

The Ontario Securities Commission

# OSC Bulletin

March 18, 2021

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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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# Table of Contents

<b>Chapter 1 Notices</b> .....	<b>2279</b>	<b>Chapter 9 Legislation</b> .....	<b>(nil)</b>
1.1 Notices .....	(nil)	<b>Chapter 11 IPOs, New Issues and Secondary</b>	
1.2 Notices of Hearing.....	(nil)	<b>Financings</b> .....	<b>2507</b>
1.3 Notices of Hearing with Related		<b>Chapter 12 Registrations</b> .....	<b>2517</b>
Statements of Allegations .....	(nil)	12.1.1 Registrants.....	2517
1.4 Notices from the Office		<b>Chapter 13 SROs, Marketplaces,</b>	
of the Secretary .....	<b>2279</b>	<b>Clearing Agencies and</b>	
1.4.1 Douglas John Eley .....	2279	<b>Trade Repositories</b> .....	<b>2519</b>
1.4.2 Alvin Jones .....	2279	<b>13.1 SROs</b> .....	<b>(nil)</b>
1.4.3 Sean Daley and Kevin Wilkerson .....	2280	<b>13.2 Marketplaces</b> .....	<b>(nil)</b>
1.4.4 Threegold Resources Inc. et al.....	2280	<b>13.3 Clearing Agencies</b> .....	<b>2519</b>
1.5 Notices from the Office		13.3.1 Canadian Derivatives Clearing Corporation	
of the Secretary with Related		(CDCC) – Proposed Amendments to the	
Statements of Allegations .....	(nil)	Rules of CDCC with Respect to the	
<b>Chapter 2 Decisions, Orders and Rulings</b> .....	<b>2281</b>	Adjustments in Contract Terms – Notice of	
2.1 Decisions .....	<b>2281</b>	Commission Approval .....	2519
2.1.1 1832 ASSET MANAGEMENT L.P. et al.....	2281	<b>13.4 Trade Repositories</b> .....	<b>(nil)</b>
2.1.2 CI Investments Inc. and CI Gold		<b>Chapter 25 Other Information</b> .....	<b>2521</b>
Bullion Fund .....	2288	<b>25.1 Consents</b> .....	<b>2521</b>
2.1.3 CI Investments Inc. and the Top Funds .....	2291	25.1.1 GURU Organic Energy Corp. – s. 4(b) of Ont.	
2.1.4 3iQ Corp. and 3iQ Bitcoin ETF .....	2298	Reg. 289/00 under the OBCA .....	2521
2.1.5 BMO Asset Management Inc. and BMO		<b>Index</b> .....	<b>2523</b>
Investments Inc. ....	2302		
2.1.6 R. J. O'Brien & Associates, LLC.....	2306		
2.1.7 Australis Capital Inc.....	2312		
<b>2.2 Orders</b> .....	<b>2313</b>		
2.2.1 Douglas John Eley – s. 144.....	2313		
2.2.2 Alvin Jones .....	2314		
2.2.3 Sean Daley and Kevin Wilkerson .....	2314		
2.2.4 360 Treasury Systems AG et al. – s. 144 of			
the OSA and s. 78 of the CFA .....	2315		
2.2.5 Threegold Resources Inc. et al.....	2340		
2.2.6 Clearwater Seafoods Incorporated .....	2340		
2.2.7 Roscan Gold Corporation – s. 1(11)(b) .....	2341		
<b>2.3 Orders with Related Settlement</b>			
<b>Agreements</b> .....	<b>(nil)</b>		
<b>2.4 Rulings</b> .....	<b>(nil)</b>		
<b>Chapter 3 Reasons: Decisions, Orders and</b>			
<b>Rulings</b> .....	<b>(nil)</b>		
<b>3.1 OSC Decisions</b> .....	<b>(nil)</b>		
<b>3.2 Director's Decisions</b> .....	<b>(nil)</b>		
<b>Chapter 4 Cease Trading Orders</b> .....	<b>2345</b>		
4.1.1 Temporary, Permanent & Rescinding			
Issuer Cease Trading Orders .....	2345		
4.2.1 Temporary, Permanent & Rescinding			
Management Cease Trading Orders .....	2345		
4.2.2 Outstanding Management & Insider			
Cease Trading Orders .....	2345		
<b>Chapter 5 Rules and Policies</b> .....	<b>(nil)</b>		
<b>Chapter 6 Request for Comments</b> .....	<b>(nil)</b>		
<b>Chapter 7 Insider Reporting</b> .....	<b>2347</b>		



# Chapter 1

## Notices

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### 1.4 Notices from the Office of the Secretary

#### 1.4.1 Douglas John Eley

**FOR IMMEDIATE RELEASE**  
March 11, 2021

**DOUGLAS JOHN ELEY,**  
File No. 2020-35

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

A copy of the Order dated March 10, 2021 is available at [www.osc.ca](http://www.osc.ca).

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#### 1.4.2 Alvin Jones

**FOR IMMEDIATE RELEASE**  
March 11, 2021

**ALVIN JONES,**  
File No. 2021-5

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

A copy of the Order dated March 11, 2021 is available at [www.osc.ca](http://www.osc.ca).

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1.4.3 Sean Daley and Kevin Wilkerson

**FOR IMMEDIATE RELEASE**  
March 12, 2021

**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 March 12, 2021 is available at [www.osc.ca](http://www.osc.ca).

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1.4.4 Threegold Resources Inc. et al.

**FOR IMMEDIATE RELEASE**  
March 15, 2021

**THREEGOLD RESOURCES INC.,  
VICTOR GONCALVES and  
JON SNELSON,  
File No. 2019-42**

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

A copy of the Order dated March 15, 2021 is available at [www.osc.ca](http://www.osc.ca).

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## Chapter 2

# Decisions, Orders and Rulings

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### 2.1 Decisions

#### 2.1.1 1832 Asset Management L.P. et al.

##### Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted from subsection 6.1(1), paragraph 6.1(3)(b) and section 6.2 of NI 81-102 to permit the Royal Canadian Mint to act as Funds’ custodian and for International Depository Services of Canada Inc. to act as sub-custodian to the Mint – State Street Trust Company Canada acts as custodian of the Funds’ assets other than Bullion and the Bank of Nova Scotia, the sub-custodian to State Street Trust Company Canada, expected to cease offering Bullion custody services – Funds wishing to appoint the Royal Canadian Mint to custody the Bullion of the Funds, together with State Street Trust Company Canada as non-Bullion custodian – Due to physical storage capacity constraints, the Royal Canadian Mint may appoint International Depository Services of Canada Inc. to act as Bullion sub-custodian – Funds unable to appoint the Royal Canadian Mint as the custodian of the Funds’ Bullion, alongside State Street Trust Company Canada as non-Bullion custodian, because subsection 6.1(1) of NI 81-102 provides that a Fund may have one custodian – Royal Canadian Mint and International Depository Services of Canada not qualified custodians under sections 6.2 of NI 81-102 – Relief granted subject to conditions – National Instrument 81-102 Investment Funds.

##### Applicable Legislative Provisions

National Instrument 81-102 Investments Funds, ss. 6.1(1), 6.1(3)(b), 6.2 and 19.1.

March 9, 2021

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

AND

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

AND

IN THE MATTER OF  
1832 ASSET MANAGEMENT L.P.  
(1832 AM) OR AN AFFILIATE  
(collectively, the Manager)

AND

IN THE MATTER OF  
DYNAMIC PRECIOUS METALS FUND,  
DYNAMIC STRATEGIC GOLD CLASS AND  
ANY OTHER EXISTING OR FUTURE INVESTMENT FUNDS MANAGED BY  
THE MANAGER TO WHICH NATIONAL INSTRUMENT 81-102 INVESTMENT FUNDS (NI 81-102) APPLIES  
(the Funds)

DECISION

##### Background

The principal regulator in the Jurisdiction has received an application from 1832 AM on behalf of the Funds that it manages and on behalf of the Funds managed by its affiliates for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption pursuant to section 19.1 of National Instrument 81-102 *Investment Funds (NI 81-102)* from:

- (a) subsection 6.1(1) and section 6.2 of NI 81-102, to permit the Mint to act as custodian to hold the Fund's Bullion; and
- (b) paragraph 6.1(3)(b) and section 6.2 of NI 81-102, to permit the Sub-Custodian to the Mint, a person or company that is not described in sections 6.2 or 6.3 of NI 81-102, to be appointed as sub-custodian of the Funds to hold the Funds' Bullion.

(collectively, the **Requested Relief**).

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

- (a) the Ontario Securities Commission is the principal regulator for this application, and
- (b) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each other province and territory in Canada (together with Ontario, the **Jurisdictions**).

### **Interpretation**

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

**1832 AM** means 1832 Asset Management L.P.

**Bullion** means gold, silver, platinum and palladium bullion.

**Manager** means 1832 AM and each person or company that is, or may in the future be, registered to act as an investment fund manager in a Jurisdiction and that is, or will be, an affiliate of 1832 AM or its general partner within the meaning of the *Securities Act* (Ontario).

**Metals Funds** means Dynamic Precious Metals Fund and Dynamic Strategic Gold Class.

**Funds** means the Metals Funds and any other existing or future investment funds managed by a Manager to which NI 81-102 applies and **Fund** means any one of them.

**Mint** means the Royal Canadian Mint.

**Mint Business Day** means any day other than a Saturday, a Sunday or a holiday observed by the Mint.

**NI 81-102** means National Instrument 81-102 *Investment Funds*.

**Sub-Custodian to the Mint** means International Depository Services of Canada Inc.

### **Representations**

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

#### *1832 AM and the Funds*

1. 1832 AM is a limited partnership formed and organized under the laws of the province of Ontario. The general partner of 1832 AM is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned directly by the Bank of Nova Scotia, with its head office in Toronto, Ontario.
2. 1832 AM is registered as: (i) a portfolio manager in all the provinces of Canada and in the Northwest Territories and the Yukon; (ii) an exempt market dealer in all of the provinces in Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Quebec, Newfoundland and Labrador and the Northwest Territories; (iv) a commodity trading manager in Ontario; (v) an adviser in Manitoba; and (vi) a derivatives portfolio manager in Quebec.
3. 1832 AM is the manager of the Metals Funds and a Manager is or will be the manager of the existing Funds and the future Funds.
4. Dynamic Precious Metals Fund is a trust fund organized under the laws of the province of Ontario. Dynamic Strategic Gold Class is a class of shares of Dynamic Global Fund Corporation, a corporation created under the laws of the province of Ontario. Each Fund is or will be an investment fund governed by the laws of Canada or of one of the Jurisdictions. Each Fund is, or will be, a reporting issuer in one or more Jurisdictions.

5. Securities of each existing Fund are, and it is expected that securities of each future Fund will be, qualified for distribution in some or all of the Jurisdictions under a simplified prospectus, annual information form, and fund facts and/or ETF facts prepared and filed in accordance with National Instrument 81-101 *Mutual Fund Prospectus Disclosure* or National Instrument 41-101 *General Prospectus Requirements*. Each Fund is, or will be, governed by NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.
6. 1832 AM and the existing Funds that it manages are not in default of securities legislation in any of the jurisdictions.

*Appointment of the Mint as Custodian of a Fund's Bullion*

7. State Street Trust Company Canada (**State Street**) acts as custodian of the assets other than Bullion of each existing Fund managed by 1832 AM, including the Metal Fund, pursuant to the terms of an amended and restated custodian agreement between 1832 AM, as trustee and manager, and State Street, dated April 27, 2004, which complies with all of the requirements in Part 6 of NI 81-102. State Street or another qualified custodian pursuant to Part 6 of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities, is or will be the custodian of the assets other than Bullion of each existing or future Fund managed by a Manager, pursuant to an agreement that complies with all of the requirements in Part 6 of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities. State Street or such other custodian is or will be only responsible for the assets of such Funds that are held directly by it, its affiliates or appointed sub-custodians.
8. The Bank of Nova Scotia acts as sub-custodian to State Street Trust Company Canada as custodian with respect to Bullion of the Metals Funds and the other existing Funds managed by 1832 AM. The Bank of Nova Scotia will cease in the future to offer Bullion custody services.
9. As a result, the Metals Funds and each other existing Fund managed by 1832 AM wish to appoint the Mint as the custodian of such Fund's Bullion. The existing and/or future Funds managed by a Manager also desire or will desire to appoint the Mint as the custodian of such Fund's Bullion.
10. Under subsection 6.1(1) of NI 81-102, a Fund is unable to appoint the Mint as the custodian of such Fund's Bullion since this subsection specifies that the Fund may have one custodian. Under subsection 6.2 of NI 81-102, a Fund is unable to appoint the Mint as the custodian of such Fund's Bullion since the Mint is not qualified to act as a "custodian".
11. The safekeeping of Bullion is a specialized business in respect of which the Mint has particular specialized knowledge, expertise and experience.
12. The head office of the Mint is located in Ottawa, Ontario.
13. The Mint is not in default of securities legislation in any of the Jurisdictions.
14. The Mint is established pursuant to the *Royal Canadian Mint Act* (Canada) (the **Mint Act**) and is a Canadian Crown corporation. Pursuant to section 5 of the Mint Act, the Mint is an agent of Her Majesty in right of Canada and, as such, its obligations generally constitute unconditional obligations of the Government of Canada. The Mint is responsible for the minting and distribution of Canada's circulation coins. As part of its operations, the Mint maintains secure storage facilities located in Canada that it owns and operates, and provides storage space to third parties.
15. The Mint had shareholders' equity of (i) C\$150,206,000 as at December 31, 2019, the date of its most recent audited annual financial statements that have been made public, and (ii) C\$175,638,000 as at September 26, 2020, the date of its most recent interim unaudited financial statements that have been made public, each significantly in excess of the requirement in section 6.2 of NI 81-102.
16. Each Manager will negotiate the specific terms and conditions of a precious metal storage and custody agreement (each a **Storage Agreement**) relating to Bullion with the Mint, which will provide for the storage of Bullion generally and will not place any limitations on a Fund's ability to buy or sell Bullion. The Storage Agreement, including the arrangements between the Mint and a Fund in connection with Bullion, will comply with the requirements of Part 6 of NI 81-102, other than with respect to the matters covered in the Requested Relief.

*Appointment of the Sub-Custodian to the Mint*

17. Due to physical storage capacity constraints and having regard to the amount of Bullion which the Funds may acquire, there may not be sufficient space in the vault facilities of the Mint to store all of the Funds' Bullion. As a result, the Mint may be required to use the services of sub-custodians to store and hold all or a portion of each Funds' Bullion.
18. The number of entities in Canada which are eligible to act as sub-custodians for the physical storage of Bullion is limited. Of these eligible entities, some already have exclusive relationships with other investment funds for storage purposes whereas others simply may not have the excess capacity that the Funds may need to store physical bullion. These

capacity constraints have been intensified due to the increased demand for physical commodities and the corresponding need to arrange for safe-keeping.

19. The Mint may appoint sub-custodians, which are qualified pursuant to Part 6 of NI 81-102, to hold all or a portion of the Bullion of each of the Funds in the vault facilities operated by such sub-custodians located in Canada. The Mint may also appoint the Sub-Custodian to the Mint, if necessary, to hold all or a portion of the Bullion of each of the Funds in the vault facilities operated by the Sub-Custodian to the Mint located in Canada. As a result of the foregoing, the Mint may be required to hold all or a portion of the Funds' Bullion that it does not hold directly in its own vaults in the vaults of the Sub-Custodian to the Mint located in Canada.
20. The Sub-Custodian to the Mint is not an entity currently approved to act as a sub-custodian for portfolio assets held in Canada, as the Sub-Custodian to the Mint is not, among other things, a bank listed in Schedule I, II or III of the *Bank Act* (Canada) or a trust company incorporated under the laws of Canada.
21. The Sub-Custodian to the Mint has experience in the precious metals storage business. The Sub-Custodian to the Mint is a leading provider of secure logistics for valuables, including diamonds, jewellery, precious metals, securities, currency and secure data, serving banks, retailers, governments, mines, refiners and metal traders. Specifically, International Depository Services of Canada Inc. is a London Bullion Market Association (**LBMA**) Associate Member, an IROC-approved precious metals custodian and a wholly owned subsidiary of Dillon Gage Inc., an international bullion wholesaler and LBMA Associate Member. International Depository Services of Canada Inc. is or will be a Sub-Custodian to the Mint and operates vaults in Toronto, Canada.
22. The Sub-Custodian to the Mint has either: (i) not less than the amount of shareholder's equity required under NI 81-102 (the **Shareholder Equity Threshold**) for entities qualified to act as a sub-custodian for portfolio assets held in Canada or (ii) an affiliate that does meet the Shareholder Equity Threshold which has, or will before the Sub-Custodian to the Mint acts as the Sub-Custodian to the Mint under this order, guaranteed all of the custodial obligations of the Sub-Custodian to the Mint (a **Guaranteed Sub-Custodian**). Schedule "A" identifies which of the above requirements the Sub-Custodian to the Mint currently meets.
23. The Storage Agreement will provide that the Mint will monitor the Sub-Custodian to the Mint on a regular basis (at least annually) to ensure that the Sub-Custodian to the Mint either meets the Shareholder Equity Threshold or is a Guaranteed Sub-Custodian.
24. 1832 AM and the Mint believe that the Sub-Custodian to the Mint has the resources and experience required and is an appropriate sub-custodian for the physical bullion of the existing Funds managed by 1832 AM held in Canada, because the Sub-Custodian to the Mint is experienced in providing bullion storage and custodial services, and is familiar with the requirements relating to the physical handling and storage of bullion. Each other Manager will make a similar determination for Funds managed by it in respect of which it relies on the Requested Relief.

*Supervision of the Mint and the Sub-Custodian to the Mint*

25. Under the Storage Agreement, upon the initial notice being delivered, the Mint or the Sub-Custodian to the Mint, as the case may be, will receive Bullion based on a list provided by a Manager in such written notice that specifies the amount, weight, type, assay characteristics, bar numbers and bar brand(s) of the Bullion to be stored. After verification of bar numbers, bar brands, count, weight, types and assay characteristics, the Mint will issue a "receipt of deposit" that confirms receipt of the Bullion. Pursuant to the Storage Agreement, the Mint will reserve the right to refuse delivery in the event of storage capacity limitations. In the event of a discrepancy arising during the verification process, the Mint will promptly notify the Manager. The Mint and the Sub-Custodian to the Mint will keep the Fund's Bullion fully allocated and specifically identify the Fund's Bullion as the Fund's property and will keep it physically segregated at all times. The Mint will provide a monthly inventory statement, which the Manager will reconcile with the Fund's records of its Bullion holdings. The Manager will have the right to physically count and have the Fund's auditors subject the Fund's Bullion to audit procedures at the vault facilities at the Mint and at the vault facilities of the Sub-Custodian to the Mint upon request on any Mint Business Day during the Mint's or Sub-Custodian to the Mint's regular business hours, provided that such physical count or audit procedures do not interrupt the routine operation of the facility and the requisite security procedures have been observed.
26. Upon the Mint's receipt and taking into possession and control (either directly or through the Sub-Custodian to the Mint) of any of a Fund's Bullion, whether through physical delivery or a transfer of Bullion from a different customer's account at the Mint or at the Sub-Custodian to the Mint, the Mint's liability will commence with respect to such Bullion. The Mint will bear all risk of physical loss of, or damage to, the Bullion owned by the Fund in the Mint's custody (regardless of the location at which the Mint decides to store the Bullion), except in the case of circumstances or causes beyond the Mint's reasonable control, including, without limitation, acts or omissions or the failure to cooperate of the Manager and/or of third parties, fire or other casualty, act of God, strike, lockout or other labour dispute, riot, war or other violence, or any law, order or requirement of any governmental agency or authority, and has contractually agreed to replace or pay for lost, damaged or destroyed Bullion in the Fund's account while in the Mint's or Sub-Custodian to the Mint's care, custody

and control. Under the Storage Agreement, the Mint's liability will terminate with respect to any Bullion following termination of the Storage Agreement, whether or not the Fund's Bullion remains in the Mint's or Sub-Custodian to the Mint's possession and control, upon transfer of such Bullion to a different customer's account at the Mint or Sub-Custodian to the Mint or upon a transfer of possession of the Bullion pursuant to the Storage Agreement.

27. Each Manager will ensure that Bullion held by the Mint or Sub-Custodian to the Mint will be subject to a physical count by a representative of the Manager periodically on a spot-inspection basis as well as subject to audit procedures by a Fund's external auditors on at least an annual basis.
28. Each Manager will ensure that no director or officer of the Manager, or its general partner, as the case may be, or representative of the Manager will be authorized to enter into the Bullion storage vaults of the Mint or Sub-Custodian to the Mint without being accompanied by at least one representative of the Mint or Sub-Custodian to the Mint.
29. Each Manager will ensure that no part of a Fund's stored Bullion may be delivered out of safekeeping by the Mint (except to Sub-Custodian to the Mint or other sub-custodian) without receipt of an instruction from the Manager in the form specified by the Mint indicating the purpose of the delivery and giving direction with respect to the specific amount.
30. 1832 AM believes that the custodial arrangements with the Mint and Sub-Custodian to the Mint in connection with the bullion of the existing Funds managed by 1832 AM are consistent with industry practice. Each other Manager will make a similar determination for Funds managed by it in respect of which it relies on the Requested Relief.

*Insurance*

31. The Mint carries such insurance as it deems appropriate for its businesses and its position as custodian of the Fund's Bullion and will provide the Funds and each Manager with at least 60 days' notice of any cancellation or termination of such coverage.
32. A Fund's ability to recover from the Mint is not contingent upon the Mint's ability to claim on its own insurance or the Sub-Custodian to the Mint's ability to claim on its own insurance.
33. Based on information provided by the Mint, 1832 AM believes that the insurance carried by the Mint, together with its status as an agent of Her Majesty pursuant to section 5 of the Mint Act with its obligations generally constituting unconditional obligations of the Government of Canada, provides the existing Funds it manages and will provide the future Funds it manages with such protection in the event of loss or theft of a Fund's Bullion stored at the Mint or at the Sub-Custodian to the Mint that is consistent with the protection afforded under insurance carried by other custodians that store gold commercially. Each other Manager will make a similar determination for Funds managed by it in respect of which it relies on the Requested Relief.

*Liability and Standard of Care*

34. In the event of physical loss, damage or destruction of a Fund's Bullion in the Mint's or Sub-Custodian to the Mint's custody, care and control, a Manager must give written notice to the Mint within three business days after the discovery of any such loss, damage or destruction, but, in the case of loss or destruction of the Fund's Bullion, in any event no more than 60 days after the delivery by the Mint to the Fund of an inventory statement in which the discrepancy first appears. In the event of loss and/or destruction of Bullion, the Mint will, at its discretion, either (i) replace the Fund's Bullion that was lost, destroyed or damaged, based on the weight and assay characteristics provided in the initial notice and/or (ii) compensate the Fund, through the Manager, for the monetary value of the Fund's Bullion that was lost or destroyed, based on the weight and assay characteristics provided in the initial notice and the market value of such Bullion that was lost or destroyed, using the market price of the Bullion on the first trading day following discovery or notification of said loss or destruction. In the event of damage to Bullion, the Mint will restore the portion of damaged Bullion to at least as good a state as it was prior to being damaged. If such notice is not given in accordance with the terms of the Storage Agreement, all claims against the Mint will be deemed to have been waived. In addition, no action, suit or other proceeding to recover any loss, damage or destruction may be brought against the Mint unless notice of such loss, damage or destruction has been given in accordance with the terms of the Storage Agreement and unless such action, suit or proceeding shall have been commenced within 12 months from the discovery of loss, damage or destruction. The Mint will not be responsible for any special, incidental, consequential, indirect or punitive losses or damages (including lost profits or lost savings), whether or not the Mint had knowledge that such losses or damages might be incurred.
35. Pursuant to the Storage Agreement, the Mint will be required to exercise the same degree of care, diligence and skill in safeguarding each Fund's property that a reasonably prudent person acting as custodian of the Bullion would exercise in the circumstance. The Fund will not relieve the Mint from its obligation to replace lost, damaged or destroyed Bullion and/or to compensate the Fund for the lost, damaged or destroyed Bullion regarding which the Mint bears the risk of loss, damage or destruction pursuant to the terms of the Storage Agreement.

36. The Mint reserves the right to reject Bullion delivered to it if Bullion contains a hazardous substance or if such Bullion is or becomes unsuitable or undesirable for metallurgical, environmental or other reasons.

*Termination and Changes to the Custodial Arrangements*

37. A Manager will be permitted to terminate the custodial relationship with the Mint by giving written notice to the Mint of its intent to terminate the Storage Agreement if: (i) the Mint is in default of its obligations under the Storage Agreement that is not cured within ten business days following the Manager giving written notice to the Mint of such default; (ii) the Mint is dissolved or adjudged bankrupt, or a trustee, receiver or conservator of the Mint or of its property is appointed, or an application for any of the foregoing is filed; or (iii) the Mint is in breach of any representation or warranty contained in the Storage Agreement. The obligations of the Mint include, but are not limited to, maintaining an inventory of a Fund's Bullion stored with the Mint, providing a monthly inventory to the Manager, maintaining the Fund's Bullion physically segregated and specifically identified as the Fund's property, and taking good care, custody and control of the Fund's Bullion.
38. 1832 AM believes that all of these obligations are material and anticipates that it would terminate the Storage Agreement if the Mint breaches any such obligation and does not cure such breach within ten business days of 1832 AM giving written notice to the Mint of such breach.
39. Prior to terminating the custodial relationship with the Mint, a Manager will appoint a replacement custodian for Bullion that complies with the requirements under NI 81-102.
40. A Manager will have the authority to change the custodial arrangements described above including, but not limited to, the appointment of a replacement custodian or sub-custodian and/or additional custodians or sub-custodians subject to the requirements under NI 81-102.
41. 1832 AM has determined that it would be in the best interests of each existing Fund that it manages to receive the Requested Relief. Each other Manager will ensure that it is in the best interests of each Fund that it manages to rely on the Requested Relief.

**Decision**

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

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

- (a) The Mint meets the Shareholder Equity Threshold and, as noted on Schedule A, the Sub-Custodian to the Mint either: (i) meets the Shareholder Equity Threshold, or (ii) is a Guaranteed Sub-Custodian. The Mint will monitor the Sub-Custodian to the Mint on a regular basis (at least annually) to ensure that it either meets the Shareholder Equity Threshold or is a Guaranteed Sub-Custodian;
- (b) The Funds and the Mint are limited to using the Sub-Custodian to the Mint as sub-custodian for the Funds' Bullion only, which will be held only in Canada; and
- (c) In respect of the compliance reports to be prepared by the Mint pursuant to paragraphs 6.7(1)(b), 6.7(1)(c)(ii) and 6.7(2)(c) of NI 81-102, as such paragraphs will not be applicable given the nature of the relief granted herein, the Mint shall include a statement in such reports regarding the completion of the Mint's review process for the Sub-Custodian to the Mint and that the Mint is of the view that the Sub-Custodian to the Mint continues to be an appropriate sub-custodian to hold the Funds' Bullion in Canada.

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

**SCHEDULE "A"**

<b>Name of Parent Company</b>	<b>Name of Sub-Custodian to the Mint which is the Subsidiary operating the vault in question</b>	<b>Location of Vault Facilities</b>
Dillon Gage Inc. <sup>1</sup>	International Depository Services of Canada Inc. <sup>2</sup>	Toronto, Canada

<sup>1</sup> Meets the Shareholder Equity Threshold requirement.

<sup>2</sup> Does not meet the Shareholder Equity Threshold requirement and is a Guaranteed Sub-Custodian with guarantee provided by Dillon Gage Inc.

## 2.1.2 CI Investments Inc. and CI Gold Bullion Fund

### Headnote

NP 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemptive relief granted to mutual funds that are now, or in the future will be, managed by the Filer or its affiliate and that offer, or will offer, securities that are, or will be, listed for trading on the TSX in order to permit the funds to accept a combination of cash and permitted precious metals as subscription proceeds for units of the funds.

### Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 9.4(2), and 19.1.

December 14, 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  
CI INVESTMENTS INC.  
(the Filer)**

AND

**IN THE MATTER OF  
CI GOLD BULLION FUND**

**DECISION**

### I. BACKGROUND

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer on behalf of the Funds (as defined below) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that exempts the Funds from subsection 9.4(2) of National Instrument 81-102 *Investment Funds (NI 81-102)*, to permit each Fund to accept a combination of cash and Baskets (as defined below) as subscription proceeds for units of the Funds (the **Requested Relief**).

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

- (a) the Ontario Securities Commission is the principal regulator for the Application; and
- (b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 – *Passport System (MI 11-102)* is intended to be relied upon in all of the provinces and territories of Canada other than Ontario (together with Ontario, the **Jurisdictions**).

### II. INTERPRETATION

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

- (a) **Basket** means, for each Fund, permitted precious metals in such kind as the Fund invests in accordance with its fundamental investment objective and in such amount as determined by the Filer in its discretion from time to time.
- (b) **Dealer** means a dealer (that may or may not be a Designated Broker) that enters into a continuous distribution agreement with the Filer or an affiliate of the Filer on behalf of the Fund, pursuant to which the Dealer may subscribe for and purchase Units from the Fund.

- (c) **Designated Broker** means a dealer that enters into a designated broker agreement with the Filer or an affiliate of the Filer on behalf of the Fund to perform certain duties in relation to the Fund.
- (d) **Units** means, collectively, the securities of the Funds and **Unit** means any one of them.
- (e) **Exchange** means the Toronto Stock Exchange or another stock exchange recognized by the Ontario Securities Commission.
- (f) **Funds** means CI Gold Bullion Fund and each of the other precious metals funds now, or in the future, that is, or will be, managed by the Filer or its affiliate and that offers or will offer securities that are or will be listed for trading on an Exchange.
- (g) **Prescribed Number of Units** means the number of Units determined from time to time for the purpose of subscription orders, exchanges, redemptions or for other purposes.

### III. REPRESENTATIONS

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

#### *The Filer*

1. The Filer is a corporation amalgamated under the laws of Ontario with its head office located in Toronto, Ontario.
2. The registered office of the Filer is located in Toronto, Ontario.
3. The Filer is registered:
  - (a) as an investment fund manager under the securities legislation in Ontario, Québec and Newfoundland and Labrador;
  - (b) as a portfolio manager and exempt market dealer under the securities legislation of each of the Jurisdictions; and
  - (c) as a commodity trading counsel and commodity trading manager under the *Commodity Futures Act* (Ontario).
4. The Filer or its affiliate will be the trustee and manager of each Fund.
5. The Filer is not in default of securities legislation in any of the Jurisdictions.

#### *CI Gold Bullion Fund*

6. CI Gold Bullion Fund will be a reporting issuer under the laws of all of the Jurisdictions.
7. CI Gold Bullion Fund filed a preliminary long form prospectus on November 23, 2020 with the securities regulatory authorities in each of the Jurisdictions to qualify the issuance of its Units in each of the Jurisdictions on a continuous basis.
8. CI Gold Bullion Fund is not in default of securities legislation in any of the Jurisdictions.
9. CI Gold Bullion Fund will be a precious metals fund. The investment objective of CI Gold Bullion Fund is to seek to provide a cost-effective and convenient way for investors to invest in gold. CI Gold Bullion Fund seeks to buy and hold substantially all of its assets in gold bullion.

#### *Designated Broker and Dealer Agreements*

10. Subsection 9.4(2) of NI 81-102 provides that a mutual fund may accept as subscription proceeds for its securities either cash or securities.
11. Each Fund will enter into a designated broker agreement with a Designated Broker and continuous distribution agreement(s) with one or more Dealers, the terms of which will provide that, for each Prescribed Number of Units issued, a Designated Broker or Dealer must deliver payment consisting of, in the Filer's discretion: (i) one Basket and cash in an amount sufficient so that the value of the Basket and the cash received is equal to the net asset value of the Units next determined following the receipt of the subscription order; or (ii) cash in an amount equal to the net asset value of the Units next determined following the receipt of the subscription order.

12. Accordingly, but for the Requested Relief, the Funds would be prohibited from accepting Baskets or a combination of Baskets and cash as payment for Units, as the permitted precious metals that comprise Baskets are not “securities” as defined in the *Securities Act* (Ontario).

**DECISION**

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

The decision of the principal regulator under the Legislation is that the Requested Relief is granted, provided that the acceptance of any Baskets as payment for the issue price of Units is made in accordance with paragraph 9.4(2)(b).

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

### 2.1.3 CI Investments Inc. and the Top Funds

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from conflict of interest provisions in 111 of the Securities Act, and section 13.5 of NI 31-103 to permit investments by public and private investment funds into related underlying investments that are not reporting issuers – relief also granted from related party transaction reporting requirements in section 117 of the Securities Act – relief subject to certain conditions.

#### Applicable Legislative Provisions

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

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.5(2)(a) and 15.1.

December 29, 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  
CI INVESTMENTS INC.  
(CI)

AND

THE TOP FUNDS  
(as defined below)

DECISION

#### Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from CI and its affiliates (collectively, the **Filer**) on behalf of investment funds managed by the Filer subject to National Instrument 81-102 *Investment Funds (NI 81-102)* and National Instrument 81-107 *Independent Review Committee for Investment Funds (NI 81-107)* (the **Existing Public Top Funds**) and investment funds managed by the Filer that are not reporting issuers subject to NI 81-102 and NI 81-107 (the **Existing Private Top Funds**) and any future investment funds managed by the Filer that are, or will be, reporting issuers subject to NI 81-102 and NI 81-107 (the **Future Public Top Funds**, and together with the Existing Public Top Funds, the **Public Top Funds**) or are not, or will not be, reporting issuers subject to NI 81-102 and NI 81-107 (the **Future Private Top Funds**, together with the Existing Private Top Funds, the **Private Top Funds**, and the Private Top Funds together with the Public Top Funds, the **Top Funds**). The Filer intends for one or more of the Top Funds, as appropriate, to invest a portion of its assets in CI Global Private Real Estate Fund (the **Real Estate Fund**), a proposed private equity fund to be created in the near future (the **Private Equity Fund** and together with the Real Estate Fund, the **Initial Underlying Investments**) and/or in any other future collective investment scheme that is, or will be, managed by the Filer that will have similar non-traditional investment strategies (the **Future Underlying Investments** and, together with the Initial Underlying Investments, the **Underlying Investments**) and therefore has applied for a decision under the securities legislation of the Jurisdiction (the **Legislation**):

1. exempting the Top Funds from the restriction in the Legislation which prohibits:
  - (a) an investment fund from knowingly making an investment in a person or company in which the investment fund, alone or together with one or more related investment funds, is a substantial security holder
  - (b) an investment fund from knowingly making an investment in an issuer in which
    - i. any officer or director of the investment fund, its management company or distribution company or an associate of any of them or

- ii. any person or company who is a substantial security holder of the investment fund, its management company or its distribution company
  - has a significant interest, and
  - (c) an investment fund, its management company or its distribution company from knowingly holding an investment described in paragraph (a) or (b) above (collectively, the **Related Issuer Relief**);
2. exempting the Filer when it wishes to cause a Top Fund to invest in an Underlying Investment from the restriction in paragraph 13.5(2)(a) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)* that prohibits a registered adviser from knowingly causing an investment portfolio managed by it, including an investment fund for which it acts as adviser, to invest in securities of any issuer in which a responsible person or an associate of a responsible person is a partner, officer or director, unless the fact is disclosed to the client and the written consent of the client to the investment is obtained before the purchase (the **Consent Requirement Relief**); and
  3. exempting the Filer, with respect to the Top Funds, from the requirement to prepare a report in accordance with the requirements of the Legislation of every transaction of purchase of securities from or sale of securities to any related person or company (the **Reporting Relief**).

The Related Issuer Relief, the Consent Requirement Relief and the Reporting Relief are collectively, the **Exemption Sought**.

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

- (a) the Ontario Securities Commission is the principal regulator for the 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 Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Québec, Prince Edward Island, Saskatchewan and Yukon (together with Ontario, the **Jurisdictions**).

### Interpretation

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

### Representations

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

#### **The Filer**

1. CI is a corporation with its head office located in Toronto, Ontario.
2. CI is registered
  - (a) under the securities legislation of all provinces and territories of Canada as a portfolio manager
  - (b) under the securities legislation of Ontario, Québec, and Newfoundland and Labrador as an investment fund manager
  - (c) under the securities legislation of all provinces and territories of Canada as an exempt market dealer and
  - (d) under the *Commodity Futures Act* (Ontario) as a commodity trading counsel and a commodity trading manager.
3. The Filer is the investment fund manager (**IFM**) and portfolio manager of the Existing Public Top Funds and the Existing Private Top Funds (together, the **Existing Top Funds**) and the Filer will be the IFM and portfolio manager of the Future Public Top Funds and the Future Private Top Funds (together, the **Future Top Funds**). To the extent that the Filer is the IFM and portfolio manager of any Future Top Fund, the representations set out in this decision will apply to the same extent to such Future Top Fund.
4. The Filer also is the manager and portfolio manager of the Initial Underlying Investments and the Filer will be the manager and portfolio manager of the Future Underlying Investments. To the extent that the Filer is the manager and portfolio manager of any Future Underlying Investment, the representations set out in this decision will apply to the same extent to such Future Underlying Investment.

5. The Filer, is, or will be, a “responsible person” of each Top Fund and each Underlying Investment, as that term is defined in NI 31-103. Since the Filer is the manager of each Underlying Investment, the Filer acts in a capacity in relation to the Underlying Investment similar to a “partner, officer or director” of the Underlying Investment, as contemplated in paragraph 13.5(2)(a) of NI 31-103.
6. The Filer is not in default of securities legislation in any Jurisdiction.

### **The Top Funds**

7. The securities of each Public Top Fund are, or will be, qualified for distribution in one or more of the Jurisdictions and distributed to investors pursuant to a simplified prospectus, an annual information form, prospectus, ETF Facts, and/or Fund Facts, prepared in accordance with National Instrument 41-101 *General Prospectus Requirements* or National Instrument 81-101 *Mutual Fund Prospectus Disclosure*, as applicable. Each Public Top Fund is, or will be, a reporting issuer under the securities legislation of one or more Jurisdictions.
8. The securities of each Private Top Fund are, or will be, distributed solely to investors pursuant to exemptions from the prospectus requirements in accordance with National Instrument 45-106 *Prospectus Exemptions (NI 45-106)* and the Legislation. Each Private Top Fund has, or will have, an offering memorandum or statement of investment policies and guidelines, which is provided to investors. None of the Private Top Funds are, or will be, reporting issuers under the securities legislation of any Jurisdiction.
9. Each Top Fund may wish to invest in securities of the Underlying Investments and, as a result, the Filer is seeking the Exemption Sought in order to permit the Top Fund to make these investments. A Top Fund may wish to so invest in one or more of the Underlying Investments, provided the investment or investments is consistent with the Top Fund’s investment objectives and strategies. Each Top Fund, including each Private Top Fund, will comply with the investment restrictions and practices provided for in Part 2 of NI 81-102 in making such investments, in particular, the concentration restriction provided for in section 2.1, the control restriction provided for in section 2.2 and the illiquid assets restriction in section 2.4. Each Top Fund will treat securities of the Underlying Investments as illiquid assets for these purposes.
10. The Existing Top Funds are not in default of the securities legislation of any Jurisdiction.
11. Each Public Top Fund is subject to NI 81-107 and the Filer has established an independent review committee (an **IRC**) in order to review conflict of interest matters pertaining to its management of the Public Top Funds as required by NI 81-107.

### **The Underlying Investments**

12. The Initial Underlying Investments are collective investment schemes that are established as open-ended trusts under the laws of Ontario. Future Underlying Investments may be structured as limited partnerships, trusts or corporations governed by the laws of a jurisdiction of Canada.
13. The Underlying Investments are not, or will not be, reporting issuers in any of the Jurisdictions. Securities of the Initial Underlying Investments are, and any Future Underlying Investment will be, distributed solely to investors pursuant to exemptions from the prospectus requirements in accordance with NI 45-106 and the Legislation. Each Initial Underlying Investment has, or will have, an offering memorandum which is provided to investors.
14. Each Underlying Investment provides, or will provide exposure to non-traditional asset classes, such as real estate, private equity, venture capital and private credit.
15. The investment objective of the Real Estate Fund is to provide exposure to (i) the returns of the CBRE Global Investment Partners Global Alpha Fund (the **Global Alpha Sub-Fund**) or (ii) a selection of real estate investments selected by CBRE Global Investment Partners Limited or an affiliate in a manner that is generally consistent with the investment objectives, strategies and restrictions of the Global Alpha Sub-Fund. To achieve its investment objective, the Real Estate Fund will initially obtain exposure to the Global Alpha Sub-Fund by investing the net proceeds from subscriptions for units in an Irish corporation that will subscribe for units of the Global Alpha Sub-Fund. The Global Alpha Sub-Fund seeks to acquire a selection of investments, which together provide well-diversified exposure across global real estate markets, with the objective of generating a nominal total return over a market cycle of between 9% and 11% per annum in local currency net of its management fee and organizational and operational expenses. The Global Alpha Sub-Fund targets a distribution yield to investors of 5% per annum through direct and indirect investments in real estate and real estate-related assets in Europe, the Americas and the Asia Pacific region.
16. It is expected that the investment objective of the Private Equity Fund will be to seek attractive long-term capital appreciation through an evergreen investment structure by obtaining exposure to a globally diversified portfolio of private equity and private debt investments. To achieve its investment objective, the Private Equity Fund will invest in a Cayman Islands exempted limited partnership master fund (**Master Fund**) through a Cayman Islands exempted company feeder

fund. The feeder fund will be established by Adams Street Partners, LLC (**ASP Manager**) for the purposes of investing in the Master Fund. ASP Manager will act as investment manager of the Master Fund.

17. The underlying assets to which the Underlying Investments will have exposure, will be managed by entities that are independent and at arm's length to the Filer. In respect of the Real Estate Fund, the Global Alpha Sub-Fund and CBRE Global Investment Partners Limited are at arm's length and not related to the Filer. For the Private Equity Fund, ASP Manager and the Master Fund are at arm's length and not related to the Filer.
18. The Underlying Investments are not, or will not be, investment funds as such term is defined under Canadian securities legislation. Nevertheless, the Underlying Investments are, or will be, operated in a manner similar to how the Filer operates its investment funds. The Underlying Investments are, or will be, administered by the Filer, as manager, and their assets are, or will be, managed by the Filer, as portfolio manager. The Filer, as manager of the Underlying Investments, calculates, or will calculate, a net asset value (**NAV**) which will be used for the purposes of determining the purchase and redemption price of the securities of the Underlying Investments.
19. The value of the underlying portfolio assets of the Real Estate Fund will be independently determined by CB Richard Ellis Group, Inc. or its affiliates, all of whom are at arm's length to the Filer, the Real Estate Fund and the other Underlying Investments, on a quarterly basis. The value of the underlying portfolio assets of the Private Equity Fund will be independently determined by ASP Manager or its affiliates, all of whom are at arm's length to the Filer, the Private Equity Fund and the other Underlying Investments on a quarterly basis. Similar independent valuation will be carried out in respect of the underlying portfolio assets of each Future Underlying Investment.
20. Each Underlying Investment produces, and will produce, audited financial statements on an annual basis, in accordance with generally accepted accounting principles with a qualified auditing firm as the auditor of those financial statements. The Filer will have access to audited financial statements prepared in respect of each underlying asset that is invested in by the Underlying Investments.
21. The Real Estate Fund is not in default of the securities legislation of any Jurisdiction.
22. No Top Fund will actively participate in the business or operations of an Underlying Investment.

***Investments by Top Funds in the Underlying Investments***

23. An investment by a Top Fund in an Underlying Investment will only be made if the investment is, or will be, compatible with the investment objectives of the Top Fund and allows, or will allow, the Top Fund to obtain exposure to asset classes in which the Top Fund may otherwise invest directly.
24. The Filer believes that the investment by a Top Fund in an Underlying Investment will provide the Top Fund with an efficient and cost-effective manner of pursuing portfolio diversification and asset diversification instead of purchasing securities, or the underlying assets of each Underlying Investment, directly. The Top Fund will gain access to the investment expertise of the portfolio adviser to the underlying assets of each Underlying Investment, as well as to their investment strategies and asset classes.
25. Investments by a Top Fund in an Underlying Investment will be effected at an objective price. The Filer's policies and procedures provide that an objective price, for this purpose, will be the NAV per security of the applicable class or series of the Underlying Investment.
26. A Top Fund will not invest in an Underlying Investment unless the portfolio manager of the Top Fund believes that the liquidity of the Top Fund's portfolio is adequately managed through other strategies. As part of such strategies, a Top Fund will not invest more than 10% of its NAV, at the time of purchase, in securities of an Underlying Investment and it will not invest in securities of an Underlying Investment that represent, at the time of purchase, more than 10% of the securities of the Underlying Investment. The Top Fund will also comply with section 2.4 of NI 81-102 with respect to illiquid investments and the Filer will include an investment by a Top Fund in an Underlying Investment in its basket of illiquid securities for the purposes of compliance with this section.
27. Each Public Top Fund is, or will be, valued and redeemable daily, while each Private Top Fund is or will be valued and redeemable either daily or on a weekly basis, and the Underlying Investments may be potentially subject to lock-up periods, early redemption penalties, and limitations on redemptions depending on the amounts being redeemed.

***Generally***

28. Subject to compliance with section 2.2 of NI 81-102, the amount invested from time to time in an Underlying Investment by a Top Fund, together with one or more other Top Funds, may exceed 20% of the outstanding voting securities of the Underlying Investment. This may result by reason of a group of Top Funds providing initial investments into the Underlying Investment on the start-up of the Underlying Investment. As a result, each Top Fund could, together with one or more

other Top Funds, become a “substantial security holder” of an Underlying Investment within the meaning of section 110 of the OSA and contrary to section 111(2)(b). The Top Funds are, or will be, “related investment funds”, as such term is defined in section 106(1) of the OSA by virtue of common management by the Filer.

29. In addition, from time to time, an officer or director of the Filer of the Filer may have a “significant interest” in an Underlying Investment and/or a person or company who is a substantial security holder of the Top Fund, the Filer may have a “significant interest” in the Underlying Investment within the meaning of section 110 of the OSA, which, under section 111(2)(c) would prohibit the Top Funds from investing in the Underlying Investment.
30. The Filer does not anticipate that any fees or sales charges would be incurred, directly or indirectly, by a Top Fund with respect to an investment in an Underlying Investment that, to a reasonable person, would duplicate a fee payable by the Top Fund to the Filer or its investors.
31. Since the Underlying Investments are not reporting issuers and are not “investment funds” pursuant to Canadian securities legislation, they are not subject to NI 81-102 and therefore the Public Top Funds are unable to rely upon the exemption codified under subsection 2.5(7) of NI 81-102 for investments by investment funds subject to NI 81-102 in other investment funds. Since the Private Top Funds are not reporting issuers subject to NI 81-102, they are also unable to rely on the exemption codified under subsection 2.5(7) of NI 81-102.
32. In the absence of the Related Issuer Relief, each Top Fund would be limited by the investment restrictions in the Legislation in terms of the extent to which they could invest in the Underlying Investments. Specifically, a Top Fund would be prohibited from (i) becoming a substantial security holder of an Underlying Investment, together with other Top Funds and (ii) investing in an Underlying Investment in which an officer or director of the Filer has a significant interest or in which a person or company who is a substantial security holder of the Top Fund or the Filer, has a significant interest.
33. The action of the Filer in causing a Top Fund to invest in an Underlying Investment would require disclosure to the “client” and the prior written consent of the “client” to the investment. Paragraph 13.5(2)(a) of NI 31-103 prohibits these investments in these circumstances given that the Filer manages the Underlying Investment, and hence acts in a capacity similar to a “partner, director or officer” and the Filer is a responsible person of the Top Funds.
34. According to the Legislation, every management company shall, in respect of each investment fund to which it provides services or advice, file a report of every transaction of purchase or sale of securities between the investment fund and any related person or company within 30 days after the end of the month in which it occurs.
35. In the absence of the Reporting Relief, the Filer acting as the management company (as defined in the applicable securities laws) of the Top Funds would be required to file a report of every purchase and sale of securities of the Underlying Investments by the Top Funds or every purchase or sale effected by the Top Funds through any related person or company with respect to which the related person or company received a fee either from the Top Funds or from the other party to the transaction or from both within 30 days after the end of the month in which such purchase or sale occurs (the **Reporting Requirement**).
36. It would be costly and time-consuming for the Top Funds to comply with the Reporting Requirement.
37. National Instrument 81-106 *Investment Fund Continuous Disclosure* requires the Public Top Funds to prepare and file annual and interim management reports of fund performance that include a discussion of transactions involving related parties to the Public Top Funds. Such disclosure is similar to that required under the Reporting Requirement and fulfills its objective to inform the general public about the transactions involving related parties to the Public Top Funds.
38. Subsection 6.2(2) of NI 81-107 provides an exemption for investment funds from the “investment fund conflict of interest investment restrictions” (as defined in NI 81-102) for purchases of related issuer securities if the purchase is made on an exchange. However, NI 81-107 does not apply to the Private Top Funds and the exemption in subsection 6.2(2) of NI 81-107 does not apply to purchases of non-exchange-traded securities and therefore does not apply to purchases of an Underlying Investment by a Public Top Fund.
39. A Top Fund’s investment in an Underlying Investment will represent the business judgment of a responsible person uninfluenced by considerations other than the best interests of the Top Fund.

## 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) Securities of the Private Top Funds are distributed in Canada solely to investors pursuant to exemptions from the prospectus requirements in NI 45-106 or the Legislation;
- (b) a direct or indirect investment by a Top Fund in an Underlying Investment will be compatible with the investment objective and strategy of such Top Fund and, among other things, included as part of the calculation for the purposes of the illiquid asset restriction in section 2.4 of NI 81-102;
- (c) each Private Top Fund will comply with the investment restrictions and practices provided for in Part 2 of NI 81-102 in making such investments, in particular, the concentration restriction provided for in section 2.1, the control restriction provided for in section 2.2 and the illiquid assets restriction in section 2.4 and will treat investments in Underlying Investments as illiquid assets for this purpose;
- (d) at the time of the purchase by a Top Fund of securities of an Underlying Investment, either the Underlying Investment holds no more than 10% of its NAV in securities of other investment funds or the Underlying Investment:
  - (i) has adopted a fundamental investment objective to track the performance of another investment fund or similar investment product;
  - (ii) purchases or holds securities of investment funds that are “money market funds” (as such term is defined in NI 81-102); or
  - (iii) purchases or holds securities that are “index participation units” (as such term is defined in NI 81-102) issued by an investment fund;
- (e) in respect of an investment by a Top Fund in an Underlying Investment, no sales or redemption fees will be paid as part of the investment in the Underlying Investment, unless the Top Fund redeems its securities of an Underlying Investment during a lock-up period, in which case an early redemption fee may be payable by the Top Fund;
- (f) in respect of an investment by a Top Fund in an Underlying Investment, no management fees or incentive fees will be payable by the Top Fund that, to a reasonable person, would duplicate a fee payable by an Underlying Investment for the same service;
- (g) the securities of an Underlying Investment held by a Top Fund will not be voted at any meeting of the security holders of the Underlying Investment, except that the Top Fund may arrange for the securities of the Underlying Investment it holds to be voted by the beneficial holders of securities of the Top Fund;
- (h) where applicable, a Public Top Fund's investment in an Underlying Investment, whether direct or indirect, will be disclosed to investors in such Public Top Fund's quarterly portfolio holding reports, financial statements and/or fund facts/ETF facts documents;
- (i) the prospectus of the Public Top Fund discloses, or will disclose in the next renewal or amendment thereto following the date of a decision evidencing the Exemption Sought, the fact that the Public Top Fund may invest, directly or indirectly, in an Underlying Investment, which is an investment vehicle managed by the Filer;
- (j) the offering memorandum or statement of investment policies and guidelines, where available, or other disclosure document of a Private Top Fund, will be provided to each new investor in a Private Top Fund prior to their purchase of securities of the Private Top Fund, and will disclose the following information at the next update of such document:
  - (i) that the Private Top Fund may purchase securities of one or more Underlying Investments;
  - (ii) the fact that the Filer is the IFM of the Private Top Fund and the Underlying Investments;
  - (iii) that the Filer does not anticipate that any fees or sales charges would be incurred, directly or indirectly, by the Private Top Fund with respect to an investment in an Underlying Investment that, to a reasonable person, would duplicate a fee payable by the Private Top Fund to the Filer or its investors; and

- (iv) that the Private Top Fund will comply with the investment restrictions and practices provided for in Part 2 of NI 81-102 in making such investments, in particular, the concentration restriction provided for in section 2.1, the control restriction provided for in section 2.2 and the illiquid assets restriction in section 2.4;
- (k) the IRC of the Public Top Fund will review and provide its approval, including by way of standing instructions, prior to the purchase of an Underlying Investment, directly or indirectly, by the Public Top Fund, in accordance with section 5.2(2) of NI 81-107;
- (l) the Filer complies with section 5.1 of NI 81-107 and the Filer and the IRC of the Public Top Fund comply with section 5.4 of NI 81-107 for any standing instructions the IRC provides in connection with the transactions;
- (m) If the IRC becomes aware of an instance where a Filer, in its capacity as manager of a Public Top Fund, did not comply with the terms of this decision, or a condition imposed by securities legislation or the IRC in its approval, the IRC of the Public Top Fund will, as soon as practicable, notify in writing the securities regulatory authority or regulator in the jurisdiction under which the Public Top Fund is organized.
- (n) where an investment is made by a Public Top Fund in an Underlying Investment, the annual and interim management reports of fund performance for the Public Top Fund disclose the name of the related person in which an investment is made, being an Underlying Investment;
- (o) where an investment is made by a Top Fund in an Underlying Investment, the records of portfolio transactions maintained by the Top Fund include, separately for every portfolio transaction effected by a Top Fund by the Filer, the name of the related person in which an investment is made, being an Underlying Investment;
- (p) a Top Fund will invest in, and redeem, each Underlying Investment at the NAV of the applicable securities of the Underlying Investment, which will be based on the valuation of the applicable portfolio assets to which the Underlying Investment has exposure, independently determined by an arm's length third party; and
- (q) a Top Fund will invest in a Future Underlying Investment only where it is structured in similar ways to the Existing Underlying Investments, including investing in other collective investment schemes that are managed by entities that are arm's length third parties to the Filer, the NAV of the Future Underlying Investment is based on the valuation of those other collective investment schemes that are independently determined by the arm's length third party and provide the Future Underlying Investment with audited annual financial statements.

**The Consent Requirement Relief**

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

**The Related Issuer Relief and the Reporting Relief**

"Frances Kordyback"  
Commissioner  
Ontario Securities Commission

"Lawrence Haber"  
Commissioner  
Ontario Securities Commission

## 2.1.4 3iQ Corp. and 3iQ Bitcoin ETF

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from subsection 59(1) of the Securities Act (Ontario) to permit exchange-traded mutual fund prospectus to omit an underwriter’s certificate – Relief from Part 2 of NI 62-104 take-over bid requirements to facilitate normal course purchases of ETF securities on a marketplace in Canada.

### Applicable Legislative Provisions

Securities Act (Ontario) – R.S.O. 1990, c. S. 5, as am., ss. 59(1) and 147.  
National Instrument 62-104 Take-Over Bids and Issuer Bids, Part 2 and s. 6.1.

March 11, 2021

**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  
3iQ CORP.  
(the Filer)**

AND

**THE 3iQ BITCOIN ETF  
(The Proposed ETF)**

**DECISION**

### Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Proposed ETF and any additional exchange-traded mutual funds (the **Future ETFs**, and together with the **Proposed ETF**, the **ETFs**, each an **ETF**) established in the future for which the Filer is the manager, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that:

- (a) exempts the Filer and each ETF from the requirement to include a certificate of an underwriter in an ETF’s prospectus (the **Underwriter’s Certificate Requirement**); and
- (b) exempts a person or company purchasing ETF Securities (as defined below) in the normal course through the facilities of the TSX (as defined below) or another Marketplace (as defined below) from the Take-Over Bid Requirements (as defined below) under Part 2 of National Instrument 62-104 *Take-Over Bids and Issuer Bids*.

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* is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Northwest Territories, Nunavut and Yukon (together with the Jurisdiction, the **Jurisdictions**).

### Interpretation

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

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

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

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

**ETF Facts** means a prescribed summary disclosure document required in respect of one or more classes or series of ETF Securities being distributed under a prospectus.

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

**Marketplace** means a “marketplace” as defined in National Instrument 21-101 *Marketplace Operations* that is located in Canada.

**MI 11-102** means Multilateral Instrument 11-102 *Passport System*.

**NI 81-102** means National Instrument 81-102 *Investment Funds*.

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

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

**Prospectus Delivery 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.

**Take-Over Bid Requirements** means the requirements of National Instrument 62-104 *Take-Over Bids and Issuer Bids* relating to take-over bids, including the requirement to file a report of a take-over bid and to pay the accompanying fee, in each Jurisdiction.

**TSX** means the Toronto Stock Exchange.

Terms defined in National Instrument 14-101 – *Definitions* (**NI 14-101**) or in National Instrument 81-102 – *Investment Funds* (**NI 81-102**) have the same meaning in this Application as in NI 14-101 or NI 81-102. Certain other defined terms have the meanings given to them below under “Representations”.

### **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 Canada, with its head office located at 4800-1 King Street West, Box 160, Toronto, Ontario, M5H 1A1.
2. The Filer is registered as (i) a portfolio manager in Alberta, Ontario and Quebec; (ii) an exempt market dealer in Alberta, British Columbia, Ontario and Quebec; (iii) an investment fund manager in Alberta, Ontario and Quebec; and (iv) a commodity trading manager in Ontario.
3. The Filer is, or will be, the investment fund manager of the ETFs. The Filer has applied, or will apply, to list the ETF Securities on the TSX or another Marketplace.
4. The Filer is not in default of securities legislation in any of the Jurisdictions.

**The ETFs**

5. The Proposed ETF will be a mutual fund structured as a trust that is governed by the laws of the Province of Ontario. The Future ETFs will be either trusts or corporations or classes thereof governed by the laws of a Jurisdiction. Each ETF will be a reporting issuer in the Jurisdiction(s) in which its securities are distributed.
6. Subject to any exemptions that have been, or may be, granted by the applicable securities regulatory authorities, each ETF will be an open-ended mutual fund subject to NI 81-102 and Securityholders of each ETF will have the right to vote at a meeting of Securityholders in respect of matters prescribed by NI 81-102.
7. The ETF Securities will be listed on the TSX or another Marketplace.
8. The Filer will file a final long form prospectus prepared and filed in accordance with National Instrument 41-101 *General Prospectus Requirements*, subject to any exemptions that may be granted by the applicable securities regulatory authorities.
9. ETF Securities will be distributed on a continuous basis in one or more of the Jurisdictions under a prospectus. ETF Securities may generally only be subscribed for or purchased directly from the ETFs (**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.
10. In addition to subscribing for and re-selling Creation Units, Authorized Dealers, Designated Brokers and Affiliate Dealers will also generally be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market. Other Dealers may also be engaged in purchasing and selling ETF Securities of the same class or series as the Creation Units in the secondary market despite not being an Authorized Dealer, Designated Broker or Affiliate Dealer.
11. 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, cash or a Basket equal to the net asset value of the ETF Securities subscribed for next determined following the receipt of the subscription order.
12. Designated Brokers and Authorized Dealers will not receive any fees or commissions in connection with the issuance of Creation Units to them. On the issuance of Creation Units, the Filer or an ETF 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.
13. 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 an ETF for cash in an amount not to exceed a specified percentage of the net asset value of the ETF or such other amount established by the Filer.
14. Each ETF will appoint, at any given time, a Designated Broker to perform certain other functions, which include standing in the market with a bid and ask price for ETF Securities for the purpose of maintaining liquidity for the ETF Securities.
15. Except for Authorized Dealer and Designated Broker subscriptions for Creation Units, as described above, and other distributions that are exempt from the Prospectus Delivery Requirement under the Legislation, ETF Securities generally will not be able to be purchased directly from an ETF. Investors are generally expected to purchase and sell ETF Securities, directly or indirectly, through dealers executing trades through the facilities of the TSX or another Marketplace. ETF Securities may also be issued directly to ETF Securityholders upon a reinvestment of distributions of income or capital gains.
16. 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 cash and/or Baskets in the discretion of the Filer. Securityholders may also redeem ETF Securities for cash at a redemption price equal to the lesser of 95% of (a) the closing price for the ETF Securities on the TSX or other Marketplace on the date of redemption; and (b) the net asset value per ETF Security.

**Underwriter's Certificate Requirement**

17. Authorized Dealers and Designated Brokers will not provide the same services in connection with a distribution of Creation Units as would typically be provided by an underwriter in a conventional underwriting.
18. The Filer will generally conduct its own marketing, advertising and promotion of the ETFs.

19. The Authorized Dealers and Designated Brokers will not be involved in the preparation of an ETF's prospectus, will not perform any review or any independent due diligence as to the content of an ETF's prospectus, and will not incur any marketing costs or receive any underwriting fees or commissions from the ETFs or the Filer in connection with the distribution of ETF Securities. The Authorized Dealers and Designated Brokers generally seek to profit from their ability to create and redeem ETF Securities by engaging in arbitrage trading to capture spreads between the trading prices of ETF Securities and their underlying securities and by making markets for their clients to facilitate client trading in ETF Securities.
20. In addition, neither the Filer nor the ETFs will pay any fees or commissions to the Designated Brokers and Authorized Dealers. As the Designated Brokers and Authorized Dealers will not receive any remuneration in connection with distributing ETF Securities and as the Authorized Dealers will change from time to time, it is not practical to provide an underwriters' certificate in the prospectus of the ETFs.

**Take-Over Bid Requirements**

21. As equity securities that will trade on the TSX or another Marketplace, it is possible for a person or company to acquire such number of ETF Securities so as to trigger the application of the Take-Over Bid Requirements. However:
  - (a) it will not be possible for one or more Securityholders to exercise control or direction over an ETF, as the constating documents of each ETF provide that there can be no changes made to such ETF which do not have the support of the Filer;
  - (b) it will be difficult for purchasers of ETF Securities to monitor compliance with the Take-Over Bid Requirements because the number of outstanding ETF Securities will always be in flux as a result of the ongoing issuance and redemption of ETF Securities by each ETF; and
  - (c) the way in which the ETF Securities will be priced deters anyone from either seeking to acquire control or offering to pay a control premium for outstanding ETF Securities because pricing for each ETF Security will generally reflect the net asset value of the ETF Securities.
22. The application of the Take-Over Bid Requirements to the ETFs would have an adverse impact on the liquidity of the ETF Securities because they could cause the Designated Brokers and other large Securityholders to cease trading ETF Securities once the Securityholder has reached the prescribed threshold at which the Take-Over Bid Requirements would apply. This, in turn, could serve to provide conventional mutual funds with a competitive advantage over the ETFs.

**Decision**

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

The decision of the principal regulator is that the Exemption Sought from:

- (a) the Underwriter's Certificate Requirement is granted; and
- (b) the Take-Over Bid Requirements is granted.

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

"Raymond Kindiak"  
Commissioner  
Ontario Securities Commission

"Frances Kordyback"  
Commissioner  
Ontario Securities Commission

**As to the Exemption Sought from the Take-Over Bid Requirements:**

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

## 2.1.5 BMO Asset Management Inc. and BMO Investments Inc.

### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Investment fund managers granted relief from related party transaction reporting requirements in paragraphs 117(1)1, 117(1)3 and 117(1)4 of the Securities Act (Ontario) in respect of the public investment funds to which they provide services or advice – monthly reporting not required provided that substantially similar disclosure is made in the annual and interim management reports of fund performance for each investment fund and that certain records of related party portfolio transactions are kept by the investment fund.

### Applicable Legislative Provisions

Securities Act (Ontario), ss. 117(1)1, 117(1)3 and 117(1)4, and 117(2).

March 12, 2021

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

**AND**

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

**AND**

**IN THE MATTER OF  
BMO ASSET MANAGEMENT INC.  
(BMOAM)**

**AND**

**BMO INVESTMENTS INC.  
(BMOII, AND EACH OF BMOAM AND BMOII, A FILER, AND COLLECTIVELY, THE FILERS)**

**DECISION**

### Background

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) exempting each Filer and any affiliate of a Filer from the management company reporting requirements (the **Reporting Requirements**) in the Legislation which require the Filer or its affiliate, for each Fund (as defined below) in respect of which it is a management company, to file a report within 30 days after the end of the month in which the following transactions occur:

- (a) every transaction of purchase or sale of securities between the investment fund and any related person or company;
- (b) every purchase or sale effected by the investment fund through any related person or company with respect to which the related person or company receives a fee either from the investment fund or from the other party to the transaction or from both; and
- (c) any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, the investment fund is a joint participant with one or more of its related persons or companies

(collectively, the **Reporting Relief**).

The Filers also seek to revoke and replace the Current Relief (as defined below) (the **Revocation Relief**). The Reporting Relief together with the Revocation Relief, the **Requested Relief**.

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

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

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

### Interpretation

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

**Filer** for the purposes of the definition of “Funds” and paragraphs 4, 7, 14, 15, 17 and 18 includes each of the Filers and each of their affiliates.

**Fund** means an investment fund (either currently existing or to be established in the future) that is, or will be, subject to NI 81-102 and is, or will be, a reporting issuer and for which a Filer acts, or will act, as the investment fund manager and may also be the portfolio manager from time to time.

**NI 81-102** means National Instrument 81-102 *Investment Funds*.

**NI 81-106** means National Instrument 81-106 *Investment Fund Continuous Disclosure*.

**NI 81-107** means National Instrument 81-107 *Independent Review Committee for Investment Funds*.

### Representations

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

1. BMOAM is a corporation incorporated under the laws of the Province of Ontario and BMOII is a corporation amalgamated under the laws of Canada. Each of BMOAM and BMOII is an indirect, wholly-owned subsidiary of Bank of Montreal. The head office of each of BMOAM and BMOII is located in Toronto, Ontario.
2. BMOAM is registered as an adviser in the category of portfolio manager in each of the Jurisdictions and as an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador.
3. BMOII is registered as a mutual fund dealer in each of the Jurisdictions and as an investment fund manager in Ontario, Quebec, and Newfoundland and Labrador.
4. Each Filer is or will be the investment fund manager and may also be the portfolio manager of one or more Funds.
5. Each of the Funds is or will be a reporting issuer in one or more of the Jurisdictions.
6. Each Filer and each of the existing Funds is not in default of securities legislation in any of the Jurisdictions.
7. Each Filer is or will be the investment fund manager and may also be the portfolio manager in respect of one or more Funds and accordingly is a “management company” in respect of such Funds as defined in the Legislation.
8. Bank of Montreal is or will be a “related person or company” to the Funds within the meaning of the Legislation as Bank of Montreal is a substantial securityholder of the management company of each Fund.
9. Any subsidiary or affiliate of Bank of Montreal including, but not limited to, BMO Nesbitt Burns Inc., BMO InvestorLine Inc. and any other brokers or dealers that are now or in the future subsidiaries or affiliates of Bank of Montreal, is or will be a “related person or company” to the Funds within the meaning of the Legislation as Bank of Montreal, which is a substantial securityholder of the management company of each Fund, has or will have a significant interest in any such subsidiary or affiliate of Bank of Montreal (each a **Related Entity**).
10. Additionally, a Fund may from time to time be a “related person or company” in respect of one or more other Funds within the meaning of the Legislation as Bank of Montreal, which is a substantial securityholder of the management company of each Fund, may have a significant interest in one or more Funds from time to time (each a **Related Fund** and each of Bank of Montreal, each Related Entity and each Related Fund shall be referred to herein as a **Related Party**).
11. Pursuant to Section 6.1 of NI 81-107, as well as exemptive relief granted to the Funds from time to time, the Funds are permitted to purchase securities from or sell securities to a Related Party including, but not limited to, the purchase and sale of debt securities by the Funds from or to a Related Party.
12. The portfolio manager or sub-advisor (if applicable) of each Fund has discretion to allocate the brokerage transactions of such Fund in any manner that it believes to be in the Fund’s best interests, subject to such policies as may be established by the investment fund manager of the Fund from time to time. Brokerage business of a Fund may be

allocated to a Related Party of the Fund for which such Related Party may receive a fee. The process for allocation of brokerage business of a Fund is the same for all brokers, regardless of whether the broker is a related person or company to the Fund.

13. A Fund may from time to time participate as a joint participant with one or more other Related Funds in the purchase of securities under a distribution, including where a Related Party may act as an underwriter in connection with such offering.
14. In the absence of relief therefrom, the Reporting Requirements would require a Filer, for each Fund in respect of which it is a management company, to file, within 30 days of the end of the month in which each transaction occurs, a report (each, a **Report**) of:
  - (a) any purchase or sale of securities between a Fund and a Related Party;
  - (b) any purchase or sale of securities by a Fund that is effected through a Related Party with respect to which that Related Party received a fee for such services, either from the Fund or another party to the transaction or both; and
  - (c) every transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, a Fund is a joint participant with one or more Related Parties.
15. The Report in each case, would have to disclose the name of the Fund, the name of the Filer, the date of the transaction, the category of the transaction, the parties to the transaction, the issuer of the securities purchased or sold, the class or designation of the securities, the amount or number of securities, the consideration, the name of the related person or company receiving a fee (if applicable), the name of the person or company that paid the fee to the related person or company (if applicable) and the amount of the fee received by the related person or company (if applicable).
16. Pursuant to NI 81-106, the Funds prepare and file, or will prepare and file, interim and annual management reports of fund performance (**MRFPs**) that disclose any transactions involving a related person or company, including: the identity of that related person or company, the relationship between the related person or company and the Funds, the purpose of the transaction, the measurement basis used to determine the recorded amount, any ongoing commitments to the related party, and, if applicable, the dollar amount of commission, spread, or any other fee that the Fund paid to any related party in connection with a portfolio transaction.
17. It is costly and time consuming for a Filer to provide the Reports required by the Legislation on a monthly and segregated basis for each Fund, and substantially similar information is already included in the MRFPs as required by NI 81-106.
18. Under an Order dated February 6, 2007, the principal regulator granted each Filer relief from the provisions of the Legislation requiring a management company, in respect of each mutual fund to which it provides services or advice, to file a report within 30 days after the end of each month relating to every purchase or sale effected by the mutual fund through any related person or company with respect to which the related person or company received a fee either from the mutual fund or from the other party to the transaction or both (the **Current Relief**).
19. The Current Relief is not as broad as the Reporting Relief, as the Current Relief does not provide relief from the Reporting Requirements that a report be filed of (i) every transaction of purchase or sale of securities between a Fund and any related person or company; and (ii) any transaction in which, by arrangement other than an arrangement relating to insider trading in portfolio securities, a Fund is a joint participant with one or more related persons or companies.

**Decision**

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

- (a) the Revocation Relief is granted; and
- (b) the Reporting Relief is granted provided that:
  - (i) the annual and interim MRFPs for each Fund disclose:
    - (A) the name of the Related Party;
    - (B) the amount of any fees paid to each Related Party; and
    - (C) the person or company who paid the fees, if they were not paid by the Fund; and

- (ii) the records of portfolio transactions maintained by each Fund include, separately for every portfolio transaction effected by the Fund through a Related Party:
  - (A) the name of the Related Party;
  - (B) the amount of any fees paid to the Related Party; and
  - (C) the person or company who paid the fees.

“Raymond Kindiak”  
Commissioner  
Ontario Securities Commission

“Frances Kordyback”  
Commissioner  
Ontario Securities Commission

2.1.6 R. J. O'Brien & Associates, LLC

**Headnote**

Application for a decision to exempt the filer from the dealer registration and prospectus requirements in connection with certain distributions of and trades in over-the-counter (OTC) derivatives that are made by the filer with a "permitted counterparty" or by a permitted counterparty with the filer – "permitted counterparty" defined to mean "permitted client" as defined in Section 1.1 of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations – Exemption sought as an interim response to current regulatory uncertainty associated with the regulation of OTC derivatives, pending the development by the Canadian Securities Administrators (the CSA) of a uniform framework for the regulation of OTC derivatives in all provinces and territories of Canada – Decision includes customary terms and conditions, including a "sunset date" that is date that is the earlier of: (i) the date that is four years after the date of the Decision; and (ii) the coming into force in the jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC derivative transactions.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(1), 53(1) and 74.

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 1.1 ("permitted client").

March 11, 2021

**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  
R. J. O'BRIEN & ASSOCIATES, LLC  
(the Filer)**  
  
**DECISION**

**Background**

The principal regulator in the Jurisdiction has received an application (the **Application**) from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the dealer registration requirement and the prospectus requirement in the Legislation that may otherwise be applicable to a trade in or distribution of an OTC Derivative (as defined below) made by either:

- (a) the Filer to a Permitted Counterparty (as defined below); or
- (b) a Permitted Counterparty to the Filer,

shall not apply to the Filer or the Permitted Counterparties, as the case may be (the **Requested Relief**), subject to certain terms and conditions.

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

- (a) the Ontario Securities Commission (**OSC**) is the principal regulator for this Application; and
- (b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 Passport System is intended to be relied upon in New Brunswick (to the extent that Local Rule 91-501 does not apply), Newfoundland and Labrador, Prince Edward Island, the Northwest Territories, Yukon and Nunavut (the **Passport Jurisdictions** and, together with Ontario, the **Jurisdictions**).

## Interpretation

Unless otherwise defined herein, terms in this decision have the respective meanings given to them in National Instrument 14-101 *Definitions*.

The terms **OTC Derivative** and **Underlying Interest** are defined in the Appendix to this decision.

The term **Permitted Counterparty** means a person or company that is a “permitted client”, as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103)*.

## Representations

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

### The Filer

1. The Filer is a limited liability company formed under the laws of the state of Delaware of the United States of America. The head office of the Filer is located in Chicago, Illinois, United States of America.
2. The Filer is a privately-held business wholly-owned by the O'Brien family of Chicago, Illinois. The Applicant was founded in 1914 and is based in Chicago, Illinois.
3. The Filer is a registered futures commission merchant with the United States Commodity Futures Trading Commission (the **CFTC**) and a member of the National Futures Association in the United States.
4. The Filer provides futures commission merchant services which include commodity clearing and execution services to various financial, industrial and agricultural institutions, including affiliates of the Filer.
5. In addition to the Filer's futures commission merchant services, the Filer's business also includes brokering or intermediating bilateral OTC Derivative transactions with counterparties located in the U.S. and is limited to transacting with, or on behalf of, institutional and other non-retail clients.
6. The CFTC de minimis exception rules provide that market participants who exceed \$8 billion in gross notional swap dealing activity over a twelve-month period are required to register with the CFTC. Prior to the most recent financial year end, the Filer relied on the de minimis exemption under U.S. derivatives laws as its activities did not exceed the requisite \$8 billion aggregate gross notional amount threshold. The Filer is currently in the process of registering with the CFTC as a swap dealer. As required by The Dodd-Frank Act (US), the Filer is required to report all transactions on a daily basis and quarterly valuation of positions to a designated U.S. trade repository.
7. The Filer is not currently registered in any capacity in Canada. The Filer does not maintain an office, sales force or physical place of business in Canada.
8. The Filer is in compliance in all material respects with U.S. securities, commodity futures and derivatives laws. The Filer is not in default of securities, commodity futures or derivatives legislation in any jurisdiction in Canada.

### Proposed Conduct of OTC Derivatives Transactions

9. The Filer proposes to broker or intermediate bilateral OTC Derivative transactions with counterparties located in all provinces and territories of Canada that consist exclusively of persons or companies that are Permitted Counterparties. The Filer understands that the Permitted Counterparties would be entering into the OTC Derivative transactions for hedging or investment purposes. The Underlying Interest of the OTC Derivatives that are entered into between the Filer and a Permitted Counterparty will consist of one of the following: a commodity; an interest rate; a currency, a foreign exchange rate; a security; an economic indicator, an index; a basket; a benchmark; another variable; another OTC Derivative; or some relationship between, or combination of, one or more of the foregoing.
10. While a Permitted Counterparty may deposit margin or collateral with the Filer in respect of its obligations under an OTC Derivative transaction, the Filer itself will not offer or provide credit or margin to any of its Permitted Counterparties for purposes of an OTC Derivative transaction.
11. The Filer seeks the Requested Relief as an interim, harmonized solution to the uncertainty and fragmentation that currently characterizes the regulation of OTC Derivatives across Canada, pending the development of a uniform framework for the regulation of OTC Derivative transactions in all provinces and territories of Canada. The Filer acknowledges that registration and prospectus requirements may be triggered for the Filer in connection with the derivative contracts under any such uniform framework to be developed for the regulation of OTC Derivative transactions.

**Regulatory Uncertainty and Fragmentation Associated with the Regulation of OTC Derivative Transactions in Canada**

12. There has generally been a considerable amount of uncertainty respecting the regulation of OTC Derivative transactions as “securities” in the provinces and territories of Canada other than Québec.
13. In each of British Columbia, Prince Edward Island, the Northwest Territories, Nunavut and Yukon, OTC Derivative transactions are regulated as securities on the basis that the definition of the term “security” in the securities legislation of each of these jurisdictions includes an express reference to a “futures contract” or a “derivative”.
14. In Alberta, Manitoba, Ontario, New Brunswick, Nova Scotia and Saskatchewan, OTC Derivative transactions are regulated as derivatives; however, certain OTC Derivative transactions also meet the definition of “security”.
15. In Newfoundland and Labrador, it is not certain whether, or in what circumstances, OTC Derivative transactions are “securities” because the definition of the term “security” in the securities legislation of this jurisdiction makes no express reference to a “futures contract” or a “derivative” and the definition of “security” does not include any category that would specifically cover OTC Derivative transactions.
16. In October 2009, staff of the OSC published OSC Staff Notice 91-702 *Offerings of Contracts for Difference and Foreign Exchange Contracts to Investors in Ontario (OSC Notice 91-702)*. OSC Notice 91-702 states that OSC staff take the view that contracts for differences, foreign exchange contracts and similar OTC Derivative products, when offered to investors in Ontario, engage the purposes of the OSA and constitute “investment contracts” and “securities” for the purposes of Ontario securities law. However, OSC Notice 91-702 also states that it is not intended to address direct or intermediated trading between institutions. OSC Notice 91-702 does not provide any additional guidance on the extent to which OTC Derivative transactions between the Filer and a Permitted Counterparty may be subject to Ontario securities law.
17. In Québec, OTC Derivative transactions are subject to the *Derivatives Act* (Québec), which sets out a comprehensive scheme for the regulation of derivative transactions that is distinct from Québec’s securities regulatory requirements.
18. In each of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia and Saskatchewan (the **Blanket Order Jurisdictions**) and Québec (collectively, the **OTC Exemption Jurisdictions**), OTC Derivative transactions are generally not subject to securities or derivative regulatory requirements, pursuant to applicable exemptions (the **OTC Derivative Exemptions**), when they are negotiated, bilateral contracts that are entered into between sophisticated non-retail parties, referred to as “Qualified Parties” in the Blanket Order Jurisdictions and “accredited counterparties” in Québec.
19. The corresponding OTC Derivative Exemptions are as follows:

Alberta	ASC Blanket Order 91-507 <i>Over-the-Counter Trades in Derivatives</i>
British Columbia	Blanket Order 91-501 <i>Over-the-Counter Derivatives</i>
Manitoba	Blanket Order 91-501 <i>Over-the-Counter Trades in Derivatives</i>
New Brunswick	Local Rule 91-501 <i>Derivatives</i>
Nova Scotia	Blanket Order 91-501 <i>Over the Counter Trades in Derivatives</i>
Saskatchewan	General Order 91-908 <i>Over-the-Counter Derivatives</i>
Québec	Section 7 of the <i>Derivatives Act</i> (Québec)

**The Evolving Regulation of OTC Derivative Transactions as Derivatives**

20. Each of the OTC Exemption Jurisdictions has sought to address the regulatory uncertainty associated with the regulation of OTC Derivative transactions as securities by regulating them as derivatives rather than securities, whether directly through the adoption of a distinct regulatory framework for derivatives in Québec, or indirectly through amendments to the definition of the term “security” in the securities legislation of the other OTC Exemption Jurisdictions and the granting of the OTC Derivative Exemptions.
21. Between 1994 and 2000, the OSC sought to achieve a similar objective by introducing proposed OSC Rule 91-504 *Over-the-Counter Derivatives* (the **Proposed OSC Rule**) for the purpose of establishing a uniform, clearly defined regulatory framework for the conduct of OTC Derivative transactions in Ontario, but the Proposed OSC Rule was returned to the OSC for further consideration by Ontario’s Minister of Finance in November, 2000.

22. The Final Report of the Ontario Commodity Futures Act Advisory Committee, published in January, 2007, concluded that OTC Derivative contracts are not suited to being regulated in accordance with traditional securities regulatory requirements and should, therefore, be excluded from the scope of securities legislation because they are used for commercial-risk management purposes and not for investment or capital-raising purposes.
23. Ontario has now established a framework for regulating the trading of derivatives in Ontario (the **Ontario Derivatives Framework**) through amendments to the OSA that were made by the *Helping Ontario Families and Managing Responsibility Act*, 2010 (Ontario).
24. The amendments to the OSA establishing the Ontario Derivatives Framework will not become effective until the date on which they are proclaimed in force. These amendments are not expected to be proclaimed in force until an ongoing public consultation on the regulation of OTC Derivatives has been completed. On April 19, 2018, the Canadian Securities Administrators (the **CSA**) published a Notice and Request for Comment on the Proposed National Instrument 93-102 *Derivatives: Registration*, and on June 14, 2018, the CSA published a Notice and Second Request for Comment on the Proposed National Instrument 93-101 *Derivatives: Business Conduct*, which, together, are intended to implement a comprehensive regime for the regulation of persons or companies that are in the business of trading or advising on derivatives.

**Reasons for the Requested Relief**

25. The Requested Relief would substantially address, for the Filer and its Permitted Counterparties, the regulatory uncertainty and fragmentation that is currently associated with the regulation of OTC Derivative transactions in Canada, by permitting the Filer to broker or intermediate these parties in entering into OTC Derivative transactions in reliance upon exemptions from the dealer registration and prospectus requirements of the Legislation that are comparable to the OTC Derivative Exemptions.

**Books, Records and Reporting**

26. The Filer will become a "market participant" for the purposes of the OSA if the Requested Relief is granted. For the purposes of the OSA, and as a market participant, the Filer is required by subsection 19(1) of the OSA to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under Ontario securities law.
27. For the purposes of its compliance with subsection 19(1) of the OSA, the books and records that the Filer will keep will include books and records that:
  - (a) demonstrate the extent of the Filer's compliance with applicable requirements of securities legislation;
  - (b) demonstrate compliance with the policies and procedures of the Filer for establishing a system of controls and supervision sufficient to provide reasonable assurance that the Filer, and each individual acting on its behalf, complies with securities legislation; and
  - (c) identify all OTC Derivative transactions brokered or intermediated by the Filer and entered into by each of its clients, including the name and address of all parties to the transaction and its terms.
28. To the extent necessary and in respect of the OTC Derivative transactions, the Filer will comply with the derivatives trade reporting rules and instruments in effect in the provinces and territories of Canada.

**Decision**

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

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

- (a) the counterparty to any OTC Derivative transaction that is brokered or intermediated by the Filer is a Permitted Counterparty;
- (b) in the case of any trade brokered or intermediated by the Filer regarding a Permitted Counterparty, the Filer does not offer or provide any credit or margin to the Permitted Counterparty; and

- (c) the Requested Relief shall terminate on the date that is the earlier of:
  - (i) the date that is four years after the date of this decision; and
  - (ii) the coming into force in the Jurisdiction of legislation or a rule that specifically governs dealer, adviser or other registration requirements applicable to market participants in connection with OTC Derivative transactions.

“Frances Kordyback”  
Commissioner  
Ontario Securities Commission

“Raymond Kindiak”  
Commissioner  
Ontario Securities Commission

## DEFINITIONS

**Clearing Corporation** means an association or organization through which Options or futures contracts are cleared and settled.

**Contract for Differences** means an agreement, other than an Option, a Forward Contract, a spot currency contract or a conventional floating rate debt security, that provides for:

- (a) an exchange of principal amounts; or
- (b) the obligation or right to make or receive a cash payment based upon the value, level or price, or on relative changes or movements of the value, level or price of, an Underlying Interest.

**Forward Contract** means an agreement, not entered into or traded on or through an organized market, stock exchange or futures exchange and cleared by a Clearing Corporation, to do one or more of the following on terms or at a price established by or determinable by reference to the agreement and at or by a time established by or determinable by reference to the agreement:

- (a) make or take delivery of the Underlying Interest of the agreement; or
- (b) settle in cash instead of delivery.

**Option** means an agreement that provides the holder with the right, but not the obligation, to do one or more of the following on terms or at a price determinable by reference to the agreement at or by a time established by the agreement:

- (a) receive an amount of cash determinable by reference to a specified quantity of the Underlying Interest of the Option.
- (b) purchase a specified quantity of the Underlying Interest of the Option.
- (c) sell a specified quantity of the Underlying Interest of the Option.

**OTC Derivative** means one or more of, or any combination of, an Option, a Forward Contract, a Contract for Differences or any instrument of a type commonly considered to be a derivative, in which:

- (a) the agreement relating to, and the material economic terms of, the Option, Forward Contract, Contract for Differences or other instrument have been customized to the purposes of the parties to the agreement and the agreement is not part of a fungible class of agreements that are standardized as to their material economic terms;
- (b) the creditworthiness of a party having an obligation under the agreement would be a material consideration in entering into or determining the terms of the agreement; and
- (c) the agreement is not entered into or traded on or through an organized market, stock exchange or futures exchange.

**Underlying Interest** means, for a derivative, the commodity, interest rate, currency, foreign exchange rate, security, economic indicator, index, basket, benchmark or other variable, or another derivative, and, if applicable, any relationship between, or combination of, any of the foregoing, from or on which the market price, value or payment obligations of the derivative are derived or based.

### 2.1.7 Australis Capital Inc.

#### Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Confidentiality – Application by an issuer for a decision that a management information circular previously filed and made public on SEDAR be held in confidence for an indefinite period by the Commission, to the extent permitted by law – incorrect circular contained inaccuracies and outdated information which could potentially cause confusion in the market and prejudice the interests of the inaccurately named dissident shareholders' director nominee – the issuer filed and made public on SEDAR a correct management information circular, without the inaccuracies and outdated information – omitted information would not be material to an investor – relief granted.

#### Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 140(1) and 140(2).

January 8, 2021

**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  
AUSTRALIS CAPITAL INC.  
(the Filer)**

**DECISION**

#### Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**), being section 140(2) of the *Securities Act* (Ontario), that the requirement for public inspection of records not apply to the version of the Filer's management information circular dated October 6, 2020 that was erroneously filed on the System for Electronic Document Analysis and Retrieval (**SEDAR**) on October 13, 2020 (the **Incorrect Circular**) and that the Incorrect Circular be held in confidence for an indefinite period, to the extent permitted by law (the **Exemption Sought**).

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

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

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

#### Interpretation

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

#### Representations

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

1. the Filer is a corporation formed under the *Business Corporations Act* (Alberta);
2. the Filer's head office is located in Las Vegas, Nevada and its registered and records office is located in Calgary, Alberta;
3. the common shares of the Filer are listed on the Canadian Securities Exchange;
4. the Filer is a reporting issuer in all of the provinces and territories in Canada;
5. the Filer is not in default of any securities legislation in any jurisdiction of Canada;
6. on October 13, 2020, the Filer filed the Incorrect Circular on SEDAR in accordance with Part 9 of National Instrument 51-102 *Continuous Disclosure Obligations (NI 51-102)*, which contained inaccuracies and outdated information that could be misleading to shareholders, including naming the incorrect slate of dissident nominee directors (the **Misleading Information**);
7. following discussions with staff of the British Columbia Securities Commission (**BCSC**), on October 14, 2020, the Filer filed the correct management information circular (**Correct Circular**), without the Misleading Information, on SEDAR in accordance with Part 9 of NI 51-102 and staff of the BCSC temporarily marked the Incorrect Circular private on SEDAR pending the decision of the principal regulator;
8. The Misleading Information could potentially prejudice the interests of the inaccurately named dissident shareholders' director nominee;
9. the Incorrect Circular has been superseded in its entirety by the Correct Circular and leaving both the Incorrect Circular and the Correct Circular on SEDAR could cause confusion amongst investors;

10. the making and keeping private of the Incorrect Circular will not adversely affect investors or impact any investment decision made by an investor with respect to the Filer and therefore, there would be no prejudice or harm to the public as a result of the Incorrect Circular remaining private;
11. the desirability of avoiding further disclosure of the Incorrect Circular outweighs the desirability of adhering to the principle that such material be available to the public for inspection, and disclosure of the Misleading Information is not necessary in the public interest; and
12. the Filer acknowledges that making the Incorrect Circular private on SEDAR does not guarantee that the Incorrect Circular is not available elsewhere in the public domain.

**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.

“Heather Zordel”  
Commissioner  
Ontario Securities Commission

“Mary Anne De Monte-Whelan”  
Commissioner  
Ontario Securities Commission

**2.2 Orders**

**2.2.1 Douglas John Eley – s. 144**

File No. 2020-35

**IN THE MATTER OF  
DOUGLAS JOHN ELEY**

Raymond Kindiak, Commissioner and Chair of the Panel  
Craig Hayman, Commissioner

March 10, 2021

**ORDER  
(Section 144 of the *Securities Act*, RSO 1990, c S.5)**

**WHEREAS** on March 5, 2021, the Ontario Securities Commission issued an order with reasons to follow (the **Commission Order**) dismissing the application brought by Douglas John Eley (**Eley**) to review decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**) dated January 28, 2020 and October 6, 2020, respectively, and providing that the stay order issued by the Commission on November 16, 2020 (the **Stay Order**) will remain in effect for 10 days following the date of the Commission Order;

**WHEREAS** on March 8, 2021, Eley requested that the Stay Order not terminate 10 days after the date of the Commission Order and instead remain in effect for 10 days following the date of the release of the reasons for the Commission Order;

**ON READING** the request from Eley, and Staff of IIROC and Staff of the Commission taking no position on the request;

**IT IS ORDERED THAT** the Commission Order is varied such that the Stay Order shall remain in effect for 10 days following the date of the release of the reasons for the Commission Order.

“Raymond Kindiak”

“Craig Hayman”

2.2.2 Alvin Jones

File No. 2021-5

IN THE MATTER OF  
ALVIN JONES

M. Cecilia Williams, Commissioner and Chair of the Panel

March 11, 2021

ORDER

**WHEREAS** on March 11, 2021, the Ontario Securities Commission held a hearing by teleconference in relation to the application brought by Alvin Jones (**Jones**) (the **Application**) to review a decision of the Investment Industry Regulatory Organization of Canada (**IIROC**) dated December 10, 2020;

**ON READING** the Application and on hearing the submissions of the representatives for Jones, Staff of the IIROC and Staff of the Commission;

**IT IS ORDERED THAT:**

1. Jones shall serve and file the record of the original proceeding by 4:30 p.m. on April 13, 2021;
2. by 4:30 p.m. on April 23, 2021:
  - a. the parties shall give notice of any intention to rely on documents or things not included in the record of the original proceeding, and shall disclose such documents or things; and
  - b. the parties shall serve and file witness lists, and serve summaries of the anticipated evidence of any witnesses, and give notice of any intention to call an expert witness; and
3. a further attendance in this proceeding is scheduled for April 28, 2021 at 10:00 a.m., by teleconference, or on such other dates or times as may be agreed to by the parties and set by the Office of the Secretary.

“M. Cecilia Williams”

2.2.3 Sean Daley and Kevin Wilkerson

File No. 2019-39

IN THE MATTER OF  
SEAN DALEY AND  
KEVIN WILKERSON

M. Cecilia Williams, Commissioner and Chair of the Panel

March 12, 2021

ORDER

**WHEREAS** on March 12, 2021, the Ontario Securities Commission (the **Commission**) held a hearing by teleconference;

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

**IT IS ORDERED THAT:**

1. Staff shall serve the respondents with a hearing brief containing copies of the documents, and identifying the other things, that Staff intends to produce or enter as evidence at the merits hearing, by 4:30 p.m. on March 19, 2021;
2. Mr. Daley shall provide Staff with a list of the documents that he intends to rely on as evidence at the merits hearing by 4:30 p.m. on March 19, 2021; and
3. each Party shall provide to the Registrar the electronic documents that the Party intends to rely on or enter into evidence at the merits hearing, along with an index file containing hyperlinks to the documents in the hearing brief, in accordance with the *Protocol for E-hearings* by 4:30 p.m. on April 5, 2021.

“M. Cecilia Williams”

**2.2.4 360 Treasury Systems AG et al. – s. 144 of the OSA and s. 78 of the CFA**

**Headnote**

Subsection 144(1) of the Securities Act (Ontario) and subsection 78(1) of the Commodity Futures Act (Ontario) – application for an order varying the Commission’s orders exempting foreign commodity futures exchanges, multilateral trading facilities and swap execution facilities carrying on business in Ontario (collectively, exempt foreign exchanges) from the requirement to be recognized as exchanges and, if applicable, from the requirement to be registered as a commodity futures exchange – variation required to streamline the regulatory reporting requirements applicable to foreign exempt exchanges and to reduce regulatory burden – requested order granted.

**Applicable Legislative Provisions**

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144.  
Commodity Futures Act, R.S.O. 1990, c. C.20, as am., ss. 15, 78.

**IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, CHAPTER S.5 AS AMENDED  
(The OSA)**

**AND**

**IN THE MATTER OF  
THE COMMODITY FUTURES ACT,  
R.S.O. 1990, CHAPTER C.20 AS AMENDED  
(The CFA)**

**AND**

**IN THE MATTER OF  
360 TREASURY SYSTEMS AG (360 MTF)  
360 TRADING NETWORKS INC. (360 SEF)  
BGC DERIVATIVES MARKETS, L.P. (BGCDM)  
BLOOMBERG SEF LLC (BSEF)  
BOARD OF TRADE OF THE CITY OF CHICAGO, INC. (CBOT)  
Cboe SEF, LLC (Cboe)  
CHICAGO MERCANTILE EXCHANGE INC. (CME)  
CME AMSTERDAM B.V. (CME MTF)  
COMMODITY EXCHANGE INC. (COMEX)  
DW SEF LLC (DW SEF)  
FINANCIAL & RISK TRANSACTIONS SERVICES IRELAND LIMITED (FRSIL)  
GFI SWAPS EXCHANGE LLC (GFI)  
ICAP GLOBAL DERIVATIVES LIMITED (IGDL)  
ICE FUTURES (ICE Europe)  
ICE FUTURES U.S., INC. (ICE US)  
ICE SWAP TRADE LLC (ICE Swap)  
LatAm SEF, LLC (LatAm)  
MarketAxess SEF CORPORATION (MarketAxess)  
NEW YORK MERCANTILE EXCHANGE, INC. (NYMEX)  
NEX SEF LIMITED (NEX)  
NODAL EXCHANGE, LLC (Nodal)  
REFINITIV US SEF LLC (Refinitiv SEF)  
STATE STREET GLOBAL MARKETS INTERNATIONAL LIMITED (State Street)  
SwapEx LLC (SwapEx)  
THE LONDON METAL EXCHANGE (LME)  
tpSEF INC. (tpSEF)  
TRADITION SEF INC. (Tradition)  
TW SEF LLC (TW SEF)  
(each an Exempt Foreign Exchange)**

**VARIATION OF EXEMPTION ORDERS  
(Section 144 of the OSA and section 78 of the CFA)**

**WHEREAS** each Exempt Foreign Exchange has participants or intends to have participants in Ontario and is considered to be carrying on business in Ontario as an exchange;

**AND WHEREAS** each of CBOT, CME, COMEX, ICE Europe, ICE US, NYMEX, Nodal and LME is also carrying on business in Ontario as a commodity futures exchange;

**AND WHEREAS** the Commission has issued orders pursuant to section 147 of the OSA exempting each Exempt Foreign Exchange from the requirement to be recognized as an exchange under subsection 21(1) if the OSA (each an **Exemption Order**);

**AND WHEREAS** the Exemption Order for each of CBOT, CME, COMEX, ICE Europe, ICE US, NYMEX, Nodal and LME also exempts each from the requirement to be registered as a commodity futures exchange under subsection 15(1) of the CFA;

**AND WHEREAS** each Exemption Order contains terms and conditions requiring the Exempt Foreign Exchange to, among other things, report certain information to the Commission at certain times and places other terms and conditions governing access by participants in Ontario;

**AND WHEREAS** the Commission has determined that it would not be prejudicial to the public interest to reduce regulatory burdens on Exempt Foreign Exchanges and to streamline the terms and conditions of the Exemption Orders;

**IT IS HEREBY ORDERED** by the Commission pursuant to section 144 of the OSA that

- (a) the Exemption Orders for 360 SEF, BGCDM, BSEF, Cboe, DW SEF, GFI, IGDL, ICE Swap, LatAm, MarketAxess, NEX, Refinitiv SEF, SwapEx, tpSEF, Tradition and TW SEF are varied by replacing the text of Schedule "A" of each Exemption Order with the text of Appendix A of this order;
- (b) the Exemption Order for 360 MTF is varied by replacing the text of Schedule "A" with the text of Appendix B of this order;
- (c) the Exemption Order for CME MTF is varied by replacing the text of Schedule "A" with the text of Appendix C of this order;
- (d) the Exemption Order for FRTSIL is varied by replacing the text of Schedule "A" with the text of Appendix D of this order;
- (e) the Exemption Order for State Street is varied by replacing the text of Schedule "A" with the text of Appendix E of this order;

**AND IT IS FURTHER ORDERED** by the Commission pursuant to section 144 of the OSA and section 78 of the CFA that

- (f) the Exemption Order for CBOT, CME, COMEX, and NYMEX is varied by replacing the text of Schedule "A" with the text of Appendix F of this order;
- (g) the Exemption Order for ICE Europe is varied by replacing the text of Schedule "B" with the text of Appendix G of this order;
- (h) the Exemption Order for ICE US is varied by replacing the text of Schedule "B" with the text of Appendix H of this order;
- (i) the Exemption Order for Nodal is varied by replacing the text of Schedule "A" with the text of Appendix I of this order; and
- (j) the Exemption Order for LME is varied by replacing the text of Schedule "A" with the text of Appendix J of this order.

**DATED** March 11, 2021

"Frances Kordyback"

"Raymond Kindiak"

**APPENDIX A**  
**(360 SEF, BGCDM, BSEF, Cboe, DW SEF, GFI, IGDL, ICE Swap, LatAm, MarketAxess, NEX, Refinitiv SEF, SwapEx, tpSEF, Tradition and TW SEF)**

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. The Applicant will continue to meet the criteria for exemption included in Appendix 1 to this Schedule.

**Regulation and Oversight of the Applicant**

2. The Applicant will maintain its registration as a swap execution facility (**SEF**) with the Commodity Futures Trading Commission (**CFTC**) and will continue to be subject to the regulatory oversight of the CFTC.
3. The Applicant will continue to comply with the ongoing requirements applicable to it as a SEF registered with the CFTC.
4. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

**Access**

5. The Applicant will not provide direct access to a participant in Ontario (**Ontario User**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an "eligible contract participant" under the United States Commodity Exchange Act, as amended (**CEA**).
6. For each Ontario User provided direct access to its SEF, the Applicant will require, as part of its application documentation or continued access to the SEF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
7. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote on the Applicant.
8. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the Applicant if the Ontario User is no longer appropriately registered or exempt from those requirements.

**Trading by Ontario Users**

9. The Applicant will not provide access to an Ontario User to trading in products other than swaps, as defined in section 1a(47) of the CEA (and for greater certainty, excluding security-based swaps), without prior Commission approval.

**Submission to Jurisdiction and Agent for Service**

10. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
11. The Applicant will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

### Prompt Reporting

12. The Applicant will notify staff of the Commission promptly of:
- (a) any authorization to carry on business granted by the CFTC is revoked or suspended or made subject to terms or conditions on the Applicant's operations;
  - (b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it;
  - (c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;
  - (d) the Applicant marketplace is not in compliance with this order or with any applicable requirements, laws or regulations of the CFTC where it is required to report such non-compliance to the CFTC;
  - (e) any known investigations of, or disciplinary action against, the Applicant by the CFTC or any other regulatory authority to which it is subject; and
  - (f) the Applicant makes any material change to the eligibility criteria for Ontario Users.

### Semi-Annual Reporting

13. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading as customers of participants (**Other Ontario Participants**);
  - (b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;
  - (c) a list of all Ontario Users against whom disciplinary action has been taken since the previous report by the Applicant or its RSP acting on its behalf, or, to the best of the Applicant's knowledge, by the CFTC with respect to such Ontario Users' activities on the Applicant and the aggregate number of disciplinary actions taken against all participants since the previous report by the Applicant or its RSP acting on its behalf;
  - (d) a list of all active investigations since the previous report by the Applicant or its RSP acting on its behalf relating to Ontario Users and the aggregate number of active investigations since the previous report relating to all participants undertaken by the Applicant;
  - (e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant since the previous report, together with the reasons for each such denial; and
  - (f) for each product,
    - (i) the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and
    - (ii) the proportion of worldwide trading volume and value on the Applicant conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format.

### Information Sharing

14. The Applicant will provide and, if applicable, cause its regulation services provider (**RSP**) to provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

**APPENDIX B  
(360 MTF)**

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. 360 Treasury Systems AG ("**360T**") will continue to meet the criteria for exemption included in Appendix 1 to this Schedule.

**Regulation and Oversight of 360T**

2. 360T will maintain its registration as a multilateral trading facility ("**MTF**") with the German Federal Financial Services Authority ("**BaFin**") and will continue to be subject to the regulatory oversight of BaFin.
3. 360T will continue to comply with the ongoing requirements applicable to it as an MTF registered with BaFin.
4. 360T will promptly notify the Commission if its registration as an MTF has been revoked, suspended, or amended by BaFin, or the basis on which its registration as an MTF has been granted has significantly changed.
5. 360T must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

**Access**

6. 360T will not provide direct access to a participant in Ontario ("**Ontario User**") unless the Ontario User is appropriately registered as applicable under Ontario securities laws or exempt from or not subject to those requirements, and qualifies an "eligible counterparty" or "professional client" under the Markets in Financial Instruments Directive 2014/65/EU (MiFID II) and the Markets in Financial Instruments Regulation (EU) No 600/2014 (MiFIR), both as amended.
7. For each Ontario User provided direct access to its MTF, 360T will require, as part of its application documentation or continued access to the MTF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
8. 360T may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided 360T notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the MTF.
9. 360T will require Ontario Users to notify 360T if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, 360T will promptly restrict the Ontario User's access to 360T if the Ontario User is no longer appropriately registered or exempt from those requirements.

**Trading by Ontario Users**

10. 360T will not provide access to an Ontario User to trading in products other than "swaps," as defined in section 1a(47) of the United States Commodity Exchange Act ("**CEA**") as amended (and for greater certainty, excluding security-based swaps), without prior Commission approval.

**Submission to Jurisdiction and Agent for Service**

11. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of 360T in Ontario, 360T will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
12. 360T will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of 360T's activities in Ontario.

### Prompt Reporting

13. 360T will notify staff of the Commission promptly of any of:
- (a) any authorization to carry on business granted by BaFin is revoked or suspended or made subject to terms or conditions on 360T's operations;
  - (b) 360T institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate 360T or has a proceeding for any such petition instituted against it;
  - (c) A receiver is appointed for 360T or 360T makes any voluntary arrangement with creditors;
  - (d) 360T marketplace is not in compliance with this Order or with any applicable requirements, laws or regulations of BaFin where it is required to report such on-compliance to BAFin;
  - (e) any known investigations of, or disciplinary action against, 360T by BaFin or any other regulatory authority to which it is subject; and
  - (f) 360T makes any material change to the eligibility criteria for Ontario Users.

### Semi-Annual Reporting

14. 360T will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by 360T, other persons or companies located in Ontario trading on the MTF as customers of participants (Other Ontario Participants);
  - (b) the legal entity identifier assigned to each Ontario User, and, to the extent known by 360T, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;
  - (c) a list of all Ontario Users whom 360T has referred to BaFin, or, to the best of 360T's knowledge, whom have been disciplined by BaFin with respect to such Ontario Users' activities on the MTF and the aggregate number of all participants referred to BaFin in since the previous report by 360T;
  - (d) a list of all active investigations during the quarter by 360T relating to Ontario Users and the aggregate number of active investigations since the previous report relating to all participants undertaken by 360T;
  - (e) a list of all Ontario applicants for status as a participant who were denied such status or access to 360T since the previous report, together with the reasons for each such denial; and
  - (f) for each product,
    - i. the total trading volume and value originating from Ontario Users, and, to the extent known by 360T, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and
    - ii. the proportion of worldwide trading volume and value on 360T conducted by Ontario Users, and, to the extent known by 360T, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format.

### Information Sharing

15. 360T will provide and, if applicable, cause its regulation services provider (RSP) to provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

**APPENDIX C  
(CME MTF)**

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. The Applicant will continue to meet the criteria for exemption included in Appendix I to this Schedule.

**Regulation and Oversight of the Applicant**

2. The Applicant will maintain its authorisation as the Market Operator of an MTF with the Dutch Minister of Finance and will continue to be subject to the supervision and regulatory oversight of the AFM.
3. The Applicant will continue to comply with the ongoing requirements applicable to it as a Market Operator authorised by the Dutch Minister of Finance and supervised and regulated by the AFM.
4. The Applicant will promptly notify the Commission if its authorisation as a Market Operator has been revoked, suspended, or amended by the Dutch Minister of Finance, or the basis on which its authorisation as a Market Operator has been granted has significantly changed.
5. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

**Access**

6. The Applicant will not provide direct access to a participant in Ontario (**Ontario User**) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, and qualifies as an "eligible counterparty" or "professional client", each as defined in MiFID.
7. For each Ontario User provided direct access to its MTF, the Applicant will require, as part of its application documentation or continued access to the MTF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
8. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the Facility.
9. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the Applicant if the Ontario User is no longer appropriately registered or exempt from those requirements.

**Trading by Ontario Users**

10. The Applicant will not provide access to an Ontario User to trading in products other than FX derivatives without prior Commission approval.

**Submission to Jurisdiction and Agent for Service**

11. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
12. The Applicant will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

### Prompt Reporting

13. The Applicant will notify staff of the Commission promptly of:
- (a) any authorization to carry on business granted by the AFM is revoked or suspended or made subject to terms or conditions on the Applicant's operations;
  - (b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it;
  - (c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;
  - (d) the Applicant marketplace is not in compliance with this Order or with any applicable requirements, laws or regulations of the AFM where it is required to report such non-compliance to the AFM;
  - (e) any known investigations of, or disciplinary action against, the Applicant by the AFM or any other regulatory authority to which it is subject; and
  - (f) the Applicant makes any material change to the eligibility criteria for Ontario Users.

### Semi-Annual Reporting

14. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading on the Facility as customers of participants (**Other Ontario Participants**);
  - (b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;
  - (c) a list of all Ontario Users whom the Applicant has referred to the AFM, or, to the best of the Applicant's knowledge, whom have been disciplined by the AFM with respect to such Ontario Users' activities on the Facility and the aggregate number of all participants referred to the AFM since the last report by the Applicant;
  - (d) a list of all active investigations since the last report by the Applicant relating to Ontario Users and the aggregate number of active investigations since the last report relating to all participants undertaken by the Applicant;
  - (e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant since the last report, together with the reasons for each such denial; and
  - (f) for each product,
    - i. the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and
    - ii. (ii) the proportion of worldwide trading volume and value on the Applicant conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format.

### Information Sharing

15. The Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

**APPENDIX D  
(FRTSIL (Refinitiv Multilateral Trading Facility))**

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. The Applicant will continue to meet the criteria for exemption included in Appendix 1 to this Schedule.

**Regulation and Oversight of the Applicant**

2. The Applicant will maintain its permission to operate as a multilateral trading facility (MTF) with the Central Bank of Ireland (CBI) and will continue to be subject to the regulatory oversight of the CBI.
3. The Applicant will continue to comply with the ongoing requirements applicable to it as the operator of an MTF authorized by the CBI.
4. The Applicant must do everything within its control, which includes cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

**Access**

5. The Applicant will not provide direct access to a participant in Ontario (Ontario User) unless the Ontario User is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements and qualifies as an "eligible counterparty" (either "per se" or "elective"), as defined by Regulation 38 of the European Union (Markets in Financial Instruments) Regulations 2017.
6. For each Ontario User provided direct access to its MTF, the Applicant will require, as part of its application documentation or continued access to the MTF, the Ontario User to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
7. The Applicant may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements, provided the Applicant notifies such Ontario User that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses the Applicant's MTF.
8. The Applicant will require Ontario Users to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario User and subject to applicable laws, the Applicant will promptly restrict the Ontario User's access to the MTF if the Ontario User is no longer appropriately registered or exempt from those requirements.

**Trading by Ontario Users**

9. The Applicant will not provide access to an Ontario User to trading in products other than swaps, as defined in section 1a(47) of the United States Commodity Exchange Act as amended, without prior Commission approval.

**Submission to Jurisdiction and Agent for Service**

10. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
11. The Applicant will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the Applicant's activities in Ontario.

### Prompt Reporting

12. The Applicant will notify staff of the Commission promptly of:
- (a) any authorization to carry on business granted by the CBI is revoked or suspended or made subject to terms or conditions on the Applicant's operations;
  - (b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it;
  - (c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;
  - (d) the Applicant marketplace is not in compliance with this Order or with any applicable requirements, laws or regulations of the CBI where it is required to report such non-compliance to the CBI;
  - (e) any known investigations of, or disciplinary action against, the Applicant by the CBI or any other regulatory authority to which it is subject; and
  - (f) the Applicant makes any material change to the eligibility criteria for Ontario Users.

### Semi-Annual Reporting

13. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half) , and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the Applicant, other persons or companies located in Ontario trading on the Applicant's MTF as customers of participants (**Other Ontario Participants**);
  - (b) the legal entity identifier assigned to each Ontario User, and, to the extent known by the Applicant, to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;
  - (c) a list of all Ontario Users whom the Applicant has referred to the CBI, or, to the best of the Applicant's knowledge, whom have been disciplined by the CBI with respect to such Ontario Users' activities on the Applicant's MTF and the aggregate number of all participants referred to the CBI since the previous report by the Applicant;
  - (d) a list of all active investigations since the previous report by the Applicant relating to Ontario Users and the aggregate number of active investigations since the previous report relating to all participants undertaken by the Applicant;
  - (e) a list of all Ontario applicants for status as a participant who were denied such status or access to the Applicant since the previous report, together with the reasons for each such denial; and
  - (f) for each product,
    - (i) the total trading volume and value on the MTF originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and
    - (ii) the proportion of worldwide trading volume and value on the MTF conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format.

### Information Sharing

14. The Applicant will provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

**APPENDIX E**  
**(State Street (Currenex MTF and FX Connect Multilateral Trading Facility))**

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. The Applicant will continue to meet and will cause the State Street MTFs to continue to meet the criteria for exemption included in Appendix 1 to this Schedule.

**Regulation and Oversight of the Applicant**

2. The Applicant will maintain its permission to operate the State Street MTFs as MTFs with the FCA in the United Kingdom and will continue to be subject to the regulatory oversight of the FCA.
3. The Applicant will continue to comply with the ongoing requirements applicable to it as the operator of an MTF registered with the FCA.
4. The Applicant will only operate the State Street MTFs in Ontario.
5. The Applicant, as operator of the State Street MTFs, must do everything within its control to ensure that, in respect of FX Connect and Currenex, it carries out activities as an exchange exempted from recognition under subsection 21(1) of the Act in compliance with Ontario securities law.

**Access**

6. The Applicant will not provide direct access to an Ontario Member to FX Connect or Currenex unless the Ontario Member is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements and qualifies as an "eligible counterparty" under MiFID II and MiFIR, both as amended.
7. For each Ontario Member provided direct access to FX Connect and Currenex, the Applicant will require, as part of its application documentation or continued access to FX Connect and Currenex, the Ontario Member to represent that it is appropriately registered as applicable under Ontario securities laws or is exempt from or not subject to those requirements.
8. The Applicant may reasonably rely on a written representation from the Ontario Member that specifies either that it is appropriately registered as applicable under Ontario securities laws or is exempted from or not subject to those requirements provided the Applicant notifies such Ontario Member that this representation is deemed to be repeated each time it enters an order, request for quote or response to a request for quote or otherwise uses FX Connect or Currenex.
9. The Applicant will require Ontario Members to notify the Applicant if their registration as applicable under Ontario securities laws has been revoked, suspended, or amended by the Commission or if they are no longer exempt from or become subject to those requirements and, following notice from the Ontario Member and subject to applicable laws, the Applicant will promptly restrict the Ontario Member's access to FX Connect and Currenex if the Ontario Member is no longer appropriately registered or exempt from those requirements.

**Trading by Ontario Members**

10. The Applicant, as operator of the State Street MTFs, will not provide access to an Ontario Member to trade in products other than swaps and security-based swaps, as defined in section 1a(47) of the United States Commodity Exchange Act, as amended, without prior Commission approval.

**Submission to Jurisdiction and Agent for Service**

11. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of the Applicant in Ontario, the Applicant will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
12. The Applicant will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or, concerning the Commission's regulation and oversight of the Applicant's activities in Ontario.

### Prompt Reporting

13. The Applicant will notify staff of the Commission promptly when:
- (a) any authorization to carry on business granted by the FCA is revoked or suspended or made subject to terms or conditions on the operations of FX Connect or Currenex;
  - (b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant, or has a proceeding for any such petition instituted against it;
  - (c) a receiver is appointed for the Applicant, or the Applicant makes any voluntary agreement with creditors;
  - (d) the Applicant, FX Connect or Currenex is not in compliance with this order or with any applicable requirements, laws or regulations of the FCA where it is required to report such non-compliance to the FCA;
  - (e) any known investigations of, or disciplinary action against the Applicant by the FCA or any other regulatory authority to which it is subject;
  - (f) the Applicant makes any material change to the eligibility criteria to FX Connect and Currenex for Ontario participants;

### Semi-Annual Reporting

14. The Applicant will maintain the following updated information in reference to FX Connect and Currenex and submit such information for each of FX Connect and Currenex in a manner and form acceptable to the Commission on a semi-annual basis (by July 31<sup>st</sup> for the first half of the calendar year and by January 31<sup>st</sup> of the following year for the second half), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Members and whether the Ontario Member is registered under Ontario securities laws or is exempt or not subject to registration and, to the extent known to the Applicant, of other persons or companies located in Ontario trading on FX Connect and Currenex as customers of participants (**“Other Ontario Participants”**);
  - (b) the legal entity identifier assigned to each Ontario Member and, to the extent known by the Applicant, to Other Ontario Participants, in accordance with the standards set by the Global Legal Entity Identifier System;
  - (c) a list of all Ontario Members against whom disciplinary action has been taken since the previous report by the Applicant or, to the best of the Applicant’s knowledge, by the FCA with respect to such Ontario Members’ activities on FX Connect and Currenex and the aggregate number of all Members referred to the FCA since the previous report by the Applicant;
  - (d) a list of all active investigations by the Applicant relating to Ontario Members and the aggregate number of active investigations since the previous report relating to all Members;
  - (e) a list of all Ontario applicants for status as a Member who were denied such status or access to FX Connect or Currenex since the previous report, together with the reasons for each such denial; and
  - (f) for each product, in the required format, and for each of FX Connect and Currenex:
    - (i) the total trading volume and value originating from Ontario Members and, to the extent known by the Applicant, from Other Ontario Participants presented on a per Ontario Member or a per Other Ontario Participant basis, and
    - (ii) the proportion of worldwide trading volume and value conducted by Ontario Members and, to the extent known by the Applicant, by Other Ontario Participants presented in the aggregate for such Ontario Members and Other Ontario Participants,

presented in the required format.

### Information Sharing

15. The Applicant, in reference to the State Street MTFs, will provide and, if applicable, cause its regulation services provider to provide such information as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

**APPENDIX F  
(CBOT, CME, COMEX, and NYMEX)**

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. Each CMEG Exchange will continue to meet the criteria for exemption included in Appendix 1 to this schedule.

**Regulation and Oversight of the CMEG Exchanges**

2. Each CMEG Exchange will maintain its registration as a DCM with the CFTC and will continue to be subject to the regulatory oversight of the CFTC.
3. Each CMEG Exchange will continue to comply with the ongoing requirements applicable to it as a DCM registered with the CFTC.
4. Each CMEG Exchange must do everything within its control, which would include cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the OSA, as a commodity futures exchange exempted from registration under subsection 15(1) of the CFA, and in compliance with Ontario securities law and Ontario commodity futures law.

**Access**

5. A CMEG Exchange will not provide direct access to an Ontario User unless the Ontario User is appropriately registered to trade in CMEG Contracts, has obtained an exemption from registration, is a Hedger, or is a Bank; in making this determination, a CMEG Exchange may reasonably rely on a written representation from the Ontario User that specifies either that it is appropriately registered to trade in CMEG Contracts, has obtained an exemption from registration, is a Hedger, or is a Bank, and the CMEG Exchange will notify such Ontario User that this representation is deemed to be repeated each time it enters an order for a CMEG Contract.
6. Each Ontario User that intends to rely on the Hedger Relief will be required to, as part of its application documentation or continued access to trading in CMEG Contracts:
  - (a) represent that it is a Hedger;
  - (b) acknowledge that the CMEG Exchanges deem the Hedger representation to be repeated by the Ontario User each time it enters an order for a CMEG Contract and that the Ontario User must be a Hedger for the purposes of each trade resulting from such an order;
  - (c) agree to notify the CMEG Exchanges if it ceases to be a Hedger;
  - (d) represent that it will only enter orders for its own account;
  - (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements; and
  - (f) acknowledge that its ability to continue to rely on the Hedger Relief in accessing trading on the CMEG Exchanges will be dependent on the Commission continuing to grant the relief and may be affected by changes to the terms and conditions imposed in connection with the Hedger Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, Commodity Futures or securities.
7. Each Ontario User that intends to rely on the Bank Relief will be required to, as part of its application documentation or continued access to trading in CMEG Contracts:
  - (a) represent that it will only enters as principal and for its own account only;
  - (b) represent that it is a Bank;
  - (c) acknowledge that the Bank Relief may be affected by changes to the terms and conditions imposed in connection with the Bank Relief or by changes to Ontario securities laws or Ontario commodity laws pertaining to derivatives, Commodity Futures or securities; and
  - (d) represent that it is not engaging in activities prohibited by its governing legislation.

8. Each CMEG Exchange will require Ontario Users to notify the CMEG Exchange if their registration or exemption from registration has been revoked, suspended or amended by the Commission or if they have ceased to be eligible for the Registration Relief and, following notice from the Ontario User or the Commission and subject to applicable laws, the CMEG Exchange will promptly restrict the Ontario User's access to the CMEG Exchange if the Ontario User is no longer appropriately registered with the Commission, or is no longer eligible for the Registration Relief.
9. Each CMEG Exchange must provide guidance to all CMEG Exchange Clearing Members that provide access to trading for Order-Routing Clients that are Ontario Participants that indicates that the CMEG Exchange Clearing Member is permitted to grant such access provided that (i) the Order-Routing Client is a registered futures commission merchant (**FCM**) under the CFA; (ii) the CMEG Exchange Clearing Member is a registered FCM under the CFA or (iii) the CMEG Exchange Clearing Member is regulated as a "dealer" (as that term is defined in subsection 1(1) of the CFA) in its home jurisdiction and the Order-Routing Client is a Hedger or is able to rely on another exemption from registration under the CFA.

**Trading by Ontario Users**

10. A CMEG Exchange will not provide access to an Ontario User to trading in the exchange-traded products of an exchange other than those of the CMEG Exchange, unless such other exchange has sought and received appropriate regulatory standing in Ontario.
11. A CMEG Exchange will not provide access to an Ontario User to trading in CMEG Contracts other than those that meet the definition of "commodity futures contract" or "commodity futures option" as defined in subsection 1(1) of the CFA, and which also fall under paragraph (p) of the definition of "security" in subsection 1(1) of the OSA, without prior Commission approval.

**Submission to Jurisdiction and Agent for Service**

12. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of a CMEG Exchange in Ontario, the CMEG Exchange will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
13. Each CMEG Exchange will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Commission's regulation and oversight of a CMEG Exchange's activities in Ontario.

**Prompt Reporting**

14. Each CMEG exchange will notify staff of the Commission promptly of:
  - (a) any authorization to carry on business granted by the CFTC is revoked or suspended or made subject to terms or conditions on the CMEG Exchange's operations;
  - (b) the CMEG Exchange institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the CMEG Exchange or has a proceeding for any such petition instituted against it;
  - (c) a receiver is appointed for the CMEG Exchange or the CMEG Exchange makes any voluntary arrangement with creditors;
  - (d) the CMEG Exchange is not in compliance with this Order or with any applicable requirements, laws or regulations of the CFTC where it is required to report such non-compliance to the CFTC;
  - (e) any known investigations of, or disciplinary action against, the CMEG Exchange by the CFTC or any other regulatory authority to which it is subject; and
  - (f) the CMEG Exchange makes any material change to the eligibility criteria for Ontario Users.

### Semi-Annual Reporting

15. Each CMEG Exchange will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by the CMEG Exchange, other persons or companies located in Ontario trading as customers of participants (**Other Ontario Participants**);
  - (b) to the extent provided to the CMEG Exchange, the legal entity identifier assigned to each Ontario User and to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;
  - (c) a list of all Ontario Users against whom disciplinary action has been taken since the previous report by the CMEG Exchange, or, to the best of the CMEG Exchange's knowledge, by the CFTC with respect to such Ontario Users' activities on the CMEG Exchange and the aggregate number of disciplinary actions taken against all participants since the previous report by the CMEG Exchange;
  - (d) a list of all active investigations since the previous report by the CMEG Exchange relating to Ontario Users and the aggregate number of active investigations since the previous report relating to all participants undertaken by the CMEG Exchange;
  - (e) a list of all Ontario applicants for status as a participant who were denied such status or access to the CMEG Exchange since the previous report, together with the reasons for each such denial; and
  - (f) for each product,
    - (i) the total trading volume and value originating from Ontario Users, and, to the extent known by the Applicant, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and
    - (ii) the proportion of worldwide trading volume and value on the Applicant conducted by Ontario Users, and, to the extent known by the Applicant, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format.

### Information Sharing

16. The CMEG Exchanges will provide information (including additional periodic reporting) as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

**APPENDIX G  
(ICE Futures)**

**SCHEDULE "B"**

**Terms and Conditions**

**REGULATION OF ICE FUTURES**

1. ICE Futures will maintain its recognition by the United Kingdom Financial Conduct Authority (FCA), or any successor regulatory body, as an RIE, or any successor category of recognition.
2. ICE Futures will continue to comply with the ongoing compliance requirements applicable to it as an RIE, or any successor compliance requirements.
3. ICE Futures will continue to meet the criteria for exemption from registration as an exchange, as set out in Schedule "A".

**ACCESS**

4. ICE Futures will not provide direct access to Ontario participants unless they are appropriately registered to trade in ICE Futures Contracts or operating pursuant to an exemption from registration; ICE Futures may reasonably rely on a written representation from each ICE Futures Member in Ontario (Ontario Member) in making this determination and will notify such Ontario Member that this representation is deemed to be repeated each time it enters an order for an ICE Futures Contract.
5. Each applicant for ICE Futures membership that intends to rely on the Hedger Relief will be required, as part of the application documentation to:
  - (a) represent that it is a Hedger;
  - (b) acknowledge that ICE Futures deems the Hedger representation to be repeated by the applicant each time it enters an order for an ICE Futures Contract and that the applicant must be a Hedger for the purposes of each trade resulting from such an order; and
  - (c) agree to notify ICE Futures if the applicant ceases to be a Hedger,
6. All orders for ICE Futures Contracts transmitted to the ICE Platform by a Hedger that is operating pursuant to the Hedger Relief will be solely for their own account.
7. ICE Futures will require Ontario Members to notify ICE Futures if their registration or exemption from registration has been revoked, suspended or amended by the Commission and, following notice from the Ontario Member or the Commission and subject to applicable laws, ICE Futures will promptly restrict access to ICE Futures if the Ontario Member is no longer appropriately registered with or exempted by the Commission.
8. With respect to order-routing access, ICE Futures will ensure that the Ontario Guidance indicates that an ICE Futures Member is permitted to grant access to ICE Futures to a client in Ontario provided that
  - (a) the client is a registered FCM under the CFA;
  - (b) the ICE Futures Member is a registered FCM under the CFA or
  - (c) the ICE Futures Member is regulated as a dealer in its home jurisdiction and the client is a Hedger or is able to rely on another exemption from registration under the CFA.

**NON-REGISTRANTS**

9. ICE Futures will require each Ontario Member that is not registered with the Commission as an FCM to file with ICE Futures a written representation, executed by a person with the authority to bind the Ontario Member, stating that as long as it operates pursuant to the Hedger Relief provided herein, the Ontario Member
  - (a) agrees to and submits to the jurisdiction of the Commission with respect to activities conducted pursuant to the Hedger Relief, and
  - (b) will provide, upon the request of the Commission, prompt access to the books and records of the Ontario Member. ICE Futures will make such representations available to the Commission upon the request of staff of the Commission.

### **SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE**

10. ICE Futures submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of ICE Futures in Ontario.
11. ICE Futures will file with the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning ICE Futures' activities in Ontario.

### **Prompt Notice**

12. ICE Futures will notify staff of the Commission promptly of:
  - (a) any authorization to carry on business granted by the FCA is revoked or suspended or made subject to terms or conditions on the Applicant's operations;
  - (b) ICE Futures institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate ICE Futures or has a proceeding for any such petition instituted against it;
  - (c) a receiver is appointed for ICE Futures or ICE Futures makes any voluntary arrangement with creditors;
  - (d) ICE Futures is not in compliance with this Order or with any applicable requirements, laws or regulations of the FCA where it is required to report such non-compliance to the FCA;
  - (e) any known investigations of, or disciplinary action against, ICE Futures by the FCA or any other regulatory authority to which it is subject;
  - (f) ICE Futures makes any material change to the eligibility criteria for Ontario Members.

### **Semi-Annual Reporting**

13. ICE Futures will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:
  - (a) a current list of all Ontario Members;
  - (b) a list of all Ontario Members against whom disciplinary action has been taken since the previous report by ICE Futures or the FCA with respect to activities on ICE Futures;
  - (c) a list of all investigations by ICE Futures relating to Ontario Members;
  - (d) a list of all Ontario applicants who have been denied membership to ICE Futures;
  - (e) for each ICE Futures Contract, the total trading volume originating from Ontario Members and the proportion of worldwide trading volume on ICE Futures conducted by Ontario Members.

### **INFORMATION SHARING**

14. ICE Futures will, subject to applicable laws, share any and all information within the care and control of ICE Futures and otherwise co-operate wherever reasonable with the Commission or its staff.

**APPENDIX H  
(ICE US)**

**SCHEDULE "B"**

**Terms and Conditions**

**REGULATION OF ICE FUTURES U.S.**

1. The Applicant will maintain its status as a DCM with the CFTC and will continue to be subject to the supervision of the CFTC, or any successor regulatory body, as a DCM, or any successor category of recognition.
2. The Applicant will continue to comply with its ongoing compliance requirements set out in the Core Principles under section 5 of the CEA or any successor compliance requirements.
3. The Applicant will continue to meet the criteria for exemption from registration as an exchange, as set out in Schedule "A".

**ACCESS**

4. The Applicant will not allow Ontario Participants to become Direct Access Users or ICE Futures U.S. members unless they are appropriately registered to trade in ICE Futures U.S. Contracts or are Hedgers.
5. Each Ontario Participant that intends to rely on the Hedger Relief will be required, as part of the application documentation to:
  - (a) represent that it is a Hedger;
  - (b) acknowledge that the Applicant deems the Hedger representation to be repeated by the Ontario Participant each time it enters an order for an ICE Futures U.S. Contract and that the Ontario Participant must be a Hedger for the purposes of each trade resulting from such an order;
  - (c) agree to notify the Applicant if it ceases to be a Hedger;
  - (d) represent that it will only enter trades for its own account; and
  - (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements.
6. The Applicant will require Ontario Participants to notify it if their registration or exemption from registration has been revoked, suspended or amended by the Commission and, following notice from the Ontario Participant or the Commission and subject to applicable laws, the Applicant will promptly restrict the Ontario Participant's access to ICE Futures U.S. if the Ontario Participant is no longer appropriately registered with or exempted by the Commission.

**SUBMISSION TO JURISDICTION AND AGENT FOR SERVICE**

7. The Applicant submits to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario, in a proceeding arising out of, related to or concerning or in any other manner connected with the activities of ICE Futures U.S. in Ontario.
8. The Applicant will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom may be served a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Applicant's activities in Ontario.

**Prompt Reporting**

9. The Applicant will notify staff of the Commission promptly of:
  - (a) any authorization to carry on business granted by the CFTC is revoked or suspended or made subject to terms or conditions on the Applicant's operations;
  - (b) the Applicant institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the Applicant or has a proceeding for any such petition instituted against it;
  - (c) a receiver is appointed for the Applicant or the Applicant makes any voluntary arrangement with creditors;

- (d) the Applicant marketplace is not in compliance with this order or with any applicable requirements, laws or regulations of the CFTC where it is required to report such non-compliance to the CFTC;
- (e) any known investigations of, or disciplinary action against, the Applicant by the CFTC or any other regulatory authority to which it is subject; and
- (f) The Applicant makes any material change to the eligibility criteria for Ontario Participants.

**Semi-Annual Reporting**

- 10. The Applicant will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:
  - (a) a current list of all Ontario Participants that are either exchange members or Direct Access Users;
  - (b) a list of all Ontario Participants that are either exchange members or Direct Access Users against whom disciplinary action has been taken since the previous report by the Applicant or the CFTC with respect to activities on ICE Futures U.S.;
  - (c) a list of all investigations by the Applicant relating to Ontario Participants that are either exchange members or Direct Access Users;
  - (d) a list of all Ontario applicants who have been denied access to ICE Futures U.S.; and
  - (e) for each ICE Futures U.S. Contract, the total trading volume originating from Ontario Participants that are either exchange members or Direct Access Users and the proportion of worldwide trading volume on ICE Futures U.S. conducted by such Ontario Participants.

**INFORMATION SHARING**

- 11. The Applicant will, subject to applicable laws, share any and all information within the care and control of ICE Futures U.S. and otherwise co-operate wherever reasonable with the Commission or its staff.

**APPENDIX I  
(Nodal)**

**SCHEDULE "A"**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. Nodal Exchange will continue to meet the criteria for exemption included in Appendix 1 to this schedule.

**Regulation and Oversight of Nodal Exchange**

2. Nodal Exchange will maintain its registration as a DCM with the CFTC and will continue to be subject to the regulatory oversight of the CFTC.
3. Nodal Exchange will continue to comply with the ongoing requirements applicable to it as a DCM registered with the CFTC.
4. Nodal Exchange must do everything within its control, which would include cooperating with the Commission as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the OSA, as a commodity futures exchange exempted from registration under subsection 15(1) of the CFA, and in compliance with Ontario securities law and Ontario commodity futures law.

**Access**

5. Nodal Exchange will maintain and operate a Trading System where Nodal Exchange Participants trade on a principal-to-principal basis for their own proprietary accounts without the capability to trade through an intermediary in a fiduciary capacity such as a dealer or FCM.
6. Nodal Exchange will not provide direct access to an Ontario Participant unless the Ontario Participant is appropriately registered to trade in Nodal Contracts, has obtained an exemption from registration, is a Hedger, or is a Bank; in making this determination, Nodal Exchange may reasonably rely on a written representation from the Ontario Participant that specifies either that it is appropriately registered to trade in Nodal Contracts, has obtained an exemption from registration, is a Hedger, or is a Bank, and Nodal Exchange will notify such Ontario Participant that this representation is deemed to be repeated each time it enters an order for a Nodal Contract.
7. Each Ontario Participant that intends to rely on the Hedger Relief will be required to, as part of its application documentation or continued access to trading in Nodal Contracts:
  - (a) represent that it is a Hedger;
  - (b) acknowledge that Nodal Exchange deems the Hedger representation to be repeated by the Ontario Participant each time it enters an order for a Nodal Contract and that the Ontario Participant must be a Hedger for the purposes of each trade resulting from such an order;
  - (c) agree to notify Nodal Exchange if it ceases to be a Hedger;
  - (d) represent that it will only enter orders for its own account;
  - (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements; and
  - (f) acknowledge that its ability to continue to rely on the Hedger Relief in accessing trading on Nodal Exchange will be dependent on the Commission continuing to grant the relief and may be affected by changes to the terms and conditions imposed in connection with the Hedger Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities.
8. Each Ontario Participant that intends to rely on the Bank Relief will be required to, as part of its application documentation or continued access to trading in Nodal Contracts:
  - (a) represent that it will only enter orders as principal and for its own account only;
  - (b) represent that it is a Bank;

- (c) acknowledge that the Bank Relief may be affected by changes to the terms and conditions imposed in connection with the Bank Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities; and
  - (d) represent that it is not engaging in activities prohibited by its governing legislation.
9. Nodal Exchange will require Ontario Participants to notify Nodal Exchange if their applicable registration or exemption from registration has been revoked, suspended or amended by the Commission or if they have ceased to be eligible for the Registration Relief and, following notice from the Ontario Participant or the Commission and subject to applicable laws, Nodal Exchange will promptly restrict the Ontario Participant's access to Nodal Exchange if the Ontario Participant is no longer appropriately registered with the Commission, or is no longer eligible for the Registration Relief.

**Trading by Ontario Participants**

10. Nodal Exchange will not provide access to an Ontario Participant to trading in exchange-traded products of an exchange other than those of Nodal Exchange, unless such other exchange has sought and received appropriate regulatory standing in Ontario.
11. Nodal Exchange will not provide access to an Ontario Participant to trading in Nodal Contracts other than those that meet the definition of "commodity futures contract" or "commodity futures option" as defined in subsection 1(1) of the CFA, and which also fall under paragraph (p) of the definition of "security" in subsection 1(1) of the OSA, without prior Commission approval.

**Submission to Jurisdiction and Agent for Service**

12. With respect to a proceeding brought by the Commission arising out of, related to, concerning or in any other manner connected with the Commission's regulation and oversight of the activities of Nodal Exchange in Ontario, Nodal Exchange will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
13. Nodal Exchange will submit to the Commission a valid and binding appointment of an agent for service in Ontario upon whom the Commission may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the Commission's regulation and oversight of Nodal Exchange's activities in Ontario.

**Prompt Reporting**

14. Nodal Exchange will notify staff of the Commission promptly of:
- (a) any authorization to carry on business granted by the CFTC is revoked or suspended or made subject to terms or conditions on Nodal Exchange's operations;
  - (b) Nodal Exchange institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate Nodal Exchange or has a proceeding for any such petition instituted against it;
  - (c) a receiver is appointed for Nodal Exchange or Nodal Exchange makes any voluntary arrangement with creditors;
  - (d) Nodal Exchange is not in compliance with this Order or with any applicable requirements, laws or regulations of the CFTC where it is required to report such non-compliance to the CFTC;
  - (e) any known investigations of, or disciplinary action against, Nodal Exchange by the CFTC or any other regulatory authority to which it is subject; and
  - (f) Nodal Exchange makes any material change to the eligibility criteria for Ontario Users.

**Semi-Annual Reporting**

15. Nodal Exchange will maintain the following updated information and submit such information in a manner and form acceptable to the Commission on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the Commission:
- (a) a current list of all Ontario Users and whether the Ontario User is registered under Ontario securities laws or is exempt from or not subject to registration, and, to the extent known by Nodal Exchange, other persons or companies located in Ontario trading as customers of participants (**Other Ontario Participants**);

- (b) to the extent provided to Nodal Exchange, the legal entity identifier assigned to each Ontario User and to Other Ontario Participants in accordance with the standards set by the Global Legal Entity Identifier System;
- (c) a list of all Ontario Users against whom disciplinary action has been taken since the previous report by Nodal Exchange, or, to the best of Nodal Exchange's knowledge, by the CFTC with respect to such Ontario Users' activities on Nodal Exchange and the aggregate number of disciplinary actions taken against all participants since the previous report by Nodal Exchange;
- (d) a list of all active investigations since the previous report by Nodal Exchange relating to Ontario Users and the aggregate number of active investigations since the previous report relating to all participants undertaken by Nodal Exchange;
- (e) a list of all Ontario applicants for status as a participant who were denied such status or access to Nodal Exchange since the previous report, together with the reasons for each such denial; and
- (f) for each product,
  - (i) the total trading volume and value originating from Ontario Users, and, to the extent known by Nodal Exchange, from Other Ontario Participants, presented on a per Ontario User or per Other Ontario Participant basis; and
  - (ii) the proportion of worldwide trading volume and value on Nodal Exchange conducted by Ontario Users, and, to the extent known by Nodal Exchange, by Other Ontario Participants, presented in the aggregate for such Ontario Users and Other Ontario Participants;

provided in the required format.

**Information Sharing**

16. Nodal Exchange will provide information (including additional periodic reporting) as may be requested from time to time by, and otherwise cooperate with, the Commission or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

**APPENDIX J  
(LME)**

**SCHEDULE A**

**TERMS AND CONDITIONS**

**Meeting Criteria for Exemption**

1. LME will continue to meet the criteria for exemption included in Appendix 1 to this Schedule A.

**Regulation and Oversight of the LME**

2. The LME will maintain its registration as a Recognised Investment Exchange (RIE) in accordance with the UK Financial Services and Markets Act (FSMA) and will continue to be subject to the regulatory oversight of the UK Financial Conduct Authority (FCA).
3. The LME will continue to comply with the ongoing requirements applicable to it as an RIE.
4. The LME must do everything within its control, which would include cooperating with the OSC as needed, to carry out its activities as an exchange exempted from recognition under subsection 21(1) of the OSA, as a commodity futures exchange exempted from registration under subsection 15(1) of the CFA, and in compliance with Ontario securities law and Ontario commodity futures law.

**Access**

5. LME will maintain and operate an electronic trading system where Members trade on a principal-to-principal basis. Members may also trade on the LME's inter-office market or in the LME's open-outcry dealing floor (the Ring).
6. The LME will not provide direct access to an Ontario Participant unless the Ontario Participant is appropriately registered to trade in LME contracts, is a Hedger, is a Bank, or has otherwise obtained an exemption from registration under the CFA; in making this determination, LME may reasonably rely on a written representation from the Ontario Participant that specifies that it is appropriately registered to trade in LME contracts or that it is a Hedger, is a Bank or has an exemption from registration, and LME will notify such Ontario Participant that this representation is deemed to be repeated each time it enters an order for a LME contract.
7. Each Ontario Participant that intends to rely on the Hedger Relief will be required to, as part of its application or continued access to trading in LME contracts:
  - (a) represent that it is a Hedger (the Hedger Representation);
  - (b) acknowledge that LME deems the Hedger Representation to be repeated by the Ontario Participant each time it enters an order for a LME contract and that the Ontario Participant must be a Hedger for the purposes of each trade resulting from such an order;
  - (c) agree to notify LME if it ceases to be a Hedger;
  - (d) represent that (insofar as it relies upon the Hedger Relief) it will only enter orders for its own account;
  - (e) acknowledge that it is a market participant under the CFA and is subject to applicable requirements; and
  - (f) acknowledge that its ability to continue to rely on the Hedger Relief in accessing trading on LME will be dependent on the OSC continuing to grant the relief and may be affected by changes to the terms and conditions imposed in connection with the Hedger Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities.
8. Each Ontario Participant that intends to rely on the Bank Relief will be required to, as part of its application documentation or continued access to trading in LME contracts:
  - (a) represent that (insofar as it relies on the Bank Relief) it will only enter orders as principal and for its account only;
  - (b) represent that it is a Bank (the Canadian Bank Representation);

- (c) acknowledge that LME deems the Canadian Bank Representation to be repeated by the Ontario Participant each time it enters an order for a LME contract and that the Ontario Participant must be a Bank for the purposes of each trade resulting from such an order;
  - (d) agree to notify LME if it ceases to be a Bank;
  - (e) acknowledge that the Bank Relief may be affected by changes to the terms and conditions imposed in connection with the Bank Relief or by changes to Ontario securities laws or Ontario commodity futures laws pertaining to derivatives, commodity futures contracts, commodity futures options or securities; and
  - (f) represent that it is not engaging in activities prohibited by its governing legislation.
9. The LME will require Ontario Participants to notify LME if their applicable registration or exemption from registration has been revoked, suspended or amended by the OSC (if applicable) or if they have ceased to be a Bank and, following notice from the Ontario Participant or the OSC and subject to applicable laws, LME will promptly restrict the Ontario Participant's access to the LME if the Ontario Participant is no longer appropriately registered or exempt from registration with the OSC or is no longer a Bank.

**Trading by Ontario Participants**

10. The LME will not provide access to an Ontario Participant to trading in exchange-traded products of an exchange other than those of the LME, unless such other exchange has sought and received appropriate regulatory standing in Ontario.
11. The LME will not provide access to an Ontario Participant to trading in LME contracts other than those that meet the definition of "commodity futures contract" or "commodity futures option" as defined in subsection 1(1) of the CFA, and which also fall under paragraph (p) of the definition of "security" in subsection 1(1) of the OSA, without prior OSC approval or pursuant to the Requested Relief.

**Submission to Jurisdiction and Agent for Service**

12. With respect to a proceeding brought by the OSC arising out of, related to, concerning or in any other manner connected with the OSC's regulation and oversight of the activities of the LME in Ontario, the LME will submit to the non-exclusive jurisdiction of (i) the courts and administrative tribunals of Ontario and (ii) an administrative proceeding in Ontario.
13. The LME will submit to the OSC a valid and binding appointment of Norton Rose Fulbright Canada LLP as the agent for service in Ontario upon which the OSC may serve a notice, pleading, subpoena, summons or other process in any action, investigation or administrative, criminal, quasi-criminal, penal or other proceeding arising out of or relating to or concerning the OSC's regulation and oversight of the LME's activities in Ontario.

**Prompt Reporting**

14. The LME will promptly notify staff of the OSC of any of the following:
- (a) The LME's registration as an RIE by the FCA is revoked or suspended or made subject to terms or conditions on the LME's operations;
  - (b) The LME institutes a petition for a judgment of bankruptcy or insolvency or similar relief, or to wind up or liquidate the LME or has a proceeding for any such petition instituted against it;
  - (c) A receiver is appointed for the LME or the LME makes any voluntary arrangement with creditors;
  - (d) The LME is not in compliance with this Order or with any applicable requirements, laws or regulations of the FCA where it is required to report such non-compliance to the FCA;
  - (e) Any known investigations of, or disciplinary action against, the LME by the FCA or any other regulatory authority to which it is subject; and
  - (f) The LME makes any material change to the eligibility criteria for Ontario Participants.

### Semi-Annual Reporting

15. LME will maintain the following updated information and submit such information in a manner and form acceptable to the OSC on a semi-annual basis (by July 31 for the first half of the calendar year and by January 31 of the following year for the second half), and at any time promptly upon the request of staff of the OSC:
- (a) a current list of all Ontario Participants, specifically identifying for each Ontario Participant:
    - (b) its status as LME or LME Clear Members , and
  - (c) the basis upon which it represented to the LME that it could be provided with direct access (i.e. that it is appropriately registered to trade in the LME contracts or benefits from another form of exemption);
  - (d) a list of all Ontario Participants against whom disciplinary action has been taken since the previous report by the LME or, to the best of LME's knowledge, by any non-Canadian regulatory bodies with respect to such Ontario Participants' activities on the LME;
  - (e) a list of all referrals to the LME Head of Risk, Regulation and Compliance by the LME surveillance team concerning Ontario Participants;
  - (f) a list of all Ontario applicants for status as an Ontario Participant who were denied such status or access to the LME since the previous report;
  - (g) for each LME contract,
    - (i) the total trading volume and value originating from Ontario Participants, presented on a per Ontario Participant basis, and
    - (ii) the proportion of worldwide trading volume and value on the LME conducted by Ontario Participants, presented in the aggregate for such Ontario Participants;

provided in the required format.

### Information Sharing

16. The LME will provide information (including additional periodic reporting) as may be requested from time to time by, and otherwise cooperate with, the OSC or its staff, subject to any applicable privacy or other laws (including solicitor-client privilege) governing the sharing of information and the protection of personal information.

**2.2.5 Threegold Resources Inc. et al.**

**File No.** 2019-42

**IN THE MATTER OF  
THREEGOLD RESOURCES INC.,  
VICTOR GONCALVES and  
JON SNELSON**

M. Cecilia Williams, Commissioner and Chair of the Panel

**March 15, 2021**

**ORDER**

**WHEREAS** the Ontario Securities Commission held a hearing in writing to consider a motion brought by Staff of the Commission (**Staff**) to waive service on the Respondent Threegold Resources Inc. (**Threegold**), proceed in Threegold's absence, dispense with Staff's disclosure obligations and hold a combined merits and sanctions hearing in writing;

**ON READING** the Motion Record and the affidavits of Victor Goncalves and Jon Snelson, and on reading the submissions of Staff, no one appearing on behalf of Threegold;

**IT IS ORDERED THAT:**

1. pursuant to Subrule 28(5)(a) of the *Ontario Securities Commission Rules of Procedure and Forms*, (2019), 42 OSCB 9714 (the **Rules**), Staff is permitted to bring this motion without notice to Threegold;
2. pursuant to Subrule 23(3) of the Rules, this motion shall be heard in writing;
3. pursuant to Subrule 6(4) of Rules, the requirement that Staff serve the Notice of Hearing, Statement of Allegations, and all future processes on Threegold is waived;
4. pursuant to Rule 3 of the Rules, Staff's disclosure obligations in respect of Threegold pursuant to Subrule 27(1) are waived;
5. pursuant to Rule 3 and Subrule 35(1) of the Rules, the merits and the sanctions and costs hearings against Threegold shall be combined; and
6. pursuant to Subrule 23(3) of the Rules, the enforcement proceeding against Threegold shall be conducted as a written hearing.

"M. Cecilia Williams"

**2.2.6 Clearwater Seafoods Incorporated**

**Headnote**

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – The issuer ceases to be a reporting issuer under securities legislation. 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.N.S. 1989, c. 418, ss. 1(10)(a)(ii), and 89.

**March 16, 2021**

**IN THE MATTER OF  
THE SECURITIES LEGISLATION OF  
NOVA SCOTIA AND ONTARIO  
(the Jurisdictions)**

**AND**

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

**AND**

**IN THE MATTER OF  
CLEARWATER SEAFOODS INCORPORATED  
(the Filer)**

**ORDER**

**Background**

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 Nova Scotia 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 British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon and Nunavut, and
- (c) this order is the order of the principal regulator and evidences the decision of the securities regulatory authority or regulator in Ontario.

### Interpretation

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

### Representations

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

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

### Order

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.

“Paul E. Radford”, Q.C.  
Chair  
Nova Scotia Securities Commission

### 2.2.7 Roscan Gold Corporation – s. 1(11)(b)

#### Headnote

Subsection 1(11)(b) – Order that the issuer is a reporting issuer for the purposes of Ontario securities law – Issuer is already a reporting issuer in British Columbia and Alberta – Issuer’s securities listed for trading on the TSX Venture Exchange – Continuous disclosure requirements in British Columbia and Alberta are substantially the same as those in Ontario – Issuer has a significant connection to Ontario.

#### Statutes Cited

Securities Act, R.S.O. 1990, c.S.5, as am., s. 1(11)(b).

**IN THE MATTER OF  
THE SECURITIES ACT,  
R.S.O. 1990, c. S.5, AS AMENDED  
(the Act)**

**AND**

**IN THE MATTER OF  
ROSCAN GOLD CORPORATION  
(the Applicant)**

**ORDER  
(Paragraph 1(11)(b))**

**UPON** the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to paragraph 1(11)(b) of the Act that, for the purposes of Ontario securities law, the Applicant is a reporting issuer in Ontario;

**AND UPON** considering the application and the recommendation of the staff of the Commission;

**AND UPON** the Applicant having represented to the Commission as follows:

1. The Applicant is a company governed by the *Business Corporations Act* (Ontario) (the **OBCA**).
2. The Applicant was continued under the laws of the Province of Ontario on November 19, 2004.
3. The Applicant’s head office and registered office is 161 Bay Street, 27th Floor Toronto ON M5J 2S1.
4. The authorized capital of the Applicant consists of an unlimited number of common shares (**Common Shares**). As at the date hereof, the Applicant has the following issued and outstanding securities: (i) 279,465,360 Common Shares; (ii) 21,465,889 common share purchase warrants and (iii) 22,750,000 options to purchase Common Shares.
5. The Common Shares are traded on the TSX Venture Exchange (the **TSXV**) under the symbol “ROS” and on the Frankfurt Stock Exchange under the symbol “2OJ”. As of the date hereof, the Common Shares are not traded on any other stock exchange or trading or quotation system.

6. No other securities of the Applicant are listed, traded or quoted on any stock exchange or trading or quotation system.
7. The Applicant is a reporting issuer under the *Securities Act* (British Columbia) (the **BC Act**) and the *Securities Act* (Alberta) (the **Alberta Act**). The Applicant became a reporting issuer in British Columbia on April 21, 1988 and became a reporting issuer in Alberta on November 26, 1999.
8. The Applicant is not a reporting issuer or equivalent in any jurisdiction other than British Columbia and Alberta.
9. The Applicant's principal regulator is the Alberta Securities Commission. The Commission will be the principal regulator of the Applicant once it has obtained reporting issuer status in Ontario. Upon granting of this Order, the Applicant will amend its profile on the System for Electronic Document Analysis and Retrieval (**SEDAR**) to indicate that the Commission is its principal regulator.
10. The Applicant is not on the lists of defaulting reporting issuers maintained pursuant to the BC Act or the Alberta Act, and is not in default of any requirement under the BC Act or the Alberta Act, or the rules and regulations made thereunder.
11. The Applicant is subject to the continuous disclosure requirements of the BC Act and the Alberta Act. The continuous disclosure requirements under the BC Act and the Alberta Act are substantially the same as the continuous disclosure requirements under the Act.
12. The continuous disclosure materials filed by the Applicant under the BC Act and the Alberta Act are available on SEDAR.
13. The Applicant is not in default under any of the rules, regulations or policies of the TSXV.
14. Pursuant to section 18 of Policy 3.1 of the TSX Venture Exchange Corporate Finance Manual (the **TSXV Manual**), a listed-issuer, which is not otherwise a reporting issuer in Ontario, must assess whether it has a "Significant Connection to Ontario" (as defined in Policy 1.1 of the TSXV Manual) and, upon becoming aware that it has a significant connection to Ontario, promptly make a *bona fide* application to the Commission to be designated a reporting issuer in Ontario.
15. The Applicant has determined that it has a "Significant Connection to Ontario" in accordance with the policies of the TSXV as (i) more than 20% of the issued and outstanding Common Shares are owned by registered and beneficial shareholders resident in Ontario; (ii) the Applicant's mind and management is principally located in Ontario; and (iii) the Applicant's head office is located in Toronto, Ontario.
16. Neither the Applicant nor any of its officers, directors or any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, has:
  - (a) been subject to any penalties or sanctions imposed by a court relating to Canadian securities legislation or by a Canadian securities regulatory authority;
  - (b) entered into a settlement agreement with a Canadian securities regulatory authority; or
  - (c) been subject to any other penalties or sanctions imposed by a court or regulatory body that would be likely to be considered important to a reasonable investor making an investment decision.
17. Neither the Applicant nor any of its officers, directors or any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been subject to:
  - (a) any known ongoing or concluded investigations by:
    - (i) a Canadian securities regulatory authority; or
    - (ii) a court or regulatory body, other than a Canadian securities regulatory authority, that would be likely to be considered important to a reasonable investor making an investment decision; or
  - (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or the appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.
18. None of the officers or directors of the Applicant or any shareholder holding sufficient securities of the Applicant to affect materially the control of the Applicant, is or has been at the time of such event an officer or director of any other issuer which is or has been subject to:
  - (a) any cease trade order or similar order, or order that denied access to any exemptions under Ontario securities law, for a period of more than 30 consecutive days, within the preceding 10 years; or
  - (b) any bankruptcy or insolvency proceedings, or other proceedings, arrangements or compromises with creditors, or appointment of a receiver, receiver-manager or trustee, within the preceding 10 years.

**AND UPON** the Commission being satisfied that granting this Order would not be prejudicial to the public interest;

**IT IS HEREBY ORDERED** pursuant to paragraph 1(11)(b) of the Act that the Applicant is a reporting issuer for the purposes of Ontario securities law.

**DATED** at Toronto, this 15<sup>th</sup> day of March, 2021.

“Marie-France Bourret”  
Manager, Corporate Finance  
Ontario Securities Commission

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## Chapter 4

# Cease Trading Orders

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

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

### Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
THERE IS NOTHING TO REPORT THIS WEEK.		

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

Company Name	Date of Order	Date of Lapse
THERE IS NOTHING TO REPORT THIS WEEK.		

### 4.2.2 Outstanding Management & Insider Cease Trading Orders

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

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 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:**

Brompton Split Banc Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus (NI 44-102) dated March 12, 2021

NP 11-202 Preliminary Receipt dated March 15, 2021

**Offering Price and Description:**

Maximum: \$300,000,000 Preferred Shares and Class A Shares

Price: \$10.39 Preferred Shares and \$12.88 Class A Shares

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

N/A

**Promoter(s):**

N/A

**Project #3186683**

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**Issuer Name:**

Sprott Physical Silver Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Shelf Prospectus (NI 44-102) dated March 9, 2021

NP 11-202 Receipt dated March 10, 2021

**Offering Price and Description:**

U.S.\$3,000,000,000 Trust Units

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

N/A

**Promoter(s):**

N/A

**Project #3181956**

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**Issuer Name:**

DAMI Corporate Bond Fund  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Simplified Prospectus dated Feb 25, 2021

NP 11-202 Preliminary Receipt dated Mar 9, 2021

**Offering Price and Description:**

Series I Units, Series F Units and Series A Units

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

N/A

**Promoter(s):**

N/A

**Project #3178485**

**Issuer Name:**

Purpose Ether ETF  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated Mar 9, 2021

NP 11-202 Preliminary Receipt dated Mar 9, 2021

**Offering Price and Description:**

CAD ETF Non-Currency Hedged Units, ETF Non-Currency Hedged Units and USD ETF Non-Currency Hedged Units

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

N/A

**Promoter(s):**

N/A

**Project #3184651**

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**Issuer Name:**

CC&L Alternative Canadian Equity Fund  
CC&L Alternative Global Equity Fund

CC&L Alternative Income Fund

PCJ Absolute Return II Fund

Principal Regulator – Ontario

**Type and Date:**

Combined Preliminary and Pro Forma Simplified Prospectus dated Mar 5, 2021

NP 11-202 Final Receipt dated Mar 9, 2021

**Offering Price and Description:**

Series I Units, Series F Units and Series A Units

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

N/A

**Promoter(s):**

N/A

**Project #3165223**

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**Issuer Name:**

Harvest Space Innovation Index ETF

Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated Mar 15, 2021

NP 11-202 Preliminary Receipt dated Mar 15, 2021

**Offering Price and Description:**

Class U Units and Class A Units

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

N/A

**Promoter(s):**

N/A

**Project #3187202**

**Issuer Name:**

Horizons High Interest Savings ETF  
Principal Regulator – Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated Mar 12, 2021  
NP 11-202 Preliminary Receipt dated Mar 12, 2021

**Offering Price and Description:**

Class A Units

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

N/A

**Promoter(s):**

N/A

**Project #**3186503

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**Issuer Name:**

Bitcoin ETF  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated  
March 7, 2021

NP 11-202 Final Receipt dated Mar 11, 2021

**Offering Price and Description:**

-

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

N/A

**Promoter(s):**

N/A

**Project #**3166687

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**Issuer Name:**

CI Galaxy Bitcoin ETF  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated  
March 5, 2021

NP 11-202 Final Receipt dated Mar 9, 2021

**Offering Price and Description:**

-

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

N/A

**Promoter(s):**

N/A

**Project #**3174826

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**Issuer Name:**

Desjardins RI Emerging Markets Multifactor – Low CO2  
ETF

Principal Regulator - Quebec

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated  
March 9, 2021

NP 11-202 Final Receipt dated Mar 11, 2021

**Offering Price and Description:**

-

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

N/A

**Promoter(s):**

N/A

**Project #**3086471

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**Issuer Name:**

NCM Short Term Income Fund  
Principal Regulator - Alberta

**Type and Date:**

Amendment #2 to Final Simplified Prospectus dated  
February 28, 2021

NP 11-202 Final Receipt dated Mar 9, 2021

**Offering Price and Description:**

-

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

N/A

**Promoter(s):**

N/A

**Project #**3043428

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**Issuer Name:**

CI Gold Bullion Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated  
March 5, 2021

NP 11-202 Final Receipt dated Mar 11, 2021

**Offering Price and Description:**

-

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

N/A

**Promoter(s):**

N/A

**Project #**3139060

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**Issuer Name:**

Sectorwise Conservative Portfolio  
Sectorwise Balanced Portfolio  
Sectorwise Growth Portfolio  
Principal Regulator - Quebec

**Type and Date:**

Amendment #2 to Final Annual Information Form dated  
March 3, 2021  
NP 11-202 Final Receipt dated Mar 9, 2021

**Offering Price and Description:**

Class A, F and P Units

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

N/A

**Promoter(s):**

N/A

**Project #3023452**

**Issuer Name:**

Horizons Active Hybrid Bond and Preferred Share ETF  
(formerly Horizons Active Floating Rate Preferred Share  
ETF)

Principal Regulator - Ontario

**Type and Date:**

Amendment #1 to Final Long Form Prospectus dated  
March 10, 2021  
NP 11-202 Final Receipt dated Mar 11, 2021

**Offering Price and Description:**

-

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

N/A

**Promoter(s):**

N/A

**Project #3156550**

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**Issuer Name:**

Lysander TDV Fund  
Principal Regulator - Ontario

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated March  
12, 2021  
NP 11-202 Final Receipt dated Mar 15, 2021

**Offering Price and Description:**

-

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

N/A

**Promoter(s):**

N/A

**Project #3124597**

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**Issuer Name:**

iProfile Canadian Equity Private Pool  
iProfile U.S. Equity Private Pool  
iProfile International Equity Private Pool  
iProfile Emerging Markets Private Pool  
iProfile Fixed Income Private Pool  
iProfile Canadian Equity Private Class  
iProfile U.S. Equity Private Class  
iProfile International Equity Private Class  
iProfile Emerging Markets Private Class  
IG Mackenzie Canadian Money Market Class  
Principal Regulator - Manitoba

**Type and Date:**

Amendment #1 to Final Simplified Prospectus dated March  
4, 2021  
NP 11-202 Final Receipt dated Mar 10, 2021

**Offering Price and Description:**

-

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

N/A

**Promoter(s):**

N/A

**Project #3088489**

NON-INVESTMENT FUNDS

**Issuer Name:**

48North Cannabis Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated March 11, 2021  
NP 11-202 Preliminary Receipt dated March 11, 2021

**Offering Price and Description:**

Minimum Offering: \$\* (\* Units)  
Maximum Offering: \$\* (\* Units)  
\$\* per Unit

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

CANTOR FITZGERALD CANADA CORPORATION  
CORMARK SECURITIES INC.

**Promoter(s):**

-

**Project #3185878**

**Issuer Name:**

AADirection Capital Corp.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary CPC Prospectus dated March 9, 2021  
NP 11-202 Preliminary Receipt dated March 10, 2021

**Offering Price and Description:**

Offering: \$400,000.00  
4,000,000 Common Shares  
Price: \$0.10 per Common Share

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

CANACCORD GENUITY CORP.

**Promoter(s):**

Joanne Yan

**Project #3184956**

**Issuer Name:**

Aurora Cannabis Inc.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Shelf Prospectus dated March 9, 2021  
NP 11-202 Preliminary Receipt dated March 10, 2021

**Offering Price and Description:**

U.S.\$1,000,000,000.00  
Common Shares  
Warrants  
Options  
Subscription Receipts  
Debt Securities  
Units

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

-

**Promoter(s):**

-

**Project #3184872**

**Issuer Name:**

Auxly Cannabis Group Inc.  
Principal Regulator - Ontario

**Type and Date:**

Amendment dated March 15, 2021 to Preliminary Shelf  
Prospectus dated February 22, 2021  
NP 11-202 Preliminary Receipt dated March 15, 2021

**Offering Price and Description:**

\$200,000,000.00  
COMMON SHARES  
PREFERRED SHARES  
DEBT SECURITIES  
SUBSCRIPTION RECEIPTS  
WARRANTS  
UNITS

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

-

**Promoter(s):**

-

**Project #3176246**

**Issuer Name:**

Bespoke Capital Acquisition Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Long Form Prospectus dated March 12, 2021  
NP 11-202 Preliminary Receipt dated March 15, 2021

**Offering Price and Description:**

No securities are being offered pursuant to this prospectus.

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

-

**Promoter(s):**

BESPOKE SPONSOR CAPITAL LP BY ITS GENERAL  
PARTNER BESPOKE CAPITAL PARTNERS, LLC  
**Project #3187066**

**Issuer Name:**

Bitfarms Ltd.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated March 12, 2021  
NP 11-202 Preliminary Receipt dated March 15, 2021

**Offering Price and Description:**

US\$250,000,000.00  
Common Shares  
Warrants  
Subscription Receipts  
Units  
Debt Securities  
Share Purchase Contracts

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

-

**Promoter(s):**

-

**Project #3186538**

**Issuer Name:**

Boosh Plant-Based Brands Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Long Form Prospectus dated March 8, 2021  
NP 11-202 Preliminary Receipt dated March 9, 2021

**Offering Price and Description:**

4,000,000 Units  
Price: \$0.50 per Unit  
\$2,000,000.00

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

Haywood Securities Inc.

**Promoter(s):**

James Pakulis

**Project #**3184598

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**Issuer Name:**

Brompton Split Banc Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated March 12, 2021  
NP 11-202 Preliminary Receipt dated March 15, 2021

**Offering Price and Description:**

Maximum: \$300,000,000 Preferred Shares and Class A Shares  
Price: \$10.39 Preferred Shares and \$12.88 Class A Shares

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

-

**Promoter(s):**

-

**Project #**3186683

---

**Issuer Name:**

Dialogue Health Technologies Inc.  
Principal Regulator - Quebec

**Type and Date:**

Amendment dated March 10, 2021 to Preliminary Long Form Prospectus dated March 8, 2021  
NP 11-202 Preliminary Receipt dated March 10, 2021

**Offering Price and Description:**

\$100,000,000.00  
\* Common Shares

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

NATIONAL BANK FINANCIAL INC.  
RBC DOMINION SECURITIES INC.  
SCOTIA CAPITAL INC.  
TD SECURITIES INC.  
CIBC WORLD MARKETS INC.  
DESJARDINS SECURITIES INC.  
CANACCORD GENUITY CORP.  
IA PRIVATE WEALTH INC.  
INFOR FINANCIAL INC.  
LAURENTIAN BANK SECURITIES INC.

**Promoter(s):**

-

**Project #**3184166

---

**Issuer Name:**

Good2GoRTO Corp.  
Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated March 10, 2021  
NP 11-202 Preliminary Receipt dated March 11, 2021

**Offering Price and Description:**

Offering: \$200,000.00  
2,000,000 Common Shares  
Price: \$0.10 per Common Share

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

Haywood Securities Inc.

**Promoter(s):**

James Cassina

**Project #**3185170

---

**Issuer Name:**

Horizonte Minerals PLC  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated March 15, 2021  
NP 11-202 Preliminary Receipt dated March 15, 2021

**Offering Price and Description:**

88,060,100 Ordinary Shares Issuable upon Exercise of 88,060,100 Special Warrants  
Per Special Warrant \$0.133  
Total Offering \$11,711,993.30

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

PARADIGM CAPITAL INC.  
CORMARK SECURITIES INC.

**Promoter(s):**

-

**Project #**3187101

---

**Issuer Name:**

Hut 8 Mining Corp. (formerly, Oriana Resources Corporation)  
Principal Regulator - Ontario

**Type and Date:**

Preliminary Shelf Prospectus dated March 9, 2021  
NP 11-202 Preliminary Receipt dated March 9, 2021

**Offering Price and Description:**

\$500,000,000.00  
Common Shares  
Debt Securities  
Subscription Receipts  
Warrants  
Convertible Securities  
Units

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

-

**Promoter(s):**

-

**Project #**3184736

---

**Issuer Name:**

IM Cannabis Corp. (formerly, Navasota Resources Inc.)  
Principal Regulator - British Columbia

**Type and Date:**

Preliminary Shelf Prospectus dated March 12, 2021  
NP 11-202 Preliminary Receipt dated March 12, 2021

**Offering Price and Description:**

US\$250,000,000.00

Common Shares

Warrants

Subscription Receipts

Debt Securities

Units

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

Rafael Gabay

Oren Shuster

**Promoter(s):**

-

**Project #3186494**

---

**Issuer Name:**

Peak Fintech Group Inc. (formerly Peak Positioning Technologies Inc.)

Principal Regulator - Quebec

**Type and Date:**

Preliminary Short Form Prospectus dated March 11, 2021  
NP 11-202 Preliminary Receipt dated March 12, 2021

**Offering Price and Description:**

Minimum Public Offering: \$12,000,000.00 / \* Units

Maximum Public Offering: \$15,000,000.00 / \* Units

\$\* per Unit

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

-

**Promoter(s):**

-

**Project #3186169**

---

**Issuer Name:**

Points International Ltd.

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated March 10, 2021  
NP 11-202 Preliminary Receipt dated March 10, 2021

**Offering Price and Description:**

C\$27,513,750.00

1,467,400 Common Shares

Price: C\$18.75 per Offered Share

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

ACUMEN CAPITAL FINANCE PARTNERS LIMITED

CORMARK SECURITIES INC.

RBC DOMINION SECURITIES INC.

SCOTIA CAPITAL INC.

**Promoter(s):**

-

**Project #3183284**

---

**Issuer Name:**

Rise Capital Corp.

Principal Regulator - Ontario

**Type and Date:**

Preliminary CPC Prospectus dated March 12, 2021  
NP 11-202 Preliminary Receipt dated March 15, 2021

**Offering Price and Description:**

Minimum Offering: \$1,000,000.00 - (5,000,000 Common Shares)

Maximum Offering: \$9,000,000.00 (45,000,000 Common Shares)

Price: \$0.20 per Common Share

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

HAMPTON SECURITIES LIMITED

**Promoter(s):**

Vernon Lobo

**Project #3186785**

---

**Issuer Name:**

Roscan Gold Corporation (formerly, Roscan Minerals Corporation)

Principal Regulator - Ontario

**Type and Date:**

Preliminary Short Form Prospectus dated March 15, 2021  
NP 11-202 Preliminary Receipt dated March 15, 2021

**Offering Price and Description:**

-

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

CLARUS SECURITIES INC.

**Promoter(s):**

-

**Project #3187126**

---

**Issuer Name:**

Solution Financial Inc.

Principal Regulator - British Columbia

**Type and Date:**

Preliminary Short Form Prospectus dated March 10, 2021  
NP 11-202 Preliminary Receipt dated March 11, 2021

**Offering Price and Description:**

Minimum Public Offering: \$3,000,000.00 / 7,500,000 Units

Maximum Public Offering: \$10,000,000.00 / 25,000,000 Units

Price: \$0.40 per Unit

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

-

**Promoter(s):**

-

**Project #3185631**

---

**Issuer Name:**

Tamarack Valley Energy Ltd.  
Principal Regulator - Alberta

**Type and Date:**

Preliminary Short Form Prospectus dated March 11, 2021  
NP 11-202 Preliminary Receipt dated March 11, 2021

**Offering Price and Description:**

\$68,181,750.00  
30,303,000 Common Shares  
\$2.25 per Common Share

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

NATIONAL BANK FINANCIAL INC.  
PETERS & CO. LIMITED  
STIFEL NICOLAUS CANADA INC  
CIBC WORLD MARKETS INC.  
EIGHT CAPITAL

DESJARDINS SECURITIES INC.

ATB CAPITAL MARKETS INC.

BMO NESBITT BURNS INC.

RAYMOND JAMES LTD.

**Promoter(s):**

-

**Project #3183492**

---

**Issuer Name:**

Apolo IV Acquisition Corp.  
Principal Regulator - Ontario

**Type and Date:**

Final CPC Prospectus dated March 10, 2021  
NP 11-202 Receipt dated March 15, 2021

**Offering Price and Description:**

\$750,000.00 or 7,500,000 Common Shares  
\$0.10 per Common Share

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

CANACCORD GENUITY CORP.

**Promoter(s):**

-

**Project #3170351**

---

**Issuer Name:**

ARHT Media Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated March 10, 2021  
NP 11-202 Receipt dated March 10, 2021

**Offering Price and Description:**

Minimum: \$7,899,999.84 (32,916,666 Units)  
Maximum: \$8,899,999.92 (37,083,333 Units)  
Offering Price: \$0.24 per Unit

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

Leede Jones Gable Inc.

**Promoter(s):**

-

**Project #3170643**

---

**Issuer Name:**

Cascada Silver Corp.  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated March 8, 2021  
NP 11-202 Receipt dated March 9, 2021

**Offering Price and Description:**

Up to 1,000,000 Units at a price of \$0.10 per Unit and  
49,379,000 Common Shares and 49,379,000 Common  
Share Purchase Warrants issuable upon the exercise of  
44,890,000 previously issued Special Warrants

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

Mackie Research Capital Corporation

**Promoter(s):**

Carl Hansen

**Project #3158496**

---

**Issuer Name:**

Ether Capital Corporation (formerly named Movit Media  
Corp.)

Principal Regulator - Ontario

**Type and Date:**

Final Shelf Prospectus dated March 4, 2021  
NP 11-202 Receipt dated March 9, 2021

**Offering Price and Description:**

\$125,000,000.00  
Common Shares  
Debt Securities  
Warrants  
Subscription Receipts  
Units

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

-

**Promoter(s):**

-

**Project #3139919**

---

**Issuer Name:**

Field Trip Health Ltd. (formerly Newton Energy  
Corporation)

Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated March 12, 2021  
NP 11-202 Receipt dated March 15, 2021

**Offering Price and Description:**

\$82,875,000.00  
12,750,000 Common Shares  
\$6.50 per Common Share

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

BLOOM BURTON SECURITIES INC.

STIFEL NICOLAUS CANADA INC.

CANACCORD GENUITY CORP.

**Promoter(s):**

-

**Project #3181770**

---

**Issuer Name:**

Harvest One Cannabis Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated March 10, 2021  
NP 11-202 Receipt dated March 10, 2021

**Offering Price and Description:**

C\$4,999,990.00  
32,258,000 Units  
Price: \$0.155 per Unit

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

MACKIE RESEARCH CAPITAL CORPORATION  
ATB CAPITAL MARKETS INC.

**Promoter(s):**

-

**Project #3181715**

---

**Issuer Name:**

Heritage Cannabis Holdings Corp. (formerly Umbral Energy Corp.)  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated March 11, 2021  
NP 11-202 Receipt dated March 12, 2021

**Offering Price and Description:**

Minimum Offering: \$10,000,000.00 - 71,428,571 Units  
Maximum Offering: \$12,040,000.00 - 86,000,000 Units  
Price: \$0.14 per Unit

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

CANTOR FITZGERALD CANADA CORPORATION  
CORMARK SECURITIES INC.  
CANACCORD GENUITY CORP.

**Promoter(s):**

-

**Project #3168182**

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**Issuer Name:**

Hollister Biosciences Inc. (formerly, 1205600 BC Ltd.)  
Principal Regulator - British Columbia

**Type and Date:**

Final Shelf Prospectus dated March 10, 2021  
NP 11-202 Receipt dated March 11, 2021

**Offering Price and Description:**

\$50,000,000.00  
Common Shares  
Debt Securities  
Subscription Receipts  
Convertible Securities  
Warrants  
Units

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

-

**Promoter(s):**

Carl Saling

**Project #3126879**

---

**Issuer Name:**

Marathon Gold Corporation  
Principal Regulator - Ontario

**Type and Date:**

Final Shelf Prospectus dated March 9, 2021  
NP 11-202 Receipt dated March 10, 2021

**Offering Price and Description:**

\$250,000,000.00  
COMMON SHARES  
DEBT SECURITIES  
WARRANTS  
SUBSCRIPTION RECEIPTS  
CONVERTIBLE SECURITIES  
UNITS

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

-

**Promoter(s):**

-

**Project #3180381**

---

**Issuer Name:**

Martello Technologies Group Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated March 12, 2021  
NP 11-202 Receipt dated March 15, 2021

**Offering Price and Description:**

\$5,000,040.00  
26,316,000 Units consisting of Common Shares and Warrants  
Price: \$0.19 per Unit

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

PARADIGM CAPITAL INC.  
EIGHT CAPITAL  
PI FINANCIAL CORP.

**Promoter(s):**

-

**Project #3182260**

---

**Issuer Name:**

mdf commerce inc.  
Principal Regulator - Quebec

**Type and Date:**

Final Short Form Prospectus dated March 8, 2021  
NP 11-202 Receipt dated March 9, 2021

**Offering Price and Description:**

\$80,000,009.00  
5,517,242 Common Shares  
Price: \$14.50 per Common Share

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

STIFEL NICOLAUS CANADA INC.  
ECHELON WEALTH PARTNERS INC.  
ACUMEN CAPITAL FINANCE PARTNERS LIMITED  
LAURENTIAN BANK SECURITIES INC.  
NATIONAL BANK FINANCIAL INC.  
SCOTIA CAPITAL INC.

**Promoter(s):**

-

**Project #3176799**

---

**Issuer Name:**

Numinus Wellness Inc.  
Principal Regulator - British Columbia

**Type and Date:**

Final Shelf Prospectus dated March 12, 2021  
NP 11-202 Receipt dated March 12, 2021

**Offering Price and Description:**

\$100,000,000.00  
COMMON SHARES  
WARRANTS  
SUBSCRIPTION RECEIPTS  
UNITS

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

-

**Promoter(s):**

-

**Project #3178965**

---

**Issuer Name:**

Orla Mining Ltd.  
Principal Regulator - British Columbia

**Type and Date:**

Final Shelf Prospectus dated March 12, 2021  
NP 11-202 Receipt dated March 12, 2021

**Offering Price and Description:**

C\$300,000,000.00  
Common Shares  
Warrants  
Subscription Receipts  
Units  
Debt Securities

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

-

**Promoter(s):**

-

**Project #3171674**

---

**Issuer Name:**

PlantX Life Inc. (formerly, Vegaste Technologies Corp.)  
Principal Regulator - British Columbia

**Type and Date:**

Final Short Form Prospectus dated March 11, 2021  
NP 11-202 Receipt dated March 11, 2021

**Offering Price and Description:**

MINIMUM OFFERING \$10 MILLION (9,523,810 OFFERED UNITS)  
MAXIMUM OFFERING \$20 MILLION (19,047,619 OFFERED UNITS)  
PRICE: \$1.05 PER OFFERED UNIT

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

MACKIE RESEARCH CAPITAL CORPORATION

**Promoter(s):**

-

**Project #3173657**

---

**Issuer Name:**

Sprott Physical Silver Trust  
Principal Regulator - Ontario

**Type and Date:**

Final Shelf Prospectus dated March 9, 2021  
NP 11-202 Receipt dated March 10, 2021

**Offering Price and Description:**

U.S.\$3,000,000,000.00 Trust Units

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

-

**Promoter(s):**

-

**Project #3181956**

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**Issuer Name:**

Subversive Acquisition LP (formerly Subversive Real Estate Acquisition REIT LP)  
Principal Regulator - Ontario

**Type and Date:**

Final Long Form Prospectus dated March 12, 2021  
NP 11-202 Receipt dated March 15, 2021

**Offering Price and Description:**

No securities are being offered pursuant to this prospectus.

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

-

**Promoter(s):**

SUBVERSIVE REAL ESTATE SPONSOR LLC  
INCEPTION ALTANOVA SPONSOR  
CG INVESTMENTS INC. IV

**Project #3171107**

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**Issuer Name:**

Talon Metals Corp.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated March 11, 2021  
NP 11-202 Receipt dated March 11, 2021

**Offering Price and Description:**

\$30,000,000.00  
50,000,000 Units  
Price: \$0.60 per Offered Unit

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

TD SECURITIES INC.  
PARADIGM CAPITAL INC.  
SPROTT CAPITAL PARTNERS LP, by its General Partner,  
SPROTT CAPITAL PARTNERS GP INC.  
ECHELON WEALTH PARTNERS INC.

**Promoter(s):**

-

**Project #3177920**

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**Issuer Name:**

The Flowr Corporation (formerly The Needle Capital Corp.)  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated March 12, 2021  
NP 11-202 Receipt dated March 12, 2021

**Offering Price and Description:**

\$15,300,000.00  
30,000,000 Units  
Price: \$0.51 per Unit

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

CANTOR FITZGERALD CANADA CORPORATION  
ATB CAPITAL MARKETS INC.  
CANACCORD GENUITY CORP.  
ECHELON WEALTH PARTNERS INC.

**Promoter(s):**

-

**Project #3171986**

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**Issuer Name:**

WeedMD Inc.  
Principal Regulator - Ontario

**Type and Date:**

Final Short Form Prospectus dated March 8, 2021  
NP 11-202 Receipt dated March 9, 2021

**Offering Price and Description:**

\$17,500,440.00  
21,342,000 Units  
Price: \$0.82 per Unit

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

EIGHT CAPITAL  
CANACCORD GENUITY CORP.  
INFOR FINANCIAL INC.

**Promoter(s):**

-

**Project #3172045**

## Chapter 12

# Registrations

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### 12.1.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Groupe Highgate Inc.	Investment Dealer	March 10, 2021
Voluntary Surrender	Rayne Capital Management Inc.	Investment Fund Manager and Exempt Market Dealer	March 11, 2021
New Registration	Matson Money, Inc.	Portfolio Manager	March 15, 2021

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## Chapter 13

# SROs, Marketplaces, Clearing Agencies and Trade Repositories

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### 13.3 Clearing Agencies

#### 13.3.1 Canadian Derivatives Clearing Corporation (CDCC) – Proposed Amendments to the Rules of CDCC with Respect to the Adjustments in Contract Terms – Notice of Commission Approval

##### CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

##### NOTICE OF COMMISSION APPROVAL

##### PROPOSED AMENDMENTS TO THE RULES OF CDCC WITH RESPECT TO THE ADJUSTMENTS IN CONTRACT TERMS

In accordance with the Rule Protocol between the Ontario Securities Commission (Commission) and the Canadian Derivatives Clearing Corporation (CDCC), the Commission approved on March 12, 2021 the amendments to the Rules of CDCC to modify Rule A-9 and Rule B-3 to provide additional guidance related to adjustments to contract terms resulting from corporate action events and allow acceleration of the nearest month term when an equity option contract is adjusted.

A copy of the CDCC notice was published for comment on November 12, 2020 on the Commission's website at: <http://www.osc.ca>.

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## Chapter 25

# Other Information

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### 25.1 Consents

#### 25.1.1 GURU Organic Energy Corp. – s. 4(b) of Ont. Reg. 289/00 under the OBCA

##### Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Canada Business Corporations Act.

##### Statutes Cited

Business Corporations Act, R.S.O. 1990, c.B.16, as am., s. 181.  
Securities Act, R.S.O. 1990, c.S.5, as am.

##### Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 289/00, as am., s. 4(b).

IN THE MATTER OF  
R.R.O. 1990, REGULATION 289/00, AS AMENDED  
(the REGULATION)

MADE UNDER  
THE BUSINESS CORPORATIONS ACT (ONTARIO),  
R.S.O. 1990, c. B.16, AS AMENDED  
(the OBCA)

AND

IN THE MATTER OF  
GURU ORGANIC ENERGY CORP.

CONSENT  
(Subsection 4(b) of the Regulation)

**UPON** the application of GURU Organic Energy Corp. (the **Corporation**) to the Ontario Securities Commission (the **Commission**) requesting the consent of the Commission for the Corporation to continue into another jurisdiction (the **Continuance**) pursuant to section 181 of the OBCA;

**AND UPON** considering the application and the recommendation of staff of the Commission;

**AND UPON** the Corporation having represented to the Commission that:

1. The Corporation is an offering corporation under the OBCA.
2. The Corporation's authorized share capital consists of an unlimited number of common shares (the **Common Shares**), of which 29,048,554 were issued and outstanding as at December 16, 2020. The Corporation's Common Shares are listed for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "GURU".
3. The Corporation intends to apply to the Director pursuant to section 181 of the OBCA (the **Application for Continuance**) for authorization to continue as a corporation under the *Canada Business Corporations Act*, R.S.C. 1985, c. C-44 (the **CBCA**).
4. The principal reason for the Continuance is that the Corporation's principal place of business is located in Québec and management therefore believes it to be in the best interest to conduct the Corporation's affairs in accordance with the CBCA so as to permit the Corporation to effect the relocation of its registered office from Ontario to Québec.
5. The material rights, duties and obligations of a corporation governed by the CBCA are substantially similar to those of a corporation governed by the OBCA.

## Other Information

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6. The Corporation is a reporting issuer under the *Securities Act*, R.S.O. 1990, c. s. 5, as amended (the **OSA**), the *Securities Act* (British Columbia), R.S.B.C. 1996, c. 418 (the **BCSA**) and the *Securities Act* (Alberta), R.S.A. 2000, c. S-4 (the **ASA**). The Corporation intends to remain a reporting issuer in Ontario, British Columbia and Alberta following the Continuance. The Corporation intends to apply to become a reporting issuer in Québec upon completion of the Continuance.
7. The Commission is the principal regulator of the Corporation. Following the Continuance, the Corporation's registered office, which is currently located in Ontario, will be relocated to Québec and the Corporation intends to have the Autorité des marchés financiers be its principal regulator.
8. The Corporation is not in default under any provision of the OBCA, the OSA, the BCSA or the ASA, including any regulations or rules made thereunder.
9. The Corporation is not subject to any proceeding under the OBCA, the OSA, the BCSA or the ASA.
10. The Corporation is not in default of any provision of the rules, regulations or policies of the TSX.
11. The Corporation's management information circular dated September 28, 2020 for a special meeting of its shareholders held on October 28, 2020 (the **Shareholders' Meeting**), described the Continuance, the reasons for it and the implications relating thereto, and disclosed full particulars of the dissent rights of the Corporation's shareholders under section 185 of the OBCA.
12. The Corporation's shareholders authorized the Continuance at the Shareholders' Meeting by way of special resolution that was approved by 100% of the votes cast at the Shareholders' Meeting. No shareholders of the Corporation exercised their dissent rights pursuant to section 185 of the OBCA.
13. Subsection 4(b) of the Regulation requires the Application for Continuance to be accompanied by a consent from the Commission.

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

**THE COMMISSION HEREBY CONSENTS** to the Continuance of the Corporation under the CBCA.

**DATED** at Toronto, Ontario this 8<sup>th</sup> day of January, 2021

"Heather Zordel"  
Commissioner  
Ontario Securities Commission

"Mary Anne De Monte-Whelan"  
Commissioner  
Ontario Securities Commission

# Index

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<b>1832 Asset Management L.P.</b>		<b>CI Gold Bullion Fund</b>	
Decision .....	2281	Decision.....	2288
<b>360 Trading Networks Inc.</b>		<b>CI Investments Inc.</b>	
Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315	Decision.....	2288
		Decision.....	2291
<b>360 Treasury Systems AG</b>		<b>Clearwater Seafoods Incorporated</b>	
Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315	Order .....	2340
<b>3iQ Bitcoin ETF</b>		<b>CME Amsterdam B.V.</b>	
Decision .....	2298	Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315
<b>3iQ Corp.</b>		<b>Commodity Exchange Inc.</b>	
Decision .....	2298	Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315
<b>Agrios Global Holdings Ltd.</b>		<b>Daley, Sean</b>	
Cease Trading Order .....	2345	Notice from the Office of the Secretary .....	2280
<b>Australis Capital Inc.</b>		Order .....	2314
Decision .....	2312	<b>DW SEF LLC</b>	
<b>BGC Derivatives Markets, L.P.</b>		Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315
Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315	<b>Dynamic Precious Metals Fund</b>	
<b>Bloomberg SEF LLC</b>		Decision.....	2281
Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315	<b>Dynamic Strategic Gold Class</b>	
<b>BMO Asset Management Inc.</b>		Decision.....	2281
Decision .....	2302	<b>Eley, Douglas John</b>	
<b>BMO Investments Inc.</b>		Notice from the Office of the Secretary .....	2279
Decision .....	2302	Order – s. 144 .....	2313
<b>Board of Trade of the City of Chicago, Inc.</b>		<b>Financial &amp; Risk Transactions Services Ireland Limited</b>	
Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315	Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315
<b>Canadian Derivatives Clearing Corporation</b>		<b>GFI Swaps Exchange LLC</b>	
Clearing Agencies – Proposed Amendments to the Rules of CDCC with Respect to the Adjustments in Contract Terms – Notice of Commission Approval ..	2519	Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315
<b>Cboe SEF, LLC</b>		<b>Goncalves, Victor</b>	
Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315	Notice from the Office of the Secretary .....	2280
<b>CDCC</b>		Order .....	2340
Clearing Agencies – Proposed Amendments to the Rules of CDCC with Respect to the Adjustments in Contract Terms – Notice of Commission Approval ..	2519	<b>Groupe Highgate Inc.</b>	
<b>Chicago Mercantile Exchange Inc.</b>		New Registration .....	2517
Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315	<b>GURU Organic Energy Corp.</b>	
		Consent – s. 4(b) of Ont. Reg. 289/00 under the OBCA .....	2521
		<b>ICAP Global Derivatives Limited</b>	
		Variation of Exemption Orders – s. 144 of the OSA and s. 78 of the CFA .....	2315

---

**ICE Futures U.S., INC.**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**ICE Futures**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**ICE Swap Trade LLC**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**Jones, Alvin**

Notice from the Office of the Secretary .....2279  
Order.....2314

**LatAm SEF, LLC**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**London Metal Exchange (The)**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**MarketAxess SEF Corporation**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**Matson Money, Inc.**

New Registration.....2517

**New York Mercantile Exchange, Inc.**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**NEX SEF Limited**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**Nodal Exchange, LLC**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**Performance Sports Group Ltd**

Cease Trading Order .....2345

**R. J. O'Brien & Associates, LLC**

Decision .....2306

**Rayne Capital Management Inc.**

Voluntary Surrender.....2517

**Refinitiv US SEF LLC**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**Roscan Gold Corporation**

Order – s. 1(11)(b) .....2341

**Snelson, Jon**

Notice from the Office of the Secretary .....2280  
Order.....2340

**State Street Global Markets International Limited**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**SwapEx LLC**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**Threegold Resources Inc.**

Notice from the Office of the Secretary .....2280  
Order .....2340

**tpSEF INC.**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**Tradition SEF INC.**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**TW SEF LLC**

Variation of Exemption Orders – s. 144 of the OSA  
and s. 78 of the CFA .....2315

**Wilkerson, Kevin**

Notice from the Office of the Secretary .....2280  
Order .....2314