

The Ontario Securities Commission

# OSC Bulletin

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

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# Chapter 1

## Notices

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### 1.1 Notices

#### 1.1.1 OSC Notice of General Order – Ontario Instrument 51-505 Temporary Exemption from Certain Corporate Finance Requirements with Deadlines during the Period from June 2 to August 31, 2020

##### Notice of General Order

##### Ontario Instrument 51-505

##### *Temporary Exemption from Certain Corporate Finance Requirements with Deadlines during the Period from June 2 to August 31, 2020*

As a result of the Coronavirus pandemic (“**COVID-19**”), the Ontario Securities Commission (the “**Commission**”) is providing issuers with temporary relief from certain requirements of Ontario securities law.

#### Description of Order

The order provides that:

- (i) A person or company required to make an annual or interim filing listed in Exhibit A of the order, or to send or deliver a document listed in Exhibit A, during the period from June 2, 2020 to August 31, 2020, has an additional 45 days from the deadline otherwise applicable under Ontario securities law to make the filing or to send or deliver the document, provided that certain conditions set out in the order are satisfied;
- (ii) A person or company required to make a continuous disclosure filing listed in Exhibit B of the order, or to send or deliver a document listed in Exhibit B, during the period from June 2, 2020 to August 31, 2020, has an additional 45 days from the deadline otherwise applicable under Ontario securities law to make the filing or to send or deliver the document, subject to a condition set out in the order;
- (iii) A person or company required to make a filing listed in Exhibit C of the order relating to an exempt distribution, or to send or deliver a document listed in Exhibit C, during the period from June 2, 2020 to August 31, 2020, has an additional 45 days from the deadline otherwise applicable under Ontario securities law to make the filing or to send or deliver the document, subject to a condition set out in the order; and
- (iv) A person or company subject to a lapse date for a final base shelf prospectus referred to in Exhibit D of the order, that occurs during the period from June 2, 2020 to August 31, 2020, may add an additional 45 days to that lapse date, provided that certain conditions set out in the order are satisfied.

The order does not provide a further extension of any deadline previously extended under Ontario Instrument 51-502 entitled “Temporary Exemption from Certain Corporate Finance Requirements” dated March 23, 2020.

#### Reasons for the Order

As a result of the outbreak of COVID-19 certain reporting issuers may be unable to make certain filings, or to send or deliver certain documents, as and when required under continuous disclosure and prospectus requirements, and certain issuers may be unable to make certain filings, or to send or deliver certain documents, as and when required under provisions relating to the use of exemptions from the prospectus requirements. Under the circumstances, the Commission has determined that it would not be prejudicial to the public interest to grant this temporary relief to assist affected persons or companies in meeting their obligations under Ontario securities law.

#### Day on which the Order Ceases to Have Effect

The order comes into effect on May 20, 2020 and expires on October 15, 2020.

**1.1.2 OSC Notice of General Order – Ontario Instrument 81-505 Extension of Certain Filing, Delivery and Prospectus Renewal Requirements of Investment Funds with Deadlines during the Period from June 2 to September 30, 2020**

**Notice of General Order**

**Ontario Instrument 81-505**

***Extension of Certain Filing, Delivery and Prospectus Renewal Requirements of Investment Funds with Deadlines during the Period from June 2 to September 30, 2020***

As a result of the Coronavirus pandemic (“**COVID-19**”), the Ontario Securities Commission (the “**Commission**”) is providing temporary relief from certain requirements under Ontario securities law that apply to investment funds, as defined in subsection 1(1) of the *Securities Act* (Ontario).

**Description of Order**

The order provides that:

- (a) certain filing and delivery obligations of investment funds under securities legislation, where the obligations are required to be met during the period from June 2, 2020 to September 30, 2020, are extended for a period of 60 days; and
- (b) certain investment funds distributing securities under a prospectus with a lapse date during the period from June 2, 2020 to September 30, 2020 will have the lapse date extended for a period of 60 days.

The relief provided above is subject to the following terms and conditions:

- any investment fund relying on the order must, as soon as reasonably practicable, notify the Director of the Investment Funds and Structured Products Branch by email at [IFSPDirector@osc.gov.on.ca](mailto:IFSPDirector@osc.gov.on.ca) stating that the investment fund is relying on the order and each applicable requirement for which it is relying on the order;
- an investment fund relying on the order must, as soon as reasonably practicable, post a statement on its public website, or the public website of its investment fund manager, stating that the investment fund is relying on the order and each applicable requirement for which it is relying on the order; and
- reference made in a notice pursuant to section 9 of the order, or a public website statement pursuant to section 10 of the order, to an equivalent exemption granted by a securities regulatory authority or regulator in another jurisdiction of Canada that is the investment fund’s principal regulator, will be deemed to constitute a reference to the relevant exemption in this order.

The order does not provide a further extension of any deadline previously extended under Ontario Instrument 81-503 *Extension of Certain Filing, Delivery and Prospectus Renewal Requirements of Investment Funds* dated March 23, 2020.

**Reasons for the Order**

The outbreak of COVID-19 and the resulting disruptions to travel, access to office facilities and availability of personnel and resources may present challenges to an investment fund’s ability to meet certain filing and delivery requirements under Ontario securities law. Under the circumstances, the Commission has determined that it would not be prejudicial to the public interest to grant this temporary relief to assist affected investment funds in meeting their obligations under Ontario securities law.

**Day on which the Order Ceases to Have Effect**

This order will come into effect on May 20, 2020 and expires on November 30, 2020.

**1.3 Notices of Hearing with Related Statements of Allegations**

**1.3.1 Aurelio Marrone – ss. 127(1), 127.1**

**FILE NO.:** 2020-16

**IN THE MATTER OF  
AURELIO MARRONE**

**NOTICE OF HEARING**

**Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5**

**PROCEEDING TYPE:** Enforcement Proceeding

**HEARING DATE AND TIME:** June 19, 2020 at 10:00 a.m.

**LOCATION:** By Teleconference

**PURPOSE**

The purpose of this proceeding is to consider whether it is in the public interest for the Commission to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on May 25, 2020.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 5(1) of the Commission's *Practice Guideline*.

**REPRESENTATION**

Any party to the proceeding may be represented by a representative at the hearing.

**FAILURE TO ATTEND**

**IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.**

**FRENCH HEARING**

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Secretary's Office in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

**AVIS EN FRANÇAIS**

L'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Bureau du secrétaire par écrit dès que possible si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 25th day of May, 2020

"Grace Knakowski"  
Secretary to the Commission

**For more information**

Please visit [www.osc.gov.on.ca](http://www.osc.gov.on.ca) or contact the Registrar at registrar@osc.gov.on.ca.

**IN THE MATTER OF  
AURELIO MARRONE**

**STATEMENT OF ALLEGATIONS**

(Subsection 127(1) and Section 127.1 of the *Securities Act*, RSO 1990, c S.5)

**A) OVERVIEW**

1. This proceeding involves an egregious and wilful failure by a registered individual to act in good faith when dealing with a vulnerable investor. The registrant demonstrated flagrant disregard for ethical standards and regulatory rules designed to protect clients.
2. Aurelio Marrone was a dealing representative at a mutual fund dealer when he was named the sole beneficiary of his elderly and terminally ill client's estate just 10 days before she died from cancer. Marrone also accepted appointments as the client's powers of attorney for personal care and property. The will and powers of attorney were executed at the client's bedside in a palliative care unit in hospital.
3. The client's estate was valued at more than \$2 million at the time of her death, including approximately \$1.7 million in investments that were managed by Marrone, who has not renounced the gift.
4. Dealing representatives of registered mutual fund dealers are subject to rules and standards imposed upon them by securities legislation, regulators and their sponsoring firms. They must avoid serious conflicts of interest with clients that cannot be reasonably addressed through other means and they are prohibited from assuming control of the financial affairs of clients where such conflicts exist.
5. Dealing representatives also serve an important gatekeeper role in protecting the integrity of the capital markets. They must not engage in any conduct that brings the market into disrepute and they are required by law to deal fairly, honestly and in good faith with their clients.
6. By accepting his client's powers of attorney, Marrone placed himself in a situation where he stood to have total control over decisions related to her care and finances while knowing he was the beneficiary of her will. Such authority over the affairs of a client gives rise to a serious conflict of interest with the potential of abuse for personal financial gain.
7. Those who defy client protection requirements in the manner perpetrated by Marrone must be permanently disqualified from participating in Ontario's capital markets.

**B) FACTS**

Staff of the Enforcement Branch of the Commission (**Staff**) make the following allegations of fact:

*The Respondent's Advisor-Client Relationship with MU*

8. Marrone (the **Respondent**) and his client (**MU**) were both Ontario residents. The Respondent was MU's dealing representative at IPC Investment Corporation (**IPC**) for approximately 13 years prior to her death in May of 2017.

*MU's Terminal Cancer Diagnosis and Declining Health*

9. MU was diagnosed with terminal cancer in or around February of 2017. MU was admitted to hospital on May 1, 2017 and subsequently transferred to a palliative care unit where she remained until she passed away approximately three weeks later. The Respondent was aware that MU was dying prior to her hospitalization.

*Sequence of Events Leading to the Creation and Execution of MU's Will and Powers of Attorney*

10. The Respondent contacted an estate lawyer (the **Lawyer**) in April of 2017. The Respondent and the Lawyer discussed a meeting between MU and the Lawyer for the purpose of preparing a will and powers of attorney for property and personal care (the **Estate Documents**) for MU. The Lawyer and MU subsequently spoke on the phone and agreed on a date to meet.
11. After meeting MU on April 30, 2017, the Lawyer had concerns about MU's capacity to prepare a will. The Respondent was aware of the Lawyer's concerns. He obtained a letter written by MU's oncologist the following day. The letter was dated May 1, 2017 and addressed "to whom it may concern". The letter stated:

*"[MU] is a patient... who has been diagnosed with metastatic cancer, with a prognosis of 3 months or less.*

*I met with her on April 13, 2017 and found her to be lucid and capable of making decisions regarding her care.*

*I trust this is the information you require.”*

12. The Respondent provided the Lawyer with a copy of the letter the same day the Respondent obtained it. After receiving the doctor's letter, the Lawyer proceeded with the preparation of MU's Estate Documents.
13. On May 9, 2017, MU executed the Estate Documents in hospital. The Respondent was named sole beneficiary of MU's will as well as her powers of attorney for personal care and property. The Lawyer was appointed estate executor and trustee. The Respondent agreed to be named MU's powers of attorney immediately before the documents were executed.
14. MU died on May 19, 2017. Her estate was valued at more than \$2 million at the time of her death, including approximately \$1.7 million in investments that were managed by the Respondent and a condominium.

*The Respondent's Failure to Comply with Dealer Policies and Regulatory Rules*

15. IPC policies and procedures and Mutual Fund Dealer Association of Canada (**MFDA**) rules specifically prohibited the Respondent from accepting power of attorney designations on behalf of clients such as MU and required him to disclose to IPC any conflict or potential conflict of interest with a client.
16. By May 9, 2017, the Respondent was aware that he had been appointed as MU's power of attorney for property and personal care. He further knew that he had been named a beneficiary of MU's estate. The Respondent did not disclose these facts to IPC, including the fact that he could reasonably be perceived to be in a serious conflict of interest position with MU. He has not renounced the assets left to him in MU's will.
17. The Respondent was terminated from IPC in January of 2018 after the firm became aware of his conduct in this matter.
18. After MU's death, additional wills that MU had executed were found in her home. The most recent of those wills, dated August 15, 2012, named the Respondent as executor of MU's estate and her nieces, who reside outside of Canada, as her beneficiaries.

**C) BREACHES OF ONTARIO SECURITIES LAW AND CONDUCT CONTRARY TO THE PUBLIC INTEREST**

Enforcement Staff alleges the following breaches of Ontario securities law and/or conduct contrary to the public interest:

19. By engaging in the conduct described above, the Respondent failed to deal fairly, honestly and in good faith with a client contrary to subsection 2.1(2) of Commission Rule 31-505.
20. The Respondent's conduct was also contrary to MFDA rules, IPC policies and procedures and the public interest.
21. Enforcement Staff reserve the right to amend these allegations to make such further and other allegations as Enforcement Staff may advise and the Commission may permit.

**D) ORDER SOUGHT**

22. Enforcement Staff request that the Commission make the following orders:
  - a) that any registration or recognition granted to the Respondent under Ontario securities law be terminated or for such period as is specified by the Commission, or that terms and conditions be imposed on the registration or recognition by the Commission, pursuant to paragraph 1 of subsection 127(1) of the Act;
  - b) that the Respondent cease trading in any securities or derivatives permanently or for such period as is specified by the Commission, pursuant to paragraph 2 of subsection 127(1) of the Act;
  - c) that the Respondent be prohibited from acquiring any securities permanently or for such period as is specified by the Commission, pursuant to paragraph 2.1 of subsection 127(1) of the Act;
  - d) that any exemption contained in Ontario securities law not apply to the Respondent permanently or for such period as is specified by the Commission, pursuant to paragraph 3 of subsection 127(1) of the Act;
  - e) that the Respondent be reprimanded pursuant to paragraph 6 of subsection 127(1) of the Act;

- f) that the Respondent resign any positions he may hold as a director or officer of any issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;
- g) that the Respondent be prohibited from becoming or acting as a director or officer of any issuer, or registrant permanently or for such period as is specified by the Commission, pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act;
- h) that the Respondent be prohibited from becoming or acting as a registrant, an investment fund manager or a promoter permanently or for such period as is specified by the Commission, pursuant to paragraph 8.5 of subsection 127(1) of the Act;
- i) that the Respondent pay an administrative penalty of not more than \$1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;
- j) that the Respondent disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;
- k) that the Respondent pay costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and
- l) such other order as the Commission may consider appropriate in the public interest.

**DATED** this 25th day of May, 2020

ONTARIO SECURITIES COMMISSION  
20 Queen Street West, 22nd Floor  
Toronto, ON M5H3S8

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gmackenzie@osc.gov.on.ca  
Tel: 416-263-7729

Staff of the Enforcement Branch

1.4 Notices from the Office of the Secretary

1.4.2 Joseph Debus

1.4.1 Paramount Equity Financial Corporation et al.

**FOR IMMEDIATE RELEASE**  
**May 22, 2020**

**FOR IMMEDIATE RELEASE**  
**May 20, 2020**

**JOSEPH DEBUS,**  
**File No. 2019-16**

**PARAMOUNT EQUITY FINANCIAL CORPORATION,  
SILVERFERN SECURED MORTGAGE FUND,  
SILVERFERN SECURED MORTGAGE LIMITED  
PARTNERSHIP,  
GTA PRIVATE CAPITAL INCOME FUND,  
GTA PRIVATE CAPITAL INCOME LIMITED  
PARTNERSHIP,  
SILVERFERN GP INC.,  
TRILOGY MORTGAGE GROUP INC.,  
MARC RUTTENBERG,  
RONALD BRADLEY BURDON and  
MATTHEW LAVERTY,  
File No. 2019-12**

**TORONTO** – The Commission issued its Reasons for Decision in the above named matter.

A copy of the Reasons for Decision dated May 21, 2020 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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[inquiries@osc.gov.on.ca](mailto:inquiries@osc.gov.on.ca)

**TORONTO** – The Commission issued its Reasons and Decision in the above named matter.

A copy of the Reasons and Decision dated May 19, 2020 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

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**1.4.3 Aurelio Marrone**

**FOR IMMEDIATE RELEASE  
May 25, 2020**

**AURELIO MARRONE,  
File No. 2020-16**

**TORONTO** – The Office of the Secretary issued a Notice of Hearing on May 25, 2020 setting the matter down to be heard on June 19, 2020 at 10:00 a.m. as soon thereafter as the hearing can be held in the above named matter.

A copy of the Notice of Hearing dated May 25, 2020 and Statement of Allegations dated May 25, 2020 are available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca).

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GRACE KNAKOWSKI  
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[inquiries@osc.gov.on.ca](mailto:inquiries@osc.gov.on.ca)

**1.4.4 Sean Daley and Kevin Wilkerson**

**FOR IMMEDIATE RELEASE  
May 26, 2020**

**SEAN DALEY and  
KEVIN WILKERSON,  
File No. 2019-39**

**TORONTO** – The Commission issued an Order in the above named matter.

A copy of the Order dated May 25, 2020 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

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GRACE KNAKOWSKI  
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1.4.5 Sean Daley et al.

**FOR IMMEDIATE RELEASE**  
**May 26, 2020**

**SEAN DALEY; and  
SEAN DALEY carrying on business as  
the ASCENSION FOUNDATION,  
OTO.Money,  
SilentVault, and  
CryptoWealth;  
WEALTH DISTRIBUTED CORP.;  
CYBERVISION MMX INC.;  
KEVIN WILKERSON; and  
AUG ENTERPRISES INC.,  
File No. 2019-28**

**TORONTO** – The Commission issued an Order in the above named matter.

A copy of the Order dated May 25, 2020 is available at [www.osc.gov.on.ca](http://www.osc.gov.on.ca)

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[inquiries@osc.gov.on.ca](mailto:inquiries@osc.gov.on.ca)

1.4.6 Money Gate Mortgage Investment Corporation et al.

**FOR IMMEDIATE RELEASE**  
**May 26, 2020**

**MONEY GATE MORTGAGE INVESTMENT  
CORPORATION,  
MONEY GATE CORP.,  
MORTEZA KATEBIAN and  
PAYAM KATEBIAN,  
File No. 2017-79**

**TORONTO** – Take notice that the hearing with respect to sanctions and costs in the above named matter scheduled to be heard on May 28, 2020 will not take place as scheduled, and will proceed by way of an attendance only on May 28, 2020 at 10:00 a.m.

OFFICE OF THE SECRETARY  
GRACE KNAKOWSKI  
SECRETARY TO THE COMMISSION

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## Chapter 2

# Decisions, Orders and Rulings

## 2.1 Decisions

### 2.1.1 Waratah Capital Advisors Ltd. and Waratah Alternative ESG Fund

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – filer seeking relief from NI 81-102 to permit alternative mutual funds to physically short sell up to 100% of net assets – funds could achieve similar short exposure through derivatives under NI 81-102 – physical short selling is generally more efficient and will not increase risk to the funds compared to similar short exposure through derivatives – relief subject to conditions.

#### Applicable Legislative Provisions

National Instrument 81-102 Investment Funds –  
ss. 2.6.1(1)(c)(v), 2.6.2 (1), 19.1.

May 19, 2020

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  
WARATAH CAPITAL ADVISORS LTD.  
(the Filer)

AND

WARATAH ALTERNATIVE ESG FUND  
(the Existing Fund)

DECISION

#### Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the Existing Fund and similarly structured investment funds managed by the Filer (the **Future Funds** and, collectively with the Existing Fund, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**)

that exempts the Funds from the restrictions in subparagraph 2.6.1(1)(c)(v) and section 2.6.2 of NI 81-102 in order to permit each Fund to borrow securities from a borrowing agent to sell securities short whereby (A) the aggregate market value of all securities sold short by the Fund may exceed 50% of the net asset value of the Fund; and (B) the aggregate market value of securities sold short combined with the aggregate value of cash borrowed by the Fund may exceed 50% of the Fund's net asset value, provided that, the aggregate market value of securities sold short combined with the aggregate amount of cash borrowed does not exceed 100% of the net asset value of the Fund (the **Exemption Sought**).

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

- (i) the Ontario Securities Commission is the principal regulator for the Application;
- (ii) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-202 *Passport System (MI 11-102)* is intended to be relied upon in each of British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick and Nova Scotia (the **Other Jurisdictions** and, together with the Jurisdiction, the **Canadian Jurisdictions**).

#### Interpretation

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

**AIF** means an annual information from of a Fund prepared in accordance with Form 81-101F2 – *Contents of Annual Information Form* under NI 81-101 *Mutual Fund Prospectus Disclosure (NI 81-101)*, as the same may be amended from time to time;

**NAV** means net asset value;

**Prime Broker** means any entity that acts as a lender or borrowing agent, as the case may be, to one or more investment funds;

**Prospectus** means a simplified prospectus of a Fund prepared in accordance with Form 81-101F1 – *Contents of Simplified Prospectus* under NI 81-101 as the same may be amended from time to time; and

**Short Selling Limit** means the limit of 50% of NAV for short sale transactions by alternative mutual funds set out in subparagraph 2.6.1(1)(c)(v) of NI 81-102.

## Representations

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

### *The Filer*

1. The Filer is a corporation incorporated under the laws of the Province of Ontario. The head office of the Filer is in Toronto, Ontario.
2. The Filer is registered as an investment fund manager, portfolio manager and exempt market dealer in the Province of Ontario; an investment fund manager and exempt market dealer in the Province of Québec; and an exempt market dealer in the Provinces of British Columbia, Alberta; Manitoba, Saskatchewan, New Brunswick and Nova Scotia.
3. The Filer is the investment fund manager and portfolio manager of the Existing Fund and will be the investment fund manager and portfolio manager of the Future Funds. As such, the Filer is, or will be, responsible for managing the assets of the Funds and has, or will have, complete discretion to invest and reinvest the Funds' assets and is, or will be, responsible for executing all portfolio transactions.
4. The Filer is not in default of applicable securities legislation in any of the Canadian Jurisdictions.

### *The Funds*

5. Each of the Funds is, or will be, organized as a trust established under the laws of the Province of Ontario or another Canadian Jurisdiction.
6. Each of the Funds is, or will be, an open-ended public alternative mutual fund governed by NI 81-102.
7. Units of the Funds are, or will be, offered by a Prospectus, AIF and fund facts documents filed in one or more of the Canadian Jurisdictions and, accordingly, each Fund is, or will be, a reporting issuer in the Canadian Jurisdictions where the Exemption Sought is relied upon.

## Reasons for the Exemption Sought

8. The investment objectives to be utilized by each of the Funds will differ but, in each case, a key investment strategy which may be utilized by a Fund will include the use of market-neutral, offsetting, inverse or shorting strategies requiring the use of short selling in excess of the Short Selling Limit.
9. Market-neutral strategies are well-recognized for limiting market risk, balancing long and short positions within an investment portfolio with the

objective of providing positive returns regardless of whether the broader market rises, falls or is flat. Market-neutral strategies are designed to have less volatility than the broader market when measured over medium to long-term periods. Market-neutral strategies also provide diversification to investors as returns are intended to be uncorrelated to the performance of the broader market – such strategies are designed to effectively remove any “beta” component from their returns and investment exposures.

10. As part of an investment strategy, short positions can serve as both a hedge against exposure to a long position, or a group of long positions, and also as a source of returns with an offsetting long position or positions. The Funds will generally seek to generate an attractive risk/return profile independent of the direction of the broad equity markets. As such, at the portfolio level, these strategies seek to hedge out the Fund's exposure to the direction of broad equity markets, and to generate positive performance from the difference, specifically, the spread between the performance of the portfolio's long and short positions.
11. The investment strategies of each Fund permit, or will permit, it to sell securities short provided that, at the time the Fund sells a security short (i) the aggregate market value of securities of any one issuer (other than “government securities” as defined in NI 81-102) sold short by the Fund does not exceed 10% of the NAV of the Fund; and (ii) the aggregate market value of all securities sold short by the Fund does not exceed 100% of its NAV.
12. The investment strategies of each Fund permit, or will permit, it to enter into a cash borrowing (to a maximum of 50% of the Fund's NAV) or short selling transaction, provided that the aggregate value of cash borrowed combined with the aggregate market value of the securities sold short by the Fund does not exceed 100% of the Fund's NAV (the **Total Borrowing and Short Selling Limit**). If the Total Borrowing and Short Selling Limit is exceeded, the Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short to be within the Total Borrowing and Short Selling Limit.
13. The investment strategies of each Fund will permit the Fund to borrow cash, enter into specified derivatives transactions or sell securities short, provided that immediately after entering into a cash borrowing, specified derivative or short selling transaction, the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and aggregate notional amount of the Fund's specified

- derivatives positions (other than positions held for hedging purposes, as defined in NI 81-102) would not exceed 300% of the NAV of the Fund as set out in subsection 2.9.1(5) of NI 81-102 (the **Leverage Limit**). If the Leverage Limit is exceeded, the Fund shall, as quickly as is commercially reasonable, take all necessary steps to reduce the aggregate value of cash borrowed combined with the aggregate market value of securities sold short and the aggregate notional amount of the Fund's specified derivatives positions (other than positions held for hedging purposes) to be within the Leverage Limit.
14. An alternative mutual fund that is subject to NI 81-102 is permitted to take leveraged long and short positions using specified derivatives up to a maximum of 300% of its NAV. As such, the Exemption Sought would not be required if the Funds utilized solely specified derivatives (such as over-the-counter total return swaps) to obtain short exposure to the underlying securities. NI 81-102 contemplates that alternative mutual funds may utilize shorting strategies (using a combination of short sale transactions and specified derivatives) subject to the Short Selling Limit and the Leverage Limit. Alternative mutual funds that were previously known as commodity pools provide 100% or 200% inverse exposure through the use of specified derivatives, which is consistent with the Leverage Limit and does not trigger the application of the Short Selling Limit for which the Filer is requesting exemptive relief. Accordingly, the Exemption Sought would simply allow the Funds to do directly what they could otherwise do indirectly through the use of specified derivatives.
15. The Exemption Sought would allow the Funds to offset the beta of their long positions through short positions in order to strategically reduce portfolio volatility where the Filer has identified potential downside risks to the market without the necessity of resorting to specified derivatives, which, as further detailed below, can be more beneficial in certain circumstances. In implementing the Funds' objectives, the Filer seeks to reduce or hedge expected market exposure in order to mitigate the downside impact of market risks. This strategy is designed to be achieved by offsetting the long positions in a portfolio of securities that are expected to outperform (or to provide exposure to a particular investment strategy) against the portfolio's short positions that are expected to underperform (or to balance market risk by shorting securities that do not have the characteristics targeted under the long investment strategy). As a result, the use of a short-selling strategy provides for greater diversification as it is uncorrelated to the movements of the broader markets.
16. The Funds require the flexibility to enter into physical short positions when doing so is, in the opinion of the Filer, in the best interests of the applicable Fund and to not be obligated to utilize an equivalent short position synthetically through the use of specified derivatives as a result of regulatory restrictions in NI 81-102 that do not provide any material benefit or protection to investors.
17. The Filer, as a registrant and a fiduciary, is in the best position to determine whether the Funds should enter into a physical short position versus achieving the same result through the use of specified derivatives, depending on the surrounding circumstances. Accordingly, the Exemption Sought would permit the Filer to engage in the most effective portfolio management available for the benefit of the Funds and their unitholders.
18. In addition, while there may be certain situations in which using a synthetic short position may be preferable, physical shorts are typically less costly, because of the ability to execute trades with a larger number of counterparties, compared to a single counterparty for synthetic shorts. This can result in wider options for borrowing securities resulting in lower borrowing costs. Alternative mutual funds may also be exposed to less counterparty risk than with a synthetic short position (e.g. counterparty default, counterparty insolvency and premature termination of derivatives).
19. Any physical short position or cash borrowing transaction entered into by a Fund will be consistent with the investment objectives and strategies of the applicable Fund.
20. The Exemption Sought would provide the Filer, a registrant with significant expertise in these areas, with the required flexibility to make timely trading decisions between physical and synthetic short sale positions. The Exemption Sought is necessary in order to permit the Filer to engage in the most effective portfolio management activities on behalf and for the benefit of the Funds and their unitholders.
21. The Prospectus, AIF and fund facts documents will comply with the requirements of NI 81-101 applicable to alternative mutual funds, including cover page text box disclosure in the fund facts to highlight how the Fund differs from other mutual funds and emphasize that short selling strategies permitted for the Fund are outside the scope of the restrictions in NI 81-102 applicable to both mutual funds and alternative mutual funds.
22. The investment strategies of each Fund will clearly disclose that short selling strategies of the Fund which are outside the scope of NI 81-102,

including that the aggregate market value of all securities sold short by the Fund may exceed 50% of the NAV of the Fund. The Prospectus will also contain appropriate risk disclosure, alerting investors of any material risks associated with such investment strategies.

23. The Filer will determine the risk rating for each Fund using the Investment Risk Classification Methodology as set out in Appendix F of NI 81-102.

24. The Filer has comprehensive risk management policies and/or procedures that address the risks associated with short selling in connection with the implementation of the investment strategy of each Fund.

25. Each Fund will implement the following controls when conducting a short sale:

- (a) the Fund will assume the obligation to return to the borrowing agent the securities borrowed to effect the short sale;
- (b) the Fund will receive cash for the securities sold short within normal trading settlement periods for the market in which the short sale is effected;
- (c) the Filer will monitor the short positions within the constraints of the Exemption Sought as least as frequently as daily;
- (d) the security interest provided by the Fund over any of its assets that is required to enable the Fund to effect a short sale transaction is made in accordance with industry practice for that type of transaction and relates only to obligations arising under such short sale transactions;
- (e) the Filer will maintain appropriate internal controls regarding short sales, including written policies and procedures for the conduct of short sales, risk management controls and proper books and records; and
- (f) the Filer will keep proper books and records of short sales and all assets of a Fund deposited with borrowing agents as security.

26. The Filer believes that it is in the best interests of each of the Funds to be permitted to engage in physical short selling and to obtain additional investment exposure through the use of cash

borrowing in excess of the current limits set out in NI 81-102.

### Decision

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

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

1. A Fund may sell a security short or borrow cash only if, immediately after the cash borrowing or short selling transaction:
  - (a) the aggregate market value of all securities sold short by the Fund does not exceed 100% of the Fund's NAV;
  - (b) the aggregate value of cash borrowing by the Fund does not exceed 50% of the Alternative Fund's NAV;
  - (c) the aggregate market value of securities sold short by the Fund combined with the aggregate value of cash borrowing by the Fund does not exceed 100% of the Fund's NAV; and
  - (d) the Fund's aggregate exposure to short selling, cash borrowing and specified derivatives does not exceed the Leverage Limit.
2. In the case of a short sale, the short sale:
  - (a) otherwise complies with all of the short sale requirements applicable to alternative mutual funds under section 2.6.1 and 2.6.2 of NI 81-102; and
  - (b) is consistent with the Fund's investment objectives and strategies.
3. The Prospectus under which units of a Fund are offered:
  - (a) discloses that the Fund can short sell securities having an aggregate market value of up to 100% of the Fund's NAV; and
  - (b) describes the material terms of this decision.

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

## 2.1.2 NCM Asset Management Ltd.

### Headnote

National Policy 11-203 – Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from paragraph 2.6(1)(a) of National Instrument 81-102 Investment Funds to allow an exchange-traded mutual fund to borrow from its custodian and, if necessary, provide a security interest to the custodian to fund the portion of any distributions payable under the fund's distribution policy that represents, amounts that are owing to, but not yet been received by, the fund – Technical relief granted to mutual funds from Parts 9, 10 and 14 of NI 81-102 to facilitate the offering of exchange-traded series and conventional mutual fund series within same fund structure – Relief permitting funds to treat exchange-traded series in a manner consistent with treatment of other ETF securities in continuous distribution in connection with their compliance with Parts 9, 10 and 14 of NI 81-102 – Relief permitting funds to treat mutual fund series in a manner consistent with treatment of other conventional mutual fund securities in connection with their compliance with Parts 9, 10 and 14 of NI 81-102.

### Applicable Legislative Provisions

National Instrument 81-102 Mutual Funds, ss. 2.6(1)(a), 19.1, Parts 9, 10, 14.

May 14, 2020

Citation: *Re NCM Asset Management Ltd.*, 2020 ABASC 65

**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  
NCM ASSET MANAGEMENT LTD.  
(the Filer)**

**DECISION**

### Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer on behalf of NCM Short Term Income Fund and NCM Core Global (collectively, the **Existing Funds**), and such other mutual funds as may be managed by the Filer or an affiliate of the Filer in the future that offer both ETF Securities (as defined below) and Mutual Fund Securities (as defined below) (the **Future Funds** and together with the Existing Funds, the **Funds**) for a decision under the securities legislation of the Jurisdictions (the **Legislation**) granting the following exemptions (collectively, the **Exemptions Sought**):

- (a) an exemption from subparagraph 2.6(1)(a)(i) of National Instrument 81-102 *Investment Funds (NI 81-102)* (the **Borrowing Restriction**) permitting each Fund to borrow cash from the custodian of the Fund (the **Custodian**) and, if required by the Custodian, to provide a security interest over any of its portfolio assets, as a temporary measure to fund the portion of any distribution payable to Securityholders (as defined below) that represents, in the aggregate, amounts that are owing to, but have not yet been received by, the Fund;
- (b) an exemption from the provisions of Parts 9, 10 and 14 of NI 81-102 (the **Sales and Redemptions Requirements**) permitting the Filer and each Fund to treat the ETF Securities and the Mutual Fund Securities (each as defined below) as if such securities were separate funds for purposes of compliance with the provisions of the Sales and Redemptions Requirements.

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

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- (a) the Alberta Securities Commission is the principal regulator for this 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 every jurisdiction of Canada other than Alberta and Ontario; 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* and MI 11-102 have the same meaning if used in this decision, unless otherwise defined.

**Affiliate Dealer** means a registered dealer that is an affiliate of an Authorized Dealer or Designated Broker and that participates in the resale of Creation Units from time to time.

**Authorized Dealer** means a registered dealer that has entered, or intends to enter, into an agreement with the manager of a Fund authorizing the dealer to subscribe for, purchase and redeem Creation Units from one or more Funds on a continuous basis from time to time.

**Basket of Securities** means, in relation to the ETF Securities of a Fund, a group of securities or assets representing the constituents of the Fund.

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

**ETF Securities** means securities of an exchange-traded class or series of a Fund that are listed or will be listed on the TSX or another Marketplace and that will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

**Form 81-101F1** means Form 81-101F1 *Contents of Simplified Prospectus*.

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

**Mutual Fund Securities** means securities of a non-exchange-traded class or series of a Fund that are or will be distributed pursuant to a simplified prospectus prepared in accordance with NI 81-101 and Form 81-101F1.

**NI 81-101** means National Instrument 81-101 *Mutual Fund Prospectus Disclosure*.

**Other Dealer** means a registered dealer that is not an Authorized Dealer, Designated Broker or Affiliate Dealer.

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

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

**Securityholders** means beneficial or registered holders of ETF Securities or Mutual Fund Securities of a Fund, as applicable.

**TSX** means the Toronto Stock Exchange.

### Representations

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

#### *The Filer*

1. The Filer is a corporation continued under the federal laws of Canada with its head office in Calgary, Alberta.

## Decisions, Orders and Rulings

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2. The Filer is registered as an investment fund manager in Alberta, Newfoundland and Labrador, Ontario, and Québec, and a portfolio manager in Alberta and Ontario.
3. The Filer or an affiliate of the Filer is, or will be, the investment fund manager of each Fund.
4. The Filer is not in default of securities legislation in any jurisdiction of Canada.

### *The Funds*

5. Each Fund is, or will be, a mutual fund structured as a trust or a corporation or a class thereof that is governed by the laws of a jurisdiction of Canada. Each Fund is, or will be, a reporting issuer in the jurisdictions of Canada in which its securities are distributed. Each Fund offers, or will offer, ETF Securities and Mutual Fund Securities.
6. Neither of the Existing Funds is in default of securities legislation in any jurisdiction of Canada.
7. Subject to any exemptions therefrom that have been, or may be, granted by the applicable securities regulatory authorities, each Fund is, or will be, subject to NI 81-102 and Securityholders will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.
8. NCM Short Term Income Fund currently offers six series of Mutual Fund Securities, specifically Series A, Series A(H), Series F, Series F(H), Series I and Series R. NCM Core Global currently offers five series of Mutual Fund Securities, specifically Series A, Series F, Series R, Series Z and Series M. These Mutual Fund Securities are currently distributed under a simplified prospectus, annual information form and fund facts documents, each dated May 22, 2019, and amended by amendment no. 1 dated February 14, 2020.
9. On April 13, 2020, a preliminary and pro forma prospectus in respect of the Mutual Fund Securities and ETF Securities of the Existing Funds, as well as fund facts documents for each series of Mutual Fund Securities and ETF facts documents for each series of ETF Securities, was filed with the securities regulatory authorities in each jurisdiction of Canada.
10. The TSX has conditionally approved the listing of the ETF Securities of the Existing Funds on the TSX. The Filer will apply to list any ETF Securities of any Future Funds on the TSX or another Marketplace and will not file a final prospectus or amendment to a prospectus for any of the Future Funds in respect of the ETF Securities until the TSX or other applicable Marketplace has conditionally approved the listing of such ETF Securities.
11. Mutual Fund Securities may be subscribed for or purchased directly from a Fund through mutual fund dealers, investment dealers and their representatives that are registered under applicable securities legislation in the jurisdictions of Canada in which they are offered for sale.
12. ETF Securities will be distributed on a continuous basis in one or more of the jurisdictions of Canada under a simplified prospectus. ETF Securities may generally only be subscribed for or purchased directly from the Funds (**Creation Units**) by Authorized Dealers or Designated Brokers. Generally, subscriptions or purchases may only be placed for a Prescribed Number of ETF Securities (or a multiple thereof) on any day when there is a trading session on the TSX or other Marketplace. Authorized Dealers or Designated Brokers subscribe for Creation Units for the purpose of facilitating investor purchases of ETF Securities on the TSX or another Marketplace.
13. In addition to subscribing for and reselling their Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.
14. Each Designated Broker or Authorized Dealer that subscribes for Creation Units must deliver, in respect of each Prescribed Number of ETF Securities to be issued, a Basket of Securities and/or cash with a value equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order. In the discretion of the Filer, the Funds may also accept subscriptions for Creation Units in cash only, in securities other than Baskets of Securities and/or in a combination of cash and securities other than Baskets of Securities, in an amount equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order.
15. Upon notice given by the Filer from time to time and, in any event, not more than once quarterly, a Designated Broker may be contractually required to subscribe for Creation Units of a Fund for cash in an amount not to exceed a specified percentage of the net asset value of the Fund or such other amount established by the Filer.

## Decisions, Orders and Rulings

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16. Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with a subscription for Creation Units. On the issuance of Creation Units, the Filer or a Fund may, in the Filer's discretion, charge a fee to a Designated Broker or an Authorized Dealer to offset the expenses incurred in issuing the Creation Units.
17. Each Fund will appoint a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for its ETF Securities for the purpose of maintaining liquidity for the ETF Securities.
18. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities will not be available for purchase directly from a Fund. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the TSX or another Marketplace. ETF Securities may also be issued directly to Securityholders upon a reinvestment of distributions of income or capital gains.
19. Securityholders that are not Designated Brokers or Authorized Dealers that wish to dispose of their ETF Securities may generally do so by selling their ETF Securities on the TSX or other Marketplace, through a registered dealer, subject only to customary brokerage commissions. A Securityholder that holds a Prescribed Number of ETF Securities or multiple thereof may exchange such ETF Securities for Baskets of Securities and/or cash at the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to 95% of the closing price of the ETF Securities on the TSX or other Marketplace on the date of redemption, subject to a maximum redemption price of the applicable net asset value per ETF Security.

### *Borrowing Restriction*

20. Subparagraph 2.6(1)(a)(i) of NI 81-102 prevents a mutual fund from borrowing cash or providing a security interest over its portfolio assets unless the transaction is a temporary measure to accommodate redemption requests or to settle portfolio transactions and does not exceed five percent of the net assets of the mutual fund. As a result, a Fund is not permitted under subparagraph 2.6(1)(a)(i) to borrow from its Custodian to fund distributions under its Distribution Policy (as defined below).
21. NCM Short Term Income Fund will make distributions on a monthly basis; and in each taxation year NCM Short Term Income Fund will distribute sufficient net income and net realized capital gains so that it will not be liable to pay income tax under Part I of the *Income Tax Act* (Canada). Taxable dividends for NCM Core Global may be paid once a year, or at such frequency as the board of directors of NCM Core Portfolios Ltd. may determine in its discretion. Capital gains dividends for NCM Core Global, if any, are paid once a year, or at such frequency as the board of directors of NCM Core Portfolios Ltd. may determine in its discretion (collectively, the **Distribution Policy**).
22. Amounts included in the calculation of net income and net realized capital gains of a Fund for a taxation year that must be distributed in accordance with its Distribution Policy sometimes include amounts that are owing to but have not actually been received by the Fund from the issuers of securities held in the Fund's portfolio (**Issuers**).
23. While it is possible for a Fund to maintain a portion of its assets in cash or to dispose of securities in order to obtain any cash necessary to make a distribution in accordance with its Distribution Policy, maintaining such a cash position or making such a disposition (which would generally be followed, when the cash is actually received from the Issuers, by an acquisition of the same securities) will impact the Fund's performance. The need to maintain assets in cash or dispose of and reacquire the same securities would preclude a portion of the net asset value of the Fund from being invested in accordance with its investment objective.
24. The Filer is of the view that it is in the interests of a Fund to have the ability to borrow cash from its Custodian and, if required by the Custodian, to provide a security interest over its portfolio assets as a temporary measure to fund the portion of any distribution payable to Securityholders that represents, in the aggregate, amounts that are owing to, but have not yet been received by, the Fund from Issuers. While such borrowing will have a cost, the Filer expects that such costs will be less than the reduction to the Fund's performance if the Fund had to hold cash or to dispose of and reacquire securities in order to fund the distribution.

### *Sales and Redemptions Requirements*

25. Parts 9, 10 and 14 of NI 81-102 do not contemplate both Mutual Fund Securities and ETF Securities being offered in a single fund structure. Accordingly, without the Exemption Sought in respect of the Sales and Redemptions Requirements, the Filer and the Funds would not be able to technically comply with those parts of NI 81-102.
26. The Exemption Sought will permit the Filer and the Funds to treat the ETF Securities and the Mutual Fund Securities as if such securities were separate funds for purposes of their compliance with the Sales and Redemptions

Requirements. The Exemption Sought will enable each of the ETF Securities and Mutual Fund Securities to comply with the Sales and Redemptions Requirements as appropriate for the type of security being offered.

**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.

1. The decision of the Decision Makers under the Legislation is that the Exemption Sought in respect of the Borrowing Restriction is granted, provided that each Fund will be in compliance with all of the following conditions:
  - (a) the borrowing by the Fund in respect of a distribution does not exceed the portion of the distribution that represents, in the aggregate, amounts that are payable to the Fund but have not been received by the Fund from the Issuers and, in any event, does not exceed five percent of the net assets of the Fund;
  - (b) the borrowing is not for a period longer than 45 days;
  - (c) any security interest in respect of the borrowing is consistent with industry practice for the type of borrowing and is only in respect of amounts owing as a result of the borrowing;
  - (d) the Fund does not make any distribution to Securityholders where the distribution would impair the Fund's ability to repay any borrowing to fund distributions;
  - (e) the final prospectus or amendment thereto of the Fund discloses the potential borrowing, the purpose of the borrowing and the risks associated with the borrowing.
  
2. The decision of the Decision Makers under the Legislation is that the Exemption Sought in respect of the Sales and Redemptions Requirement is granted, provided that each Fund will be in compliance with both of the following conditions:
  - (a) with respect to its Mutual Fund Securities, the Fund complies with the provisions of Parts 9, 10 and 14 of NI 81-102 that apply to mutual funds that are not exchange-traded mutual funds;
  - (b) with respect to its ETF Securities, the Fund complies with the provisions of Parts 9 and 10 of NI 81-102 that apply to exchange-traded mutual funds.

"Tom Graham, CPA, CA"  
Director, Corporate Finance  
Alberta Securities Commission

### 2.1.3 IMAX Corporation

#### Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the issuer bid requirements set out in Part 2 of NI 62-104 in connection with purchases by the issuer of up to 15% of its outstanding shares through the facilities of the NYSE under repurchase programs that the issuer may implement from time to time – the shares are not listed on any Canadian exchange and are only listed and posted for trading on the NYSE – the issuer believes that less than 2% of the shares are beneficially owned by resident Canadians – requested relief granted, subject to conditions, including that the bid is made in compliance with applicable U.S. securities laws and the rules of the NYSE, the aggregate number of shares acquired by the issuer and any joint actors within a 12 month period doesn't exceed 15% of the outstanding shares at the beginning of the 12-month period, the shares are not listed and posted for trading on an exchange in Canada, and the requested relief is time limited.

#### Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2, s. 6.1.

May 21, 2020

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  
IMAX CORPORATION  
(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 principal regulator (the **Legislation**) varying a decision of the principal regulator dated March 25, 2019 (the **Original Decision**) which exempted the Filer from the requirements applicable to issuer bids (the **Issuer Bid Requirements**) in Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids (NI 62-104)* in connection with purchases by the Filer of up to 10% of the Filer's outstanding common shares (the **Shares**, and such maximum, the **Original Repurchase Maximum**) made through the facilities of the New York Stock Exchange (the **NYSE**) under repurchase programs that the Filer may implement from time to time (such programs, the **Repurchase Programs**).

The Filer has requested that the Original Decision be varied to increase the Original Repurchase Maximum such that the Filer will be exempted from the Issuer Bid Requirements in connection with purchases by the Filer of up to 15% of the Filer's outstanding Shares (the **Amended Repurchase Maximum**) made through the facilities of the NYSE under Repurchase Programs (the **Exemption Sought**). For ease of reference, each of the representations of the Filer made in the Original Decision has been repeated here and updated where appropriate given the passage of time since the date of the Original Decision and/or to reflect matters in connection with the Amended Repurchase Maximum. The Original Decision ceases to be effective and is superseded by this decision as of the date hereof.

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

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

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

### Interpretation

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

### Representations

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

1. The Filer is a corporation existing under the *Canada Business Corporations Act* with its head office and one of its two principal executive offices located in Mississauga, Ontario. The Filer's other principal executive office is located in New York, New York.
2. The Filer is a reporting issuer in all of the provinces of Canada, and is not in default of any requirements of the securities legislation of the jurisdictions in which it is a reporting issuer.
3. The Filer is also a registrant with the Securities and Exchange Commission in the United States (the **SEC**) and is subject to the requirements of the *Securities Act of 1933* (United States) (the **1933 Act**) and the *Securities Exchange Act of 1934* (United States) (the **1934 Act**).
4. The authorized capital of the Filer consists of an unlimited number of Shares and an unlimited number of non-voting special shares. As at May 5, 2020, the Filer had 58,878,749 Shares and no special shares issued and outstanding.
5. Upon the completion of its initial public offering in 1994, the Shares were concurrently listed and posted for trading on the Toronto Stock Exchange (the **TSX**) and the NASDAQ Stock Exchange (the **NASDAQ**). In 2011, the Filer delisted the Shares from the NASDAQ and instead listed and posted the Shares for trading on the NYSE. From that point onward, until January 19, 2015, the Shares were listed and posted for trading on the TSX and the NYSE.
6. The Filer was of the view that the low trading volume of the Shares on the TSX over a sustained period no longer justified the financial and administrative costs associated with maintaining its listing of the Shares on the TSX, and on January 12, 2015, the Filer applied for a voluntary delisting of the Shares from the TSX. The delisting was effective as of the close of markets on January 19, 2015.
7. The Shares are no longer listed and posted for trading on any exchange in Canada. The Shares are only listed and posted for trading on the NYSE under the symbol "IMAX".
8. As at May 5, 2020, the Filer's "public float" (as such term is defined by the TSX and the NYSE) consisted of 49,015,789 Shares, representing approximately 83.25% of the outstanding Shares.
9. On June 12, 2017, the Filer announced that its board of directors approved a U.S.\$200 million share Repurchase Program (the **Current Repurchase Program**). The Current Repurchase Program commenced on July 1, 2017 and authorizes the Filer to purchase up to U.S.\$200 million worth of Shares until June 30, 2020 pursuant to open market purchases or private transactions, subject to market conditions, applicable legal requirements and other relevant factors.
10. The exemption from the Issuer Bid Requirements set out in subsection 4.8(3) of NI 62-104 (the **Other Published Markets Exemption**) provides that an issuer bid that is made in the normal course on a published market, other than a designated exchange, is exempt from the Issuer Bid Requirements if, among other things, the bid is for not more than 5% of the outstanding securities of a class of securities of the issuer and the aggregate number of securities acquired in reliance on the Other Published Markets Exemption by the issuer and any person acting jointly or in concert with the issuer within any period of 12 months does not exceed 5% of the outstanding securities of that class at the beginning of the 12-month period.
11. The Ontario Securities Commission issued a decision on April 1, 2016 (the **2016 Decision**) exempting the Filer from the Issuer Bid Requirements in connection with purchases by the Filer of up to 10% of its outstanding Shares made through the facilities of the NYSE under Repurchase Programs implemented by the Filer from time to time, subject to certain conditions set out in the decision, for a period of 36 months.

12. The Filer repurchased an aggregate of 7,575,737 Shares pursuant to the 2016 Decision. Any and all Shares purchased under the Current Repurchase Program prior to April 1, 2019 were acquired in reliance on the 2016 Decision.
13. As at May 5, 2020, the Filer has:
  - (a) repurchased a total of 2,618,507 Shares for an aggregate amount of U.S.\$39,229,625 through the facilities of the NYSE under the Current Repurchase Program in reliance on the Original Decision; and
  - (b) approximately U.S.\$89,361,337 remaining available to repurchase Shares under the Current Repurchase Program.
14. The Filer wishes to be able to continue to make repurchases under the Current Repurchase Program and any Repurchase Programs that may be implemented by the Filer on the facilities of the NYSE in excess of the maximum allowable in reliance on the Other Published Markets Exemption (such repurchases, the **Proposed Bids**). The Filer intends to approve and implement a Repurchase Program to allow it to continue to make repurchases following the expiry of the Current Repurchase Program.
15. The Filer believes that the Proposed Bids are in the best interests of the Filer and its shareholders.
16. Although the Original Decision will not expire until March 25, 2022, the Filer has continued to repurchase Shares under the Original Decision and believes that it may reach the Original Repurchase Maximum as a result of purchases under the Current Repurchase Program in response to the unexpected decrease in the Share price due to market events outside of the Filer's control, particularly the extraordinary circumstances surrounding the coronavirus outbreak. Accordingly, the Filer wishes to increase the maximum number of Shares that may be purchased under a Proposed Bid from the Original Repurchase Maximum to the Amended Repurchase Maximum.
17. Based on information provided by the Filer's transfer agent, as at May 5, 2020:
  - (a) 51,826,032 Shares (or approximately 88.022% of the issued and outstanding Shares) were registered to shareholders in the United States;
  - (b) 7,051,281 Shares (or approximately 11.976% of the issued and outstanding Shares) were registered to shareholders in Canada (the **Registered Canadian Shares**);
  - (c) of the Registered Canadian Shares, (i) 7,035,616 Shares were registered to The Canadian Depository for Securities (the **CDS Position**), and (ii) 15,665 Shares (or approximately 0.027% of the issued and outstanding Shares) were held among fewer than 50 registered shareholders in Canada; and
  - (d) of the CDS Position, 6,119,384 Shares were held by American intermediaries (the **U.S. Intermediary Shares**), and 916,232 Shares (or approximately 1.556% of the issued and outstanding Shares) were held by Canadian intermediaries.
18. Based on the information provided by the Filer's transfer agent noted in paragraph 17, the Filer reasonably believes that:
  - (a) less than 2% of the Shares are beneficially owned by more than 50 shareholders resident in Canada; and
  - (b) the size of the CDS Position, and the fact that the U.S. Intermediary Shares form part of the CDS Position, is likely a result of the Shares having been listed on the TSX for over 20 years.
19. The Proposed Bids will be effected in accordance with the 1933 Act, the 1934 Act, the rules of the SEC made pursuant thereto, including the safe harbour provided by Rule 10b-18 under the 1934 Act (collectively, the **Applicable U.S. Securities Laws**) and any by-laws, rules, regulations or policies of the NYSE (the **Exchange Rules**).
20. Applicable U.S. Securities Laws require that, in respect of purchases by an issuer of its own securities through the facilities of the NYSE: (a) all purchases made during a single trading day must be conducted through a single broker or dealer; (b) purchases cannot be effected during the last 10 minutes before the scheduled close of market or be the opening purchase; (c) purchases must be made at a price that does not exceed the highest independent bid or the last transaction price quoted; and (d) in any given day, the issuer cannot purchase more than 25% of its average daily trading volume on the NYSE over the past four weeks.

## Decisions, Orders and Rulings

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21. Applicable U.S. Securities Laws also require that the Filer report any repurchases conducted pursuant to the Current Repurchase Program (and any Repurchase Programs that may be implemented by the Filer) in its quarterly and annual reports.
22. The Proposed Bids would be permitted under the Exchange Rules and Applicable U.S. Securities Laws.
23. The purchase of Shares under the Proposed Bids will not adversely affect the Filer or the rights of any of the Filer's security holders and they will not materially affect control of the Filer.

### Decision

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

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

- (a) the Proposed Bids are permitted under the Exchange Rules and Applicable U.S. Securities Laws, and are established and conducted in accordance and compliance with the Exchange Rules and Applicable U.S. Securities Laws;
- (b) the aggregate number of Shares acquired in reliance on the Exemption Sought by the Filer and any person acting jointly or in concert with the Filer within any period of 12 months does not exceed 15% of the outstanding Shares at the beginning of the 12-month period;
- (c) the Shares are not listed and posted for trading on an exchange in Canada;
- (d) the Exemption Sought apply only to the acquisition of Shares by the Filer occurring within 36 months of the date of the Original Decision pursuant to a Proposed Bid; and
- (e) prior to purchasing Shares in reliance on this decision, the Filer discloses the terms of the Exemption Sought and the conditions applicable thereto in a press release that is issued and filed on the System for Electronic Document Analysis and Retrieval, and includes such information as part of the news release required to be issued in accordance with the Other Published Markets Exemption in respect any Repurchase Program that may be implemented by the Filer.

“Jason Koskela”  
Manager, Office of Mergers & Acquisitions  
Ontario Securities Commission

2.1.4 Hamilton Capital Partners Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – An ETF that invests in a portfolio consisting of the six largest Canadian banks in its investment objectives granted relief from the concentration restriction in NI 81-102, subject to conditions – An ETF that invests in a portfolio consisting of the five largest Australian banks in its investment objectives granted relief from the concentration restriction in NI 81-102, subject to conditions.

Applicable Legislative Provisions

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

April 29, 2020

IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO

AND

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

AND

IN THE MATTER OF  
HAMILTON CAPITAL PARTNERS INC.  
(the Filer)

AND

HAMILTON CANADIAN BANK MEAN  
REVERSION INDEX ETF  
(HCA)

AND

HAMILTON AUSTRALIAN BANK EQUAL-WEIGHT  
INDEX ETF  
(HBA and together with HCA,  
the Funds and each a Fund)

DECISION

Background

The principal regulator in Ontario has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of Ontario (the **Legislation**) for exemptive relief (the **Exemption Sought**) relieving the Funds from subsection 2.1(1) of National Instrument 81-102 – *Investment Funds (NI 81-102)*, which prohibits a mutual fund from purchasing a security of an issuer, entering into a specified derivatives transaction or

purchasing an index participation unit if, immediately after the transaction, more than 10% of the net assets of the mutual fund, taken at market value at the time of the transaction, would be invested in securities of any issuer (the **Concentration Restriction**) to permit:

- (a) HCA to replicate the performance of a rules-based, variable-weight Canadian bank index (the **Canadian Bank Index**); and
- (b) HBA to replicate the performance of an equal-weight Australian bank index (the **Australian Bank Index**).

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

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

Interpretation

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

Representations

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

*General*

1. The Filer is a corporation organized under the laws of Ontario with a head office in Toronto.
2. The Filer will be the trustee, portfolio manager and investment fund manager of each Fund.
3. The Filer is not in default of securities legislation in any of the Jurisdictions.
4. The Filer is registered as: (i) an investment fund manager in Ontario, Quebec and Newfoundland & Labrador; (ii) an exempt market dealer in Ontario; and (iii) a portfolio manager in Ontario.
5. Each Fund will be an exchange traded mutual fund trust governed by the laws of Ontario and a

- reporting issuer under the laws of the Jurisdictions.
6. The Filer has filed a preliminary long form prospectus on behalf of the Funds with the securities regulatory authority in each of the Jurisdictions.
  7. Each Fund will be subject to NI 81-102, subject to any exemptions therefrom that may be granted by the securities regulatory authorities
  8. Each Fund will be subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.
  9. Units of each Fund will (subject to satisfying the Toronto Stock Exchange's (the **TSX**) original listing requirements) be listed on the TSX.

*Hamilton Canadian Bank Mean Reversion Index ETF*

10. The investment objective of HCA will be to replicate, to the extent reasonably possible and before the deduction of fees and expenses, the performance of the Canadian Bank Index. Specifically, HCA seeks to replicate the Solactive Canadian Bank Mean Reversion Index, a newly created index (or any successor thereto) that is a rules-based, variable-weight index.
11. The constituent securities of the Canadian Bank Index will be the common shares of the six largest Canadian banks by market capitalization listed on the TSX or other recognized exchange in Canada (the **Canadian Banks** and each a **Canadian Bank**). Currently, the constituents of the Canadian Bank Index are Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada and The Toronto-Dominion Bank.
12. The Canadian Bank Index uses a rules-based mean reversion strategy. The Canadian Bank Index will rebalance the portfolio once a month (an **HCA Rebalance Date**) based on the percent difference between each Canadian Bank's stock price and its 50-day average price. On an HCA Rebalance Date it is expected that: (i) the three Canadian Banks with the lowest percentage difference between their current trading price and their 50-day average price will be "over-weighted" at approximately 26.5% each of the Canadian Bank Index; and (ii) the three Canadian Banks with the highest percentage difference between their current trading price and their 50-day average price will be "under-weighted" at approximately 6.5% each of the Canadian Bank Index. Such portfolio weightings will be maintained until the next HCA Rebalance Date, at which point the rebalancing process is repeated.

13. The investment strategy of HCA will be to invest in and hold the constituent securities (common shares of the Canadian Banks) of the Canadian Bank Index in substantially the same proportion as they are reflected in the Canadian Bank Index or securities intended to replicate the performance of the Canadian Bank Index. As an alternative to, or in conjunction with investing in and holding common shares of the Canadian Banks, HCA may therefore invest in other securities to obtain exposure to the Canadian Banks in a manner that is consistent with HCA's investment objective. HCA may also hold cash and cash equivalents or other money market instruments in order to meet its obligations.
14. In order to achieve its investment objective, and based on the proposed investment strategy, HCA therefore wishes to be able to invest in a portfolio of Canadian Banks, such that immediately after a purchase, more than 10% of HCA's NAV may be invested in any one Canadian Bank for the purposes of determining compliance with the Concentration Restriction.
15. The investment objective and investment strategy of HCA, as well as the risk factors associated therewith, including concentration risk, will be disclosed in the prospectus of HCA, as may be renewed or amended from time to time. The names of the Canadian Banks will also be disclosed in the prospectus of HCA, as may be renewed or amended from time to time.
16. The common shares of the Canadian Banks are listed on the TSX.
17. The Canadian Banks are among the largest public issuers in Canada.

*Hamilton Australian Bank Equal-Weight Index ETF*

18. The investment objective of HBA will be to replicate, to the extent reasonably possible and before the deduction of fees and expenses, the performance of the Australian Bank Index. Specifically, HBA seeks to replicate the Solactive Australian Bank Equal-Weight Index, a newly created index (or any successor thereto).
19. The constituent securities of the Australian Bank Index will be the common shares of the five largest Australian banks by market capitalization listed on the Australian Securities Exchange (**ASE**) (the **Australian Banks** and each an **Australian Bank** and together with the Canadian Banks the **Banks** and each a **Bank**). Constituents of the Australian Bank Index will be subject to minimum market capitalization and liquidity screens and will be rebalanced semi-annually (an **HBA Rebalance Date** and together with an HCA Rebalance Date, a **Rebalance Date**). Currently, the constituents of the Australian Bank Index are

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|--|--|
| <p>Commonwealth Bank of Australia, Australia and New Zealand Banking Group, Westpac Banking Corporation, National Australia Bank and Macquarie Group Inc.</p>  | <p><i>Rationale for Investment</i></p>   |
| <p>20. As of April 22, 2020, the market capitalizations of the Australian Banks range from A\$34.7 billion (CDN\$31.0 billion) (Macquarie Group Inc.) to A\$104.9 billion (CDN\$93.7 billion) (Commonwealth Bank of Australia), with well over \$100 million of shares of each stock traded each day. In view of the Filer, such figures are evidence of the liquidity of the Australian Banks.</p>  | <p>28. The Filer notes that, in respect of each Fund, its strategy to acquire securities of an applicable Bank will be transparent, passive and fully disclosed to investors. A Fund will not invest in securities other than applicable Bank securities (or securities designed to gain exposure to the Bank securities as described herein). In addition, in respect of a Fund, the names of the applicable Banks to be invested in will be listed in the Fund's prospectus. Consequently, unitholders of a Fund will be fully aware of the risks involved with an investment in the securities of the Fund.</p> |
| <p>21. In the view of the Filer, the Australian Banks are subject to materially similar banking regulations and capital requirements as those to which the Canadian Banks are subject, pursuant to Canadian law.</p>   | <p>29. Given the proposed composition of each Fund's portfolio, it would be impossible for the Fund to achieve its investment objective and pursue its investment strategy without obtaining relief from the Concentration Restriction.</p>  |
| <p>22. On an HBA Rebalance Date, each security in the Australian Bank Index will be allocated an equal weight rather than a market capitalization weight. As such, on an HBA Rebalance Date, any one Australian Bank will represent 20% of the Australian Bank Index.</p>  | <p>30. The units of a Fund will be highly liquid securities, as designated brokers act as intermediaries between investors and the Fund, standing in the market with bid and ask prices for the units of the Fund to maintain a liquid market for the units of the Fund. The majority of trading in units of a Fund will occur in the secondary market.</p>  |
| <p>23. HBA will seek to achieve its investment objective by investing in and holding a proportionate share of the Australian Bank Index. As an alternative to, or in conjunction with investing in and holding common shares of the Australian Banks, HBA may also invest in other securities to obtain exposure to the Australian Banks in a manner that is consistent with HBA's investment objective. HBA may also hold cash and cash equivalents or other money market instruments in order to meet its obligations.</p> | <p>31. If required to facilitate distributions or pay expenses of a Fund, securities of the applicable Bank securities will be sold pro-rata across the Fund's portfolio according to their relative market values at the time of such sale.</p>   |
| <p>24. In order to achieve its investment objective, and based on the proposed investment strategy, HBA therefore wishes to be able to invest in a portfolio of Australian Banks, such that immediately after a purchase, more than 10% of HBA's NAV may be invested in any one Australian Bank for the purposes of determining compliance with the Concentration Restriction.</p>   | <p>32. Future subscriptions for Fund securities, if any, will be used to acquire securities of each applicable Bank up to the same weights as the Bank securities exist in the Fund's portfolio, based on their relative market values at the time of such subscription.</p>   |
| <p>25. The investment objective and investment strategy of HBA, as well as the risk factors associated therewith, including concentration risk, will be disclosed in the prospectus of HBA, as may be renewed or amended from time to time. The names of the Australian Banks will also be disclosed in the prospectus of HBA, as may be renewed or amended from time to time.</p>   | <p>33. In view of the Filer, each Fund is also akin to a "fixed portfolio investment fund", as such term is defined in NI 81-102, in that each will: (a) have fundamental investment objectives that include holding and maintaining a fixed portfolio of publicly traded equity securities of one or more issuers, the names of which are disclosed in its prospectus; and (b) trade the securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus. Each Fund will not be a "fixed portfolio investment fund" as each will be in continuous distribution.</p>                 |
| <p>26. The common shares of the Australian Banks are listed on the Australian Stock Exchange.</p>  | <p>34. The Filer further notes that a "fixed portfolio investment fund" is exempt from the Concentration Restrictions, provided purchases of securities are made in accordance with its investment objectives.</p>   |
| <p>27. The Australian Banks are among the largest public issuers in Australia.</p>   | <p>35. With respect to the Canadian Banks, the Canadian Banks are among the largest public</p>   |

issuers in Canada. The common shares of the Canadian Banks are some of the most liquid equity securities listed on the TSX and are less likely to be subject to liquidity concerns than the securities of other issuers.

36. The liquidity of the common shares of the Canadian Banks is evidenced by the markets for options in connection therewith. A liquid market for options on the common shares of the Canadian Banks is provided by the Montreal Exchange.
37. In view of the Filer, similar to an investment in Canadian Banks, an investment in Australian Banks is also less likely to be subject to liquidity concerns than an investment in the securities of other issuers.

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

The decision of the principal regulator is that the Exemption Sought is granted in respect of HCA for so long as:

- (a) the investment in a Canadian Bank is made in accordance with HCA's investment objectives and investment strategies to replicate the performance of the Canadian Bank Index;
- (b) HCA's investment strategies disclose that, as of an applicable HCA Rebalance Date, HCA will invest in the Canadian Banks up to the stated maximum percentages described at representation 12, above. Outside of an HCA Rebalance Date, any investments by HCA, if any, will be such that securities of each Canadian Bank are acquired up to the same weights as the Canadian Bank securities exist in HCA's portfolio, based on their relative market values at the time of such investment;
- (c) HCA's investment strategies disclose that HCA's portfolio will be rebalanced monthly; and
- (d) HCA includes in its final prospectus: (i) disclosure regarding the Exemption Sought under the heading "Exemptions and Approvals"; and (ii) a risk factor regarding the concentration of HCA's investments in the Canadian Banks and the risks associated therewith.

The decision of the principal regulator is that the Exemption Sought is granted in respect of HBA for so long as:

- (a) the investment in an Australian Bank is made in accordance with HBA's

investment objectives and investment strategies to replicate the performance of the Australian Bank Index;

- (b) HBA's investment strategies disclose that, as of an HBA Rebalance Date, HBA will invest in the Australian Banks in the percentages described at representation 22, above. Outside of an HBA Rebalance Date, any investments by HBA, if any, will be such that securities of each Australian Bank are acquired up to the same weights as the Australian Bank securities exist in HBA's portfolio, based on their relative market values at the time of such investment;
- (c) HBA's investment strategies disclose that HBA's portfolio will be rebalanced semi-annually; and
- (d) HBA includes in its final prospectus: (i) disclosure regarding the Exemption Sought under the heading "Exemptions and Approvals"; and (ii) a risk factor regarding the concentration of HBA's investments in the Australian Banks and the risks associated therewith.

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

**2.2 Orders**

**2.2.1 Ontario Instrument 51-505 Temporary Exemption from Certain Corporate Finance Requirements with Deadlines during the Period from June 2 to August 31, 2020**

**Ontario Securities Commission**

**Ontario Instrument 51-505**

***Temporary Exemption from Certain Corporate Finance Requirements with Deadlines during the Period from June 2 to August 31, 2020***

The Ontario Securities Commission, considering that to do so would not be prejudicial to the public interest, orders that effective on May 20, 2020, Ontario Instrument 51-505 entitled “Temporary Exemption from Certain Corporate Finance Requirements with Deadlines during the Period from June 2 to August 31, 2020” is made, such that affected persons or companies are temporarily exempted from certain requirements of Ontario securities law.

This order provides for the extension of certain deadlines for issuers where their deadlines, which have not already been extended, fall within the above-noted time period. This order does not provide a further extension of any deadline previously extended under Ontario Instrument 51-502 entitled “Temporary Exemption from Certain Corporate Finance Requirements” dated March 23, 2020.

Dated this 20th day of May 2020.

“Grant Vingoe”  
Acting Chair

“Timothy Moseley”  
Vice Chair

**Authority under which the order is made:**

Act and section: *Securities Act*, subsection 143.11(2)

Ontario Securities Commission

Ontario Instrument 51-505

**Temporary Exemption from Certain Corporate Finance Requirements with Deadlines  
during the Period from June 2 to August 31, 2020**

**Definitions**

1. Terms defined in the *Securities Act* (Ontario) (“OSA”), National Instrument 14-101 *Definitions*, National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (“National Instrument 43-101”), National Instrument 44-102 *Shelf Distributions* (“National Instrument 44-102”), National Instrument 45-106 *Prospectus Exemptions* (“National Instrument 45-106”), Multilateral Instrument 45-108 *Crowdfunding* (“Multilateral Instrument 45-108”), National Instrument 51-101 *Standards of Disclosure for Oil and Gas Activities* (“National Instrument 51-101”) and National Instrument 51-102 *Continuous Disclosure Obligations* (“National Instrument 51-102”) have the same meaning in this Instrument.
2. In this Instrument, “extension period” means the period between
  - (a) the date a person or company was required to make a filing listed in Exhibit A, or to send or deliver a document listed in Exhibit A, under Ontario securities law, and
  - (b) 45 days following that date.

**Exemptive relief**

3. As a result of the coronavirus disease 2019 (“COVID-19”) outbreak, which was declared a pandemic by the World Health Organization on March 11, 2020 and has led to a “Declaration of Emergency” under the *Emergency Management and Civil Protection Act* by the Lieutenant Governor of Ontario on March 17, 2020, the Ontario Securities Commission (the “Commission” or “OSC”) acknowledges that this pandemic may present challenges for market participants in the meeting of certain obligations under Ontario securities law.
4. Specifically,
  - (a) certain reporting issuers may be unable to make certain filings, or to send or deliver certain documents, as and when required under continuous disclosure and prospectus requirements, and
  - (b) certain issuers may be unable to make certain filings, or to send or deliver certain documents, as and when required under provisions relating to the use of exemptions from the prospectus requirements.
5. Under subsection 143.11(2) of the OSA if the Commission considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to clause (b) of subsection 143.11(3) of the OSA.
6. This order does not provide a further extension of any deadline previously extended under Ontario Instrument 51-502 entitled “Temporary Exemption from Certain Corporate Finance Requirements” dated March 23, 2020.

**Order**

7. Consequently, this order provides for the temporary exemptions listed below.
8. A person or company required to make a filing listed in Exhibit A, or to send or deliver a document listed in Exhibit A, during the period from June 2, 2020 to August 31, 2020 has an additional 45 days from the deadline otherwise applicable under Ontario securities law to make the filing or to send or deliver the document, provided that:
  - (a) the person or company issues, and files on SEDAR as soon as reasonably practicable, a news release in advance of its filing deadline that discloses
    - (i) each applicable requirement for which it is relying on this exemption,

- (ii) that its management and other insiders are subject to an insider trading black-out policy that reflects the principles in section 9 of National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* ("National Policy 11-207"),
  - (iii) the estimated date by which the required disclosure is expected to be filed or the required document is expected to be sent or delivered, and
  - (iv) the following information about the person or company
    - (A) an update of any material business developments since the date of the last annual financial statements or interim financial reports that were filed, or
    - (B) confirmation that there have been no material business developments since that date;
  - (b) the person or company issues, and files on SEDAR as soon as reasonably practicable,
    - (i) a news release no later than 30 days after the first day of the extension period, and
    - (ii) a subsequent news release no later than 30 days following the date of the news release referred to in subparagraph (i) if the person or company has not yet filed each document for which it is relying on this exemption;
  - (c) the news release required by paragraph (b) above must provide the following information about the person or company
    - (i) an update of any material business developments since the date of the last news release required by this section, or
    - (ii) confirmation that there have been no material business developments since that date;
  - (d) if the person or company is relying on this exemption for one or more documents, it does not file a preliminary prospectus or a final prospectus for an offering of securities until it has filed all documents for which it is relying on this exemption.
9. A person or company required to make a filing listed in Exhibit B, or to send or deliver a document listed in Exhibit B, during the period from June 2, 2020 to August 31, 2020 has an additional 45 days from the deadline otherwise applicable under Ontario securities law to make the filing or to send or deliver the document, provided that the person or company issues, and files on SEDAR as soon as reasonably practicable, a news release in advance of its filing deadline that discloses each applicable requirement for which it is relying on this exemption.
10. A person or company required to make a filing listed in Exhibit C, or to send or deliver a document listed in Exhibit C, during the period from June 2, 2020 to August 31, 2020 has an additional 45 days from the deadline otherwise applicable under Ontario securities law to make the filing or to send or deliver the document, provided that the person or company issues, and files on SEDAR as soon as reasonably practicable if the person or company is a SEDAR filer, a news release in advance of its filing deadline that discloses each applicable requirement for which it is relying on this exemption.
11. A person or company subject to a lapse date listed in Exhibit D that occurs during the period from June 2, 2020 to August 31, 2020 may add an additional 45 days to that lapse date, provided that the person or company:
- (a) issues, and files on SEDAR as soon as reasonably practicable, a news release in advance of its lapse date that discloses the specific requirements for which it is relying on this exemption, and
  - (b) is not also relying on the exemption in section 8.
12. A reference made in a news release to an equivalent exemption granted by a securities regulatory authority or regulator in another jurisdiction of Canada that is the person's or company's principal regulator, as defined in National Policy 11-207, will be deemed to constitute a reference to the relevant exemption in this order.

**Effective date and term**

13. This order comes into effect on May 20, 2020 and expires on October 15, 2020.

**Exhibit A – Annual and interim filings or delivery requirements**

1. The filing of:
  - annual financial statements required by section 4.2 of National Instrument 51-102,
  - an interim financial report required by section 4.4 of National Instrument 51-102,
  - management's discussion & analysis required by subsection 5.1(2) of National Instrument 51-102,
  - management's discussions & analysis of SEC issuers required by section 5.2 of National Instrument 51-102,
  - an annual information form required by section 6.2 of National Instrument 51-102,
  - financial statements after becoming a reporting issuer required by subsection 4.7(2) and (3) of National Instrument 51-102,
  - financial statements of a reverse takeover acquirer for periods ending before a reverse takeover required by subsection 4.10(2) of National Instrument 51-102,
  - a statement of reserves data and other information required by section 2.1 of National Instrument 51-101,
  - a technical report required by paragraph 4.2(1)(j) of National Instrument 43-101, or
  - any similar annual or interim disclosure document of a reporting issuer required pursuant to an exemption from one of the requirements listed above included in an exemptive relief decision made by a securities regulatory authority or regulator prior to the date of this order.
  
2. The delivery of:
  - annual financial statements required by subsection 4.6(3) of National Instrument 51-102, or
  - management's discussion & analysis required by subsection 5.6(1) of National Instrument 51-102.

**Exhibit B – Other continuous disclosure filings**

1. The filing of:
  - a change of auditor reporting package required by section 4.11 of National Instrument 51-102,
  - a notice of change in year end required by section 4.8 of National Instrument 51-102,
  - a business acquisition report required by section 8.2 of National Instrument 51-102,
  - a notice of change in corporate structure required by section 4.9 of National Instrument 51-102, or
  - executive compensation disclosure required by section 11.6 of National Instrument 51-102.

**Exhibit C – Filings related to exempt distributions**

1. The filing of:
  - annual financial statements required by subsection 2.9(17.5) of National Instrument 45-106,
  - a notice of use of proceeds on Form 45-106F16 *Notice of Use of Proceeds* required by subsection 2.9(17.19) of National Instrument 45-106,
  - annual financial statements required by section 16 of Multilateral Instrument 45-108, or
  - annual disclosure of use of proceeds required by section 17 of Multilateral Instrument 45-108.

**Exhibit D – Lapse date for a base shelf prospectus**

1. The lapse date for a final base shelf prospectus referred to in paragraph 2.2(3)(a), 2.3(3)(a), 2.4(3)(a), 2.5(3)(a), 2.6(3)(a) or section 2.7 of National Instrument 44-102.

**2.2.2 Ontario Instrument 81-505 Extension of Certain Filing, Delivery and Prospectus Renewal Requirements of Investment Funds with Deadlines during the Period from June 2 to September 30, 2020**

**Ontario Securities Commission**

**Ontario Instrument 81-505**

***Extension of Certain Filing, Delivery and Prospectus Renewal Requirements of Investment Funds with Deadlines during the Period from June 2 to September 30, 2020***

The Ontario Securities Commission (“OSC”), considering that to do so would not be prejudicial to the public interest, orders that effective on May 20, 2020, Ontario Instrument 81-505 entitled “*Extension of Certain Filing, Delivery and Prospectus Renewal Requirements of Investment Funds with Deadlines during the period from June 2 to September 30, 2020*” is made such that:

- i. certain filing and delivery obligations of investment funds under securities legislation, where the obligations are required to be met during the period from June 2, 2020 to September 30, 2020, are extended for a period of 60 days, and
- ii. certain investment funds distributing securities under a prospectus with a lapse date during the period from June 2, 2020 to September 30, 2020, have the lapse date extended for a period of 60 days.

The order does not provide a further extension of any deadline previously extended under Ontario Instrument 81-503 *Extension of Certain Filing, Delivery and Prospectus Renewal Requirements of Investment Funds* dated March 23, 2020.

May 20, 2020

“Grant Vingoe”  
Acting Chair

“Timothy Moseley”  
Vice-Chair

**Authority under which the order is made:**

Act and section: Securities Act, subsection 143.11(2)

Ontario Securities Commission

Ontario Instrument 81-505

***Extension of Certain Filing, Delivery and Prospectus Renewal Requirements of Investment Funds  
with Deadlines during the Period from June 2 to September 30, 2020***

**Definitions**

1. Terms defined in the *Securities Act* (Ontario) (“OSA”), Multilateral Instrument 11-102 *Passport System* (“MI 11-102”), National Instrument 14-101 *Definitions*, National Instrument 41-101 *General Prospectus Requirements* (“NI 41-101”), National Instrument 81-102 *Investment Funds* (“NI 81-102”) National Instrument 81-106 *Investment Fund Continuous Disclosure* (“NI 81-106”) and National Instrument 81-107 *Independent Review Committee for Investment Funds* (“NI 81-107”) have the same meaning as in this order.

**Exemptive Relief**

2. As a result of the coronavirus disease 2019 (“COVID-19”) outbreak, which was declared a pandemic by the World Health Organization on March 11, 2020 and has led to a “Declaration of Emergency” under the *Emergency Management and Civil Protection Act* by the Lieutenant Governor of Ontario on March 17, 2020, the Ontario Securities Commission (the “Commission” or “OSC”) acknowledges that this pandemic may present challenges for market participants in the meeting of certain obligations under Ontario securities law.
3. Specifically, the outbreak of COVID-19 may present challenges to an investment fund’s ability to meet the filing and delivery requirements (the “Filing and Delivery Requirements”) under Ontario securities law listed in Exhibit A and the prospectus renewal requirements (the “Prospectus Renewal Requirements”) under Ontario securities law listed in Exhibit B.
4. Under subsection 143.11(2) of the OSA if the Commission considers that it would not be prejudicial to the public interest to do so, the Commission may, on application by an interested person or company or on its own initiative, make an order exempting a class of persons or companies, trades, intended trades, securities or derivatives from any requirement of Ontario securities law on such terms or conditions as may be set out in the order, effective for a period of no longer than 18 months after the day on which it comes into force unless extended pursuant to paragraph (b) of subsection 143.11(3) of the OSA.

**Order**

5. Consequently, this order provides for the temporary exemptions listed below.
6. Any investment fund required to make a filing and/or delivery in accordance with the Filing and Delivery Requirements during the period from June 2, 2020 to September 30, 2020 has an additional 60 days from the deadline otherwise applicable under Ontario securities law to make the filing or to send or deliver the document, subject to the terms and conditions listed below.
7. Any investment fund distributing securities under a prospectus with a lapse date that occurs during the period from June 2, 2020 to September 30, 2020 may add an additional 60 days to that lapse date in fulfilling the Prospectus Renewal Requirements, subject to the terms and conditions listed below.
8. This order does not provide a further extension of any deadline previously extended under Ontario Instrument 81-503 *Extension of Certain Filing, Delivery and Prospectus Renewal Requirements of Investment Funds* dated March 23, 2020.

**Terms and conditions**

9. Any investment fund relying on this order must, as soon as reasonably practicable and in advance of its filing or delivery deadline, notify the Director of the Investment Funds and Structured Products Branch by email at [IFSPDirector@osc.gov.on.ca](mailto:IFSPDirector@osc.gov.on.ca) stating that the investment fund is relying on this order and each applicable requirement for which it is relying on this order.
10. An investment fund relying on this order must, as soon as reasonably practicable and in advance of its filing or delivery deadline, post a statement on its public website, or the public website of its investment fund manager, stating that the investment fund is relying on this order and each applicable requirement for which it is relying on this order.

## Decisions, Orders and Rulings

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11. Reference made in a notice pursuant to section 9 of this order, or a public website statement pursuant to section 10 of this order, to an equivalent exemption granted by a securities regulatory authority or regulator in another jurisdiction of Canada that is the investment fund's principal regulator, as defined in MI 11-102, will be deemed to constitute a reference to the relevant exemption in this order.
12. This order will come into effect on May 20, 2020 and expires on November 30, 2020.

**Exhibit A – Filing and Delivery Requirements**

- (a) section 14.6(3) of NI 41-101 and section 6.7(3) of 81-102, which require a custodian to deliver to the securities regulatory authority, custodian compliance reports within 30 days after the filing of the annual financial statements of an investment fund,
- (b) section 12.1 of NI 81-102, which requires a mutual fund, other than an exchange-traded mutual fund that is not in continuous distribution, that does not have a principal distributor, to complete and file a compliance report, within 140 days after the financial year end of the mutual fund,
- (c) section 2.2 of NI 81-106, which requires that annual financial statements and an auditor's report be filed on or before the 90th day after the investment fund's most recently completed financial year,
- (d) section 2.4 of NI 81-106, which requires that interim financial statements be filed on or before the 60th day after the end of the most recent interim period of the investment fund,
- (e) section 2.11 of NI 81-106, which requires a mutual fund that is not a reporting issuer to provide notice to the regulator of reliance on the section 2.11 exemption to file its financial statements,
- (f) section 4.2 of NI 81-106, which requires an investment fund, other than an investment fund that is a scholarship plan, to file an annual management report of fund performance for each financial year and an interim management report of fund performance for each interim period at the same time that it files its annual financial statements or its interim financial statements for that financial period,
- (g) section 4.3 of NI 81-106, which requires a scholarship plan to file an annual management report of fund performance at the same time as it files its annual financial statements,
- (h) section 5.1(2) of NI 81-106, which requires an investment fund to deliver to a securityholder its annual financial statements, interim financial statements, and the related management report on fund performance concurrently with the filing deadline set out in Part 2 of NI 81-106,
- (i) section 5.2(5) of NI 81-106, which requires an investment fund acting in accordance with section 5.2 of NI 81-106, to send annually to each securityholder a request form that they may use to instruct the investment fund as to which of the documents the securityholder wishes to receive,
- (j) section 5.3(3) of NI 81-106, which requires an investment fund to send annually to each securityholder a request form the securityholder may use to instruct the investment fund as to which document listed in subsection 5.1(2) of NI 81-106 the securityholder wishes to receive,
- (k) section 5.4 of NI 81-106, which requires an investment fund to send a copy of the document listed in subsection 5.1(2) of NI 81-106 requested by securityholder by the later of the filing deadline of the requested document and ten calendar days after the request,
- (l) section 8.2(c) of NI 81-106, which requires a labour sponsored or venture capital fund to concurrently file, where applicable, an independent valuation with the filing of its annual financial statements,
- (m) section 9.3 of NI 81-106, which requires an investment fund to file an annual information form on or before 90 days after the most recently completed financial year, and
- (n) section 4.4 of NI 81-107, which requires an independent review committee to prepare, for each financial year of an investment fund and no later than the date the investment fund files its annual financial statements, a report to securityholders of the investment fund that describes the independent review committee and its activities for the financial year.

**Exhibit B – Prospectus Renewal Requirements**

Section 62 of the OSA which requires an investment fund to file and obtain a receipt for a new prospectus, in accordance with certain timelines, in order to continue distribution of the investment fund's securities for a further 12 months after the lapse date.

### 2.2.3 The Stars Group Inc.

#### Headnote

Application for an order that the issuer is not a reporting issuer under applicable securities laws – requested relief granted.

#### Applicable Legislative Provisions

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

May 21, 2020

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
ONTARIO  
(the Jurisdiction)**  
**AND**  
**IN THE MATTER OF  
THE PROCESS FOR CEASE TO BE  
A REPORTING ISSUER APPLICATIONS**  
**AND**  
**IN THE MATTER OF  
THE STARS GROUP INC.  
(the Filer)**  
**ORDER**

#### Background

The principal regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Filer for an order under the securities legislation of the Jurisdiction (the **Legislation**) that the Filer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer (the **Order Sought**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System (MI 11-102)* is intended to be relied upon in each of the provinces and territories of Canada.

#### Interpretation

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

#### Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 security holders in total worldwide;
3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of security where trading data is publicly reported;
4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
5. the Filer is not in default of securities legislation in any jurisdiction.

#### Order

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

The decision of the principal regulator under the Legislation is that the Order Sought is granted.

“Winnie Sanjoto”  
Manager, Corporate Finance  
Ontario Securities Commission

2.2.4 Sean Daley and Kevin Wilkerson – ss. 127, 127.1

**IN THE MATTER OF  
SEAN DALEY and  
KEVIN WILKERSON**

File No. 2019-39

Lawrence P. Haber, Commissioner and Chair of the Panel

May 25, 2020

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

**WHEREAS** on April 27, 2020, the Ontario Securities Commission announced that it would not be holding in-person hearings until further notice, but indicated that hearings may proceed via teleconference, in writing or by videoconference;

**ON READING** the submissions of the representatives for Staff of the Commission and Sean Daley, and no one responding on behalf of Kevin Wilkerson;

**IT IS ORDERED** that a Second Attendance in this proceeding is scheduled for July 10, 2020 at 10:00 a.m. by teleconference, or on such other date and time as may be agreed by the parties and set by the Office of the Secretary.

“Lawrence P. Haber”

2.2.5 Sean Daley et al. – ss. 127(8), 127(1)

**IN THE MATTER OF  
SEAN DALEY; and  
SEAN DALEY carrying on business as  
the ASCENSION FOUNDATION,  
OTO.Money,  
SilentVault, and  
CryptoWealth;  
WEALTH DISTRIBUTED CORP.;  
CYBERVISION MMX INC.;  
KEVIN WILKERSON; and  
AUG ENTERPRISES INC.**

File No. 2019-28

Lawrence P. Haber, Commissioner and Chair of the Panel

May 25, 2020

**ORDER  
(Subsection 127(8) and 127(1) of  
Securities Act, RSO 1990 c S.5)**

**WHEREAS** on April 27, 2020, the Ontario Securities Commission announced that it would continue to not hold in-person hearings until further notice, but that hearings may proceed via teleconference, in writing or by videoconference;

**ON READING** the submissions for representatives for Staff of the Commission and Sean Daley, and no one appearing on behalf of the remaining respondents;

**IT IS ORDERED THAT:**

1. the motion to extend the Temporary Order dated August 6, 2019 will be heard by teleconference on July 10, 2020 at 11:00 a.m. or on such other dates or times as may be agreed to by the parties and set by the Office of the Secretary; and
2. the Temporary Order is extended until July 11, 2020.

“Lawrence P. Haber”

**2.2.6 Otis Gold Corp.**

**Headnote**

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

**Applicable Legislative Provisions**

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

**May 25, 2020**

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

**AND**

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

**AND**

**IN THE MATTER OF  
OTIS GOLD CORP.  
(the Filer)**

**ORDER**

**Background**

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

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

- (a) the British Columbia Securities Commission is the principal regulator for this application,
- (b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and
- (c) this order is the order of the principal regulator that evidences the decision of the securities regulatory authority or regulator in Ontario.

**Interpretation**

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

**Representations**

- ¶ 3 This order is based on the following facts represented by the Filer:
1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;
  2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;
  3. no securities of the Filer, including debt securities, are traded in Canada or another country on a marketplace as defined in National Instrument 21-101 *Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;
  4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and
  5. the Filer is not in default of securities legislation in any jurisdiction.

**Order**

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

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

“John Hinze”  
Director, Corporate Finance  
British Columbia Securities Commission

## Chapter 3

# Reasons: Decisions, Orders and Rulings

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### 3.1 OSC Decisions

#### 3.1.1 Paramount Equity Financial Corporation et al.

Citation: *Paramount (Re)*, 2020 ONSEC 12

Date: 2020-05-19

File No. 2019-12

IN THE MATTER OF  
PARAMOUNT EQUITY FINANCIAL CORPORATION,  
SILVERFERN SECURED MORTGAGE FUND,  
SILVERFERN SECURED MORTGAGE LIMITED PARTNERSHIP,  
GTA PRIVATE CAPITAL INCOME FUND,  
GTA PRIVATE CAPITAL INCOME LIMITED PARTNERSHIP,  
SILVERFERN GP INC.,  
TRILOGY MORTGAGE GROUP INC.,  
MARC RUTTENBERG,  
RONALD BRADLEY BURDON and  
MATTHEW LAVERTY

#### REASONS AND DECISION

<b>Hearing:</b>	In Writing	
<b>Decision:</b>	May 19, 2020	
<b>Panel:</b>	Timothy Moseley Garnet W. Fenn Heather Zordel	Vice-Chair and Chair of the Panel Commissioner Commissioner
<b>Submissions received from:</b>	Mark Bailey Vivian Lee  Matthew Laverty	For Staff of the Ontario Securities Commission  On his own behalf  No submissions received from other respondents

#### REASONS AND DECISION

### I. OVERVIEW

- [1] The COVID-19 pandemic interrupted the merits hearing in this proceeding, at a point when Staff of the Ontario Securities Commission (the **Commission**) had called some but not all of its witnesses. Following a decision of this hearing panel on March 23, 2020,<sup>1</sup> Staff delivered the rest of its evidence in the form of affidavits from the following witnesses:
- a. Leon Dadoun, Staff's proposed expert regarding mortgage underwriting;<sup>2</sup>
  - b. Kevin Dusseldorp, a Forensic Accountant in the Commission's Enforcement Branch;<sup>3</sup>
  - c. François Collat, the former Chief Financial Officer of the respondent Paramount Equity Financial Corporation (**Paramount**);<sup>4</sup>

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<sup>1</sup> *Paramount (Re)*, 2020 ONSEC 9, (2020) 43 OSCB 3056

<sup>2</sup> We have marked Mr. Dadoun's affidavit sworn April 9, 2020, as Exhibit 82 in this hearing

<sup>3</sup> We have marked Mr. Dusseldorp's affidavit sworn April 13, 2020, as Exhibit 83 in this hearing

<sup>4</sup> We have marked Mr. Collat's affidavit sworn April 13, 2020, as Exhibit 84 in this hearing

- d. David Ross, a former director of the respondent Trilogy Mortgage Group Inc.;<sup>5</sup>
- e. an investor, J.C.R.;<sup>6</sup> and
- f. an investor, M.C.<sup>7</sup>

[2] We sought submissions from the parties as to the use we ought to make of the opinion evidence contained in the affidavit of Mr. Dadoun, Staff's proposed expert. Staff provided written submissions. No other party responded. In the absence of any challenge to Mr. Dadoun's qualifications as an expert or to the scope of his opinion evidence, we will admit that opinion evidence, subject to the limitations described below.

[3] We also asked that the respondents indicate whether they intended to cross-examine any of the witnesses mentioned above. The respondent Matthew Lavery was the only respondent who advised of such an intention. Mr. Lavery intends to cross-examine Mr. Dusseldorp and Mr. Collat. We provide directions below as to next steps.

## II. OPINION EVIDENCE OF LEON DADOUN

### A. Introduction

[4] Mr. Dadoun's brief affidavit attaches his expert report dated November 18, 2019,<sup>8</sup> and his *curriculum vitae*. Staff asks us to accept Mr. Dadoun's opinions, which are expressed as answers to questions posed by Staff to Mr. Dadoun.

[5] Opinion evidence is generally inadmissible. In order to have us make an exception to that rule, and in the absence of any rule that would otherwise exclude Mr. Dadoun's opinion evidence, Staff must demonstrate that:

- a. Mr. Dadoun's opinion evidence is relevant;
- b. he is properly qualified to give it; and
- c. it is necessary, in that it is outside the Commission's experience and knowledge, and would enable us to appreciate the matters at issue due to their technical nature.<sup>9</sup>

[6] We address each of these three criteria in turn.

### B. Relevance of Mr. Dadoun's opinion evidence

[7] Admissibility of any evidence depends on, among other things, whether the proffered evidence is relevant to an issue in the hearing.

[8] In this case, Staff alleges that Paramount employed "substandard" mortgage underwriting practices.<sup>10</sup> Much of Mr. Dadoun's opinion evidence explains the risks associated with various types of mortgages, describes industry practices relating to the underwriting of mortgages, and assesses various policies and practices of some respondents against those industry practices. It is clear, and the respondents do not dispute, that Mr. Dadoun's opinion evidence on these topics is relevant.

[9] While some of Mr. Dadoun's testimony goes beyond the topics listed above, on its surface his testimony does meet the low threshold test of relevance. We address this additional testimony further in the context of necessity, below.

### C. Mr. Dadoun's qualifications as an expert

[10] It is evident from Mr. Dadoun's affidavit that he has extensive, varied and senior experience in the area of mortgage lending. Because the respondents do not challenge his qualification as an expert, we need not describe that experience in detail here.

[11] We have no difficulty concluding that Mr. Dadoun is an expert about the risks associated with various kinds of mortgages, and about industry practices relating to underwriting mortgages.

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<sup>5</sup> We have marked Mr. Ross's affidavit sworn April 9, 2020, as Exhibit 85 in this hearing

<sup>6</sup> We have marked the affidavit of J.C.R., sworn April 9, 2020, as Exhibit 86 in this hearing

<sup>7</sup> We have marked the affidavit of M.C., sworn April 9, 2020, as Exhibit 87 in this hearing

<sup>8</sup> *Expert Report of Leon Dadoun, CA, CPA* (Exhibit A to the affidavit of Leon Dadoun marked as Exhibit 82 in this hearing) (**Dadoun Report**)

<sup>9</sup> *R v Mohan*, [1994] 2 SCR 9, at paras 17, 26

<sup>10</sup> Statement of Allegations, at para 38

**D. Necessity of Mr. Dadoun's opinion evidence**

- [12] The portions of Mr. Dadoun's report that describe industry practices, or that compare respondents' policies and practices to those prevalent in the industry, engage matters that are outside the Commission's expertise. Those portions of the report enable us to analyze a number of issues in this proceeding. They therefore meet the necessity criterion.
- [13] However, some questions that Staff posed to Mr. Dadoun lead him into areas that go beyond our need for expert assistance. One such question asks him whether investments in certain mortgages by the respondent Silverfern Secured Mortgage Fund (the **Silverfern Fund**) complied with constraints set out in governing documents. Another question asks whether certain investments were suitable for the fund.
- [14] To the limited extent that Mr. Dadoun's answers to those questions invoke industry practices, they are admissible opinion evidence. However, the questions (and therefore the answers) go farther, as is illustrated by the following two examples.
- [15] According to Mr. Dadoun, a document issued by the Silverfern Fund mentions the fund's focus on "the alternative market arising from Canada's tightening bank rules". Mr. Dadoun asserts that this is "a direct reference to OSFI Guideline B20" and that it is "completely misleading".<sup>11</sup> That may or may not be true, but if it is ultimately to be an issue in this proceeding, it will be for this panel to decide to what the statement intends to refer, and whether it is misleading. We need not rely on Mr. Dadoun's expertise to make that decision.
- [16] A second example is found in Mr. Dadoun's assertion that he "would have expected to see the use of funds by borrowers being mostly for either renovation of the subject property or debt consolidation, not to finance 'soft costs' and/or development/construction expenses."<sup>12</sup> It will be for this panel to assess, if called upon to do so, how the funds raised were used. We need not rely on Mr. Dadoun's expertise to make that assessment.
- [17] Staff, in its written submissions, concedes that some portions of Mr. Dadoun's report are not directly related to Staff's allegation of "substandard" practices. Staff submits that those portions are nonetheless of assistance to us, and we have the discretion to consider them. We decline the invitation. The question of whether opinion evidence is helpful arises only after the three criteria cited above, including necessity, have been established.<sup>13</sup>

**E. Conclusions regarding Mr. Dadoun's opinion evidence**

- [18] If Mr. Dadoun were giving oral testimony, specific questions being put to him could be ruled proper or improper. Mr. Dadoun's written testimony complicates matters somewhat, because some portions of the report weave together proper opinion evidence with evidence that does not meet the necessity test. It is not practical at this stage of the hearing to separate all of the strands. It will be for Staff to ensure that its closing submissions conform to the limitations described in these reasons. Any uncertainty can be resolved at that time, in the context of a full evidentiary record that includes cross-examinations and reply evidence, if any.
- [19] We make one other observation regarding Mr. Dadoun's report. In it, he refers to various documents on which he relied in coming to his conclusions. Those documents are not appended to his report, and at least one of them is not in evidence in this hearing. Because of the unusual way in which this hearing has had to proceed due to the COVID-19 pandemic, we wish to ensure that the parties have had a full opportunity to adduce, or review and respond to, as the case may be, any documents relied on in support of conclusions we will be asked to draw.
- [20] Accordingly, on or before May 29, 2020, Staff may serve and file such additional documents as it considers necessary in light of this observation. Alternatively, Staff may confirm to the Registrar and to the other parties that no additional documents are necessary.

**III. CROSS-EXAMINATIONS**

- [21] As noted above, Mr. Laverty has advised that he intends to cross-examine Mr. Dusseldorp and Mr. Collat.
- [22] Those cross-examinations may take place by videoconference. We ask that Staff:
- a. communicate with all respondents other than Mr. Laverty, in an attempt to determine which of them, if any, wishes to observe Mr. Laverty's cross-examination of Mr. Dusseldorp and Mr. Collat;

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<sup>11</sup> *Dadoun Report* at 48

<sup>12</sup> *Dadoun Report* at 52

<sup>13</sup> *White Burgess Langille Inman v Abbott and Haliburton Co*, 2015 SCC 23 at para 24

- b. work with the Registrar, Mr. Laverty, Mr. Dusseldorp, Mr. Collat, and any respondent who has advised Staff of an intention to observe a cross-examination, to ensure that there are no technological impediments to participation by the necessary parties and witnesses; and
- c. attempt to produce, and communicate to the Registrar, a set of possible dates and times for each of the two cross-examinations, taking into account the availability of Mr. Laverty, the relevant witness, and any respondent who has advised Staff of an intention to observe the cross-examination.

[23] If Staff is successful in the above steps, the Commission will review the submission and issue an order fixing dates and times for the cross-examinations. Alternatively, if Staff or any other party requires further direction from the Commission, they should submit that request to the Registrar, with a copy to all other parties.

Dated at Toronto this 19th day of May, 2020.

“Timothy Moseley”

“Garnet W. Fenn”

“Heather Zordel”

### 3.1.2 Joseph Debus

Citation: *Debus (Re)*, 2020 ONSEC 13

Date: 2020-05-21

File No. 2019-16

#### IN THE MATTER OF JOSEPH DEBUS

#### REASONS FOR DECISION

<b>Hearing:</b>	In writing	
<b>Decision:</b>	May 21, 2020	
<b>Panel:</b>	M. Cecilia Williams	Commissioner and Chair of the Panel
<b>Submissions received from:</b>	Stephen Chiu Mark Persaud	For Joseph Debus
	Kathryn Andrews Sally Kwon	For Staff of the Investment Industry Regulatory Organization of Canada
	Katrina Gustafson	For Staff of the Ontario Securities Commission

#### REASONS FOR DECISION

##### I. OVERVIEW

- [1] These are the reasons for decision for an Order issued on May 8, 2020.
- [2] Joseph Debus has applied for a hearing and review of an Investment Industry Regulatory Organization of Canada (IIROC) decision, in which an IIROC panel found that Debus breached IIROC's business conduct, supervision of accounts, and suitability determination rules and imposed sanctions on him.<sup>1</sup> There have been several appearances before the Ontario Securities Commission (the **Commission**) to determine the date of the hearing and for the exchange of materials by the parties in advance of the hearing.
- [3] Debus is represented by the Persaud Law Group, principally by two lawyers of that firm, Mark Persaud and Stephen Chiu. Unfortunately, their ability to represent Debus was hampered by Persaud's health issues and the fact that as of May 15, 2020, Chiu would no longer be available to assist with this matter.
- [4] Debus was to have served his hearing brief, witness summaries, if any, and written submissions (**Materials**) by April 23, 2020. He failed to do so.
- [5] Debus now seeks the following:
- a 60-day extension of the time to serve his Materials to June 29, 2020;
  - a similar extension to the relevant deadlines for IIROC and OSC Staff hearing briefs, witness summaries, if any, and written submissions, and Debus' reply submissions; and
  - an adjournment of the hearing to a date to be set in September, 2020.
- [6] In an Order dated May 8, 2020, I granted an extension of the filing deadlines and set a new date for the hearing. These are the reasons for my decision.

##### II. BACKGROUND FACTS

- [7] IIROC provided Debus's counsel with an electronic copy of the transcripts and exhibits of the IIROC hearings that are the subject of the hearing and review (the **Record**) on August 23, 2019, September 4, 2019 and February 11, 2020. IIROC also delivered an electronic copy of the Record to Debus personally on September 4, 2019.

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<sup>1</sup> *Debus (Re)*, 2019 IIROC 05; *Debus (Re)*, 2019 IIROC 18

- [8] On August 21, 2019, I scheduled the hearing for March 23 and 24, 2020, and ordered Debus to serve and file his Materials by January 17, 2020.
- [9] On January 14, 2020, Debus requested a four-week extension to file his Materials due to Persaud's health issues. I granted an extension, on consent of the parties, to February 14, 2020.
- [10] At an attendance on February 24, 2020, Debus requested that I issue a summons to a third party for the delivery of certain documents. I asked the parties to provide written submissions with respect to that request.
- [11] Because of the need for submissions on the summons issue, I extended the deadline for Debus to deliver his Materials to April 23, 2020, and adjourned the hearing to May 21 and 22, 2020.
- [12] On April 9, 2020, having reviewed the parties' submissions regarding Debus's request for a summons, I communicated my decision to deny that request, for reasons that would follow and that would be included in my reasons following the hearing on the merits of Debus's principal application.
- [13] On April 24, 2020, IIROC Staff asked Debus's counsel by email about the status of Debus's Materials, which had not been delivered the previous day as ordered. Debus's counsel replied that they had inadvertently missed the date due to the firm having to work remotely and requested the extension of timelines and the adjournment now under consideration.
- [14] Debus's counsel also advised that they were awaiting my decision about the summons, so that they would know what additional material they might receive.
- [15] Debus cites the following reasons for adjournment:
- a. Debus's counsel have not been able to attend their office due to COVID-19 restrictions and therefore have not had access to the voluminous paper materials in this matter, which have been marked with notes and post-its;
  - b. Debus and his counsel have not been able to work collaboratively on the Materials; and
  - c. Persaud continues to experience personal and health-related issues.
- [16] Chiu has also advised that he will no longer be available to work on this matter as of May 15, 2020, and that Persaud may not be able to return to work in May.
- [17] Debus also submits that:
- a. given his financial situation, he is unable to retain alternate counsel at this time; and
  - b. there are no valid public protection issues as he is under strict supervision and there have been no concerns expressed about his conduct since the IIROC hearing.
- [18] IIROC opposes Debus's request for the following reasons:
- a. IIROC provided counsel for Debus and Debus with an electronic copy of the Record on at least three occasions;
  - b. previous extensions and adjournments have been granted and Debus has failed to meet those new deadlines;
  - c. the closure of non-essential businesses by the Province of Ontario on March 24, 2020, has not required legal services to be discontinued;
  - d. IIROC believes Debus has had more than sufficient time to complete his materials; and
  - e. it is not in the public interest to leave this matter open indefinitely.
- [19] Staff of the Commission also opposes Debus's request for an adjournment.

III. ANALYSIS

- [20] Rule 29(1) of the Commission's *Rules of Procedures and Forms*<sup>2</sup> provides that every merits hearing shall proceed on the scheduled date unless the party requesting an adjournment "satisfies the Panel that there are exceptional circumstances requiring an adjournment."
- [21] I must therefore decide whether Debus's counsel's unavailability constitutes exceptional circumstances justifying an adjournment of the hearing.
- [22] The Commission has ruled that the standard set out in Rule 29(1) is a "high bar" that reflects the important objective set out in Rule 1, that Commission proceedings be conducted in a "just, expeditious and cost-effective manner".<sup>3</sup> This objective must be balanced against parties' ability to participate meaningfully in the hearing and present their case.<sup>4</sup>
- [23] The balancing of these objectives is necessarily fact-based and must take into account the circumstances of the parties and the manner in which they have conducted themselves in the proceeding.<sup>5</sup>
- [24] Prior to this request, I granted two extensions of the filing timelines in this matter and one adjournment. On January 14, 2020, I ordered the first extension due to Persaud's health issues. I consider the timing issues associated with this first extension a negative factor in my analysis of this request.
- [25] When Debus requested the first extension he had had more than four months to prepare for the hearing, which was scheduled to occur in just over two months. I expect that significant progress on Debus's Materials would have already been made by the date of the request, given that timing.
- [26] I ordered the second extension and the hearing adjournment to accommodate my request for written submissions on the summons issue and the timing for delivery of those submissions. I therefore consider the second extension and first hearing adjournment to be a neutral factor in my analysis.
- [27] One of Debus's reasons for this extension is that he was waiting for the decision on the summons issue to understand what additional material, if any, he might be able to access. While I acknowledge that any additional documentation could have had an impact on Debus's Materials, I do not accept that the core of Debus's Materials could not have been prepared in the original timeframes and modified, if required, after the decision. Had he been successful on the summons issue, Debus could have then sought an adjournment to consider the additional material and make appropriate changes to his Materials.
- [28] The restrictions introduced because of COVID-19 have presented unique challenges. However, they have not prevented the courts and tribunals, the Commission included, from continuing to operate, albeit on a remote basis to ensure adherence to public health guidance on social distancing.
- [29] Also, while many offices are closed under the COVID-19 guidelines they do not prohibit people from accessing their offices to obtain critical information or tools to support remote working arrangements. Technology has also proven critical to fostering and enabling remote collaboration.
- [30] Although Debus remains under strict supervision, this is not a full answer on the question of protecting the public interest. In the first place, several of the breaches IIROC found Debus to have committed occurred while Debus was under close or strict supervision. More particularly, there is a public interest in ensuring that proceedings before the Commission proceed in a timely manner. In instances such as these there is a public interest in persons found to have breached IIROC rules to be held accountable by requiring them to comply with the ordered sanctions on a timely basis, subject to exercising any rights for a hearing before the Commission.
- [31] Despite the above, I do find that the following combination of circumstances does meet the level of "exceptional" for the purposes of a further adjournment:
- a. Persaud's continuing health issues and the potential timing of his return to work;
  - b. Chiu's unavailability as of May 15, 2020; and
  - c. Debus's being unable to seek alternate counsel at this time.

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<sup>2</sup> (2019) 42 OSCB 9714

<sup>3</sup> *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18, (2018) 41 OSCB 3512 at para 28

<sup>4</sup> *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40, (2020) 43 OSCB 35 (*Money Gate*) at para 54

<sup>5</sup> *Money Gate* at para 54

[32] While I find the exceptional circumstances warrant an adjournment, they do not support a delay of the hearing for approximately three and a half months to a date in September, 2020.

[33] Allowing an adjournment for the delivery of the Materials for 60 days as requested by Debus but ensuring that the hearing proceeds within what would be a normal timeframe thereafter effectively balances the objectives of ensuring that Debus is able to participate meaningfully in the proceeding and present his case and ensuring that this matter proceeds in a just, expeditious and cost-effective manner.

**IV. CONCLUSION**

[34] Therefore, I grant an extension of time for the delivery of Debus's Materials to June 22, 2020, being 60 days from April 23, 2020, the date originally ordered for delivery of his Materials in the February 24, 2020, order.

[35] IIROC shall serve and file its hearing brief, witness summaries, if any, and responding written submissions by July 8, 2020.

[36] Staff of the Commission shall serve and file any responding written submissions by July 15, 2020.

[37] Debus shall serve and file any reply written submissions by July 22, 2020.

[38] The hearing is scheduled for July 29 and 30, 2020, commencing at 10:00 a.m. on each scheduled day, or on such other dates or times as may be agreed to by the parties and set by the Office of the Secretary.

Dated at Toronto this 21st day of May, 2020.

"M. Cecilia Williams"

## Chapter 4

# Cease Trading Orders

### 4.1.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

Company Name	Date of Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/Revoke
THERE IS NOTHING TO REPORT THIS WEEK.				

### Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Alderon Iron Ore Corp.	May 20, 2020	
ENTREC Corporation	May 25, 2020	
PPX Mining Corp.	May 20, 2020	
Pushfor Investments Inc.	May 22, 2020	

### 4.2.1 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
SOPerior Fertilizer Corp.	May 21, 2020	

### 4.2.2 Outstanding Management & Insider Cease Trading Orders

Company Name	Date of Order or Temporary Order	Date of Hearing	Date of Permanent Order	Date of Lapse/ Expire	Date of Issuer Temporary Order
Performance Sports Group Ltd.	19 October 2016	31 October 2016	31 October 2016		

Company Name	Date of Order	Date of Lapse
North Bud Farms Inc.	March 31, 2020	
North Bud Farms Inc.	May 12, 2020	
DATA Communications Management Corp.	May 15, 2020	

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## Chapter 7

# Insider Reporting

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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](http://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](http://www.sedi.ca)).



## Chapter 11

# IPOs, New Issues and Secondary Financings

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### INVESTMENT FUNDS

**Issuer Name:**

Big Banc Split Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated May 20, 2020  
NP 11-202 Preliminary Receipt dated May 20, 2020

**Offering Price and Description:**

Minimum: \$10,000,000 Preferred Shares and \$10,000,000  
Class A Shares

Maximum: \$\*-\* Preferred Shares and \*-\* Class A Shares  
Price: \$10.00 per Preferred Share and \$10.00 per Class A  
Share

**Underwriter(s) or Distributor(s):**

National Bank Financial Inc.  
CIBC World Markets Inc.  
BMO Nesbitt Burns Inc.  
Canaccord Genuity Corp.  
RBC Dominion Securities Inc.  
Richardson GMP Limited  
Scotia Capital Inc.  
TD Securities Inc.  
Industrial Alliance Securities Inc.  
Echelon Wealth Partners Inc.  
Raymond James Ltd.  
Desjardins Securities Inc.  
Hampton Securities Limited  
Haywood Securities Inc.  
Mackie Research Capital Corporation  
Manulife Securities Incorporated  
PI Financial Corp.

**Promoter(s):**

N/A

**Project #3060616**

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**Issuer Name:**

Canada Life Canadian Dividend Fund (Laketon)  
Canada Life Canadian Equity Fund (Beutel Goodman)  
Canada Life Canadian Low Volatility Fund (London Capital)  
Canada Life Canadian Value Fund (FGP)  
Canada Life North American Specialty Fund  
Principal Jurisdiction - Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated May 15, 2020  
NP 11-202 Final Receipt dated May 19, 2020

**Offering Price and Description:**

HW5 series securities, HW8 series securities, L5 series  
securities, N5 series securities, QFW series securities, HW  
series securities, H5 series securities, L series securities,  
D5 series securities, QF5 series securities, QFW5 series  
securities, L8 series securities, N series securities, N8  
series securities, Q series securities, H series securities,  
H8 series securities, QF series securities and D8 series  
securities

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3034790.**

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**Issuer Name:**

iProfile ETF Private Pool  
Principal Regulator – Manitoba

**Type and Date:**

Preliminary Simplified Prospectus dated May 21, 2020  
NP 11-202 Preliminary Receipt dated May 21, 2020

**Offering Price and Description:**

Series P Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3061045**

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**Issuer Name:**

Mawer Balanced Fund  
Mawer Canadian Bond Fund  
Mawer Canadian Equity Fund  
Mawer Canadian Money Market Fund  
Mawer EAFE Large Cap Fund  
Mawer Emerging Markets Equity Fund  
Mawer Global Balanced Fund  
Mawer Global Bond Fund  
Mawer Global Equity Fund  
Mawer Global Small Cap Fund  
Mawer International Equity Fund  
Mawer New Canada Fund  
Mawer Tax Effective Balanced Fund  
Mawer U.S. Equity Fund  
Principal Regulator – Alberta (ASC)

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated May 20, 2020  
NP 11-202 Final Receipt dated May 21, 2020

**Offering Price and Description:**

Series S Units, Series A Units and Series O Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3044384**

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**Issuer Name:**

EdgePoint Canadian Growth & Income Portfolio  
EdgePoint Canadian Portfolio  
EdgePoint Global Growth & Income Portfolio  
EdgePoint Global Portfolio  
EdgePoint Income Portfolio  
Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated May 18, 2020  
NP 11-202 Final Receipt dated May 20, 2020

**Offering Price and Description:**

Series B(N) Units, Series B Units, Series A(N) Units, Series I Units, Series A Units, Series F(N) Units and Series F Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3042449**

**Issuer Name:**

un Life MFS International Growth Fund  
Sun Life MFS International Growth Class  
Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #3 to Final Simplified Prospectus dated May 20, 2020

NP 11-202 Final Receipt dated May 21, 2020

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2986090**

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**Issuer Name:**

Fidelity Canadian High Dividend Index ETF  
Fidelity U.S. Dividend for Rising Rates Index ETF  
Fidelity U.S. Dividend for Rising Rates Currency Neutral Index ETF  
Fidelity U.S. High Dividend Index ETF  
Fidelity U.S. High Dividend Currency Neutral Index ETF  
Fidelity International High Dividend Index ETF  
Fidelity Canadian Low Volatility Index ETF  
Fidelity U.S. Low Volatility Index ETF  
Fidelity U.S. Low Volatility Currency Neutral Index ETF  
Fidelity International Low Volatility Index ETF  
Fidelity Canadian High Quality Index ETF  
Fidelity U.S. High Quality Index ETF  
Fidelity U.S. High Quality Currency Neutral Index ETF  
Fidelity International High Quality Index ETF  
Fidelity Sustainable World ETF  
Fidelity Systematic Canadian Bond Index ETF  
Fidelity Global Core Plus Bond ETF  
Fidelity Canadian Short Term Corporate Bond ETF  
Fidelity Systematic U.S. High Yield Bond ETF  
Fidelity Systematic U.S. High Yield Bond Currency Neutral ETF  
Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated May 19, 2020

NP 11-202 Final Receipt dated May 25, 2020

**Offering Price and Description:**

Series L units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2941765**

**Issuer Name:**

First Trust Cboe Vest U.S. Equity Buffer ETF - May  
Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated May 21, 2020

NP 11-202 Final Receipt dated May 22, 2020

**Offering Price and Description:**

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**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #3042395**

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**Issuer Name:**

Encasa Canadian Equity Fund (formerly Social Housing  
Canadian Equity Fund)

Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated April 28, 2020

NP 11-202 Final Receipt dated May 22, 2020

**Offering Price and Description:**

Series B Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2911780**

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**Issuer Name:**

Fidelity Global Monthly High Income ETF Fund  
Fidelity Canadian Monthly High Income ETF Fund  
Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated May 19, 2020

NP 11-202 Final Receipt dated May 25, 2020

**Offering Price and Description:**

Series B units, Series F units, Series O units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2985908**

**Issuer Name:**

Fidelity Canadian Short Term Corporate Bond ETF Fund  
Fidelity Systematic Canadian Bond Index ETF Fund  
Fidelity Systematic U.S. High Yield Bond ETF Fund  
Fidelity Systematic U.S. High Yield Bond Currency Neutral  
ETF Fund

Fidelity Global Core Plus Bond ETF Fund

Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #2 to Final Simplified Prospectus dated May 19, 2020

NP 11-202 Final Receipt dated May 25, 2020

**Offering Price and Description:**

Series B units, Series F units, Series O units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2941762**

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**Issuer Name:**

Encasa Canadian Equity Fund (formerly Social Housing  
Canadian Equity Fund)

Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated May 28, 2020

NP 11-202 Final Receipt dated May 22, 2020

**Offering Price and Description:**

Series A Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2981510**

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**Issuer Name:**

Vanguard Canadian Government Bond Index ETF  
Vanguard Canadian Corporate Bond Index ETF  
Vanguard Canadian Long-Term Bond Index ETF  
Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #2 to Final Long Form Prospectus dated May 15, 2020

NP 11-202 Final Receipt dated May 22, 2020

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

**Project #2929060**

**Issuer Name:**

BetaPro Crude Oil Daily Bull ETF (formerly BetaPro Crude Oil 2x Daily Bull ETF)

BetaPro Crude Oil -1x Daily Bear ETF (formerly BetaPro Crude Oil -2x Daily Bear ETF)

Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #4 to Final Long Form Prospectus dated May 14, 2020

NP 11-202 Final Receipt dated May 20, 2020

**Offering Price and Description:**

ETF Shares

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

Project #2975186

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**Issuer Name:**

Fidelity Canadian Monthly High Income ETF

Fidelity Global Monthly High Income ETF

Principal Jurisdiction - Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated May 19, 2020

NP 11-202 Final Receipt dated May 25, 2020

**Offering Price and Description:**

Units

**Underwriter(s) or Distributor(s):**

N/A

**Promoter(s):**

N/A

Project #2985914

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NON-INVESTMENT FUNDS

**Issuer Name:**

Bank of Montreal  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated May 19, 2020  
NP 11-202 Preliminary Receipt dated May 20, 2020

**Offering Price and Description:**

\$6,000,000,000.00  
Medium Term Notes (Principal At Risk Notes)

**Underwriter(s) or Distributor(s):**

BMO Nesbitt Burns Inc.  
Desjardins Securities Inc.  
HSBC Securities (Canada) Inc.  
Industrial Alliance Securities Inc.  
Manulife Securities Incorporated  
Raymond James Ltd.  
Wellington-Altus Private Wealth Inc.

**Promoter(s):**

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**Project #3060223**

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**Issuer Name:**

Cardiol Therapeutics Inc.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated May 19, 2020  
NP 11-202 Preliminary Receipt dated May 19, 2020

**Offering Price and Description:**

\$15,000,000.00 - 6,000,000 Offered Units  
Price: \$2.50 per Offered Unit

**Underwriter(s) or Distributor(s):**

CANACCORD GENUITY CORP.  
ALTACORP CAPITAL INC.  
ECHELON WEALTH PARTNERS INC.  
RAYMOND JAMES LTD.

**Promoter(s):**

-

**Project #3059803**

**Issuer Name:**

CloudMD Software & Services Inc. (formerly Premier  
Health Group Inc.)  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated May 19, 2020  
NP 11-202 Preliminary Receipt dated May 20, 2020

**Offering Price and Description:**

\$13,000,400.00  
8,572,000 Units  
Price: \$0.70 per Unit

**Underwriter(s) or Distributor(s):**

CANACCORD GENUITY CORP.  
BEACON SECURITIES LIMITED  
ECHELON WEALTH PARTNERS INC.  
PARADIGM CAPITAL INC.

**Promoter(s):**

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**Project #3060256**

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**Issuer Name:**

Euro Sun Mining Inc. (formerly Carpathian Gold Inc.)  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated May 21, 2020  
NP 11-202 Preliminary Receipt dated May 21, 2020

**Offering Price and Description:**

\$20,000,000.28  
51,282,052 Units  
PRICE: \$0.39 PER UNIT

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3060243**

**Issuer Name:**

Suncor Energy Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Shelf Prospectus dated May 22, 2020  
NP 11-202 Preliminary Receipt dated May 22, 2020

**Offering Price and Description:**

\$5,000,000,000.00  
Medium Term Notes (Unsecured)

**Underwriter(s) or Distributor(s):**

ALTACORP CAPITAL INC.  
BMO NESBITT BURNS INC.  
CIBC WORLD MARKETS INC.  
CITIGROUP GLOBAL MARKETS CANADA INC.  
DESJARDINS SECURITIES INC.  
J.P. MORGAN SECURITIES CANADA INC.  
MERRILL LYNCH CANADA INC.  
MIZUHO SECURITIES CANADA INC.  
MORGAN STANLEY CANADA LIMITED  
MUFG SECURITIES (CANADA), LTD.  
RBC DOMINION SECURITIES INC.  
SCOTIA CAPITAL INC.  
SMBC NIKKO SECURITIES CANADA, LTD.  
TD SECURITIES INC.

**Promoter(s):**

-

**Project #3061835**

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**Issuer Name:**

Suncor Energy Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Shelf Prospectus dated May 22, 2020  
NP 11-202 Preliminary Receipt dated May 22, 2020

**Offering Price and Description:**

US\$5,000,000,000.00  
Debt Securities

Common Shares  
Preferred Shares  
Subscription Receipts  
Warrants  
Units

Share Purchase Contracts  
Share Purchase Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3061845**

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**Issuer Name:**

Aleafia Health Inc. (formerly Canabo Medical Inc.)  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated May 25, 2020  
NP 11-202 Receipt dated May 25, 2020

**Offering Price and Description:**

\$13,000,000.00  
20,000,000 UNITS

**Underwriter(s) or Distributor(s):**

EIGHT CAPITAL  
CANACCORD GENUITY CORP.  
BMO NESBITT BURNS INC.  
LEEDE JONES GABLE INC.  
RAYMOND JAMES LTD.  
MACKIE RESEARCH CAPITAL CORP.  
PI FINANCIAL CORP.

**Promoter(s):**

-

**Project #3059036**

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**Issuer Name:**

First Capital Real Estate Investment Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Shelf Prospectus dated May 22, 2020  
NP 11-202 Receipt dated May 22, 2020

**Offering Price and Description:**

\$2,000,000,000.00  
Trust Units  
Warrants to Purchase Trust Units  
Subscription Receipts  
Debt Securities  
Units

**Underwriter(s) or Distributor(s):**

-

**Promoter(s):**

-

**Project #3057248**

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**Issuer Name:**

Marathon Gold Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated May 19, 2020  
NP 11-202 Receipt dated May 19, 2020

**Offering Price and Description:**

\$30,000,000.00  
20,000,000 Units  
\$1.50 per Unit

**Underwriter(s) or Distributor(s):**

CANACCORD GENUITY CORP.  
SPROTT CAPITAL PARTNERS LP BY ITS GENERAL  
PARTNER SPROTT CAPITAL PARTNERS GP INC.  
RBC DOMINION SECURITIES INC.  
DESJARDINS SECURITIES INC.  
NATIONAL BANK FINANCIAL INC.  
SCOTIA CAPITAL INC.  
BEACON SECURITIES LIMITED  
HAYWOOD SECURITIES INC.  
LAURENTIAN BANK SECURITIES INC.

**Promoter(s):**

-

**Project #3052669**

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**Issuer Name:**

Martello Technologies Group Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated May 20, 2020  
NP 11-202 Receipt dated May 20, 2020

**Offering Price and Description:**

\$6,000,750.00  
28,575,000 Units consisting of Common Shares and  
Warrants  
\$0.21 per Common Share

**Underwriter(s) or Distributor(s):**

PI FINANCIAL CORP.  
EIGHT CAPITAL  
PARADIGM CAPITAL INC.

**Promoter(s):**

-

**Project #3056066**

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**Issuer Name:**

Mind Medicine (MindMed) Inc. (formerly Broadway Gold  
Mining Ltd.)

Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated May 21, 2020  
NP 11-202 Receipt dated May 21, 2020

**Offering Price and Description:**

\$11,500,470.00  
21,699,000 Units  
\$0.53 per Unit

**Underwriter(s) or Distributor(s):**

EIGHT CAPITAL

**Promoter(s):**

-

**Project #3053350**

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**Issuer Name:**

Spartan Acquisition Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Final CPC Prospectus dated May 15, 2020  
NP 11-202 Receipt dated May 21, 2020

**Offering Price and Description:**

MINIMUM OFFERING: \$400,000.00 or 2,000,000 Common  
Shares  
MAXIMUM OFFERING: \$800,000.00 or 4,000,000  
Common Shares  
Price: \$0.20 per Common Share

**Underwriter(s) or Distributor(s):**

Haywood Securities Inc.

**Promoter(s):**

-

**Project #3023787**

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**Issuer Name:**

WELL Health Technologies Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated May 19, 2020  
NP 11-202 Receipt dated May 19, 2020

**Offering Price and Description:**

\$12,500,400.00  
5,682,000 Common Shares  
\$2.20 per Common Share

**Underwriter(s) or Distributor(s):**

EIGHT CAPITAL  
STIFEL NICOLAUS CANADA INC.  
PI FINANCIAL CORP.  
BEACON SECURITIES LIMITED  
CANACCORD GENUITY CORP.  
HAYWOOD SECURITIES INC.  
LAURENTIAN BANK SECURITIES INC.

**Promoter(s):**

Hamed Shahbazi

**Project #3055516**

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## Chapter 12

# Registrations

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### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Equivesto Canada Inc.	Exempt Market Dealer	May 19, 2020

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