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

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Editor's Note: On Friday, April 29, 2022, the Securities Commission Act, 2021 (SCA), came into force by proclamation of the Lieutenant Governor of Ontario. The SCA's proclamation implemented key structural and governance changes to the OSC: the separation of the OSC Chair and Chief Executive Officer roles, and the creation of a new Capital Markets Tribunal. These new structural and governance changes are now reflected in the Bulletin, with one section to report and record the activities of the Capital Markets Tribunal and one section to report and record the activities of the Ontario Securities Commission: www.capitalmarketstribunal.ca/en/resources.

A. Capital Markets Tribunal

A.2
Other Notices

A.2.1 Paramount Equity Financial Corporation et al.

FOR IMMEDIATE RELEASE
November 2, 2022

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

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

A copy of the Order dated November 2, 2022 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.2 Plateau Energy Metals Inc. et al.

FOR IMMEDIATE RELEASE
November 2, 2022

PLATEAU ENERGY METALS INC.,
ALEXANDER FRANCIS CUTHBERT HOLMES AND PHILIP NEVILLE GIBBS,
File No. 2021-16

TORONTO – Following a hearing held today, the Tribunal issued an Order in the above named matter approving the Settlement Agreement reached between Staff of the Commission and Plateau Energy Metals Inc., Alexander Francis Cuthbert Holmes and Philip Neville Gibbs.

A copy of the Order dated November 2, 2022, Oral Reasons for Approval of a Settlement dated November 2, 2022 and Settlement Agreement dated October 25, 2022 are available at capitalmarketstribunal.ca.

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A.2.3 Michael Paul Kraft and Michael Brian Stein

FOR IMMEDIATE RELEASE
November 3, 2022

MICHAEL PAUL KRAFT AND
MICHAEL BRIAN STEIN,
File No. 2021-32

TORONTO – Take notice that an additional merits hearing date in the above-named matter is scheduled for December 19, 2022 at 11:00 a.m.

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Ontario Securities Commission

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A.2.4 Canada Cannabis Corporation et al.

FOR IMMEDIATE RELEASE
November 4, 2022

CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO AND
PETER STRANG,
File No. 2019-34

TORONTO – Following a hearing held today, the Tribunal issued an Order in the above named matter approving a Settlement Agreement between Staff of the Commission and Canada Cannabis Corporation, Canadian Cannabis Corporation and Benjamin Ward.

A copy of the Order dated November 4, 2022, Settlement Agreement dated October 28, 2022, Oral Reasons for Approval of a Settlements dated November 4, 2022 are available at capitalmarketstribunal.ca.

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A.2.5 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
November 4, 2022

BRIDGING FINANCE INC.,
DAVID SHARPE,
NATASHA SHARPE AND
ANDREW MUSHORE,
File No. 2022-9

TORONTO – Take notice that an attendance in the above named matter is scheduled to be heard on November 17, 2022 at 10:00 a.m.

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Ontario Securities Commission

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A.2.6 Mark Edward Valentine

FOR IMMEDIATE RELEASE
November 4, 2022

MARK EDWARD VALENTINE,
File No. 2022-7

TORONTO – Take notice that the attendance in the above named matter scheduled to be heard on November 7, 2022 will not proceed as scheduled.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.7 Mark Edward Valentine

FOR IMMEDIATE RELEASE
November 8, 2022

MARK EDWARD VALENTINE,
File No. 2022-7

TORONTO – Take notice that an attendance in the above-named matter is scheduled to be heard on December 2, 2022 at 10:00 a.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
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A.3
Orders

A.3.1 Paramount Equity Financial Corporation et al.

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

File No. 2019-12

Adjudicators: Timothy Moseley (chair of the panel)
Cathy Singer
Geoffrey D. Creighton

November 2, 2022

ORDER

WHEREAS on November 2, 2022, the Capital Markets Tribunal held a hearing by videoconference with respect to setting a schedule for the continuation of the sanctions and costs hearing in this proceeding;

ON HEARING the submissions of the representative for Staff of the Ontario Securities Commission and for Matthew Laverty, no one appearing for the remaining respondents;

IT IS ORDERED THAT:

1. the written submissions on sanctions and costs dated September 21, 2022, previously filed by Laverty and Burdon, and the written reply submissions filed by Staff dated September 30, 2022, do not form part of the record in this proceeding and are considered withdrawn;

2. Laverty and Burdon shall each serve and file revised written submissions and any evidence on sanctions and costs by 4:30 p.m. on January 6, 2023;

3. Staff shall serve and file revised written reply submissions and evidence on sanctions and costs, if any, by 4:30 p.m. on January 19, 2023; and

4. the sanctions and costs hearing shall continue on February 6, 2023, at

5. 10:00 a.m. by videoconference, or on such other date or time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

“Timothy Moseley”

“Cathy Singer”

“Geoffrey D. Creighton”

A.3.2 Plateau Energy Metals Inc. et al. – ss. 127, 127.1

IN THE MATTER OF
PLATEAU ENERGY METALS INC.,
ALEXANDER FRANCIS CUTHBERT HOLMES AND
PHILIP NEVILLE GIBBS

File No. 2021-16

Adjudicators: James Douglas (chair of the panel)
Sandra Blake
Timothy Moseley

November 2, 2022

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

WHEREAS on November 2, 2022 the Capital Markets Tribunal held a hearing by videoconference to consider the parties' joint request for approval of a settlement agreement dated October 25, 2022 (the **Settlement Agreement**);

ON READING the Joint Request for a Settlement Hearing, including the Statement of Allegations dated May 3, 2021 and the Settlement Agreement, and the written submissions, on hearing the submissions of representatives of each of the parties, and on considering that Plateau Energy Metals Inc. (**Plateau**), Alexander Francis Cuthbert Holmes (**Holmes**), and Philip Neville Gibbs (**Gibbs**), have made payments to the Ontario Securities Commission in accordance with the terms of the Settlement Agreement, and on considering the parties' advice that Holmes and Gibbs have completed the customized education course agreed to as a term of the Settlement Agreement;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved pursuant to s. 127(1) of the *Securities Act* (the **Act**);
2. each of the respondents is reprimanded pursuant to paragraph 6 of s. 127(1) of the Act;
3. Holmes shall immediately resign any position he holds as director of any reporting issuer, pursuant to paragraph 7 of s. 127(1) of the Act;
4. for two years following this Order, Holmes shall be prohibited from becoming or acting as a director or certifying officer, as defined in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52-109), of any reporting issuer, pursuant to paragraph 8 of s. 127(1) of the Act;
5. Gibbs shall immediately resign any position he holds as director of any reporting issuer, pursuant to paragraph 7 of s. 127(1) of the Act;
6. for one year following this Order, Gibbs shall be prohibited from becoming or acting as a director of any reporting issuer, pursuant to paragraph 8 of s. 127(1) of the Act;
7. pursuant to paragraph 9 of s. 127(1) of the Act:
    a. Plateau shall pay an administrative penalty of $500,000;
    b. Holmes shall pay an administrative penalty of $175,000; and
    c. Gibbs shall pay an administrative penalty of $75,000; and
8. pursuant to s. 127.1 of the Act, costs of the Ontario Securities Commission's investigation shall be paid by:
    a. Plateau in the amount of $210,000;
    b. Holmes in the amount of $60,000; and
    c. Gibbs in the amount of $30,000.

"James D.G. Douglas"

"Sandra Blake"

"Timothy Moseley"

IN THE MATTER OF
PLATEAU ENERGY METALS INC.,
ALEXANDER FRANCIS CUTHBERT HOLMES AND
PHILIP NEVILLE GIBBS

SETTLEMENT AGREEMENT

PART I – INTRODUCTION

1. This proceeding involves a Canadian mining company that misled investors about a decision by a Peruvian mining regulator that threatened their mining rights over certain properties in Peru. In March 2019, the company's Canadian executives became aware of regulatory threats to the company's mining rights in Peru. The company did not inform the public until July 31, 2019.

2. Maintaining title and/or rights to property is of critical importance to a mining exploration and development company. Reporting issuers with operations outside of Canada must ensure that important information concerning the company's mining rights flows to its Canadian executive and is disclosed to investors on a timely basis.

3. To make informed investment decisions, investors rely on timely and accurate disclosure from a reporting issuer. Misleading statements in a news release and the failure to disclose material facts in a company's MD&A deprive investors of the opportunity to make fully informed investment decisions and undermine confidence in Ontario's capital markets.

4. On March 14, 2019, a blogger wrote a detailed post about a recent Peruvian mining authority decision that placed the company at risk of losing certain of its mining concessions in Peru. Instead of notifying the public of the decision, the company announced in a misleading news release on March 15, 2019 that the blog post was spreading "misinformation" and that all of its mining concessions were in good standing.

5. As a result of contradictory information flowing from the blog post and the company, investors contacted the company's chief executive officer (**CEO**) for more information. The CEO discussed the events giving rise to the regulatory threat and the company's position with these investors. However, the company did not make any public disclosure of these facts until July 31, 2019. Selective disclosure is contrary to the public interest as it does not promote truthful and accurate disclosure to the capital markets as a whole.

6. After the March 15, 2019 news release, the company made additional misleading statements in subsequent news releases and in the management's discussion and analysis (MD&A) relating to its second quarter interim financial statements.

7. In July 2019, Peru's highest mining authority confirmed the initial mining authority decision through its own resolutions. When the company publicly disclosed these resolutions and the regulatory threat to its mining concessions at the end of July 2019, its share price dropped by more than half.

8. The parties will jointly file a request that the Capital Markets Tribunal (the **Tribunal**) issue a Notice of Hearing to announce it will hold a hearing to consider whether, pursuant to section 127 of the Securities Act, RSO 1990, c S.5 (the **Act**), it is in the public interest for the Tribunal to make certain orders against the Respondents.

PART II – JOINT SETTLEMENT RECOMMENDATION

9. Plateau Energy Metals Inc. (**Plateau** or the **Company**), Alexander Francis Cuthbert Holmes (**Holmes**), and Philip Neville Gibbs (**Gibbs**) (collectively the **Respondents**), consent to the making of an order (the **Order**) substantially in the form attached as Schedule "A" to this Settlement Agreement based on the facts set out in this Settlement Agreement.

10. For the purposes of this proceeding, and any other regulatory proceeding commenced by a Canadian securities regulatory authority only, the Respondents agree with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

11. Plateau Energy Metals Inc. (**Plateau** or the **Company**) is an Ontario corporation and reporting issuer with its head office in Toronto. It was listed on the TSX Venture Exchange under the trading symbol "PLU". Plateau is a mining exploration and development company. It conducts its business in Peru through its wholly owned subsidiary, Macusani Yellowcake S.A.C. (also referred to as the **Company**).

12. Alexander Francis Cuthbert Holmes (**Holmes**) joined as Plateau's CEO on August 17, 2018. He was Plateau's CEO at the relevant times discussed below. On January 20, 2021, Holmes resigned as CEO with an effective date of February 12, 2021. Holmes was also a director of Plateau and continued in that role following his resignation as CEO. Holmes is a resident of British Columbia. Philip Neville Gibbs (**Gibbs**) was the part-time Chief Financial Officer (**CFO**) of Plateau. Gibbs is a resident of Ontario.

13. The Company's significant assets are known as the Falchani Lithium Project and Macusani Uranium Project in southeastern Peru. These projects are contained within the 151 different mining concessions granted to Plateau's subsidiary since 2006 by the Peruvian mining regulatory authority known as the Geology, Mining and Metallurgy Institute of the Ministry of Energy and Mines (**INGEMMET**). The Company does not have any other significant assets.

14. 32 of the 151 concessions are relevant to this matter (the **Disputed Concessions**). The Company's main focus of exploration during the relevant time was the Falchani Lithium Project which consists mainly of two concessions, Falchani and Ocacasa 4. The Ocacasa 4 concession is included in the Disputed Concessions.

15. Under Peruvian mining law, mining concessions are granted for an indefinite term. However, in order to maintain the concessions, the holders must satisfy several obligations, including making annual payments of USD 3.00 per hectare before June 30th of a given year (Good Standing Fees).

16. In 2018, the deadline for the Company's Good Standing Fee payments was July 2, 2018.

17. The Company made the Good Standing Fee Payments for the Disputed Concessions on the deadline date of July 2, 2018. However, the Company was not able to link the payments for the Disputed Concessions to their respective unique codes because the INGEMMET system incorrectly showed that certain penalty payments were owing on the Disputed Concessions. As a result, the Company was required to and did submit an accreditation application to INGEMMET for its payment of the Good Standing Fees relating to the Disputed Concessions (the **Accreditation Application**).

18. On October 3, 2018, INGEMMET issued a resolution deeming that the Accreditation Application was inadmissible because receipts of payments made were not attached to the application on a timely basis (the **Inadmissibility Resolution**). In particular, INGEMMET refused to recognize certain payment receipts because they were attached to the Accreditation Application after the close of business hours at INGEMMET (i.e. after 4:30 p.m.).

19. On October 9, 2018, the Company's Peru-based employees requested that the President of INGEMMET annul the Inadmissibility Resolution (the **Annulment Request**). At that time, the Company's Peru-based employees had received legal advice that the Company had complied with the requirements of Peruvian mining law in relation to the events that occurred on July 2, 2018.

20. The Annulment Request was treated by INGEMMET as an appeal and was sent to the Mining Council within the Ministry of Energy and Mines (**MINEM**) for a determination. On January 9, 2019, the Mining Council within MINEM (the **Mining Council**) rejected the Annulment Request.

21. On February 20, 2019, INGEMMET cancelled the Company's rights to the Disputed Concessions by Presidential Resolution 0464, stating they had lapsed for failing to make timely payment of the required Good Standing fees (the **Cancellation Resolution**). The Cancellation Resolution was delivered to the Company's Peruvian office on March 5, 2019 but not opened and reviewed by the Peru-based employees until on or about March 11, 2019.

22. On March 14, 2019, the Company's Peru-based employees filed an appeal of the Cancellation Resolution to the highest mining regulatory authority in Peru (the Mining Council). As a result of the appeal, the Cancellation Resolution could not be registered with the Public Mining Registry and was not effective vis-à-vis the government and third parties. However, the Cancellation Resolution remained effective vis-à-vis the Company.

23. The Company's Peru-based employees did not convey the existence of the Inadmissibility Resolution, the Annulment Request and its rejection, or the Cancellation Resolution to the Company's Canadian executive in a timely way so as to ensure the Company's compliance with its disclosure obligations under Ontario securities law.

Misleading and Selective Disclosure

24. On March 14, 2019, a blogger, who hosts a blog called IKN, posted an article stating:

> On February 20th 2019, Peru's geological regulatory body INGEMMET, via its Presidential Resolution 0464, decreed that due to non-payment of concession fees in both 2017 and 2018 the wholly owned subsidiary of Plateau Energy Metals (PLU.v) would be stripped of 32 concessions from its flagship project in the Macusani region of Puno, Peru. What's more, one of the 32 concessions now stripped from the company is Ocacasa 4, which is 1,000 hectares of the total 1,700-hectare zone of the property that contains its lithium resource.
>
> This snafu rates highly in IKN's "Annals of Material Event Disclosure Failures." Frankly amazing that the company has tried to keep this under wraps.
>
> (the **IKN Blog Post**).

Misleading Disclosure in the March 15, 2019 News Release

25. In response to the IKN Blog Post, the Company issued a news release on March 15, 2019 (the **March 15, 2019 News Release**) including:

    (a) it had "been made aware that information was published by a third party" late the day before "surrounding certain concessions in its 93,000 hectare land package not being in good standing";

    (b) the Company wished "to confirm all of its mineral concessions are in good standing and are 100% controlled";

    (c) a statement by Plateau's CEO and a director, Holmes, that "it's disappointing to see this irresponsible spread of misinformation" and that "Plateau is actively engaged with the government and communities where it operates, and will continue to operate in an open and transparent manner to the benefit of everyone involved"; and

    (d) the Company was in the process of "determining the source of the misinformation and is considering legal action."

26. Other than the references in the IKN Blog Post that the Cancellation Resolution was due to the *non-payment* of fees, whereas the Cancellation Resolution noted the failure to make *the timely payment* of fees and the use of the word "stripped" in the IKN Blog Post, the facts referred to in the IKN Blog Post were accurate, including that:

    (a) INGEMMET had issued the Cancellation Resolution on February 20, 2019 with the number 0464 in relation to the Disputed Concessions owned by Plateau's wholly owned subsidiary;

    (b) The Disputed Concessions formed part of the Company's project in the Macusani region of Puno, Peru;

    (c) the Cancellation Resolution declared that the mining rights associated with the Disputed Concessions had lapsed;

    (d) the Ocacasa 4 concession was among the Disputed Concessions included in the Cancellation Resolution; and,

    (e) according to the Company's technical report dated September 6, 2018, the Ocacasa 4 concession constituted 1,000 hectares of the total 1,700-hectare zone of the Falchani Lithium Project that contains the lithium resource.

27. Rather than disclose the existence of the Cancellation Resolution referred to in the IKN Blog Post, the March 15, 2019 News Release made no mention of the Cancellation Resolution and stated that:

    (a) the IKN Blog Post was an "irresponsible spread of misinformation";

    (b) "all of its mineral concessions are in good standing and are 100% controlled"; and

    (c) the Company would continue to operate in a "transparent manner".

28. Plateau made these statements in the March 15, 2019 News Release that it knew, or reasonably ought to have known, were materially misleading and/or untrue contrary to subsection 126.2(1) of the *Securities Act*, R.S.O. 1990, c S.5 (the **Act**) and these statements would reasonably be expected to have a significant effect on the market price or value of Plateau's securities.

29. Holmes and others at Plateau were involved in the drafting of the March 15, 2019 News Release. As part of the drafting of the March 15, 2019 News Release, Holmes spoke with the Company's Peru-based Chief Operating Officer (**COO**), who is fluent in Spanish and who is the conduit through which information flows from Peru to the Company's Canadian executive.

30. Despite OSC Staff Notice 51-720 – Issuer Guide for Companies Operating in Emerging Markets published in 2012, there was an overreliance by Canadian management on Peruvian management. Holmes did not conduct a sufficient investigation of the accuracy of the IKN Blog Post before the issuance of the March 15, 2019 News Release in which Holmes is quoted as characterizing the IKN Blog Post as an "irresponsible spread of misinformation". As set out above, the facts contained in the IKN Blog Post were essentially accurate and not an "irresponsible spread of misinformation."

31. While Holmes obtained reports through the Peruvian INGEMMET database prior to the issuance of the March 15 News Release which confirmed that Plateau's title to the Disputed Concessions was valid, Holmes acknowledges that he should have conducted a more thorough investigation including obtaining a copy and translation of the Cancellation Resolution and reviewing the resolution before the issuance of the March 15 News Release.

32. Holmes authorized, permitted or acquiesced in Plateau's breach of subsection 126.2(1) of the Act in connection with the March 15, 2019 News Release, contrary to section 129.2 of the Act.

Failure to Correct the March 15, 2019 News Release and Misleading Disclosure in Subsequent News Releases

33. Following the publication of the March 15, 2019 News Release, a shareholder complaint came to Holmes' attention on March 17, 2019 regarding the lack of disclosure in the March 15, 2019 News Release (the **Complaint**):

> *"I'm sorry to bother you again, but I'm really not feeling comfortable with the PLU press release. It's clear by now for every investor that took his / her time on the internet, there are definitely some rulings and potential problems with some of PLUs concessions. Maybe mr (sic) Holmes took legal advice about his choice of words in the press release, however the reason why the inkacola news blog came with the news was not addressed. While the PR warned about potential legal steps against the blogger, there is apparently proof the payment was too late. It's not because PLU has time till the end of the month to appeal that there are no problems."*

34. Despite Holmes' receipt of the Complaint and an English translation of the Cancellation Resolution on March 19, 2019, he failed to take steps to correct the March 15, 2019 News Release. Thereafter, the Company issued subsequent news releases between April 24, 2019 and July 18, 2019 (the **Subsequent News Releases**). The Subsequent News Releases contained misleading and/or untrue information as those news releases referred to either (a) the Company's "100% control of mineral concessions covering over 93,000 hectares" or (b) the Company's "mineral concessions covering over 93,000 hectares" without disclosing that the Company's rights over the Disputed Concessions were at risk of being lost. As a result, the Subsequent News Releases were inaccurate and incomplete because they did not contain balanced information about the Disputed Concessions. This omission gave the public a distorted picture of the Company's affairs in Peru.

35. By omitting this information, Plateau made statements in the Subsequent News Releases that it knew, or reasonably ought to have known, were materially misleading and/or untrue contrary to subsection 126.2(1) of the Act and these statements would reasonably be expected to have a significant effect on the market price or value of Plateau's securities.

36. Holmes authorized, permitted or acquiesced in Plateau's breach of subsection 126.2(1) of the Act in connection with the Subsequent News Releases, contrary to section 129.2 of the Act.

Misleading Disclosure in the Q2 2019 Filings

37. On May 22, 2019, the Company filed its second quarter interim financial statements for the period ending March 31, 2019 and related MD&A (together the **Q2 2019 Filings**). Holmes and Gibbs signed a certification in relation to the Q2 2019 Filings in which each of them certified that the Q2 2019 Filings did not contain any untrue statement of a material fact or omit to state a material fact required to be stated or that was necessary to make the statement not misleading in light of the circumstances under which it was made (the **Certifications**). The Q2 2019 Filings made the following statements:

    (a) Plateau's MD&A stated that "the Company controls over 930 kilometres of territory on the Macusani plateau";

    (b) Note 4 to the financial statements stated that: "As at March 31, 2019, the Company, through its Peruvian subsidiaries, held a total of 151 mining concessions covering an aggregate area of approximately 93,000 hectares; and

    (c) Plateau's MD&A presented mineral resource estimates for the Falchani Lithium Project on an indicated and inferred basis that included the Ocacasa 4 concession.

38. Plateau knew or ought to have known that these statements were misleading and/or untrue contrary to subsection 126.2(1) of the Act because there was no disclosure in the Q2 2019 Filings that the mining rights associated with the Disputed Concessions (including Ocacasa 4) had lapsed following the Cancellation Resolution.

39. Prior to filing the Q2 2019 Filings, the Respondents received legal advice from Peruvian legal counsel that Plateau was very likely to prevail in its March 14, 2019 appeal of the Cancellation Resolution because the Company had complied with all payment requirements needed to maintain title to the Disputed Concessions. However, the legal advice did not address the immediate legal effect of the Cancellation Resolution upon the Company's mining rights.

40. Holmes as CEO took the lead on the disclosure decision relating to the Cancellation Resolution and obtained board approval. Plateau erroneously concluded that it did not have to disclose the Cancellation Resolution and its potential impact on Plateau's assets in the Q2 2019 Filings. Gibbs failed to sufficiently challenge Plateau's decision not to disclose the Cancellation Resolution in the Q2 2019 Filings.

41. Holmes, as CEO, and Gibbs, as part time CFO, had important gatekeeping roles in ensuring that the public was provided with disclosure of material facts in the Q2 filings. Holmes and Gibbs authorized, permitted or acquiesced in Plateau's breaching subsection 126.2(1) of the Act in connection with the Q2 2019 Filings, contrary to section 129.2 of the Act.

Selective Disclosure to Shareholders

42. On the same day the March 15, 2019 News Release was issued, someone using the name "Juan Peru" made a post on the Stockhouse forum providing a detailed account of the events from July 2, 2018 onwards that led to the Cancellation Resolution (the **Juan Peru Forum Post**).

43. Following the publication of the IKN Blog Post and the Juan Peru Forum Post, between approximately March 14 and 19, 2019, Holmes, on behalf of the Company responded to inquiries from a number of concerned shareholders and analysts about the posts to try to mitigate panic selling and to "bring calm to the situation". During these discussions, Holmes referred to the following facts before they were generally disclosed: (a) certain of the facts in respect of the Cancellation Resolution, including the events leading up to that resolution; and (b) the Company's position in response. The Company, however, did not make any public disclosure of these facts until July 31, 2019.

44. The conduct described above violates the fundamental purposes and principles of the Act as set out in subsections 1.1 and 2.1 of the Act and is conduct contrary to the public interest. Specifically, it was contrary to the public interest for Holmes to provide selective disclosure of these material facts only to those investors who made inquiries. Selective disclosure is contrary to the requirements for timely, accurate and efficient disclosure of information and undermines the fairness and efficiency of the capital markets, thereby impairing the confidence in the capital markets.

Company Discloses the Regulatory Threats to the Disputed Concessions

45. In July 2019, the Mining Council heard the Company's appeal of the Cancellation Resolution. The Mining Council subsequently denied the Company's appeal to suspend the Cancellation Resolution regarding the Disputed Concessions and confirmed the Cancellation Resolution through a series of resolutions (the **Mining Council Resolutions**).

46. On July 31, 2019, the Company issued a news release disclosing, for the first time, its on-going administrative issues in respect of the Disputed Concessions (the **July 31, 2019 News Release**). The July 31, 2019 News Release informed investors that the Company's appeal to suspend the Cancellation Resolution affecting seven of the Disputed Concessions was denied. A material change report was filed on August 8, 2019 in connection with the July 31, 2019 News Release.

47. On August 6, 2019, the Company issued a news release disclosing that the Mining Council had dismissed the Company's appeal to suspend the Cancellation Resolution in connection with the remaining 25 of 32 Disputed Concessions (the **August 6, 2019 News Release**). A material change report was filed on August 12, 2019 in connection with the August 6, 2019 News Release.

Loss of the Disputed Concessions was Important Information to Investors

48. Following the Company's disclosure on July 31, 2019, Plateau's share price declined from $0.59 on July 25, 2019 (the last trading day before the stock was halted) to $0.28 on August 1, 2019 (the day trading resumed).

49. The impact of the potential loss of some or all of the Disputed Concessions to the Company was explained in news releases issued by the Company from July 31, 2019 to at least February 4, 2020. Following the completion of the NI 43-101 preliminary economic assessment on February 4, 2020, the Company disclosed that, on a preliminary basis, the impact could represent:

    (a) 2.18 million tonnes (**Mt**) of the 4.7 Mt of contained Lithium Carbonate for the Falchani Lithium Project, representing a loss of approximately 46% of the contained Lithium Carbonate in the Falchani mineral resource estimate;

    (b) 36.0 million pounds (**Mlbs**) of the total of 68.8 Mlbs of contained Uranium Oxide for the Macusani Uranium Project concessions included in the Company's 2016 preliminary economic assessment (**PEA)** for that project, representing a loss of approximately 52% of the contained Uranium Oxide in the Macusani mineral resource estimate. In addition, a further two of the Disputed Concessions, not included in the 2016 Macusani PEA, represented a loss of an additional 3.2 Mlbs of contained Uranium Oxide; and

    (c) that without the Ocacasa 4 concession, the net present value (after tax) of the Falchani Lithium Project was reduced by 46%, gross revenue was reduced by 58% and there was a 62% decrease in undiscounted cash flows (after tax).

Subsequent Corporate Changes

50. On May 11, 2021, Plateau became a wholly-owned subsidiary of a public mining company which has been responsible for making disclosure and issuing financial statements in respect of Plateau since that time. As a result of that corporate change, Plateau was delisted from the TSX Venture Exchange, on May 18, 2021.

Subsequent Judicial Decision

51. On November 2, 2021, the Peruvian Courts heard the Company's appeal of the Mining Council Resolutions, decided in favour of the Company and annulled the Mining Council Resolutions, the Cancellation Resolution and the Inadmissibility

Resolution (the **Judicial Decision**). The Judicial Decision recognized that the Company had made payment of the Good Standing fees within the deadline.

Mitigating Factors

52. By agreeing to this settlement agreement, a 14-day hearing on the merits has been avoided. This has saved resources for both the OSC and the Capital Market Tribunal. This has also obviated the need for witnesses to testify.

53. In May 2021, Holmes voluntarily completed the course, "Public Companies: Financial Governance and Compliance" at Simon Fraser University.

54. As part of this settlement agreement, Holmes and Gibbs will complete a customized education course, agreeable to the Commission, in relation to disclosure obligations, including with respect to certification of public filings pursuant to National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109).**

PART IV – NON-COMPLIANCE WITH ONTARIO SECURITIES LAW [AND/OR] CONDUCT CONTRARY TO THE PUBLIC INTEREST

55. By engaging in the conduct described above, the Respondents admit and acknowledge the following:

(a) Plateau made statements in the March 15, 2019 News Release that it knew or reasonably ought to have known, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that is required to be stated or that is necessary to make the statements not misleading, contrary to subsection 126.2(1) of the Act. These statements would reasonably be expected to have a significant effect on the market price or value of Plateau's securities;

(b) Holmes authorized, permitted or acquiesced in the contravention of subsection 126.2(1) of the Act by Plateau in connection with the March 15, 2019 News Release and is deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act;

(c) Plateau made statements in the Subsequent News Releases that it knew or reasonably ought to have known, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that is required to be stated or that is necessary to make the statements not misleading, contrary to subsection 126.2(1) of the Act. These statements would reasonably be expected to have a significant effect on the market price or value of Plateau's securities;

(d) Holmes authorized, permitted or acquiesced in the contravention of subsection 126.2(1) of the Act by Plateau in connection with the Subsequent News Releases and is deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act;

(e) Plateau made statements in the Q2 2019 Filings that it knew or reasonably ought to have known, in a material respect and at the time and in the light of the circumstances under which they were made, were misleading or untrue or did not state a fact that is required to be stated or that is necessary to make the statements not misleading, contrary to subsection 126.2(1) of the Act. These statements would reasonably be expected to have a significant effect on the market price or value of Plateau's securities;

(f) Each of Holmes and Gibbs authorized, permitted or acquiesced in the contravention of subsection 126.2(1) of the Act by Plateau in connection with the Q2 2019 Filings and are deemed to have failed to comply with Ontario securities law pursuant to section 129.2 of the Act; and

(g) Holmes, engaged in conduct that is contrary to the public interest, as set out in paragraphs 42 and 43 above.

PART V – TERMS OF SETTLEMENT

56. The Respondents agree to the terms of settlement set forth below.

57. The Respondents consent to the Order substantially in the form attached to this Settlement Agreement as Schedule "A", pursuant to which it is ordered that:

(a) the Respondents shall be reprimanded pursuant to paragraph 6 of subsection 127(1) of the Act;

(b) Holmes shall resign any position he holds as director of any reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(c) for two years following the order approving this Settlement Agreement, Holmes shall be prohibited from becoming or acting as a director or certifying officer, as defined in NI 52-109, of any reporting issuer, pursuant to paragraph 8 of subsection 127(1) of the Act;

(d) Gibbs shall resign any position he holds as director of any reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

(e) for one year following the order approving this settlement agreement, Gibbs shall be prohibited from becoming or acting as a director of any reporting issuer, pursuant to paragraph 8 of subsection 127(1) of the Act;

(f) Within one year of the order approving the settlement agreement, each of Holmes and Gibbs shall complete a customized education course, agreeable to the Commission, in relation to disclosure obligations, including with respect to certification of public filings pursuant to NI 52-109, at their own expense;

(g) Plateau shall pay an administrative penalty of $500,000 for the failure to comply with Ontario securities law, by wire transfer before the commencement of the Settlement Hearing, pursuant to paragraph 9 of subsection 127(1) of the Act;

(h) Holmes shall pay an administrative penalty of $175,000 for the failure to comply with Ontario securities law, by wire transfer before the commencement of the Settlement Hearing, pursuant to paragraph 9 of subsection 127(1) of the Act;

(i) Gibbs shall pay an administrative penalty of $75,000 for the failure to comply with Ontario securities law, by wire transfer before the commencement of the Settlement Hearing, pursuant to paragraph 9 of subsection 127(1) of the Act;

(j) Plateau shall pay $210,000 towards the costs of the Commission investigation, by wire transfer before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act;

(k) Holmes shall pay $60,000 towards the costs of the Commission investigation, by wire transfer before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act; and

(l) Gibbs shall pay $30,000 towards the costs of the Commission investigation, by wire transfer before the commencement of the Settlement Hearing, pursuant to section 127.1 of the Act.

58. The Respondents acknowledge that, in addition to any proceedings referred to in paragraphs 61 and 62, failure to pay in full any monetary sanctions and/or costs ordered will result in the Respondents' names being added to the list of "Respondents Delinquent in Payment of Commission Orders" published on the Commission's website.

59. The Respondents consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 57, other than subparagraphs 57 (g) through (l). The applicable sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

60. The Respondents acknowledge that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondents. The Respondents should contact the securities regulator of any other jurisdiction in which the Respondents intends to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VI – FURTHER PROCEEDINGS

61. If the Tribunal approves this Settlement Agreement, no enforcement proceeding will be commenced or continued against the Respondents under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless one or more of the Respondents fail to comply with any term in this Settlement Agreement, in which case enforcement proceedings may be brought under Ontario securities law against that or those Respondents that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

62. The Respondents acknowledge that, if the Tribunal approves this Settlement Agreement and the Respondents fail to comply with any term in it, proceedings may be brought in order to, among other things, recover the amounts set out in sub-paragraphs 57 (g) through (l), above.

63. The Respondents waive any defences to a proceeding referenced in paragraphs 61 and 62 that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

64. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Tribunal, which shall be held on a date determined by the Registrar, Governance & Tribunal Secretariat of the Commission in accordance with this Agreement and the Tribunal's *Rules of Procedure and Forms*.

65. Representatives of the Respondents will attend the Settlement Hearing by video conference.

66. The parties confirm that this Settlement Agreement sets forth all facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

67. If the Tribunal approves this Settlement Agreement:

    (a) the Respondents irrevocably waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and

    (b) no party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

68. Whether or not the Tribunal approves this Settlement Agreement, the Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Tribunal's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

69. If the Tribunal does not make the Order:

    (a) this Settlement Agreement and all discussions and negotiations between the parties before the Settlement Hearing will be without prejudice to any party; and

    (b) the parties will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

70. The parties will keep the terms of this Settlement Agreement confidential until the Tribunal approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Tribunal does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless the parties otherwise agree in writing or if required by law.

PART IX - EXECUTION OF SETTLEMENT AGREEMENT

71. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

72. An electronic copy of any signature will be as effective as an original signature.

DATED at Vancouver**,** BC**,** this 20th day of October, 2022.

PLATEAU ENERGY METALS INC.

I have authority to bind the Corporation.

"Simon Clarke"
CEO

DATED at Duncan, BC this 21st day of October, 2022.

"M Fournie"
Witness: Mitchell Fournie

"Alexander Holmes"

DATED at Oakville, Ontario this 21st day of October, 2022.

"Wendy Heather Gibbs"
Witness: Wendy Heather Gibbs

"Phillip N Gibbs"

DATED at Toronto, Ontario, this 25th day of October, 2022**.**

ONTARIO SECURITIES COMMISSION

"Jeff Kehoe"
Director, Enforcement Branch

SCHEDULE "A"

FORM OF ORDER

IN THE MATTER OF
PLATEAU ENERGY METALS INC.,
ALEXANDER FRANCIS CUTHBERT HOLMES AND
PHILIP NEVILLE GIBBS

File No.

(Names of panelists comprising the panel)

(Day and date order made)

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

WHEREAS on [**date**] the Capital Markets Tribunal held a hearing by videoconference to consider the request for approval of a settlement agreement dated **[date**] (the **Settlement Agreement**);

ON READING the Joint Application for Settlement Hearing, including the Statement of Allegations dated May 3, 2021 and the Settlement Agreement, the written submissions, and on hearing the submissions of representatives of each of the parties, and on considering Plateau Energy Metals Inc. (**Plateau**), Alexander Francis Cuthbert Holmes (**Holmes**), and Philip Neville Gibbs (**Gibbs**), having made payments of $500,000, $175,000 and $75,000 respectively on account of administrative penalties and $210,000, $60,000 and $30,000 respectively on account of costs to the Commission in accordance with the terms of the Settlement Agreement, and on being advised that Holmes and Gibbs have completed the customized education course agreed to as a term of the Settlement Agreement,

IT IS ORDERED that:

1. the Settlement Agreement is approved;

2. each of the Respondents is reprimanded pursuant to paragraph 6 of subsection 127(1) of the Act;

3. Holmes immediately resign any position he holds as director of any reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

4. for two years following the order approving the Settlement Agreement, Holmes shall be prohibited from becoming or acting as a director or certifying officer, as defined in National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109***)*, of any reporting issuer, pursuant to paragraph 8 of subsection 127(1) of the Act;

5. Gibbs immediately resign any position he holds as director of any reporting issuer, pursuant to paragraph 7 of subsection 127(1) of the Act;

6. for one year following the order approving the Settlement Agreement, Gibbs shall be prohibited from becoming or acting as a director of any reporting issuer, pursuant to paragraph 8 of subsection 127(1) of the Act;

7. Plateau pay an administrative penalty of $500,000 pursuant to paragraph 9 of subsection 127(1) of the Act;

8. Holmes pay an administrative penalty of $175,000 pursuant to paragraph 9 of subsection 127(1) of the Act;

9. Gibbs pay an administrative penalty of $75,000 pursuant to paragraph 9 of subsection 127(1) of the Act;

10. Plateau pay costs of the Commission's investigation in the amount of $210,000 pursuant to section 127.1 of the Act.

11. Holmes pay costs of the Commission's investigation in the amount of $60,000 pursuant to section 127.1 of the Act.

12. Gibbs pay costs of the Commission's investigation in the amount of $30,000 pursuant to section 127.1 of the Act.

_____
[Adjudicator]

_____ _____
[Adjudicator] [Adjudicator]

A.3.3 Canada Cannabis Corporation et al. – ss. 127(1), 127.1

IN THE MATTER OF
CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO AND
PETER STRANG

File No. 2019-34

Adjudicators: M. Cecilia Williams (chair of the Panel)
Geoffrey D. Creighton
Dale R. Ponder

November 4, 2022

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

WHEREAS on November 4, 2022, the Capital Markets Tribunal held a hearing by videoconference to consider the request for approval of a settlement agreement between Staff of the Ontario Securities Commission (the **Commission**), Canada Cannabis Corporation, Canadian Cannabis Corporation and Benjamin Ward (**Ward**), dated October 28, 2022 (the **Settlement Agreement**);

WHEREAS this Order is without prejudice to the rights of Canada Cannabis Corporation and Canadian Cannabis Corporation (collectively, **CCC**) under s. 144.1 of the *Securities Act*, RSO 1990, c S.5 (the **Act**) to bring an application to the Tribunal, on notice to the Commission, to vary the Order to effect a transaction that would aid in recovery for CCC's investors; and

ON READING the Joint Request for a Settlement Hearing, including the Settlement Agreement, the Statement of Allegations dated September 13, 2019, and the written submissions and on hearing the submissions of the representatives for each of Staff of the Commission, Canada Cannabis Corporation, Canadian Cannabis Corporation and Ward;

IT IS ORDERED THAT:

1. the Settlement Agreement is approved;

Canada Cannabis Corporation

2. pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Canada Cannabis Corporation shall cease permanently;

3. pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by Canada Cannabis Corporation is prohibited permanently;

4. pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Canada Cannabis Corporation permanently;

5. pursuant to paragraph 8.5 of s. 127(1) of the Act, Canada Cannabis Corporation is prohibited from becoming or acting as a registrant (including an investment fund manager) or promoter permanently;

Canadian Cannabis Corporation

6. pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Canadian Cannabis Corporation shall cease permanently;

7. pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by Canadian Cannabis Corporation is prohibited permanently;

8. pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Canadian Cannabis Corporation permanently;

9. pursuant to paragraph 8.5 of s. 127(1) of the Act, Canadian Cannabis Corporation is prohibited from becoming or acting as a registrant (including an investment fund manager) or promoter permanently;

Ward

10. pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Ward for six years;

11. pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act, Ward shall resign all positions that he holds as a director or officer of any issuer, registrant, or investment fund manager;

12. pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act, Ward is prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager for six years;

13. pursuant to paragraph 8.5 of s. 127(1) of the Act, Ward is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for six years;

14. pursuant to paragraphs 1 and 2 of s. 127.1 of the Act, Ward shall pay $10,000 towards the costs that were incurred by or on behalf of the Commission, with $1,000 to be paid by certified cheque or bank draft by the date of the public settlement hearing and $1,000 to be paid by the 15th day of each month thereafter until the amount of $10,000 has been paid.

“M. Cecilia Williams”

“Geoffrey D. Creighton”

“Dale R. Ponder”

FILE NO.: 2019-34

IN THE MATTER OF
CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO AND
PETER STRANG

SETTLEMENT AGREEMENT
(Canada Cannabis Corporation, Canadian Cannabis Corporation and Benjamin Ward)

PART I – INTRODUCTION

1. This proceeding involves misconduct in the burgeoning cannabis sector.

2. On January 20, 2014, Benjamin Ward, Peter Strang, Silvio Serrano and others formed a cannabis cultivation and distribution company known as Canada Cannabis Corporation which subsequently, through a reverse take-over, became Canadian Cannabis Corporation (the two corporations are collectively referred to as **CCC**). Ward was Chief Executive Officer and director of CCC. Both Strang and Serrano were Vice Presidents and either directors or *de facto* directors of CCC. CCC raised approximately $3.2 million and USD 8.8 million from approximately 125 investors, approximately 60 of which are located in Ontario, by selling shares and debentures of CCC.[1] Ward, Strang and Serrano represented to investors that their funds would be used to develop and operate CCC.

3. CCC loaned approximately $3 million to a company called Growlite Canada, owned by Serrano (the **Growlite Loan**). As set out below, investors were misled about material facts as to how the Growlite Loan would be funded and used. Growlite Canada did not make any interest payments or repay any of the principal. The Growlite Loan was eventually written off. By the fall of 2016, Ward, Strang and Serrano had resigned from CCC, leaving behind a company depleted of all investor funds without ever having engaged in the cultivation or distribution of cannabis.

4. Investors are interested in investing in the cannabis sector. They often believe that they can earn a quick and profitable return from their investment in this industry. These investments, however, can be highly speculative, and the cost of an investment in a cannabis company may be based on the expectation of its future success rather than its current performance. All issuers and their management, including those in the cannabis industry, must accurately and truthfully disclose how invested funds will be used.

PART II – JOINT SETTLEMENT RECOMMENDATION

5. A Notice of Hearing was issued and a Statement of Allegations was published in respect of a proceeding against the Respondents (the **Proceeding**) on September 13, 2019.

6. The parties will jointly file a request that the Capital Markets Tribunal (the **Tribunal**) issue a Notice of Hearing to announce that it will hold a hearing (the **Settlement Hearing**) to consider whether, pursuant to sections 127 and 127.1 of the *Securities Act*, RSO 1990, c S.5 (the **Act**), it is in the public interest for the Tribunal to make certain orders against CCC and Ward (the **Settling Respondents**).

7. The Settling Respondents consent to the making of an order (the **Order**) substantially in the form attached as Schedule "A" to this agreement (the **Settlement Agreement**) based on the facts set out in this Settlement Agreement. For the purposes of the Proceeding, and any other regulatory proceeding commenced by a securities regulatory authority, derivatives regulatory authority or financial regulatory authority, the Settling Respondents agree with the facts set out in Part III of this Settlement Agreement and the conclusion in Part IV of this Settlement Agreement.

PART III – AGREED FACTS

8. Canada Cannabis Corporation is an Ontario corporation incorporated on January 20, 2014, with its office in Oakville, Ontario. As of May 2014, it is a wholly-owned subsidiary of Canadian Cannabis Corporation.

9. Canadian Cannabis Corporation is a Delaware corporation with offices in Oakville, Ontario. As a corporate entity, Canadian Cannabis Corporation resulted from a series of merger transactions that concluded on May 21, 2014.

10. During the relevant time, Ward was a resident of Ontario. At all relevant times, he was a director and officer of CCC.

[1] All figures are in Canadian dollars unless otherwise stated.

CCC's Investment In Growlite Canada

11. Growlite Canada was a company solely owned by Serrano. Beginning November 1, 2013, Growlite Canada held the exclusive distribution rights for Canada to sell and distribute horticultural lighting and related accessories manufactured by Growlite USA.

12. On or about February 2, 2014, Ward, Strang and Serrano came to an oral agreement (described in CCC's minutes as a "handshake" agreement) to invest $4 million of CCC investor funds in Growlite Canada (the **Growlite Transaction**). Of that amount, $1 million would be used to purchase a 45% interest in Growlite Canada and $3 million would be used to finance the Growlite Loan. The oral "handshake" agreement was to be formalized by a written agreement. There was no independent valuation performed of Growlite Canada to support the purchase price or the amount of CCC's investment.

13. Before the written Growlite Loan agreement was signed, between February 5, 2014 and March 28, 2014, $4 million of investor funds was transferred from CCC to Growlite Canada for both the investment in and the Growlite Loan.

14. The Growlite Loan agreement was signed by Ward (on behalf of CCC) and Serrano (on behalf of Growlite Canada) effective March 31, 2014. The Growlite Loan was not secured. The interest rate on the Growlite Loan was 2% to be paid quarterly.

15. Between February 5, 2014 and August 29, 2016, funds were directed away from the business of Growlite Canada and to the benefit of Serrano and Strang, their families or companies controlled by them as follows:

    (a) Serrano or companies controlled by him: $1,500,000 and USD 224,000;

    (b) Strang or companies controlled by him: $520,000;

    (c) Serrano's brother, or companies controlled by him: $215,000;

    (d) Serrano's father, or companies controlled by him: $45,000;

    (e) a criminal defence lawyer who represented Serrano's father: $48,500; and

    (f) Serrano's cousin, or companies controlled by him: $62,500.

16. CCC did not sign a security agreement for the Growlite Loan until May 2015, after the time investor funds from the Growlite Loan had begun to be redirected. CCC did not recover any amount of the Growlite Loan.

17. CCC wrote off the Growlite Loan in April 2016. Growlite Canada did not make any of the required interest payments and did not repay any of the principal amount.

CCC's Misrepresentations to Investors

18. CCC solicited investment through private placements of shares and a private placement of debentures (the **Private Placements**). Between January 20, 2014 and August 29, 2016, CCC raised approximately $3.2 million and USD 8.8 million from approximately 125 investors, of which approximately 60 were located in Ontario.

19. In connection with promoting the Private Placements, CCC provided prospective investors with an investor brief dated January 16, 2014 (the **Investor Brief**), an Offering Memorandum dated May 16, 2014 (the **OM**) and an investor slide deck dated January 2015 (the **Slide Deck**).

20. The Investor Brief, the OM and the Slide Deck constituted offering memoranda under Ontario securities law.

21. The Investor Brief included the following misstatements:

    (a) The Investor Brief included a statement that Investor Brief states that "CCC has purchased 45% of [Growlite]." This was misleading. CCC had not yet made any investment in or loan to Growlite Canada. Prospective investors would not have understood from this statement that their capital was needed to make this investment.

    (b) The Investor Brief states that Growlite "sales in the first month of business totalled 2,000 units." This was false. Growlite Canada's Daily Sales Summary shows that in its first month of business (November 2013), Growlite Canada had made one sale to one customer of 732 units. In its second month of business (December 2013), Growlite Canada made no sales. In its third month of business (January 2014, when the Investor Brief was written), Growlite made one sale to one customer of an estimated fewer than 100 units.

(c) The Investor Brief twice identifies Ward as "Benjamin Ward, PhD." This was untrue. Ward does not have a PhD.

22. In addition, the Investor Brief was misleading in that it failed to state that CCC had not obtained an independent valuation of Growlite Canada before agreeing to invest $4 million.

23. The OM included a statement as follows:

"GrowLite Canada produces and distributes a proprietary lighting system developed and patented by Aubrey Bradley, an innovator in the horticultural lighting industry. GrowLite Canada holds patents for its vertical horticultural lamp system, increasing efficiency and reducing costs over comparable systems. The Company invested CAD $4 Million (approximately $3.97 million) into GrowLite Canada to acquire a 45% ownership interest in the company from Silvio Serrano, an officer and founder of CCC, who owns the remaining 55% ownership interest in GrowLite. A quarter of the CCC's investment in GrowLite Canada was purchased for cash, with the remainder in the form of a loan extended by CCC to GrowLite Canada. Certain of CCC's officers are also officers of GrowLite Canada."

24. The OM was misleading in that it failed to state that CCC had not independently valued Growlite Canada before agreeing on the purchase price for the Growlite Transaction, that the Growlite Loan came with no express conditions on how it could be used, that CCC did not take reasonable steps to ensure it could oversee or monitor the Growlite Loan, and that the Growlite Loan money had been or would be spent on matters unrelated to Growlite Canada business, including personal expenses of Strang, Serrano and their families.

25. The Slide Deck included the following statements:

(a) "On March 31, 2014, CCC acquired a 45% equity interest in Growlite Canada for $4M."

(b) Growlite Canada has "$2M in sales to date; Management anticipated orders of $11M in 2015".

26. This was untrue in that Growlite Canada did not have $2 million in sales to January 2015, and misleading in that Management's anticipation of orders of $11 million in 2015 was not reasonable.

27. Further, the Slide Deck failed to state that CCC had not independently valued Growlite Canada before agreeing to the Growlite Transaction, that $3 million of the purchase price was in the form of an unsecured loan, that the Growlite Loan had no express conditions on how it could be used, that CCC did not take reasonable steps to ensure it could oversee or monitor the Growlite Loan, and that the Growlite Loan money had been or would be spent on matters unrelated to Growlite Canada business, including personal expenses of Strang, Serrano and their families.

CCC's Position

28. CCC understands, and the OSC accepts, that this Settlement Agreement is without prejudice to CCC's right under s. 144.1 of the Act to bring an application to the Tribunal, on notice to the OSC, to vary the Order to effect a transaction that would aid in recovery for CCC's investors.

Ward's Position

29. Ward did not personally receive any of the money CCC advanced to Growlite Canada.

30. Ward had no prior relationship, experience or association with Growlite Canada prior to the events described above.

31. At the time CCC agreed to the Growlite Transaction, Ward believed the Growlite Transaction was in the best interests of CCC and its investors. Ward admits that he should have done more diligence.

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

32. The Settling Respondents acknowledge and admit that, by engaging in the conduct described above:

(a) CCC made statements in offering memoranda required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in light of the circumstances under which the statements were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to the prohibition contained in subsection 122(1)(b) of the Act, thereby resulting in a breach of Ontario securities law;

(b) Ward acquiesced in CCC's breach, and is liable under subsection 129.2 of the Act; and

(c) The conduct described above is contrary to the public interest.

PART V – TERMS OF SETTLEMENT

33. The Settling Respondents agree to the terms of the settlement set forth below.

34. The Settling Respondents consent to the Order substantially in the form attached as Schedule "A", pursuant to which it is ordered that:

(a) this Settlement Agreement is approved;

Canada Cannabis Corporation

(b) pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Canada Cannabis Corporation cease permanently;

(c) pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by Canada Cannabis Corporation is prohibited permanently;

(d) pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Canada Cannabis Corporation permanently;

(e) pursuant to paragraph 8.5 of s. 127(1) of the Act, Canada Cannabis Corporation is prohibited from becoming or acting as a registrant (including an investment fund manager) or promoter permanently;

Canadian Cannabis Corporation

(f) pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Canadian Cannabis Corporation cease permanently;

(g) pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by Canadian Cannabis Corporation is prohibited permanently;

(h) pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Canadian Cannabis Corporation permanently;

(i) pursuant to paragraph 8.5 of s. 127(1) of the Act, Canadian Cannabis Corporation is prohibited from becoming or acting as a registrant (including an investment fund manager) or promoter permanently;

Ward

(j) pursuant to paragraph 3 of s. 127(1) of the Act, that any exemptions contained in Ontario securities law do not apply to Ward for six years;

(k) pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act, Ward resign all positions that he holds as a director or officer of any issuer, registrant, or investment fund manager;

(l) pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act, Ward be prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager for six years;

(m) pursuant to paragraph 8.5 of s. 127(1) of the Act, Ward be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for six years;

(n) pursuant to paragraphs 1 and 2 of s. 127.1 of the Act, Ward be ordered to pay $10,000 towards the costs that were incurred by or on behalf of the Commission, with $1,000 to be paid by certified cheque or bank draft by the date of the settlement hearing and $1,000 to be paid by the 15th day of each month thereafter until the amount of $10,000 has been paid.

Reciprocal Orders

35. The Settling Respondents consent to a regulatory order made by any provincial or territorial securities regulatory authority in Canada containing any or all of the sanctions set out in paragraph 34, other than sub-paragraph 34(n). These sanctions may be modified to reflect the provisions of the relevant provincial or territorial securities law.

36. The Settling Respondents acknowledge that this Settlement Agreement and the Order may form the basis for orders of parallel effect in other jurisdictions in Canada. The securities laws of some other Canadian jurisdictions allow orders made in this matter to take effect in those other jurisdictions automatically, without further notice to the Respondents.

The Respondents should contact the securities regulator of any other jurisdiction in which the Respondents intend to engage in any securities- or derivatives-related activities, prior to undertaking such activities.

PART VI – FURTHER PROCEEDINGS

37. If the Tribunal approves this Settlement Agreement, no enforcement proceeding will be commenced or continued against the Settling Respondents under Ontario securities law based on the misconduct described in Part III of this Settlement Agreement, unless the Settling Respondents fail to comply with any term in this Settlement Agreement, in which case enforcement proceedings may be brought under Ontario securities law against the Settling Respondents that may be based on, among other things, the facts set out in Part III of this Settlement Agreement as well as the breach of this Settlement Agreement.

38. The Settling Respondents acknowledge that, if the Tribunal approves this Settlement Agreement and they fail to comply with any term in it, proceedings may be brought against them. Ward acknowledges that this may include proceedings in order to, among other things, recover the amounts set out in sub-paragraph 34(n), above.

39. Ward acknowledges that, in addition to any proceedings referred to in paragraphs 37 and 38, failure to pay in full any costs ordered will result in the Respondent's name being added to the list of "Respondents Delinquent in Payment of Commission Orders" published on the Commission's website.

40. The Settling Respondents waive any defences to a proceeding referenced in this Part VI that are based on the limitation period in the Act, provided that no such proceeding shall be commenced later than six years from the date of the occurrence of the last failure to comply with this Settlement Agreement.

PART VII – PROCEDURE FOR APPROVAL OF SETTLEMENT

41. The parties will seek approval of this Settlement Agreement at the Settlement Hearing before the Tribunal, which shall be held on a date determined by the Secretary to the Tribunal in accordance with this Settlement Agreement and the Tribunal's *Rules of Procedure and Forms.*

42. Ward and a CCC representative will attend the Settlement Hearing in person or by video conference.

43. The parties confirm that this Settlement Agreement sets forth all of the agreed facts that will be submitted at the Settlement Hearing, unless the parties agree that additional facts should be submitted at the Settlement Hearing.

44. If the Tribunal approves this Settlement Agreement:

    (a) the Settling Respondents irrevocably waive all rights to a full hearing, judicial review or appeal of this matter under the Act; and

    (b) no party will make any public statement that is inconsistent with this Settlement Agreement or with any additional agreed facts submitted at the Settlement Hearing.

45. Whether or not the Tribunal approves this Settlement Agreement, the Settling Respondents will not use, in any proceeding, this Settlement Agreement or the negotiation or process of approval of this Settlement Agreement as the basis for any attack on the Commission or the Tribunal's jurisdiction, alleged bias, alleged unfairness or any other remedies or challenges that may be available.

PART VIII – DISCLOSURE OF SETTLEMENT AGREEMENT

46. If the Tribunal does not approve this Settlement Agreement or does not make an order substantially in the form of the Order attached as Schedule "A" to this Settlement Agreement:

    (a) this Settlement Agreement and all discussions and negotiations between the parties before the Settlement Hearing will be without prejudice to any party; and

    (b) the parties will each be entitled to all available proceedings, remedies and challenges, including proceeding to a hearing on the merits of the allegations contained in the Statement of Allegations in respect of the Proceeding. Any such proceedings, remedies and challenges will not be affected by this Settlement Agreement, or by any discussions or negotiations relating to this Settlement Agreement.

47. The parties will keep the terms of this Settlement Agreement confidential until the Tribunal approves the Settlement Agreement, except as is necessary to make submissions at the Settlement Hearing. If, for whatever reason, the Tribunal does not approve the Settlement Agreement, the terms of the Settlement Agreement shall remain confidential indefinitely, unless the parties otherwise agree in writing or if required by law.

PART IX – EXECUTION OF SETTLEMENT AGREEMENT

48. This Settlement Agreement may be signed in one or more counterparts which together constitute a binding agreement.

49. A facsimile copy or other electronic copy of any signature will be as effective as an original signature.

DATED at Toronto, Ontario this 27th day of October, 2022.

"Benjamin Ward"

DATED at Toronto, Ontario this 27th day of October, 2022

CANADA CANNABIS CORPORATION

"Scott Keevil"
For Canada Cannabis Corporation
Director

DATED at Toronto, Ontario this 27th day of October, 2022.

CANADIAN CANNABIS CORPORATION

"Scott Keevil"
For Canadian Cannabis Corporation
Director

DATED at Toronto, Ontario, this 28th day of October, 2022.

ONTARIO SECURITIES COMMISSION

"Jeff Kehoe"
Director, Enforcement Branch

SCHEDULE "A"

FORM OF ORDER

IN THE MATTER OF
CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO AND
PETER STRANG
(Canada Cannabis Corporation, Canadian Cannabis Corporation and Benjamin Ward)

File No. 2019-34

Adjudicators: M. Cecilia Williams (chair of the Panel)
Geoffrey D. Creighton
Dale R. Ponder

(Day and date order made)

ORDER

(Sections 127 and 127.1 of the Securities Act, RSO 1990, c S.5)WHEREAS: on **[date]**, 2022, the Capital Markets Tribunal (the **Tribunal**) held a hearing by videoconference to consider the request for approval of a settlement agreement between Staff of the Ontario Securities Commission (the **Commission**), Canada Cannabis Corporation, Canadian Cannabis Corporation and Benjamin Ward dated **[date]** (the **Settlement Agreement**); and

WHEREAS this Order is without prejudice to the rights of Canada Cannabis Corporation and Canadian Cannabis Corporation (collectively **CCC**) under s. 144.1 of the *Securities Act*, RSO 1990, c S.5 (the **Act**) to bring an application to the Tribunal, on notice to the Commission, to vary the Order to effect a transaction that would aid in recovery for CCC's investors; and

ON READING the Joint Request for a Settlement Hearing, including the Settlement Agreement and the Statement of Allegations dated September 13, 2019, the written submissions and on hearing the submissions of the representatives for each of the Commission, Canada Cannabis Corporation, Canadian Cannabis Corporation and Benjamin Ward;

IT IS ORDERED THAT:

(a) the Settlement Agreement is approved;

Canada Cannabis Corporation

(b) pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Canada Cannabis Corporation shall cease permanently;

(c) pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by Canada Cannabis Corporation is prohibited permanently;

(d) pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Canada Cannabis Corporation permanently;

(e) pursuant to paragraph 8.5 of s. 127(1) of the Act, Canada Cannabis Corporation is prohibited from becoming or acting as a registrant (including an investment fund manager) or promoter permanently;

Canadian Cannabis Corporation

(f) pursuant to paragraph 2 of s. 127(1) of the Act, trading in any securities or derivatives by Canadian Cannabis Corporation shall cease permanently;

(g) pursuant to paragraph 2.1 of s. 127(1) of the Act, the acquisition of any securities by Canadian Cannabis Corporation is prohibited permanently;

(h) pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Canadian Cannabis Corporation permanently;

(i) pursuant to paragraph 8.5 of s. 127(1) of the Act, Canadian Cannabis Corporation is prohibited from becoming or acting as a registrant (including an investment fund manager) or promoter permanently;

Ward

(j) pursuant to paragraph 3 of s. 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Ward for six years;

(k) pursuant to paragraphs 7, 8.1 and 8.3 of s. 127(1) of the Act, Ward shall resign all positions that he holds as a director or officer of any issuer, registrant, or investment fund manager;

(l) pursuant to paragraphs 8, 8.2 and 8.4 of s. 127(1) of the Act, Ward is prohibited from becoming or acting as a director or officer of any issuer, registrant, or investment fund manager for six years;

(m) pursuant to paragraph 8.5 of s. 127(1) of the Act, Ward is prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter for six years;

(n) pursuant to paragraphs 1 and 2 of s. 127.1 of the Act, Ward shall pay $10,000 towards the costs that were incurred by or on behalf of the Commission, with $1,000 to be paid by certified cheque or bank draft by the date of the public settlement hearing and $1,000 to be paid by the 15th day of each month thereafter until the amount of $10,000 has been paid.

_____
[Adjudicator]

_____ _____
[Adjudicator] [Adjudicator]

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A.4
Reasons and Decisions

A.4.1 Plateau Energy Metals Inc. et al. – ss. 127(1), 127.1

Citation: *Plateau Energy Metals Inc. (Re)*, 2022 ONCMT 33
Date: 2022-11-02
File No. 2021-16

IN THE MATTER OF
PLATEAU ENERGY METALS INC.,
ALEXANDER FRANCIS CUTHBERT HOLMES AND
PHILIP NEVILLE GIBBS

ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	James D.G. Douglas (chair of the panel) Sandra Blake Timothy Moseley	
Hearing:	By videoconference, November 2, 2022	
Appearances:	Brian Weingarten Rikin Morzaria	For Staff of the Ontario Securities Commission
	Lara Jackson John Picone Stephanie Voudouris	For Plateau Energy Metals Inc.
	Melissa MacKewn Dan Thomas	For Alexander Francis Cuthbert Holmes
	James Camp Jamie Gibson	For Philip Neville Gibbs

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

[1] Staff of the Ontario Securities Commission has alleged that, amongst other things, Plateau Energy Metals Inc. made misleading or untrue statements in news releases and filings, contrary to the *Securities Act* (the ***Act***).[1] They further allege that Alexander Holmes authorized, permitted, or acquiesced in the contravention of the *Act* in connection with the misleading news releases, and that both Holmes and Philip Gibbs authorized, permitted, or acquiesced in the contravention in connection with the misleading filings.

[2] Staff also alleges that Holmes acted in a manner contrary to the public interest by making selective disclosure of relevant facts to certain shareholders before Plateau had publicly disclosed those facts.

[3] Staff and the respondents seek approval of a settlement agreement they have entered into regarding these allegations. We conclude that it would be in the public interest to approve the settlement, for the following reasons.

[4] The factual background is set out in more detail in the settlement agreement, but we summarise the most important facts here.

[5] Plateau Energy Metals Inc. is a mining exploration and development company that conducts its business in Peru through a wholly-owned subsidiary. Holmes was Plateau's CEO during the relevant times, and Gibbs was the part-time Chief Financial Officer.

[6] The parties have agreed that, under Peruvian law, mining concessions are granted for an indefinite term, but holders must satisfy several obligations to maintain the concessions, including making annual payments. In 2018, there was an

[1] RSO 1990, c S.5

issue with the receipt of Plateau's payment and a cancellation resolution was made against 32 of Plateau's 151 concessions in February 2019.

[7] On March 14, 2019, Plateau filed an appeal of the cancellation resolution to the highest mining authority in Peru. On the same day, a blogger posted a detailed article about the cancellation resolution and its potential impact on Plateau's operations in Peru. The next day, March 15, 2019, the company issued a misleading news release in relation to the status of its mining concessions. Holmes participated in drafting this news release.

[8] In the days following that news release, Holmes answered inquiries from some concerned shareholders, and in doing so, described some facts about the cancellation resolution and the company's response. Plateau had not publicly disclosed those facts, and did not do so until the end of July 2019.

[9] Plateau issued further misleading news releases over the next several months.

[10] In May 2019, Plateau filed its second quarter interim financial statements. Holmes and Gibbs each certified that the filing did not contain any untrue statements of a material fact or omit to state a material fact. However, the filings omitted to state the material fact that the mining rights associated with the disputed concessions had lapsed.

[11] In July 2019, Plateau issued a news release disclosing, for the first time, its ongoing administrative issues in respect of the disputed concessions. It also informed investors that its appeal from the cancellation resolution was denied. Following the company's disclosure, Plateau's share price declined significantly.

[12] We have reviewed the settlement agreement in detail. In addition, we had the benefit of a confidential conference with counsel for all parties.

[13] Each of Plateau, Holmes and Gibbs has made payments to the Commission in the amounts contemplated in the Settlement Agreement, as follows:

a. Plateau paid $500,000 for an administrative penalty and $210,000 for investigation costs;

b. Holmes paid $175,000 for an administrative penalty and $60,000 for investigation costs; and

c. Gibbs paid $75,000 for an administrative penalty and $30,000 for investigation costs.

[14] Further, the parties advise that both Holmes and Gibbs completed a customized education course relating to disclosure obligations, which course was agreeable to Staff.

[15] Our role at this settlement hearing is to determine whether the negotiated result falls within a range of reasonable outcomes, and whether it would be in the public interest to approve the settlement.

[16] Timely, accurate and efficient disclosure is one of the fundamental principles upon which securities regulation in Ontario is founded. Misleading disclosure poses serious risks of investor harm and impairs the integrity of Ontario's capital markets. In the case of mining companies and other reporting issuers operating outside of Canada, increased vigilance is often required on the part of those responsible for making disclosure decisions. Violations of disclosure obligations are in all instances serious breaches of Ontario securities law warranting regulatory action and censure.

[17] Selective disclosure also harms investors and impairs the integrity of Ontario's capital markets. Public issuers and their representatives must ensure that relevant information is disclosed publicly and not selectively, so as to ensure fairness for all consumers of that information.

[18] The panel is satisfied that, overall, the sanctions agreed to by the parties under the settlement agreement achieve the objectives of specific and general deterrence. Moreover, the Tribunal respects the negotiation process and accords significant deference to the resolution reached by the parties. In the context of settlement approval, it is not the role of this panel to substitute or impose its views as to appropriate settlement terms, but rather to ensure that the settlement is consistent with the purposes and principles articulated in sections 1.1 and 2.1 of the *Act*, which inform the public interest in this context. We are satisfied that the settlement agreement is consistent with those purposes and principles and, therefore, it is in the public interest for us to approve the settlement.

[19] We will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 2nd day of November, 2022

"James D.G. Douglas"

"Sandra Blake"

"Timothy Moseley"

A.4.2 Canada Cannabis Corporation et al. – ss. 127(1), 127.1

Citation: *Canada Cannabis Corporation (Re)*, 2022 ONCMT 34
Date: 2022-11-04
File No. 2019-34

IN THE MATTER OF
CANADA CANNABIS CORPORATION,
CANADIAN CANNABIS CORPORATION,
BENJAMIN WARD,
SILVIO SERRANO AND
PETER STRANG

ORAL REASONS FOR APPROVAL OF A SETTLEMENT
(Subsection 127(1) and section 127.1 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	M. Cecilia Williams (chair of the Panel) Geoffrey D. Creighton Dale R. Ponder	
Hearing:	By videoconference, November 4, 2022	
Appearances:	Johanna Braden	For Staff of the Ontario Securities Commission
	William Harvey Jones	For Canada Cannabis Corporation and Canadian Cannabis Corporation
	Melissa MacKewn Michael Byers	For Benjamin Ward

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

The following reasons have been prepared for publication, based on the reasons delivered orally at the hearing, as edited and approved by the panel, to provide a public record of the oral reasons.

[1] Staff of the Ontario Securities Commission allege that Canada Cannabis Corporation, Canadian Cannabis Corporation, Benjamin Ward, Silvio Serrano and Peter Strang contravened the *Securities Act*[1] (the ***Act***). Staff and Canada Cannabis Corporation, Canadian Cannabis Corporation and Mr. Ward seek approval of this settlement agreement into which they have entered to resolve all the allegations against them. No settlement agreement has been entered by Mr. Serrano or Mr. Strang. For clarity, in these reasons we refer to Canada Cannabis Corporation, Canadian Cannabis Corporation and Mr. Ward as the Settling Respondents, and for brevity we refer to Canada Cannabis Corporation and Canadian Cannabis Corporation, collectively, as CCC.

[2] The Statement of Allegations alleges that the respondents' actions were fraudulent and contravened s. 126(1)(b) of the *Act*. However, none of the Settling Respondents are admitting to this allegation. Instead, the settlement before us contains the following admissions:

a. The corporations made statements in offering memoranda required to be filed or furnished under Ontario securities law that, in a material respect and at the time and in light of the circumstances under which the statements were made, were misleading or untrue or did not state a fact that was required to be stated or that was necessary to make the statements not misleading, contrary to the prohibition contained in subsection 122(1)(b) of the *Act*, thereby resulting in a breach of Ontario securities law;

b. Mr. Ward acquiesced in the corporations' breach, and is liable under subsection 129.2 of the *Act*; and

c. the conduct described above is contrary to the public interest.

[3] We conclude that it would be in the public interest to approve the settlement agreement with the Settling Respondents, for the following reasons.

[4] The factual background is set out in more detail in the settlement agreement, but we summarize the most important agreed facts here.

[1] RSO 1990, c S.5

[5] This proceeding involves misconduct in the burgeoning cannabis sector. In January 2014, the respondents formed a cannabis cultivation and distribution company, CCC. Mr. Ward was Chief Executive Officer and a director of CCC. Mr. Strang and Mr. Serrano were Vice Presidents and either directors or *de facto* directors of CCC.

[6] CCC raised approximately $3.2 million and USD 8.8 million from approximately 125 investors, approximately 60 of whom were located in Ontario, by selling shares and debentures of CCC in private placements. To raise funds, CCC provided prospective investors with an investor brief dated January 16, 2014, an offering memorandum dated May 16, 2014, and an investor slide deck dated January 2015. These documents constituted offering memoranda under Ontario securities law.

[7] Between early February 2014 and March 28, 2014, approximately $4 million of investor funds were transferred from CCC to a company called Growlite Canada, a corporation solely owned by Mr. Serrano. The transfers were pursuant to an oral agreement among the respondents, which was reduced to writing on March 31, 2014. The transfers were by way of a $1 million investment to purchase a 45% interest in Growlite, and $3 million to fund a loan to Growlite (the **Growlite Loan**). Between February 2014 and August 2016, funds were directed away from the business of Growlite Canada to the benefit of Mr. Serrano, Mr. Strang, their families or companies controlled by them.

[8] Growlite Canada did not make any interest payments nor repay any principal and eventually CCC wrote off the Growlite Loan in its entirety, in April 2016.

[9] Each of the offering memoranda contained misstatements or were misleading in various respects, full details of which are set out in the settlement agreement. By way of example, the investor brief stated that “CCC has purchased 45% of Growlite”, when in fact no investment had yet been made and the investors’ funds were needed to make the investment. It gave a vastly overstated figure for sales in the first month of business for Growlite, and characterized Mr. Ward as a PhD, which was untrue.

[10] By way of further example, the offering memorandum and investor slide deck were misleading in that they described the investments in Growlite but failed to state that CCC had not independently valued Growlite before agreeing on a price, that the Growlite Loan came with no express conditions on how it could be used, that CCC did not take reasonable steps to ensure it could oversee or monitor the Growlite Loan, and that the proceeds of the loan had been or would be spent on matters unrelated to Growlite’s business.

[11] Based on the agreed facts in the settlement agreement, the Settling Respondents acknowledge and admit that CCC breached subsection 122(1)(b) of the *Act*, Mr. Ward acquiesced in CCC’s breach and is liable under subsection 129.2 of the *Act*, and that the conduct described is contrary to the public interest.

[12] That brings us to the sanctions upon which Staff and the Settling Respondents have reached agreement.

[13] Staff and the Settling Respondents have agreed that CCC shall be subject to permanent, broad market bans, prohibiting CCC from trading or acquiring securities, acting as a registrant or promoter, or benefiting from any exemptions under Ontario securities law. They have agreed that Mr. Ward will immediately resign from all positions as a director or officer of any issuer, registrant or investment fund manager and will be prohibited from acting in those capacities, or as a promoter, for six years. Staff and the Settling Respondents have also agreed that Mr. Ward will pay $10,000 towards the costs incurred by the Commission, on an agreed schedule.

[14] We have reviewed the settlement agreement in detail. In addition, we have had the benefit of a confidential settlement conference with counsel for Staff and the Settling Respondents. We asked questions of counsel and heard their submissions.

[15] Our role at this settlement hearing is to consider the settlement agreement as a whole, to determine whether the negotiated result falls within the range of reasonable outcomes, and whether it would be in the public interest to approve the settlement agreement.

[16] The settlement agreement is the result of what its signatories advise were protracted and careful negotiations. The Tribunal affords significant weight and deference to settlement agreements, as they reflect a balancing of factors and interests between adversarial parties. We recognize that a negotiated agreement will not generally yield the same sanctions that might follow a contested hearing.

[17] Staff and the Settling Respondents have agreed to facts that both narrow and expand upon the facts pleaded in the Statement of Allegations. CCC has agreed to admit to a breach of the *Act* that was not expressly pleaded, but that admission covers CCC’s role in the overall conduct relating to their offering memoranda. Mr. Ward has agreed to admit to acquiescing in CCC’s breach and this reflects the role Mr. Ward played as CEO.

[18] We must be satisfied that the sanctions serve to deter not only the Settling Respondents, but any like-minded people from engaging in similar misconduct. Misleading investors with untrue and inaccurate statements is serious. The amount

of money lost by CCC to Growlite Canada was a significant portion of the total funds raised from investors. It impaired CCC's ability to succeed.

[19] While we note that there is no agreement for payment of any administrative monetary penalty, Staff submits and we agree that taken as a whole, the significant non-monetary sanctions, in the context of the entire settlement agreement, place the agreement within the reasonable range.

[20] Mr. Ward did not receive any of the funds directed from CCC to Growlite Canada, and we agree that a disgorgement order is not necessary in these circumstances.

[21] Staff submitted that the agreement protects the public and deters others. We agree. Other, like-minded parties are on notice that a failure to accurately and truthfully disclose how investor funds will be used will not be tolerated as it harms investors and impairs the integrity of the capital markets.

[22] By reaching a settlement, the Settling Respondents have recognized their wrongdoing and accepted accountability. Staff submits that, while the Commission intends to proceed against the remaining respondents, the settlement agreement with the Settling Respondents will significantly reduce the costs and time associated with this matter.

[23] In our view, given all the circumstances, the terms of the settlement agreement fall within the range of reasonable outcomes, and it is in the public interest to approve the settlement agreement. We will therefore issue an Order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 4th day of November, 2022

"M. Cecilia Williams"

"Geoffrey D. Creighton"

"Dale R. Ponder"

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B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Staff Notice 96-303 Derivatives Data Reporting Transition Guidance

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Staff Notice 96-303
Derivatives Data Reporting Transition Guidance

November 10, 2022

Introduction

Staff of the Canadian Securities Administrators (**CSA Staff** or **we**) are publishing this notice to provide their guidance to market participants in light of changes to swap data reporting rules that will be implemented by the Commodity Futures Trading Commission (the **CFTC**).

Background and Purpose

The Committee on Payments and Market Infrastructure led by the Bank of International Settlements and the International Organization of Securities Commissions (together, **CPMI-IOSCO**) established a working group to develop harmonized international derivatives data standards that could be incorporated into domestic derivatives reporting rules to clarify requirements and standardize data fields. In April 2018, CPMI-IOSCO published globally accepted guidance that defines how certain derivatives transaction details should be reported (the **CPMI-IOSCO Data Guidance**).

Capital market regulators globally are now in the process of adopting these standards through revisions to existing trade reporting rules. In the US, the CFTC has revised its swap data reporting rules[1] to adopt the CPMI-IOSCO Data Guidance, which we understand are scheduled to be implemented beginning December 2022 (the **CFTC Amendments**).[2]

On June 9, 2022, proposed amendments (the **CSA Proposed Amendments**) to the following trade reporting rules (collectively, the **Trade Reporting Rules**) were published:

- Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*,
- Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting*,
- Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting*, and
- Quebec Regulation 91-507 *respecting Trade Repositories and Derivatives Data Reporting*.

One of the goals of the CSA Proposed Amendments is to incorporate the updated data elements in the CPMI-IOSCO Data Guidance into the Trade Reporting Rules. We are aiming to implement the CSA Proposed Amendments in 2024. Accordingly, there will be a period of time where certain reporting counterparties will be subject to revised reporting requirements under the CFTC Amendments but will not be subject to comparable revised requirements in Canada until the CSA Proposed Amendments are finalized and implemented (the **Transition Period**). During the Transition Period, trade repositories may, in connection with the CFTC Amendments, update submission specifications for market participants that also report under the Trade Reporting Rules. The purpose of this guidance is to assist reporting counterparties in complying with the Trade Reporting Rules during the Transition Period.

[1] Amendments to CFTC Rules Parts 43, 45, 46 and 49: Final Rule, *Swap Data Recordkeeping and Reporting Requirements*, 85 Fed. Reg. 75503 (Nov. 25, 2020); Final Rule, *Real-Time Public Reporting Requirements*, 85 Fed. Reg. 75422 (Nov. 25, 2020); and Final Rule, *Certain Swap Data Repository and Data Reporting Requirements,* 85 Fed. Reg. 75601 (Nov. 25, 2020).

[2] CFTC Letter No. 22-03 (No-Action) dated January 31, 2022.

Transition Period Guidance

CSA Staff are providing the following guidance during the Transition Period:

1. Where derivatives data is reportable under the current Trade Reporting Rules, and where analogous data is required under the CFTC Amendments:

    - market participants may comply with the Trade Reporting Rules if they report that data according to a CFTC data element that is comparable to the relevant data element in Appendix A to the Trade Reporting Rules (if supported by the designated or recognized trade repository).

> *Example:*
> *A reporting counterparty that is reporting data in relation to the data element "Counterparty side" will comply with the Trade Reporting Rules by reporting that data under the CFTC data element "Buyer identifier", "Seller identifier", "Payer identifier" or "Receiver identifier", as applicable, notwithstanding that the description of the data element under Appendix A to the Trade Reporting Rules is not identical to the CFTC's definition for these data elements, provided that the designated or recognized trade repository supports this reporting.*

2. Where derivatives data is reportable under the CFTC Amendments but is not reportable under the current Trade Reporting Rules:

    - this data continues not to be reportable under the current Trade Reporting Rules. However, market participants may, at their option, report this data if the relevant data element has been proposed in the CSA Proposed Amendments and if supported by the designated or recognized trade repository.

> *Example:*
> *Daily margin data, which is required under the CFTC Amendments, is not reportable under the current Trade Reporting Rules. However, reporting counterparties should be aware that this data element is proposed to be required under the CSA Proposed Amendments and therefore it is anticipated that this data will be required once the CSA Proposed Amendments are implemented. If supported by the designated or recognized trade repository, market participants may optionally report this data during the Transition Period.*

3. Where derivatives data is reportable under the current Trade Reporting Rules, but is not reportable under the CFTC Amendments:

    - this data continues to be reportable under the Trade Reporting Rules.

> *Example:*
> *The jurisdiction of a local counterparty under the current Trade Reporting Rules continues to be reportable during the Transition Period, even though it is not reportable under the CFTC Amendments.*

The above guidance under paragraphs 1 and 2 will facilitate reporting during the Transition Period, to the extent supported by a designated or recognized trade repository. This guidance should not be interpreted as requiring a designated or recognized trade repository to support these options. We invite market participants to contact their trade repositories to understand any upcoming changes resulting from implementation of the CFTC Amendments and the trade repository's intended approach during the Transition Period.

Questions

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B.1.2 CSA Consultation Paper 21-403 – Access to Real-Time Market Data

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Consultation Paper 21-403
Access to Real-Time Market Data

November 10, 2022

Item 1 – Introduction

Real-time market data (**RTMD**) plays a key role in providing vital information about securities markets, including information about price and liquidity. The Canadian equity markets have evolved over time from a structure in which trading in a particular security was concentrated on a single listing exchange, to one in which multiple marketplaces, both exchanges and alternative trading systems (**ATSs**), compete for trading in the same securities. In this context, information about orders and trades for the same securities is fragmented across multiple trading venues and may lead to inefficiencies, including impacts on access to RTMD.

Globally, regulators have sought to ensure the accessibility of RTMD by regulating marketplace fees for order and trade information and by mandating the availability of market data at a reasonable price. They share the view that access to consolidated RTMD is key for market participants, investors, and their advisors to make informed investment, routing, and execution decisions.[1]

Despite a renewed regulatory focus,[2] concerns remain about the accessibility and cost of RTMD in an environment where trading activity is fragmented across multiple trading venues. In this context, we note that regulators in the United States (**US**) and Europe (**EU**) are currently undertaking regulatory reform or have policy initiatives underway relating to the access to and cost of consolidated RTMD. In addition, the International Organization of Securities Commissions (**IOSCO**) undertook a consultation and published a paper focused on understanding the market data environment in participating countries.

Given the importance of RTMD to the securities markets and as a result of both global initiatives and the concerns raised by Canadian market participants, Staff of the Canadian Securities Administrators (**CSA Staff** or **we**) have undertaken a fact-finding review of the issues associated with access to RTMD, including its cost, for exchange-traded securities other than options.

This Consultation Paper is the outcome of our review. It sets out the current regulatory regime for RTMD in Canada, including the regulation of equities marketplace direct feeds and consolidated data, describes the concerns raised by Canadian market participants, and articulates a number of initial and longer-term options that could alleviate some of these concerns.

We are seeking feedback on the overall feasibility and effectiveness of the proposed options, in addition to the specific questions outlined below pertaining to each of the proposed options. Any regulatory proposal resulting from this Consultation Paper and comments received will be published for comment in the normal course.

Item 2 – Purpose and Scope

The purpose of this Consultation Paper is twofold:

1. to present the results of our fact-finding review and the concerns raised by Canadian market participants in relation to accessing RTMD, and

2. to seek feedback on proposed initial and longer-term options that, if undertaken, could potentially alleviate some of the inefficiencies introduced by fragmentation and other concerns raised by market participants in relation to accessing RTMD.[3]

Our fact-finding review included both a quantitative and a qualitative review. Our quantitative review considered marketplaces with at least an aggregate market share of one percent across their trading books. The information we collected and assessed from marketplaces included the fees charged by marketplaces for access to and the take-up of RTMD and related services by market

[1] CSA Staff Consultation Paper 21-401 Real-Time Market Data Fees at pg. 1, available at https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20121108_21-401_real-time-data-fees.htm.

[2] For more of this history of the regulation in this area, please see "Data fees and access to data," available at https://www.osc.ca/en/industry/market-regulation/market-structure-initiatives.

[3] This Consultation Paper does not address issues with respect to accessing derived data products (e.g., index and benchmark data products) or historical data products. This Consultation Paper also does not extend to issues associated with accessing real-time market data provided by third-party service vendors because we do not have jurisdiction over such vendors (i.e., data and access vendors, telecommunications service providers, and/or data centre operators).

participants, as well as the nature of marketplace expenses and revenues. We also used publicly available information to compare the fees charged to market participants in Canada against those charged in the US and other global markets.

The qualitative review included interviews with more than 40 market participants, including dealers, marketplaces, and both data and access vendors about how their businesses have evolved over time, how they access and use RTMD, the cost of using that data (if available), and any issues or concerns. With respect to the participants interviewed, the sample included small, medium, and large dealers, institutional investors, and proprietary trading firms. We interviewed individuals from multiple business lines, including full-service retail and discount brokerage, wealth advisory, institutional, proprietary, as well as compliance.

Overall, the fact-finding review considered:

1. changes in core marketplace revenues (i.e., trading, access, and market data revenues), which helped us to identify changes and trends in how marketplaces make money and identify areas of concern;

2. those fees that impact the costs incurred by market participants that access and use RTMD in consolidated and non-consolidated form. Specifically, we observed the evolution of the following fee categories: (i) professional and non-professional display fees, (ii) distribution fees, and (iii) non-display fees. We also observed changes in other fees (see footnote 2) that were not the focus of this Consultation Paper;

3. the need to access Level 2 consolidated RTMD versus Level 1 consolidated RTMD from listing markets only; and

4. the fees charged to market participants in Canada compared to those charged in the US and other global markets on an individual and consolidated basis.

The results of our fact-finding review are provided at Appendix A to this Consultation Paper.

In developing the proposed options, we considered:

1. the statutory mandate of investor protection and fostering fair, efficient, and competitive capital markets and confidence in those markets,[4]

2. the present state of the equities market, including key elements of the “ecosystem” for equities, such as the regulatory environment and the needs of market participants,

3. the attributes of an ideal market (i.e., transparency, price discovery, liquidity, transaction costs)[5] and the impact of the potential inefficiencies introduced by fragmentation on these attributes, and

4. the results of our fact-finding review and the feedback received from the interviews with market participants.

The potential initial options for addressing the results of our review as proposed in this Consultation Paper focus on ensuring the regulatory regime facilitates fair access to RTMD for both direct marketplace and consolidated RTMD feeds, including using standardized terminology to describe RTMD products and how those products are accessed. The longer-term options involve proposing an overhaul of the regulatory regime for accessing consolidated RTMD.

Item 3 – Current State of Market Data in Canada

3.1 What is Real-Time Market Data?

RTMD refers to order and trade information that is distributed immediately after an order has been entered, amended, or cancelled or a trade has been executed. Pre-trade RTMD provides details of orders entered on a marketplace and generally identifies the price and volume associated with each order for a particular security. Post-trade RTMD provides details of a trade and generally includes the price at which the trade was executed and the volume for a particular security.[6]

[4] This mandate is generalized across the CSA. We acknowledge that not every securities regulatory authority has a competition mandate, for example.

[5] Based on characteristics viewed as being essential to an efficient market outlined in both in the 1997 TSE *Report of the Special Committee on Market Fragmentation: Responding to the Challenge*, and subsequently in a June 22, 2006 report entitled, *Ideal Attributes of a Marketplace*, by Eric Kirzner; Task Force to Modernize Securities Legislation in Canada, *Canada Steps Up, Volume 4 -- Maintaining a Competitive Capital Market in Canada*.

[6] CSA Staff Consultation Paper 21-401 Real-Time Market Data Fees at pg. 3, available at https://www.osc.gov.on.ca/en/SecuritiesLaw_csa_20121108_21-401_real-time-data-fees.htm.

Marketplaces are the sole producers of RTMD relating to the orders placed and trades executed on their own facilities. By and large, marketplaces offer RTMD market data via feeds (also known as marketplace direct feeds) that include both pre- and post-trade information, and generally fall into the following two categories:

1. Top-of-book or Level 1 (**Level 1**), which is made up of information, for each security, consisting of last sale, the best bid and offer, and the aggregate volume available for purchase or sale at those prices;[7] and

2. Depth-of-book or Level 2 (**Level 2**), which consists of information on all visible orders in the marketplace (price and volume) and all trades.[8]

RTMD is also available in consolidated form (**Consolidated RTMD**). Consolidated RTMD refers to the consolidation of either pre- or post-trade RTMD across multiple marketplaces trading the same securities. In Canada, consolidated RTMD (and consolidated feeds) may consist of RTMD from every equity marketplace or may be composed of only some marketplaces' RTMD, such as those that achieve protected status under the Order Protection Rule (**OPR**).[9]

RTMD is distributed either directly by marketplaces in the form of direct feeds or indirectly by the information processor (**IP**)[10] or third-party data vendors (whether at the individual marketplace level or on a consolidated basis).

Currently, the consolidated RTMD products distributed by the IP and approved by CSA Staff include the following:

1. Consolidated Best Bid and Offer (**CBBO**) – includes information about aggregated volume at the best price across all marketplaces from continuous trading on a protected and non-protected basis.[11]

2. Consolidated Last Sale (**CLS**) – includes information about executed trades that allows market participants to identify the nature of the trade (e.g., as a particular cross-type or as a closing auction trade).

3. Consolidated Depth of Book (**CDB**) – includes information about aggregated volume at each price level, identifying each contributing marketplace, and offered on a protected and non-protected basis.

4. Consolidated Data Feed (**CDF**) – the Level 2 feeds of each marketplace distributed in a single format by the IP.

When consolidated RTMD is distributed by a third-party service data vendor, it may be disseminated in a format and composition that is at the discretion of such vendor or in a customized form at the request of the purchaser of the data. In either of these cases, the price and the format of consolidated RTMD is not subject to regulatory review as we do not have jurisdiction over vendors.

3.2 Different Uses of RTMD

RTMD is generally used by dealers and their clients, both retail and institutional, to make informed investment and trading decisions, and is also used by dealers to meet regulatory obligations when handling and routing orders.

What data is necessary to make investment and trading decisions and to route orders varies based on any number of factors. These include the specific activity being performed, user needs and objectives, and the means of consumption and use (human or display use versus machine, as in black box or algorithmic trading). These differences can affect the depth, breadth, and granularity of data needed, as well as whether the data needs to be real-time or can be delayed.

For example, some users rely on access to Level 1 consolidated RTMD and last sale information from listing markets only for indicative pricing purposes.[12] Our fact-finding review indicated that many retail and wealth advisory dealers are provided with Level 1 consolidated RTMD feeds from the listing markets only.[13] Other market participants, who are responsible for routing and execution decisions, indicated that they need a consolidated view of all volumes and prices across all marketplaces.

All participants interviewed expressed the view that the use of RTMD should be tailored to a participant's needs and that not all participants need access to the same RTMD to conduct their business.

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7 Level 1 RTMD can also be offered through requests for quotes, whereby a market participant requests the Level 1 information for a specific security.

8 In Canada, Level 2 RTMD feeds are often offered on a market-by-price and market-by-order basis, with the former representing a feed with orders aggregated at each price level, and the latter representing a feed with order-by-order information.

9 See Part 6 of National Instrument 23-101 *Trading Rules*, available at https://www.osc.ca/sites/default/files/pdfs/irps/ni_20170410_23-101_unofficial-consolidatation-cp.pdf.

10 Please see section 4.3 below for more information on the IP.

11 "Protected" basis contains only protected markets, while "non-protected" basis contains all markets.

12 Where the user relies on the prices on the listing market for a particular security as being indicative of the pricing available for that same security across all markets.

13 Please see Appendix A, Figures 32 and 33. While out of scope for this Consultation Paper, we note that in some cases, this access might be limited to delayed data, depending on the nature of the dealer service offering. One such example is where a retail investment advisor is servicing a client base that does not actively seek to buy or sell individual stocks through their advisors. A dealer might also provide its retail investors with delayed data where the provision of RTMD may be costly – for example, to update client watch lists or for presenting the client with intra-day value of held positions.

3.3 Understanding Marketplace RTMD Fees

Marketplaces charge a variety of fees for access and use of RTMD. These fees may vary based on how RTMD is accessed (i.e., directly from the marketplace or indirectly through a data vendor or the IP), whether the RTMD is redistributed (either internally or externally), the nature of the end-use/end-user (e.g., human versus machine), and the depth of the RTMD received or used (i.e., Level 1 or Level 2). In the case of RTMD feeds, how the feed is accessed may impact the fees charged and who is responsible for those fees. For example, marketplaces may charge the same or different rates for RTMD feeds depending on whether they are accessed and consumed directly from the marketplace or indirectly from a data vendor. Where consumed indirectly from a data vendor, the fees may be charged by the marketplace directly to the end recipient or may be the responsibility of the data vendor, which may then pass on the fees (with or without a mark-up) or bundle them into the vendor's offering with fees being charged on an aggregate basis.

A marketplace may also charge *distribution fees* depending on whether the recipient of a RTMD feed intends to redistribute the data feed received and/or the underlying content, either within the firm (i.e., internal distribution) or to its clients or other individuals outside of the firm (i.e., external distribution). In some cases, the distribution fee covers both a license to redistribute and the charge for accessing the feed itself.

The nature of the end-use of the data also affects how and what fees are charged. For example, end-use by human users that consume data via display products will typically result in *user display fees*. There are generally two types of display users: (i) professional, and (ii) non-professional users. Professional users are generally individuals that consume RTMD for business purposes (e.g., dealer or buy-side traders). Certain marketplaces may further segment the professional user category to allow for different charges for *retail professional users*, a category of professional user that services retail investors, specifically retail investment advisors (**RIAs**), a type of registered representative.[14] Non-professional users are individuals that use RTMD for personal trading or investing purposes (i.e., retail investors).

If the RTMD is consumed and used by a machine, the use of that data may attract *non-display fees*. These fees may be charged where data is consumed by trading systems and not displayed for the purposes of routing, analysis, and/or algorithmic trading.

RTMD fees will also depend on the depth of the RTMD consumed. Receipt, distribution, and use of Level 2 data will cost more than receipt, distribution, and use of Level 1 data as Level 2 feeds include more information.

Lastly, there may be other fees and charges incurred by participants associated with how they connect to and their consumption of RTMD. For example, there are fees and costs associated with co-location for participants seeking to reduce data and trading latency. Access and data vendors may also charge administration fees, product fees, or general mark-ups on the data-related products and services offered to their clients.

Item 4 – Regulation of Market Data in Canada

4.1 Regulatory Requirements that Impact Access to RTMD

There are a number of regulatory requirements in place that impact whether and how market participants access RTMD. OPR, which is found in Part 6 of National Instrument 23-101 *Trading Rules* (**NI 23-101**), imposes requirements on marketplaces and dealers to establish, maintain, and comply with policies and procedures reasonably designed to prevent the execution of an order at a price that is inferior to better-priced orders displayed on protected Canadian marketplaces.[15] Compliance is typically managed through algorithms and smart order routers that rely on RTMD from all visible markets, i.e. those that display pre-trade data, including unprotected visible markets.

Best execution requirements set out in the Universal Market Integrity Rules (**UMIR**) of the Investment Industry Regulatory Organization of Canada (**IIROC**) require dealers to have policies and procedures that specifically address achieving best execution[16] for their clients. The policies and procedures for achieving best execution are required to consider a number of factors, including price, speed, certainty, and the overall cost of execution to the client. While the best execution obligations do not mandate that participants and their employees have access to RTMD from all marketplaces,[17] the general view expressed in interviews by those responsible for trading (both manual and electronic) was that consolidated RTMD from all marketplaces was necessary for the purposes of achieving best execution for their clients.[18]

Compliance with both OPR and best execution requirements intersects in a way that is often misunderstood by market participants. Best execution requires policies and procedures, not pre-trade monitoring on a transaction-by-transaction basis. Dealers must

[14] At present, only NEO Exchange offers an RIA user category for professional RTMD subscribers.
[15] Dealers are subject to these OPR obligations when entering "directed-action orders."
[16] "Best execution," as defined in section 3119 of the IIROC Dealer Member Rules means "obtaining the most advantageous execution terms reasonably available under the circumstances."
[17] IIROC Dealer Member Rule 3121(2)(iv) identifies "how order and trade information from all appropriate *Marketplaces*, including unprotected *Marketplaces* and *foreign organized regulated markets*, is taken into account" as a factor that must be specifically addressed in a dealer's policies and procedures for best execution of client orders in "listed securities" and "foreign exchange-traded securities."
[18] Please see Part 4 of Companion Policy 23-101CP *Trading Rules* for regulatory guidance on this issue.

review the effectiveness of the policies and procedures and identify where changes may be required. While OPR is also based on reasonable policies and procedures, those procedures typically rely on RTMD for routing decisions.

4.2 Current Regulatory Regime for Marketplace RTMD Fees

National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and NI 23-101 (together, the **Marketplace Rules**) provide the framework under which marketplaces in Canada carry on business. Part 3 of NI 21-101 sets out the information reporting requirements for marketplaces. Specifically, section 3.1 sets out the initial information to be submitted with an application for recognition as an exchange or authorization as an ATS and section 3.2 sets out the ongoing filing requirements, including with respect to changes to RTMD fees.

All marketplace fee changes, including those relating to RTMD, are subject to regulatory review and approval. Proposed fee changes are generally not subject to a public comment process unless they might have a significant impact on stakeholders or raise public interest concerns.

Proposed fee changes are generally evaluated based on the fair access requirements set out in subsections 5.1(1) and (3) of NI 21-101. These requirements provide that a marketplace must not unreasonably prohibit, condition, or limit access by a person or company to services offered by it, permit unreasonable discrimination, or impose any burden on competition that is not reasonably necessary and appropriate. This means that when setting or changing their fees, marketplaces must do so taking into consideration several factors, including, but not limited to, the amount of fees charged by other marketplaces for similar services in the context of the Canadian market, or, where introducing a new fee, international comparisons may also be considered. Applying a comparative approach can be difficult because different marketplaces offer products and services that may not have the same informational content or offer the same value for the fee charged.

For professional user fees, compliance with the fair access requirements is also assessed using the Data Fee Methodology (**DFM**), which the CSA formalized in 2016. The DFM is applied on an annual or ad-hoc basis to review the professional user fees charged by marketplaces for access to Level 1 and Level 2 feeds in Toronto Stock Exchange (**TSX**)-, TSX Venture Exchange (**TSXV**)-, and Canadian Securities Exchange (**CSE**)-listed securities. It relies on pre- and post-trade metrics to establish a permissible fee range for each marketplace. This range attempts to reflect each marketplace's contribution to price discovery and trading activity. The range is estimated based on a domestic reference that takes the data fees charged by each marketplace and aggregates them into a single pool, which is then re-allocated based on the ranking models.[19] If the fee being charged is beyond the range, the marketplace is required to decrease its professional user fees.

In addition, marketplaces are also subject to a "review protocol" that establishes a process for the review, publication, and approval process of marketplace changes, including changes to RTMD fees. This protocol is administered by the Ontario Securities Commission (**OSC**) for all equities marketplaces in Canada other than the TSXV. Through TSXV's Recognition Order, the British Columbia Securities Commission (**BCSC**) and Alberta Securities Commission (**ASC**) administer the protocol for TSXV. The BCSC also administers the review protocol for the CSE, together with the OSC.

Marketplaces may be required (for example, under the review protocol) to submit additional information in support of their fee proposal for our consideration. Some examples of this information are an analysis of the potential impact of the fee change on market structure or market participants, the methodology used to develop the fee, and the reasonability of the amount proposed relative to the marketplace's share of market-wide activity levels.[20]

4.3 Current Regulatory Regime for Consolidated RTMD Fees

To mitigate the effects of fragmentation of information that arises in a multiple marketplace environment, the CSA introduced transparency requirements for marketplaces and mandated a central party to consolidate and publicly disseminate RTMD (the **equity IP**). Pursuant to the transparency requirements set out in Part 7 of NI 21-101, transparent marketplaces must provide to the equity IP all orders and trades, whereas dark marketplaces must provide only trades.

The regulatory requirements applicable to the equity IP are set out in Part 14 of NI 21-101 and include provisions relating to the collection, processing, and dissemination of RTMD, as well as requirements to provide prompt and accurate order and trade information to all market participants. The consolidated and non-consolidated RTMD feeds disseminated by the equity IP and described earlier in this Consultation Paper, are approved by the CSA. Any changes to these products are subject to public comment and approval by the CSA.

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[19] When the DFM was first introduced, there was some discussion about developing a benchmark or reference point for its application. However, given the developments in other jurisdictions, this was not feasible, and instead we have embarked on this consultation instead.

[20] The review protocol is imposed on exchanges via their recognition orders and on ATSs via Commission order. See https://www.osc.ca/en/securities-law/orders-rulings-decisions/candealca-inc-et-al for the current review protocol applicable to ATSs. Please see section 6 for a list of factors we will consider when assessing fee changes.

In 2009, TSX became the IP for exchange-traded securities other than options (**TMX IP**), which ensured that there would be at least one source of consolidated data that met regulatory standards.[21] At the time of TMX IP's approval as the equity IP, the CSA did not have statutory powers to create a regulatory regime governing fees for consolidated data from the IP, including the underlying data content. As a result, the fees charged by the IP for the consolidated and non-consolidated RTMD feeds rely on what is referred to as a "pass-through model."

Under this model, subscribers access consolidated RTMD from the equity IP subject to the terms and conditions set by each individual marketplace in relation to that marketplace's data that is included in the consolidated data product, including both the contractual terms and the fees. To access consolidated and non-consolidated RTMD feeds, subscribers must contract with each individual marketplace that has data included in the product they are purchasing and based on the use of RTMD feeds, pay an amount equal to the aggregate of the fees charged by each marketplace. Where applicable, TMX IP also charges an administration fee on top of these marketplace fees, which is subject to review and approval by the applicable securities regulatory authorities (**SRAs**).

Item 5 – Regulation of Market Data in Other Jurisdictions

The issues relating to access to RTMD are complex and not unique to Canada. Access to RTMD has also been an area of regulatory discussion and reform in several jurisdictions, including the US and EU. In addition, IOSCO has issued a Final Report, "Market Data in the Secondary Equity Market," examining this issue from a global perspective. Each of these developments is outlined below.

5.1 United States

In the United States (**US**), the Securities and Exchange Commission (**SEC**) has taken several steps to update and modernize the regulatory system for the collection, consolidation, and dissemination of certain core market data. The US regulatory system for core market data was developed in the late 1970s and so the SEC undertook three separate initiatives related to the provision of core data.

First, the SEC approved amendments to Rule 608 under Regulation National Market System (**Regulation NMS**) to require that fees proposed by the national market system plans (**NMS plans**) must be published for comment and approved by the SEC.[22]

Second, in May 2020, the SEC issued an order requiring equity exchanges to submit a new national market system plan (**NMS plan**) relating, in part, to the consolidation of equities order and trade data that would consolidate the three existing NMS plans[23] into one and impose certain governance requirements on the new NMS plan (the **Governance Order**).[24] The objectives were to address inefficiencies in the existing three-plan structure, as well as the conflicts of interest arising between the exchanges' business interests in their proprietary data offerings and their responsibilities for consolidated data under the NMS plans. The resulting NMS plan proposal, filed by the exchanges in response to the Governance Order, was published for comment in October 2020.[25] An order approving the proposal, with modifications, was issued in August 2021 but has not been implemented yet.[26]

Third, in December 2020, the SEC approved rules that improve the existing model for data collection, consolidation and dissemination (**Market Data Infrastructure Rule**).[27] The Market Data Infrastructure Rule expands the content of core data that will be made widely available in the NMS and modifies the way such data is collected, consolidated, and disseminated. These changes sought to expand the breadth and depth of consolidated data covered by the NMS plans to "[assure] 'the availability to brokers, dealers, and investors of information with respect to quotations for and transactions in securities' that is prompt, accurate, reliable, and fair."[28]

The Market Data Infrastructure Rule also introduces competition to the consolidation and dissemination function by allowing for multiple "competing consolidators" for all applicable market data. The intention is that this competition will facilitate the opportunity for participants and investors to be better served by more flexible, consolidated data products, improved technology and infrastructure, and reduced latencies relative to consolidated data provided under the existing centralized consolidation model. The goal of this rule is to help reduce costs for those obtaining data from both the NMS plans and via proprietary exchange market data feeds by providing the opportunity for reduced reliance on exchanges' proprietary market data and introducing competition.

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21 CSA Staff Notice 21-309 Information Processor for Exchange-Traded Securities other than Options, available at https://www.osc.ca/en/securities-law/instruments-rules-policies/2/21-309.

22 Rescission of Effective-Upon-Filing Procedures for NMS Plan Fee Amendments, Securities Exchange Act Release No. 89618 (Aug. 19, 2020), 85 FR 65470 (Oct. 15, 2020)

23 The three NMS plans disseminate consolidated data for equity securities as follows: Tape A for securities listed on the New York Stock Exchange (**NYSE**); Tape B for securities listed on exchanges other than NYSE and Nasdaq; and Tape C for securities listed on Nasdaq. For more information about the NMS plans, please see pages 4-8 of the Governance Order, available at https://www.sec.gov/rules/sro/nms/2020/34-88827.pdf.

24 The Governance Order is available at https://www.sec.gov/rules/sro/nms/2020/34-88827.pdf.

25 SEC, "Joint Industry Plan; Notice of Filing of a National Market System Plan Regarding Consolidated Equity Market Data," available at https://www.sec.gov/rules/sro/nms/2020/34-90096.pdf.

26 The approval order, available at https://www.sec.gov/rules/sro/nms/2021/34-92586.pdf, was subsequently challenged by a number of the NMS plan participants.

27 See final rule at https://www.sec.gov/rules/proposed/2020/34-88216.pdf.

28 See SEC, "Market Data Infrastructure Rule" available at https://www.federalregister.gov/documents/2021/04/09/2020-28370/market-data-infrastructure.

The Market Data Infrastructure Rule became effective in June 2021, but has a transition schedule for implementation. As part of the initial phase of implementation, certain filings have been made by the current NMS plans to effect necessary changes, including in relation to the fees to be charged for consolidated data products under the new regime.[29]

While not specific to market data, it is also worth noting that in 2019, the SEC's Division of Trading and Markets published staff guidance on exchange fee filings. This guidance outlines SEC Staff's expectations as to what exchanges should consider when demonstrating how a proposed fee change addresses the requirements of the Exchange Act for fees, including market data fees, to be reasonable, equitably allocated, not unfairly discriminatory, and not an undue burden on competition.[30]

5.2 European Union

There is currently no equity IP-type entity in Europe. Marketplaces are required to make both pre- and post-trade data available on a reasonable commercial basis to ensure that participants have access in a non-discriminatory manner.[31] They must also make this data available for free 15 minutes after publication.[32]

After the implementation of the Markets in Financial Instruments Directive II (**MiFID II**), the European Securities and Markets Authority (**ESMA**) determined that the approach to market data, particularly consolidated market data, needed to be reviewed. As a result, ESMA commissioned a study on the creation of a consolidated tape for securities trading in the EU (the **CT Study**)[33] and launched a consultation (the **ESMA Consultation**).[34]

The CT Study discussed the importance of making consolidated data accessible in Europe and recommended the creation of an exclusive data consolidator run as a utility. This recommendation was taken up by ESMA in the ESMA Consultation, which also sought input on making changes to ESMA's supervisory guidance to standardize publication format and key terminology and legislative proposals to better understand whether market data is provided on a reasonably commercial basis. The ESMA Consultation closed on January 11, 2021 and the final guidelines were published on June 1, 2021.[35]

The final guidelines, which became effective on January 1, 2022, set out expectations applicable to all national competent authorities, trading venues, approved publication arrangements, consolidated tape providers, and systematic internalisers.[36] These guidelines, while not regulatory requirements, cover a number of topics, including but not limited to, the need for clear and easily accessible market data policies, the standardization of certain key terms such as "professional customer" and what constitutes "display data," the provision of data on the basis of costs, provision of free market data 15 minutes after publication, unbundling of market data rates, per-user based fees that would allow for a single charge for use of the same data when received from different providers, and transparency obligations in relation to market data policies and fees.

5.3 IOSCO

In December 2020, IOSCO published a consultation report on access to market data citing market participant concerns arising in multiple jurisdictions about the content, costs, accessibility, fairness, and consolidation of market data (**IOSCO Consultation Report**).[37] The IOSCO Consultation Report solicited feedback on a number of issues and potential ways to address them and resulted in approximately 40 comment letters being received.

On April 28, 2022, IOSCO published its final report: *Market Data in the Secondary Equity Market: Current Issues and Considerations* (**IOSCO Report**).[38] The IOSCO Report provides a summary of the comments received and highlights three considerations for regulators when reviewing RTMD provided by trading venues and in over-the-counter markets, as follows:

1. Pre- and post-trade data contain important information that promotes transparency of trading and, as a result, regulators should consider the needs of different types of market participants to make informed investment, order routing, and trading decisions;

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29 For the filings relating to proposed fee changes, see https://www.sec.gov/rules/sro/nms/2021/34-93625.pdf for the CTA and CQ plans, and https://www.sec.gov/rules/sro/nms/2021/34-93618.pdf for the UTP plan.

30 See SEC, "Staff Guidance on SRO Rule Filings Relating to Fees," available at https://www.sec.gov/tm/staff-guidance-sro-rule-filings-fees.

31 See Articles 13, 15(1), and 18(8) of MiFIR and 64(1) and 65(1) and (2) of MiFID II.

32 See Article 13(1) of MiFIR and Article 64(1) and 65(1) of MiFID II.

33 See http://www.marketstructure.co.uk/wp-content/uploads/Full-Report--The-Study-on-the-Creation-of-an-EU-Consolidated-Tape.pdf?utm_source=%27newsletter%27&utm_medium=%27email%27&utm_campaign=%27EU+Consolidated+Tape+Report+Published+Today+%7C+Market+Structure+Partners%27.

34 See https://www.esma.europa.eu/press-news/consultations/consultation-paper-guidelines-mifid-ii-mifir-obligations-market-data#TODO.

35 See ESMA, "Final Report: Guidelines on the MiFID II/MiFIR obligations on market data," available at https://www.esma.europa.eu/sites/default/files/library/esma70-156-4305_final_report_mifid_ii_mifir_obligations_on_market_data.pdf.

36 Systemic internalisers are proprietary trading firms that execute client orders away from trading venues on a frequent and systematic basis.

37 IOSCO, "Market Data in the Secondary Equity Markets: Consultation Report," available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD667.pdf.

38 IOSCO, "Market Data in the Secondary Equity Market: Current Issues and Considerations," available at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD703.pdf.

2. Fair access to such data by market participants is important, given that market data is not interchangeable in all cases. In this context, regulators should consider the extent to which access to free or delayed data may meet the needs of market participants; and

3. Consolidation of market data may be useful in reducing the cost of access, identifying liquidity, and comparing execution quality in jurisdictions where fragmentation of liquidity is an issue.

Item 6 – Discussion, Analysis, and Staff Considerations

Similar to our global counterparts, we analyzed our regulatory regime to identify any gaps and/or potential ways to improve our approach to regulating the access to and use of both direct marketplace RTMD feeds and consolidated RTMD.

In addition, our fact-finding review aimed to understand the evolution of the cost of access to and use of RTMD by market participants, such that we could identify potential approaches to better facilitate access to consolidated and non-consolidated RTMD. In this section, we discuss our findings and outline considerations regarding potential approaches that will then be further discussed in the subsequent section of the Consultation Paper.

6.1 Impact of Regulatory Requirements – OPR and Best Execution

Participants raised concerns about the impact of regulation, specifically OPR and best execution, on the need to obtain data from each marketplace. Most market participants are of the view that they must acquire RTMD from all marketplaces to comply with both OPR and best execution. They argue that whether purchased directly from marketplaces or indirectly from data and access vendors, the aggregate cost of such data is high. In addition, given that the equity IP operates on a pass-through model, the cost of purchasing consolidated data products through it is similarly viewed as being high.

The results of our interviews with market participants suggest that the introduction of the OPR threshold has not had any meaningful impact on the use and sourcing of consolidated RTMD by market participants. We understand that a contributing factor to the lack of change in behaviour may have been that the upfront costs to accessing the visible unprotected markets and consuming their RTMD were already absorbed[39] by the time that the OPR threshold was introduced. Participants were also relatively consistent in their views that maintaining access and trader visibility into the liquidity available on those venues was necessary to either provide best execution to their clients or to avoid the prospect of having to defend their ability to achieve best execution.

We also note that issues and concerns associated with the costs of accessing RTMD in a multiple marketplace environment are not unique to jurisdictions with an OPR requirement as in Canada and the US. Similar concerns regarding the costs of accessing consolidated and non-consolidated RTMD in a multiple marketplace environment are present in Europe and other jurisdictions where there is no OPR requirement. These shared issues across non-OPR jurisdictions support the view that concerns regarding RTMD would exist in the current multiple marketplace environment regardless of OPR. We also heard this view echoed in the interviews we conducted.

CSA Staff consideration 1: Given the expected limited impact on access to RTMD and the feedback obtained in the interviews, we do not think that amending OPR or best execution will address the industry's concerns around access to RTMD but seek feedback on this consideration further on in this Consultation Paper.

6.2 Impact of the Current Regulatory Approach for RTMD Fees

(a) Use of the DFM to Regulate Professional User Fees

The current regulatory review and approval processes for RTMD fees has had limited impact on these fees overall.[40] While the DFM has helped manage the growth of professional user fees for some, but not all, marketplaces, ultimately any cost savings from a reduction by one marketplace were offset over time by increases by others whose calculated fee range allowed for an increase.[41] As a result, the effectiveness of the DFM has decreased with each passing year. This long-term effect reflects challenges in the application of the DFM, particularly with respect to the current baseline reference points (i.e., benchmarks) used to establish the pricing for consolidated data to allocate marketplace data fees.[42]

[39] At the time of the implementation of the OPR threshold in October 2016, a total of five visible trading venues were deemed to be unprotected for the purpose of OPR. Two of these (TSX Alpha and NEO-N) had lost protection because of the application of a speedbump. Of the remaining three (the below-threshold markets), two (CSE and NEO-L) lost protection for trading in securities other than their own listed securities. The last was Lynx ATS, a sister market to Omega ATS, which lost protection because it did not meet the threshold. See https://www.osc.ca/en/securities-law/instruments-rules-policies/2/23-316/csa-staff-notice-23-316-order-protection-rule.

[40] Fees for all marketplaces except the TSXV are subject to review and approval by the OSC. The BCSC and ASC review and approve TSXV fees.

[41] Please see Appendix A, Figures 11 and 12 for the trend in professional subscriber fees and each marketplace operator's contributions to those trends.

[42] In past discussions of the baseline reference points we also referenced the concept of a "benchmark." In this paper we have used the term reference points to encapsulate both concepts.

In addition, feedback received from certain market participants indicated that transparency of the calculated DFM fee ranges on an annual basis would be helpful to better explain observed changes in marketplace professional subscriber fees.

Our review of other RTMD regulatory regimes indicated that Canada is an outlier with respect to the application of a methodology to directly regulate professional user fees. We are not aware of another jurisdiction that applies a DFM or similar formula to assess professional RTMD user fees. As a result, if we were to continue to use and apply the DFM, we would need to address its main weakness, which is the lack of appropriate reference points.

CSA Staff consideration 2: Retain external assistance, such as a consultant, academic, or industry expert, to review the DFM and its relevance in the context of domestic and international developments in equity markets. The review should include an examination of the reference points used by CSA Staff to allocate the share of fees chargeable by marketplaces under the DFM.

CSA Staff consideration 3: In the interim, consider whether to publish the calculated fee ranges.

(b) Current Approach to Regulate Fees Other than Professional User Fees

The DFM is only applied to professional subscriber fees. All other fees relating to RTMD are subject to the review standards discussed previously. The effect of this approach has been sharp increases in the cumulative total fees as each facility introduces fees charged by others, at similar rates, with the result, in some cases, being a doubling or tripling of cumulative fees over the identified period.[43] Given the nature of these fee changes, they are often not published for comment. We are of the view that further transparency of these fee changes would benefit both stakeholders and the regulatory review process.

CSA Staff consideration 4: Enhance transparency of any fee proposals related to RTMD, including fees pertaining to non-professional subscribers, by requiring marketplaces, as part of the regulatory review and approval process, to publish the proposed changes prior to approval.

(c) Current Approach to the Regulatory Model for Consolidated RTMD

As described earlier, market participants that access RTMD through the equity IP and some vendors are subject to a pass-through fee model. In terms of the use of the consolidated and non-consolidated RTMD feeds from the equity IP, we noted that:

1. few domestic dealers consume consolidated and non-consolidated RTMD feeds directly from the equity IP. Rather, most rely on data and/or access vendors or consolidate RTMD feeds themselves (**self-consolidate**);

2. access vendors need direct feeds to facilitate trading access and will also self-consolidate, but may use the equity IP to obtain certain non-consolidated RTMD feeds, usually from the smaller marketplaces;

3. some data vendors use the consolidated RTMD feeds from the equity IP to avoid the costs of developing and maintaining consolidated RTMD products themselves;

4. those that access RTMD through the equity IP are more likely to purchase the non-consolidated feeds rather than the consolidated ones; and

5. the effect of the pass-through model was commonly identified as a factor that has impeded the take-up of the consolidated RTMD feeds from the IP, both because of the cost, but also because of the administrative burden involved in signing contracts with each individual marketplace.

Given these findings and considering some of the other concerns regarding access to consolidated RTMD generally, we are of the view that we need to revisit our data consolidation regime to better facilitate access to RTMD.

CSA Staff consideration 5: Improve access to consolidated RTMD by either leveraging the current equity IP model or introducing a new model for data consolidation.

[43] Please see Appendix A, Figures 9 and 10, which show sharp increases in data distribution and data license revenue.

6.3 Increasing Costs for Accessing Consolidated RTMD

(a) Costs of Accessing Market Data Have Continued to Increase with the Number of Marketplaces

Since the introduction of the Marketplace Rules in 2001,[44] the Canadian market has expanded from two regulated exchanges[45] trading only their own listed securities, to 15 markets or facilities[46] operated by ten marketplace operators[47] trading securities listed on TSX, TSXV, CSE, and NEO.[48] The launch of new marketplaces and the introduction of RTMD fees by marketplaces – for example, for data receipt, distribution, and use – has had a cumulative effect on costs. The impact of this on any one participant will vary based on the extent to which the fees are borne at the use/user level versus the firm level, and how costs are shared amongst business lines. For data and access vendors, the impact will depend on the extent to which the costs are absorbed by the vendor or passed on to the clients. Appendix A provides several examples of the extent to which the cumulative increases for those consuming data from multiple marketplaces impacts their cost of access to and use of RTMD.

Since 2001, the evolution of technology and the automation of many business activities has led to changes in how RTMD is used for making trading and investment decisions. There has been a noticeable shift from manual to automated trading and an increased use of smart order routers, algorithms, and artificial intelligence for routing and trading decisions. Dealers also offer increasingly sophisticated and data-rich applications to their clients to make trading easier and simpler. The resulting changes in how market participants consume and use RTMD have led marketplaces to introduce new fees that align with these new uses. An example of this is the non-display fees for the use of RTMD in trading or analysis applications. These fees also have a cumulative effect that can be observed in Figures 28 through 31 of Appendix A.

We also understand that increased retail investor trading activity over the past few years has led to higher quote-usage, contributing to an increase in market participants' RTMD costs, especially where such participants are not otherwise able to manage these costs.[49]

(b) Effect of Competition on RTMD Fees

There are questions as to the degree to which competition for orders can impact RTMD fees. Most are of the view that because RTMD is not interchangeable (i.e., the specific data from one marketplace cannot be substituted with data from another), there is a lack of competition resulting in an absence of downward pressure on RTMD fees.

Competition can have a positive impact on some marketplace fees. For example, Figures 4 and 5 of Appendix A highlight how trading fees changed in response to increased competition between marketplaces for trading activity. In contrast, we do not see similar outcomes for RTMD or for other fees. This is particularly valid for display, non-display, and distribution fees, which, as we noted above, are not subject to the DFM. Our fact-finding review demonstrates that as each marketplace has begun operating or introduced similar data fees, there has been no subsequent competitive response for market data fees from those already charging such fees. This outcome confirms that there is limited competitive pressure on market data fees.

However, our fact-finding review also identified several circumstances where marketplaces reduced their fees, either as a result of market participant pressures or as a result of perceived competitive pressures. Specifically, we noted the following:

- TSX reduced its professional subscriber rates for Level 1 RTMD in 2012 over 2010 from $38 to $30, although it did increase other fees over the same time period;[50]
- TSXV reduced non-professional subscriber rates for RTMD in 2013;
- TMX introduced various enterprise pricing programs that may have resulted in lower effective per user rates for non-professionals; and

[44] The purpose of the Marketplace Rules was "to create a framework that permits competitive operation of traditional exchanges and [ATSs], while ensuring that trading is fair and transparent." Please see "Alternative Trading System Proposal," available at https://www.osc.ca/sites/default/files/pdfs/irps/rule_20000728_atsproposal.pdf.

[45] Being operated by the Toronto Stock Exchange Inc. and Canadian Venture Exchange Inc. (now TSX Venture Exchange Inc.).

[46] Commonly known as TSX, TSXV, Alpha, CSE, Nasdaq CXC, Nasdaq CX2, Nasdaq CXD, NEO-L, NEO-N, NEO-D, Omega ATS, Lynx ATS, MATCHNow, Liquidnet, and ICX.

[47] Alpha Exchange Inc., CNSX Markets Inc., Instinet Canada Cross Ltd., Liquidnet Canada Inc., Nasdaq CXC Limited, NEO Exchange Inc., Tradelogiq Markets Inc., TriAct Canada Marketplace LP, TSX Inc., and TSX Venture Exchange Inc.

[48] TSX-listed securities and TSXV-listed securities are eligible to trade on every Canadian marketplace. CSE-listed securities are currently eligible to trade on twelve trading venues and NEO-listeds are currently eligible to trade on seven trading venues.

[49] Dealers may provide delayed data in certain circumstances to manage these costs, or where offered by a marketplace and accessible to the dealer, may enter into "enterprise arrangements" through which the dealer may pay a set lump fee or be subject to tiering of lumped fees, that cover all usage, or usage up to a specified level.

[50] Some would argue that this reduction was not a response to competition, but rather was a response to dealer and industry pressure, including pressures that arose from the findings of a study commissioned by the Investment Industry Association of Canada, entitled *An Economic Study of Securities Market Data Pricing by Canadian Trading Venues* (June 2011), available at https://iiac.ca/wp-content/themes/IIAC/resources/1580/original/SLCG-Canadian-Market-DataJune%207.pdf.

- Nasdaq Canada introduced the "Nasdaq Basic Canada" program, offering a potentially lower-cost alternative to those only requiring indicative pricing for Canadian equities.

In addition, some may argue that delays in the introduction of certain common fees or a lack of increases in stated rates over a long period of time might also suggest the existence of competitive pressures.[51]

(c) Costs may have Implications for the RTMD made Available to Users

Market participants indicated that, in certain circumstances, decisions regarding the level of access to RTMD made available to users depend on cost. We understand that retail clients, wealth advisors, and RIAs are often only provided with top-of-book RTMD from the listing markets because the incremental costs of providing access to full depth-of-book RTMD from all markets represents a barrier to such access. Many portfolio managers are in a similar situation. We understand these users are often using quote information for indicative pricing purposes.

Market participants also indicated that the level of access to RTMD (i.e., top-of-book RTMD from listing marketplaces only versus consolidated RTMD for all marketplaces) depends on the needs of each user. In this context, market participants stated that some users seek access to best price information only, whereas others may also need information about the volume available at the best price to determine the best way to trade (i.e., whether to place a marketable or a non-marketable order).

To assess the extent to which listing market data is sufficient to observe best price, we performed a quantitative analysis which indicates that access to top-of-book RTMD from listing markets only appears to be sufficient in most cases where users seek access to best price information, apart from TSX-listed exchange traded funds (**ETFs**).[52] For these ETFs, we noted a higher probability of best price information being available on away markets, meaning that investors looking to obtain best price information would be better served by access to consolidated RTMD.

We also assessed the extent to which RTMD from listing markets might be sufficient where a user needs information about the volume available at the best price – for example, where the volumes at best price might influence a retail client's decision to trade, and the order type they would choose to effect a trade.[53] We noted that for low value orders (e.g., orders with a value of $1,000 or less), access to the volume available at the best price on listing markets only may be sufficient.[54] However, as the order value increases, the likelihood that the investor is missing relevant information about the size available at the best price across all markets increases. For these users, our analysis indicates that in many cases, top-of-book RTMD from the listing market may be insufficient, particularly where the order value is above $10,000.[55]

We acknowledge that providing access to consolidated RTMD for these users could be costly, both in terms of the marketplace fees and any additional surcharges by display vendors. From a regulatory perspective, we believe that these users would be better served by having access to consolidated RTMD to make informed decisions. The principles of transparency suggest that regulatory action to facilitate more cost-effective access to consolidated RTMD for these users is appropriate.

CSA Staff consideration 6: Any options considered for addressing RTMD cost issues should sufficiently incentivize market participants to provide consolidated RTMD to their clients where such provision is voluntary or should help offset the explicit cost impacts if the provision of such information was to be mandated.

(d) Other Notable Cost Effects – Administrative Burden

Market participants have also raised concerns about the increasing costs and inefficiency of managing and administering contractual relationships with multiple marketplaces to gain and maintain access to consolidated and non-consolidated RTMD. These concerns stem from the increasing number of contracts required for each additional marketplace.[56] In addition, participants raised concerns about the variation in the language of data access contracts and the differences in interpretation of similar language. Inconsistencies in definitions of key terms (for example, definitions of "professional" or "non-professional"), in the application of data policies (for example, in terms of non-display use), or in the application of product bundles and packages, can have implications for costs and the data that is selected.[57] Inconsistencies are commonplace both between marketplaces and also within the same marketplace from year to year.

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51 Figures 16 through 27 of Appendix A show both CSE and Tradelogiq not introducing data distribution fees until 2017 and 2019, respectively, despite each having been operating marketplaces for more than ten years. Similarly, Figures 28 through 31 of Appendix A show Nasdaq Canada and Tradelogiq only introducing fees for non-display use in 2019 and CSE not yet charging those fees.

52 See Tables 1 to 3 of Appendix A.

53 For example, a retail client's decision to participate with a market order, marketable limit order, or non-marketable limit order might be influenced by both the observed price and volume.

54 For the purposes of the Consultation Paper, we considered access to best price and volume to be sufficient if a market participant was able to access and have visibility into two thirds of the listing market RTMD.

55 See Figures 34 through 39 of Appendix A.

56 Whether the participant is consolidating data itself or in receipt of a consolidated data product sourced from the TMX IP as the TMX IP relies on a pass-through fee model.

57 For example, we understand that differences in the definitions of "professional" versus "non-professional" may lead retail dealers to apply the narrowest definition of "non-professional" to a particular client for all data provided to that client. Where this approach leads to the client being defaulted to "professional," this may impact the dealer's costs or result in the dealer limiting that client's access to RTMD by providing delayed data only.

CSA Staff consideration 7: Creating mandated standardized key terms, such as definitions of professional and non-professional clients and non-display use, would likely reduce barriers to accessing consolidated RTMD.

CSA Staff consideration 8: Overall, in the context of the above discussion on increasing costs for accessing consolidated RTMD, regulatory options should be focused on facilitating access to consolidated RTMD such that consolidated RTMD is accessible to all at a reasonable price.

Item 7 – Proposed Options

The CSA Staff considerations outlined in the preceding section are the basis for the proposed options set out below. Given the complexity of the issues, the polarized views of those that provided feedback, the approaches proposed in other jurisdictions, and the particularities of the Canadian market, we are considering both initial and longer-term options, as follows:

Initial Options for Addressing Staff Considerations (1 to 2 years)	**Longer-term Options for Addressing Staff Considerations (Over 2 years)**
1. Enhance transparency of the fee changes proposed by marketplaces	1. Improve access to consolidated RTMD by leveraging the current IP model
2. Retain external assistance to review the use of the DFM and the reference points used to allocate fees, as well as improve transparency of the DFM by publishing each marketplace's fee ranges	2. Introduce a new model for data consolidation to improve access to consolidated RTMD
3. Create an industry group to help standardize key terms and definitions for access to and use of RTMD between marketplaces and market participants	

While some of these options are either-or, many of them can be implemented together. We are seeking feedback on all of the proposed options, and, as outlined above, any regulatory changes proposed as a result of the feedback received would be published for comment in the normal course.

7.1 Initial Options

(a) Enhance transparency of any fee proposals related to RTMD by requiring marketplaces, as part of the regulatory review and approval process, to publish proposed changes when they are filed for approval.

Currently, marketplace fee changes are published for public comment where, in Staff of the SRA's view, they may have a significant impact on the marketplace, its market structure, members, issuers, investors, or the Canadian capital markets or otherwise raise regulatory or public interest concerns and should be subject to public comment.[58] In these cases, fee changes are generally published for 30 days. If the SRA decides to approve the changes, the marketplace must respond to any comments received as part of its Notice of Approval of the fee changes, which is published by the SRA.

This option involves replacing the current process with a requirement for marketplaces to publish for comment all their proposed changes to RTMD fees as part of the review and approval process. The process would impose discipline on marketplaces to publicly justify any changes to fees and/or fee models.

The information to be published about the proposed RTMD fee change would include the following:

1. How the proposed fee changes comply with the regulatory requirements set out in subsections 5.1(1) and 5.1(3)(a) of NI 21-101 (also known as the **fair access requirements**) and in Part 10 of the exchange recognition criteria, where applicable, including reasonability, fairness, appropriateness, and transparency;

2. A description and analysis of the proposed fee change that includes the current information submitted with a proposed fee change including, but not limited to:

    a. A description of the fee change being proposed,

    b. The expected date of implementation,

    c. The rationale for the proposed fee change and any analysis in support of it,

[58] This reflects the practice in Ontario.

d. A description of the methodology used to set the proposed fees,

e. An analysis of the impact on stakeholders,

f. An overview of any alternatives considered,

g. Any analysis conducted to determine how the proposed fee compares to fees charged for similar services by other marketplaces in Canada and abroad, and

h. The costs of producing the product or service, where relevant.

The mechanism by which marketplaces would make these proposals public may involve a dedicated page on the applicable SRAs' and/or applicable marketplace's website where the proposal and accompanying details would be publicly available for review by interested parties. Approval would not be granted for at least 30 days after the proposal has been made public, or longer where warranted based on the complexity of the proposal. This timing would allow interested parties to provide feedback for consideration by the SRAs. There would be no requirement for the marketplaces to respond publicly to any feedback received, but Staff of the SRAs would consider this feedback as part of their regular review process.

QUESTION #1: Please identify any potential unintended consequences at the industry, marketplace, or firm level if we pursue this option.

QUESTION #2: Would this approach satisfy the need for more transparency in relation to proposed fee changes and their review process? If yes, please indicate what benefits this approach would offer. If no, please explain why and whether other requirements should be considered.

(b) Retain external assistance to review the DFM and its relevance in the context of domestic and international developments in equity markets. The review should include an examination of reference points that could be used by CSA Staff to allocate the share of fees chargeable by marketplaces under the DFM. The fee ranges assigned to each marketplace should be made transparent.

As outlined above, the DFM has helped slow the growth of professional subscriber fees charged by marketplaces, but its effectiveness has decreased over time due to issues associated with the current reference points and how the DFM is applied. This option involves retaining an external party to review the DFM with the goal of setting appropriate reference points for the RTMD fees for consolidated data and addressing some of the other issues around its application.

It may not be feasible or desirable to apply the DFM across all current and future data fee categories, particularly those that are less associated with data use where pre- and post-trade metrics used in the DFM may be less relevant – e.g., distribution fees or "feed fees." To do so would require the creation of reference points for each of the targeted fee categories. The ability to extend the DFM to additional data fee categories may also be limited by the definitions and fee models used by marketplaces to charge for those categories (e.g., non-display use fees), unless there is greater standardization in RTMD key terms and definitions. As a result, the application of the DFM may remain limited to professional subscriber fees, but it could be extended to non-professional subscriber fees.

This option also involves considering whether to publish the fee ranges calculated under the DFM in order to increase transparency and accountability and to provide for a more level playing field amongst marketplaces. All marketplaces and market participants that consume RTMD could then have a better understanding of why certain marketplaces may have been permitted to increase their professional and potentially non-professional RTMD fees.

QUESTION #3: What are your concerns, if any, with continuing to use the DFM? If the DFM were to continue to be used, what changes are necessary?

QUESTION #4: Is the application of the DFM appropriate for both senior and venture market data?

QUESTION #5: Should the application of the DFM be extended beyond subscriber fees? For example, should the DFM be applied to non-display and distribution fees (whether internal and/or external distribution fees) given the potential challenges noted above?

QUESTION #6: What are the potential benefits or risks of making the fee ranges calculated under the DFM transparent? Should there be greater transparency of other inputs to the DFM (e.g., reference points or key input metrics)? If so, please comment on the potential benefits and risks.

QUESTION #7: Should we consider adopting a methodology for non-professional subscriber fees? If yes, what should be factored into such a methodology? If not, why not?

(c) Create an industry group to help standardize key terms and definitions for access to and use of RTMD between marketplaces and market participants.

This option involves creating an industry group that includes data experts from market participants (including vendors, dealers, buy-side, etc.) that need access to and use RTMD as well as marketplace staff with expertise in administering RTMD contracts. The goal of this group would be to identify and standardize those key terms and definitions (for example, definitions of "professional" and "non-professional" users) that are confusing and difficult to understand, maintain, and audit in the context of the access to RTMD feeds.

Standardization would help to remove certain frictions and barriers to access consolidated RTMD that can result from different interpretations of the terms and definitions associated with RTMD, as discussed earlier. To that end, this industry group could also develop use cases to ensure that the fees charged for access to and use of RTMD apply to users in a consistent manner. Consideration would then be given to mandating the adoption and implementation of standardized terms and definitions in relation to accessing consolidated and non-consolidated RTMD feeds that could potentially lay a foundation for the long-term options focused on improving access to consolidated RTMD described in the next section.

For clarity, mandating the adoption and implementation of standardized terms and definitions does not mean that marketplaces must charge fees in each category. For example, a marketplace may continue to choose to not charge end-use data subscribers but would be required to use the standardized terms and definitions if those fees were to be introduced.

Further, the intent would be to limit the standardization exercise to key terms and conditions directly related to the receipt and use of RTMD which we understand have introduced frictions and barriers for accessing consolidated RTMD. At this time, defining standard language for contract terms that are more commercial in nature, such as indemnity provisions, would not be considered. In-scope terms and definitions could include the definitions and restrictions on use for:

1. End-use categories (e.g., professional and non-professional subscribers);

2. Non-display use categories;

3. Internal versus external distribution; and

4. Real-time versus delayed data.

QUESTION #8: Should standardized key terms and definitions, such as professional and non-professional users, be developed for the access to, receipt, distribution, and use of RTMD products? If yes, please explain what the benefits of such an approach would be. If not, please explain why not.

QUESTION #9: What other key terms and definitions should be standardized? What factors or industry legacy issues should be considered in standardizing such terms?

QUESTION #10: Would this approach help address market participants' concerns with respect to the administrative burden related to the access to and use of consolidated RTMD? Please explain your answer.

QUESTION #11: What would be the unintended consequences, if any, of standardizing these types of key RTMD terms and definitions?

7.2 Longer-term Options

(a) Leverage the current IP model by introducing a TIP+ Model.

Under the current regulatory framework for consolidated RTMD, both marketplaces and the equity IP must comply with certain requirements in relation to consolidated RTMD under NI 21-101. The IP collects, normalizes, consolidates, and disseminates marketplace order and trade data to its subscribers, but the fees and contractual terms for use of the data are set by each marketplace under the pass-through model described above. As a result, the equity IP's functions are those of a technical information processor (**TIP**), meaning that it serves a purely consolidation and distribution function, but does not play an administrative role.

Under this option, we would mandate an enhanced TIP model (**TIP+ model**) that could address concerns about the cost of access to and use of consolidated RTMD by imposing a cap on fees charged by marketplaces for marketplace order and trade data that is consumed through the consolidated products distributed by the TIP – currently, the CBBO protected, CBBO all markets, CLS, CDB protected, and CDB feeds. The caps would be established by the CSA. For example, the CSA could consider imposing caps by restricting marketplaces from charging more than a set percentage of their stated fees for marketplace data consumed through the TIP. The caps could apply to both display and non-display use fees as well as distribution fees.

To establish the caps for the consolidated products distributed by the TIP, we could consider a number of factors, including, but not limited to:

1. the extent to which consolidated TIP products offer a comparable degree of granularity and/or content to individual marketplace feeds; and

2. how trade-offs between a consumer's needs and the cost of RTMD might reflect greater value of the consolidated data for end-users.

Another way to establish the caps could be to set reference prices for various uses of each consolidated TIP product, with the DFM then being used to determine what each marketplace is permitted to charge for the RTMD they contribute to consolidated TIP products.

We could also establish how the revenue derived from the TIP's consolidated products would be allocated to each marketplace based on a number of considerations, including the informational value of each marketplace's incremental contribution to consolidated data products.

Under this model there could be a single TIP or multiple TIPs.

Mechanisms may also be needed to ensure the continued viability of a TIP. For example, in the absence of one or more entities choosing to become and act as the TIP, there may be a need to mandate that marketplaces contribute to the creation and viable operation of a TIP to carry out the technical consolidation functions.

QUESTION #12: Would caps on fees charged by marketplaces for their RTMD consumed through the consolidated TIP products affect the consumption and use of consolidated RTMD? If so, how? If not, why not, and are there alternatives that should be considered?

QUESTION #13: Under this approach, do you believe data vendors would begin to offer TIP-based products and pass cost savings on to the end user? If not, what drivers would be necessary to encourage this? Do you envision any potential unintended consequences under this approach?

QUESTION #14: What means of establishing caps and what factors for establishing cap levels should be considered?

(b) Introduce a new model for data consolidation through the use of an Admin IP.

The second option contemplates the creation of a new model for the distribution of consolidated RTMD in Canada that could be designed to address several issues in relation to the access to and use of consolidated RTMD. This new model contemplates the creation of an Administrative IP (**Admin IP**) that would be responsible for establishing and managing the components of the model in relation to the access to and use of consolidated RTMD products (i.e., products, fees, and revenue sharing). The CSA would mandate the creation of the Admin IP and set clear requirements for its governance, involving representation from both marketplaces and dealers. Under this approach, one or more TIPs could be charged with the collection, normalization, consolidation, and distribution of the consolidated RTMD products as defined and required by the Admin IP. Whether one or multiple TIPs should be considered under this structure is discussed in the next section.

(i) Admin IP

The key responsibilities of the Admin IP would include:

Product definition - design, describe, and standardize the key consolidated RTMD products to be available for access and use by market participants, subject to any regulatory requirements or guidance from the CSA.

Fee setting - set the fees for the consolidated RTMD products distributed by the TIPs. This would include fees for the access to and use of consolidated RTMD feeds, both display and non-display, and the fees charged for the distribution of such data, as well as any connectivity fees associated with the access to such feeds. Should the Admin IP, rather than an independent TIP, be responsible for the distribution of consolidated RTMD products, then it would also set the fees associated with the collection, normalization, consolidation, and distribution of consolidated products to its subscribers.

Contractual terms setting - develop, set, and maintain standardized contractual terms and conditions that would govern access to, receipt, distribution, and use of consolidated RTMD products from the TIPs and, if applicable, the Admin IP. The contractual standardized terms should be developed by the Admin IP through a consultative process with industry experts and, before adoption, would be subject to regulatory approval.

Revenue sharing - design, implement, maintain, and administer, subject to regulatory approval, a revenue sharing model to allocate the net revenues earned from the sale of the consolidated RTMD feeds to the contributing marketplaces.

The Admin IP's responsibilities may present conflicts of interests between the producers and consumers of consolidated RTMD, specifically marketplaces and market data customers. To ensure that the Admin IP meets its regulatory obligations, it must have a strong governance structure in place with adequate breadth of representation from both the producer and consumer categories. The governance mechanism must be able to facilitate the adoption of optimal solutions that will incentivize the access to and use of consolidated RTMD products by market data consumers. While additional details would be included in any resulting future proposal, the administrative functions and governance structure of an Admin IP may not be dissimilar from those outlined in the finalized SEC's Governance Order and Market Data Infrastructure Rule.

QUESTION #15: What are your views on the appropriateness of an Admin IP model for Canada? What would be the key benefits and challenges and how could any challenges be addressed?

QUESTION #16: What are the unintended consequences or risks that should be considered?

QUESTION #17: Are there any other key responsibilities that should be considered for an Admin IP model?

QUESTION #18: What governance model could be introduced that would be fair and help overcome conflicts such that the Admin IP could achieve its regulatory obligations?

(ii) Single vs. Multiple TIPs under an Admin IP Model

The key responsibilities of any TIP are expected to be similar to those applicable under the current IP model – i.e., the collection and normalization of marketplace order and trade data to create and disseminate consolidated RTMD products. We are considering the following approaches in relation to the operation of the TIP under an Admin IP model:

1. allowing for a single TIP that could either be operated by the Admin IP or by an entity that is independent from the Admin IP, or

2. creating a competitive TIP structure under which marketplaces would be mandated to provide order and trade information to multiple TIPs exclusively for the purpose of consolidating and distributing such data, under terms established by the Admin IP.

Allowing multiple TIPs to operate may boost competition in the consolidated data distribution space, which may contribute to lower latency through innovation in technology, creativity in service offerings, and potentially streamlined contractual terms. Competition could also drive TIPs to provide customized services to consolidated market data users. The existence of multiple TIPs could also help reduce the "single-point-of-failure" risk that could result from a single TIP ceasing operations (whether because the entity is no longer a going concern or is unable or unwilling to continue to provide the consolidated RTMD products).

The primary challenge with a multiple TIPs model is that there may not be enough of an incentive for multiple parties to create and act as TIPs – i.e., there would need to be sufficient commercial opportunity for multiple IPs to take on the costs and any additional responsibilities associated with acting as a TIP.

Under either a single or multiple TIP approach, there is a risk that no entity chooses to become a TIP due to the lack of a sufficient commercial opportunity. In such a case, as suggested earlier, there may be a need to mandate that marketplaces contribute to the creation and viable operation of a TIP to carry out the technical consolidation functions.

QUESTION #19: Based on the size and scale of the Canadian market, should the CSA consider allowing for multiple TIPs to operate under the Admin IP approach?

QUESTION #20: Alternatively, should there only be a single TIP and, if so, should it be operated independently of the Admin IP?

QUESTION #21: If there is only a single TIP, should it operate as a for profit business or as a not-for-profit entity? Please explain your answer.

7.3 General Questions

QUESTION #22: With respect to Staff Consideration 1, do you think that our review of RTMD costs and accessibility should consider the impact of regulatory requirements, such as OPR and best execution? What could drive changes in consumer behaviour (such as disconnecting from marketplaces that offer little benefit to the market compared with the costs or unprotected marketplaces)? What changes could impact the competition among data producers? What could incrementally increase consumer bargaining power? And ultimately, could any of these suggestions impact fees? Please explain your answer.

QUESTION #23: Would any of the options outlined above assist dealers with moving retail orders to other marketplaces during a marketplace outage?

QUESTION #24: Are there any other options to address industry's concerns about the access to and cost of RTMD that we have not considered? Please explain your answer.

Item 8 – Conclusion

The issues concerning access to RTMD are complex and there are many different views as to how they can be addressed. We intend to consider the feedback received on this Consultation Paper to determine next steps. Any policy changes or rulemaking will be subject to publication for comment in accordance with the usual process.

Item 9 – Comments and Submissions

We invite participants to provide input on the issues outlined in this public consultation paper. You may provide written comments in hard copy or electronic form. The consultation period expires February 10, 2023.

Certain CSA regulators require publication of the written comments received during the comment period. We will publish all responses received on the websites of the Autorité des marchés financiers (www.lautorite.qc.ca), the Ontario Securities Commission (www.osc.ca), and the Alberta Securities Commission (www.albertasecurities.com). Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Please submit your comments in writing on or before February 10, 2023.

Address your submission to all of the CSA as follows:

British Columbia Securities Commission
Alberta Securities Commission
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Ontario Securities Commission
Autorité des marchés financiers
Financial and Consumer Services Commission, New Brunswick
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island
Nova Scotia Securities Commission
Office of the Superintendent of Securities, Service NL
Northwest Territories Office of the Superintendent of Securities
Office of the Yukon Superintendent of Securities
Nunavut Securities Office

Deliver your comments **only** to the address below. Your comments will be distributed to the other participating CSA regulators.

Ontario Securities Commission
20 Queen Street West
19th Floor, Box 55
Toronto, Ontario M5H 3S8
Fax: 416-593-2318
comments@osc.gov.on.ca

Item 10 – Questions

If you have any comments or questions, please contact any of the CSA Staff listed below.

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APPENDIX A

Quantitative Analysis – Review of Access to RTMD in Canada

Item 1 – Introduction

In addition to a regulatory gap analysis, we also conducted a quantitative fact-finding review to develop the initial and longer-term options proposed in the Consultation Paper. The scope of the quantitative fact-finding review was to observe:

1. Overall changes in the market data environment by understanding changes to core marketplace revenues (i.e., trading, access, and market data revenues);

2. Specific changes in the key RTMD fee levels in Canada by focusing on those fees that impact the costs incurred by market participants that access and use RTMD in consolidated and non-consolidated form. Specifically, we observed the evolution of the following fee categories: (i) professional and non-professional display fees; (ii) distribution fees; and (iii) non-display fees. We also observed changes in other fees (i.e., access fees, fees for delayed data, historical fees), to better understand the impact of all fees on market participants;

3. The need to access Level 2 consolidated RTMD versus Level 1 consolidated RTMD from listing markets only; and

4. The fees charged to market participants in Canada compared to those charged in the US and other global markets on an individual and consolidated basis (i.e., TSX fees versus similar fees charged in the EU, US, and Australia, for instance).

To conduct our quantitative analysis, we collected information from selected equity marketplace operators with respect to their core revenues and certain user count information.[59] The revenue information that was expressed in US dollars (because the fees collected were billed in US dollars) was normalized and presented on an FX-adjusted basis in our analysis.[60] We also used publicly available information about trading activity and fees to conduct the international comparisons and information obtained from IIROC to assess the need for accessing consolidated information versus market data from listing markets only.

Our fact-finding review covered a 13-year period, between 2006 and 2019. Where possible, our observations cover the entire period under review (**13-year period**) and also outline observations between 2014 to 2019 (**latter 5 years**) if data for 2006 was not available for all marketplaces.

Item 2 – Core Marketplace Revenue and the Market Data Environment

We consider core marketplace revenue to be the revenue collected by marketplaces from the fees charged for:

1. access to the marketplace, including connectivity (e.g., logical connectivity for data access and order entry and physical connectivity), colocation, membership, and other fees (e.g., smart order router);

2. trading; and

3. market data.[61]

2.1 General Observations

We observed that both the level and the composition of core marketplace revenue has changed since 2006. Marketplace revenues have grown at a compound annual growth rate (**CAGR**)[62] of approximately 1.6 percent over the 13-year period and 2.5 percent over the latter 5 years.[63]

We note that the proportion of core marketplace revenue attributable to market data and access has grown over the 13-year period. In 2006, trading revenue represented almost 60 percent of core marketplace revenue versus 39 percent in 2019, whereas market data represented 40 percent in 2006 and increased to almost 50 percent in 2019. Access revenue has also grown by 12 percent over the same 13-year period (shown in Figure 1).

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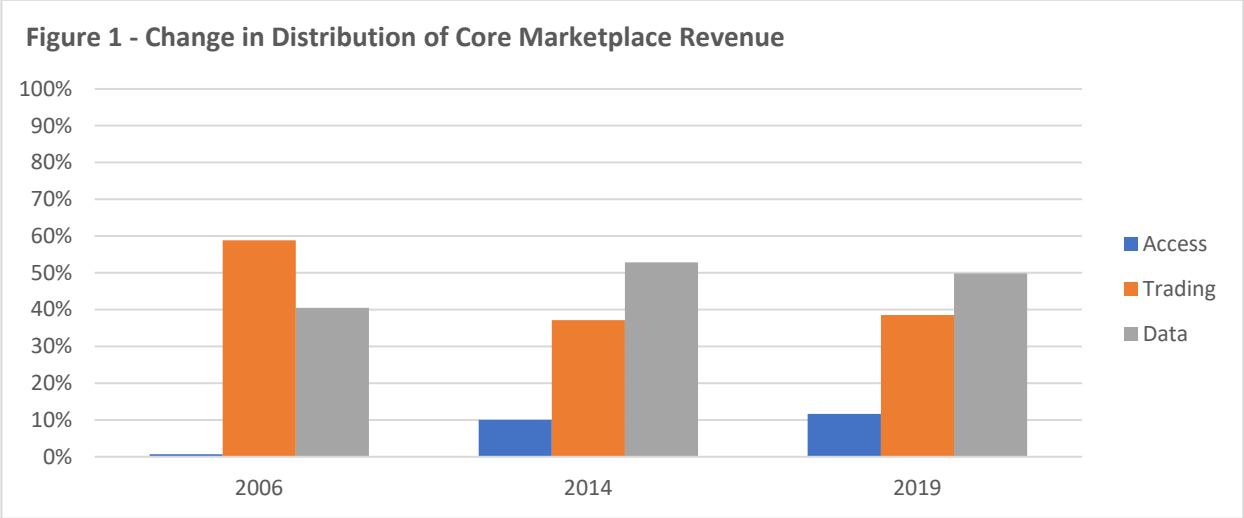
59 Information was only requested from equity marketplace operators with at least an aggregate market share of one percent across the operator's trading venues, representing all trading venues other than those operated by Instinet Canada Cross Ltd. and Liquidnet Canada.

60 USD revenue was normalized into CAD for each of 2014 and 2019 using the effective FX rate for 2006. That is because changes in FX rates can have a significant impact on market data revenue, where marketplaces may charge/bill subscribers in either CAD or USD. For example, there was a significant change in FX rates between 2014 and 2019 that would have resulted in a compound annual growth rate (**CAGR**) of 3.4 percent over the latter 5 years versus the 2.5 percent reflected above. We note there was no impact on trading and access revenue as all trading fees and almost all access fees were billed in CAD.

61 Data revenue excludes audit recovery revenue, which may reflect recovered revenue spanning multiple years.

62 Rates are simple CAGR measured as the compound annual growth rate between the beginning and end points.

63 Comparatively, inflation as measured by the average annual Canadian Consumer Price Index grew at a CAGR of 1.7 percent for each of the 13-year and latter 5 years periods.



2.2 Change Drivers

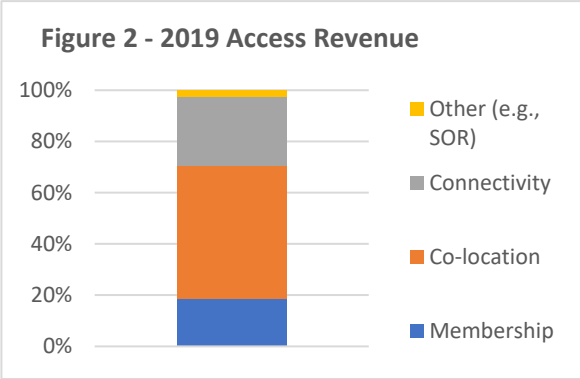
(a) Access Revenues

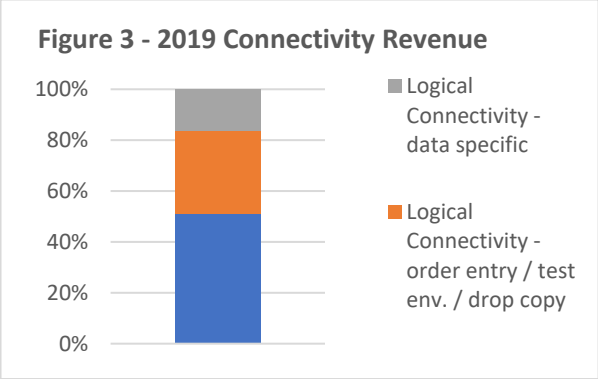
In 2019, access revenue included the following:

1. membership revenue - which has increased with more marketplaces;

2. colocation revenue - primarily attributable to TMX as the other marketplace operators do not generally manage their own colocation facilities; and

3. physical and logical connectivity revenue - which has also increased as a result of additional venues and the introduction of new fees.





The primary contributor to the growth of access revenue, aside from the increase caused by the membership revenue, is the revenue earned by marketplaces from connectivity fees. Data-specific logical connectivity fees, reflected in Figure 3, have increased as a result of the introduction of such fees by two marketplace operators. Of note, however, is that marketplaces may choose to recoup any costs associated with data-specific connectivity differently, which means that charges for any data-specific connectivity may not always be explicit. For example, some marketplaces may attempt to recover logical connectivity costs for data through their distribution fees, where such fees are charged by feed and by source, or they may be broadly absorbed through a variety of data offerings. This adds complexity to any attempt to compare and contrast connectivity and data offerings.

(b) Trading Revenues

We observed that trading revenue decreased from 2006 to 2014, and then recovered slightly in 2019. This decrease occurred despite continued growth in trading volumes (see Figure 4).[64]

[64] All-in effective net fee per share based on total trading revenue from marketplace matching (e.g., continuous trading, opening and closing auctions, special trading sessions). Trading volumes obtained from IIROC.

The main drivers for the decrease in trading revenue are the increasingly competitive environment for trading fees that has resulted in a decrease in the effective fee yield per share traded, as well as the increase in the proportion of trading associated with low-priced/lower-fee stock.[65]

The significant decrease in trading revenue occurring between 2006 and 2014 was also highlighted by the decline in the effective net fee per share traded earned by marketplaces[66] (see Figure 5). This decrease was the effect of changes to fee models and fee levels implemented in response to competitive pressures from US markets for interlisted trading volumes, and from increased competition within the domestic marketplace environment resulting from the increase in the number of trading venues.

Figure 4 - Trading Revenue vs. Effective Net Fee per Share Traded
(index basis - 2006 base year)

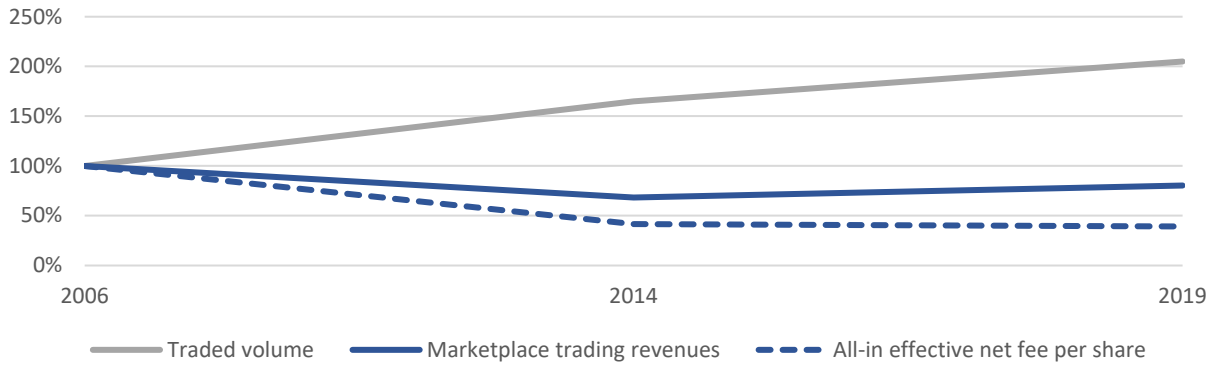
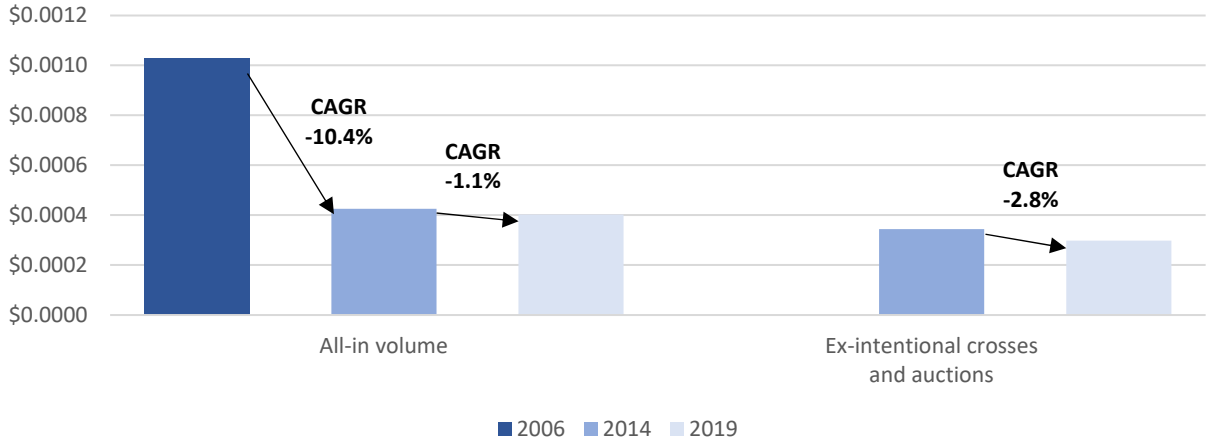


Figure 5 - Change in Effective Net Fee per Share Traded



(c) Market Data Revenues

We consider market data revenue to be the revenue collected by marketplaces from the fees charged for:

1. the use of Level 1 and Level 2 RTMD feeds by professional and non-professional users – the discussion below uses the term *data subscriber* when referring to the revenue earned by marketplaces from these fees;

2. the use of quotes by non-professional subscribers – the discussion below uses the term *quote usage* when referring to the revenue earned by marketplaces from these fees;

[65] We observed that a higher percentage of continuous traded volume in 2019 was in stocks priced under $1.00 relative to 2014.

[66] See Figure 5, for All-in effective net fee per share. The "ex-intentional crosses and auctions" effective net fees per share for 2014 and 2019 were estimated after adjusting revenues and volumes to exclude opening and closing auctions and intentional crosses, with further adjustments to revenue to add back estimated payouts for "payment for cross" programs (2006 not included due to insufficient granularity of trading revenues and volume information).

3. distribution/feed licenses – the discussion below uses the term *distribution/feed fees* when referring to revenue earned by marketplaces from these fees;

4. *data license*; and

5. *historical data*.

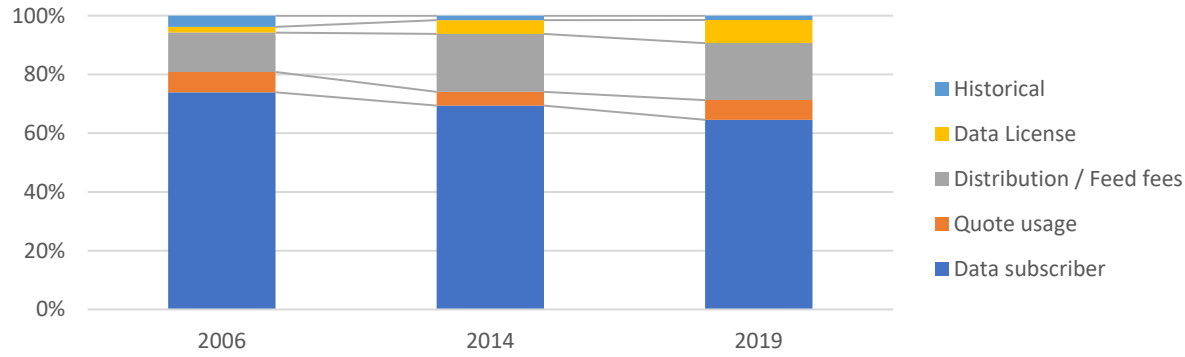
Data subscriber and quote usage revenues are also referred to as display revenue.

In 2019, the revenue from market data represented 50 percent of core marketplace revenue. This revenue has grown at a CAGR of 3.2 percent over the 13-year period and 1.4 percent over the latter 5 years.

Since 2006, display revenue[67] has represented the most significant component of marketplace data revenue. However, over the 13-year period, the contribution of display revenue to overall data revenue has decreased from approximately 80 percent in 2006 to approximately 72 percent in 2019. Over that same period, the proportion of data revenue from distribution/feed and data license fees has increased (see Figure 6).

To understand the drivers behind these trends, we looked at the evolution of the largest three contributors to market data revenues, specifically (i) data subscriber, (ii) data distribution, and (iii) data license revenues.

Figure 6 - Change in Composition of Marketplace Data Revenue

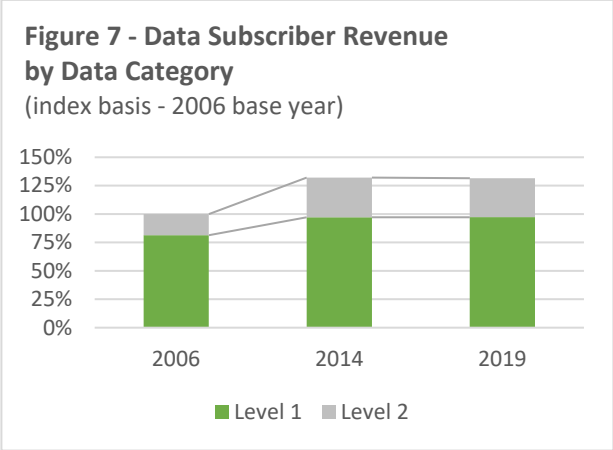


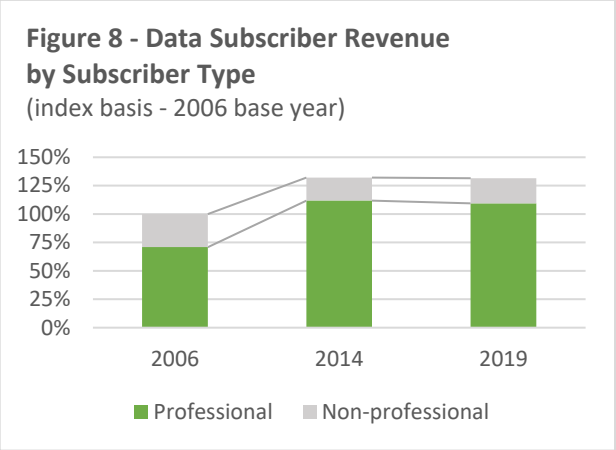
(i) Data Subscriber Revenue

Data subscriber revenue represents money earned from subscribers that use display services. In 2019, this revenue represented an estimated 65 percent of marketplace data revenue and an estimated 32 percent of core marketplace revenue. By comparison, trading revenue was approximately 38 percent of core marketplace revenue in 2019. This makes data subscriber revenue the second largest category of revenue after trading revenue.

Over the 13-year period, data subscriber revenue increased by an estimated 23 percent. It has grown by a CAGR of 2.1 percent over the 13-year period and was virtually flat over the latter 5 years. In the latter 5 years, there has been little change between the proportion of data subscriber revenue that is earned from Level 1 versus Level 2 subscribers (see Figure 7), or from professional versus non-professional subscribers (see Figure 8).

[67] The display revenue included an estimated allocation of the amounts earned by marketplaces from data enterprise pricing programs, with the allocation based on the split between the relationship related revenue line-items arising from the related data products.





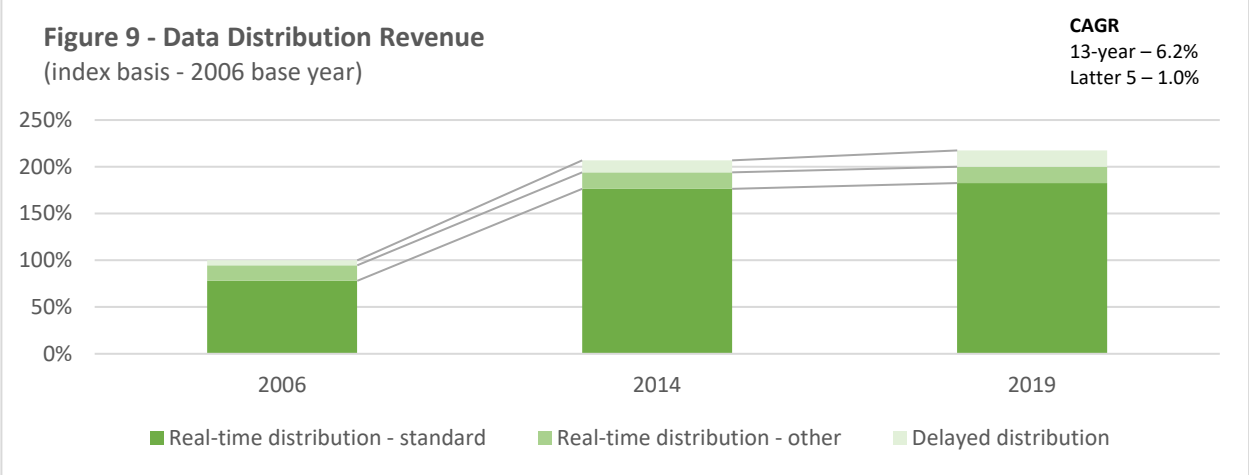
The key drivers supporting the increase in data subscriber revenue between 2006 and 2014 appear to be both an increase in the number of venues charging for data and a net increase in user levels. For the latter 5 years, data subscriber revenues remained relatively flat. The flattening of subscriber revenues appears to have been a function of further increases in venues charging for data being offset by decreases in net user levels, particularly in relation to the level of professional data subscribers.

(ii) Data Distribution Revenue

Data distribution revenue represents money earned by marketplaces from fees charged to data recipients for the redistribution of RTMD feeds (i.e., Level 1 and Level 2 feeds), internally (i.e., to users within the data recipient), and/or externally (i.e., to subscribers outside the data recipient).[68] It generally includes distribution fees that some marketplaces refer to as *feed fees*.

In 2019, data distribution revenue represented approximately 19 percent of marketplace data revenue. We note that between 2006 and 2014, this revenue grew at a CAGR of 6.2 percent, whereas for the latter 5 years, the CAGR was 1.0 percent (see Figure 9).[69]

We observed that the primary drivers for the increase in data distribution and feed fee revenues were changes to and/or the introduction of these fees by additional marketplaces, with changes in use levels and product mix also contributing.



(iii) Data License Revenue

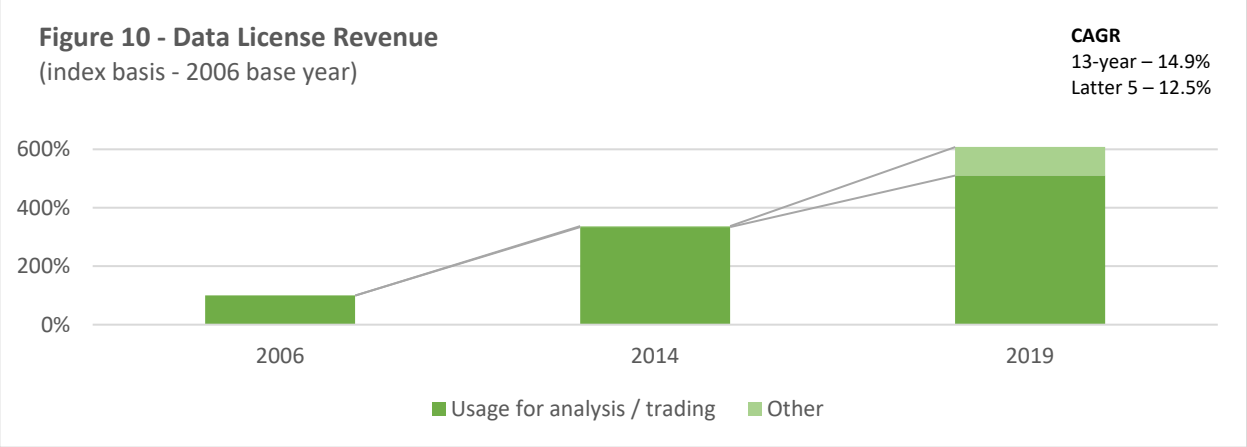
Data license revenue represents money earned by marketplaces from license fees relating to the receipt and use of RTMD for particular use cases – most commonly in relation to non-display use involving the receipt and use of RTMD for analysis programs or order generation/trading applications (including use for smart order routing and algorithms). Other uses for which license fees

[68] Data distribution/feed fee revenue may also reflect some portion of revenue collected for connectivity costs associated with accessing the feed itself. See access revenue discussion.

[69] We distinguish between the distribution of RTMD feeds (i.e., Level 1 and Level 2 feeds) and the distribution of other feeds, such as last sale and other mixed private/public feeds.

might apply include the use of data for creating and distributing derived data or proprietary indices, or where the data is being stored for historical reference purposes.

In 2019, data license revenue represented approximately eight percent of marketplace data revenue. We note that between 2006 and 2014, data licence revenue grew at a CAGR of 14.9 percent and the latter 5 years at a CAGR of over 12.5 percent. The revenue earned by marketplaces from license fees seemed to have grown at the highest rate over the 13-year period (see Figure 10). However, data license revenue remains less than 10 percent of marketplace data revenue.



We observed that the drivers for this increase were changes to and/or the introduction of these fees by additional marketplaces.

Item 3 – Review of Changes in Key RTMD Fee Levels

The growth in the number of trading venues and/or the introduction of RTMD fees has had a cumulative effect on costs for those that need to access, use, or distribute RTMD from multiple trading venues. The impact on any one market participant will vary based on the extent to which the fees are borne at the use/user level versus the firm level, and how costs are shared amongst business lines. For data and access vendors, the impact will depend on the extent to which the costs are absorbed by the vendor or passed on to clients.

We observed the evolution of the following fee categories:

1. Display fees – professional and non-professional display fees;
2. Distribution fees – internal and external;
3. Non-display fees – trading and order generation; and
4. Other fees (i.e., access fees, fees for delayed data, historical fees),

in our efforts to better understand the impact of these fees on market participants.

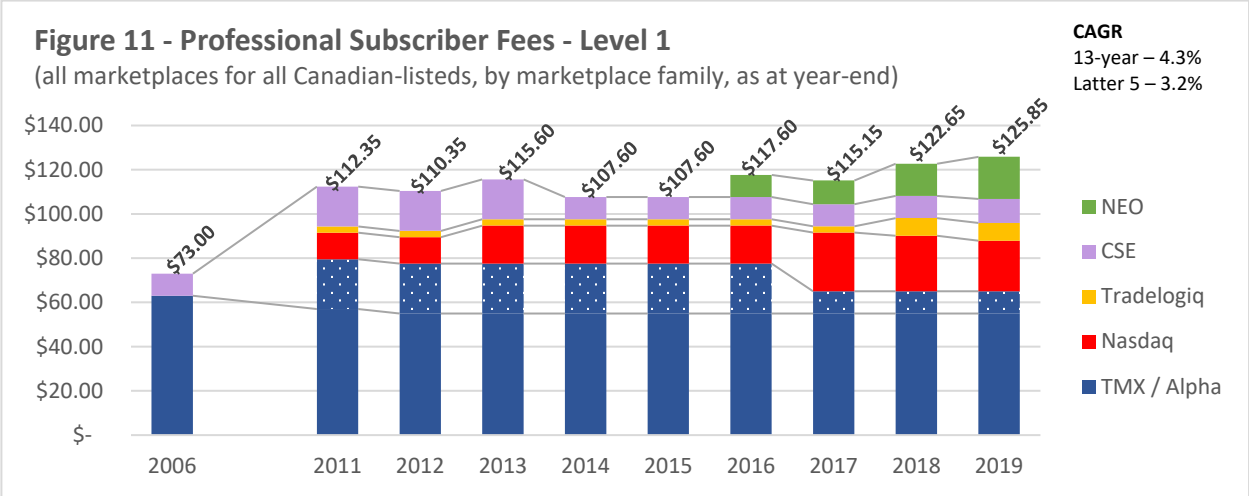
To construct the figures in this section, we used OSC records of marketplace filings that included publicly available fee schedules of each marketplace over the 13-year period. We did not include any changes in fees between 2006 and 2011 due to challenges in accessing records. The amounts represent the fees charged as at year end based on stated rates by each marketplace family for their respective marketplace platforms in relation to access, use, and/or the redistribution of RTMD, expressed in Canadian dollars.

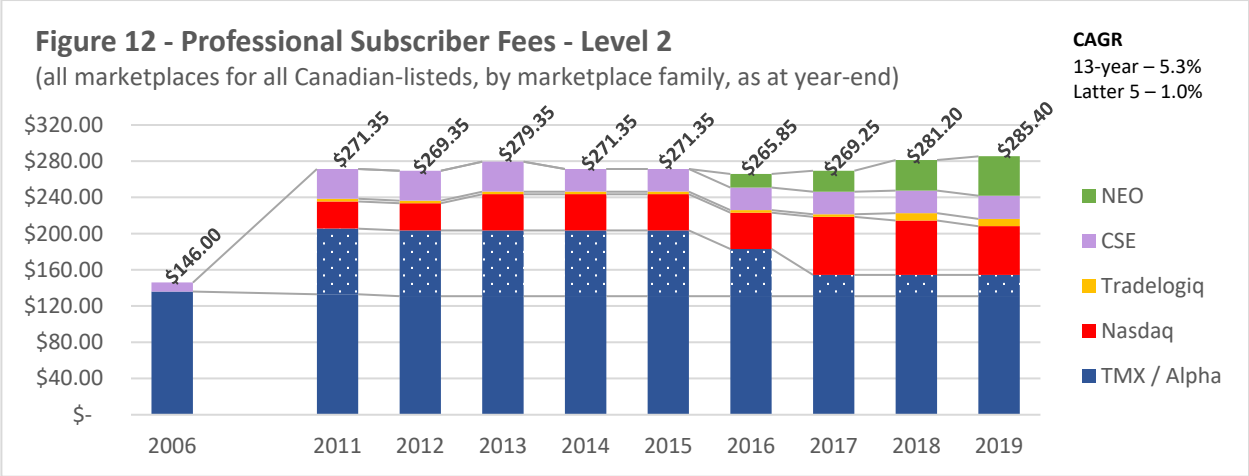
3.1 Display Fees – Professional, Non-professional, and Quotation Fees

(a) Professional Subscriber Fees

Professional subscriber fees are charged by marketplaces on a monthly basis to those end-users of RTMD (i.e., for the use of Level 1 and Level 2 feeds) that meet the marketplace's definition of professional subscriber. In general terms, a professional subscriber is a person or company that uses RTMD for business purposes. It would generally include securities professionals or any individual who is not acting in his or her personal capacity.

We note that growth rates over the latter 5 years were lower than over the entire period reviewed. The drivers behind this lower growth were fewer marketplaces introducing these fees and the application of the DFM, which resulted in the reduction of fees by some marketplaces while allowing for an increase by others (see Figures 11 and 12).[70]





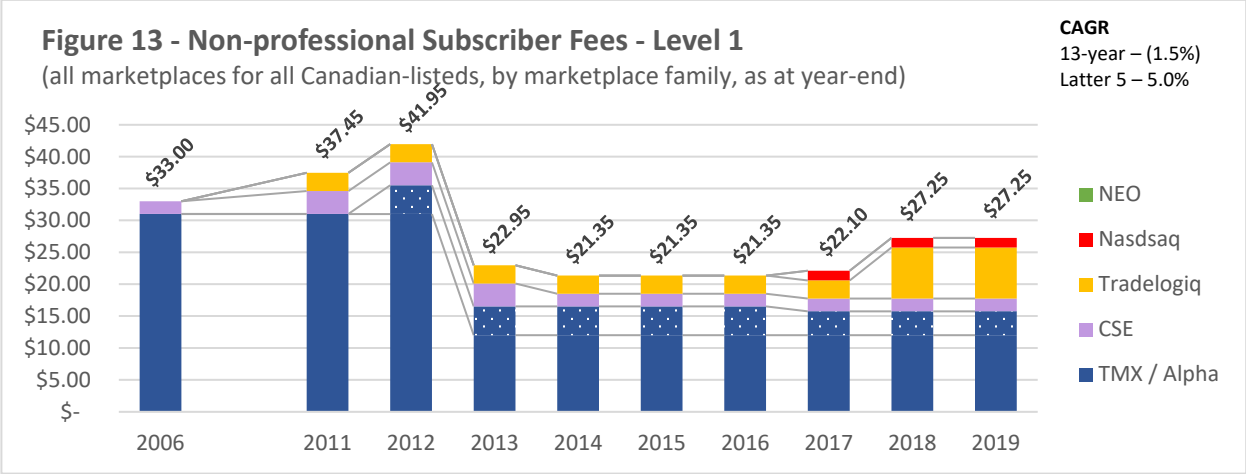
(b) Non-professional Subscriber Fees

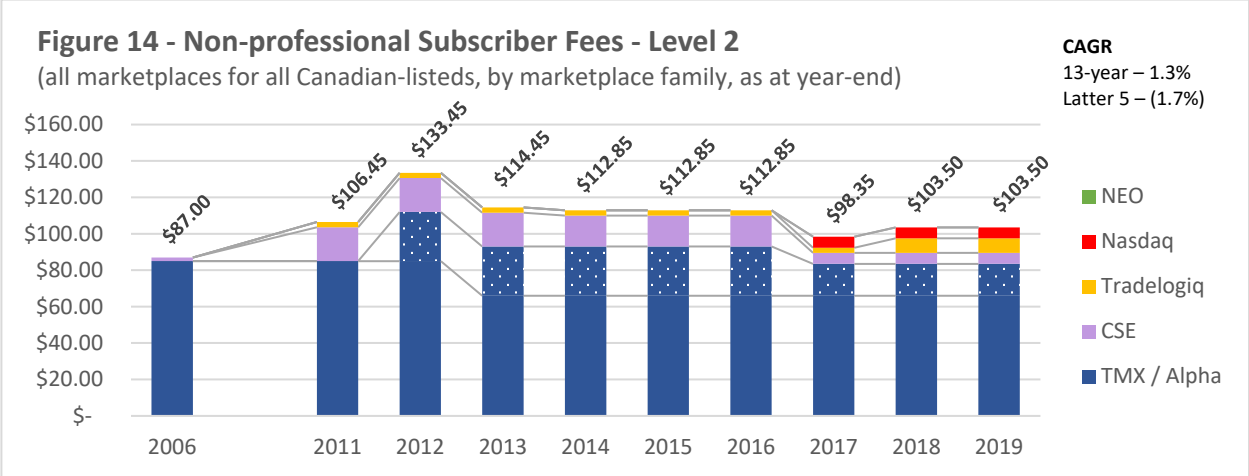
Non-professional subscriber fees are charged by marketplaces on a monthly basis to those end-users of RTMD that do not meet the definition of professional subscriber. The information we gathered about the use of RTMD by non-professionals indicates that most see only data from the listing markets, and their dealers, in practice, typically incur only the fees charged by those markets.

We note that the cumulative monthly fees paid by a non-professional user decreased from a 2012 high as a result of reductions in the rates charged by TSXV post-2012. In addition, the effective monthly rate for a dealer that has a large base of non-professional subscribers may be lower than is reflected in the figures below if it consumes RTMD from marketplaces that offer enterprise pricing arrangements (see Figures 13 and 14).[71]

[70] The Figures show the growth in cumulative monthly professional subscriber fees for an end-user that consumes Level 1 and Level 2 Market-by-Order data for all Canadian-listed securities, by marketplace family. Note that fees for Alpha Exchange/TSX Alpha are reflected as a dotted pattern in the same colour as other TMX marketplaces reflected in the chart. TMX acquired Alpha Exchange in 2012.

[71] The figures show the evolution of the cumulative monthly fees for non-professional subscribers that access RTMD from all marketplaces in Canada.





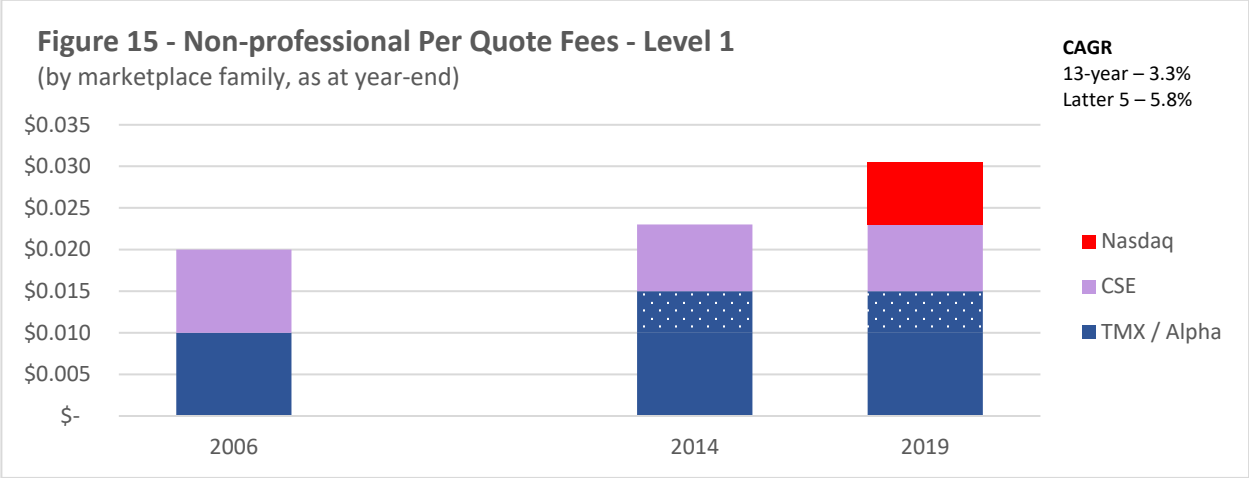
(c) Non-professional Quotation Usage Fees

We also found that the majority of non-professional users are provided with RTMD under fee models that contemplate a per quote charge. Certain marketplaces also cap per quote charges at the monthly rate. We note, however, that not all marketplaces offer quote-metred pricing, and this approach may create barriers to accessing consolidated RTMD on a per quote basis where the consumption of a single-quote might attract the monthly subscriber rate.[72] Further, the total amount spent for a non-professional subscriber may also be subject to enterprise agreements that can help to reduce the effective per quote fee.

If a non-professional subscriber wants to see the best quote for a stock across all marketplaces, they would be subject to each marketplaces' quote fees. However, in theory, a non-professional subscriber may choose to look at one marketplace at a time.

The revenue from quote fees grew at a CAGR of 3.3 percent over the 13-year period and at a CAGR of 5.8 percent over the latter 5 years (see Figure 15).[73] The driver behind this growth seems to be the addition of quote fees by marketplaces.

[72] TMX data policies do not allow professional users to pay on a per quote basis.
[73] Figure 15 illustrates the per quote fees for non-professional users only and only for those markets that offer quote-metred pricing.



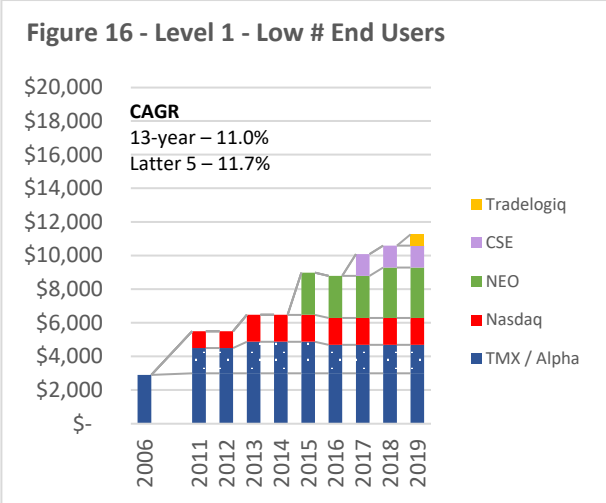
3.2 Data Distribution Fees

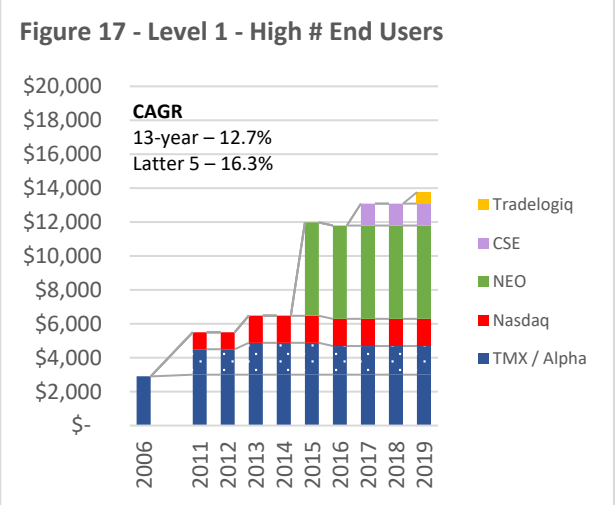
Marketplaces may charge distribution and "feed fees" in connection with the internal and/or external redistribution of their RTMD feeds by market participants. The fees and fee models employed by marketplaces vary. For example, some marketplaces may include the inherent costs of connectivity in the stated distribution fee. Others may charge different amounts depending on whether the feed is obtained directly from the marketplace or indirectly from a third party (e.g., a data vendor). Some may provide discounted rates for additional instances of the feed being received or may charge tiered distribution rates based on the number of end-users serviced by a redistributed feed. As a result, there are many permutations of the resulting fees that a feed recipient might be charged for the redistribution of RTMD.

(a) Distribution Fees – External

We show, on the basis of a single instance received and redistributed, the growth rate of the redistribution fees charged in relation to RTMD received from all marketplaces for external redistribution (see Figures 16 through 19).[74] It is evident that the cumulative effect of each marketplace's (external) distribution fees when introduced has a significant impact on market participants from a cost of access perspective.

We also contrast distribution fees where the recipient is directly consuming a single instance of the applicable data feed from each marketplace for the purposes of distributing such data to a low versus a high number of external end users.[75]





[74] Figures 16 through 19 illustrate external redistribution fees for a single instance received directly from a marketplace. They capture all marketplaces for all Canadian listed securities, by marketplace family, as at year-end.

[75] The costs of directly consuming the feeds also include any logical connectivity costs explicitly associated with directly consuming a data feed for comparability given that inherent in the stated distribution fees of some markets are charges relating to logical connectivity.

Figure 18 - Level 2 - Low # End Users

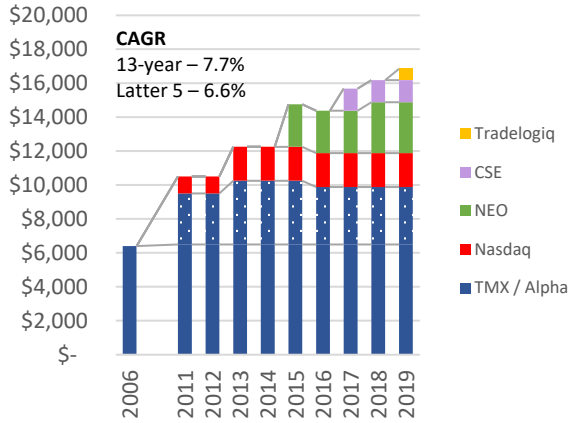
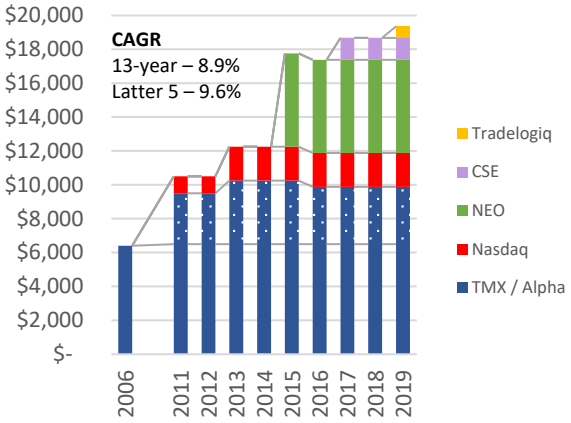


Figure 19 - Level 2 - High # End Users



We note that a market participant that redistributes RTMD might incur different costs if they choose to receive some or all of these feeds indirectly through another party and their "effective cost per feed" may vary depending on the number of instances of a feed they are consuming directly from a marketplace (see Figures 20 through 23).[76] In this case, the lower fees reflect the effect of receiving RTMD for redistribution through a third-party vendor or the absence of explicit logical connectivity charges associated with directly consuming the data. Where a data distributor chooses to consume directly from some marketplaces and indirectly from others, their monthly fees would fall somewhere between the two extremes.

Figure 20 - Level 1 - Low # End Users

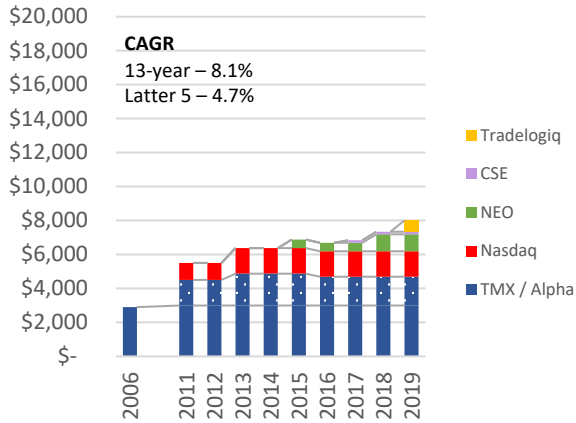
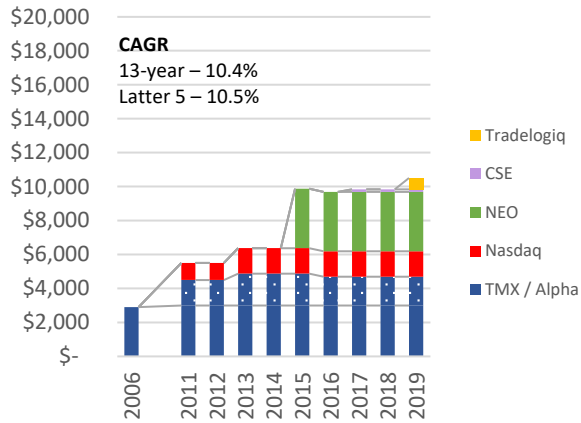


Figure 21 - Level 1 - High # End Users



[76] Figures 20 through 23 illustrate external redistribution fees for a single instance received indirectly from a marketplace (all marketplaces for all Canadian-listeds, by marketplace family, as at year-end).

Figure 22 - Level 2 - Low # End Users

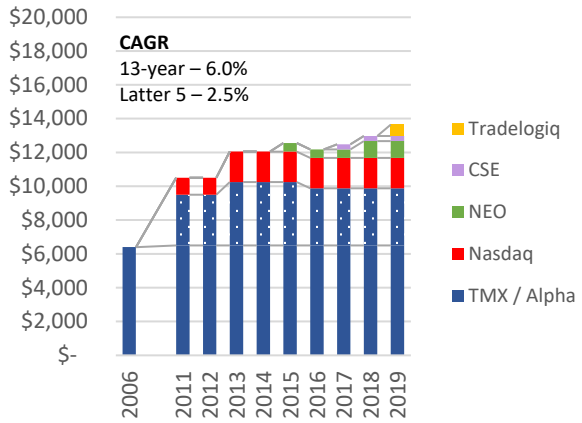
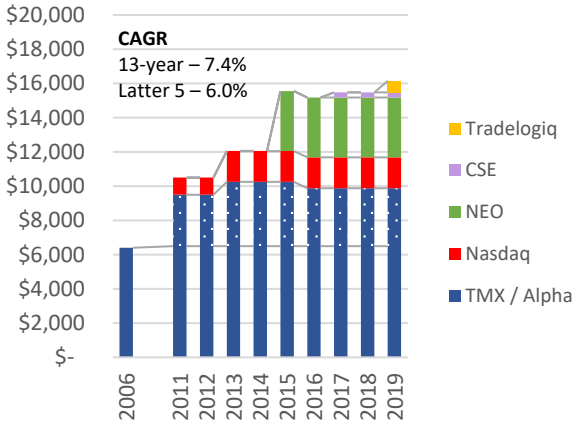


Figure 23 - Level 2 - High # End Users



(b) Distribution Fees – Internal

Similar to the section above on Distribution fees – External, we reviewed the growth rates of redistribution fees charged in relation to RTMD received from all marketplaces for internal redistribution by the data recipient (see Figures 24 through 27).[77] We also contrasted between a data recipient that is consuming data from all markets directly versus indirectly for internal redistribution only, so fees for such recipients may fall between the two extremes based on choices made regarding how the feed is consumed. In each case, we note the cumulative effect on the data recipient of each marketplace's fees when introduced.

Figure 24 - Level 1 - Direct

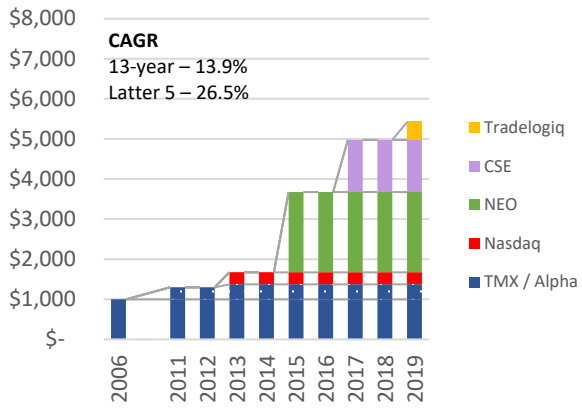
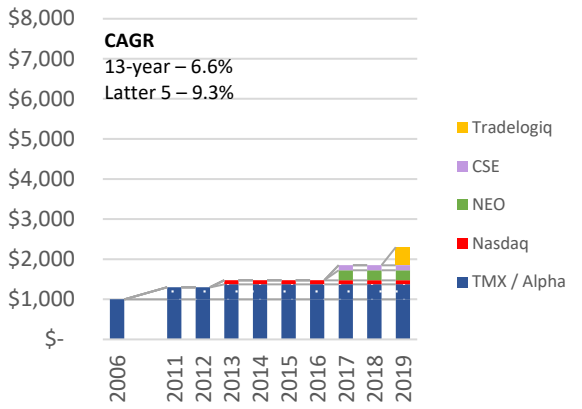
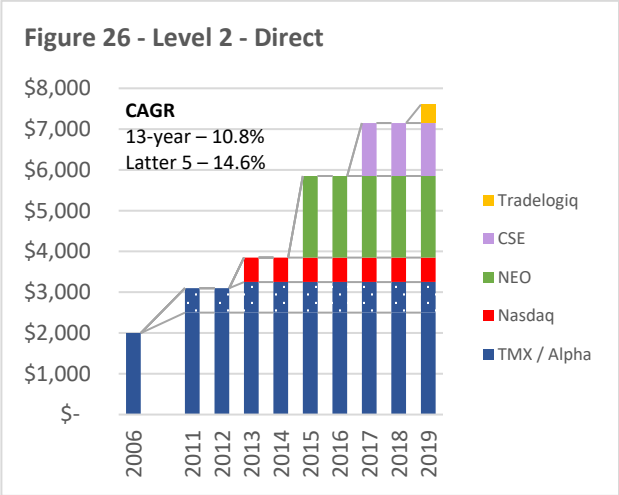
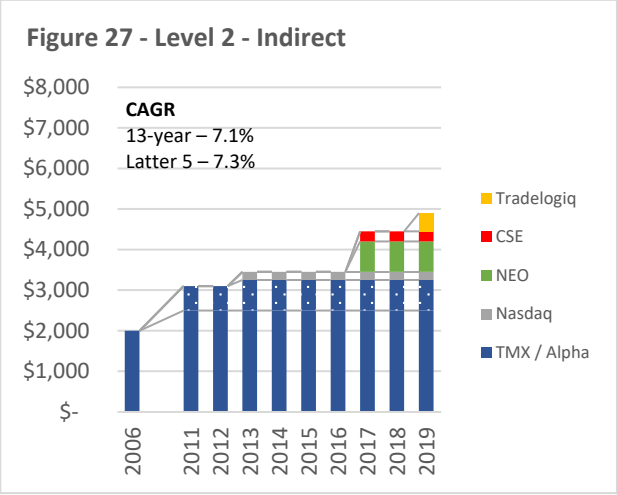


Figure 25 - Level 1 - Indirect



[77] Figures 24 through 27 illustrate internal redistribution fees for a single instance received directly or indirectly (all marketplaces for all Canadian-listeds, by marketplace family, as at year-end).

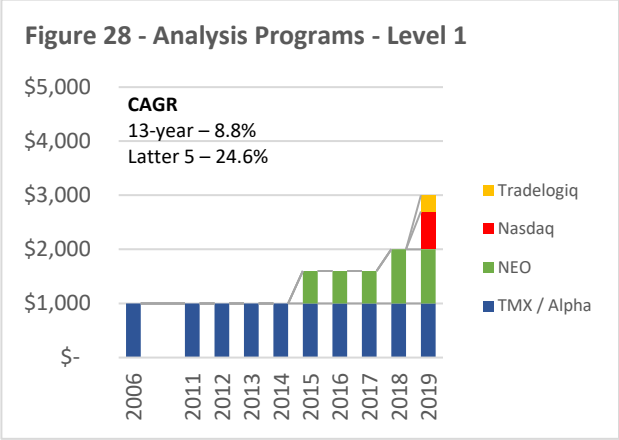


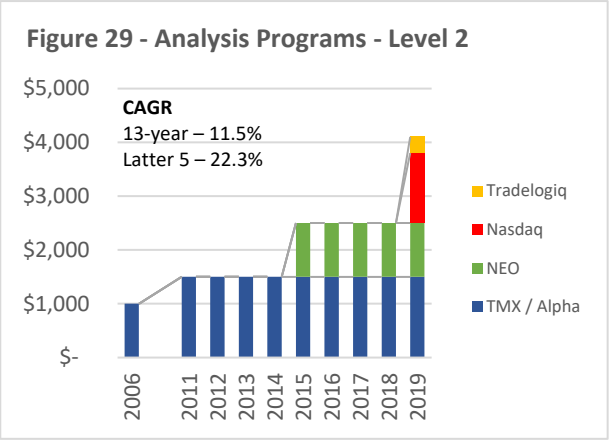


(c) Non-display Fees – Use of RTMD in Analysis Programs or for Order Generation/Trading Applications

Non-display fees are charged by marketplaces on a monthly basis for the use of RTMD for analysis programs or order generation and/or trading applications (including for smart order routing and algorithms). At the end of 2019, most marketplaces were charging separate, non-display fees for the use of their RTMD for analysis programs versus use for order generation and/or trading applications. One marketplace also provided for discounted rates for those paying for both use cases.

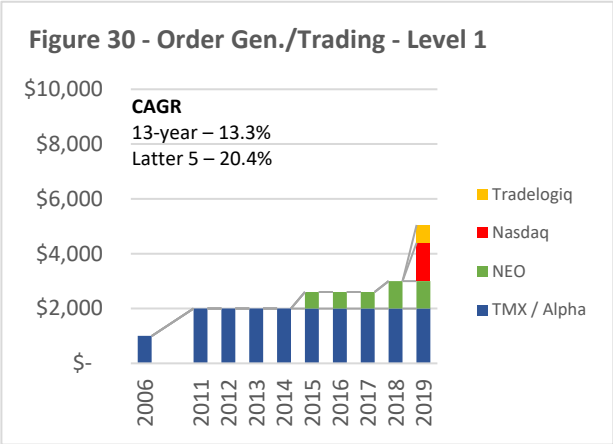
We note a significant growth in these fees for those data recipients that need to use RTMD from all marketplaces for these purposes (see Figures 28 and 29[78] for non-display fees for analysis programs and Figures 30 and 31[79] for non-display use for order generation), arising from the cumulative effect of each marketplace's fees when introduced.

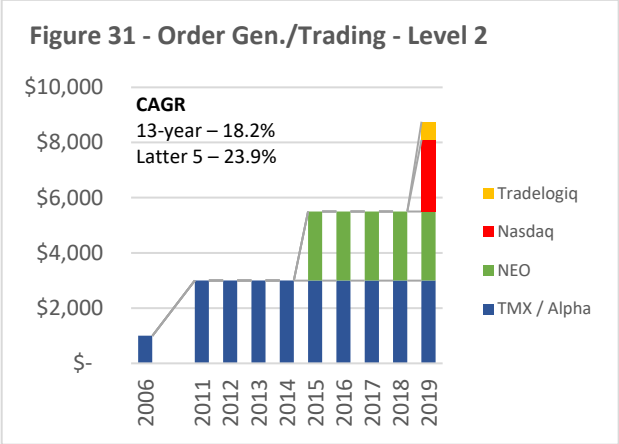




[78] Figures 28 and 29 illustrate monthly fees for the use of RTMD for use in analysis programs (all marketplaces for all Canadian-listeds, by marketplace family, as at year-end).

[79] Figures 30 and 31 illustrate monthly fees for the use of RTMD for use in order generation/trading applications (all marketplaces for all Canadian-listeds, by marketplace family, as at year-end).





Item 4 – Review of Certain Indicators relating to Access to Consolidated Data by Professional and Non-professional Subscribers

Market participants indicated that, in certain circumstances, access to and use of Level 2 consolidated RTMD is only provided to those professional and non-professional users for whom the need for such data sufficiently outweighs the incremental costs of purchasing it (i.e., trading desks). This approach has raised questions related to whether providing access to and use of consolidated Level 1 and Level 2 RTMD based on cost constraints is aligned with the requirements of fair access and ensuring fair and orderly markets.

Market participants also indicated that fair access does not necessarily mean equal access and that mandating a vendor display rule in Canada, similar to the one in the US, would have a significant impact on the bottom line of those participants that would become subject to such a rule.

To understand whether this approach is reasonable or requires any regulatory action, we considered:

1. the take-up of consolidated data by professional and non-professional subscribers;

2. the need for consolidated RTMD beyond Level 1 consolidated RTMD from listing markets; and

3. the impact of the cost of providing professional and non-professional subscribers access to consolidated Level 2 RTMD.

4.1 Indicators of Take-up of Consolidated Data

(a) Professional Subscribers

To gauge the use of consolidated Level 1 and/or Level 2 RTMD by professional and non-professional users we reviewed their take-up of consolidated data. Most of the market participants that provide consolidated Level 2 RTMD to internal users and clients do so by purchasing it directly from marketplaces or indirectly from third-party vendors and less so from the equity IP. Consequently, we observed the take-up of consolidated RTMD from marketplaces only based on the information about subscriber counts for TSX-listed securities provided by each marketplace.

We estimated that in 2019, the number of professional subscribers to Level 2 RTMD was around a quarter of the estimated Level 1 professional subscriber population (for TSX-listeds). Similar ratios were observed for TSXV-listed securities. However, we expect that the ratios for CSE- and NEO-listed securities would be lower as the liquidity for these securities was less fragmented across multiple trading venues. Our assumption is also based on the lack of observed take-up where an away venue charged subscription fees for data on these listed securities.

Figure 32 highlights the difference in take up of consolidated Level 1 and Level 2 RTMD amongst professional subscribers.[80] We note the much lower take-up of Level 2 consolidated RTMD by professional subscribers. This seems to support the view that Level 2 consolidated RTMD is being used mostly by those professional subscribers that have trading responsibilities given that, in this case, the cost of access to and use of such data is justified by the specific activities being performed. It also seems to indicate

[80] Based on subscriber counts for TSX-listed data provided by the marketplaces. Listing market (TSX) is shown on an index basis to mask the number of subscribers. Away markets are in no particular order and the ordering of the away markets as presented between Level 1 and Level 2 has been randomized.

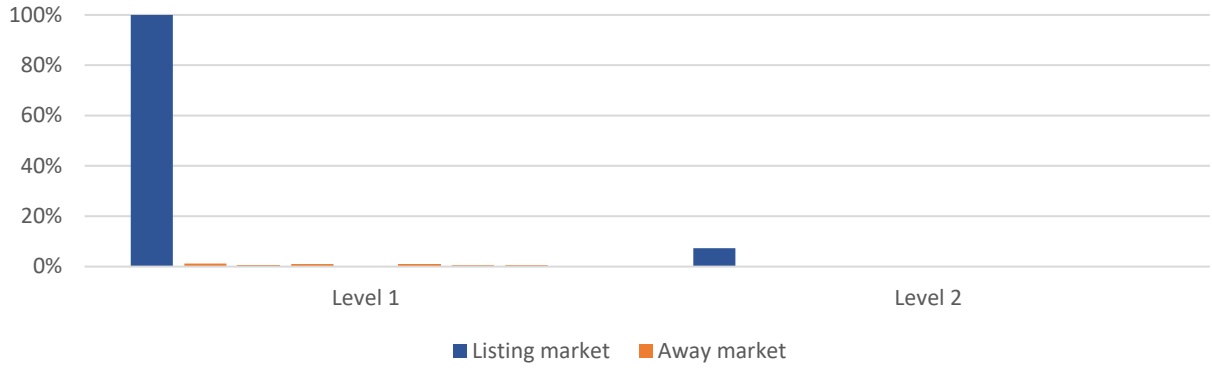
that other professional subscribers, such as portfolio managers and RIAs, have access only to Level 1 RTMD from the listing markets for indicative pricing purposes because the scope of their activities is limited in relation to the services being performed.

Figure 32 - Comparison of Professional Subscriber Counts - TSX-listeds
(index basis - listing market Level 1 as base; as at December 2019, est.)

(b) Non-professional Subscribers

We also observed that non-professional subscribers are typically limited to accessing RTMD from the listing markets. Figure 33[81] indicates that perhaps one percent or less of non-professional subscribers have access to consolidated RTMD.[82]

Figure 33 - Comparison of Non-professional Subscriber Counts - TSX-listeds
(index basis - listing market Level 1 as base; as at December 2019, est.)



We understand that the broader population of non-professional subscribers typically consumes data on a quote-metered basis and that user population would not otherwise be included in the subscriber counts reflected in Figure 33 above.[83] However, revenue data provided by marketplaces would suggest that virtually all non-professional subscribers accessing data on a quote-metered basis only have access to data from the listing markets.[84]

4.2 Assessing the Need for Consolidated Data beyond Level 1 Consolidated RTMD

As stated above, certain users of RTMD, such as RIAs and most retail investors, only have access to RTMD (or, in some cases, delayed data) in consolidated or non-consolidated form from listing markets and use this information for making trading and

[81] See footnote 80 also applicable for Figure 33. Also incorporated in Figure 33 are the counts for non-professional subscribers included in the listing market's enterprise pricing program.

[82] We understand that many (if not most) of the non-professional subscriber counts for the listing market reflect retail users that were treated as "subscribers" as their quote-usage was subject to caps by the listing market at the amounts otherwise chargeable under the monthly subscription rates. This could have the effect of understating the indicated percentage of retail users that have access to consolidated data. However, as indicated in the subsequent commentary after Figure 33, the premise that most retail users do not generally have access to consolidated data was also supported by our analysis of marketplace quote-usage revenue.

[83] Aside from those non-professional subscribers that were quote users capped at the monthly subscription rates as described in footnote 82.

[84] Based on almost all aggregate revenue from quote-metered revenue being earned by the listing markets despite certain non-listing markets providing the option (and fees) for quote-metered access.

investment decisions or updating their investment portfolios. This type of access only provides, at best, indicative pricing information. We questioned whether this type of access is fair and aligns with each user's data needs (i.e., seeing best price versus a price that might at best approximate the best price) to make investment decisions and/or order type choices (i.e., marketable versus non-marketable limit order).

To evaluate whether having access to indicative pricing information is fair, we conducted a quantitative analysis of:

1. The extent to which access to Level 1 RTMD from listing markets is sufficient to observe best price by calculating the percent of time that the listing market had the National Best Bid (**NBB**) and the National Best Offer (**NBO**), and

2. The extent to which access to Level 1 RTMD from listing markets is sufficient to observe the full size available at the best price at each order size threshold by calculating the time weighted average size of the listing market versus market-wide.

(a) Analysis of Percent of Time that Listing Market has the NBB or the NBO

The analysis indicates that access to Level 1 RTMD from listing markets only appears to be generally sufficient in most cases where the user (either a retail investor, RIA, or portfolio manager) seeks access to best price information, other than for TSX-listed ETFs that are "highly-liquid" or "medium-liquid."[85] For example, the data indicated that for "highly-liquid" TSX-listed ETFs, the listing market was at the NBB/NBO for 90 percent of the time or greater for 64 percent of symbol/day NBB/NBO observations, and that for 16 percent of observations, the listing market had the best price for less than 75 percent of the day.

The analysis also indicates that a lower likelihood of seeing the best price occurs with "highly-liquid" or "medium-liquid" TSXV-listed securities when a subscriber has access to Level 1 consolidated RTMD from TSXV only. NEO-listed securities generally exhibited the highest percentages across the various categories, likely a result of the fact that only a limited number of marketplaces were offering trading in NEO-listed securities, with minimal loss of market share to NEO, resulting in less fragmented trading and quoting activity.

Tables 1-3 – Assessment of proportion of symbol/day NBB/NBO observations where the listing market percent of time at the NBB/NBO that fell within the identified percentage time buckets[86,87]

(Based on quote data for the month of September 2021)

Table 1 – Observations for Highly-liquid[88] Equities and ETFs

	ETFs				Equities							
% time at NBB / NBO	TSX-listed		NEO-listed		TSX-listed		TSXV-listed		CSE-listed		NEO-listed	
Under 50%	330	5%	0	0%	57	0%	2	0%	1	0%	0	0%
50% to 74%	784	11%	0	0%	439	3%	99	5%	37	4%	0	0%
75% to 89%	1,377	20%	0	0%	1,458	9%	385	21%	116	12%	0	0%
90% and over	4,523	64%	42	100%	14,392	88%	1,362	74%	802	84%	126	100%
Total count	7,014	100%	42	100%	16,346	100%	1,848	100%	956	100%	126	100%

Table 2 – Observations for Medium-liquid[85] Equities and ETFs

	ETFs				Equities							
% time at NBB / NBO	TSX-listed		NEO-listed		TSX-listed		TSXV-listed		CSE-listed		NEO-listed	
Under 50%	736	13%	0	0%	52	0%	256	2%	70	1%	1	0%
50% to 74%	934	17%	9	3%	186	2%	753	5%	213	4%	5	1%
75% to 89%	1,108	20%	13	4%	383	3%	1,660	12%	439	7%	13	2%
90% and over	2,770	50%	272	93%	10,719	95%	11,126	81%	5,362	88%	613	97%
Total count	5,548	100%	294	100%	11,340	100%	13,795	100%	6,084	100%	632	100%

85 Symbols were classified as "highly-liquid," "medium-liquid," and "less-liquid" based on trade activity levels over the month, as follows:
"Highly-liquid" – average traded value > $1 million per day and average # of trades / day > 100;
"Medium-liquid" – average traded value > $50,000 per day and average # of trades / day > 50; and
"Less-liquid" – everything not considered "highly-liquid" or "medium-liquid."

86 For each symbol/day observation, the listing market's percent of time at the NBB (and percent of time at the NBO) during continuous trading hours was determined for all time periods where there was a non-zero market wide NBB (NBO). The NBB (NBO) was determined based on all displayed prices (i.e., included protected and unprotected visible markets). The tables compile the number of observations of individual symbol/day NBB and symbol/day NBO observations whereby the listing market's percent of time at the NBB (NBO) exceeded the identified threshold.

87 Calculations were based on individual marketplace quote messages for all ETFs and equities over the month of September 2021 available in the CSA MAP system (data provided to CSA MAP by IIROC). Equities category also includes rights, warrants, and preferred shares.

88 See footnote 85 for definitions of "highly-liquid," "medium-liquid," and "less-liquid."

Table 3 – Observations for Less-liquid[85] Equities and ETFs

	ETFs				Equities							
% time at NBB / NBO	TSX-listed		NEO-listed		TSX-listed		TSXV-listed		CSE-listed		NEO-listed	
Under 50%	2,344	7%	36	1%	158	1%	1,680	3%	278	1%	23	1%
50% to 74%	1,708	5%	52	1%	150	1%	1,073	2%	147	1%	29	1%
75% to 89%	1,862	6%	51	1%	241	1%	1,454	2%	262	1%	27	1%
90% and over	25,944	81%	3,359	96%	26,983	98%	55,107	93%	20,382	97%	1,961	96%
Total count	31,858	100%	3,498	100%	27,532	100%	59,314	100%	21,069	100%	2,040	100%

(b) Analysis of Listing Market versus Market-wide Time-weighted Average Size (TWA)

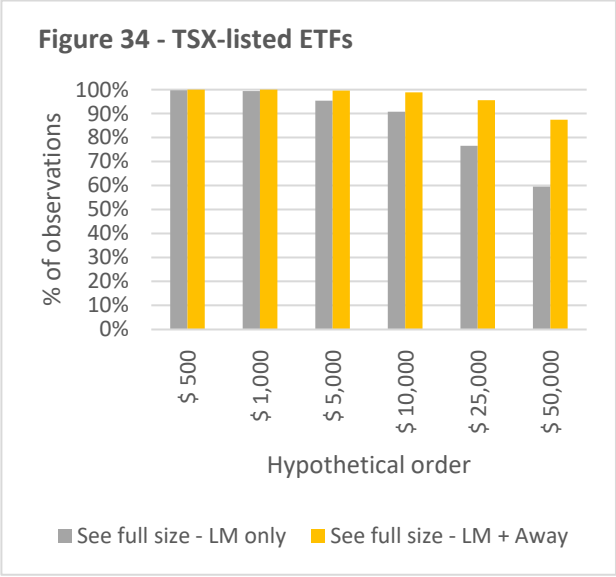
This metric is a proxy for the extent to which users that only have access to Level 1 consolidated RTMD from listing markets are not seeing the full size available at the best price at each order size threshold. Access to size/depth information available at the best price is only relevant for those non-professional subscribers (i.e., retail investors) that intend to trade immediately. This information is important when deciding whether to post a limit order and wait, rather than cross the spread with a marketable order, if the displayed order size is less than the amount sought to trade, and the expected average fill price cannot be estimated without access to it. The size/depth the investor sees at the best price may also influence his or her decision to post at a price that is worse or better than what he or she believes to be the best price.

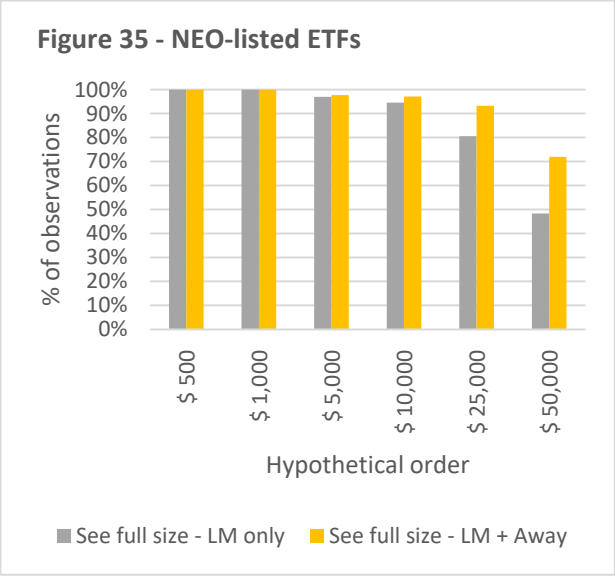
We examined the impact of accessing Level 1 consolidated RTMD from listing markets only versus Level 2 consolidated RTMD for several hypothetical typical retail order sizes and types (such as limit or marketable orders). Figures 34 through 39 show that the percent of observations where the TWA for the symbol/day NBB (NBO) was less than the threshold decreases as the hypothetical order size threshold increases. More notably, the gap between the results for the listing market (**LM**) size versus total market (**LM + Away**) size increases as the hypothetical order threshold increases.

The gap begins to widen significantly for TSX, TSXV, and CSE-listed securities above the $1,000 hypothetical order threshold. For ETFs, the gap becomes more pronounced after the $10,000 threshold. In our view, this indicates that the likelihood that a retail investor is missing relevant information increases above these identified levels if it only has access to Level 1 consolidated RTMD from the listing market. The analysis also suggests that for low value orders (orders with a value of $1000 or less), access to Level 1 consolidated RTMD from the listing market only generally provides sufficient information about the available volume.

Figures 34 through 39 – Analysis of percent of symbol/day observations where time-weighted average displayed NBB/NBO size is greater than hypothetical retail customer order

(Based on quote data for the month of September 2021) [89,90]





89 For each symbol/day observation, the TWA value at the NBB (and at the NBO) during continuous trading hours for each of the listing markets and market-wide was determined for all time periods where there was a non-zero market-wide NBB (NBO). The TWA value for each of the NBB (NBO) was determined based on size available on all visible marketplaces (i.e., including protected and unprotected visible markets). The charts reflect the percentage of the symbol/day NBB and NBO observations where the calculated TWA value for the observation exceeded the stated hypothetical order threshold.

90 See footnote 87 for information about source of data and security type categories.

Figure 36 - TSX-listed Equities

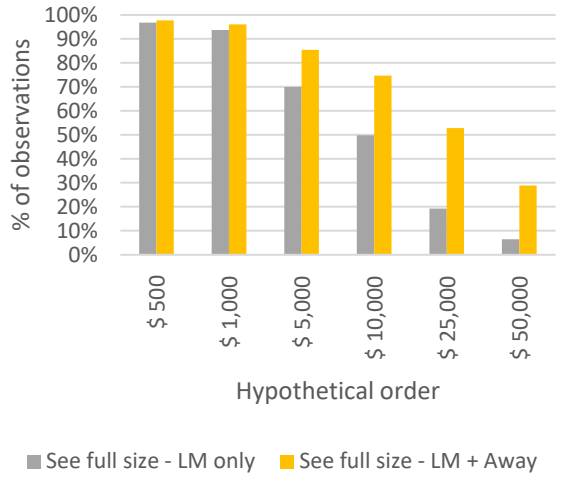


Figure 37 - TSXV-listed Equities

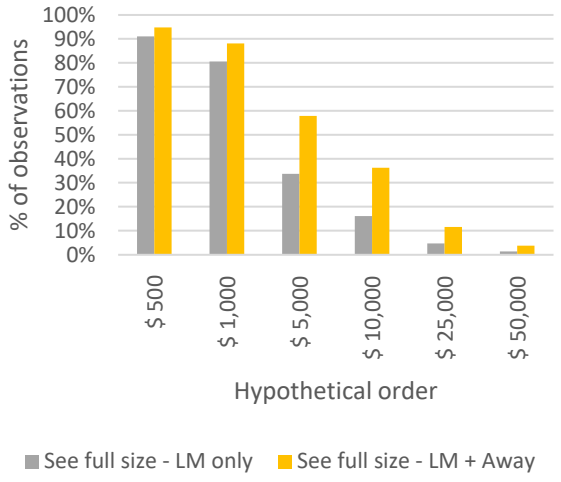


Figure 38 - CSE-listed Equities

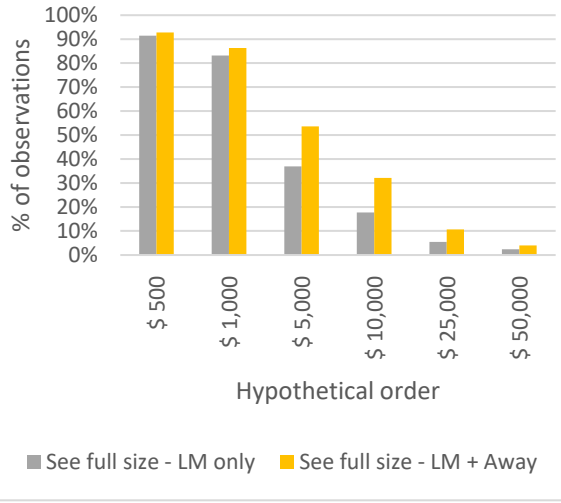
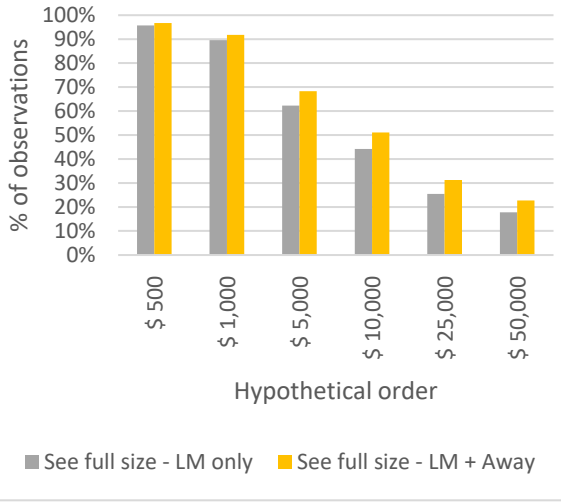


Figure 39 - NEO-listed Equities



4.3 The Impact of Cost on Providing Access to Level 2 Consolidated RTMD

Our understanding is that the decision to provide access to Level 2 consolidated RTMD is mostly based on cost and that such cost is not always justified by the needs of users. We also understand that dealers will often provide their retail clients and wealth advisors/RIAs with access to Level 1 consolidated RTMD from listing markets only based on needs, costs, or the trade-off between both. We were informed that the costs of providing access to Level 2 consolidated RTMD can be significant, particularly for those dealers with a significant number of retail clients. These cost concerns continue despite certain marketplaces providing reduced monthly subscriber fees for RIAs that service retail clients.[91]

We observed that where costs are a deciding factor, providing access to Level 2 consolidated RTMD would as much as double, in many cases, the cost to consume data from all marketplaces as compared to only the listing markets[92](see Figures 40 through 43).

While the effect of enterprise agreements or similar arrangements can help to reduce the effective costs per user, not all marketplaces offer such programs. Some marketplaces will allow for a non-professional's quote usage charges in any given month to be capped at the amount otherwise charged for a monthly subscription, which could also help to limit overall costs. Regardless, the figures below suggest that a dealer with a large number of retail clients or a large number of RIAs deciding to provide access

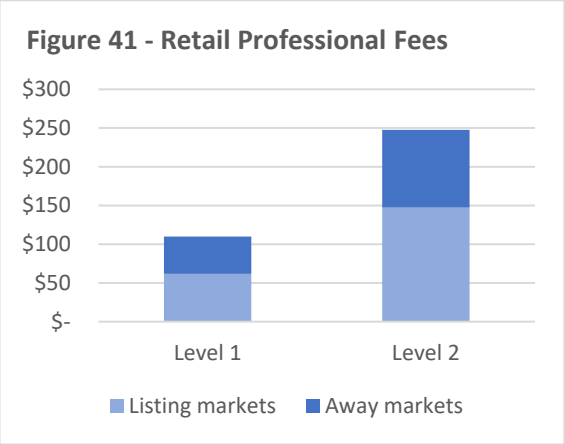
[91] As at December 2019, only NEO Exchange offered reduced display fees for "retail-professional users" that would apply to wealth advisors/RIAs.

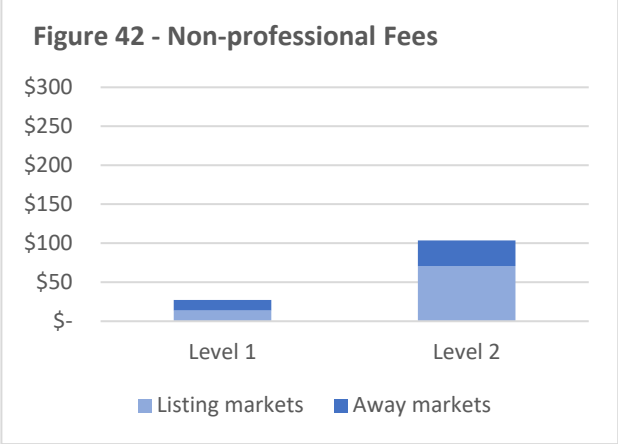
[92] Not all marketplaces currently provide quote-metered pricing which may also mean that a dealer that provides consolidated data to its retail client based on a quote-metered basis might become subject to the monthly non-professional subscriber fee of any such marketplace by virtue of a client consuming a single quote during the month.

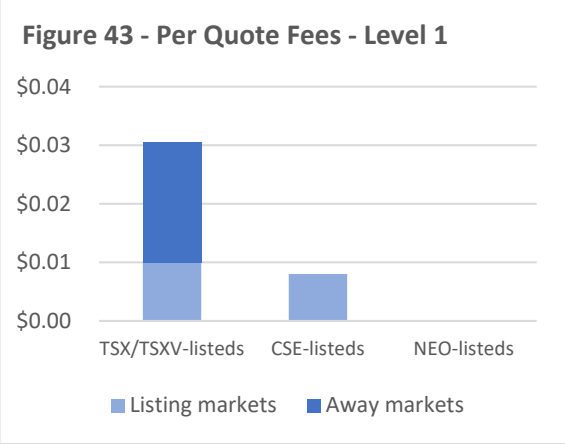
to Level 1 consolidated RTMD from all marketplaces would incur an immediate and significant cost impact from such a decision. The cost impact would be double should the same dealer provide access to Level 2 consolidated RTMD to all.

Figures 40 through 43 – Monthly subscriber and quotation fees for listing markets versus all markets[93,94]

(Based on pricing as at December 2019)







Item 5 – Comparison of Certain Data Subscription Fees Against Other Benchmarks

To further assess the level of RTMD fees charged in Canada relative to other international trading venues we compared subscriber fees charged by TSX against similar fees charged by key exchanges in the US, Europe, and Australia for benchmarking purposes.[95] We also compared the rate for consolidated data in Canada against rates available in the US.

93 Figures 40 through 42 represent monthly subscriber fees for listing market data only (TSX-listed, TSXV-listed, CSE-listed, and NEO-listed) versus the amounts charged to consume data on those listed securities by markets other than the listing market.

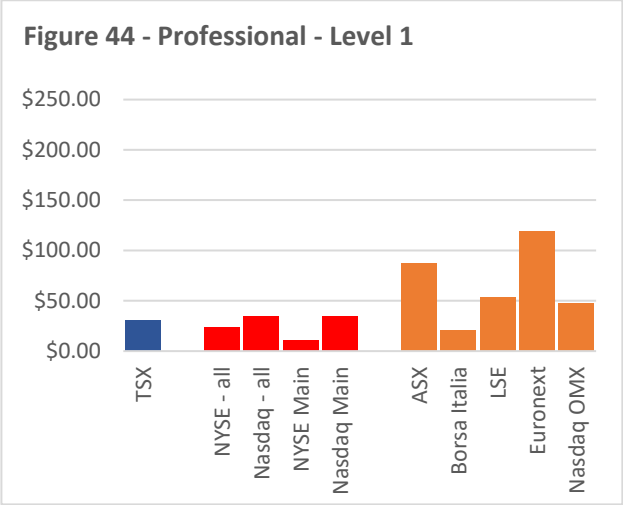
94 Figure 43 includes only those marketplaces that offered quoted-metered pricing (including where the stated price was $0.) See footnote 92 for additional info on quote-metered pricing. As at December 2019, for TSX- and TSXV-listeds, there were no differences in the stated per quote rates; for CSE-listeds, the only other visible marketplaces that offered per-quote metered pricing were Nasdaq CXC and Nasdaq CX2; for NEO-listeds, no other visible marketplaces traded NEO-listeds.

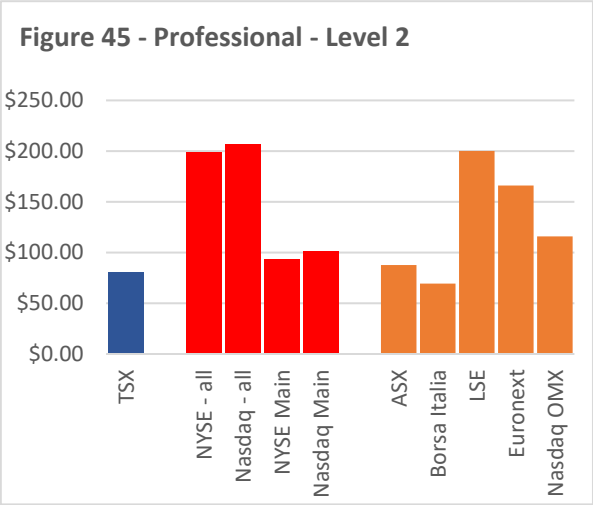
95 Fees for non-Canadian markets used herein are sourced from publicly available fee schedules applicable as at December 2019 for the most comparable product and converted to CAD at prevailing foreign exchange rates.

5.1 Professional Subscriber Fees

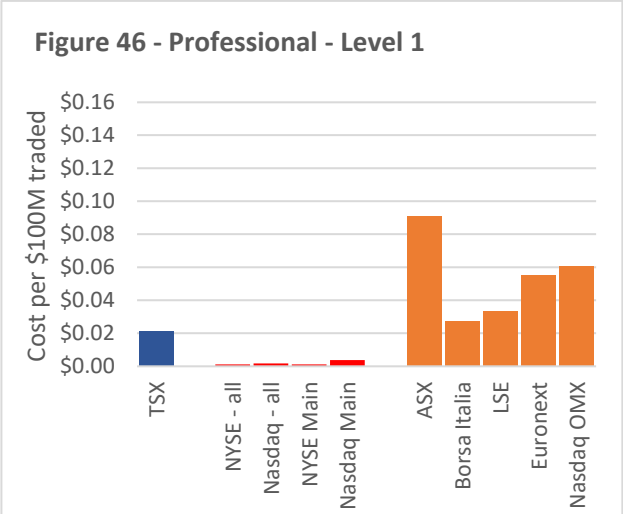
(a) Professional – Comparison of TSX Fees against International Comparables

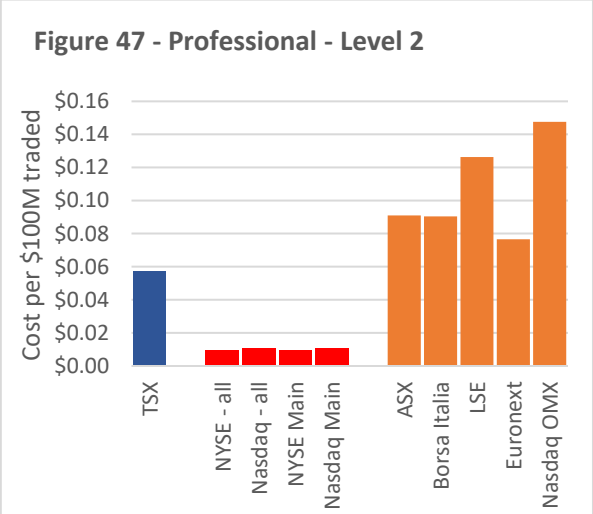
We note that, on an absolute dollar basis, TSX's professional fees appear to be comparable and/or favourable to those charged by US and international markets fees (see Figures 44 and 45).[96]





On a relative value basis, however,[97] TSX's fees are significantly higher than those charged by US exchanges but appear to be favourable relative to those charged by exchanges elsewhere (see Figures 46 and 47).[98]





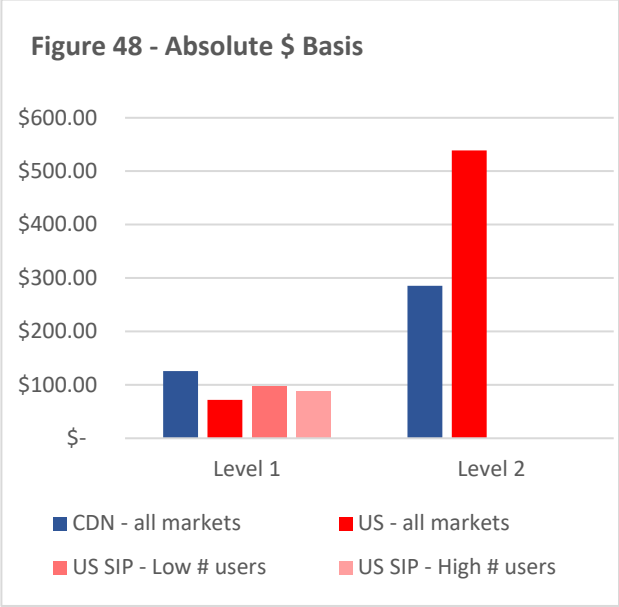
[96] Figures 44 and 45 compare the monthly professional fees charged by TSX versus other exchanges on an absolute dollar basis (based on pricing as at December 2019, all figures converted to CAD).

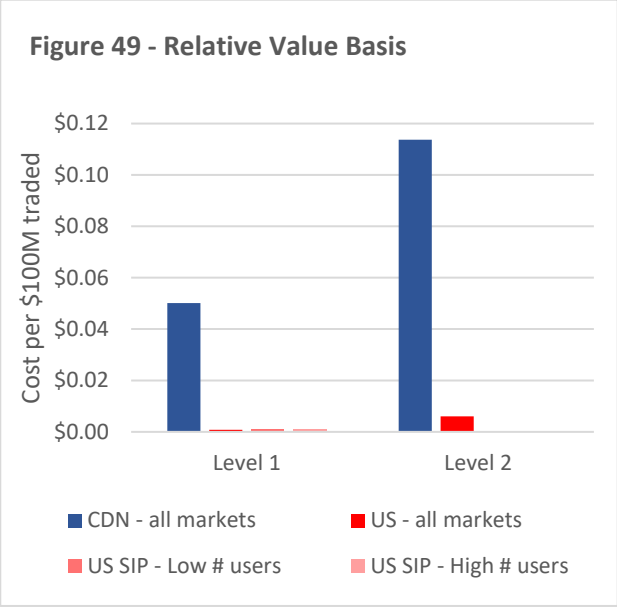
[97] Relative value basis used herein normalizes each marketplace's fees to a per $100M monthly traded value by market, with both the fees and monthly value traded converted to CAD at prevailing foreign exchange rates. Monthly traded values for non-Canadian markets were sourced from publicly available information on US and EU exchanges' websites.

[98] Figures 46 and 47 compare the monthly professional fees charged by TSX versus others exchanges on a relative value basis (based on pricing as at December 2019, all figures converted to CAD).

(b) Professional – Comparison of Consolidated Fees for Canada versus the US

We note that consolidated fees for Canada versus the US appear comparable on an absolute dollar basis but are significantly higher in Canada when compared on a relative value basis (see Figures 48 and 49).[99]

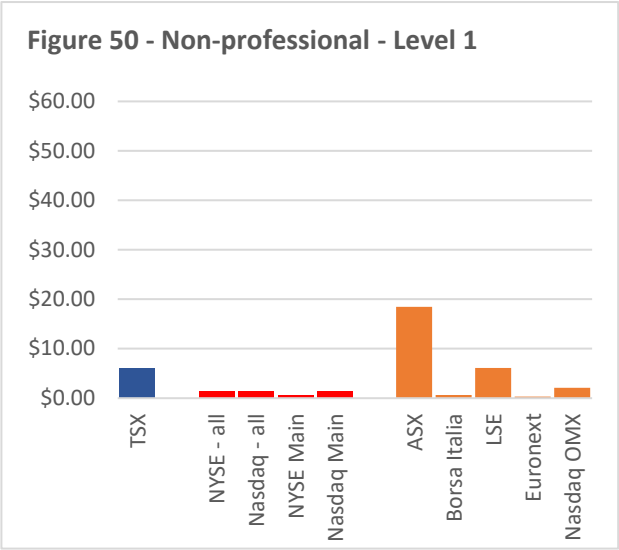


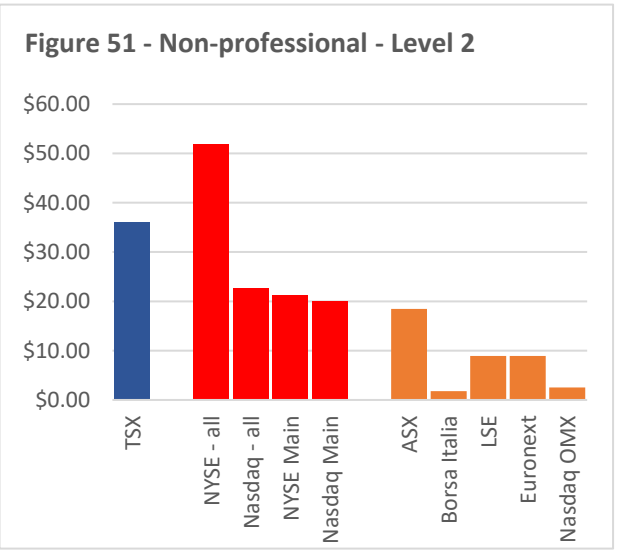


5.2 Non-professional Subscriber Fees

(a) Non-professional – Comparison of TSX Fees against International Comparables

We observed that, on an absolute dollar basis, TSX's non-professional fees appear to be high relative to most US and international exchanges. In the US, the non-professional fees charged by individual markets for access to Level 1 RTMD are likely constrained by the low rates charged by the regulated securities information processors (**SIPs**) for consolidated data (see Figures 50 and 51).[100]

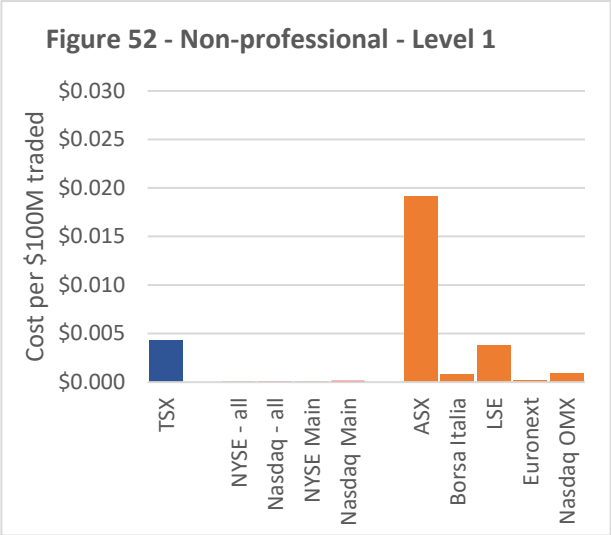


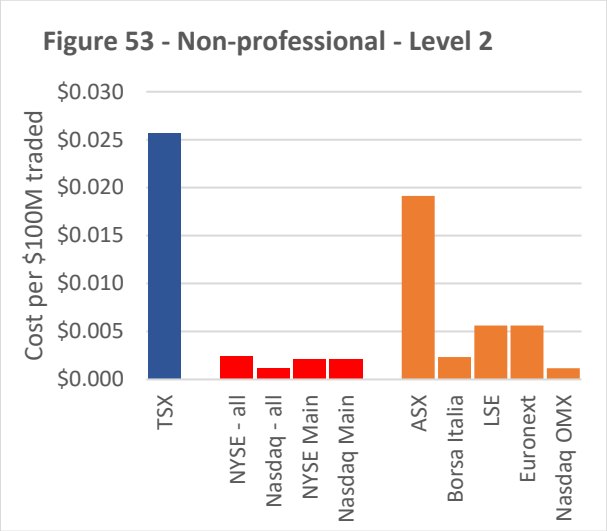


[99] Figures 48 and 49 compare monthly professional fees of Canadian consolidated fees versus US consolidated fees (based on pricing as at December 2019, all figures converted to CAD).

[100] Figures 50 and 51 show a comparison of the monthly non-professional fees charged by TSX versus other exchanges on an absolute dollar basis (based on pricing as at December 2019, all figures converted to CAD).

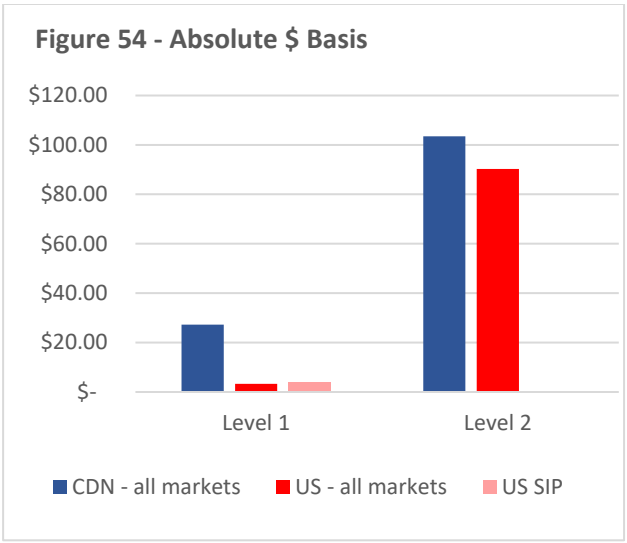
We also observed that when compared on a relative value basis (monthly fees per CAD $100M in monthly value traded), TSX's fees are significantly higher than those charged by US exchanges (Figures 52 and 53).[101]

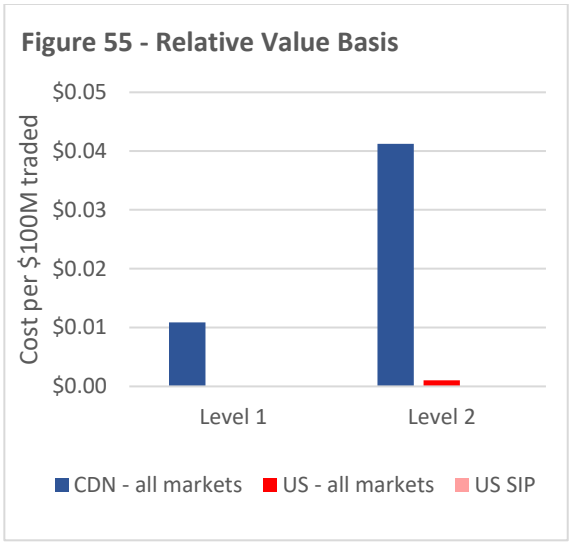




(b) Non-professional – Comparison of Consolidated Fees for Canada versus the US

We note that consolidated fees for Canada versus the US appear to be high on an absolute dollar basis but are significantly higher when compared on a relative value basis. As noted earlier, non-professional fees charged by the regulated SIPs in the US are constrained to considerably lower rates (see Figures 54 and 55).[102]





(c) Non-professional as a Percentage of Professional Fees

We also examined non-professional fees as a percentage of professional fees on an absolute dollar basis as an additional means of assessing whether these fees might be high (see Figures 56, 57, and 58).[103, 104] We note that non-professional fees in Canada,

[101] Figures 52 and 53 show a comparison of the monthly non-professional fees charged by TSX versus other exchanges on a relative value basis (based on pricing as at December 2019, all figures converted to CAD).

[102] Figures 54 and 55 show comparisons of monthly consolidated non-professional fees charged in Canada versus the US (based on pricing as at December 2019, all figures converted to CAD).

[103] Figures 56 and 57 illustrate the monthly non-professional fees as a percentage of professional fees charged by TSX versus others (based on pricing as at December 2019). Non-professional fees as a percentage of professional fees are based on the stated non-FX adjusted rates for non-Canadian markets.

[104] Figure 58 illustrates the monthly non-professional fees as a percentage of professional fees in Canada versus the US (based on pricing as at December 2019). Non-professional fees as a percentage of professional fees are based on the stated non-FX adjusted rates for non-Canadian markets.

when measured as a percent of professional fees, are considerably higher than elsewhere. This applies when comparing TSX to the US and international markets, or when comparing consolidated fees for Canada to the US.

Figure 56 - TSX vs. Others - Level 1

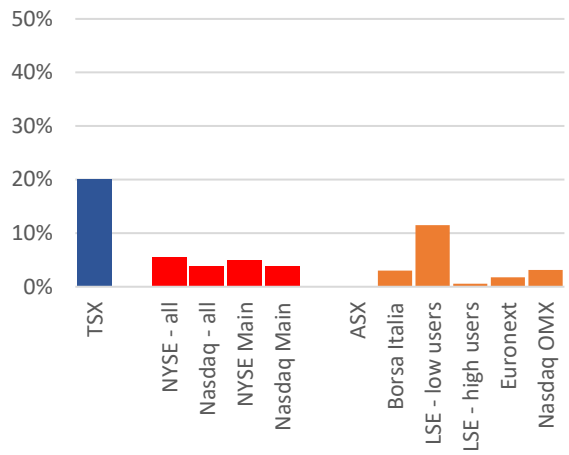


Figure 57 - TSX vs. Others - Level 2

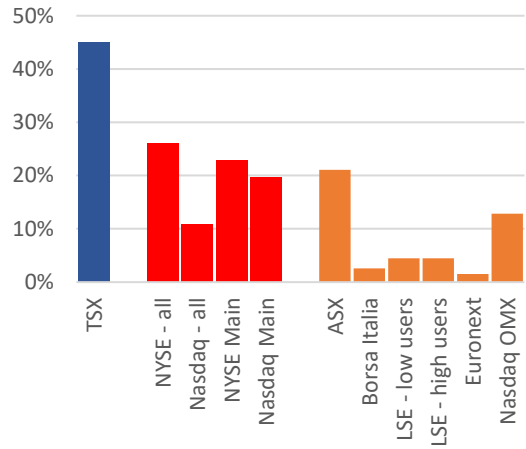
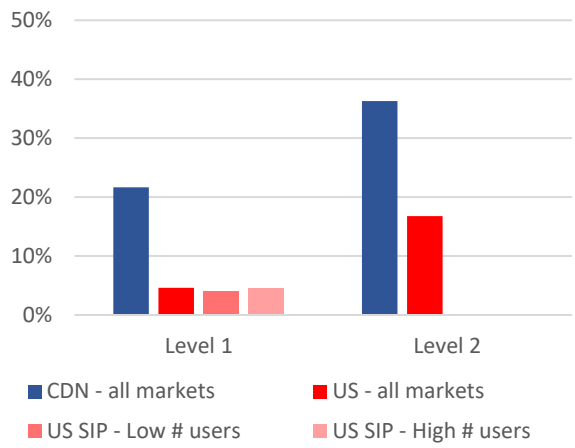


Figure 58 - Canada Consolidated vs. US



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B.2
Orders

B.2.1 TransGlobe Energy Corporation

Headnote

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

Applicable Legislative Provisions

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

Citation

Re TransGlobe Energy Corporation, 2022 ABASC 147

November 2, 2022

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

AND

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

AND

IN THE MATTER OF
TRANSGLOBE ENERGY CORPORATION
(the Filer)

ORDER

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **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 Alberta 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, Saskatchewan, Manitoba, Québec, New Brunswick, Prince Edward Island, Nova Scotia, Newfoundland and Labrador; and

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

Interpretation

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.

“Timothy Robson”
Manager, Legal
Corporate Finance
Alberta Securities Commission

OSC File #: 2022/0466

B.2.2 Zymeworks BC Inc.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Securities Act s. 88 Cease to be a reporting issuer in BC – The securities of the issuer are beneficially owned by not more than 50 persons and are not traded through any exchange or market – The issuer is not an OTC reporting issuer; the securities of the issuer are beneficially owned by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders worldwide; no securities of the issuer are traded on a market in Canada or another country; the issuer is not in default of securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, s. 88.

November 3, 2022

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

AND

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

AND

IN THE MATTER OF
ZYMEWORKS BC INC.
(the Filer)

ORDER

Background

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

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

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

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

(c) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in each of the other provinces and territories of Canada.

Interpretation

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

Representations

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

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

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

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

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

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

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

"Noreen Bent"
Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2022/0462

B.2.3 Covington Fund II Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for the Filer to cease to be a reporting issuer under applicable securities law – Relief granted.

Applicable Legislative Provisions

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

November 1, 2022

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

AND

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

AND

IN THE MATTER OF
COVINGTON FUND II INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

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

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

Application File #: 2022/0471

B.3
Reasons and Decisions

B.3.1 Mulvihill Capital Management Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exchange traded mutual funds granted exemption from the concentration restriction in sections 2.1(1) and (1.1) of NI 81-102 to permit each ETF to invest in accordance with its fundamental investment objective of seeking to provide long-term capital appreciation through purchasing and holding the NASDAQ or New York Stock Exchange (NYSE)-listed and traded equity securities of the single US public issuer specified in the ETF's investment objectives, including, in the case of alternative mutual funds, by using leverage in accordance with NI 81-102, of up to 25% of the ETF's unlevered net asset value solely through cash borrowing for purchasing the specified securities, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.1(1), (1.1) and 19.1.

October 31, 2022

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
MULVIHILL CAPITAL MANAGEMENT INC.
(MULVIHILL)
AND ITS AFFILIATES
(together with Mulvihill, the Filer)

AND

IN THE MATTER OF
MULVIHILL TSLAY ENHANCED YIELD ETF,
MULVIHILL AMZNY ENHANCED YIELD ETF AND
MULVIHILL GOOGY ENHANCED YIELD ETF
(the Proposed ETFS)
AND
SIMILAR FUTURE ETFS MANAGED BY THE FILER
(the Future ETFS, together with the Proposed ETFS, the ETFS)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the ETFs for exemptive relief from sections 2.1(1) and (1.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) (the **Concentration Restriction**) to permit each ETF to invest in excess of the Concentration Restriction to invest in accordance with its fundamental investment objective of seeking to provide long-term capital appreciation through purchasing and holding the NASDAQ or New York Stock Exchange (**NYSE**)-listed and traded equity securities of the single US Public Issuer (as defined below) specified in the ETF's investment

objectives (referred to below as the **Specified Securities** and the **Specified US Public Issuer**, respectively), including, in the case of alternative mutual funds, by using leverage in accordance with NI 81-102, of up to 25% of the ETF's unlevered net asset value (**NAV**) solely through cash borrowing for purchasing the Specified Securities.

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions* (**NI 14-101**), NI 41-101 *General Prospectus Requirements* (**NI 41-101**) or in NI 81-102 have the same meaning if used in this decision unless otherwise defined herein:

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

ETF Security means a listed security of an ETF.

Exchange means the Toronto Stock Exchange or Neo Exchange Inc., as applicable.

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

US means United States of America.

US Public Issuer means a public company that satisfies the following capitalization and liquidity standards for a Specified US Public Issuer and its Specified Securities: (a) any Specified US Public Issuer must: (i) be incorporated in the US, (ii) be listed in the S&P 500 Index, and (iii) have a market capitalization in excess of US$20 billion; (b) the Specified Securities must be listed on the NASDAQ or the NYSE; and (c) the average daily trading volume of the Specified Securities in the month before the date that the ETF Securities are listed on an Exchange must exceed US$100 million (collectively, the **Capitalization and Liquidity Standards**).

Securityholders means beneficial or registered holders of ETF Securities.

Representations

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

The Filer and the ETFs

1. Mulvihill is a corporation incorporated under the laws of Canada, with its head office located at 121 King Street West, Suite 2600, Toronto, Ontario.

2. Mulvihill is registered as (a) an adviser in the category of portfolio manager under the securities legislation of each of the Provinces of Canada, (b) a dealer in the category of exempt market dealer and an investment fund manager in the Provinces of Ontario, Québec and Newfoundland and Labrador and (c) a dealer in the category of mutual fund dealer in the Provinces of Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Ontario, Prince Edward Island and Saskatchewan.

3. The Filer will be the registered investment fund manager and registered portfolio manager of the ETFs. The Filer will apply to list the ETF Securities on an Exchange.

4. The Filer and the Proposed ETFs are not in default of securities legislation in any of the Jurisdictions.

5. Each Proposed ETF will be an exchange-traded mutual fund that is a separate class of shares of Mulvihill Fund Corp., a mutual fund corporation incorporated under the laws of the Province of Ontario. Each Future ETF will be an exchange-traded mutual fund that is a trust, corporation or separate class of shares of a mutual fund corporation governed by the laws of a Jurisdiction.

6. Each Proposed ETF will be an open-ended alternative mutual fund (as defined in NI 81-102) and each Future ETF will be an open-ended alternative mutual fund or non-alternative mutual fund.

7. The ETFs will be subject to NI 81-102, subject to any exemptions that may be granted by the applicable securities regulatory authorities.

8. The Filer will file a final long form prospectus in respect of each of the ETFs which will be prepared and filed in accordance with NI 41-101, subject to any exemptions that may be granted by the applicable securities regulatory authorities.

9. Each ETF will be a reporting issuer under the laws of one or more of the Jurisdictions.

10. ETF Securities will be (subject to satisfying the original listing requirements of the applicable Exchange) listed on an Exchange.

11. Designated Brokers will act as intermediaries between investors and the ETFs, performing a market-making function, including by standing in the market with bid and ask prices for the ETF Securities to maintain a liquid market for the ETF Securities. The majority of trading in ETF Securities will occur in the secondary market.

12. The fundamental investment objective of each ETF will be to seek to provide:

    (a) long-term capital appreciation through purchasing and holding the Specified Securities of the Specified US Public Issuer, including, in the case of alternative mutual funds, by using leverage in accordance with NI 81-102, of up to 25% of the ETF's unlevered NAV through cash borrowing to purchase Specified Securities;

    (b) monthly distributions by writing call and put options on a portion of the ETF's portfolio; and, may also include,

    (c) hedging of substantially all of the ETF's US dollar currency back to the Canadian dollar.

13. Specifically, the Specified Securities and the Specified US Public Issuer for each of the Proposed ETFs will be as follows:

ETF Name	**Specified Securities**	**Specified US Public Issuer**
Mulvihill TSLAy Enhanced Yield ETF	Common stock	Tesla, Inc.
Mulvihill AMZNy Enhanced Yield ETF	Common stock	Amazon.com, Inc.
Mulvihill GOOGy Enhanced Yield ETF	Class C common stock and/or Class A common stock	Alphabet Inc.

14. Each ETF will use a ticker symbol the Filer believes is unlikely to be confused with the ticker symbol for the Specified Securities and the Specified US Public Issuer for the ETF.

15. Distribution of ETF Securities (**Distribution**) will be conducted without the knowledge or consent of the Specified US Public Issuers and the Filer will as a general matter not have direct knowledge of or access to material information regarding the Specified US Public Issuers or Specified Securities other than publicly available information.

Disclosure

16. The prospectus of each ETF (the **Prospectus**) will disclose:

    (a) the name of each ETF using the convention reflected in this decision for the Proposed ETFs;

    (b) the investment objective and investment strategy of each ETF as well as the risk factors associated therewith, including concentration risk;

    (c) the fact that the ETF has obtained the Concentration Relief to permit the purchase of the Specified Securities on the terms described in this decision;

    (d) the ways in which, and the extent to which, purchasing and holding the ETF Securities can be expected to be different from directly purchasing and holding the Specified Securities and the factors influencing these differences (such as the ETF's cash-borrowing, option-writing and currency-hedging strategies), including in respect of performance, returns and securityholder rights;

    (e) that the ETF's investment in the Specified Securities will be a passive investment; and

    (f) the Filer's specific policies and procedures for making proxy voting and tender decisions in respect of the Specified US Public Issuer and the expected outcomes for the ETF of such decisions in potential scenarios,

such as merger or other restructuring of the Specified US Public Issuer, a sale of part or all of its business, or bankruptcy of the Specified US Public Issuer and other scenarios.

17. In the manner similarly contemplated for equity linked notes under CSA Staff Notice 44-304 *Linked Notes Distributed under Shelf Prospectus System* (**SN 44-304**), the Prospectus will provide only abbreviated disclosure in respect of the Specified Securities and the Specified US Public Issuer based on publicly available information.

18. The Filer intends to meet the full, true and plain disclosure requirement of the Legislation in connection with the ETF Securities without having responsibility for the accuracy of disclosure issued by the Specified US Public Issuer in respect of the Specified Securities. As similarly contemplated for equity linked notes under SN 44-304, the Prospectus will direct investors to public disclosure made available by the Specified US Public Issuer in respect of the Specified Securities in accordance with applicable US legislation. The Prospectus will also clarify that such disclosure and other information made publicly available about the Specified Securities and the Specified US Public Issuer on the Filer's website and otherwise cannot be expected to contemplate the Distribution. The Prospectus will clearly state that the Filer is not the source of disclosure relating to the Specified Securities and the Specified US Public Issuer and will clearly disclaim the Filer's responsibility both for verifying the accuracy of such disclosure and for updating such disclosure.

19. As similarly contemplated for equity linked notes under SN 44-304, to meet the full, true and plain disclosure requirement, the Prospectus will disclose that the Specified US Public Issuer will not receive a direct or indirect financing benefit from the Distribution.

Reasons for the Exemption Sought

20. The ETFs cannot pursue their fundamental investment objectives without the Concentration Relief.

21. The Filer submits that each ETF's strategy to acquire Specified Securities will be transparent, passive and fully disclosed to investors. An ETF will not invest in securities other than Specified Securities.

22. The Filer submits that an ETF that relies on the Concentration Relief would be analogous to an investment fund that relies on the exception to the Concentration Restriction in section 2.1(2) of NI 81-102 for purchases of equity securities by a "fixed portfolio investment fund", as defined in NI 81-102, in accordance with its investment objectives. The Filer submits that the only difference would be that the ETFs are in continuous distribution and the ETF Securities are redeemable on each trading day, accordingly, the ETFs will buy and sell Specified Securities as may be required in connection with subscription and redemption requests received by the ETF. However, the Filer submits that the existence of the ETF's Designated Broker should mean that the ETF Securities will not trade at a discount to the NAV per ETF Security which may more likely be the case for a "fixed portfolio investment fund".

23. The Specified US Public Issuers will be among the largest public issuers in the US. The Specified Securities will be some of the most liquid equity securities listed on the NASDAQ or NYSE and will be less likely to be subject to liquidity concerns than the securities of other issuers.

24. The Filer believes that any risks associated with an investment in only a single Specified US Public Issuer in reliance on the Concentration Relief will be mitigated by the fact that the Specified Securities are highly liquid and that there is a robust liquid options market for these securities.

25. The Filer submits that, given the market price per publicly listed security of the US Public Issuers, many investors would be unable to achieve meaningful exposure to these US Public Issuers through direct investment. The ETFs would provide investors with the ability to get access and obtain meaningful exposure to the Specified Securities given the ETF size.

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 Concentration Relief is granted, provided that:

(a) but for the fact that ETF Securities may be subscribed for or redeemed on each trading day (i.e. the ETFs being in continuous distribution), the ETF otherwise meets the definition of "fixed portfolio investment fund" in NI 81-102;

(b) any purchase by the ETF of the Specified Securities is in accordance with the investment objectives of the ETF;

(c) at the time that the ETF Securities are listed on an Exchange, the Specified US Public Issuer and its Specified Securities satisfy the Capitalization and Liquidity Standards;

(d) the ETF will not purchase Specified Securities if the ETF would, as a result of such purchase, become an insider of the Specified US Public Issuer;

(e) the ETF's prospectus contains the disclosure referred to in representations 16 through 19 above; and

(f) the Filer will not permit the ETFs to be used as a financing vehicle by a Specified US Public Issuer or to permit an indirect offering of Specified Securities into a jurisdiction of Canada.

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

Application File #: 2021/0605

B.3.2 Laurentian Bank Securities Inc.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 13.18(2)(b) and 15.1.

[COURTESY TRANSLATION]

November 2, 2022

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

AND

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

AND

IN THE MATTER OF
LAURENTIAN BANK SECURITIES INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (**Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

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

(b) the 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 by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada (the **Other Jurisdictions**) in respect of the Exemption Sought, and

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

Interpretation

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

Representations

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

1. The Filer is a corporation formed under the laws of Canada and has its head office in Montreal, Québec.

2. The Filer is registered as an investment dealer in Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan. The Filer is also registered as a derivatives dealer in Québec.

3. The Filer is a member of the Investment Industry Regulatory Organization of Canada (**IIROC**).

4. Other than with respect to the subject of this decision, the Filer is not in default of securities legislation in any province or territory of Canada.

5. The Filer is a wholly-owned, direct subsidiary of Laurentian Bank of Canada.

6. Institutional Equity and Institutional Fixed Income Divisions of Laurentian Bank Securities are focusing on Canadian-listed companies, with a full service offering including research, sales, trading and investment banking. The group currently covers six sectors considered to be of high importance and an integral part of the Canadian economic engine. Presently, the sectors covered are base and precious metals, industrials and transportation, utilities, diversified technology, REITS and special situation.

7. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately 17 Registered Individuals.

8. The current titles used by the Registered Individuals include the words “Vice-President”, “Vice-President and Managing Director” and “Director”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**).

9. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual’s sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

10. The Registered Individuals interact only with institutional clients that are, each, a non-individual “institutional client”, as defined in IIROC Rule 1201 (the **Clients**).

11. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

12. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

13. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.

14. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual “institutional clients”, as defined in IIROC Rule 1201.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

French version signed by:

"Éric Jacob"
Superintendent, Client Services and Distribution oversight
Autorité des marchés financiers

Application File #: 2022/0350

B.3.3 CI Investments Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted under subsection 62(5) of the Securities Act to permit the extension of two ETF prospectus lapse dates 83 and 63-days to facilitate the combination of the ETFs' prospectuses with two other prospectuses under common management – no conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

November 3, 2022

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 GALAXY MULTI-CRYPTO ETF
CI BIO-REVOLUTION ETF
CI DIGITAL SECURITY ETF
(the ETFs)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the ETFs for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the respective time limits for the renewal of the long form prospectus of CI Galaxy Multi-Crypto ETF (the **January 2022 ETF**) dated January 7, 2022 (the **January 2022 ETF Prospectus**) and the long form prospectus of CI Bio-Revolution ETF and CI Digital Security ETF (the **February 2022 ETFs**) dated February 17, 2022 (the **February 2022 ETFs Prospectus**, and together with the January 2022 ETF Prospectus, the **Prospectuses**) be extended to those time limits that would apply as if the lapse dates of the Prospectuses were March 31, 2023 (in the case of the January 2022 ETF Prospectus) and April 21, 2023 (in the case of the February 2022 ETFs Prospectus) (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (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. The Filer is a corporation incorporated under the laws of Ontario. The Filer's head office is located in Toronto, Ontario.

2. The Filer is registered as follows:

   a. under the securities legislation of all Jurisdictions as a portfolio manager and an exempt market dealer;

   b. under the securities legislation of Ontario, Québec, and Newfoundland and Labrador as an investment fund manager; and

   c. under the *Commodity Futures Act* of Ontario as a commodity trading counsel and a commodity trading manager.

3. The Filer is the investment fund manager and portfolio manager of the ETFs.

4. Neither the Filer nor any of the ETFs are in default of securities legislation in any of the Jurisdictions.

The ETFs

5. Each of the ETFs is an exchange traded mutual fund trust established under the laws of Ontario. Each of the ETFs is a reporting issuer as defined in the securities legislation of each of the Jurisdictions.

6. Securities of the ETFs are currently qualified for distribution in each of the Jurisdictions under the Prospectuses. The securities of the ETFs are listed on the Toronto Stock Exchange.

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse date of the January 2022 ETF Prospectus is January 7, 2023 (the **January 2022 Current Lapse Date**) and the lapse date of the February 2022 ETFs Prospectus is February 17, 2023 (the **February 2022 Current Lapse Date**, each a **Current Lapse Date** and together with the January 2022 Current Lapse Date, the **Current Lapse Dates**). Accordingly, under subsection 62(2) of the Act, the distribution of securities of each of the ETFs would have to cease on the applicable Current Lapse Date unless: (i) the ETFs file a *pro forma* long form prospectus at least 30 days prior to the applicable Current Lapse Date; (ii) the final long form prospectus is filed no later than 10 days after the applicable Current Lapse Date; and (iii) a receipt for the final long form prospectus is obtained within 20 days after the applicable Current Lapse Date.

Reasons for the Lapse Date Extension

8. The Filer is the investment fund manager of the January 2022 ETF and the February 2022 ETFs. The Filer is also the investment fund manager of (i) approximately two other ETFs (the **Affiliated Crypto ETFs**) that currently distribute their securities to the public under a long form prospectus and ETF facts (collectively, the **Affiliated Crypto ETFs Prospectus**) with a lapse date of March 31, 2023 and (ii) approximately 38 other ETFs (the **Affiliated CI ETFs**) that currently distribute their securities to the public under a long form prospectus and ETF facts (collectively, the **Affiliated CI ETFs Prospectus)** with a lapse date of April 21, 2023.

9. The Filer wishes to combine (i) the January 2022 ETF Prospectus with the Affiliated Crypto ETFs Prospectus and (ii) the February 2022 ETFs Prospectus with the Affiliated CI ETFs Prospectus in order to reduce renewal, printing and related costs.

10. Offering (i) the January 2022 ETF and the Affiliated Crypto ETFs under the same renewal long form prospectus and ETF facts documents (collectively, the **Renewal Documents**) and (ii) the February 2022 ETFs and the Affiliated CI ETFs under the same Renewal Documents would facilitate the distribution of the Renewal Documents in the Jurisdictions and enable the Filer to streamline disclosure across the Filer's ETF platform. The Affiliated Crypto ETFs and the Affiliated CI ETFs also share many common operational and administrative features with the January 2022 ETF and February 2022 ETFs, respectively, and combining them under the same Renewal Documents will allow investors to compare their features more easily.

11. It would be impractical to alter and modify all of the dedicated systems, procedures and resources required to prepare the Renewal Documents of the Affiliated Crypto ETFs Prospectus and the Affiliated CI ETFs Prospectus and unreasonable to incur the costs and expenses associated therewith, so that the Renewal Documents of the Affiliated Crypto ETFs Prospectus and the Affiliated CI ETFs Prospectus can be filed earlier with the Renewal Documents of the January 2022 ETF and February 2022 ETFs on or before their respective lapse dates.

12. The Filer also may make changes to the features of the Affiliated Crypto ETFs Prospectus and the Affiliated CI ETFs Prospectus as part of the process of renewing the Affiliated Crypto ETFs Prospectus and the Affiliated CI ETFs Prospectus. The ability to incorporate the January 2022 ETF into the Affiliated Crypto ETFs Prospectus and the February 2022 ETFs into the Affiliated CI ETFs Prospectus will ensure that the Filer can make the operational and administrative features of the January 2022 ETF and February 2022 ETFs consistent with the Affiliated Crypto ETFs Prospectus and the Affiliated CI ETFs Prospectus, if necessary.

13. There have been no material changes in the affairs of the ETFs since the dates of the Prospectuses, as applicable. Accordingly, the Prospectuses continue to represent accurate information regarding the ETFs, as applicable.

14. Given the disclosure obligations of the Filer and the ETFs, should any material change in the business, operations or affairs of the ETFs occur, the Prospectuses or ETF fact documents in respect of the applicable ETFs, will be amended as required under the Legislation.

15. New investors of the ETFs will receive delivery of the most recently filed ETF fact documents of the applicable ETFs. In addition, the Prospectuses will remain available to investors upon request.

16. The Exemption Sought will not affect the accuracy of the information contained in the Prospectuses or ETF fact documents of each of the ETFs and will therefore not be prejudicial to the public interest.

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.

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

Application File #: 2022/0455

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B.4
Cease Trading Orders

B.4.1 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
Global TreeGro Inc.	November 2, 2022	
Banxa Holdings Inc.	November 3, 2022	
Orchid Ventures, Inc.	November 3, 2022	
TGS Esports Inc.	November 3, 2022	
The Good Flour Corp.	November 3, 2022	
Zadar Minerals Corp.	November 3, 2022	
Poko Innovations Inc.	November 3, 2022	
Royal Wins Corporation	November 3, 2022	
Plymouth Rock Technologies Inc.	November 4, 2022	
Empower Clinics Inc.	August 3, 2022	November 7, 2022

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

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

B.4.3 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	
Gatos Silver, Inc.	April 1, 2022	
Gatos Silver, Inc.	April 12, 2022	
Sproutly Canada, Inc.	June 30, 2022	

Gatos Silver, Inc.	July 7, 2022	
PlantX Life Inc.	August 4, 2022	
AION THERAPEUTIC INC.	August 31, 2022	
iMining Technologies Inc.	September 30, 2022	

B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.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).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Invesco Balanced-Risk Allocation Pool
Invesco Global Equity Income Advantage Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Nov 4, 2022
NP 11-202 Final Receipt dated Nov 7, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3438070

Issuer Name:
iShares Gold Bullion ETF
iShares Silver Bullion ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Oct 28, 2022
NP 11-202 Final Receipt dated Nov 1, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3441933

Issuer Name:
Alphabet (GOOGL) Yield Shares
Amazon (AMZN) Yield Shares
Apple (AAPL) Yield Shares
Berkshire Hathaway (BRK) Yield Shares
Exxon Mobil (XOM) Yield Shares
Johnson & Johnson (JNJ) Yield Shares
JPMorgan Chase (JPM) Yield Shares
Microsoft (MSFT) Yield Shares
Tesla (TSLA) Yield Shares
UnitedHealth Group (UNH) Yield Shares
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Nov 7, 2022
NP 11-202 Preliminary Receipt dated Nov 7, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3453114

Issuer Name:
BMO ARK Genomic Revolution Fund
BMO ARK Innovation Fund
BMO ARK Next Generation Internet Fund
BMO Canadian Income & Growth Fund
BMO Global Income & Growth Fund
BMO Global Innovators Fund
BMO Structured Equity Yield Portfolio
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Nov 1, 2022
NP 11-202 Final Receipt dated Nov 2, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3442492

Issuer Name:
CIBC Canadian Short-Term Bond Index ETF
CIBC International Equity Index ETF (CAD-Hedged)
CIBC U.S. Equity Index ETF (CAD-Hedged)
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Long Form Prospectus dated Nov 3, 2022
NP 11-202 Preliminary Receipt dated Nov 3, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3452111

Issuer Name:
Encasa Canadian Money Market Fund
Principal Regulator – Ontario
Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Nov 1, 2022
NP 11-202 Preliminary Receipt dated Nov 2, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3451100

Issuer Name:
Horizons USD High Interest Savings ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Nov 3, 2022
NP 11-202 Preliminary Receipt dated Nov 3, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3452088

Issuer Name:
Arrow Canadian Advantage Alternative Class
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated November 2, 2022
NP 11-202 Final Receipt dated Nov 4, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3384256

Issuer Name:
Dynamic Money Market Fund
Principal Regulator - Ontario
Type and Date:
Amendment #4 to Final Simplified Prospectus dated October 27, 2022
NP 11-202 Final Receipt dated Nov 1, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3287695

Issuer Name:
Dynamic Retirement Income Fund
(formerly,Dynamic Retirement Income+ Fund)
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated October 28, 2022
NP 11-202 Final Receipt dated Nov 2, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3435082

Issuer Name:
Dynamic Active Retirement Income ETF
(Formerly, Dynamic Active Retirement Income+ ETF)
Principal Regulator - Ontario
Type and Date:
Amendment #2 to Final Long Form Prospectus dated October 28, 2022
NP 11-202 Final Receipt dated Nov 2, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
N/A
Project #3320882

Issuer Name:
PIMCO Global Income Opportunities Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated November 4, 2022
NP 11-202 Preliminary Receipt dated November 4, 2022
Offering Price and Description:
$150,000,000 Class A Units
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
PIMCO Canada Corp.
Project #3452729

Issuer Name:
PIMCO Tactical Income Fund
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated November 4, 2022
NP 11-202 Preliminary Receipt dated November 4, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
N/A
Promoter(s):
PIMCO Canada Corp.
Project #3452732

NON-INVESTMENT FUNDS

Issuer Name:
AYA GOLD & SILVER INC.
Principal Regulator - Quebec
Type and Date:
Preliminary Shelf Prospectus dated November 4, 2022
NP 11-202 Preliminary Receipt dated November 4, 2022
Offering Price and Description:
$200,000,000.00 - COMMON SHARES, SUBSCRIPTION RECEIPTS, WARRANTS, DEBT SECURITIES, UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3452727

Issuer Name:
FortisBC Energy Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated November 1, 2022
NP 11-202 Preliminary Receipt dated November 2, 2022
Offering Price and Description:
$800,000,000.00 - Medium Term Note Debentures (unsecured)
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3451257

Issuer Name:
Kuya Silver Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated October 31, 2022
NP 11-202 Preliminary Receipt dated November 1, 2022
Offering Price and Description:
$100,000,000.00 - Common Shares, Warrants, Subscription Receipts, Debt Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3450625

Issuer Name:
SolarBank Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Long Form Prospectus dated November 4, 2022
NP 11-202 Preliminary Receipt dated November 7, 2022
Offering Price and Description:
$2,550,000.00 - Up to 3,400,000 Common Shares Price: $0.75 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3453006

Issuer Name:
Brookfield Renewable Corporation
Brookfield Renewable Partners L.P.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated October 31, 2022
NP 11-202 Receipt dated November 1, 2022
Offering Price and Description:
US$2,500,000,000.00 -Class A Exchangeable Subordinate Voting Shares of Brookfield Renewable Corporation
Limited Partnership Units of Brookfield Renewable Partners L.P. (issuable or deliverable upon exchange, redemption or acquisition of Class A Exchangeable Subordinate Voting Shares)
Underwriter(s) or Distributor(s):
-
Promoter(s):
BROOKFIELD RENEWABLE PARTNERS L.P.
Project #3447170

Issuer Name:
Brookfield Renewable Partners L.P.
Brookfield Renewable Corporation
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated October 31, 2022
NP 11-202 Receipt dated November 1, 2022
Offering Price and Description:
US$2,500,000,000.00 - Class A Exchangeable Subordinate Voting Shares of Brookfield Renewable Corporation
Limited Partnership Units of Brookfield Renewable Partners L.P. (issuable or deliverable upon exchange, redemption or acquisition of Class A Exchangeable Subordinate Voting Shares)
Underwriter(s) or Distributor(s):
-
Promoter(s):
BROOKFIELD RENEWABLE PARTNERS L.P.
Project #3447169

Issuer Name:
FRONTIER LITHIUM INC.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated November 7, 2022
NP 11-202 Receipt dated November 7, 2022
Offering Price and Description:
$20,020,000.00 - 9,100,000 UNITS
Price: $2.20
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
GOLDMAN SACHS CANADA INC.
BMO NESBITT BURNS INC.
CANACCORD GENUITY CORP.
CORMARK SECURITIES INC.
STIFEL NICOLAUS CANADA INC.
Promoter(s):
-
Project #3446820

Issuer Name:
M3 Capital Corp.
Principal Regulator - Alberta
Type and Date:
Amendment dated November 2, 2022 to Final CPC Prospectus dated August 15, 2022
NP 11-202 Receipt dated November 4, 2022
Offering Price and Description:
Minimum Offering: $500,000.00 - 5,000,000 Common Shares
Maximum Offering: $1,000,000.00 - 10,000,000 Common Shares
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
iA Private Wealth Inc.
Promoter(s):
Morris Chia
Project #3410318

Issuer Name:
POCML 7 Inc.
Principal Regulator - Ontario
Type and Date:
Final CPC Prospectus dated November 7, 2022
NP 11-202 Receipt dated November 7, 2022
Offering Price and Description:
$250,000.00 - 2,500,000 Common Shares
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
iA PRIVATE WEALTH INC.
Promoter(s):
-
Project #3444954

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	BMO Nesbitt Burns Securities Ltd.	Portfolio Manager	November 3, 2022
Change in Registration Category	Redjay Asset Management Inc.	From: Portfolio Manager, Exempt Market Dealer and Investment Fund Manager To: Portfolio Manager, Exempt Market Dealer, Investment Fund Manager and Commodity Trading Manager	November 7, 2022

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Editor's Note: On Friday, April 29, 2022, the Securities Commission Act, 2021, came into force by proclamation of the Lieutenant Governor of Ontario. The new structural and governance changes are now reflected in the Bulletin index with the use of the "Capital Markets Tribunal" designation to differentiate those proceedings from the proceedings of the Ontario Securities Commission: www.capitalmarketstribunal.ca.

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