquidation in a default;**

   ii) **be marketable securities that have an active outright sale market even in stressed market conditions;**

   iii) **have reliable price data published on a regular basis;**

   iv) **be settled over a securities settlement system compliant with the Principles; and**

   v) **be denominated in the same currency as the credit exposures being managed, or in a currency that the FMI can demonstrate it has the ability to manage.**

   An FMI should not rely only on external opinions to determine what acceptable collateral is. The FMI should conduct its own assessment of the riskiness of assets, including differences within a particular asset category, to determine whether the risks are acceptable. Since the primary purpose of accepting collateral is to manage the credit exposures of the FMI and its participants, it is paramount that assets eligible as collateral can be liquidated for fair value within a reasonable time frame to cover credit losses following a default. The annual review of the FMI's collateral policy provides an opportunity to assess whether risks continue to be adequately managed. Owing to the dynamic nature of capital markets, the FMI should monitor changes in the underlying risk of the specific assets accepted as collateral, and should adjust its collateral policy in the interim period between annual reviews, when required.

   At a minimum, an asset should have certain characteristics in order to provide sufficient assurance that it can be liquidated for fair value within a reasonable time frame. These characteristics relate primarily to the FMI's ability to reliably sell the asset as required to manage its credit exposures. The asset should be unencumbered, that is, it must be free of legal, regulatory, contractual or other restrictions that would impede the FMI's ability to sell it. The challenges associated with selling or transferring non-marketable assets, or those without an active secondary market, preclude their acceptance as collateral.

2) **Assets generally judged to have minimal credit, liquidity and market risk are the following:**

   i) **cash;**

   ii) **securities issued or guaranteed by the Government of Canada;[17]**

   iii) **securities issued or guaranteed by a provincial government; and**

   iv) **securities issued by the U.S. Treasury.**

   In general, the assets judged to have minimal risk are cash and debt securities issued by government entities with unique powers, such as the ability to raise taxes and set laws, and that have a low probability of default. Total Canadian debt outstanding is currently dominated by securities issued or guaranteed by the Government of Canada and by provincial governments. The relatively large supply of securities issued by these entities and their generally high creditworthiness contribute to the liquidity of these assets in the domestic capital market. Securities issued by the U.S. Treasury are also deemed to be of high quality for the same reasons. The overall riskiness of securities issued by the Government of Canada and the U.S. Treasury is further reduced by their previous record of maintaining value in stressed market conditions, when they tend to benefit from a "flight to safety."

   It is essential that an FMI regularly assesses the riskiness of even the specific high-quality assets identified in this section to determine their adequacy as eligible collateral. In some cases, only certain assets within the more general asset category may be deemed acceptable.

[17] Guarantees include securities issued by federal and provincial Crown corporations or other entities with an explicit statement that debt issued by the entity represents the general obligations of the sovereign.

3) An FMI should consider its own distinct arrangements for allocating credit losses and managing credit exposures when accepting a broader range of assets as collateral. The following asset classes may be acceptable as collateral if they are subject to conservative haircuts and concentration limits:

i) securities issued by a municipal government;

ii) bankers' acceptances;

iii) commercial paper;

iv) corporate bonds;

v) asset-backed securities that meet the following criteria: (1) sponsored by a deposit-taking financial institution that is prudentially regulated at either the federal or provincial level, (2) part of a securitization program supported by a liquidity facility , and (3) backed by assets of an acceptable credit quality;

vi) equity securities traded on marketplaces regulated by a member of the CSA and the Investment Industry Regulatory Organization of Canada; and

vii) other securities issued or guaranteed by a government, central bank or supranational institution classified as Level 1 high-quality assets by the Basel Committee on Banking Supervision.

An FMI should take into account its specific risk profile when assessing whether accepting certain assets as collateral would be appropriate. The decision to broaden the range of acceptable collateral should also consider the size of collateral holdings to cover the credit exposures of the FMI relative to the size of asset markets. In cases where the total collateral required to cover credit exposures is small compared with the market for high-quality assets, there is less potential strain on participants to meet collateral requirements.

Accepting a broader range of collateral has certain advantages. Most importantly, it provides participants with more flexibility to meet the FMI's collateral requirements, which may be especially important in stressed market conditions. A broader range of collateral diversifies the risk exposures faced by the FMI, since it may be easier to liquidate diversified collateral holdings when liquidity unexpectedly dries up for a particular asset class. It also diversifies market risk by reducing potential exposure to idiosyncratic shocks. Accepting a broader range of assets recognizes the increased cost to market participants of posting only the highest-quality assets, as well as the increasing encumbrance of these assets in order to meet new regulatory standards.[18]

(ii) Concentration Limits

The following text has been extracted directly from the PFMIs, from Principle 5 - Key Considerations 1 and 4:

An FMI should avoid concentrated holding of assets where this could potentially introduce credit, market and liquidity risk beyond acceptable levels. In addition, the FMI should mitigate specific wrong-way risk by limiting the acceptance of collateral that would likely lose value in the event of a participant default, and prevent participants from posting assets they or their affiliates have issued. The FMI should measure and monitor the collateral posted by participants on a regular basis, with more frequent analysis required when more flexible collateral policies have been implemented.

The following points clarify regulators' expectations regarding the composition of collateral accepted by an FMI by specifying:

1) broad limits for riskier asset classes to mitigate concentration risk;

2) targeted limits for securities issued by financial sector entities to mitigate specific wrong-way risk; and

3) the level of monitoring required for collateral posted by participants.

1) An FMI should limit assets from the broader range of acceptable assets identified in section (i)3) to a maximum of 40 per cent of the total collateral posted from each participant. Within the broader range of acceptable assets, the FMI should consider implementing more specific concentration limits for different asset categories.

[18] The encumbrance of high-quality assets is expected to increase through a number of regulatory reforms, including Basel III, over-the-counter derivatives reform and the Principles.

An FMI should limit securities issued by a single issuer from the broader range of acceptable assets to a maximum of 5 per cent of total collateral from each participant.

The guidance limits the acceptance of collateral from the broader range of assets to a maximum of 40 per cent because a higher proportion could potentially create unacceptable risks to FMIs and their participants. This limit is currently applied to the Bank's Standing Liquidity Facility and the Liquidity Coverage Ratio under Basel III. The benefits of expanding collateral—namely, providing participants with more flexibility and achieving greater diversification—are achieved within the limit of 40 per cent, with collateral in excess of this limit increasing the overall risk exposures with less benefit. In some circumstances, regulators may permit an FMI to accept more than 40 per cent of total collateral from the broader range of assets if the risk from a particular participant is low.
Employing a limit of 5 per cent of total collateral for securities issued by a single issuer is a prudent measure to limit exposures from idiosyncratic shocks. It also reduces the need for procyclical adjustments to collateral requirements following a decline in value.

An FMI should consider implementing more stringent concentration limits, as well as imposing limits on certain asset categories, depending on the FMI's specific arrangements for managing credit exposures. The considerations described in section (i) 3) for accepting a broader range of assets as collateral apply equally to the decision over whether more stringent concentration limits should be implemented.

2) **An FMI should limit the collateral from financial sector issuers to a maximum of 10 per cent of total collateral pledged from each participant. The FMI should not allow participants to post their own securities or those of their affiliates as collateral.**

An FMI is exposed to specific wrong-way risk when the collateral posted is highly likely to decrease in value following a participant default. It is highly likely that the value of debt and equity securities issued by companies in the financial sector would be adversely affected by the default of an FMI participant, introducing wrong-way risk. This is especially the case for interconnected FMI participants with activities that are concentrated in domestic financial markets. Implementing a limit on financial sector issuers mitigates potential risk exposures from specific wrong-way risk. More stringent limits should be implemented where appropriate.

3) **In cases where only the highest-quality assets are accepted, an FMI is required to measure and monitor the collateral posted by participants during periodic evaluations of participant creditworthiness. The FMI should measure and monitor the correlation between a participant's creditworthiness and the collateral posted more frequently when a broader range of collateral is accepted. The FMI should have the ability to adjust the composition and to increase the collateral required from participants experiencing a reduction in creditworthiness.**

When only the highest-quality assets are accepted as collateral, there is less risk associated with the composition of collateral posted by a participant; hence, such risk does not need to be monitored as closely. The FMI should monitor the composition of collateral pledged by participants more frequently when riskier assets are eligible, since such assets are more likely to be correlated with the participant's creditworthiness. FMIs should also consider the general credit risk of their participants when deciding how frequently monitoring should be conducted. In all circumstances, the FMI should have the contractual and legal ability to unilaterally require more collateral and to request higher-quality collateral from a participant that is judged to present a greater risk.

(iii) Haircuts

The following text has been extracted directly from the PFMIs, from Principle 5 - Key Considerations 2 and 3:

An FMI should establish stable and conservative haircuts that consider all aspects of the risks associated with the collateral. An FMI should evaluate the performance of haircuts by conducting backtesting and stress testing on a regular basis.

The following points clarify regulators' expectations regarding the calculation and testing of haircuts by outlining:

1) requirements for calculating haircuts; and

2) requirements for testing the adequacy of haircuts and overall collateral accepted.

1) **An FMI should apply stable and conservative haircuts that are calibrated against stressed market conditions. When the same haircut is applied to a group of securities, it should be sufficient to cover the riskiest security within the group. Haircuts should reflect both the specific risks of the collateral accepted and the general risks of an FMI's collateral policy.**

   Including periods of stressed market conditions in the calibration of haircuts should increase the haircut rate. In addition to representing a conservative approach, this helps to mitigate the risk of a procyclical increase in haircuts during a period of high volatility. Typically, FMIs group similar securities by shared characteristics for the purposes of calculating haircuts (e.g., Government of Canada bonds with similar maturities). An FMI should recognize the different risks associated with each individual security by ensuring that the haircut is sufficient to cover the security with the most risk within each group. Haircuts should always account for all of the specific risks associated with each asset accepted as collateral. However, the FMI should also consider the portfolio risk of the total collateral posted by a participant; the FMI may consider employing deeper haircuts for concentration and wrong-way risk above certain thresholds.

2) **An FMI should perform backtesting of its collateral haircuts on at least a monthly basis, and conduct a more thorough review of haircuts quarterly. The FMI's stress tests should take into account the collateral posted by participants.**

   FMIs are expected to calculate stable and conservative haircuts by considering stressed market conditions. In general, including stressed market conditions in the calibration of haircuts should provide a high level of coverage that does not require continuous testing and verification. Nonetheless, backtesting on a monthly basis allow the adequacy of haircuts to be evaluated against observed outcomes. A quarterly review of haircuts balances the objective of stable haircuts with the need to adjust haircuts as required. Including changes to collateral values as part of stress testing provides a more accurate assessment of potential losses in a default scenario.

– ***Standard 7: Liquidity risk***

Box 4:
Joint Supplementary Guidance –
Liquidity Risk

Context

The PFMIs define liquidity risk as risk that arises when the FMI, its participants or other entities cannot settle their payment obligations when due as part of the clearing or settlement process. This note provides additional guidance for Canadian FMIs to meet the components of the liquidity-risk principle related to: (i) maintaining sufficient liquid resources and (ii) qualifying liquid resources.

(i) Maintaining sufficient liquid resources

The following text has been extracted directly from the PFMIs, from Principle 7 - Key Considerations 3, 5, 6 and 9:

> *An FMI should maintain sufficient qualifying liquid resources to cover its liquidity exposures to participants with a high degree of confidence. An FMI should maintain additional liquid resources sufficient to cover a wide range of potential stress scenarios that should include, but not be limited to, the default of the participant and its affiliates that would generate the largest aggregate liquidity obligation for the FMI in extreme but plausible conditions. Liquidity stress testing should be performed on a daily basis. An FMI should verify that its liquid resources are sufficient through comprehensive stress testing conducted at least monthly.*

The information provided in this section clarifies regulators' expectations of sufficient qualifying liquid resources by specifying:

1 the degree of confidence required to cover liquidity exposures;

2) the total liquid resources that should be maintained; and

3) how the FMI should verify that its liquid resources are sufficient and adjust liquid resources when necessary.

1) Qualifying liquid resources should meet an established single-tailed confidence level of at least 97 per cent with respect to the estimated distribution of potential liquidity exposures.[19] The FMI should have an appropriate method for estimating potential exposures that accounts for the design of the FMI and other relevant risk factors.

The guidance requires a high threshold for covering liquidity exposures with qualifying liquid resources, while also considering the expense associated with obtaining these resources. A 97 per cent degree of confidence is equivalent to less than one observation per month (on average) in which a liquidity exposure is greater than the FMI's qualifying liquid resources. However, if it is to meet the required threshold, the FMI should estimate its potential liquidity exposures accurately. The FMI should account for all relevant predictive factors when estimating potential exposures. While historical exposures are expected to form the basis of estimated potential exposures, the FMI should account for the impact of new products, additional participants, changes in the way transactions settle or other relevant market- risk factors.

2a) An FMI should maintain additional liquid resources that are sufficient to cover a wide range of potential stress scenarios. Total liquid resources should cover the FMI's largest potential exposure under a variety of extreme but plausible conditions. The FMI should have a liquidity plan that justifies the use of other liquid resources and provides the supporting rationale for the total liquid resources that it maintains.

The guidance requires that total liquid resources be determined by the largest potential exposure in extreme but plausible conditions. This implies maintaining total liquid resources sufficient to cover at least the FMI's largest observed liquidity exposures, but the liquidity resources would likely be larger, based on an assessment of potential liquidity exposures in extreme but plausible conditions. The FMI's liquidity plan should explain why the FMI's estimated largest potential exposure is an accurate assessment of the FMI's liquidity needs in extreme but plausible conditions, thereby demonstrating the adequacy of the FMI's total liquid resources.

It is permissible for an FMI to manage this risk in part with other liquid resources because it may be prohibitively expensive, or even impossible, for the FMI to obtain sufficient qualifying liquid resources. FMIs face increased risk from liquid resources that do not meet the strict definition of "qualifying," and thus an FMI should include in its liquidity plan a clear explanation of how these resources could be used to satisfy a liquidity obligation. This additional explanation is warranted in all cases, even when the FMI's dependence on other liquid resources is minimal.

2b) When applicable, the possibility that a defaulting participant is also a liquidity provider should be taken into account.

Generally, the liquidity providers for Canadian FMIs are also participants in the FMI. When a defaulting participant is also a liquidity provider, it is important that the FMI's liquidity facilities are arranged in such a way that it has sufficient liquidity. To do so, the FMI should either have additional liquid resources or negotiate a backup liquidity provider, so that the FMI has sufficient liquidity (as specified in this guidance) in the event that one of its liquidity providers defaults.

3) FMIs should perform liquidity stress testing on a daily basis to assess their liquidity needs. At least monthly, FMIs should conduct comprehensive stress tests to verify the adequacy of their total liquid resources and to serve as a tool for informing risk management. Stress-testing results should be reviewed by the FMI's risk-management committee and reported to regulators on a regular basis.

FMIs should have clear procedures to determine whether their liquid resources are sufficient and to adjust their available liquid resources when necessary. A full review and potential resizing of liquid resources should be completed at least annually.

The annual validation of an FMI's model for managing liquidity risk should determine whether its stress testing follows best practices and captures the potential risks faced by the FMI.

FMIs should assess their liquidity needs through stress testing that includes the measurement of the largest daily liquidity exposure that they face. FMIs should also conduct stress testing to verify whether their liquid resources are sufficient to cover potential liquidity exposures under a wide range of stress scenarios. An annual full review and potential resizing of liquid resources provides adequate time to negotiate with liquidity providers. While it may be impractical for FMIs to frequently obtain additional liquid resources, it is important that FMIs clearly define the

[19] A "potential liquidity exposure" is defined as the estimated maximum daily liquidity needs resulting from the market value of the FMI's payment obligations under normal business conditions. FMIs should consider potential liquidity exposures over a rolling one-year time frame.

circumstances requiring prompt adjustment of their available liquid resources, and have a reliable plan for doing so. Establishing clear procedures provides transparency regarding an FMI's decision-making process and prevents the FMI from delaying required increases in liquid resources beyond what is reasonably acceptable. The review of stress- testing results by the FMI's risk-management committee provides additional assurance that liquid resources are sufficient, and whether an interim resizing is necessary. Reporting results to regulators on a monthly basis allows for timely intervention if liquid resources have been deemed inadequate.

Comprehensive stress testing should also encompass a broad range of stress scenarios, not just to verify whether the FMI's liquid resources are sufficient, but also to identify potential risk factors. Reverse stress testing, more extreme stress scenarios, valuation of liquid assets and focusing on individual risk factors (e.g., available collateral) all help to inform the FMI of potential risks. The annual validation of the FMI's risk-management model enables it to fully assess the appropriateness of the stress scenarios conducted and the procedures for adjusting liquid resources.

(ii) Qualifying liquid resources

The following text has been extracted directly from the PFMIs, from Principle 7 - Key Considerations 4, 5 and 6:

Qualifying liquid resources should be highly reliable and have same-day availability. Liquid resources are reliable when the FMI has near certainty that the resources it expects will be available when required. Qualifying liquid resources should be available on the same day that they are needed by the FMI to meet any immediate liquidity obligation (e.g., a participant's default). Qualifying liquid resources that are denominated in the same currency as the FMI's exposures count toward its minimum liquid-resource requirement.

The following section clarifies regulators' expectations as to what is considered a qualifying liquid resource by:

1) identifying the assets in the possession, custody or control of the FMI that are considered qualifying liquid resources; and

2) setting clear standards for liquidity facilities to be considered qualifying liquid resources, including more-stringent standards for uncommitted liquidity facilities.

1) Cash and treasury bills[20] in the possession, custody or control of an FMI are qualifying liquid resources for liquidity exposures denominated in the same currency.[21]

Cash held by an FMI does not fluctuate in value and can be used immediately to meet a liquidity obligation, thereby satisfying the criteria for liquid resources to be highly reliable and available on the same day.[22] Treasury bills issued by the Government of Canada or the U.S. Treasury also meet the definition of a qualifying liquid resource. By market convention, sales of treasury bills settle on the same day, allowing funds to be obtained immediately, whereas other bonds can settle as late as three days after the date of the trade. Treasury bills can also be transacted in larger sizes with less market impact than most other bonds. In addition, the shorter-term nature of treasury bills makes them more liquid than other securities during a crisis (i.e., they benefit from a "flight to liquidity"). Thus, there is a high degree of certainty that the FMI would obtain liquid resources in the amount expected following the sale of treasury bills.

2a) Committed liquidity facilities are qualifying liquid resources for liquidity exposures denominated in the same currency if the following criteria are met:

i) facilities are pre-arranged and fully collateralized;

ii) there is a minimum of three independent liquidity providers;23 and

iii) the FMI conducts a level of due diligence that is as stringent as the risk assessment completed for FMI participants.

For liquidity facilities to be considered reliable, an FMI should have near certainty that the liquidity provider will

20 "Treasury bills" refers to bonds issued by the Government of Canada and the U.S. Treasury with a maturity of one year or less.

21 This section refers to unencumbered assets free of legal, regulatory, contractual or other restrictions on the ability of the FMI to liquidate, sell, transfer or assign the asset.

22 "Cash" refers to currency deposits held at the issuing central bank and at creditworthy commercial banks. "Value" in this context refers to the nominal value of the currency.

23 The Liquidity providers should not be affiliates to be considered independent.

honour its obligation. Pre-arranged liquidity facilities provide clarity on terms and conditions, allowing greater certainty regarding the obligations and risks of the liquidity providers. Pre- arranged facilities also reduce complications associated with obtaining liquidity, when required. Furthermore, a liquidity provider is most likely to honour its obligations when lending is fully collateralized. Therefore, only the amount that is collateralized will be considered a qualifying liquid resource. A liquidity facility is more reliable when the risk of non-performance is not concentrated in a single institution. By having at least three independent liquidity providers, the FMI would continue to diversify its risks should even a single provider default. To monitor the continued reliability of a liquidity facility, the FMI should assess its liquidity providers on an ongoing basis. In this respect, an FMI's risk exposures to its liquidity providers are similar to the risks posed to it by its participants. Therefore, it is appropriate for the FMI to conduct comparable evaluations of the financial health of its liquidity providers to ensure that the providers have the capacity to perform as expected.

2b) Uncommitted liquidity facilities are considered qualifying liquid resources for liquidity exposures in Canadian dollars if they meet the following additional criteria:

i) the liquidity provider has access to the Bank of Canada's Standing Liquidity Facility (SLF);

ii) the facility is fully collateralized with SLF-eligible collateral; and

iii) the facility is denominated in Canadian dollars.

More-stringent standards are warranted for uncommitted facilities because a liquidity provider's incentives to honour its obligations are weaker. However, the risk that the liquidity provider will be unwilling or unable to provide liquidity is reduced by the requirement that it needs to be a direct participant in the Large Value Transfer System and that the collateral be eligible for the Standing Liquidity Facility (SLF). This is because the collateral obtained from the FMI in exchange for liquidity can be pledged to the Bank of Canada under the SLF. This option significantly reduces the liquidity pressures faced by the liquidity provider that could interfere with its ability to perform on its obligations. A facility in a foreign currency would not qualify because the Bank does not lend in currencies other than the Canadian dollar. The increased reliability of liquidity providers with access to routine credit from the central bank is recognized explicitly within the PFMIs.

– ***Standard 15: General business risk***

Box 5:
Joint Supplementary Guidance –
General Business Risk

Context

The PFMIs define general business risk as any potential impairment of the financial condition (as a business concern) of an FMI owing to declines in its revenue or growth in its expenses, resulting in expenses exceeding revenues and a loss that must be charged against capital. These risks arise from an FMI's administration and operation as a business enterprise. They are not related to participant default and are not covered separately by financial resources under the Credit or Liquidity Risk Principles. To manage these risks, the PFMIs state that FMIs should identify, monitor and manage their general business risk and hold sufficient liquid net assets funded by equity to cover potential general business losses. This note provides additional guidance for Canadian FMIs to meet the components of the general business risk principle related to: (i) governing general business risk; (ii) determining sufficient liquid net assets; and (iii) identifying qualifying liquid net assets. It also establishes the associated timelines and disclosure requirements.

(i) Governance of general business risk

Principle 15, Key Consideration 1 of the PFMIs states:

An FMI should have robust management and control systems to identify, monitor, and manage general business risk.

The following points clarify the authorities' expectations on how an FMI's governance arrangements should address general business risk.

An FMI's Board of Directors should be involved in the process of identifying and managing business risks.

Management of business risks should be integrated within an FMI's risk-management framework, and the Board of Directors should be responsible for determining risk tolerances related to business risk and for assigning responsibility for the identification and management of these risks. These risk tolerances and the process for the identification and management of business risk should be the foundation for the FMI's business risk-management policy. Based on the PFMIs, the policies and procedures governing the identification and management of business risk should meet the standards outlined below.

- The FMI's business risk-management policy should be approved by the Board of Directors and reviewed at least annually. The policy should be consistent with the Board's overall risk tolerance and risk-management strategy.
- The Board's Risk Committee should have a role in advising the Board on whether the business risk-management policy is consistent with the FMI's general risk-management strategy and risk tolerance.
- The business risk-management policy should provide clear responsibilities for decision making by the Board, and assign responsibility for the identification, management and reporting of business risks to management.

(ii) Determining sufficient liquid net assets

Principle 15, Key Consideration 2 of the PFMIs states:

> *An FMI should hold liquid net assets funded by equity […] so that it can continue operations and services as a going concern if it incurs general business losses. The amount of liquid net assets funded by equity an FMI should hold should be determined by its general business risk profile and the length of time required to achieve a recovery or orderly wind-down, as appropriate, of its critical operations and services if such action is taken.*

Principle 15, Key Consideration 3 of the PFMIs states:

> *An FMI should maintain a viable recovery or orderly wind-down plan and should hold sufficient liquid net assets funded by equity to implement this plan. At a minimum, an FMI should hold liquid net assets funded by equity equal to at least six months of current operating expenses.*

The following points clarify the authorities' expectations on how FMIs should calculate their sufficient liquid net assets:

Until guidance for recovery planning and for calculating the associated costs is completed, FMIs are required to hold liquid net assets to cover a minimum of six months of current operating expenses.

In calculating current operating expenses, FMIs will need to:

- **Assess and understand the various general business risks they face** to allow them to estimate as accurately as possible the required amount of liquid net assets. These estimates should be based on financial projections, which take into consideration, for example, past loss events, anticipated projects and increased operating expenses.
- **Restrict the calculation to ongoing expenses.** FMIs will need to adjust their operating costs such that any extraordinary expenses (i.e., unessential, infrequent or one-off costs) are excluded. Typically, operating costs include both fixed costs (e.g., premises, IT infrastructure, etc.) and variable costs (e.g., salaries, benefits, research and development, etc.).
- **Assess the portion of staff from each corporate department required to ensure the smooth functioning of the FMI during the six-month period.** The calculation of operating expenses would include some indirect costs. FMIs would require not only dedicated operational staff, but also various supporting staff. These could include (but are not limited to) staff from the FMI's Legal, IT and HR departments or staff required to ensure the continued functioning of other FMIs that could be necessary to support the FMI.

To fully observe Principle 15, FMIs must hold sufficient liquid assets to cover the greater of (i) funds required for FMIs to implement their recovery or wind-down; or (ii) six months of current operating expenses. In the interim, until recovery planning guidance is published, only the latter amount will apply.

The amount of liquid net assets required to implement an FMI's recovery or wind-down plans will depend on the scenarios or tools available to the FMI. The acceptable recovery and orderly wind-down plans for Canadian FMIs will be articulated by the authorities in forthcoming guidance. Once this guidance on recovery planning has been developed, the guidance on general business risk will be updated to provide FMIs with additional clarity on how to calculate the costs associated with these plans and determine the amount of liquid net assets required.

(iii) Qualifying liquid net assets

Explanatory Note 3.15.5 of the PFMIs states:

> *An FMI should hold liquid net assets funded by equity (such as common stock, disclosed reserves or other retained earnings) so that it can continue operations and services as a going concern if it incurs general business losses. Equity allows an FMI to absorb losses on an ongoing basis and should be permanently available for this purpose.*

Principle 15, Key Consideration 4 of the PFMIs states:

> *Assets held to cover general business risk should be of high quality and sufficiently liquid to allow the FMI to meet its current and projected operating expenses under a range of scenarios, including in adverse market conditions.*

Principle 15, Key Consideration 3 of the PFMIs states:

> *These assets are in addition to resources held to cover participant defaults or other risks covered under the financial resources principles.*

The following points clarify the authorities' expectations on which assets qualify to be held against general business risk, and how these assets should be held to ensure that they are permanently available to absorb general business losses.

Assets held against general business risk should be of high quality and sufficiently liquid, such as cash, cash equivalents and liquid securities.

Authorities have developed regulatory guidance related to managing liquidity and investment risks, which provides additional clarity on the definition of cash equivalents and liquid securities, respectively.

- **Cash equivalents** – are considered to be treasury bills[24] issued by either the Canadian or U.S. federal governments. As noted in the liquidity guidance, by market convention, sales of treasuries settle on the same day, allowing funds to be obtained immediately, whereas other bonds can settle as late as three days after the trade date.

- **Liquid securities** – for the purposes of general business risk, liquid securities are defined by the financial instruments criteria listed in the guidance on the Investment Risk Principle. These criteria outline financial instruments considered to have minimal credit, market, and liquidity risk.

Liquid net assets must be held at the level of the FMI legal entity to ensure that they are unencumbered and can be accessed quickly. Liquid net assets may be pooled with assets held for other purposes, but must be clearly identified as held against general business risk.

FMIs may need to accumulate liquid net assets for purposes other than to meet the General Business Risk Principle. However, assets held against general business risk cannot be used to cover participant default risk or any other risks covered by the financial resources principles.

Liquid net assets can be pooled with assets held for other purposes, but must be clearly identified as held against general business risk in the FMI's reports to its regulators.

(iv) Timelines for assessing and reporting the level of liquid net assets

Explanatory Note 3.15.8 of the PFMIs states:

> *To ensure the adequacy of its own resources, an FMI should regularly assess and report its liquid net assets funded by equity relative to its potential business risks to its regulators.*

The following clarifies the authorities' expectations of the frequency with which FMIs should assess and report their required level of liquid net assets.

FMIs should report to authorities the amount of liquid net assets held against business risk annually, at a minimum.

[24] Treasury bills refer to short-term (i.e., maturity of one year or less) debt instruments issued by the Canadian or U.S. federal government.

An FMI should report to the authorities the amount of liquid net assets funded by equity held exclusively against business risk and quantify its business risks as major developments arise, or at least on an annual basis. This report should include an explanation of the methodology used to assess the FMI's business risks and to calculate its requirements for liquid net assets.

FMIs should recalculate the required amount of liquid net assets annually, at a minimum.

Once FMI operators have established the amount of liquid net assets required to cover six months of operating expenses, FMIs should recalculate the required amount of liquid net assets as major developments occur, or annually, at a minimum. Once the authorities have provided further guidance on recovery and FMIs have developed recovery plans, FMIs should also evaluate the need to increase the amount of liquid net assets they should hold to meet the General Business Risk Principle.

To establish clear procedures that improve transparency regarding an FMI's decision-making process and to prevent the FMI from delaying required increases in liquid resources beyond what is reasonably acceptable, FMIs should maintain a viable capital plan for raising additional acceptable resources should these resources fall close to or below the amount needed. This plan should be approved by the Board of Directors and updated annually, or as major developments occur.

FMIs should review their methodology for calculating the required level of liquid net assets at least once every five years, or as major developments occur.[25]

The methodology for calculating the amount of required liquid net assets should be reviewed at least every five years to ensure that the calculation remains relevant over time.

– ***Standard 16: Custody and investment risks***

Box 6:
Joint Supplementary Guidance –
Custody and Investment Risks

Context

The PFMIs define investment risk as the risk faced by an FMI when it invests its own assets or those of its participants.

- An FMI holds assets for a variety of purposes, some of which are referred to specifically in the PFMIs: to cover its business risk (Principle 15), to cover credit losses (Principle 4) and to cover credit exposures (Principle 6) using the collateral pledged by participants.

- An FMI may also hold financial assets for purposes not directly related to the risk management issues addressed within the PFMIs (e.g., employee pensions, general investment assets).

An FMI's strategy for investing assets should be consistent with its overall risk-management strategy (Principle 16). The purpose of this note is to provide further guidance on regulators' expectations regarding the management of investment risk. This guidance helps to ensure that an FMI's investments are managed in a way that protects the financial soundness of the FMI and its participants.[26]

(i) Governance

The PFMIs state that the Board of Directors is responsible for overseeing the risk-management function and approving material risk decisions. An FMI should develop an investment policy to manage the risk arising from the investment of its own assets and those of its participants.

- The FMI's investment policy should be approved by the Board and reviewed at least annually. The policy should be consistent with the Board's overall risk tolerance and considered part of the FMI's risk-management framework.

[25] In the context of this specific guidance item, "major developments" refers to the major changes to operations, product and service offerings, or classes of participation.

[26] This guidance on investment risk is based on aspects of Principle 2 – Governance, Principle 3 – Comprehensive Framework for the Management of Risk, and Principle 16 – Custody and Investment Risk.

- The Risk Committee should advise the Board on whether the investment policy is consistent with the FMI's general risk-management strategy and risk tolerance.

- The Board should assess the advantages and disadvantages of managing assets internally or outsourcing them to an external manager. The FMI retains full responsibility for any actions taken by its external manager.

- The FMI should establish criteria for the selection of an external manager.[27]

The FMI's investment policy should clearly identify those who are accountable for investment performance. The investment policy should also:

- Provide a clear explanation of the Board's delegated responsibility for investment decision making.

- Specify clear responsibilities for monitoring investment performance (against established benchmarks) and risk exposures (against limits or constraints). Procedures should be established to ensure that appropriate actions are taken when breaches occur, including possible reporting to the Board.

- Investment performance and key risk metrics should be reported to the Board at least quarterly.[28]

(ii) Investment strategy

The investment strategy chosen by an FMI should not allow the pursuit of profit to compromise its financial soundness. As outlined below, additional consideration should be given to the investment strategy governing assets held specifically for risk-management purposes (i.e. Principle 4-7 and Principle 15).

Investment objectives

The investment policy should include appropriate investment objectives for the various assets held for risk-management purposes. The stated expected return and risk tolerance of the investment objectives should reflect the:

- specific purpose of the assets;

- relative importance of the assets in the overall risk management of the FMI; and

- requirement within the PFMIs for FMIs to invest in instruments with minimal credit, market and liquidity risk (see the Appendix for the minimum standards of acceptable instruments).

The investment objectives should also help to determine the appropriate benchmarks for measuring investment performance.

Investment constraints

The importance of assets held for risk-management purposes warrants the use of investment constraints. It is paramount that an FMI have prompt access to these assets with minimal price impact to avoid interference with their primary use for risk management. Investment of these assets should, at a minimum, observe the following:

- To reduce concentration risk, no more than 20 per cent of total investments should be invested in municipal and private sector securities. Investment in a single private sector or municipal issuer should be no more than 5 per cent of total investments.

- To mitigate specific wrong-way risk, investments should, as much as possible, be inversely related to market events that increase the likelihood of those assets being required. Investment in financial sector securities should be no more than 10 per cent of total investments. An FMI should not invest assets in the securities of its own affiliates. An FMI is not permitted to reinvest participant assets in a participant's own securities or those of its affiliates, as specified in Principle 16.

[27] At a minimum, external managers should have demonstrated past performance and expertise, as well as strong risk-management practices such as an internal audit function and processes to protect and segregate the FMI's assets.

[28] Investment performance may also be reported to a Board committee with special expertise to which the Board has delegated the authority to review investment performance (e.g., an Investment Committee).

- For investments that are subject to counterparty credit risk, an FMI should set clear criteria for choosing investment counterparties and setting exposure limits.

The investment constraints should be clearly stated in the investment policy in order to provide clear guidance for those responsible for investment decision making.[29]

Link to risk management

FMIs should account for the implications of investing assets on their broader risk-management practices. The following issues should be considered when investing assets held for risk management purposes:

- An FMI's process for determining whether sufficient assets are available for risk management should account for potential investment losses. For example, investing the assets available to a CCP to cover losses from a participant default could lose value in a default scenario, resulting in less credit-risk protection. An FMI should hold additional assets to cover potential losses from its investments held for risk-management purposes.

- An FMI should account for the implications of investing assets on its ability to effectively manage liquidity risk. In particular, identification of the FMI's available liquid resources should account for the investment of its own and participants' assets. For example, cash held at a creditworthy commercial bank would no longer be considered a qualifying liquid resource under Principle 7 if it were invested in the debt instrument of a private sector issuer.

- The investment of an FMI's own assets and those of its participants should not circumvent related risk management requirements. For example, the reinvestment of participants' collateral should still respect the FMI's collateral concentration limits applicable to those assets.

Appendix

For the purposes of Principle 16, financial instruments can be considered to have minimal credit, market and liquidity risk if they meet *each* of the following conditions:

1. Investments are debt instruments that are:

   a. securities issued by the Government of Canada;

   b. securities guaranteed by the Government of Canada;

   c. marketable securities issued by the United States Treasury;

   d. securities issued or guaranteed by a provincial government;

   e. securities issued by a municipal government;

   f. bankers' acceptances;

   g. commercial paper;

   h. corporate bonds; and

   i. asset-backed securities that meet the following criteria: (1) sponsored by a deposit-taking financial institution that is prudentially regulated at either the federal or provincial level, (2) part of a securitization program supported by a liquidity facility, and (3) backed by assets of an acceptable credit quality.

2. The FMI employs a defined methodology to demonstrate that debt instruments have low credit risk. This methodology should involve more than just mechanistic reliance on credit-risk assessments by an external party.

3. The FMI employs limits on the average time-to-maturity of the portfolio based on relevant stress scenarios in order to mitigate interest rate risk exposures.

[29] The use of investment vehicles where investments are held indirectly (e.g. mutual funds and exchange-traded funds) should not result in breaches to the investment constraints listed.

4. Instruments have an active market for outright sales or repurchase agreements, including in stressed conditions.

5. Reliable price data on debt instruments are available on a regular basis.

6. Instruments are freely transferable and settled over a securities settlement system compliant with the PFMIs.

– ***Standard 23: Disclosure of rules, key procedures, and market data***

Box 7:
Joint Supplementary Guidance –
Disclosure of rules, key procedures and market data

Context

The PFMIs state that FMIs should provide sufficient information to their participants and prospective participants to enable them to clearly understand the risks and responsibilities of participating in the system. This note provides additional guidance for Canadian FMIs to meet the components of the disclosure principle related to: (i) public qualitative disclosure and (ii) public quantitative disclosure.

Requirements included in the PFMIs

Principle 23 outlines requirements for disclosure to participants as well as the general public. In addition, specific disclosure requirements are listed in the principles to which they pertain.

The following text has been extracted directly from the PFMIs, Principle 23, Key Consideration 5:

> *An FMI should complete regularly and disclose publicly responses to the CPMI-IOSCO Disclosure framework for financial market infrastructures. An FMI also should, at a minimum, disclose basic data on transaction volumes and values.*

To supplement Key Consideration 5, CPMI-IOSCO published two documents: the Disclosure Framework for Financial Market Infrastructures (the Disclosure Framework),[30] and the Quantitative Disclosure Standards for CCPs (the Quantitative Disclosure Standards).[31] This note will refer to the disclosures that result from completing the templates provided in these documents as the Qualitative Disclosure and the Quantitative Disclosure, respectively.

Supplementary guidance for Canadian FMIs designated by the Bank of Canada

On its public website, an FMI should publish its Qualitative Disclosure and Quantitative Disclosure, as well as any other public disclosure requirements specified in Principle 23 or in other principles. Any public disclosure should be written for an audience with general knowledge of the financial sector.

(a) Qualitative disclosure (*Applies to all types of FMIs*)

A Qualitative Disclosure should provide the public with a high-level understanding of an FMI's governance, operation and risk-management framework.

Summary narrative disclosure

In part four of the Disclosure Framework, FMIs are required to provide a summary narrative of their observance of the Principles. FMIs should provide these narratives at the principle level, and are not required to address Key Considerations or to provide answers to the detailed questions listed in Section 5 of the Disclosure Framework report. Instead, the narrative disclosure should focus on providing a broad audience with an understanding of how each Principle applies to the FMI, and what the FMI has done or plans to do to ensure its observance.

[30] The Disclosure Framework is part of a document published in December 2012, titled "Principles for Financial Market Infrastructures: Disclosure Framework and Assessment Methodology", and is available at http://www.bis.org/press/p121214.htm.

[31] This document is currently in public consultation, and is available at http://www.bis.org/cpmi/publ/d114.htm. A final version is expected by the end of 2014.

Timing

FMIs should update and publish their Qualitative Disclosures following significant changes[32] to the system or its environment, or at least every two years. Only the most current Qualitative Disclosure needs to be maintained on the FMI's website.

(b) Quantitative disclosure (*Applies only to CCPs*)

Quantitative Disclosures specify the set of key quantitative information required in the Disclosure Framework. They should follow the format provided by CPMI-IOSCO, allowing stakeholders, including the general public, to easily evaluate and compare FMIs.

Currently, CPMI-IOSCO has developed public quantitative disclosure standards only for CCPs. The following guidance applies only to CCPs; Canadian authorities will provide further guidance on the quantitative disclosure requirements of FMIs other than CCPs when such standards have been developed.

Context

Where a general audience may need additional context to properly interpret the data, it should be provided in explanatory notes or addressed in the CCP's Qualitative Disclosure. CCPs are encouraged to provide charts, background information and additional documentation where it may aid the reader's understanding.

Comparability

Regulators recognize that, given the different structures and arrangements among CCPs, an overly homogenized presentation format could lead to inaccurate comparability. Subject to regulatory approval, a CCP may provide analogous data in place of a disclosure requirement that is not applicable to its business or representative of the risks it faces. The CCP must justify to authorities the necessity and selection of the alternative metric.[33] If granted approval, the CCP must provide the original data to authorities with the frequency specified in the Quantitative Disclosure Standards, and must explain in each public disclosure why an alternative metric was chosen.

Confidentiality

A CCP's public disclosure obligation does not release it from its confidentiality duties. Where a required disclosure item could reveal (or allow knowledgeable parties to deduce) commercially sensitive information about individual clearing members, clients, third-party contractors or other relevant stakeholders, or where disclosure may amount to a breach of laws or regulations for maintaining market integrity, the data must be omitted. In this case, the CCP must justify the omission to authorities.[34] If granted approval, the CCP must provide the confidential data to authorities with the frequency specified in the Quantitative Disclosure Standards, and must explain the reason for the omission in each public disclosure.

Timing

Quantitative Disclosures should be reported quarterly, and updated with the frequency specified in the Quantitative Disclosure Standards.[35] Even though some required data may already be publicly disclosed in other reports, or may not have changed from the previous quarter, the data should still be included in the disclosure matrix for completeness and consistency. Data should be publicly disclosed no later than 60 days after the end of each fiscal quarter, and should remain available on its website for at least three years so that trends can be examined.

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[32] Updated Qualitative Disclosures should be published subsequent to regulatory approval, and prior to the effective date of the significant change. Significant changes can include, but are not limited to: (i) any changes to the FMI's constating documents, bylaws, corporate governance or corporate structure; (ii) any material change to an agreement between the FMI and its participants or to the FMI's rules, operating procedures, user guides, or manuals or the design, operation or functionality of its operations and services; and (iii) the establishment of, or removal or material change to, a link, or commencing or ceasing to engage in a business activity.

[33] If the authorities are satisfied with the justification, the CCP need not resubmit the substitution unless the CCP's structure or arrangements change the applicability of the original disclosure requirement, or the CCP wishes to change its substituted metric. CCPs are responsible for informing authorities of any changes that could affect the applicability of the originally required or substituted data.

[34] If the authorities are satisfied with the justification, the CCP need not resubmit the omission unless the circumstances change the confidentiality of the disclosure. CCPs are responsible for informing the authorities of any changes that could affect the confidentiality of such data.

[35] According to the Quantitative Disclosure Standards, items under general business risk should be updated annually, and all other items should be updated on a quarterly basis.

PART 4
OTHER REQUIREMENTS OF
RECOGNIZED CLEARING AGENCIES

Introduction

4.0 As discussed in section 1.2(2) of this CP, the provisions of Part 4 are in addition to the requirements of Part 3, and apply to a clearing agency whether or not it operates as a CCP, SSS or CSD.

Division 1 – Governance:

Board of directors

4.1 (2) A definition of independence is provided in subsection 4.1(3). The clearing agency should publicly disclose which board members it regards as independent.

(3) Subsection 4.1(3) defines independence to be the absence of any direct or indirect material relationship between an individual and a clearing agency. Under subsection 4.1(4), those relationships which could, in the view of the clearing agency's board of directors, be reasonably expected to interfere with the exercise of a member's independent judgment should be considered material relationships within the meaning of subsection 4.1(3). Subsection 4.1(5) describes those individuals that we believe have a relationship with a clearing agency that would reasonably be expected to interfere with the exercise of the individual's independent judgment. Consequently, these individuals are not considered independent for the purposes of section 4.1.

Documented procedures regarding risk spill-overs

4.2 See the Joint Supplementary Guidance in Box 2 under section 3.1 of this CP.

CRO and CCO

4.3 (3) The reference to "harm to the broader financial system" in subparagraph 4.3(3)(c)(ii) may be in relation to the domestic or international financial system.

Board or advisory committees

4.4 All committees should have clearly assigned responsibilities and procedures. The clearing agency's internal audit function should have sufficient resources and independence from management to provide, among other activities, a rigorous and independent assessment of the effectiveness of its risk-management and control processes. A board will typically establish an audit committee to oversee the internal audit function. In addition to reporting to senior management, the audit function should have regular access to the board through an additional reporting line.

With respect to independence, policies and procedures related to committees should include processes to identify, address, and manage potential conflicts of interest. Conflicts of interest include, for example, circumstances in which a board member has material competing business interests with the clearing agency.

Division 2 – Default management:

Use of own capital

4.5 The CSA are of the view that a CCP should be required to participate in the default waterfall with its own capital contribution, to be used immediately after a defaulting participant's contributions to margin and default fund resources have been exhausted, and prior to non-defaulting participants' contributions. Such equity should be a reasonable proportion of the size of the CCP's total default fund that is significant enough to attract senior management's attention, and should be separately retained and not form part of the CCP's resources for other purposes, such as to cover general business risk.

Division 3 – Operational risk:

Systems requirements

4.6 (a) The intent of these provisions is to ensure that controls are implemented to support information technology planning, acquisition, development and maintenance, computer operations, information systems support, and security. Recognized guides as to what constitutes adequate information technology controls include 'Information Technology Control Guidelines' from the Canadian Institute of Chartered Accountants (CICA) and 'COBIT' from the IT Governance Institute.

(b) Capacity management requires that the clearing agency monitor, review, and test (including stress test) the actual capacity and performance of the system on an ongoing basis. Accordingly, under paragraph 4.6(b), the clearing agency is required to meet certain standards for its estimates and for testing. These standards are consistent with prudent business practice. The activities and tests required in this paragraph are to be carried out at least once a year. In practice, continuing changes in technology, risk management requirements and competitive pressures will often result in these activities being carried out or tested more frequently.

(c) A failure, malfunction or delay or other incident is considered to be "material" if the clearing agency would, in the normal course of operations, escalate the matter to or inform its senior management ultimately accountable for technology. It is also expected that, as part of this notification, the clearing agency will provide updates on the status of the failure and the resumption of service. Further, the clearing agency should have comprehensive and well-documented procedures in place to record, report, analyze, and resolve all operational incidents. In this regard, the clearing agency should undertake a "post-incident" review to identify the causes and any required improvement to the normal operations or business continuity arrangements. Such reviews should, where relevant, include the clearing agency's participants. The results of such internal reviews are required to be communicated to the securities regulatory authority as soon as practicable. Subsection 4.6(c) also refers to a material security breach. A material security breach or systems intrusion is considered to be any unauthorized entry into any of the systems that support the functions of the clearing agency or any system that shares resources with one or more of these systems. Virtually any security breach would be considered material and thus reportable to the securities regulatory authority. The onus would be on the clearing agency to document the reasons for any security breach it did not consider material.

Systems reviews

4.7 (1) A qualified party is a person or company or a group of persons or companies with relevant experience in both information technology and in the evaluation of related internal systems or controls in a complex information technology environment. Qualified persons may include external auditors or third party information system consultants, as well as employees of the clearing agency, but may not be persons responsible for the development or operation of the systems or capabilities being tested.

Clearing agency technology requirements and testing facilities

4.8 (1) The technology requirements required to be publicly disclosed under subsection 4.8(1) do not include detailed proprietary information.

(4) We expect the amended technology requirements to be made publicly available as soon as practicable, either while the changes are being made or immediately after.

Testing of business continuity plans

4.9 Business continuity management is a key component of a clearing agency's operational risk-management framework. A recognized clearing agency's business continuity plan and its associated arrangements should be subject to frequent review and testing. At a minimum, under section 4.9, such tests must be conducted annually. Tests should address various scenarios that simulate wide-scale disasters and inter-site switchovers. The clearing agency's employees should be thoroughly trained to execute the business continuity plan and participants, critical service providers, and linked clearing agencies should be regularly involved in the testing and be provided with a general summary of the testing results. The CSA expect that the clearing agency will also facilitate and participate in industry-wide testing of the business continuity plan. The clearing agency should make appropriate adjustments to its business continuity plan and associated arrangements based on the results of the testing exercises.

Outsourcing

4.10 Where a recognized clearing agency relies upon or outsources some of its operations to a service provider, it should generally ensure that those operations meet the same requirements they would need to meet if they were provided internally. Under section 4.10, the clearing agency must meet various requirements in respect of the outsourcing of critical services or systems to a service provider. These requirements apply regardless of whether the outsourcing arrangements are with third-party service providers, or with affiliates of the clearing agency.

Generally, the clearing agency is required to establish, implement, maintain and enforce policies and procedures to evaluate and approve outsourcing agreements to critical service providers. Such policies and procedures should include assessing the suitability of potential service providers and the ability of the clearing agency to continue to comply with securities legislation in the event of the service provider's bankruptcy, insolvency or termination of business. The clearing agency is also required to monitor and evaluate the on-going performance and compliance of the service provider to which they outsourced critical services, systems or facilities. Accordingly, the clearing agency should define key performance indicators that will measure the

service level. Further, the clearing agency should have robust arrangements for the substitution of such providers, timely access to all necessary information, and the proper controls and monitoring tools.

Under section 4.10, a contractual relationship should be in place between the clearing agency and the critical service provider allowing it and relevant authorities to have full access to necessary information. The contract should ensure that the clearing agency's approval is mandatory before the critical service provider can itself outsource material elements of the service provided to the clearing agency, and that in the event of such an arrangement, full access to the necessary information is preserved. Clear lines of communication should be established between the outsourcing clearing agency and the critical service provider to facilitate the flow of functions and information between parties in both ordinary and exceptional circumstances.

Where the clearing agency outsources operations to critical service providers, it should disclose the nature and scope of this dependency to its participants. It should also identify the risks from its outsourcing and take appropriate actions to manage these dependencies through appropriate contractual and organisational arrangements. The clearing agency should inform the securities regulatory authority about any such dependencies and the performance of these critical service providers. To that end, the clearing agency can contractually provide for direct contacts between the critical service provider and the securities regulatory authority, contractually ensure that the securities regulatory authority can obtain specific reports from the critical service provider, or the clearing agency may provide full information to the securities regulatory authority.

Division 4 – Participation requirements:

Access requirements and due process

4.11 (1)(d) We are of the view that a requirement on participants of a CCP serving the derivatives markets to use an affiliated trade repository to report derivatives trades would be unreasonable.

PART 5
BOOKS AND RECORDS AND LEGAL ENTITY IDENTIFIER

Legal Entity Identifiers

5.2 (3) The Global Legal Entity Identifier System defined in subsection 5.2(1) and referred to in subsections 5.2(3) and 5.2(4) is a G20 endorsed system[36] that will serve as a public-good utility responsible for overseeing the issuance of legal entity identifiers (LEIs) globally to counterparties who enter into transactions in order to uniquely identify parties to transactions. It is currently being designed and implemented under the direction of the LEI Regulatory Oversight Committee (ROC), a governance body endorsed by the G20.

(4) If the Global LEI System is not available at the time a clearing agency is required to fulfill their recordkeeping or reporting requirements under securities legislation, they must use a substitute LEI. The substitute LEI must be in accordance with the standards established by the LEI ROC for pre-LEI identifiers. At the time the Global LEI System is operational, a clearing agency or its affiliates must cease using their substitute LEI and commence using their LEI. It is conceivable that the two identifiers could be identical.

[36] See http://www.financialstabilityboard.org/list/fsb_publications/tid_156/index.htm for more information.

6.1.2 Proposed Amendments to NI 45-106 Prospectus and Registration Exemptions, NI 41-101 General Prospectus Requirements, NI 44-101 Short Form Prospectus Distributions and NI 45-102 Resale Restrictions and Proposed Repeal of NI 45-101 Rights Offering

The CSA Notice and Request for Comment for Proposed Amendments to NI 45-106 *Prospectus and Registration Exemptions*, NI 41-101 *General Prospectus Requirements*, NI 44-101 *Short Form Prospectus Distributions* and NI 45-102 *Resale Restrictions* and Proposed Repeal of NI 45-101 *Rights Offering* is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the CSA Notice.

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request for Comment
Proposed Amendments to
National Instrument 45-106 *Prospectus and Registration Exemptions*, National Instrument 41-101 *General Prospectus Requirements*, National Instrument 44-101 *Short Form Prospectus Distributions*, and National Instrument 45-102 *Resale Restrictions* and Proposed Repeal of National Instrument 45-101 *Rights Offerings*

November 27, 2014

Introduction

The Canadian Securities Administrators (the **CSA** or **we**) are publishing for a 90-day comment period

- proposed amendments to:
  - National Instrument 45-106 *Prospectus and Registration Exemptions* (**NI 45-106**),
  - National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**),
  - National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**),
  - National Instrument 45-102 *Resale Restrictions* (**NI 45-102**), and
- the proposed repeal of National Instrument 45-101 *Rights Offerings* (**NI 45-101**) (collectively, the **Proposed Amendments**).

We are also publishing for comment proposed changes to:

- Companion Policy 45-106CP to NI 45-106 (**45-106CP**), and
- Companion Policy 41-101CP to NI 41-101 (**41-101CP**).

If adopted, the Proposed Amendments would create a streamlined prospectus exemption for rights offerings conducted by reporting issuers other than investment funds that are subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**). The Proposed Amendments would also update or revise some of the requirements for rights offerings by way of prospectus and repeal the prospectus exemption for rights offerings by non-reporting issuers.

The text of the Proposed Amendments is contained in Annex A of this notice and is also available on websites of CSA jurisdictions, including:

www.lautorite.qc.ca
www.albertasecurities.com
www.bcsc.bc.ca

nssc.novascotia.ca
www.osc.gov.on.ca
www.msc.gov.mb.ca

Substance and Purpose

Rights offerings can be one of the fairer ways for issuers to raise capital as they provide security holders with an opportunity to protect themselves from dilution. However, the CSA recognizes that reporting issuers very seldom use prospectus-exempt rights offerings because of the associated time and cost.

The Proposed Amendments are designed to make prospectus-exempt rights offerings more attractive to reporting issuers by creating a streamlined prospectus exemption (the **Proposed Exemption)**. The Proposed Exemption updates requirements and removes the current regulatory review process prior to use of the rights offering circular. We have also proposed increased investor protection through the addition of civil liability for secondary market disclosure and the introduction of a user-friendly form of rights offering circular.

The Proposed Amendments would also update or revise some of the requirements for rights offerings by way of prospectus and repeal both NI 45-101 and the prospectus exemption in NI 45-106 for rights offerings by non-reporting issuers.

Background

Currently, an issuer wanting to conduct a prospectus-exempt rights offering in Canada would use the prospectus exemption in section 2.1 of NI 45-106 (the **Current Exemption**). Some of the key conditions of the Current Exemption are

- the offering must comply with the requirements of NI 45-101;
- the securities regulatory authority must not object to the offering - this results in a review of the rights offering circular by CSA staff;
- reporting issuers are restricted from issuing more than 25% of their securities under the exemption in any 12 month period.

Very few reporting issuers use the Current Exemption. During the past year, CSA staff conducted research, collected data and held informal consultations with market participants to identify issues and to consider changes to the Current Exemption that would facilitate prospectus-exempt rights offerings.

Through this work, the CSA found that the overall time period to conduct a prospectus-exempt rights offering, including the CSA review period, was much longer than the time period when using other prospectus exemptions. Specifically, CSA staff looked at 93 rights offerings by reporting issuers over the last seven years and found that the average length of time to complete an offering was 85 days and the average length of time between filing of the draft circular and notice of acceptance by the regulator was 40 days. CSA staff heard that the length of time to complete an offering results in lack of certainty of financing and increased costs.

Market participants also reported that the dilution limit was too low and greatly restricts the ability of issuers with small market capitalization to raise sufficient funds to make a rights offering worthwhile.

Summary of the Proposed Amendments

1. Proposed new exemption for reporting issuers

Availability
The Proposed Exemption would only be available for reporting issuers, other than investment funds that are subject to NI 81-102. Pursuant to section 9.1.1 of NI 81-102, which was effective September 22, 2014, investment funds that are subject to that Instrument are restricted from issuing warrants or rights.

Notice
We propose a new form of notice that issuers will have to file and send to security holders before using the Proposed Exemption (**Proposed Form 45-106F14** or the **Notice**). Proposed Form 45-106F14 will require basic disclosure about the offering. It will also inform security holders how to access the rights offering circular electronically. We anticipate that a Notice prepared in Proposed Form 45-106F14 will only be one to two pages long. We do not anticipate that the requirement to send the Notice will be burdensome as issuers would already have to send rights offering certificates.

Circular
Issuers will have to prepare and file a new form of rights offering circular (**Proposed Form 45-106F15** or the **Circular**). Issuers will not have to send the Circular to security holders. We propose to require that all disclosure under Proposed Form 45-106F15 be in a question and answer format. This format is intended to be easier for issuers to prepare and more straightforward for investors to understand. The disclosure required by Proposed Form 45-106F15 focuses on information about the rights offering, the use of funds available and the financial condition of the issuer. We do not propose to require information about the business in the Circular. Most investors that exercise rights will already be existing security holders familiar with the issuer's continuous disclosure or will otherwise be able to access it on SEDAR.

The issuer must also certify that the Circular contains no misrepresentations.

Review
Under the Current Exemption, an issuer cannot use a circular until CSA staff have issued a notice of acceptance. Under the Proposed Exemption, CSA staff will not review the Notice or Circular prior to use. However, for a period of two years from the adoption of the Proposed Exemption, CSA staff in certain jurisdictions intend to conduct reviews of Circulars (in most cases, on a post-distribution basis) to understand how issuers are using the Proposed Exemption and to ensure that issuers are complying with the conditions of the Proposed Exemption.

CSA staff also conduct continuous disclosure reviews of issuers on an ongoing basis. As noted in CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program,* staff

use various tools to target those issuers that are most likely to have deficiencies in their disclosure.

Dilution limit
The Proposed Exemption will not be available where there would be an increase of more than 100% in the number of outstanding securities of the class to be issued upon exercise of rights, assuming the exercise of all rights issued under the Proposed Exemption by the issuer during the preceding 12 months. This provision represents a substantial increase from the 25% dilution limit under the Current Exemption and applies to all reporting issuers. If a reporting issuer wanted to conduct a rights offering where there would be greater dilution, it could still do so by using a prospectus.

Timing
Under the Proposed Exemption, issuers will be required to file and send the Notice prior to commencement of the exercise period and to file the Circular concurrently with the Notice.

We propose that the exercise period be a minimum of 21 days and a maximum of 90 days. These time periods are substantially consistent with the Current Exemption.

Offer to all security holders
One of the conditions of the Proposed Exemption is that the issuer must make the basic subscription privilege available on a *pro rata* basis to each security holder of the class of securities to be distributed on exercise of the rights. This requirement means that an issuer using the Proposed Exemption must offer the rights to all security holders of that class in the local jurisdiction, even if there is only a small number of security holders in that jurisdiction.

This is distinct from the Current Exemption where there is no clear requirement to offer rights to all security holders. We do not anticipate that this requirement will add time to the offering as there will no longer be a review by CSA staff in each jurisdiction prior to the offering.

Pricing
For reporting issuers that are listed on a marketplace, we propose that the subscription price for a security issuable on exercise of a right must be lower than the market price at the time of filing the Notice. The main purpose of a rights offering is to allow all security holders to participate on a *pro rata* basis. Requiring a discount from market price will allow more retail security holders to participate.

For reporting issuers that are not listed on a marketplace, we propose that the subscription price for a security issuable on exercise of a right must be lower than fair value at the time of filing the Notice. This provision would not apply if insiders of the issuer are restricted from increasing their proportionate interest in the issuer through the offering or through a stand-by commitment. This exception recognizes that it may be difficult or expensive for an unlisted issuer to provide evidence of fair value.

In both situations, should the market price or fair value fall below the subscription price at any time following the filing of the Notice, insiders will still be able to participate in the offering.

Stand-by commitments
We propose to permit stand-by commitments subject to certain requirements, such as the issuer must confirm and disclose that the stand-by guarantor has the financial ability to carry through on the stand-by commitment.

Closing news release
A condition of the Proposed Exemption is that the issuer must file a closing news release. The closing news release must contain prescribed information about the rights offering, such as the aggregate gross proceeds and amounts of securities distributed under each of the basic subscription privilege, the additional subscription privilege and the stand-by commitment.

Resale restrictions
The Proposed Exemption would be subject to a seasoning period on resale meaning that, in most situations, there would be no hold period. These are the same resale restrictions that apply to securities issued under the Current Exemption.

Statutory liability
We propose that the statutory civil liability for secondary market disclosure provisions would apply to the acquisition of securities in a rights offering. To effect this change, the Proposed Exemption must be prescribed in each jurisdiction's local securities legislation as subject to the secondary market civil liability provisions. This also means prescribing, for those purposes, the exemption in section 2.42 of NI 45-106, if the original securities were issued under the Proposed Exemption. This proposal is intended to ensure that investors relying on a Circular have rights of action in respect of a misrepresentation in an issuer's continuous disclosure, including the Circular.

We are proposing statutory secondary market civil liability as it attaches to misrepresentations in an issuer's continuous disclosure record document. While contractual liability offers a direct remedy for an individual security holder, it may not be available in all circumstances and for all continuous disclosure. Additionally, there is a potential risk that an issuer would not provide the contractual rights to security holders, or that the contractual rights are not consistent from issuer to issuer and from offering to offering.

Technical disclosure
Under paragraph 4.2(1)(e) of National Instrument 43-101 *Standards of Disclosure for Mineral Projects*, with certain exceptions, a reporting issuer must file a technical report if a rights offering circular filed by the issuer contains scientific or technical information that relates to a mineral project on a property material to the issuer. This requirement would still apply to Circulars filed under the Proposed Exemption. However, Proposed Form 45-106F15 contains no required technical or business disclosure. As a result, we do not anticipate that an issuer will trigger the technical report requirement unless it chooses to include technical disclosure in its Circular.

2. Proposed repeal of the prospectus exemption for rights offerings by non-reporting issuers

We propose to repeal the Current Exemption. This would mean there would no longer be a prospectus exemption for rights offerings by non-reporting issuers. The Current Exemption provides for limited disclosure of the issuer and its business in the rights offering circular and existing security holders do not have access to continuous disclosure about the issuer. As a result, we are concerned that there is insufficient disclosure for an investor to make an informed investment decision and to justify a prospectus exemption. We expect this will not have a significant impact as there is very little use of the Current Exemption by non-reporting issuers.

We also propose to repeal NI 45-101 and withdraw Companion Policy 45-101CP to NI 45-101.

3. Proposed amendments for rights offerings conducted by way of prospectus

We propose to move all of the requirements related to rights offerings distributed by way of prospectus to NI 41-101 and all applicable guidance to 41-101CP. As NI 41-101 is the primary instrument for prospectus requirements, it is more logical for requirements that apply to rights offerings distributed by way of prospectus to reside in that instrument.

The only proposed substantive change for rights offerings distributed by way of prospectus is the proposed pricing requirements which will be the same as under the Proposed Exemption. The reason for the change in pricing requirements is discussed above.

4. Proposed exemption for securities distributed as part of a stand-by commitment

In proposed section 2.1.2 of NI 45-106, we introduce a prospectus exemption for securities issued to a stand-by guarantor as part of a distribution under the Proposed Exemption (the **Stand-by Exemption**). Currently, there is no specific exemption for the distribution of securities under a stand-by commitment if the stand-by guarantor is not a current security holder. If the stand-by guarantor is a security holder as at the date of the Notice (other than a registered dealer), the issuer would be able to distribute securities to them under the Proposed Exemption with only a seasoning period on resale. We believe that a restricted period on resale is not appropriate where a stand-by guarantor is already a security holder of the issuer. A restricted period on resale could potentially place the stand-by guarantor at a disadvantage compared to other security holders who may take up the entire additional subscription privilege without any resale restrictions.

Under the Stand-by Exemption, the stand-by guarantor would have to acquire the securities as principal. Securities issued under the Stand-by Exemption would be subject to a restricted period on resale. We believe a restricted period on resale is appropriate as allowing a stand-by guarantor that is not a security holder of the issuer or is a registered dealer to receive free trading securities could result in the stand-by guarantor distributing a block of shares into the market, without liability for the issuer's disclosure (as in the case under a prospectus, where an underwriter and a promoter accept liability for the issuer's disclosure and each sign a certificate).

We are considering whether securities issued to a stand-by guarantor who *is* a current security

holder should also be subject to a restricted period on resale. If we were to impose a restricted period on resale, the stand-by guarantor could still acquire free-trading securities under the basic subscription privilege. The four-month hold would only apply to securities issued to the stand-by guarantor as part of the stand-by commitment. A four-month hold period might be appropriate because the existing security holder would already have free trading securities of the issuer and would receive a benefit by being able to potentially invest more at a lower price than the stand-by guarantor would otherwise be able to invest under other prospectus exemptions. In addition, we note that the stand-by guarantor is usually a strategic investor for whom a hold period should not be an impediment.

5. Proposed exemption for issuers with a minimal connection to Canada

In proposed section 2.1.3 of NI 45-106, we propose a prospectus exemption for issuers with minimal connection to Canada (the **Minimal Connection Exemption**). The prospectus requirement would not apply to rights offerings in specified situations where the number of securities and beneficial holders in Canada, and in the local jurisdiction, is minimal. The issuer must provide a notice to the regulator and send to security holders in Canada all of the materials sent to other security holders. The Minimal Connection Exemption is substantially the same as the current exemption in section 10.1 of NI 45-101.

Anticipated Costs and Benefits of the Proposed Amendments

Reporting issuers

We anticipate that the Proposed Exemption will benefit reporting issuers by reducing the time and associated costs of conducting a rights offering. Removing regulatory review of the Circular will significantly reduce the amount of time to conduct the offering. Reducing the time period may also increase the certainty of financing. The *pro rata* requirement and increased dilution limit provide issuers with a more equitable means of raising sufficient funds.

Issuers will incur some upfront administrative costs to comply with the new disclosure requirements, especially for the Proposed Form 45-106F15. However, we do not anticipate these costs will outweigh the benefits mentioned above and expect issuers will be more likely to choose rights offerings as a means of financing than previously.

Existing security holders

We anticipate that the use of rights offerings will benefit existing security holders to the extent that they will have an opportunity to retain their *pro rata* holdings of an issuer. However, this benefit must be contrasted against the monetary outlay in additional proceeds necessary to maintain their holdings regardless of the outcome of their investment.

Removal of the regulatory review may deprive existing security holders of the protections associated with such a review before the offering. We believe the reduced investor protection afforded by a review to be the main cost to existing security holders. However, we believe the addition of civil liability for secondary market disclosure and the enhanced disclosure required

by Proposed Form 45-106F15 will mitigate these concerns. Proposed Form 45-106F15 requires disclosure in the Circular to be in a user-friendly, question and answer format that we anticipate will better inform investors about the offering and the associated risk.

In addition, for a period of two years from the adoption of the Proposed Exemption, CSA staff in certain jurisdictions intend to conduct post-distribution reviews of Circulars to understand how issuers are using the Proposed Exemption and to ensure that issuers are complying with the conditions of the Proposed Exemption. CSA staff also conduct continuous disclosure reviews of issuers on an ongoing basis. Staff use various tools to target those issuers that are most likely to have deficiencies in their disclosure.

Local Matters

Annex B to this notice is being published in any local jurisdiction that is making related changes to local securities laws, including local notices or other policy instruments in that jurisdiction. It also includes any additional information that is relevant to that jurisdiction only.

Annex B to this notice outlines the proposed amendments to local securities legislation. Each jurisdiction that is proposing local amendments will publish an Annex B outlining the proposed local amendments for that jurisdiction.

Request for Comments

We welcome your comments on the Proposed Amendments, and the proposed changes to the related companion policies. In addition to any general comments you may have, we also invite comments on the following specific questions:

Questions relating to the Proposed Exemption

1. We propose that the exercise period for a rights offering under the Proposed Exemption must be a minimum of 21 days and a maximum of 90 days. These time periods are substantially consistent with those under the Current Exemption. Some market participants have told us that an exercise period of 21 days is too long. Others thought a longer exercise period is beneficial. Reasons cited for a longer exercise period are that at least 21 days may be necessary to reach beneficial security holders and foreign security holders and that institutional investors often need a longer period to receive approvals.

   (a) Do you agree that the exercise period should be a minimum of 21 days and a maximum of 90 days?

   (b) If not, what are the most appropriate minimum and maximum exercise periods? Why?

2. We propose that the Notice must be filed and sent before the exercise period begins and that the Circular must be filed concurrently with the Notice. Do you foresee any

challenges with this timing requirement?

3. Some market participants have suggested we consider requiring the issuer to only file and not send the Notice and the Circular. While we do not think that the issuer should have to send the Circular itself, it is our view that the issuer should send the Notice to ensure that each security holder is aware of the offering. We also understand that the issuer would have to send rights certificates to security holders in any event.

   (a) Do you foresee any challenges with requiring the issuer to send a paper copy of the Notice?

   (b) Do you foresee any challenges with the Circular only being available electronically?

4. The required disclosure in the proposed Circular focuses on information about the offering, the use of funds available and the financial condition of the issuer. We do not propose to require information about the business in the Circular.

   (a) Have we included the right information for issuers to address in their disclosure?

   (b) Is there any other information that would be important to investors making an investment decision in the rights offering?

5. Under the Proposed Exemption, we would require the issuer to include certain information in their closing news release including the amount of securities distributed under each of the basic subscription privilege and the additional subscription privilege to insiders as a group and to all other persons as a group. Other required disclosure includes the aggregate gross proceeds of the distribution, the amount of securities distributed under any stand-by commitment, the amount of securities issued and outstanding as at the closing date and the amount of any fee or commission paid in connection with the distribution. This information will give investors a more complete understanding of who acquired securities under the rights offering.

   Do you think that this disclosure will be unduly burdensome? If so, what disclosure would be more appropriate?

6. The Current Exemption permits the trading of rights and we propose to allow for the trading of rights under the Proposed Exemption. We have received mixed feedback from market participants on the costs and benefits of allowing rights to trade freely.

   On the one hand, the trading of rights adds complexity to a rights offering and could potentially add a few days to the timeline for an average rights offering. The trading of rights also allows the issuance of free-trading securities to new investors. On the other hand, the trading of rights may benefit issuers as it often puts the rights into the hands of holders who are more likely to exercise the rights. It allows for monetization, which means that security holders who are unable to exercise rights could receive compensation for the rights. It also benefits foreign security holders as the issuer's transfer agent will

typically attempt to sell the rights of ineligible security holders on the market.

(a) Should we continue to allow rights to be traded? If so, why?

(b) What are the benefits of not allowing rights to be traded?

(c) Should issuers have the option of not listing rights for trading?

7. When we looked at historic use of rights offerings by reporting issuers, we found that the time between the filing of the draft circular and the notice of acceptance was quite lengthy (an average of 40 days). As a result, we considered options to reduce the review period. One of the options was to conduct a more focused initial review in three days rather than 10 days prior to the regulators' acceptance of the offering. The review would focus on sufficiency of proceeds, stand-by commitments, use of proceeds, insiders, and other issues that raise significant investor protection or public interest concerns. We decided not to proceed with this option but instead to remove regulatory review prior to use. This is similar to other prospectus exemptions and it would significantly improve issuers' time to market. Certain jurisdictions are also proposing reviewing rights offerings on a post-distribution basis for a period of two years to assess the use of and compliance with the Proposed Exemption.

   (a) Do you agree with our proposal to remove pre-offering review?

   (b) Do the benefits of providing issuers with faster access to capital outweigh the costs of eliminating our review?

   (c) Post-distribution review would focus on sufficiency of proceeds, stand-by commitments, use of proceeds, insiders and other issues that raise significant investor protection concerns. Are there other areas that we should focus on?

8. Currently, an investor in a rights offering has no statutory recourse if there is a misrepresentation in an issuer's rights offering circular or continuous disclosure record. We propose that civil liability for secondary market disclosure provisions would apply to the acquisition of securities in a rights offering under the Proposed Exemption.

   (a) Is this the appropriate standard of liability to protect investors given that there will be no review by CSA staff of an issuer's rights offering circular?

   (b) Would requiring a contractual right of action for a misrepresentation in the circular be preferable? If so, what impact would this standard of liability have on the length and complexity of an issuer's offering circular, given that in order for the contractual liability to cover additional continuous disclosure record documents, the issuer may have to incorporate by reference those documents into the issuer's circular.

9. Given the potential size of rights offerings, there may be circumstances where it is desirable to mitigate the effect of the offering on control of an issuer. In this regard, CSA

staff question whether security holders would benefit from separating the timing of the basic subscription and additional subscription privilege such that an issuer would announce the results of the basic subscription before commencing the additional subscription privilege period. An issuer's announcement of the results of the basic subscription may help security holders make more informed decisions about their participation under the additional subscription privilege.

(a) Would security holders benefit from knowing the results of the basic subscription before making an investment decision through the additional subscription privilege?

(b) Would security holders make a different investment decision through the additional subscription if the results of the basic subscription were announced? If so,

- Should the additional subscription privilege be inside or outside of 21 days?
- Should the split timing for basic subscriptions and additional subscriptions always be required or only required in circumstances where there may be an impact on control?

(c) What are the costs and benefits of having a two-tranche system for security holders?

Questions relating to the repeal of the Current Exemption for use by non-reporting issuers

10. We propose repealing the Current Exemption for use by non-reporting issuers. There is very little use of the Current Exemption by non-reporting issuers. We also have concerns that existing security holders of non-reporting issuers do not have access to continuous disclosure about the issuer and the rights offering circular contains very limited disclosure about the issuer and its business. Accordingly, there may not be sufficient disclosure upon which an investor can make an informed investment decision.

(a) If we repeal the rights offering prospectus exemption for non-reporting issuers,

- Would this create an obstacle to capital formation for non-reporting issuers?
- Do you foresee any other problems?
- Would repealing the Current Exemption cause problems for foreign issuers that do not meet the Minimal Connection Exemption? If so, should we consider changes to the Minimal Connection Exemption? Please explain what changes would be appropriate and the basis for those changes.

(b) Do you think we should consider changes to the Current Exemption instead of repealing it? If so, what changes should we consider?

- If you think we should change the disclosure requirements, please explain what disclosure would be more appropriate.

- Should non-reporting issuers be required to provide audited financial statements to their security holders with the rights offering circular if they use the exemption?

(c) If the Current Exemption is repealed, non-reporting issuers could continue to offer securities to existing security holders under other prospectus exemptions such as the offering memorandum exemption, the accredited investor exemption, and the family, friends and business associates exemption. Are there other circumstances in which non-reporting issuers need to rely on the Current Exemption? If so, please describe.

Questions relating to the Stand-by Exemption

11. We propose that the securities distributed under the Stand-by Exemption to a stand-by guarantor who is not a current security holder or who is a registered dealer will be subject to a four-month hold period. We understand that stand-by guarantors are often either insiders of the issuer or registered dealers.

    (a) Should stand-by guarantors be subject to different resale restrictions depending on whether or not they are security holders of the issuer on the date of the notice?

    (b) What challenges would there be for issuers trying to find a stand-by guarantor that is not already a security holder?

12. We are considering whether securities distributed under the Stand-by Exemption to a stand-by guarantor that *is* an existing security holder should also be subject to a four-month hold.

    (a) If the stand-by guarantor is an existing security holder, should we require a four month hold? Why or why not?

    (b) We understand that in many cases, a stand-by guarantor receives a fee for providing a stand-by commitment. Should a stand-by guarantor that receives a fee and is a current security holder be subject to a restricted period on resale when other security holders are not subject to the restricted period?

    (c) What challenges do you foresee if we require a four-month hold?

Question relating to the Minimal Connection Exemption

13. We are considering whether we should require the filing of materials with the regulator through SEDAR as part of the Minimal Connection Exemption. Most issuers using the Minimal Connection Exemption would be foreign issuers. We understand that some, but not all, of these issuers use local counsel to file the materials. Do you anticipate challenges if we require that materials for the Minimal Connection Exemption be filed on SEDAR?

Please submit your comments in writing on or before February 25, 2015. If you are sending your comments by email, please also send an electronic file containing the submissions (in Microsoft Word format).

Address your submission to all of the CSA as follows:

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

Deliver your comments **only** to the addressees below. Your comments will be distributed to the other participating CSA members.

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We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the website of the *Autorité des marchés financiers* at www.lautorite.qc.ca and the website of the Ontario Securities Commission at

www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Thank you in advance for your comments.

Contents of Annexes

The following annexes form part of this CSA Notice:

Annex A:	**A1: Proposed instruments amending or repealing** • NI 45-106 • NI 45-101 • NI 41-101 • NI 44-101 • NI 45-102 **A2: Proposed changes to** • 45-106CP • 41-101CP
Annex B:	**Local matters**

Questions

Please refer your questions to any of the following:

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Annex A1

Proposed Amendments to
National Instrument 45-106 *Prospectus and Registration Exemptions*

1. National Instrument 45-106 Prospectus and Registration Exemptions is amended by this Instrument.

2. Section 2.1 is repealed.

3. The Instrument is amended by adding the following after section 2.1:

Rights offering – reporting issuer

Refer to Appendix E of National Instrument 45-102 *Resale of Securities.* First trades are subject to a seasoning period on resale.

2.1.1 (1) In this section:

"additional subscription privilege" means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

"basic subscription privilege" means the privilege to subscribe for the number of securities set out in a rights certificate held by a holder of the rights certificate;

"circular" means a completed Form 45-106F15 *Rights Offering Circular for Reporting Issuers*;

"closing date" means the date of completion of the distribution of the securities issued on exercise of rights issued under this section;

"managing dealer" means a dealer that has entered into an agreement with an issuer under which the dealer has agreed to organize and participate in the solicitation of the exercise of rights issued by the issuer;

"marketplace" has the same meaning as in section 1.1 of National Instrument 21-101 *Marketplace Operation*;

"market price" means, for securities of a class for which there is a published market,

(a) except as provided in paragraph (b)

(i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(b) if trading of securities of the class in the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:

(i) the average of the closing bid and closing ask prices for each day on which there was no trading;

(ii) if the published market

(A) provides a closing price of securities of the class for each day that there has been trading, the closing price, or

(B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there has been trading;

"notice" means a completed Form 45-106F14 *Rights Offering Notice for Reporting Issuers*;

"published market" means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

(a) disseminated electronically, or

(b) published in a newspaper or business or financial publication of general and regular paid circulation;

"soliciting dealer" means a person or company whose interest in a rights offering is limited to soliciting the exercise of rights by holders of those rights;

"stand-by commitment" means an agreement between an issuer and the stand-by guarantor who agrees to acquire the securities of the issuer not subscribed for under the basic subscription privilege or the additional subscription privilege;

"stand-by guarantor" means a person or company who provides a stand-by commitment.

(2) For the purpose of the definition of "market price", if there is more than one published market for a security, and if

(a) only one of the published markets is in Canada, the market price is determined solely by reference to that market;

(b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined; and

(c) none of the published markets is in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined.

(3) The prospectus requirement does not apply to a distribution by an issuer of a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if all of the following apply

(a) the issuer is a reporting issuer in at least one jurisdiction of Canada;

(b) if the issuer is a reporting issuer in the local jurisdiction, the issuer has filed all periodic and timely disclosure documents that it is required to have filed in that jurisdiction as required by each of the following:

(i) applicable securities legislation;

(ii) an order issued by the regulator or securities regulatory authority;

(iii) an undertaking to the regulator or securities regulatory authority;

(c) before the commencement of the exercise period for the rights, the issuer files and sends the notice to all security holders of the class of securities to be issued on exercise of the rights;

(d) concurrently with filing the notice, the issuer files the circular;

(e) the issuer makes the basic subscription privilege available on a pro rata basis to each security holder of the class of securities to be distributed on the exercise of the rights;

(f) in Québec, the documents that are required to be filed under paragraphs (c) and (d) must be prepared in French or in French and English.

(4) The issuer must set the subscription price for a security to be issued on exercise of a right granted under subsection (3) lower than

(a) the market price of the security on the date of filing the notice, if there is a published market for the security, or

(b) the fair value of the security on the date of filing the notice, if there is no published market for the security.

(5) Paragraph (4)(b) does not apply if all insiders of the issuer are prohibited from increasing their proportionate interest in the issuer through the exercise of rights under the offering or through a stand-by commitment.

(6) An issuer must not grant an additional subscription privilege to a holder of a right unless all of the following apply

(a) the issuer grants the additional subscription privilege to all holders of rights,

(b) each holder of a right would be entitled to receive, on exercise of the additional subscription privilege, the number or amount of securities equal to the lesser of

(i) the number or amount of securities subscribed for by the holder under the additional subscription privilege, and

(ii) $x(y/z)$ where

x = the aggregate number or amount of securities available through unexercised rights,

y = the number of rights previously exercised by the holder under the rights offering, and

z = the aggregate number of rights previously exercised under the rights offering by holders of rights that have subscribed for securities under the additional subscription privilege;

(c) any unexercised rights are allocated on a pro rata basis to holders who subscribed for additional securities based on the additional subscription privilege up to the number of securities subscribed for by a particular holder, and

(d) the subscription price of the additional subscription privilege is the same as the subscription price for the basic subscription privilege.

(7) If there is a stand-by commitment,

(a) the issuer must grant an additional subscription privilege to all holders of rights,

(b) the issuer must include a statement in the circular that the issuer has confirmed that the stand-by guarantor has the financial ability to carry through on their stand-by commitment, and

(c) the subscription price under the stand-by commitment must be the same as the subscription price under the basic subscription privilege.

(8) If an issuer has stated in the circular that no security will be issued on the exercise of a right unless a stand-by commitment is provided or unless proceeds no less than the stated minimum amount are received by the issuer, all of the following apply:

(a) the issuer must appoint a depository to hold all money received on the exercise of the rights until either the stand-by commitment is provided or the stated minimum amount is received,

(b) a depository under paragraph (a) must be

(i) a Canadian financial institution, or

(ii) a registrant in the jurisdiction in which the funds are proposed to be held who is acting as managing dealer for the rights offering, or, if there is no managing dealer, who is acting as a soliciting dealer,

(c) the issuer and the depository must enter into an agreement, the terms of which require the depository to return the money in full to the holders of rights that have subscribed for securities under the distribution if either the stand-by commitment is not provided, or the stated minimum amount is not received by the depository during the exercise period for the rights.

(9) The agreement between the depository and the issuer under which the depository is appointed must provide that, if either the stand-by commitment is not provided or the stated minimum amount is not received by the depository during the exercise period for the rights, the money held by the depository will be returned in full to the holders of rights that have subscribed for securities under the distribution.

(10) A circular filed under this section must contain a certificate that states the following: “This rights offering circular does not contain a misrepresentation”.

(11) If the issuer is a company, a certificate under subsection (10) must be signed

(a) by the issuer's chief executive officer and chief financial officer or, if the issuer 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 the issuer, 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 the issuer.

(12) If an issuer is not a company, a certificate under subsection (10) must be signed by the persons that, in relation to the issuer, are in a similar position or perform a similar function to the persons referred to in subsection (11).

(13) A certificate under subsection (10) must be true on

(a) the date the certificate is signed, and

(b) the closing date.

(14) An issuer must not file an amendment to a circular filed under paragraph (3)(d) unless

(a) the amendment amends and restates the circular,

(b) the issuer files the amended circular before the earlier of

(i) the listing date of the rights, if the issuer lists the rights for trading, and

(ii) the date the exercise period for the rights commences, and

(c) the issuer issues and files a news release explaining the reason for the amendment concurrently with the filing of the amended circular.

(15) The issuer must file a news release containing the information required by subsection (16) on the closing date or as soon as practicable following the closing date.

(16) The closing news release must include:

(a) the aggregate gross proceeds of the distribution;

(b) the amount of securities distributed under the basic subscription privilege to

(i) all persons who were insiders before the distribution or became insiders as a result of the distribution, as a group, and

(ii) all other persons, as a group;

(c) the amount of securities distributed under the additional subscription privilege to

(i) all persons who were insiders before the distribution or became insiders as a result of the distribution, as a group, and

(ii) all other persons, as a group;

(d) the amount of securities distributed under any stand-by commitment;

(e) the amount of securities of the class issued and outstanding as at the closing date;

(f) the amount of any fees or commissions paid in connection with the distribution.

(17) Subsection (3) does not apply to a distribution

(a) if there would be an increase of more than 100 percent in the number, or, in the case of debt, the principal amount, of the outstanding securities of the class to be issued upon the exercise of rights, assuming the exercise of all rights issued under this exemption by the issuer during the 12 months immediately before the date of the circular;

(b) if the exercise period for the rights is less than 21 days or more than 90 days after the day the notice is sent to security holders;

(c) if the issuer has entered into an agreement to compensate a person or company for soliciting the exercise of rights issued under the rights offering that provides for the payment of a fee for soliciting the exercise of rights by holders of rights that were not security holders of the issuer immediately before the rights offering and that fee is higher than the fee payable for soliciting the exercise of rights by holders of rights that were security holders at that time;

(d) to a stand-by guarantor, if one of the following applies:

(i) the stand-by guarantor did not hold a security of the issuer on the date the issuer files the notice;

(ii) the stand-by guarantor is a registered dealer.

Rights offering – stand-by commitment

Refer to Appendix D of National Instrument 45-102 *Resale of Securities.* First trades are subject to a restricted period on resale.

2.1.2 The prospectus requirement does not apply to the distribution of a security by an issuer to a stand-by guarantor as part of a distribution under section 2.1.1 if the stand-by guarantor acquires the security as principal.

Rights offering – issuer with a minimal connection to Canada

Refer to Appendix E of National Instrument 45-102 *Resale of Securities.* First trades are subject to a seasoning period on resale.

2.1.3 The prospectus requirement does not apply to a distribution by an issuer of a right granted by the issuer to purchase a security of its own issue to a security holder of the issuer if

(a) to the knowledge of the issuer after reasonable enquiry,

(i) the number of beneficial holders of the class for which the rights are issued that are resident in Canada does not constitute 10 percent or more of all holders of that class,

(ii) the number of securities of the issuer of the class for which the rights are issued that are beneficially held by securityholders resident in Canada does not constitute, in the aggregate, 10 percent or more of the outstanding securities of that class,

(iii) the number of beneficial holders of the class for which the rights are issued that are resident in the local jurisdiction does not constitute five percent or more of all holders of that class,

(iv) the number of securities of the issuer of the class for which the rights are issued that are beneficially held by securityholders resident in the local jurisdiction does not constitute, in the aggregate, five percent or more of the outstanding securities of that class;

(b) all materials sent to any other security holders for the rights offering are concurrently delivered to the regulator or, in Québec, the securities regulatory authority and sent to each securityholder of the issuer resident in the local jurisdiction;

(c) the issuer delivers to the regulator or, in Québec, the securities regulatory authority a written notice that it is relying on this exemption and a certificate of an officer or director of the issuer, or if the issuer is a limited partnership, an officer or director of the general partner of the issuer, or if the issuer is a trust, a trustee or officer or director of a trustee of the issuer, that to the knowledge of the person signing the certificate, after reasonable inquiry that

(i) the number of beneficial holders of the class for which the rights are issued that are resident in Canada does not constitute 10 percent or more of all holders of that class,

(ii) the number of securities of the issuer of the class for which the rights are issued that are beneficially held by securityholders resident in Canada does not constitute, in the aggregate, 10 percent or more of the outstanding securities of that class,

(iii) the number of beneficial holders of the class for which the rights are issued that are resident in the local jurisdiction does not constitute five percent or more of all holders of that class,

(iv) the number of securities of the issuer of the class for which the rights are issued that are beneficially held by securityholders resident in the local jurisdiction does not constitute, in the aggregate, five percent or more of the outstanding securities of that class.

Rights offering – Listing representation exemption

2.1.4 (1) In this section:

"listing representation" means a representation that a security will be listed or quoted, or that application has been or will be made to list or quote the security, either on an exchange, or on a quotation and trade reporting system, in a foreign jurisdiction;

"listing representation prohibition" means the prohibition in the securities legislation set out in Appendix C.

(2) The listing representation prohibition does not apply to a listing representation made in a rights offering circular for a distribution of rights conducted under section 2.1.3 if the listing representation is not a misrepresentation.

Rights offering – Civil liability for secondary market disclosure

2.1.5 (1) In this section:

"secondary market liability provisions" means the provisions in the securities legislation set out in Appendix D.

(2) The secondary market liability provisions apply to

(a) the acquisition of an issuer's security pursuant to the exemption from the prospectus requirement set out in section 2.1.1, and

(b) the acquisition of an issuer's security pursuant to the exemption from the prospectus requirement set out in section 2.42 if the security previously issued by the issuer was acquired pursuant to the exemption that is set out in section 2.1.1..

4. The Instrument is amended by adding the following appendices:

Appendix C

Listing representation prohibitions

Alberta:	Subsection 92(3) of the *Securities Act* (Alberta)
Manitoba:	Subsection 69(3) of the *Securities Act* (Manitoba)
New Brunswick:	Subsection 58(3) of the *Securities Act* (New Brunswick)
Newfoundland and Labrador:	Subsection 39(3) of the *Securities Act* (Newfoundland and Labrador)
Northwest Territories:	Subsection 147(1) *Securities Act* (Northwest Territories)
Nova Scotia:	Subsection 44(3) of the *Securities Act* (Nova Scotia)
Nunavut:	Subsection 147(1) of the *Securities Act* (Nunavut)
Ontario:	Subsection 38(3) of the *Securities Act* (Ontario)
Prince Edward Island:	Subsection 147(1) of the *Securities Act* (Prince Edward Island)
Québec:	Subsection 199(4) of the *Securities Act* (Quebec)
Saskatchewan:	Subsection 44(3) of the *Securities Act* (Saskatchewan)
Yukon:	Subsection 147(1) of the *Securities Act* (Yukon)

Appendix D

Secondary market liability provisions

Alberta:	Part 17.01 of the *Securities Act* (Alberta)
British Columbia:	Part 16.1 of the *Securities Act* (British Columbia)
Manitoba:	Part XVIII of the *Securities Act* (Manitoba)
New Brunswick:	Part 11.1 of the *Securities Act* (New Brunswick)
Newfoundland and Labrador:	Part XXII.1 of the *Securities Act (Newfoundland and Labrador)*
Northwest Territories:	Part 14 of the *Securities Act* (Northwest Territories)
Nova Scotia:	Sections 146A to 146N of the *Securities Act* (Nova Scotia)
Nunavut:	Part 14 of the *Securities Act* (Nunavut)
Ontario:	Part XXIII.1 of the *Securities Act* (Ontario)
Prince Edward Island:	Part 14 of the *Securities Act* (Prince Edward Island)
Québec:	Division II of Chapter II of Title VIII of the *Securities Act* (Québec)
Saskatchewan:	Part XVIII.1 of the *Securities Act* (Saskatchewan)
Yukon:	Part 14 of the *Securities Act* (Yukon)**.**

5. The Instrument is amended by adding the following forms:

Form 45-106F14
Rights Offering Notice for Reporting Issuers

This is the form of notice you must use for a distribution of rights under section 2.1.1 of National Instrument 45-106 *Prospectus and Registration Exemptions*.

PART 1 GENERAL INSTRUCTIONS

Deliver this notice to each security holder eligible to receive rights under the rights offering. Using plain language, prepare the notice using a question-and-answer format.

Guidance We do not expect the notice to be greater than two pages in length.

PART 2 THE NOTICE

1. Basic information
State the following with the bracketed information completed:

"[Name of issuer]
Notice to security holders – [Date]"

If you have less than 12 months of working capital and are aware of material uncertainties that may cast significant doubt upon your ability to continue as a going concern, include the following language in bold type immediately below the date of the notice:

> "**We currently have sufficient working capital to last [insert the number of months of working capital as at the date of the circular] months. We require [insert the percentage of the rights offering required to be taken up]% of the offering to last 12 months."**

2. Who can participate in the rights offering?

State the record date and identify which class of securities is subject to the offering.

3. Who is eligible to receive rights?

Provide information about the jurisdictions in which the issuer is offering rights. Explain how a security holder in an ineligible jurisdiction can acquire the rights and securities issuable upon exercise of rights.

4. How many rights are we offering?

State the total number of rights offered.

5. How many rights will you receive?

State the number of rights each eligible security holder will receive for every security held as of the record date.

6. What does one right entitle you to receive?

Provide the number of rights required to acquire a security upon exercise of the rights. Also state the subscription price.

7. If you are an eligible security holder, how will you receive your rights?

Include a rights certificate with the rights offering notice if the notice is being delivered to a registered security holder, and direct the security holder's attention to this certificate. If you are delivering this notice to an ineligible security holder, provide instructions on how the ineligible security holder can receive their rights certificate.

8. When and how can you exercise your rights?

State when the exercise period ends for eligible security holders who have their rights certificate. Also, provide instructions on how to exercise rights to security holders whose securities are held in a brokerage account.

9. What are the next steps?

Direct the security holder to the SEDAR address to find your rights offering circular. State that the security holder should read the circular, along with the issuer's continuous disclosure record, to make an informed decision.

10. Signature

Sign the notice. State the name and title of the person signing this notice.

Form 45-106F15
Rights Offering Circular for Reporting Issuers

Table of Contents

PART 13 CERTIFICATE

41. Date and certificate
42. Signing of certificate

PART 1 INSTRUCTIONS

1. Overview of the rights offering circular

This is the form of circular you must use for a distribution of rights under section 2.1.1. of National Instrument 45-106 *Prospectus and Registration Exemptions*. The objective of the circular is to provide information about the rights offering and details on how an existing security holder can exercise rights.

Prepare the rights offering circular using a question-and-answer format.

Guidance We do not expect the circular to be greater than 10 pages.

2. Incorporating information by reference

You must not incorporate information into the circular by reference.

3. Plain language

Use plain, easy to understand language in preparing the circular. Avoid technical terms but, if they are necessary, explain them in a clear and concise manner.

4. Format

Except as otherwise stated, use the questions presented in this form as headings in the circular. To make the circular easier to understand, present information in tables and, where possible, state amounts in figures.

5. Omitting information

Unless this form indicates otherwise, you are not required to respond to an item in this form if it does not apply.

6. Date of information

Unless this form indicates otherwise, present the information in this form as at the date of the circular.

7. Forward-looking information

If you disclose forward-looking information in the circular, you must comply with Part 4A.3 of NI 51-102.

PART 2 SUMMARY OF OFFERING

8. Required statement

State in italics at the top of the cover page the following:

"This rights offering circular is prepared by management. No securities regulatory authority or regulator has assessed the merits of these securities or reviewed this circular. Any representation to the contrary is an offence.

This is the circular we referred to in the [insert date of rights offering notice] *rights offering notice, which you should have received by mail. Your rights certificates and relevant forms were enclosed with the notice. This circular should be read in conjunction with the notice and our continuous disclosure prior to making an investment decision."*

9. Basic disclosure about the distribution

Immediately below the statement required above, state the following with the bracketed information completed:

"Rights offering circular [Date]

[Name of Issuer]"

If you have less than 12 months of working capital and are aware of material uncertainties that may cast significant doubt upon your ability to continue as a going concern, include the following language in bold immediately below the name of the issuer:

> "**We currently have sufficient working capital to last [insert the number of months of working capital as at the date of the circular] months. We require [insert the percentage of the rights offering required to be taken up]% of the offering to last 12 months."**

10. Purpose of circular

State the following in bold:

"Why are you reading this circular?"

Explain the purpose of the circular. State that the circular provides details about the rights offering and refer to the notice that you sent to security holders.

11. Securities offered

State the following in bold:

"What is being offered?"

Provide the number of rights you are offering to each security holder under the offering. If your outstanding share capital includes more than one class or type of security, ensure you identify which security holders are eligible to receive rights. Include the record date the issuer will use to determine which security holders are eligible to receive rights.

12. Right entitlement

State the following in bold:

"What does a right entitle you to receive?"

Explain what one right will entitle the security holder to receive.

13. Subscription price

State the following in bold:

"What is the subscription price?"

Provide the price a security holder must pay to exercise a right. If there is no published market for the securities, either explain how you determined the fair value of the securities or explain that no insider will be able to increase their proportionate interest through the rights offering.

Guidance

Refer to subsection 2.1.1(4) of NI 45-106 which provides that the subscription price must be lower than the market price if there is a published market for the securities. If there is no published market, either the subscription price must be lower than the fair value of the securities or insiders are not permitted to increase their proportionate interest in the issuer through the rights offering.

14. Expiry of offer

State the following in bold:

"When does the offer expire?"

Provide the date and time when the offer expires.

Guidance

Refer to paragraph 2.1.1(17)(b) of NI 45-106 which provides that the rights offering exemption is not available where the exercise period for the rights is less than 21 days or more than 90 days after the day the notice is sent to security holders.

15. Outstanding securities

State the following in bold:

"How many of our [insert class of securities issuable on exercise of rights] are currently outstanding?"

Provide the number of outstanding securities of the class of securities issuable on exercise of the rights, as at the date of the circular.

16. Securities issuable under the offering

State the following in bold:

"What are the minimum and maximum number of [insert type of security issuable on exercise of rights] that may be issued under the offering?"

Provide the minimum, if any, and maximum number of securities that may be issuable on exercise of the rights.

17. Listing of Securities

State the following in bold:

"Where will the rights and securities issuable upon exercise of rights be listed for trading?"

Identify the exchange(s) and quotation system(s), if any, on which the rights and underlying securities are traded or quoted. If no market exists, or is expected to exist, state the following in boldface type:

"There is no market through which these [rights and/or underlying securities] may be sold."

PART 3 USE OF FUNDS AVAILABLE

18. Funds available

State the following in bold:

"What will our funds available be after the offering?"

Using the following table, disclose the funds available after the offering. If you plan to combine additional sources of funding with the offering proceeds to achieve your principal capital-raising purpose, provide details about each additional source of funding.

If there is no minimum offering or stand-by commitment, or if the minimum offering or stand-by commitment represents less than 75% of the offering, include threshold disclosure if only 15%, 50% or 75% of the entire offering is taken up.

Disclose the amount of working capital deficiency, if any, of the issuer as at the most recent month end. If the funds available will not eliminate the working capital deficiency, state how you intend to eliminate or manage the deficiency. If there has been a significant change in the working capital since the most recently audited annual financial statements, explain those changes.

Guidance

We would consider a significant change to include a change in the working capital that results in material uncertainty regarding the issuer's going concern assumption, or a change in the working capital balance from positive to deficiency or vice versa.

		Assuming minimum offering or stand-by commitment only	Assuming 15% of offering	Assuming 50% of offering	Assuming 75% of offering	Assuming 100% of offering
A	Amount to be raised by this offering	$	$	$	$	$
B	Selling commissions and fees	$	$	$	$	$
C	Estimated offering costs (e.g., legal, accounting, audit)	$	$	$	$	$
D	Available funds: D = A - (B+C)	$	$	$	$	$
E.	Additional sources of funding required	$	$	$	$	$
F.	Working capital deficiency	$	$	$	$	$
G.	Total: G = (D+E) - F	$	$	$	$	$

19. Use of funds available

State the following in bold:

"How will we use the funds available?"

Using the following table, provide a detailed breakdown of how you will use the funds. Describe in reasonable detail each of the principal purposes, with approximate amounts.

Description of intended use of funds available listed in order of priority.	Assuming minimum offering or stand-by commitment only	Assuming 15% of offering	Assuming 50% of offering	Assuming 75% of offering	Assuming 100% of offering
	$	$	$	$	$
	$	$	$	$	$
Total: Equal to G in the funds available table above	$	$	$	$	$

If there is no minimum offering or stand-by commitment, or if the minimum offering or stand-by commitment represents less than 75% of the offering, include threshold disclosure if only 15%, 50% or 75% of the entire offering is taken up.

Instructions:

1. *If the issuer has significant short-term liquidity requirements, discuss, for each threshold amount (i.e., 15%, 50% and 75%), the impact, if any, of raising that amount on its liquidity, operations, capital resources and solvency. Short-term liquidity requirements include non-discretionary expenditures for general corporate purposes and overhead expenses, significant short-term capital or contractual commitments, and expenditures required to achieve stated business objectives.*

When discussing the impact of raising each threshold amount on your liquidity, operations, capital resources and solvency, include all of the following in the discussion:

- *which expenditures will take priority at each threshold, and what effect this allocation has on your operations and business objectives and milestones;*
- *the risks of defaulting on payments as they become due, and what effect the defaults would have on your operations;*
- *an analysis of your ability to generate sufficient amounts of cash and cash equivalents from other sources, the circumstances that could affect those sources and management's assumptions in conducting this analysis.*

State the minimum amount required to meet the short-term liquidity requirements. In the event that the funds available could be less than the amount required to meet the short-term requirements, describe how management plans to discharge its liabilities as they become due. Include the assumptions management used in its plans.

If the funds available could be insufficient to cover the issuer's short-term liquidity requirements and overhead expenses for the next 12 months, include management's assessment of the issuer's ability to continue as a going concern. If there are material uncertainties that cast significant doubt upon the issuer's ability to continue as a going concern, state this fact in boldface type.

2. *If you will use more than 10% of funds available to reduce or retire indebtedness and the indebtedness was incurred within the two preceding years, describe the principal purposes for which the indebtedness was used. If the creditor is an insider, associate or affiliate of the issuer, identify the creditor and the nature of the relationship to the issuer and disclose the outstanding amount owed.*

3. *If you will use more than 10% of funds available to acquire assets, describe the assets. If known, disclose the particulars of the purchase price being paid for or being allocated to the assets or categories of assets, including intangible assets. If the vendor of the asset is an insider, associate or affiliate of the issuer, identify the vendor and nature of the relationship to the issuer, and disclose the method used in determining the purchase price.*

4. *If any of the funds available will be paid to an insider, associate or affiliate of the issuer, disclose in a note to the use of funds available table the name of the insider, associate or affiliate, the relationship to the issuer, and the amount.*

5. *If you will use more than 10% of funds available for research and development of products or services,*

    a. *describe the timing and stage of research and development that management anticipates will be reached using the funds,*

    b. *describe the major components of the proposed programs you will use the funds available for, including an estimate of anticipated costs,*

    c. *state if you are conducting your own research and development, are subcontracting out the research and development or are using a combination of those methods, and*

    d. *describe the additional steps required to reach commercial production and an estimate of costs and timing.*

6. *If you may re-allocate funds available, include the following statement:*

"We intend to spend the funds available as stated. We will reallocate funds only for sound business reasons."

20. How long will funds available last?

State the following in bold:

"How long will the funds available last?"

Explain how long management anticipates funds available will last. If you do not have adequate funds to cover anticipated expenses for the next 12 months, state the sources of financing that the issuer has arranged but not yet used. Also, provide an analysis of your ability to generate sufficient amounts of cash and cash equivalents in the short term and the long term to maintain capacity, and to meet planned growth or to fund development activities. You should describe sources of funding and circumstances that could affect those sources that are reasonably likely to occur. If this results in material uncertainties that cast significant doubt upon the issuer's ability to continue as a going concern, disclose this fact.

If you expect funds available to last for greater than 12 months, state this fact.

PART 4 INSIDER PARTICIPATION

21. Intention of insiders

State the following in bold:

"Will insiders be participating?"

Provide the answer. If yes, provide details of insiders' intentions to exercise their rights.

22. Holders of at least 10% before and after the offering

State the following in bold:

"Who are the 10% holders before and after the offering?"

Provide this information in the following tabular form:

Name	Holdings before the offering	Holdings after the offering
[Name of security holder]	[State the number of securities held and the percentage of security holdings this represents]	[State the number of securities held and the percentage of security holdings this represents]

PART 5 DILUTION

23. Dilution

State the following in bold:

"If you do not exercise your rights, how much will your security holdings be diluted?"

Provide a percentage in the circular and state the assumptions used, as appropriate.

PART 6 STAND-BY COMMITMENT

24. Stand-by guarantor

State the following in bold:

*"***Who is the stand-by guarantor and what are the fees?"**

Describe the stand-by commitment and the material terms of the basis on which the stand-by guarantor may terminate the obligation under the stand-by commitment.

25. Financial ability of the stand-by guarantor

State the following in bold:

"Have we confirmed that the stand-by guarantor has the financial ability to carry through on its stand-by commitment?"

If the offering has a stand-by commitment, state that you have confirmed that the stand-by guarantor(s) has the financial ability to carry through on its stand-by commitment.

PART 7 MANAGING DEALER, SOLICITING DEALER AND UNDERWRITING CONFLICTS

26. The managing dealer, soliciting dealer, and their fees

State the following in bold:

"Who is the [managing dealer/soliciting dealer] and what are their fees?"

Identify the managing dealer, if any, and the soliciting dealers, if any, and describe the commissions or fees payable to them.

27. Managing dealer/soliciting dealer conflicts

State the following in bold:

"Does the [managing dealer/soliciting dealer] have a conflict of interest?"

If disclosure is required by National Instrument 33-105 *Underwriting Conflicts*, include that disclosure.

PART 8 HOW TO EXERCISE THE RIGHTS

28. Security holders who are registered holders

State the following in bold:

"How does a security holder that is a registered holder participate in the offering?"

Explain how a registered holder can participate in the rights offering.

29. Security holders who are not registered holders

State the following in bold:

"How does a security holder that is not a registered holder participate in the offering?"

Explain how a security holder who is not a registered holder can participate in the rights offering.

30. Eligibility to participate

State the following in bold:

"Who is eligible to participate in the offering?"

Explain which security holders are eligible to participate in the offering. Disclose the jurisdictions in which you are making the rights offering.

31. Non-eligible security holder

State the following in bold:

"What if a security holder is not eligible to participate in the offering?"

Explain how a security holder who does not reside in an eligible jurisdiction can participate in the offering.

32. Transfer of rights

State the following in bold:

"How does a right holder sell or transfer rights?"

Explain how a holder of rights can sell or transfer rights. If the rights will be listed on an exchange, provide further details related to the trading of the rights on the exchange.

33. Additional subscription privilege

State the following in bold:

"What is the additional subscription privilege and how can you exercise this privilege?"

Describe the additional subscription privilege and explain how a holder of rights who has exercised the basic subscription privilege can exercise the additional subscription privilege.

34. Trading of underlying securities

State the following in bold:

"When can you trade securities issuable upon exercise of your rights?"

Say when a security holder can trade the securities issuable upon exercise of the rights.

35. Fractional rights

State the following in bold:

"Will we issue fractional rights?"

Respond yes or no and explain (if necessary).

PART 9 APPOINTMENT OF DEPOSITORY

36. Depository

State the following in bold:

"Who is the depository?"

If the rights offering is subject to a minimum offering amount, or if there is a stand-by commitment, state the name of the depository you appointed to hold all money received on exercise of the rights until the minimum offering amount or stand-by commitment is received or until the money is returned.

37. Release of funds from depository

State the following in bold:

"What happens if we do not raise the [minimum offering amount] or if we do not receive funds from the stand-by guarantor?"

If the offering is subject to a minimum offering amount, or if there is a stand-by commitment, state that you have entered into an agreement with the depository where the depository will return the money held by it to holders of rights that have already subscribed for securities under the offering, if you do not raise the minimum offering amount or receive funds from the stand-by guarantor.

PART 10 FOREIGN ISSUERS

38. Foreign issuers

State the following in bold:

"How can you enforce a judgment against us?"

If the issuer is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada, state the following:

"The [issuer] is incorporated, continued or otherwise organized under the laws of a foreign jurisdiction or resides out of Canada. It may not be possible for investors to enforce judgments obtained in Canada against any person or company that is incorporated, continued, or otherwise organized under the laws of a foreign jurisdiction or resides outside of Canada."

PART 11 STATEMENT AS TO RESALE RESTRICTIONS

39. Resale restrictions

State the following in bold:

"Are there restrictions on the resale of securities?"

If the issuer is offering rights in one or more jurisdictions where there are restrictions on the resale of securities, include a statement disclosing when those rights and underlying securities will become freely tradable and that until then, such securities may not be resold except pursuant to a prospectus or prospectus exemption, which may only be available in limited circumstances.

PART 12 ADDITIONAL INFORMATION

40. Additional information

State the following in bold:

"Where can you find more information about us?"

Provide the SEDAR website address and state that a security holder can access the issuer's continuous disclosure from that site. If applicable, provide the issuer's website address.

PART 13 CERTIFICATE

41. Date and certificate

Provide the following statement at the end of the circular:

"Dated: [insert the date the circular is signed]

This rights offering circular does not contain a misrepresentation."

42. Signing of certificate

Sign the certificate in accordance with subsection 2.1.1(10) of NI 45-106**.**

6. This Instrument comes into force on xx.

Proposed Amendments to
National Instrument 45-101 *Rights Offerings*

1. National Instrument 45-101 Rights Offerings is repealed by this Instrument.

2. This Instrument comes into force on xx.

Proposed Amendments to
National Instrument 41-101 *General Prospectus Requirements*

1. National Instrument 41-101 General Prospectus Requirements is amended by this Instrument.

2. The following Part is added after section 8.3:

PART 8A: Rights offerings

Application

8.1A(1) This part applies to an issuer that files a preliminary or final prospectus to distribute rights.

(2) In this Part,

"additional subscription privilege" means a privilege, granted to a holder of a right, to subscribe for a security not subscribed for by any holder under a basic subscription privilege;

"basic subscription privilege" means the privilege to subscribe for the number of securities set out in a rights certificate held by a holder of the rights certificate;

"managing dealer" means a dealer that has entered into an agreement with an issuer under which the dealer has agreed to organize and participate in the solicitation of the exercise of rights issued by the issuer;

"marketplace" has the same meaning as in section 1.1 of National Instrument 21-101 *Marketplace Operation*;

"market price" means for securities of a class for which there is a published market

(a) except as provided in paragraph (b)

(i) if the published market provides a closing price, the simple average of the closing price of securities of that class on the published market for each of the trading days on which there was a closing price falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(ii) if the published market does not provide a closing price, but provides only the highest and lowest prices of securities of the class traded, the average of the simple averages of the highest and lowest prices of securities of the class on the published market for

each of the trading days on which there were highest and lowest prices falling not more than 20 trading days immediately before the day as of which the market price is being determined, or

(b) if trading of securities of the class in the published market has occurred on fewer than 10 of the immediately preceding 20 trading days, the average of the following amounts established for each of the 20 trading days immediately before the day as of which the market price is being determined:

(i) the average of the closing bid and closing ask prices for each day on which there was no trading;

(ii) if the published market

(A) provides a closing price of securities of the class for each day that there has been trading, the closing price, or

(B) provides only the highest and lowest prices, the average of the highest and lowest prices of securities of that class for each day that there has been trading;

"published market" means, for a class of securities, a marketplace on which the securities are traded, if the prices at which they have been traded on that marketplace are regularly

(a) disseminated electronically, or

(b) published in a newspaper or business or financial publication of general and regular paid circulation;

"soliciting dealer" means a person or company whose interest in a rights offering is limited to soliciting the exercise of rights by holders of those rights;

"stand-by commitment" means an agreement by a person or company to acquire securities of an issuer not issued under the basic subscription privilege or the additional subscription privilege available under a rights offering.

(3) For the purpose of the definition of "market price", if there is more than one published market for a security, and if

(a) only one of the published markets is in Canada, the market price is determined solely by reference to that market;

(b) more than one of the published markets is in Canada, the market price is determined solely by reference to the published market in Canada on

which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date as of which the market price is being determined; and

(c) none of the published markets are in Canada, the market price is determined solely by reference to the published market on which the greatest volume of trading in the particular class of securities occurred during the 20 trading days immediately before the date on which the market price is being determined.

Filing of prospectus for a rights offering

8.2A **(1)** An issuer must not file a prospectus for a rights offering unless

(a) in addition to qualifying the distribution of the rights, the prospectus qualifies the distribution of the securities issuable on exercise of the rights,

(b) if there is a managing dealer, the managing dealer complies with section 5.9 as if the dealer were an underwriter,

(c) the exercise period for the rights is at least 21 days after the date on which the prospectus is sent to security holders, and

(d) the issuer sets the subscription price for a security issuable on exercise of the right distributed by the prospectus lower than

(i) the market price, as of the date of the final prospectus, if there is a published market for the security, or

(ii) fair value, as of the date of the final prospectus, if there is no published market for the security.

(2) If subparagraph (1)(d)(ii) applies, the issuer must deliver to the regulator independent evidence of fair value.

(3) Subparagraph 1(d)(ii) does not apply if all insiders of the issuer are prohibited from increasing their proportionate interest in the issuer through the exercise of rights under the offering or through a stand-by commitment.

Additional subscription privilege

8.3A An issuer must not grant an additional subscription privilege to a holder of a right unless

(a) the issuer grants the additional subscription privilege to all holders of rights,

(b) each holder of a right is entitled to receive, on exercise of the additional subscription privilege, the number or amount of securities that is equal to the lesser of

(i) the number or amount of securities subscribed for by the holder under the additional subscription privilege; and

(ii) x(y/z) where

x = the aggregate number or amount of securities available through unexercised rights,

y = the number of rights previously exercised by the holder under the rights offering, and

z = the aggregate number of rights previously exercised under the rights offering by holders of rights that have subscribed for securities under the additional subscription privilege,

(c) any unexercised rights are allocated on a pro rata basis to holders who subscribed for additional securities based on the additional subscription privilege up to the number of securities subscribed for by a particular holder, and

(d) the subscription price of the additional subscription privilege is the same as the subscription price for the basic subscription privilege.

Stand-by commitments

8.4A If there is a stand-by commitment for a rights offering,

(a) the issuer must grant an additional subscription privilege to all holders of rights,

(b) the issuer must deliver to the regulator evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment, and

(c) the subscription price under the stand-by commitment must be the same as the subscription price under the basic subscription privilege.

Appointment of depository

8.5A(1) If an issuer has stated in the prospectus that no securities will be issued on the exercise of the rights unless a stand-by commitment is provided or unless proceeds at least equal to the stated minimum amount are received by the issuer, all of the following apply:

(a) the issuer must appoint a depository to hold all money received on the exercise of rights until either the stand-by commitment is provided or the stated minimum amount is received;

(b) a depository appointed under paragraph (a) must be

(i) a Canadian financial institution, or

(ii) a registrant in the jurisdiction in which the funds are proposed to be held who is acting as managing dealer for the rights offering, or, if there is no managing dealer for the rights offering, who is acting as a soliciting dealer;

(c) the issuer and the depository must enter into an agreement the terms of which require the depository to return the money in full to the holders of rights that have subscribed for securities under the distribution if either the stand-by commitment is not provided, or the stated minimum is not received by the depository during the exercise period for the rights.

Amendment

8.6A An issuer must not file an amendment to a final prospectus for a rights offering to change the terms of the rights offering.

3. Paragraph 9.2(b) is amended by

a. in subparagraph (iii), replacing "."with ";",

b. adding the following after subparagraph (iii):

(iv) **Evidence of financial ability** – the evidence of financial ability required to be delivered under section 8.4A if it has not previously been delivered; and

(v) **Evidence of fair value –** the evidence of fair value required to be delivered under subsection 8.2A(2) if it has not previously been delivered**.**

4. This Instrument comes into force on xx.

Proposed Amendments to
National Instrument 44-101 *Short Form Prospectus Distributions*

1. National Instrument 44-101 Short Form Prospectus Distributions is amended by this Instrument.

2. Paragraph 4.2(b) is amended by

a. subparagraph (ii), replacing ", and***" with "*,***",***

b. in subparagraph (iii), replacing ".***"with "*,***", and***

c. adding the following after subparagraph (iii):

(iv) the evidence of financial ability required to be delivered under section 8.4A of NI 41-101 if it has not previously been delivered, and

(v) the evidence of fair value required to be delivered under subsection 8.2A(2) of NI 41-101 if it has not previously been delivered.**.**

3. This Instrument comes into force on xx.

Proposed Amendments to
National Instrument 45-102 *Resale of Securities*

1. National Instrument 45-102 Resale of Securities is amended by this Instrument.

2. Appendix D is amended by adding the following after "Except in Manitoba, the following exemptions from the prospectus requirement in NI 45-106:***":***

- Section 2.1.2 [*Rights offerings – stand-by commitments*]**.**

3. Appendix E is amended by

a. replacing "section 2.1 [Rights offering]***" with "***section 2.1 [Repealed]***", and***

b. adding the following after "section 2.1 [Repealed]***":***

- section 2.1.1 [*Rights offerings – reporting issuers*]
- section 2.1.3 [*Rights offerings – issuers with a minimal connection to Canada*]**.**

4. This Instrument comes into force on xx.

Annex A2

Proposed Changes to
Companion Policy 45-106CP *Prospectus and Registration Exemptions*

1. Companion Policy 45-106CP Prospectus and Registration Exemptions is changed by this Instrument.

2. Part 3 is changed by adding the following sections:

3.10 Rights offering - reporting issuer

(1) Offer available to all security holders

One of the conditions of the rights offering exemption for reporting issuers in section 2.1.1 of the Instrument is that the issuer must make the basic subscription privilege available on a pro rata basis to every security holder of the class of securities to be distributed on exercise of the rights. This means that the issuer must send notice of the offering to each security holder of the class in the local jurisdiction, regardless of how many security holders reside in the local jurisdiction.

(2) Market price and fair value

Paragraph 2.1.1(4)(b) of the Instrument provides that if there is no published market for the securities, the subscription price must be lower than fair value. The exception to this is set out in subsection 2.1.1(5) which provides that paragraph 2.1.1(4)(b) does not apply if no insider is permitted to increase its proportionate interest in the issuer through the rights offering or a stand-by commitment. Under section 13 of Form 45-106F15, an issuer must explain in its rights offering circular how it determined the fair value of the securities. For these purposes, an issuer could consider a fairness opinion or a valuation.

For the purposes of subsection 2.1.1(4) of the Instrument, if the subscription price falls below the market price or fair value following filing of the notice, insiders will not be prohibited from participating in the offering.

(3) Stand-by commitments

To provide the confirmation in paragraph 2.1.1(7)(b) of the Instrument that the stand-by guarantor has the financial ability to carry out its obligations under the stand-by commitment, the issuer could consider the following:

- a statement of net worth attested to by the stand-by guarantor
- a bank letter of credit
- the most recent annual audited financial statements of the stand-by guarantor.

(4) Calculation of number of securities

In calculating the number of outstanding securities for purposes of paragraph 2.1.1(16)(b) of the Instrument, CSA staff generally take the view that

(a) if

x = the number of securities of the class of the securities that may be or have been issued upon the exercise of rights under all rights offerings made by the issuer in reliance on the exemption during the previous 12 months,

y = the maximum number of securities that may be issued upon exercise of rights under the proposed rights offering, and

z = the number of securities of the class of securities that is issuable upon the exercise of rights under the proposed rights offering that are outstanding as of the date of the rights offering circular;

then $\frac{x + y}{z}$ must be equal to or less than 1, and

(b) if the convertible securities that may be acquired under the proposed rights offering may be converted before 12 months after the date of the proposed rights offering, the potential increase in outstanding securities, and specifically, "y" in paragraph (a), should be calculated as if the conversion of those convertible securities had occurred.

One of the conditions of the exemption is that the issuer must make the basic subscription privilege available on a pro rata basis to each security holder of the class of securities to be distributed on exercise of the rights. For clarity, this means that an issuer cannot use a rights offering to distribute a new class of securities.

In order to use the exemption in section 2.1.1 of the Instrument for the distribution of securities to a stand-by guarantor (in which case the securities would be subject to a seasoning period on resale), the stand-by guarantor must have been a security holder as at the date the issuer filed the notice. If the stand-by guarantor was not a security holder on that date, the issuer must use the exemption in section 2.1.2 of the Instrument to distribute securities to the stand-by guarantor. The securities would then be subject to a restricted period on resale.

If the stand-by guarantor is a registered dealer, the issuer must use the exemption in section 2.1.2 of the Instrument to distribute securities to the stand-by guarantor even if the guarantor was a security holder. This is to prevent potential backdoor underwriting concerns. We do not believe a registered dealer should be able to immediately resell to the public securities it acquired under a rights offering unless it provides a prospectus or uses another exemption from the prospectus requirement.

(5) Investment funds

As a reminder, pursuant to section 9.1.1 of National Instrument 81-102 *Investment Funds* (NI 81-102), investment funds that are subject to NI 81-102 are restricted from issuing warrants or rights.

3.11 Rights offering – issuer with a minimal connection to Canada

It may be difficult for an issuer to determine beneficial ownership of its securities as a result of the book-based system of holding securities. We are of the view that, for the purpose of determining beneficial ownership to comply with the exemption in section 2.1.3 of the Instrument, procedures comparable to those found in National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer*, or any successor instrument, are appropriate**.**

3. These changes become effective on xx.

Proposed Changes to
Companion Policy 41-101CP *General Prospectus Requirements*

1. Companion Policy 41-101CP General Prospectus Requirements is changed by this Instrument.

2. Part 2 is changed by adding the following section:

Rights offerings

2.11(1) The regulator may refuse to issue a receipt for a prospectus filed for a rights offering under which rights are issued if the rights are exercisable into convertible securities that require an additional payment by the holder on conversion and the securities underlying the convertible securities are not qualified under the prospectus. This will ensure that the remedies for misrepresentation in the prospectus are available to the person or company who pays value.

(2) Subparagraph 8.2A(1)(d)(ii) of the Instrument provides that if there is no published market for the securities, the subscription price must be lower than fair value. The exception to this is set out in subsection 8.2A(3) which provides that subparagraph 8.2A(1)(d)(ii) does not apply if no insider is permitted to increase its proportionate interest in the issuer through the rights offering or a stand-by commitment. Under subsection 8.2A(2), the issuer must deliver to the regulator evidence of fair value. For this purpose, the regulator will consider such things as fairness opinions, valuations and letters from registered dealers as evidence of the fair value.

(3) Under paragraph 8.4A(b) of the Instrument, if there is a stand-by commitment for a rights offering, the issuer must deliver to the regulator evidence that the person or company providing the stand-by commitment has the financial ability to carry out the stand-by commitment. For this purpose, the regulator may consider any of the following:

- a statement of net worth attested to by the person or company making the commitment,
- a bank letter of credit,
- the most recent audited financial statements of the person or company making the commitment,
- other evidence that provides comfort to the regulator..

3. These changes become effective on xx.

ANNEX B
ONTARIO SECURITIES COMMISSION
NOTICE AND REQUEST FOR COMMENT

Introduction

The Canadian Securities Administrators (the CSA) are proposing the following changes (collectively, the **Proposed Amendments**):

- amendments to:
    - National Instrument 45-106 *Prospectus and Registration Exemptions* including the introduction of
        - Form 45-106F14 *Rights Offering Notice for Reporting Issuers*, and
        - Form 45-106F15 *Rights Offering Circular for Reporting Issuers*,
    - Companion Policy 45-106CP *Prospectus and Registration Exemptions*,
    - National Instrument 41-101 *General Prospectus Requirements*,
    - Companion Policy 41-101CP *General Prospectus Requirements*,
    - National Instrument 44-101 *Short Form Prospectus Distributions*, and
    - National Instrument 45-102 *Resale of Securities*.
- repealing National Instrument 45-101 *Rights Offerings* (**NI 45-101**).

Please refer to the CSA's notice and request for comment.

The purposes of Annex B are to:

- supplement the CSA's notice and request for comment, and
- seek comment on a consequential amendment to OSC Rule 13-502 *Fees* (**OSC Rule 13-502**).

Consequential amendment to OSC Rule 13-502

The Ontario Securities Commission (the **OSC**) is publishing for a 90-day comment period a proposed amendment to OSC Rule 13-502 as set out in Schedule 1 to this Annex (the **OSC Consequential Amendment**).

The purpose of the OSC Consequential Amendment is to reflect the new form number of the rights offering circular described in the Proposed Amendments and the proposed repeal of NI 45-101. Schedule 1 sets out the text of the OSC Consequential Amendment.

Rule-making authority

In Ontario, the following provisions of the *Securities Act* (the Act) provide the Commission with authority to make the Proposed Amendments and the OSC Consequential Amendment:

- Paragraph 8 of subsection 143(1) of the Act, which authorizes the Commission to make rules in respect of any matter referred to in Part XII (Exemptions from Registration Requirements) as required by the regulations or prescribed by or in the regulations, other than the matters referred to in subsection 35.1(2).

- Paragraph 20 of subsection 143(1) of the Act to make rules in respect of any matter referred to in Part XVII (Exemptions from Prospectus Requirements) as required by the regulations or prescribed by or in the regulations, other than the matters referred to in subsection 73.1(3).

- Paragraph 13 of subsection 143(1) of the Act authorizes the Commission to make rules regulating trading in or advising about securities or derivatives to prevent trading or advising that is fraudulent, manipulative, deceptive or unfairly detrimental to investors.

- Paragraph 39 of subsection 143(1) of the Act authorizes the Commission to make rules requiring or respecting the media, format, preparation, form, content, execution, certification, dissemination and other use, filing and review of all documents required under or governed by this Act, the regulations or the rules and all documents determined by the regulations or the rules to be ancillary to the documents.

- Paragraph 43 of subsection 143(1) authorizes the Commission to make rules prescribing the fees payable to the Commission, including those for filing, for applications for registration or exemptions, for trades in securities, in respect of audits made by the Commission, and in connection with the administration of Ontario securities law.

- Paragraph 48 of subsection 143(1) authorizes the Commission to make rules specifying the conditions under which any particular type of trade that would not otherwise be a distribution shall be a distribution.

- Paragraph 55.2 of subsection 143(1) authorizes the Commission to make rules providing for the application of Part XXIII.1 to the acquisition of an issuer's security pursuant to a distribution that is exempt from section 53 or 62 and to the acquisition or disposition of an issuer's security in connection with or pursuant to a takeover bid or issuer bid.

Schedule 1
Ontario Securities Commission Rule 13-502
Fees

1. Appendix C is amended

(a) in item B(3), by replacing "Form 45-101F" **with** "Form 45-106F15"

2. This Rule comes into force on ●.

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 8

Notice of Exempt Financings

REPORT OF TRADES ON FORM 45-106F1 AND 45-501F1

There are no Reports of Exempt Distribution on Forms 45-106F1 or 45-501F1 (Reports) in this Bulletin.

Reports filed on or after February 19, 2014 must be filed electronically.

As a result of the transition to mandated electronic filings, the OSC is considering the most effective manner to make data about filed Reports available to the public, including whether and how this information should be reflected in the Bulletin. In the meantime, Reports filed with the Commission continue to be available for public inspection during normal business hours.

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Chapter 11

IPOs, New Issues and Secondary Financings

Issuer Name:
Allied Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated November 19, 2014
NP 11-202 Receipt dated November 19, 2014
Offering Price and Description:
$1,000,000,000
Debt Securities
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2281070

Issuer Name:
Arsenal Energy Inc.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 21, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
$7,959,005 - 799,900 Flow-Through Shares
Price: $9.95 per Flow-Through Share
Underwriter(s) or Distributor(s):
PARADIGM CAPITAL INC.
ACUMEN CAPITAL FINANCE PARTNERS LIMITED
NATIONAL BANK FINANCIAL INC.
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
-
Project #2282302

Issuer Name:
Chemtrade Logistics Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 21, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
$100,110,000 - 4,700,000 Units
Price: $21.30 per Offered Unit
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
TD SECURITIES INC.
RBC DOMINION SECURITIES INC.
GMP SECURITIES L.P.
RAYMOND JAMES LTD.
Promoter(s):
-
Project #2280492

Issuer Name:
DH Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated November 18, 2014
NP 11-202 Receipt dated November 18, 2014
Offering Price and Description:
$175,087,500 - 4,830,000 Common Shares
Price: $36.25 per Common Share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
TD SECURITIES INC.
BMO NESBITT BURNS INC.
RBC DOMINION SECURITIES INC.
SCOTIA CAPITAL INC.
NATIONAL BANK FINANCIAL INC.
CREDIT SUISSE SECURITIES (CANADA), INC.
DESJARDINS SECURITIES INC.
RAYMOND JAMES LTD.
GMP SECURITIES L.P.
INDUSTRIAL ALLIANCE SECURITIES INC.
Promoter(s):
-
Project #2278535

Issuer Name:
First Asset Active Credit ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 14, 2014
NP 11-202 Receipt dated November 20, 2014
Offering Price and Description:
Common Units, Advisor Class Unit, US$ Common Units and US$ Advisor Class Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
FIRST ASSET INVESTMENT MANAGEMENT INC
Project #2281418

Issuer Name:
First Asset Active Utility & Infrastructure ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 17, 2014
NP 11-202 Receipt dated November 18, 2014
Offering Price and Description:
Common Units and Advisor Class Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
FIRST ASSET INVESTMENT MANAGEMENT INC.
Project #2280662

Issuer Name:
First Asset Core Balanced ETF
First Asset Core Canadian Equity ETF
First Asset Core U.S. Equity ETF
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 18, 2014
NP 11-202 Receipt dated November 18, 2014
Offering Price and Description:
Common Units, Advisor Class Units, Unhedged Common Units, US$ Unhedged Common Units, Unhedged Advisor Class Units and US$ Unhedged Advisor Class Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
FIRST ASSET INVESTMENT MANAGEMENT INC.
Project #2280707

Issuer Name:
GoGold Resources Inc.
Principal Regulator - Nova Scotia
Type and Date:
Preliminary Short Form Prospectus dated November 18, 2014
NP 11-202 Receipt dated November 18, 2014
Offering Price and Description:
C$20,000,250 - 13,333,500 Common Shares
Price: C$1.50 per Offered Share
Underwriter(s) or Distributor(s):
CORMARK SECURITIES INC.
BMO NESBITT BURNS INC.
PI FINANCIAL CORP.
Promoter(s):
-
Project #2280755

Issuer Name:
IGM Financial Inc.
Principal Regulator - Manitoba
Type and Date:
Preliminary Base Shelf Prospectus dated November 19, 2014
NP 11-202 Receipt dated November 19, 2014
Offering Price and Description:
$3,000,000,000
Debt Securities (unsecured)
First Preferred Shares
Common Shares
Subscription Receipts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2280972

Issuer Name:
IA Clarington Growth & Income Fund
IA Clarington North American Opportunities Class
Principal Regulator - Quebec
Type and Date:
Preliminary Simplified Prospectuses dated November 17, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
Offering Series A, E, E5, F, F5, L, L5, P, P5, and T5 securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
IA Clarington Investments Inc.
Project #2281320

Issuer Name:
Lysander Corporate Value Bond Fund
Lysander U.S. Credit Fund
18 Asset Management All-Cap Canadian Equity Fund
Crusader Equity Income Fund
Lysander-Seamark Balanced Fund
Lysander-Seamark Total Equity Fund
Lysander-Slater Preferred Share Dividend Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Simplified Prospectuses dated November 19, 2014
NP 11-202 Receipt dated November 20, 2014
Offering Price and Description:
Series A, F, O, A5 and F5 Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Lysander Funds Limited
Project #2281216

Issuer Name:
Maple Leaf 2014-II Flow-Through Limited Partnership - National Class
Maple Leaf 2014-II Flow-Through Limited Partnership - Quebec Class
Principal Regulator - British Columbia
Type and Date:
Amended and Restated Preliminary Long Form Prospectus dated November 17, 2014
NP 11-202 Receipt dated November 18, 2014
Offering Price and Description:
Maximum: $10,000,000 - 400,000 Maple Leaf 2014-II Flow-Through Limited Partnership – National Class Units
Price per Unit: $25.00
Minimum Purchase: $5,000 (200 Units)
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
BMO NESBITTBURNS INC.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
MANULIFE SECURITIES INCORPORATED
BURGEONVEST BICK SECURITIES LIMITED
DUNDEE SECURITIES LTD.
GLOBAL SECURITIES CORPORATION
Promoter(s):
CADO BANCORP LTD.
MAPLE LEAF 2014-II FLOW-THROUGH MANAGEMENT CORP.
Project #2265389;2265392

Issuer Name:
Melcor Real Estate Investment Trust
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 18, 2014
NP 11-202 Receipt dated November 18, 2014
Offering Price and Description:
$30,000,000 - 5.50% Extendible Convertible Unsecured Subordinated Debentures
Pice: $1,000 per Debenture
Underwriter(s) or Distributor(s):
RBC Dominion Securities Inc.
CIBC World Markets Inc.
TD Securities Inc.
Desjardins Securities Inc.
National Bank Financial Inc.
Scotia Capital Inc.
Canaccord Genuity Corp.
Laurentian Bank Securities Inc.
Raymond James Ltd.
Promoter(s):
-
Project #2277847

Issuer Name:
Nautilus Minerals Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated November 18, 2014
NP 11-202 Receipt dated November 19, 2014
Offering Price and Description:
Cdn$500,000,000
COMMON SHARES
WARRANTS
DEBT SECURITIES
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2280966

Issuer Name:
NYX Gaming Group Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 21, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
$ * - * Shares
Price: $ * per Share
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
NATIONAL BANK FINANCIAL INC.
DUNDEE SECURITIES LTD.
GLOBAL MAXFIN CAPITAL INC.
MACKIE RESEARCH CAPITAL CORPORATION
Promoter(s):
-
Project #2282101

Issuer Name:
Painted Pony Petroleum Ltd.
Principal Regulator - Alberta
Type and Date:
Preliminary Short Form Prospectus dated November 18, 2014
NP 11-202 Receipt dated November 18, 2014
Offering Price and Description:
$55,044,000 - 4,587,000 Common Shares
Price: $12.00 per Common Share
Underwriter(s) or Distributor(s):
Cormark Securities Inc.
FirstEnergy Capital Corp.
Canaccord Genuity Corp.
RBC Dominion Securities Inc.
TD Securities Inc.
AltaCorp Capital Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Promoter(s):
-
Project #2280166

Issuer Name:
Riley Resources Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary CPC Prospectus dated November 20, 2014
NP 11-202 Receipt dated November 20, 2014
Offering Price and Description:
$200,000.00 - 2,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
Todd L. Hilditch
Project #2281869

Issuer Name:
Union Gas Limited
Principal Regulator - Ontario
Type and Date:
Preliminary Base Shelf Prospectus dated November 21, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
$1,500,000,000 - MEDIUM TERM NOTE DEBENTURES (UNSECURED)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #2282144

Issuer Name:
Westcoast Energy Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Base Shelf Prospectus dated November 21, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
$1,000,000,000 - MEDIUM TERM NOTE DEBENTURES (UNSECURED)
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
TD Securities Inc.
Promoter(s):
-
Project #2282229

Issuer Name:
Phillips, Hager & North High Yield Bond Fund
Principal Regulator - Ontario
Type and Date:
Amendment #3 dated November 17, 2014 to the Annual Information Form dated June 27, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
Series C, Advisor Series, Series D, Series F and Series O units
Underwriter(s) or Distributor(s):
Phillips, Hager & North Investment Funds Ltd.
Promoter(s):
RBC Global Asset Management Inc.
Project #2211271; 2211275

Issuer Name:
Brandes Canadian Money Market Fund (Class A units and Class F units)
Brandes Global Balanced Fund (Class A units, Class F units, Class K units,
Class L units, Class M units, Class W units and Class I units)
Sionna Canadian Balanced Fund (Class A units, Class AN units, Class F units, Class FN units,
Class K units, Class L units, Class M units, Class W units and Class I units)
Sionna Monthly Income Fund (Class A units, Class AN units, Class F units,
Class FN units, Class K units, Class L units, Class M units and Class I units)
Principal Regulator - Ontario
Type and Date:
Amendment #1 dated November 7, 2014 to the Simplified Prospectuses dated May 12, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
Brandes Investments Partners & Co.
Project #2190946

Issuer Name:
Healthcare Leaders Income Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 19, 2014
NP 11-202 Receipt dated November 20, 2014
Offering Price and Description:
Maximum: $150,000,000 - 15,000,000 Units @ $10 per unit
Minimum: $2,000 - 200 Units @ $10 per unit
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
CIBC World Markets Inc.
Scotia Capital Inc.
National Bank Financial Inc.
Canaccord Genuity Corp.
Global Securities Corporation
GMP Securities L.P.
Raymond James Ltd.
Desjardins Securities Inc.
Dundee Securities Ltd.
Industrial Alliance Securities Inc.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
Harvest Portfolios Group Inc.
Project #2271827

Issuer Name:
InnVest Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 19, 2014
NP 11-202 Receipt dated November 19, 2014
Offering Price and Description:
$63,262,500
12,050,000 Units
$5.25 per Unit
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
BMO NESBITT BURNS INC.
CIBC WORLD MARKETS INC.
SCOTIA CAPITAL INC.
TD SECURITIES INC.
CANACCORD GENUITY CORP.
Promoter(s):
-
Project #2275964

Issuer Name:
iShares Alternatives Completion Portfolio Builder Fund
iShares Conservative Core Portfolio Builder Fund
iShares Global Completion Portfolio Builder Fund
iShares Growth Core Portfolio Builder Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 20, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
Units @ net asset value
Underwriter(s) or Distributor(s):
Blackrock Asset Management Canada Limited
Promoter(s):
-
Project #2268699

Issuer Name:
Maple Leaf 2014-II Flow-Through Limited Partnership - National Class
Maple Leaf 2014-II Flow-Through Limited Partnership - Quebec Class
Principal Regulator - British Columbia
Type and Date:
Final Long Form Prospectus dated November 20, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
$10,000,000 (Maximum)
(400,000 Maple Leaf 2014-II Flow-Through Limited Partnership – National Class Units)
Price per Unit: $25.00
Minimum Purchase: $5,000 (200 Units)
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
NATIONAL BANK FINANCIAL INC.
BMO NESBITTBURNS INC.
GMP SECURITIES L.P.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
DESJARDINS SECURITIES INC.
MANULIFE SECURITIES INCORPORATED
BURGEONVEST BICK SECURITIES LIMITED
DUNDEE SECURITIES LTD.
GLOBAL SECURITIES CORPORATION
Promoter(s):
CADO BANCORP LTD.
MAPLE LEAF 2014-II FLOW-THROUGH MANAGEMENT CORP.
Project #2265389; 2265392

Issuer Name:
NorthWest International Healthcare Properties Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 18, 2014
NP 11-202 Receipt dated November 18, 2014
Offering Price and Description:
$30,001,100.00
13,954,000 Units
Price: $2.15 per Unit
Underwriter(s) or Distributor(s):
National Bank Financial Inc.
GMP Securities L.P.
BMO Nesbitt Burns Inc.
Canaccord Genuity Corp.
Scotia Capital Inc.
Dundee Securities Ltd.
Raymond James Ltd.
Manulife Securities Incorporated
Laurentian Bank Securities Inc.
Mackie Research Capital Corporation
All Group Financial Services Inc.
Promoter(s):
-
Project #2274991

Issuer Name:
Paramount Resources Ltd.
Principal Regulator - Alberta
Type and Date:
Final Base Shelf Prospectus dated November 20, 2014
NP 11-202 Receipt dated November 20, 2014
Offering Price and Description:
$800,000,000
Debt Securities
Class A Common Shares
Subscription Receipts
Warrants
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2279785

Issuer Name:
Pattern Energy Group Inc.
Principal Regulator - Ontario
Type and Date:
Final MJDS Prospectus dated November 21, 2014
NP 11-202 Receipt dated November 21, 2014
Offering Price and Description:
Class A Common Stock
Preferred Stock
Debt Securities
Warrants
Purchase Contracts
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2266686

Issuer Name:
RBC Emerging Markets Foreign Exchange Fund (Series O Units only)
RBC Conservative Growth & Income Fund (Series A, Advisor Series, Advisor T5 Series,
Series T5, Series H, Series F, Series FT5, Series I and Series O Units)
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated November 14, 2014
NP 11-202 Receipt dated November 20, 2014
Offering Price and Description:
Series A, Advisor Series, Advisor T5 Series, Series T5, Series H, Series F, Series FT5, Series I and Series O Units @ Net Asset Value
Underwriter(s) or Distributor(s):
Royal Mutual Funds Inc.
RBC Global Asset Management Inc.
Royal Mutual Funds Inc.
Promoter(s):
RBC Global Asset Management Inc.
Project #2267741

Issuer Name:
Social Housing Canadian Bond Fund
Social Housing Canadian Equity Fund
Social Housing Canadian Short-Term Bond Fund
Type and Date:
Amendment #2 dated November 12, 2014 to the Simplified Prospectuses and Annual Information Form dated June 27, 2014
Receipted on November 19, 2014
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
Philips, Hager & North Investment Funds Ltd.
Promoter(s):
-
Project #2214185

Issuer Name:
Social Housing Canadian Bond Fund
Social Housing Canadian Equity Fund
Social Housing Canadian Short-Term Bond Fund
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectuses dated November 13, 2014
NP 11-202 Receipt dated November 18, 2014
Offering Price and Description:
Series B Units
Underwriter(s) or Distributor(s):
Philips, Hager & North Investment Funds Ltd.
Promoter(s):
-
Project #2279772; 2265640

Issuer Name:
TELUS Corporation
Principal Regulator - British Columbia
Type and Date:
Final Base Shelf Prospectus dated November 19, 2014
NP 11-202 Receipt dated November 19, 2014
Offering Price and Description:
$3,000,000,000
Debt Securities
Preferred Shares
Common Shares
Warrants to Purchase Equity Securities
Warrants to Purchase Debt Securities
Share Purchase Contracts
Share Purchase or Equity Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #2275386

Issuer Name:
Voya Global Income Solutions Fund
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated November 18, 2014
NP 11-202 Receipt dated November 20, 2014
Offering Price and Description:
Maximum $100,000,000 (10,000,000 Class A Units and/or Class U Units)
Price: $10.00 per Class A Unit and U.S. $10.00 per Class U Unit
Minimum purchase: 100 Class A Units or Class U Units
Underwriter(s) or Distributor(s):
BMO Nesbitt Burns Inc.
Scotia Capital Inc.
CIBC World Markets Inc.
RBC Dominion Securities Inc.
National Bank Financial Inc.
GMP Securities L.P.
Canaccord Genuity Corp.
Raymond James Ltd.
Burgeonvest Bick Securities Limited
Desjardins Securities Inc.
Dundee Securities Ltd.
Mackie Research Capital Corporation
Manulife Securities Incorporated
Promoter(s):
Aston Hill Capital Markets Inc.
Project #2264579

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Chapter 12

Registrations

12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
Additional Registration Category	Alignvest Investment Management Corporation	Commodity Trading Manager	November 18, 2014
Change in Registration Category	Antares Investment Management, Inc.	From: Portfolio Manager and Investment Fund Manager To: Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	November 19, 2014
Voluntary Surrender	Transition Financial Advisors Group, Inc.	Portfolio Manager	November 19, 2014
Firm Name Change	From: ZLC Private Investment Management Inc. To: ZLC Wealth Inc.	Portfolio Manager and Exempt Market Dealer	November 13, 2014
New Business	SIA Wealth Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	November 21, 2014
Change in Registration Category	Manulife Asset Management Limited	From: Portfolio Manager, Investment Fund Manager, Exempt Market Dealer To: Portfolio Manager, Investment Fund Manager	September 29, 2014
New Business	Palette Investment Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	November 24, 2014

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Chapter 25

Other Information

25.1 Permissions

25.1.1 Anglo Pacific Group PLC – s. 38(3)

Headnote

Filer granted permission from the Director, pursuant to s. 38(3) of the Securities Act (Ontario), to make listing representations in its offering documents to the effect that the filer intends to make application to the London Stock Exchange for its Ordinary Shares to be admitted for listing and trading.

Statutes Cited

Securities Act, R.S.O. 1990, c. S.5, as am., s. 38(3).

November 18, 2014

Norton Rose Fulbright Canada LLP
200 Bay Street, Suite 3800
Royal Bank Plaza, South Tower
Toronto, Ontario
M5J 2Z4

Attention: Mr. Bruce Sheiner

Re: Anglo Pacific Group PLC

Application for Permission under s. 38(3) of the Securities Act (Ontario) to Make Listing Representations

Further to your letter submitted on behalf of Anglo Pacific Group PLC (the **Filer**) dated November 10, 2014 (the Application), we understand that:

1. The Filer is incorporated in England and Wales under the *Companies Act 1948* with registered number 00897608.

2. The Filer's Ordinary Shares are listed on the London Stock Exchange (**LSE**) and the Toronto Stock Exchange (**TSX**) and is therefore a reporting issuer in Ontario.

3. The Filer is proposing to issue Ordinary Shares (the **New Ordinary Shares**) by way of a Firm Placing and Placing and Open Offer (the **Offering**).

4. The Offering is being made by way of prospectus (the **Prospectus**) in the United Kingdom and certain other jurisdictions where the extension or availability of the Offering would not breach any applicable law.

5. It is contemplated that the Offering will be made by way of a private placement (the **Private Placement**) in the Canadian provinces of Ontario and Quebec.

6. In connection with the Private Placement, it is expected that prospective investors in Ontario and Quebec will be provided with either a preliminary and final, or just final, Canadian offering memorandum that includes, as applicable, the preliminary or final Prospectus (collectively the **Offering Memoranda**).

7. Each prospective investor in Ontario or Quebec will be an "accredited investor" in accordance with National Instrument 45-106 *Prospectus and Registration Exemptions* or a "permitted client" in accordance with National Instrument 31-103 *Registration Requirements and Exemptions*.

8. The placement agent in Canada for the Private Placement (the **Placement Agent**) will, when distributing securities to residents of Ontario, rely on appropriate exemptions from the prospectus requirements and will

either (i) rely on the "international dealer" exemption to the registration requirements or (ii) be a dealer registered under the securities laws of Ontario.

9. The Offering Memoranda will contain representations identical or substantially similar to the following (the **Listing Representations**):

   a. *"Applications will be made to the Financial Conduct Authority for the New Ordinary Shares to be admitted to listing on the premium segment of the Official List and to be admitted to trading on the London Stock Exchange's main market for listed securities and application has been made to the Toronto Stock Exchange to list the New Ordinary Shares.*

   b. *It is expected that Admission will become effective and that dealings in the New Ordinary Shares will commence at 8:00 a.m. on [●] 2014 on the London Stock Exchange's main market for listed securities and at market open on [●] 2014 on the Toronto Stock Exchange.*

10. No approval for the listing of the Ordinary Shares on the LSE, conditional or otherwise, has been granted, nor has such stock exchange consented to, nor indicated that they do not object to, the Listing Representations.

11. The Filer seeks permission to include the Listing Representations in the Offering Memoranda to be provided and made available to prospective Ontario purchasers.

Based upon the representations above and the representations contained in your Application, permission is hereby granted pursuant to subsection 38(3) of the *Securities Act* (Ontario) to include the Listing Representations (through the incorporation of the preliminary or final Prospectus, as the case may be) in the Offering Memoranda to be provided to or made available to prospective Ontario purchasers.

Yours very truly,

"Sonny Randhawa"
Manager, Corporate Finance Branch
Ontario Securities Commission

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