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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 Cormark Securities Inc. et al.

FOR IMMEDIATE RELEASE
November 23, 2022

CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.,
File No. 2022-24

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

A copy of the Order dated November 23, 2022 is available at capitalmarketstribunal.ca.

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A.2.2 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
November 28, 2022

BRIDGING FINANCE INC.,
DAVID SHARPE,
BRIDGING INCOME FUND LP,
BRIDGING MID-MARKET DEBT FUND LP,
BRIDGING INCOME RSP FUND,
BRIDGING MID-MARKET DEBT RSP FUND,
BRIDGING PRIVATE DEBT INSTITUTIONAL LP,
BRIDGING REAL ESTATE LENDING FUND LP,
BRIDGING SMA 1 LP,
BRIDGING INFRASTRUCTURE FUND LP, AND
BRIDGING INDIGENOUS IMPACT FUND,
File No. 2021-15

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

A copy of the Reasons and Decision dated November 25, 2022 is available at capitalmarketstribunal.ca.

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A.2.3 Mark Odorico

FOR IMMEDIATE RELEASE
November 28, 2022

MARK ODORICO,
File No. 2022-18

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

A copy of the Order dated November 28, 2022 is available at capitalmarketstribunal.ca.

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A.3
Orders

A.3.1 Cormark Securities Inc. et al.

IN THE MATTER OF
CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.

File No. 2022-24

Adjudicator: Timothy Mosely

November 23, 2022

ORDER

WHEREAS on November 23, 2022, the Capital Markets Tribunal held a hearing by videoconference;

ON HEARING the submissions of the representatives for Staff of the Ontario Securities Commission (**Staff**) and for the respondents;

IT IS ORDERED THAT:

1. by December 23, 2022 at 4:30 p.m., Staff shall disclose to the respondents the non-privileged, relevant documents and things in Staff's possession or control;

2. by February 24, 2023 at 4:30 p.m., the respondents shall serve and file a motion, if any, regarding Staff's disclosure or seeking disclosure of additional documents;

3. by March 3, 2023 at 4:30 p.m., Staff shall:

   (a) serve and file a witness list,

   (b) serve a summary of each witness's anticipated evidence, and

   (c) indicate any intention to call an expert witness, including providing the expert's name and the issues on which the expert will give evidence; and

4. a further attendance in this matter is scheduled for March 10, 2023, at 8:30 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Timothy Mosely"

A.3.2 Mark Odorico – ss. 8, 21.7

IN THE MATTER OF
MARK ODORICO

File No. 2022-18

Adjudicators: Andrea Burke (chair of the panel)
Sandra Blake
Cathy Singer

November 28, 2022

ORDER
(Sections 8 and 21.7 of the *Securities Act*, RSO 1990, c S.5)

WHEREAS on November 25, 2022, the Capital Markets Tribunal held a hearing by videoconference to consider a motion by Mark Odorico for a stay of decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**) dated April 7, 2022 and August 15, 2022 pending the disposition of his application for a hearing and review of those decisions;

AND WHEREAS a portion of the hearing proceeded on a confidential basis at the request of Odorico, with the issue of what portion, if any, of the corresponding hearing transcript would be kept confidential subject to further order of the Tribunal after receiving submissions in writing from the parties;

ON READING the materials filed by Odorico and by the representative of Staff of IIROC, and on hearing the oral testimony and submissions of Odorico and submissions of the representative of Staff of IIROC and of Staff of the Ontario Securities Commission;

IT IS ORDERED, for reasons to follow, that:

1. Odorico's motion for a stay is dismissed; and

2. the transcript of the confidential portion of the hearing is to remain confidential pending further order of the Tribunal.

"Andrea Burke"

"Sandra Blake"

"Cathy Singer"

A.4
Reasons and Decisions

A.4.1 Bridging Finance Inc. et al. – ss. 16.1, 25.0.1 of the Statutory Powers Procedure Act

Citation: *Bridging Finance Inc (Re),* 2022 ONCMT 35
Date: 2022-11-25
File No. 2021-15

IN THE MATTER OF
BRIDGING FINANCE INC.,
DAVID SHARPE,
BRIDGING INCOME FUND LP,
BRIDGING MID-MARKET DEBT FUND LP,
BRIDGING INCOME RSP FUND,
BRIDGING MID-MARKET DEBT RSP FUND,
BRIDGING PRIVATE DEBT INSTITUTIONAL LP,
BRIDGING REAL ESTATE LENDING FUND LP,
BRIDGING SMA 1 LP,
BRIDGING INFRASTRUCTURE FUND LP, AND
BRIDGING INDIGENOUS IMPACT FUND

REASONS AND DECISION
(Sections 16.1 and 25.0.1 of the *Statutory Powers Procedure Act,* RSO 1990, c S.22)

Adjudicators:	Timothy Moseley (chair of the panel) William Furlong Dale R. Ponder	
Hearing:	By videoconference, September 8, 2022; final written submissions received September 20, 2022	
Appearances:	Mark Bailey Adam Gotfried	For Staff of the Ontario Securities Commission
	Alistair Crawley Melissa MacKewn Brian Greenspan Alexandra Grishanova Naomi Lutes Dan Thomas	For David Sharpe
	Erin Pleet	For the receiver of Bridging Finance Inc. et al.

REASONS AND DECISION

1. OVERVIEW

[1] On May 12, 2021, Staff of the Ontario Securities Commission commenced this proceeding, seeking an extension of a temporary cease trade order that had been issued against all respondents except Bridging Finance Inc. and David Sharpe. That order has been extended a number of times, with modifications we describe below.

[2] There are or have been several proceedings in court or before the Capital Markets Tribunal, all arising from a common factual background. For clarity in these reasons, we sometimes refer to this proceeding as **this temporary cease trade proceeding**.

[3] This decision arises from a motion brought by Sharpe for a stay of a decision issued earlier in this proceeding. In that earlier decision, this Tribunal dismissed Sharpe's request that certain portions of the adjudicative record filed by Staff of the Ontario Securities Commission at the outset of this proceeding be kept confidential. Sharpe has applied to the Divisional Court for judicial review of that decision.

[4] We dismiss Sharpe's request for a stay of that decision. As we explain below, we conclude that we do not have jurisdiction to issue a stay under these circumstances. We reach that conclusion particularly because our authority to grant any stay would arise under s. 16.1(1) of the *Statutory Powers Procedure Act*,[1] but that provision permits only interim orders. The requested stay in this case would not be an interim order, because this Tribunal's dismissal of Sharpe's confidentiality request finally disposed of the real matter in dispute between Staff and Sharpe, and there would be no future order in this proceeding on that issue.

[5] Even if we did have jurisdiction to issue the stay, we would not do so. While Sharpe's request raises a serious issue to be tried, Sharpe has not demonstrated that if we decline his request he will suffer irreparable harm of a nature that would justify a stay. Further, the balance of convenience does not favour the granting of a stay, when the interests that Sharpe identifies are weighed against the public interest in the transparency of Tribunal proceedings.

2. BACKGROUND

[6] On April 30, 2021, before this proceeding was commenced, the Ontario Securities Commission (acting in its executive capacity, not its adjudicative capacity) issued an order[2] providing that:

a. trading cease in securities of nine of the respondent entities (*i.e.*, all of the respondent entities except Bridging Finance Inc.); and

b. Sharpe's registration as Ultimate Designated Person of Bridging Finance Inc. be suspended.

[7] The order was made without notice to the respondents and was to expire fifteen days later.

[8] Also on April 30, 2021, the Commission (acting in its executive capacity) applied for and obtained an order from the Superior Court of Ontario, appointing a receiver over the various Bridging entities.

[9] This proceeding was commenced on May 7, 2021, by way of an application from Staff of the Commission to extend only the cease trade portion of the order. Sharpe's employment with Bridging Finance Inc. had been terminated by the receiver, so Staff did not seek an extension of the term of the April 30 order by which Sharpe's registration with Bridging Finance Inc. had been suspended. As a result, while Sharpe continues to be named as a respondent, Staff has never sought any relief in respect of him in this proceeding.

[10] On May 12, 2021, the Tribunal granted Staff's request and extended the cease trade provision to August 12, 2021.[3] The cease trade provision was later extended five times (the last of those being shortly after we received final written submissions on this hearing of Sharpe's stay motion),[4] each time with an exception allowing the receiver of the nine respondent entities to carry out the receivership. The current cease trade order is set to expire on March 31, 2023.

[11] In support of Staff's first request to extend the order in May 2021, Staff filed an extensive record. That record includes material that Staff obtained during its investigation using powers of compulsion pursuant to an order issued under s. 11 of the *Securities Act*.[5] That material is therefore subject to the confidentiality provisions of s. 16 of the *Securities Act*.

[12] In July 2021, Sharpe took two steps simultaneously. He:

a. commenced a separate proceeding, in which he asked that the Tribunal revoke the s. 11 investigation order (pursuant to which the compelled material had already been obtained); and

b. brought a motion in this temporary cease trade proceeding, in which he asked that certain portions of the adjudicative record and written submissions in this proceeding be kept confidential.

[13] On December 16, 2021, the Tribunal held a hearing relating both to Sharpe's application to revoke the s. 11 order, and to Sharpe's motion in this proceeding seeking a confidentiality order. The purpose of the hearing was to determine two preliminary questions that would bear upon Sharpe's request (contained within Sharpe's revocation application) that the Tribunal revoke the s. 11 order. The Tribunal advised that at that first stage it would consider only the preliminary questions relating to the s. 11 order, and that it would defer consideration of Sharpe's confidentiality request. However, the Tribunal ordered[6] that in the meantime, the adjudicative record was to be kept confidential pending the disposition of that confidentiality request at a later date.

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1 RSO 1990, c S.22
2 *Bridging Finance Inc (Re)*, (2021) 44 OSCB 3781
3 *Bridging Finance Inc (Re)*, (2021) 44 OSCB 4187
4 *Bridging Finance Inc (Re)*, (2021) 44 OSCB 6878; *Bridging Finance Inc (Re)*, (2021) 44 OSCB 10379; *Bridging Finance Inc (Re)*, (2022) 45 OSCB 3088; *Bridging Finance Inc (Re)*, (2022) 45 OSCB 6551; *Bridging Finance Inc (Re)*, (2022) 45 OSCB 8314
5 RSO 1990, c S.5
6 *Sharpe (Re)*, (2021) 44 OSCB 10378

[14] On March 25, 2022, the Tribunal dismissed,[7] for reasons issued on March 30, 2022,[8] Sharpe's request to revoke the s. 11 order. The Tribunal found that when the Commission, acting in its executive capacity, applied to court for the appointment of a receiver, the Commission ought first to have obtained an order under s. 17 of the *Securities Act* authorizing disclosure of material obtained using the powers of compulsion. That material had been filed in court in support of the receivership application, and had been posted on the receiver's website in accordance with the court's order.

[15] The Tribunal determined, however, that despite the Commission's failure to obtain a s. 17 order, revocation of the s. 11 order was not an available remedy in the circumstances set out in the agreed statement of facts filed by the parties.

[16] In its reasons of March 30, 2022, the Tribunal directed that Sharpe's still-pending confidentiality request (contained in his motion in this temporary cease trade proceeding) be dealt with in writing. Following the receipt of written submissions on that question, the Tribunal decided on July 5, 2022, to dismiss Sharpe's confidentiality request.[9] That July 5 decision (the **Confidentiality Decision**) revoked the December 2021 interim confidentiality order referred to above.

[17] On July 15, 2022, Sharpe moved in this proceeding for a stay of the Confidentiality Decision. His motion, which is disposed of by this decision and these reasons, contemplated that he would commence an application in the Divisional Court seeking judicial review of that decision. Sharpe asked that we stay the Confidentiality Decision until the court decides the judicial review application.

[18] Sharpe filed his judicial review application in Divisional Court on August 4, 2022. At the hearing before us, counsel advised that the judicial review application is scheduled to be heard on February 16, 2023.

[19] Until he filed that application, Sharpe had never sought any relief from the court in relation to the public availability of the compelled material about which he has expressed concern. Sharpe would first have been in a position to do so, if he chose to, as early as May 2021, when the materials in the receivership application were served on him. We return below to discuss the significance of this fact in the context of the current motion.

3. ANALYSIS

3.1 Introduction

[20] Sharpe's request for a stay presents two principal issues:

a. Does this Tribunal have jurisdiction to stay the Confidentiality Decision?

b. If the Tribunal has jurisdiction to stay the Confidentiality Decision, should it do so?

[21] We conclude that the answer to both questions is "no". We do not have jurisdiction, and even if we did, we would not exercise it.

[22] We begin our analysis by examining whether we have jurisdiction to grant the requested stay.

3.2 Jurisdiction to grant the requested stay

3.2.1 Statutory framework

[23] Sharpe submits that the Tribunal has jurisdiction to grant the requested stay under two provisions of the *Statutory Powers Procedure Act*:

a. s. 16.1(1), which provides that a tribunal may make interim decisions and orders; and

b. s. 25.0.1(a), which provides that a tribunal has the power to determine its own procedures and practices, and may for that purpose make orders about the procedures and practices that apply in any particular proceeding.

[24] Staff submits that neither provision gives the Tribunal authority to stay the Confidentiality Decision.

[25] Below, we will explain why we agree with Staff's position. Before examining in detail each of the two provisions of the *Statutory Powers Procedure Act* mentioned above, we must first set some context by reviewing three other statutory provisions.

[26] The first of those other statutory provisions is s. 10 of the *Securities Act*, which provides that the Commission's Chief Executive Officer or a person or company directly affected by a final decision of the Tribunal may appeal the decision to

7 *Sharpe (Re)*, (2022) 45 OSCB 3274
8 *Sharpe (Re),* 2022 ONSEC 3
9 *Sharpe (Re),* 2022 ONCMT 18

the Divisional Court. Subsection 10(2) states that the decision appealed from takes effect immediately, but this Tribunal or the Divisional Court may grant a stay. We note that s. 10(2) refers to appeals of Tribunal decisions, but does not refer to applications for judicial review of Tribunal decisions.

[27] Staff submits that since the legislature expressly empowered the Tribunal to grant a stay on an appeal, but did not do so in the case of an application for judicial review (which form of application is not mentioned at all in the *Securities Act*), we should conclude that the legislature intended that the Tribunal have no such power. In Staff's submission, had the legislature intended the Tribunal to have the power to grant a stay in the context of an application for judicial review, the legislature would have expressly said so.

[28] Staff provided no authority that directly supports that proposition. Sharpe submits, and we agree, that in the absence of exclusionary language, the mere grant of power in the case of an appeal does not necessarily preclude the conclusion that the power can be derived elsewhere.

[29] The second relevant provision is s. 4 of the *Judicial Review Procedure Act*,[10] which provides that on an application for judicial review, "the court may make such interim order as it considers proper pending the final determination of the application." As with the first provision, Staff submits that because the legislature expressly conferred this power on the court and did not expressly confer a similar power on tribunals that are the subject of judicial review applications, we should conclude that the legislature intended that tribunals have no such power.

[30] Once again, we agree with Sharpe's submission that in the absence of exclusionary language, the mere grant of power to the court does not preclude the conclusion that tribunals' power to grant a stay can be derived elsewhere.

[31] The third provision we consider as part of the context is s. 25 of the *Statutory Powers Procedure Act*. Subsection 25(1) provides that an appeal from a decision of a tribunal operates as a stay, unless: (i) another applicable statute or regulation provides to the contrary; or (ii) a competent body has ordered otherwise. The effect is automatic and by operation of the statute, without the need for an order staying the decision appealed from.

[32] Subsection 25(2) clarifies that an application for judicial review is not an appeal within the meaning of s. 25(1). Accordingly, the automatic stay called for by s. 25(1) does not apply in the case of an application for judicial review. This is so even if the automatic stay would not apply due to it being displaced by s. 10 of the *Securities Act* (discussed above) because s. 10 is a statutory provision that provides to the contrary.

[33] Staff submits that this distinction supports the conclusion that a decision that is the subject of a judicial review application cannot be stayed by the tribunal whose decision is being reviewed. We agree with Sharpe's response that even though no automatic stay occurs by operation of the statute, nothing in that section precludes a tribunal from granting a discretionary stay, assuming that the tribunal is properly authorized to do so.

[34] We therefore conclude that none of the three provisions, on its own, excludes the possibility that the Tribunal's authority to stay may be found elsewhere. We note Staff's submission that taking the various provisions together, as opposed to each in isolation, should compel us to find that we have no jurisdiction. We do not accept that submission, since we do not see a statutory scheme that is any more apparent holistically than can be discerned from one of the provisions on its own. The provisions are consistent with each other, in that none of them features exclusionary language, which would have been equally easy for the legislature to include.

[35] With that background, we turn now to consider each of s. 16.1(1) and s. 25.0.1 of the *Statutory Powers Procedure Act*, the two provisions that Sharpe relies on.

3.2.2 Subsection 16.1(1) of the *Statutory Powers Procedure Act*

3.2.2.a Introduction

[36] Subsection 16.1(1) of the *Statutory Powers Procedure Act* provides that a tribunal may make interim decisions and orders. Sharpe's request for a stay under s. 16.1(1) raises two issues:

a. does the provision empower tribunals to issue interim orders staying a decision; and

b. if so, would a stay of the Confidentiality Decision be an interim order?

[37] We will deal with each of these in turn. Through our analysis, we conclude that s. 16.1(1) does empower tribunals to issue interim orders staying a decision. However, we also conclude that for s. 16.1(1) to apply in this case, the order that would be the subject of the stay must itself be interim. In this case, the Confidentiality Decision is not interim. Accordingly, the power under s. 16.1(1) is not available to Sharpe on this motion.

[10] RSO 1990, c J.1

3.2.2.2.b Does s. 16.1(1) empower tribunals to issue interim orders staying a decision?

[38] We begin by examining whether s. 16.1(1) empowers tribunals to issue interim orders staying a decision.

[39] Staff describes s. 16.1(1) as a general provision that cannot be extended to stays, in the face of the various statutory provisions mentioned above that expressly deal with stays. Staff submits that in substance, what Sharpe seeks is interim relief in his judicial review application, not interim relief in this temporary cease trade proceeding. In Staff's submission, Sharpe's request here would stretch s. 16.1(1) beyond its breaking point.

[40] In response, Sharpe submits that s. 16.1(1) gives tribunals largely unfettered discretion to make interim orders, including interim stay orders.

[41] This Tribunal has not canvassed the issue in any of its previous decisions. Numerous decisions of other bodies have considered whether s. 16.1(1) authorizes substantive orders (*e.g.*, a stay), as opposed to other kinds of orders that are merely procedural in nature. *Toussaint v Ontario (Health and Long Term Care)*,[11] a decision of the Human Rights Tribunal of Ontario, reviews conflicting tribunal decisions on the question and adopts an interpretation of s. 16.1(1) that confers upon tribunals the power to make substantive interim decisions.[12] That tribunal, in reasons that were recently endorsed by the Divisional Court,[13] found that:

a. the broad language of s. 16.1(1) suggests an intention to confer broad powers;

b. there is nothing in s. 16.1(1) that suggests that the provision is limited to purely procedural questions;

c. the widespread presence of procedural provisions elsewhere in the *Statutory Powers Procedure Act* would make s. 16.1(1) redundant if s. 16.1(1) were limited to procedural orders; and

d. a statutory provision that is remedial should be given a fair, large and liberal interpretation as best ensures the attainment of the provision's objects.[14]

[42] We adopt that reasoning and conclude that s. 16.1(1) authorizes tribunals to grant substantive orders, including stays.

3.2.2.c Would a stay of the Confidentiality Decision be an interim order?

3.2.2.c.i Introduction

[43] As we have concluded, s. 16.1(1) authorizes the issuance of substantive orders, including stays. However, that authority authorizes only "interim" orders. The question remains whether the stay sought in this case would be an interim order. Staff says that it would not. We agree.

[44] To reach that conclusion, we break this question down into two parts:

a. was the Confidentiality Decision itself an interim order; and

b. if the Confidentiality Decision was not an interim order, could a stay of the Confidentiality Decision nevertheless be an interim order and therefore authorized by s. 16.1(1)?

[45] There is no explicit requirement that the order sought to be stayed is itself an interim order. However, we consider the analysis of whether the Confidentiality Decision is an interim order to be a helpful step in our analysis of whether the requested stay would be an interim order. Below, we explain in more detail why that is. Briefly, though, once a final order is made in a proceeding about a particular issue (even if that order is not the final, as in chronologically last, order in the proceeding), the tribunal will not return to the issue that was the subject of that final order. The issue that was the subject of that final order has been determined.

[46] Because the Confidentiality Decision finally determined the issue before the Tribunal, a stay of that decision cannot be "pending" (*i.e.*, awaiting) any further resolution by the Tribunal of the issue, which the Tribunal has resolved. Given that such a stay cannot be pending final determination by the Tribunal of the original issue, how could the stay be seen as interim? Conceivably, a stay could be made temporary, pending some other unrelated event in the proceeding, but Sharpe has not asked for such an order. He has asked for a stay pending an event outside the proceeding, *i.e.*, resolution of a question in the judicial review application. As we discuss below, we consider that misalignment of venues to be problematic for Sharpe's requested relief.

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11 2010 HRTO 2102 (***Toussaint***)
12 *Toussaint* at paras 14-31
13 *Dua v College of Veterinarians of Ontario*, 2021 ONSC 6917 at paras 22-33
14 *Legislation Act*, SO 2006, c 21, Sch F, s 64(1)

[47] For these reasons, we find it useful to examine whether the Confidentiality Decision was an interim or final order, before we consider the nature of a stay order itself.

3.2.2.c.ii Was the Confidentiality Decision itself an interim order?

[48] Staff submits that the Confidentiality Decision was not interim because the issue of confidentiality of the adjudicative record in this temporary cease trade proceeding has been finally disposed of. Even though the proceeding continues, that is only to deal with Staff's continuing request that securities of nine respondent entities be cease traded. There is no unresolved issue about confidentiality of the record. The issue of confidentiality of that record will not come back before the Tribunal in the context of this proceeding. There is no relationship between the question of whether the adjudicative record should be confidential and the question of whether the nine respondent entities should be prohibited from trading securities.

[49] More importantly, there is no pending claim for relief in respect of Sharpe; indeed, Staff has never sought any relief in respect of Sharpe during the life of this temporary cease trade proceeding, because the initial order suspended his registration with Bridging Finance Inc., but Sharpe was terminated before this proceeding was commenced.

[50] Accordingly, says Staff, the order dismissing Sharpe's request for confidentiality cannot be described as temporary or provisional, and it therefore does not meet the standard set by the Supreme Court of Canada in *Bell Canada v Canada (Canadian Radio-Television and Telecommunications Commission)*.[15] In that case, the court held that it is "inherent in the nature of interim orders that their effect as well as any discrepancy between the interim order and the final order may be reviewed and remedied by the final order."[16]

[51] That analysis is consistent with the words of s. 4 of the *Judicial Review Procedure Act*, quoted in paragraph [29] above. That section contemplates "interim orders … pending the final determination of the application". It cannot be said that the Confidentiality Decision, when made, was "pending" anything.

[52] That the order dismissing Sharpe's confidentiality request is not interim is further highlighted by the fact that Staff could at any time withdraw its request for the cease trade order against the nine entities. That request is the sole reason this temporary cease trade proceeding still exists. If Staff did withdraw its request, or if it let the current order expire on March 31, 2023, without seeking an extension, that would conclude this proceeding. The Tribunal would no longer have jurisdiction over the proceeding (except, for example, in the case of an application under s. 144.1 to revoke or vary the Tribunal decision), and the adjudicative record would persist. Sharpe's only recourse to have the adjudicative record treated as confidential would lie with the court, since the Tribunal's authority in this proceeding would have been exhausted (or, to use the Latin, the Tribunal would be *functus officio*).

[53] In rebutting Staff's position, Sharpe cites the Court of Appeal for Ontario's description of an "interlocutory" order (which is arguably analogous to an interim order).[17] The court held that an interlocutory order does not determine "the real matter in dispute between the parties".[18] Sharpe submits that the dismissal of his confidentiality request was merely an interlocutory procedural order, since it did not determine the real matter in dispute between the parties.

[54] In our view, the court's description undermines rather than supports Sharpe's position. Sharpe sought only one thing from the Tribunal in his original motion in this temporary cease trade proceeding. He asked that various material "be marked confidential and not be made available to the public", without time limitation. That was the only matter in dispute between Staff and Sharpe in this proceeding, so we cannot give effect to Sharpe's submission that the Confidentiality Decision did not determine the real matter in dispute.

[55] Sharpe did seek revocation of the s. 11 investigation order, but:

a. that request arose in another proceeding (*i.e.*, the proceeding that Sharpe commenced, in which he sought that revocation), not in this temporary cease trade proceeding; and

b. in any event, the question of whether or not the investigation order should continue to exist was disposed of in that other proceeding.

[56] Where a confidentiality order is made in a proceeding, it is often the case that the order is purely procedural and would not resolve any true dispute between the parties. For example, a party may ask the panel to consider evidence related to the party's health, and may ask the panel to keep that information confidential pursuant to s. 2(2) of the *Tribunal Adjudicative Records Act, 2019*,[19] or Rule 22(4) of the Tribunal's *Rules of Procedure and Forms*. That type of request for

15 [1989] 1 SCR 1722 (***Bell Canada***)
16 *Bell Canada* at 1752
17 *Drywall Acoustic Lathing Insulation Local 675 Pension Fund v SNC-Lavalin Group Inc*, 2020 ONCA 375 (***Drywall***) at paras 16-17
18 *Drywall* at para 16
19 SO 2019, c 7, Sch 60

confidentiality is important to the party but is entirely tangential to the issues being adjudicated and the relief sought by the applicant in that proceeding.

[57] Because it is common for confidentiality orders to be issued in similar circumstances, Sharpe's original request for a confidentiality order may "feel" procedural. But it is not. The question of whether or not the adjudicative record should be confidential was the core of the Confidentiality Decision (the decision that Sharpe seeks to stay). The Confidentiality Decision was therefore a final determination of the sole issue between Staff and Sharpe in this proceeding. As we discussed above, once the Confidentiality Decision was issued, the question of confidentiality was fully resolved. Accordingly, the Confidentiality Decision cannot be seen as interim.

[58] That conclusion aligns with the Supreme Court of Canada's description of an interim order, cited in paragraph [50] above, because the effect of the Confidentiality Decision would not be addressed in any way by the "final" (*i.e.*, chronologically last) order in this proceeding.

[59] As further illustration, this case is unlike *Dua*, the case referred to in paragraph [41] above. In that case, the Divisional Court affirmed that s. 16.1 authorized the tribunal to impose an interim suspension pending the final disposition of discipline proceedings against the respondent, Dr. Dua. In other words, the issue that was the subject of the interim order (the right of Dr. Dua to continue to practise) was the same issue that was to be determined at the end of the proceeding. That case fits squarely within the Supreme Court of Canada's description of an interim order.

3.2.2.c.iii Even though the Confidentiality Decision was not an interim order, could a stay of the Confidentiality Decision nevertheless be an interim order and therefore authorized by s. 16.1(1)?

[60] We must still address, though, whether the requested stay could be interim (and therefore authorized by s. 16.1(1)) even though the proposed subject of that stay (the Confidentiality Decision) was not. We conclude that in the circumstances of this case, the requested stay cannot be characterized as interim.

[61] Our reason for that conclusion overlaps with the discussion above relating to the nature of the Confidentiality Decision. Because there is no pending request for relief by Staff against Sharpe in this temporary cease trade proceeding, how could a stay of the Confidentiality Decision be interim? Interim pending what? Sharpe himself answers that question in his notice of motion and in his written submissions on this motion, in which he specifies that his request is for "an interim stay … pending the disposition of the judicial review application. [emphasis added]"[20]

[62] The misalignment of venues in that submission is problematic. It reinforces our view that in the same way the Confidentiality Decision did not conform to the Supreme Court of Canada's description of an interim order, a stay of that decision would not conform either. Specifically, there will be no future "final order" with respect to the stay against which the supposedly interim stay order could be measured.

[63] Once again, because Sharpe's requested stay would be temporary, pending another event, it may "feel" interim. However, where, as here, the event on which the temporary stay would depend is outside this temporary cease trade proceeding, the stay could not be seen as interim in the context of this proceeding. As we discussed above, this illogicality is highlighted by the possibility that the stay order would last longer than the very proceeding in which it arises. This temporary cease trade proceeding could end long before the court disposes of the judicial review application, and this proceeding could well end without any involvement by Sharpe, since there is no request for relief against him.

3.2.2.c.iv Conclusion about whether a stay of the Confidentiality Decision would be an interim order

[64] For all these reasons, we conclude that because the Confidentiality Decision was not an interim decision, and because the suggested contingent event is the disposition of a court proceeding involving only Sharpe and not the other respondents in this temporary cease trade proceeding, the requested stay cannot be interim in nature. Accordingly, s. 16.1(1) of the *Statutory Powers Procedure Act* does not apply and cannot support a stay of the Confidentiality Decision.

3.2.3 Section 25.0.1 of the *Statutory Powers Procedure Act*

[65] We turn now to the second provision on which Sharpe relies. Sharpe submits that s. 25.0.1 of the *Statutory Powers Procedure Act* also authorizes the Tribunal to grant the requested stay in this case. We disagree.

[66] Sharpe correctly submits that we ought to interpret the section broadly, but we must do so in a way that respects the boundaries set by the section's clear wording, enabling a tribunal "to determine its own procedures and practices", and therefore for that purpose to make orders "with respect to the procedures and practices that apply in any particular proceeding".

[20] Written submissions of David Sharpe at para 48

[67] In our view, the plain and ordinary meaning of these words indicates that they relate to how a hearing (or a proceeding consisting of multiple hearings) is run. The Confidentiality Decision was not a procedural ruling. It disposed of the substantive relief that Sharpe was seeking in the proceeding. We must point out again that the outcome in the Confidentiality Decision survives the proceeding; that is, the adjudicative record remains open to the public even after the proceeding concludes. The converse would be true as well – if we had disposed of Sharpe's request by ordering (without time limitation) that the adjudicative record would remain confidential, that order would have continued to be effective beyond the end of the proceeding.

[68] As we did with s. 16.1(1), we must consider not just the Confidentiality Decision, but more importantly the requested stay, when interpreting s. 25.0.1. If we were to accede to Sharpe's submission that s. 25.0.1 permits a stay in this case, we would have to read s. 25.0.1 as authorizing a tribunal to stay any of its own decisions, even when the tribunal had finally disposed of the issues addressed by its decision. That would be a broad power, and nothing in s. 25.0.1 would limit its applicability to situations where the party was seeking judicial review of the decision. We see no support for that interpretation in the statutory scheme.

[69] Further, in our view the plain and ordinary meaning of the words "practices and procedures that apply in any particular proceeding" cannot include a stay:

a. which may be granted only on satisfaction of an onerous three-pronged test (discussed below) that is inconsistent with the mundanity of those words; and

b. which the Federal Court of Appeal has described as "serious relief".[21]

[70] We were provided no authority to suggest that s. 25.0.1 could be relied on in these circumstances. We reject the submission that we should do so.

3.2.4 Conclusion on jurisdiction

[71] Before we conclude on the jurisdiction question, we wish to address one Tribunal decision that Sharpe cites. He submits that the Tribunal previously granted a respondent an order similar to the one he now requests. He refers to the Tribunal's 2010 order in *Re Boock*.[22] It appears from the order, which was issued without reasons, without any express reference to statutory authority, and on consent of Staff, that:

a. the Tribunal had made an earlier decision on a motion in the same proceeding;

b. the motion decision related to disclosure "regarding" one of the respondents;

c. the respondent commenced an application for judicial review of the motion decision; and

d. the Tribunal stayed the motion decision pending the court's decision in the judicial review application.

[72] We do not find the order to be of assistance in this proceeding, because:

a. it was on consent, and there is no indication that the Tribunal canvassed the issue before us;

b. it appears to relate to the obligations that parties to an enforcement proceeding have to each other to make certain disclosures (although in the absence of reasons we are not certain);

c. if we have correctly described the subject matter of the order in *Re Boock*, then that falls within the category of "procedures and practices" within a proceeding, as contemplated by s. 25.0.1 of the *Statutory Powers Procedure Act*, in that it does not determine any of the relief sought in that proceeding, but instead governs a procedural step along the path to the ultimate disposition of the proceeding.

[73] We therefore conclude, for the reasons set out above, that neither s. 16.1(1) nor s. 25.0.1 of the *Statutory Powers Procedure Act* empowers us to grant the requested stay.

[74] We note also that as we have discussed above, our conclusion on this question does not leave Sharpe without recourse in his pursuit of a stay of the Confidentiality Order. The Divisional Court's jurisdiction to grant a stay is less constrained than this Tribunal's. Sharpe could have, and still can, seek a stay from that court.

[75] Having concluded, therefore, that we have no jurisdiction to grant the requested stay, we could end our decision here. However, we have decided against Sharpe on two bases, one as much as the other. Accordingly, and in the event we are wrong about whether we have jurisdiction, we will analyze whether we should stay the Confidentiality Decision, if we

[21] *Janssen Inc v Abbvie Corporation*, 2014 FCA 112 (***Janssen***) at para 24
[22] (2010) 33 OSCB 2375

had the jurisdiction to do so. That question was vigorously argued by the parties and we have given it our careful consideration.

3.3 If the Tribunal has the jurisdiction to stay the Confidentiality Decision, should it do so?

3.3.1 Introduction

[76] With respect to the question of whether we should grant a stay, assuming we can, the parties agreed that we should apply the three-part test used where injunctive relief is sought.[23] That same test is also commonly used to determine whether a stay is appropriate. The test calls for three questions to be considered:

a. Is there a serious issue to be tried?

b. If the stay is not granted, will the requesting party suffer irreparable harm of a nature that would justify a stay?

c. Does the balance of convenience favour the granting of the stay?

[77] If the answer to one or more of the three questions is "no", then we should not grant the stay.

[78] In this case, we answer "yes" to the first question (*i.e.*, there is a serious issue to be tried), but "no" to the second and third questions. We will now address each of the three questions in turn.

3.3.2 Is there a serious issue to be tried?

[79] We begin by asking whether Sharpe's request for a stay, and by extension his application for judicial review, raise a serious issue. If the stay request is frivolous or vexatious, then the answer to this first question is "no", and we should deny the request.

[80] We agree with Sharpe's submission that in this case the answer to this first question is "yes".

[81] On the surface, Sharpe's judicial review application raises serious issues. He questions the proper interpretation of s. 17(6) of the *Securities Act*, and the interplay between the Tribunal's process and Sharpe's privacy rights.

[82] However, in submitting that there is no serious issue to be tried, Staff focuses not on the inherent merit (or lack of merit) of any particular argument that Sharpe intends to make on the judicial review application. Instead, Staff submits that none of Sharpe's intended arguments was previously made before the Tribunal. Accordingly, says Staff, the Divisional Court will refuse to hear any arguments from Sharpe, leaving no serious issue to be tried.

[83] We cannot reach that conclusion.

[84] In its written submissions, Staff reviewed in detail the arguments made before the Tribunal, and the grounds set out in the judicial review application. There clearly are differences, *e.g.*, the intended advancement of a constitutional argument before the court that was not made before the Tribunal.

[85] However, while there are differences, there is some overlap, a point not strenuously contested by Staff in its oral submissions. Indeed, one example will suffice to show the overlap. Both Sharpe's original motion (leading to the Confidentiality Decision) and his judicial review application explicitly cite, among other provisions, s. 2(2) of the *Tribunal Adjudicative Records Act, 2019*, which permits a Tribunal to order that a portion of an adjudicative record be treated as confidential under certain specified circumstances.

[86] There are other examples of overlap, which we need not review. Even if those examples were not clear, though, and while courts generally discourage the introduction of new arguments on appeal or on judicial review, the court always has the discretion to allow arguments not made before the Tribunal below.[24] Staff is correct in saying that the discretion is not often exercised, but in our view Staff goes too far in suggesting that not only will Sharpe not be entitled to advance new arguments, he will not be permitted to "supplement" arguments that he did make before the Tribunal.

[87] Given the interconnected nature of the issues in this case, and the fact that there are grounds referred to in the judicial review application that were cited before the Tribunal, we would consider it presumptuous to find that Sharpe will be precluded from making in court any of the arguments set out in his judicial review application. Further, any decision we might make about what the court might hear risks being inconsistent with the court's own decision on the point. We should avoid that risk. The court should be left to decide what arguments it is willing to consider.

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[23] *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311

[24] *Quan v Cusson*, 2009 SCC 62 at para 36

[88] We therefore cannot accept Staff's contention that the judicial review application is frivolous or vexatious. The application presents a serious issue to be tried.

3.3.3 If a stay is not granted, will Sharpe suffer irreparable harm of a nature that would justify a stay?

[89] We turn to the second prong of the three-part test. If a stay is not granted, will Sharpe suffer irreparable harm of a nature that would justify a stay? We conclude that he will not, primarily because the potential harm that Sharpe anticipates is harm that he has taken no steps to avoid, despite it long having been open to him to do so.

[90] The factual background is central to this question.

[91] Staff's application for a temporary cease trade order, first from the Commission exercising its executive function, and then as a request for the Tribunal to extend the order, includes two affidavits sworn by Daniel Tourangeau, a member of Staff. The first affidavit was sworn April 29, 2021, and it attached transcripts for two of the three days on which Sharpe was examined as part of Staff's investigation. The body of that affidavit describes some of the testimony that Sharpe gave. The second affidavit was sworn April 30, 2021, and it attaches as an exhibit the entire rough draft transcript of Sharpe's examination the previous day.

[92] Those same affidavits formed part of the record that the Commission filed with the court on its application for the appointment of a receiver.

[93] In its decision, the court not only appointed the receiver, it also required that both affidavits, with exhibits, be posted on the receiver's website. As a result, whatever concerns Sharpe may have had about the propriety of the Commission choosing not to obtain a s. 17 order before applying for a receiver, those concerns were, as a practical matter, superseded by the court's order. If Sharpe believed that the without-notice order was improperly obtained or should be varied, it was open to Sharpe, and continues to be open to him, to bring his concerns to the court. He has not.

[94] The exhibits to the first affidavit are no longer included in the version that is posted on the receiver's website. The complete version of the affidavit, including exhibits, was available for some period of time, but the record does not tell us for how long that was the case. At the hearing before us, counsel were unable to assist with any reasonable degree of certainty.

[95] The body of the first affidavit, as posted on the receiver's website, continues to contain the description of the substance of Sharpe's testimony.

[96] Whatever the full chronology may have been with respect to the public availability of the contents of the court file, there is no dispute before us that the material has been widely dispersed. In his written submissions before us, Sharpe acknowledged that his own compelled evidence and that of other compelled witnesses contained in the receivership application record was filed in the open court record on April 30, 2021, and posted on the receiver's website. In his application for judicial review, Sharpe notes that "the Compelled Evidence was posted on the case website established by [the receiver]… and was subject to widespread reporting by the media."

[97] We could not put it better than Sharpe's counsel did when he was asked at the December 2021 hearing why Sharpe had not asked the court for a sealing order: "[T]he horse was out of the barn and it completed a few laps at the field".

[98] A stay is a significant remedy. We respectfully adopt the conclusion of the Federal Court of Appeal that a party seeking a stay "must demonstrate in a detailed and concrete way that it will suffer real, definite, unavoidable harm [emphasis added]", since "it would be strange if a litigant complaining of … harm it could have avoided … or harm it still can avoid … could get such serious relief."[25]

[99] It was open to Sharpe, from the moment he became aware in May 2021 that the compelled evidence was in the court file and posted on the receiver's website, to take steps in court to have that portion of the record sealed and information removed from the website. It is still open to him to take those steps. He could have done so before or after this Tribunal's decision in March 2022, and he could have done so before or after the Confidentiality Decision in July 2022.

[100] We pressed Sharpe's counsel on this point, asking why we should grant a stay when Sharpe has consistently chosen not to seek relief from the court, when it is the court that controls the contents of the court file and the information the receiver posts on its website. Sharpe's counsel offered no satisfactory answer. We were told only that there may be different tests associated with information that has already been made public, an assertion that was not developed and that we do not find persuasive.

[101] We also asked why Sharpe did not, on this motion, put forward any evidence about the harm that Sharpe might suffer. In response, Sharpe's counsel pointed us to the decision of the Nova Scotia Court of Appeal in *Nova Scotia v O'Connor*,

[25] *Janssen* at para 24

in which the chambers judge observed that the concept of irreparable harm concerns itself with the nature of the harm rather than its magnitude.[26] We accept that proposition, but note that the judge was dealing with disclosure that is wrongful and unlawful.

[102] We do not and cannot conclude that the disclosure of the adjudicative record in this proceeding is wrongful or unlawful. This Tribunal has already made its decision that it was appropriate and lawful to make the record public in this temporary cease trade proceeding (as opposed to in the receivership application), for reasons set out in the Confidentiality Decision. It would be contrary to the important principle of legal finality and certainty for this panel now to find that continuing to make the adjudicative record available to the public is or would be wrongful. In contrast, a court to which a stay request was brought would be under no such constraint.

[103] It is also critical to assess whether further continued availability of the information would cause incremental harm. What if anything would be the incremental harm if:

a. the information is and has been publicly available all along (*e.g.*, the rough draft of the transcript of Sharpe's third day of examination, posted on the receiver's website); or

b. the substance of the information is described in an affidavit that is and has been publicly available all along (*e.g.*, Tourangeau's description of Sharpe's testimony from the first two days of examination, posted on the receiver's website)?

[104] We cannot conclude on a balance of probabilities that there would be any incremental harm, because Sharpe has not given us any assistance in identifying what that would be.

[105] We note further that there is no absolute confidentiality protection regarding material protected by s. 16 of the *Securities Act*. Subsection 17(6) of that statute permits disclosure in connection with a proceeding commenced under the *Securities Act*, and subsection 17(1) permits the Tribunal to authorize disclosure of otherwise protected material. While the protections of s. 16 are important, this Tribunal has already decided that there is no continuing need or public interest in preserving the confidentiality of the material.

[106] In any event, Sharpe has offered only vague and unsubstantiated speculation about what harm he might suffer, without even identifying a potentially harmful aspect of the adjudicative record that has not already been widely publicized. Further, he has offered no satisfactory answer to the significant concern that for almost the past year and a half he could have sought to avoid the harm he fears, by seeking relief from the court.

[107] We conclude that Sharpe fails to meet the second prong of the three-part test.

3.3.4 Does the balance of convenience favour granting a stay?

[108] We turn now to the third prong of the test. We ask whether the balance of convenience favours granting a stay, assuming we have jurisdiction to do so. We conclude that it does not, for two reasons.

[109] First, a stay is also available from the Divisional Court. If we were to grant a stay, we might reach conclusions that are inconsistent with what the court's findings will be on the merits of the judicial review application. That would be an undesirable outcome that could be avoided by Sharpe seeking his stay from the court rather than from this Tribunal.

[110] In canvassing this issue with the parties, we heard speculation that it might take longer to get before a judge to seek a stay than it would be to get a stay from this Tribunal. We did not find that argument persuasive given that no attempt was made and the parties had no specific information from the court.

[111] Secondly, we attach considerable importance to the need for transparency with respect to Tribunal proceedings, although we are mindful of the Divisional Court's conclusion in *Gaudet v Ontario (Securities Commission)* that the openness principle is unlikely to be seriously compromised by a relatively brief period during which the materials would be unavailable to the public.[27]

[112] In a number of the authorities cited to us, the concern was that a failure to grant a stay would render the earlier decision nugatory. In other words, and to paraphrase the point made earlier, it was submitted in those cases that if the stay were refused, the horse would be let out of the barn, and even a successful appeal of the original decision could not put the horse back in the barn.

[113] This case is not like those authorities. This Tribunal has already found, many months ago, that the information complained of has been widely available and reported on publicly for a considerable time. It is true that when considering irreparable harm we must recognize that continued public availability of information previously disclosed can be inherently harmful.

[26] *Nova Scotia v O'Connor,* 2001 NSCA 47 at para 16
[27] *Gaudet v Ontario (Securities Commission)*, (1990) 13 OSCB 1809 at para 8

However, it is common ground that the three prongs of the test are not silos or "watertight compartments",[28] and we observe that when assessing the balance of convenience (a highly discretionary exercise), the surrounding circumstances are important. In balancing competing principles, we can and should take account of the nature and magnitude of that harm, and whether the party seeking the stay has taken any steps to avoid that harm.

[114] Taking all of the above factors into account, we conclude that the balance of convenience favours Staff's position. Sharpe fails to meet the third prong of the test for a stay.

3.3.5 Conclusion as to whether the Tribunal should exercise its jurisdiction, if indeed it has jurisdiction to stay the Confidentiality Decision

[115] For the above reasons, we conclude that:

a. Sharpe's judicial review application raises a serious issue to be tried;

b. Sharpe has not demonstrated unavoidable and irreparable harm that would befall him if the stay were denied; and

c. the balance of convenience favours the transparency of the Tribunal's proceedings over the interests put forward by Sharpe.

[116] Therefore, even if this Tribunal has jurisdiction to grant the requested stay, we conclude that we should not do so.

4. CONCLUSION

[117] We conclude that we do not have jurisdiction to grant the stay that Sharpe requests. Even if we did have that jurisdiction, we would not exercise it, because of Sharpe's failure to satisfy the three-prong test outlined above.

[118] Sharpe's request for a stay of the Confidentiality Decision is dismissed.

Dated at Toronto this 25th day of November, 2022

"Timothy Moseley"

"William Furlong"

"Dale R. Ponder"

[28] *Circuit World Corp v Lesperance*, 1997 CanLII 1385 (ON CA)

B. Ontario Securities Commission

B.2
Orders

B.2.1 Vision Capital Corporation and Vision Market Neutral Alternative Fund

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 23, 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
VISION CAPITAL CORPORATION
(the Filer)

AND

VISION MARKET NEUTRAL ALTERNATIVE FUND
(the Fund)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Quebec, Newfoundland, and Yukon.

Interpretation

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

Representations

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

1. the Fund 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 Fund, 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 Fund, 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 Fund has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Fund 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 #: 2022/0495

B.2.2 Emerald Health Therapeutics, 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 28, 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
EMERALD HEALTH THERAPEUTICS, INC.
(the Filer)

ORDER

¶ 1 Background

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

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

(a) the British Columbia Securities Commission is the principal regulator for this application,

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland, and

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

¶ 2 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.

¶ 3 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.

¶ 4 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.

"Noreen Bent"
Chief, Corporate Finance Legal Services
British Columbia Securities Commission

OSC File #: 2022/0523

B.3
Reasons and Decisions

B.3.1 Instinet Canada Cross Limited

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the requirement to engage one or more qualified external auditors to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices – relief subject to systems reviews similar in scope to that which would have applied to an independent systems review – National Instrument 21-101 Marketplace Operation.

Applicable Legislation

National Instrument 21-101 Marketplace Operation, ss. 12.2, 15.1.

November 22, 2022

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA,
ALBERTA,
MANITOBA,
QUÉBEC AND
ONTARIO
(the Jurisdictions)

AND

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

AND

IN THE MATTER OF
INSTINET CANADA CROSS LIMITED
(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**) for relief from the requirements in the Legislation that the Filer, on a reasonably frequent basis and, in any event, at least annually, engage one or more qualified external auditors to conduct an independent systems review and prepare a report in accordance with established audit standards and best industry practices (collectively, an "**ISR**") for 2022 and 2023 inclusive (the **Exemptive Relief Sought**).

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

1. the Ontario Securities Commission ("**Commission**") is the principal regulator for this application, and

2. the decision is the decision of the principal regulator and evidences the decision of each other Decision Maker.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* 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. Instinet Canada Cross Limited ("**ICX**") is a corporation established under the laws of Canada and its principal business is to operate an alternative trading system ("**ATS**") as defined in National Instrument 21-101 *Marketplace Operation*;

2. The head office of ICX is located in Toronto, Ontario;

3. ICX is a member of the Investment Industry Regulatory Organization of Canada and the Canadian Investor Protection Fund, and is registered in each of the Jurisdictions in the category of investment dealer;

4. The ICX System is an ATS offering three order types – VWAP Cross, Conditional Orders and Continuous Block Cross – that do not affect the national best protected bid and best protected offer for the security traded;

5. The ICX System is not connected to any other marketplace and cannot affect another marketplace or be affected by another marketplace;

6. For each of its systems that supports order entry, order routing, execution, trade reporting, trade comparison, data feeds, market surveillance and trade clearing, ICX has developed and maintains:

- reasonable business continuity and disaster recovery plans;
- adequate internal controls over those systems; and
- adequate information technology general controls, including without limitation, controls relating to information systems operations, information security, cyber resilience, change management, problem management, network support and system software support;

7. In accordance with prudent business practice, on a reasonably frequent basis and, in any event, at least annually, ICX:
   - makes reasonable current and future capacity estimates;
   - conducts capacity stress tests to determine the processing capability of those systems to perform in an accurate, timely and efficient manner;
   - tests its business continuity and disaster recovery plans; and
   - reviews the vulnerability of the ICX System and data centre operations to internal and external threats including physical hazards, and natural disasters;
8. ICX's current trading and order entry volumes in the ICX System represent less than 2 percent of peak design capacity of the ICX System, and ICX has not experienced any failure of the ICX System;
9. ICX's current trade volume is currently substantially less than 1 percent of total market activity on Canadian equities marketplaces;
10. The estimated cost to ICX of an annual independent systems review by a qualified external auditor would represent a material impairment to ICX's business on an annual basis;
11. The ICX System is monitored 24 hours a day, 7 days a week to ensure that all components continue to operate and remain secure;
12. ICX shall promptly notify the Commission of any failure to comply with the representations set out herein;
13. The cost of an ISR is prejudicial to ICX and represents a disproportionate impact on ICX's revenue; and
14. ICX is not in default of securities legislation in any jurisdiction.

Decision

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

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

1. ICX shall promptly notify the Commission of any material changes to the representations set out herein, including any material changes to ICX's annual net income or to the market share or daily transaction volume of the ICX System; and
2. ICX shall, in each year from 2022 to 2023 inclusive, cause Instinet Incorporated to complete a review of the ICX System and of its controls, similar in scope to that which would have applied had ICX undergone an independent systems review and in a manner and form acceptable to the Commission, for ensuring it continues to comply with the representations set out herein and prepare written reports of its reviews which shall be filed with staff of the Commission no later than (i) 30 days after the report is provided to ICX's board of directors or audit committee, or (ii) the 60th day after the report's completion.

"Michelle Alexander"
Manager, Market Regulation
Ontario Securities Commission

B.3.2 Mackenzie Financial Corporation et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted to extend the time limit pertaining to the distribution of securities of investment funds under their simplified prospectus by 103 days – Due to administrative error, the funds failed to file a pro forma prospectus in accordance with the timelines stipulated for a renewal of a prospectus under the legislation, as a result of which the prospectus lapsed – Relief granted subject to a 90-day cancellation right being given to investors who purchased securities of the fund after the lapse date – Securities Act (Ontario).

Applicable Legislative Provisions

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

August 12, 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
MACKENZIE FINANCIAL CORPORATION
(the Filer)

AND

IN THE MATTER OF
MACKENZIE CHINAAMC ALL CHINA BOND FUND

AND

MACKENZIE TAX-MANAGED GLOBAL EQUITY FUND
(the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the time limit pertaining to the distribution of securities of the Funds under their simplified prospectus, fund facts and annual information form of the Funds dated June 18, 2021 (the **Prospectus**) be extended to September 29, 2022 (the **Exemption Sought**).

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

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

(ii) 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 (the **Other Jurisdictions** and together with the Jurisdiction, the **Jurisdictions**).

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, and National Instrument 81-102 *Investment Funds* 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:

Background Facts

The Filer

1. The Filer is a corporation amalgamated under the laws of Ontario with its head office in Toronto, Ontario.

2. The Filer is registered as an investment fund manager, portfolio manager, exempt market dealer and commodity trading manager in Ontario. The Filer is also registered as a portfolio manager and exempt market dealer in the Other Jurisdictions, as an investment fund manager in Newfoundland and Labrador and Québec, and as an adviser in Manitoba.

3. The Filer is the manager, trustee and portfolio manager of each Fund.

4. Each Fund is an open-ended mutual fund trust established under the laws of Ontario and is a reporting issuer as defined in the securities legislation of each of the Jurisdictions.

5. Neither the Filer nor any of the Funds are in default of securities legislation in any of the Jurisdictions, except as stated herein with respect to the lapse date of the Funds.

6. The Funds currently distribute securities in the Jurisdictions under the Prospectus. Due to an administrative error as further described below, the Funds failed to file a *pro forma* prospectus in accordance with the time lines stipulated for a renewal of a prospectus under the Legislation. As a result, the Prospectus of the Funds lapsed on June 18, 2022 (the **Lapse Date**).

7. The Filer is the manager of (i) 80 other funds (the **Mackenzie Funds**) that currently distribute their

securities under a simplified prospectus, fund facts and annual information form with a lapse date of September 29, 2022 (the **Mackenzie Funds Prospectus**). The Filer filed a *pro forma* prospectus for the Mackenzie Funds on July 29, 2022 (the **Mackenzie Funds Pro Forma Prospectus**) which included the Funds.

8. Under a decision dated May 31, 2022 (the **Prior Relief**), the Filer and 13 other funds it manages were granted relief which extended the lapse date of the prospectus of those other funds to September 29, 2022 to coincide with the lapse date of the Mackenzie Funds Prospectus in order to enable the Filer to consolidate the prospectus of the other funds with the Mackenzie Funds Prospectus and renew the prospectus of the other funds as part of the Mackenzie Funds Pro Forma Prospectus.

9. The Filer intended to include the Funds in their application for the Prior Relief to similarly facilitate the consolidation of the Prospectus of the Funds with the Mackenzie Funds Prospectus in order to streamline disclosure across the Filer's fund platform and reduce prospectus renewal, printing and related costs. However, due to an administrative error, the Funds were not included as part of the Filer's application for such exemption. In the absence of renewing the Prospectus of the Funds in accordance with the timelines stipulated for the renewal of a prospectus under the Legislation, and in the absence of a decision extending the Lapse Date of the Prospectus of the Funds, the distribution of securities of each of the Funds was required to cease on the Lapse Date.

10. While one of the Funds had $0 in gross sales from the Lapse Date to the date of this decision (the **Interim Period**), the other Fund had $3200 in gross sales during the Interim Period in a prospectused series that is only eligible for high net worth investors.

11. If the Exemption Sought is not granted, it would be necessary to prepare and file a preliminary prospectus in respect of the Funds in order to re-qualify the distribution of the Funds' securities and consolidate that filing with the Mackenzie Funds Prospectus in order to facilitate the distribution of the Funds in the Jurisdictions under the same prospectus.

12. It would be impractical to file a preliminary prospectus for the Funds and more efficient to grant the Exemption Sought in order to enable the Funds to continue the distribution of their securities under the Mackenzie Funds Pro Forma Prospectus, in respect of which a final prospectus (the **Final Prospectus**) is expected to be filed and a receipt issued.

13. There have been no material changes in the affairs of the Funds since the date of the Prospectus. Accordingly, the Prospectus of the Funds represents current information regarding the Funds.

14. Given the disclosure obligations of the Funds, should a material change in the affairs of any of the Funds occur, such change will be disclosed in an amendment to the Prospectus or incorporated in the Final Prospectus of the Mackenzie Funds Pro Forma Prospectus, as required under the Legislation.

15. New investors of the Funds will receive delivery of the most recently filed fund facts document(s) of the applicable Fund(s). The Prospectus will still be available upon request.

16. The Exemption Sought will not affect the accuracy of the information contained in the Prospectus or the Mackenzie Funds Prospectus and therefore will 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, provided that:

(a) Every securityholder of record of the Funds who purchased securities of the Funds in any Jurisdiction in the Interim Period (each, an **Affected Securityholder**) is provided with the right

i. to cancel (**Cancellation Right**) such trades within 90 days of the receipt of a statement (the **Statement of Rights**) describing the Cancellation Right, which is to be mailed by the Filer to the Affected Securityholder, and

ii. to receive, upon the exercise of a Cancellation Right the purchase price paid on the acquisition of such securities and all fees and expenses incurred in effecting such purchase;

(b) The Filer mails the Statement of Rights and a copy of this decision document to each Affected Securityholder no later than 10 days after the date of this decision; and

(c) If the net asset value per security of the relevant Fund on the date that an Affected Securityolder exercises the Cancellation Right is less than the price per security paid by the Affected Securityholder at the time of purchase, the Filer shall reimburse the difference to the Fund.

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

Application File #: 2022/0370

B.3.3 Gluskin Sheff + Associates Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations (NI 31-103) – relief from the requirement in section 11.2 of NI 31-103 to designate an individual to be the ultimate designated person (UDP), and instead be permitted to designate two individuals as UDPs in respect of two distinct operational divisions of the Filer.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 11.2 and 15.1.

November 22, 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
GLUSKIN SHEFF + ASSOCIATES INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief, pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), from the requirement contained in section 11.2 of NI 31-103 to designate an individual to be the ultimate designated person (**UDP**) and instead permit the Filer to designate and register two individuals as UDP in respect of two distinct lines of securities business of the Filer (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 all of the jurisdictions in Canada outside of Ontario (together with the Jurisdiction, the **Filing 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 with its head office located in Toronto, Ontario.

2. The Filer is registered in each of the provinces and territories as a portfolio manager (other than Prince Edward Island and Nunavut) and as an exempt market dealer (other than Prince Edward Island, Nunavut and the Yukon) and is registered in Ontario, Quebec and Newfoundland and Labrador as an investment fund manager. The Filer is also registered in Ontario as a commodity trading manager. Additionally, the Filer is regulated as an investment advisor by the U.S. Securities and Exchange Commission.

3. The Filer is wholly owned by Onex Corporation. Onex Corporation was founded in 1984 by Gerry Schwartz to make private equity investments in companies located primarily in North America and today operates from offices located in Toronto (established in 1984), New York (established in 1986), New Jersey (established in 2007) and London (established in 2012). Onex Corporation shares trade on the Toronto Stock Exchange under the stock symbol ONEX.

4. The Filer is not in default of any requirements of securities legislation in any jurisdiction of Canada.

Operational Structure

5. The Filer operates two distinct lines of securities business based on the nature of the services provided:

   (a) one business line referred to as the **Private Client Division** through which the Filer: (i) offers fully discretionary accounts that currently invest in equity, fixed income, alternative credit and alternative equity investment products managed by the Filer or its affiliates (the **Proprietary Funds**) and may in the future invest in

investment products managed by other fund managers or directly in equity, fixed income and other securities; and (ii) distributes interests in the Proprietary Funds to discretionary accounts managed by the Filer (where determined to be appropriate for the account(s)) and directly to non-discretionary investors as an exempt market dealer. The Private Client Division serves as a wealth manager for primarily high net worth and ultra high net worth clients through constructing and optimizing client portfolios, offering investment advice and execution of investments, and also provides financial and wealth planning services including estate and trust planning, tax planning, retirement analysis and philanthropy planning; and

(b) the other business line referred to as the **Investment Management Division** (and along with the Private Client Division, the **Divisions**, and each, a **Division**), through which the Filer identifies investment opportunities, creates and manages the Proprietary Funds and is responsible for risk management and oversight of the Proprietary Funds, which includes: (i) establishing the product mandate; (ii) monitoring adherence to the mandate; and (iii) conducting the investment activities of the product.

6. The Filer began dividing its activities among the two Divisions in the first quarter of 2022. Each Division has or will have separate and distinct senior management and operating structures. As of June 30, 2022, the Filer had 162 employees with 57 employees dedicated to the Private Client Division on a full-time basis (including 19 registrants) and 20 employees dedicated to the Investment Management Division on a full-time basis (including 10 registrants), and the remaining employees providing administrative, back office and middle office services to both Divisions. As of June 30, 2022, the Filer had approximately CAD$7.1 billion in assets under management.

7. Given that each Division is functionally a stand-alone operation within the Filer's business, and the historical annual growth of the Filer's business, as described above, the Filer seeks to ensure that its operational structure remains aligned with its business model while effectively meeting the policy objectives of NI 31-103.

The UDPs

8. Currently, the Divisions share the same UDP and Chief Compliance Officer (the CCO). The Filer does not have a CEO; instead, the head of the Private Client Division of the Filer is currently the UDP of the Filer, and the head of the Investment Management Division of the Filer is the Chief Investment Officer of the Filer.

9. If the Exemption Sought is granted, the Filer intends to have two UDPs. The head or most senior officer of each Division will be the UDP of their respective Division (together, the Division Heads).

10. The Division Heads will each have the role that is the equivalent of a chief executive officer in respect of the Division for which they are responsible and will be the most senior and final decision maker for their Division. Each Division Head fulfills the following roles for their respective Division:

(a) provides clear leadership and sets the tone at the top for the business lines;

(b) is the person that management within the business line reports to;

(c) implements the objectives, strategy and plans for the business lines;

(d) promotes compliance with industry rules and applicable securities laws;

(e) supervises the activities of the Filer directed toward ensuring compliance with industry rules and applicable securities law requirements;

(f) is responsible for the overall conduct of and the supervision of its employees;

(g) ensures that supervisory policies and procedures are developed and implemented and adequately reflect the regulatory requirements; and

(h) has accountability for reporting to the Filer's Board of Directors with respect to the Division.

11. There will be no line of reporting between the Division Heads. Each Division Head will have direct access and will report independently to the Board of Directors of the Filer in respect of the Division for which they are responsible. David Kelly, who is expected to serve solely as the UDP of the Private Client Division, will step down from the Board of Directors of the Filer prior to his appointment as the UDP of the Private Client Division. While it is anticipated that David Kelly will be the UDP of the Private Client Division and Peter Zaltz will be the UDP of the Investment Management Division, the Exemption Sought is for any person who may act in the capacity of a Division Head.

12. The Filer's compliance team (the Compliance Team) has been, and will continue to be, led by a single CCO. The Compliance Team serves both Divisions and is supported and reinforced by the reporting structure that Onex Corporation has adopted across all of its business lines (each, an

Onex Business Line). The legal and compliance functions of each Onex Business Line (including the Filer) report to the General Counsel of Onex Corporation (the Onex GC) in her capacity as the most senior legal and compliance executive of Onex Corporation and to the board of directors of the relevant Onex Business Line. While the Office of the Onex GC will be available to the UDPs and CCO of the Filer, the Onex GC is not expected to be involved in the day-to-day regulatory compliance of the Filer, and such responsibility currently resides, and will continue to reside, with the CCO of the Filer. The CCO of the Filer will have direct access to each UDP and the Board of Directors of the Filer.

13. No other executive officer of the Filer will have authority to overrule a decision of the applicable Division Head or control either of the Division Heads' access to the Board of Directors of the Filer.

Reasons for the Exemption Sought

14. Under section 11.2 of NI 31-103, a registered firm is required to designate an individual to be the UDP and the UDP must be: (i) the chief executive officer (the CEO) or, if the firm does not have a CEO, an individual acting in a capacity similar to a CEO; (ii) the sole proprietor of the registered firm; or (iii) the officer in charge of a division of the registered firm, if the activity that requires the firm to register occurs only in the division and the firm has significant other business activities (the UDP Requirement).

15. Granting the Exemption Sought would be consistent with the policy objectives that the UDP Requirement is intended to achieve because:

    (a) The Divisions are independent operations that are distinct from each other and conducted on a significant scale; and

    (b) The Division Heads shall be, effectively, the most senior executive members of their respective Divisions.

Decision

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

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

    (a) Each Division shall have its own UDP, who shall be the equivalent of the chief executive officer in respect of the Division for which they are the UDP;

    (b) Only one individual shall be the UDP of each Division;

    (c) Each UDP has direct access to the Board of Directors of the Filer; and

    (d) Each UDP shall fulfill the responsibilities set out in section 5.1 of NI 31-103, and any successor provision thereto, in respect of the Division for which they are designated UDP.

"Felicia Tedesco"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2022/0403

B.3.4 Guardian Capital LP and the Funds listed in Schedule A

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 an extension of a prospectus lapse date by 98-days in order to facilitate the incorporation of audited annual financial statements in the filing of the renewal prospectus documents so as to not incur the costs associated with a review of the unaudited interim financial statements – no conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 62(5).

November 17, 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
GUARDIAN CAPITAL LP
(the Filer or Manager)

AND

IN THE MATTER OF
THE FUNDS LISTED IN SCHEDULE A
(each a Fund, collectively the Funds)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of the Funds, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) that the time limit for the renewal of the simplified prospectus of the Funds dated January 6, 2022 (the Prospectus) be extended to the time limit that would apply if the lapse date of the Prospectus was April 14, 2023 (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:

1. The Filer is an Ontario limited partnership. The general partner of the Filer is Guardian Capital Inc., an Ontario corporation. The Filer's head office is located in Toronto, Ontario.

2. The Filer is registered as a portfolio manager and an exempt market dealer in each province of Canada, an investment fund manager in each of Ontario, Québec, and Newfoundland and Labrador, and a commodity trading manager and a commodity trading counsel in Ontario. The Filer is the investment fund manager of the Funds.

3. Each Fund is a mutual fund for purposes of National Instrument 81-102 *Investment Funds* established as a trust under the laws of the Province of Ontario, and is a reporting issuer as defined in the securities legislation of each of the Jurisdictions.

4. Neither the Filer nor any of the Funds are in default of securities legislation in any of the Jurisdictions.

5. The Funds currently distribute securities in the Jurisdictions under the Prospectus.

6. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the Act), the lapse date of the Prospectus is January 6, 2023 (the Lapse Date). Accordingly, under subsection 62(2) of the Act, the distribution of securities of each of the Funds would have to cease on the Lapse Date unless: (i) the Funds file a pro forma prospectus at least 30 days prior to the Lapse Date; (ii) the final prospectus is filed no later than 10 days after the Lapse Date; and (iii) a receipt for the final prospectus is obtained within 20 days of the Lapse Date.

7. The fiscal year-end of each of the Funds is December 31 and, pursuant to section 2.2 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, the annual financial statements and auditor's report are required to be filed on or before the 90th day after each Fund's most recently completed financial year, which for each of the Funds will be its first financial year-end of December 31, 2022 (the 2022 Fiscal Year-End).

8. It is expected each Fund will receive the written consent of its auditor at the same time that the

financial statements and auditor's report for the 2022 Fiscal Year-End are issued, which is expected to occur on or about March 30, 2023.

9. As audited financial statements will not be ready by the Lapse Date, the Funds will need to incorporate by reference unaudited interim financial information into their final simplified prospectus. In accordance with section 3.1.2 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (NI 81-101), in order to incorporate by reference the interim unaudited financial statements into the Funds' final simplified prospectus, those interim unaudited financial statements must be reviewed by the Funds' auditor in accordance with the relevant standards set out in the Handbook of the Canadian Institute of Chartered Accountants for a review of financial statements.

10. Accordingly, if the Exemption Sought is not granted, the Funds' auditor will be required to review each of the Funds' interim financial statements. In doing so, additional costs will be incurred by the Manager and these costs will recur annually.

11. Rather than facing this audit challenge each year, it would be more efficient and cost effective to extend the Lapse Date to April 14, 2023. This extension will provide the time necessary for the auditor to complete the audit of each of the Funds' financial statements for the 2022 Fiscal Year-End, and for the Manager to prepare and file the final prospectus and fund facts, along with the written consent of the auditor, as required by NI 81-101.

12. In addition, the extension of the Lapse Date would provide the Filer with additional time to prepare certain year-over-year performance data based on the audited annual financial statements each year, which would help to ensure that investors receive more accurate information on the performance of each of the Funds.

13. There have been no material changes in the affairs of the Funds since the date of the Prospectus. Accordingly, the Prospectus and current fund facts of the Funds represents current information regarding the Funds.

14. Given the disclosure obligations of the Funds, should a material change in the affairs of any of the Funds occur, the Prospectus and current fund facts document(s) of the applicable Fund(s) will be amended as required under the Legislation.

15. New investors in the Funds will receive delivery of the most recently filed fund facts document(s) of the applicable Fund(s). The Prospectus will still be available upon request.

16. The Exemption Sought will not affect the accuracy of the information contained in the Prospectus or fund facts document(s) 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
Ontario Securities Commission

Application File #: 2022/0488

Schedule A

The Funds

Sustainable Balanced 40/60 Fund
Sustainable Balanced 60/40 Fund
Sustainable Growth 80/20 Fund
Sustainable Growth 100 Fund
Sustainable Income 100 Fund
Sustainable Income 20/80 Fund

B.3.5 European Stability Mechanism and European Financial Stability Facility

Headnote

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

Applicable Legislative Provisions

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

November 11, 2022

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

AND

IN THE MATTER OF
THE PROCESS FOR EXEMPTIVE RELIEF
APPLICATION
IN MULTIPLE JURSIDICTIONS

AND

IN THE MATTER OF
EUROPEAN STABILITY MECHANISM
(ESM)
AND
EUROPEAN FINANCIAL STABILITY FACILITY
(EFSF)
(the Filers)

DECISION

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

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

7. The EFSF's long-term debt is currently rated AA by S&P, Aaa by Moody's and AA by Fitch Ratings.

8. Following the creation of the ESM in 2012, it was decided that any new requests for financial assistance would be handled by the ESM only. The period for EFSF to enter into new loan agreements ended on June 30, 2013, but its funding currently extends until 2070. As of July 1, 2013, the EFSF may no longer engage in new financing programs or enter into new loan facility agreements. From that date, the ESM is the sole and permanent mechanism for responding to new requests for financial assistance by the EFSF Member States, plus Latvia and Lithuania who joined the euro zone after the creation of the EFSF (together, the **ESM Member States**). The EFSF will remain active in order to (i) receive loan repayments from beneficiary countries, (ii) make interest and principal payments to holders of EFSF bonds, and (iii) roll over outstanding EFSF bonds, as the

maturity of its outstanding loans is longer than the maturity of bonds issued by the EFSF. The EFSF will be dissolved and liquidated when all financial assistance provided to EFSF Member States and all funding instruments issued by the EFSF have been repaid in full. Under its current terms, financial assistance that has been provided by the EFSF may be outstanding until as long as 2070. The final maturity for the financial assistance provided by the EFSF is 2040 for Portugal, 2042 for Ireland, and 2070 for Greece.

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

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

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

12. Following a request for stability support by an ESM Member State, the European Commission (in liaison with the European Central Bank) is mandated by the ESM to make an initial assessment of the application for financial assistance. They assess the risk to financial stability of euro area as a whole or of its member states, whether the applicable ESM Member State's public debt is sustainable (assessed, wherever appropriate, together with the International Monetary Fund), and its actual or potential financing needs. Based on this assessment, the Board of Governors of the ESM (the **ESM Board of Governors**) decides whether to grant (in principle) support in the form of a financial assistance facility. The ESM then entrusts the European Commission (in liaison with the European Central Bank) with the task of negotiating a memorandum of understanding (**MoU**) detailing the policy conditionality. The managing director of the ESM (the **ESM Managing Director**) then makes a proposal for adoption by the ESM Board of Governors for a financial assistance facility agreement, including the financial terms and conditions of the financial assistance and the choice of instruments. The ESM Board of Governors also approves the MoU. Financial assistance is provided only after ensuring compliance with the policy conditions.

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

14. The ESM's total subscribed capital is €704.8 billion, which consists of paid-in capital of €80.5 billion and committed callable capital of €624.25 billion. The consolidated maximum lending capacity of the ESM and EFSF is €700 billion. The ESM's maximum lending capacity, subject to regular review by the ESM Board of Governors (the most recent one carried out in June 2022), is €500 billion. Thus, the ESM's subscribed capital exceeds the ESM's maximum lending capacity set out in the ESM Treaty by more than 40%. The ESM's paid-in capital is not available for on-lending, but is maintained to protect creditors. Its committed callable capital is subject, among other safeguards, to an emergency capital call to avoid default on any ESM payment obligation, to be paid within seven days of receipt.

15. The ESM's long-term debt is currently rated AAA by S&P, Aaa by Moody's and AAA by Fitch Ratings.

16. In case of the ESM, losses arising in its operations shall be charged against:

    (a) first, the reserve fund;

    (b) secondly, the paid-in capital; and

    (c) lastly, an appropriate amount of authorised unpaid capital, called by the ESM Managing Director according to the procedure set out in the ESM Treaty.

17. In order to avoid default, the ESM has strict liquidity rules so as to cover liabilities falling due over the next 12 months. In case of imminent default, the ESM Managing Director may call authorised unpaid capital.

18. In case of a capital call, each ESM Member State is required to provide funds in proportion to its initial capital contribution. In the event of a shortfall due to an ESM Member State not providing such funds, this process is continued through additional capital calls to contributing ESM Member States in the same proportion until the ESM has all required funds.

19. EFSF also has liquidity rules so as to cover liabilities falling due over next 12 months. The EFSF may call guarantees in case of an imminent default, and the trustee may call guarantees after a default. For the EFSF guarantees, each guaranteeing EFSF Member State is requested, 8 to 10 business days before funds are needed, to provide its proportionate share of the required funds, based on its contribution key, within 2 business days. If there is a shortfall, each guaranteeing EFSF Member State that provided

funds following the first request is requested to provide its proportionate share of the shortfall, again based on its contribution key. This process continues until the EFSF has the required funds. The requests in each case are not limited to the EFSF Member States with high credit ratings that have an over-guarantee contribution key, although, as stated above, the intent is for all such over-guarantee contribution keys to cover, in aggregate, the total amount of the indebtedness.

20. The Basel Committee on Banking Supervision has included the Filers in the list of entities receiving a 0% risk weight under the Basel consolidated framework. The Filers' securities will also be included as Level 1 High Quality Liquid Assets (**HQLA**) under the Basel Committee's liquidity coverage ratio (**LCR**) framework. The European Banking Authority, under its role in providing assessment on uniform definition on LCR, has recommended that euro notes issued by the Filers be considered as "Extremely High Quality Liquid Assets". The EU has assigned a 0% risk weight to exposures to the ESM and the EFSF in Regulation (EU) No 575/2013 on prudential requirements for credit institutions and investment firms.

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

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

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

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

Decision

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

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

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

(b) the debt securities are distributed:

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

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

The Exemption Sought shall terminate on the coming into force of material amendments to paragraph 2.34(2)(b) of NI 45-106.

"Marie-France Bourret"
Manager, Corporate Finance
Ontario Securities Commission

B.3.6 TSAG ESOP Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – passport application filed by issuer for relief from the prospectus requirement in connection with the distribution of securities of the issuer to employees, directors, executive officers, consultants and associates of a partnership or a related entity of the partnership – the issuer's only business is to hold an interest in the partnership – Relief granted subject to certain conditions.

Applicable Legislative Provisions

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

November 28, 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
TSAG ESOP INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the prospectus requirement under section 53 of the *Securities Act* (Ontario) and the equivalent provision under the securities legislation of each of the other provinces and territories of Canada does not apply to issuances of the Filer's common shares (the **Common Shares**) to Calgary Employees (as defined below)(the **Requested Exemptive Relief**).

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

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

(b) the Filer has provided notice that section 5.4(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

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:

TSAG and the Smith + Andersen Group

1. The Smith + Andersen Group (**TSAG**) is an Ontario partnership, that owns and operates a Canadian engineering firm primarily through "local partnerships" or other entities (the **Local Partnerships** and each, a **Local Partnership**) which have been formed to serve as the principal contracting and operating entities for the delivery of engineering services for projects located in particular geographic locales by TSAG (TSAG and such local entities collectively, the **Group**).

2. Local partnerships are currently in place for Vancouver, Edmonton, Winnipeg, London (Ontario), Toronto, Ottawa and Halifax.

3. Each Local Partnership is intended to have one or more "local" partner(s), each being a corporation owned by a professional engineer or principal who works out of an office located in the locale of the particular Local Partnership. The Edmonton, Winnipeg and Halifax Local Partnerships currently do not have a local partner in place.

4. In each instance, an applicable local partnership agreement between TSAG and each Local Partnership provides for TSAG to be constituted as the managing partner with authority to direct the activities of the Local Partnership. In addition, TSAG is entitled to exercise a majority of the votes held of each Local Partnership and, as such, each Local Partnership is "controlled" by TSAG and is an "affiliate" of TSAG.

5. Contract and administrative (for example, back office) services for each Local Partnership and, as required, additional professional services, are provided to the Local Partnership by the Toronto Local Partnership (**Smith and Andersen Consulting Engineering**) which is the most significant local partnership in the Group. There are approximately 600 individuals employed by members of the Group (the **Employees**).

6. The business of the Group in and around the City of Calgary is not conducted through a Local Partnership but rather is carried on by Smith + Andersen (Calgary) Ltd. (**Calgary Co**.) which is an Alberta corporation that employs a total of

approximately 50 people who are resident in Alberta (the **Calgary Employees**).

7. Calgary Co. was originally formed as a spin-off from the Toronto office of TSAG's predecessor (which was then the only locale where the business was operating) when one of the employees of the predecessor left the Toronto office to form a branch in Calgary. This occured before the formation of TSAG and the Group structure under Local Partnerships, including Smith and Anderson Consulting Engineering.

8. Calgary Co.'s corporate name originally included the name of the principal of the TSAG predecessor partner who remained in Toronto (the **Toronto Principal**) and the TSAG predecessor employee who left the Toronto office to form a branch in Calgary (the **Calgary Principal**, and together with the Toronto Principal, the **Original Shareholders**).

9. Upon the retirement of the Calgary Principal, the corporate name was changed to the current name of Calgary Co. The continuing use by Calgary Co. of "Smith + Andersen" as part of its corporate name is authorized by a license agreement between TSAG and Calgary Co. dated May 25, 2022.

10. Share ownership of Calgary Co. was originally shared between the Original Shareholders. The Toronto Principal subsequently joined with others to form Smith and Andersen Consulting Engineering and later TSAG. The shares originally held by the Toronto Principal are now held in JSA Energy Analysts Inc. (**JSA**), which is owned by certain corporate partners of TSAG (as described below).

11. Over the years, as new engineers or principals joined Calgary Co., Calgary Co. issued additional shares to shareholders thereby diluting the interests of the Original Sharheolders. Collectively, holding companies for local engineer or principals now hold 80% of the issued shares of Calgary Co. with JSA now holding 20% of the issued shares of Calgary Co..

12. The issued shares of JSA are held by D. I. Smith Engineering Inc., Farbridge Engineering Inc. and Kevin Sharples Engineering Inc. being the partners of TSAG which collectively hold 65% of the voting partnership interests of TSAG and thus exercise control over TSAG.

13. JSA has agreed to the transfer of its 20% ownership interest in Calgary Co. to TSAG at fair market value, effective June 1, 2022 (the **JSA Transaction**). The JSA Transaction is anticipated to be completed by no later than November, 2022.

14. Neither JSA, while a shareholder of Calgary Co., nor TSAG, upon its acquisition of the shares of Calgary Co. currently held by JSA, exercise or will exercise de facto control over Calgary Co. Calgary Co. is not currently a related entity or affiliate of TSAG or of the Filer, nor is it expected to be following completion of the JSA Transaction. .

15. Calgary Co. markets its services and operates its business of the Group in and around the City of Calgary, using intellectual property consisting of trademarks and trade names licensed by TSAG as well as the same contract and administrative (back office) services and, as required, additional professional services, provided by Smith and Andersen Consulting Engineering. Calgary Employees are given access to the same TSAG and Group information database/platform which is accessible by all other Employees and are treated in all material respects in a manner equivalent to other Employees. . Calgary Employees have been informed of and have familiarity with TSAG generally. Included in the package of material made available to Eligible Participants, including Eligible Calgary Co. Employees, is general information about TSAG, its business operations and legal structure.

16. With a view to realizing the benefits of better aligning the interests of the Employees, management and principals of each Local Partnership with the business of the Group, as well as the Calgary Employees with the Group, TSAG has implemented the TSAG ESOP Inc. EMPLOYEE SHARE OWNERSHIP PLAN 2022 (the **Plan**). The Plan is intended to enable all eligible Employees, including eligible Calgary Employees (together, the **Eligible Participants**), to acquire shares of the Filer and thereby indirectly acquire and hold an equity interest in TSAG.

17. None of TSAG or its affiliates or the Local Partnerships is a reporting issuer in any jurisdiction in Canada and none of TSAG or its affiliates or the Local Partnerships intends to become a reporting issuer in any jurisdiction in Canada.

The Filer

18. The Filer is a corporation formed under the laws of Ontario and is authorized to issue an unlimited number of common shares and an unlimited number of control shares.

19. The Filer is not in default under the Legislation or the securities legislation of any of the other provinces and territories of Canada.

20. The Filer does not intend to become a reporting issuer in any jurisdiction in Canada.

21. The Filer is not a related entity (as defined in section 2.22 of National Instrument 45-106 *Prospectus Exemptions*) of Calgary Co. or an affiliate (as defined in section 1.3 of Multilateral Instrument 62-104 *Take-Over Bids and Issuer Bids*) of Calgary Co.

22. In order for the participation by Eligible Participants in the equity of TSAG to be attractive, effective and efficient from both a tax and limitation-of-liability perspective, the Filer, a newly incorporated entity, was formed to offer its Common Shares to Eligible Participants pursuant to the terms of the Plan.

23. As contemplated in the Plan, the equity participation by Eligible Participants is to be effected by the voluntary subscription for and acquisition of Common Shares of the Filer by Eligible Participants. The subscription proceeds are then used by the Filer to acquire a partnership interest in TSAG. This corporate structure for the holding of the equity interest by the Filer in TSAG mirrors that used by the other holders of partnership interests in TSAG.

24. The Filer is anticipated to acquire and hold up to a 5% partnership interest in TSAG. The Filer's sole business is participating as a partner in TSAG.

25. The sole asset of the Filer will be its partnership interest in TSAG.

26. Eligible Participants that subscribe for Common Shares of the Filer pursuant to the Plan become shareholders of the Filer (each, a **Shareholder**, and collectively, **Shareholders**) and will become parties to a unanimous shareholder agreement (the **USA**) with the Filer that, among other things, restricts the transfer and ownership of the securities of the Filer acquired pursuant to the Plan.

27. In certain circumstances, including in the case of termination of employment, Shareholders may be required under the USA to sell their Common Shares of the Filer to the Filer for cancellation. The price for Common Shares sold by departing Employees and Calgary Employees is established annually by the management of TSAG in reliance on the book value of TSAG as determined by TSAG's accountants.

28. Under the Plan, in May of each year that Common Shares of the Filer are made available for purchase, Eligible Participants who express an interest in subscribing for such shares will receive electronically from the Filer the following materials:

    a. a Group overview document

    b. a copy of the Plan

    c. a summary of the income tax implications of subscribing for Common Shares of the Filer

    d. an intent to subscribe and deposit agreement

    e. a copy of the USA

    In addition, in November of each year, Eligible Participants who agree to subscribe for Common Shares of the Filer will receive electronically from the Filer the following materials:

    a. shareholder agreement joinder

    b. subscription agreement

    c. receipt for balance of subscription funds

29. Prior to subscribing for Common Shares of the Filer under the Plan, Eligible Participants will receive electronically from the Filer a package of information that includes, at minimum:

    a. a Group overview document

    b. a copy of the Plan

    c. a summary of the income tax implications of subscribing for Common Shares of the Filer under the Plan

    d. a copy of the USA

30. Under the Plan, Shareholders of the Filer will receive the annual financial statements of the Filer on an ongoing basis.

31. The equity participation structure afforded by the Plan is anticipated to be an effective means to attract, incentivize and retain Eligible Participants who are critical to the overall success of TSAG and the Group as a whole.

32. TSAG and the Filer believe that allowing all Eligible Participants to participate in the equity of the TSAG is critical to the ongoing success of TSAG and the Group as a whole.

33. The issuance of Common Shares by the Filer to Calgary Employees pursuant to the Plan will be deemed to be a "distribution" requiring the filing of a prospectus unless an exemption from the prospectus requirements is available under the Legislation. There is no exemption available to the issuance of the Common Shares of the Filer to the Calgary Employees since Calgary Co. is not a related party to or an affiliate of the Filer. In contrast, since all other Employees are employed by related entities or affiliates of TSAG/the Filer by virtue of the current ownership structure, issuances to such Employees will be exempt from the prospectus requirement.

34. The Filer has considered whether under National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) and the Legislation, it could be considered to be engaged in or holding itself out as engaging in the business of trading in securities and therefore required to register as a dealer, rely on an exemption from the dealer registration requirement or seek exemptive relief from the dealer registration requirement. In light of the particular facts and circumstances of the Filer,

including the fact that it does not trade in securities frequently, does not receive any remuneration for trading in securities, does not act in an intermediary capacity, does not produce or intend to produce a distinct profit from trading in securities, and does not employ or otherwise contract with persons to perform activities on its behalf that are similar to those performed by a registrant, and having considered the guidance in section 1.3 of the Companion Policy to NI 31-103, the Filer has concluded that it should not be considered to be engaged in registrable activities and therefore does not require relief from the dealer registration requirement of the Legislation.

Decision

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

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

1. Calgary Employees are not induced to purchase Common Shares by expectation of employment or continued employment with Calgary Co. or a related entity of TSAG or the Filer;

2. the Filer and TSAG, as applicable, comply with paragraphs 28, 29 and 30 above, as applicable;

3. the sole business of the Filer is restricted to having an interest in TSAG and exercising its rights and obligations as a partner of TSAG;

4. the Filer and TSAG are not reporting issuers in any jurisdiction of Canada;

5. securities of the Filer are not traded on a marketplace as defined in National Instrument 21-101 *Marketplace Operation*;

6. any subsequent trade of Common Shares of the Filer is a distribution unless the trade is to a Eligible Participant; and

7. prior to the issuance of or trade in Common Shares of the Filer to eligible Calgary Employees, the Filer will deliver to such Eligible Participant a copy of this decision.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0531

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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
Neptune Wellness Solutions Inc.	November 22, 2022	
Xebec Adsorption Inc.	November 22, 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	
iMining Technologies Inc.	September 30, 2022	

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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:
Mackenzie Betterworld Canadian Equity Fund
Mackenzie Betterworld Global Equity Fund
Mackenzie Bluewater Canadian Growth Balanced Fund
Mackenzie Bluewater Canadian Growth Fund
Mackenzie Bluewater Global Growth Fund
Mackenzie Bluewater US Growth Fund
Mackenzie Canadian Bond Fund
Mackenzie Canadian Dividend Fund
Mackenzie Canadian Equity Fund
Mackenzie Canadian Money Market Fund
Mackenzie Canadian Short Term Income Fund
Mackenzie Canadian Small Cap Fund
Mackenzie Conservative Income ETF Portfolio
Mackenzie Corporate Bond Fund
Mackenzie Floating Rate Income Fund
Mackenzie Global Dividend Fund
Mackenzie Global Green Bond Fund
Mackenzie Global Resource Fund
Mackenzie Global Small-Mid Cap Fund
Mackenzie Global Sustainable Balanced Fund
Mackenzie Global Sustainable Bond Fund
Mackenzie Global Tactical Bond Fund
Mackenzie Global Women's Leadership Fund
Mackenzie Greenchip Global Environmental All Cap Fund
Mackenzie Greenchip Global Environmental Balanced Fund
Mackenzie Income Fund
Mackenzie Ivy Canadian Fund
Mackenzie Ivy International Fund
Mackenzie Monthly Income Balanced Portfolio
Mackenzie Monthly Income Conservative Portfolio
Mackenzie Monthly Income Growth Portfolio
Mackenzie Private Global Income Balanced Pool
Mackenzie Private Income Balanced Pool
Mackenzie Strategic Bond Fund
Mackenzie Strategic Income Fund
Mackenzie Unconstrained Fixed Income Fund
Mackenzie US All Cap Growth Fund
Mackenzie US Mid Cap Opportunities Fund
Mackenzie US Small-Mid Cap Growth Fund
Symmetry Balanced Portfolio
Symmetry Conservative Income Portfolio
Symmetry Conservative Portfolio
Symmetry Equity Portfolio
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Moderate Growth Portfolio
Principal Regulator – Ontario

Type and Date:
Combined Preliminary and Pro Forma Simplified Prospectus dated Nov 22, 2022
NP 11-202 Final Receipt dated Nov 22, 2022

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Project #3445059

Issuer Name:
RGP Alternative Income Portfolio
Principal Regulator – Quebec
Type and Date:
Final Simplified Prospectus dated Nov 25, 2022
NP 11-202 Final Receipt dated Nov 28, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3429654

Issuer Name:
Lysander TDV Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Nov 24, 2022
NP 11-202 Final Receipt dated Nov 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3446758

Issuer Name:
CIBC Alternative Credit Strategy
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated November 21, 2022
NP 11-202 Final Receipt dated Nov 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3367310

Issuer Name:
Morningstar Balanced Portfolio
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated November 23, 2022
NP 11-202 Final Receipt dated Nov 24, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3372521

Issuer Name:
Fidelity Advantage Bitcoin ETF
Fidelity Advantage Ether ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated November 21, 2022
NP 11-202 Final Receipt dated Nov 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3412762

Issuer Name:
Fidelity Advantage Ether ETF Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated November 21, 2022
NP 11-202 Final Receipt dated Nov 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3412811

Issuer Name:
IA Clarington Canadian Dividend Fund
IA Clarington Canadian Leaders Class
IA Clarington Canadian Small Cap Class
IA Clarington Canadian Small Cap Fund
IA Clarington Core Plus Bond Fund
IA Clarington Dividend Growth Class
IA Clarington Floating Rate Income Fund
IA Clarington Global Equity Fund
IA Clarington Global Risk-Managed Income Portfolio
IA Clarington Global Value Fund
IA Clarington Inhance Balanced SRI Portfolio
IA Clarington Inhance Bond SRI Fund
IA Clarington Inhance Canadian Equity SRI Class
IA Clarington Inhance Conservative SRI Portfolio
IA Clarington Inhance Global Equity SRI Class
IA Clarington Inhance Global Equity SRI Fund
IA Clarington Inhance Growth SRI Portfolio
IA Clarington Inhance High Growth SRI Portfolio
IA Clarington Inhance Moderate SRI Portfolio
IA Clarington Inhance Monthly Income SRI Fund
IA Clarington Loomis Global Allocation Class
IA Clarington Loomis Global Allocation Fund
IA Clarington Loomis Global Equity Opportunities Fund
IA Clarington Loomis Global Multisector Bond Fund
IA Clarington Loomis U.S. All Cap Growth Fund
IA Clarington Money Market Fund
IA Clarington Monthly Income Balanced Fund
IA Clarington Strategic Corporate Bond Fund
IA Clarington Strategic Equity Income Class
IA Clarington Strategic Equity Income Fund
IA Clarington Strategic Income Fund
IA Clarington Tactical Income Class
IA Clarington Thematic Innovation Class
IA Clarington U.S. Dividend Growth Fund
IA Clarington U.S. Dollar Floating Rate Income Fund
IA Clarington U.S. Equity Class
IA Clarington U.S. Equity Currency Neutral Fund
IA Wealth Balanced Portfolio
IA Wealth Conservative Portfolio
IA Wealth Core Bond Pool
IA Wealth Enhanced Bond Pool
IA Wealth Growth Portfolio
IA Wealth High Growth Portfolio
IA Wealth Moderate Portfolio
Principal Regulator - Quebec
Type and Date:
Amended and Restated Simplified Prospectus dated October 28, 2022 amending and restating the Simplified Prospectus dated June 15, 2022, as amended by Amendment #1 dated June 27, 2022
NP 11-202 Final Receipt dated Nov 25, 2022
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3380535

Issuer Name:
Canoe EIT Income Fund
Principal Regulator - Alberta (ASC)
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated November 28, 2022
NP 11-202 Preliminary Receipt dated November 28, 2022
Offering Price and Description:
Maximum Offering: $975,000,000 Units Preferred Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3464394

NON-INVESTMENT FUNDS

Issuer Name:
Ascend Wellness Holdings, Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Prospectus - dated November 22, 2022
NP 11-202 Preliminary Receipt dated November 24, 2022
Offering Price and Description:
$100,000,000.00 - Class A Common Stock Preferred Stock, Warrants, Debt Securities, Subscription Rights, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3460885

Issuer Name:
Hertz Lithium Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated November 22, 2022
NP 11-202 Preliminary Receipt dated November 23, 2022
Offering Price and Description:
Minimum Public Offering of 12,000,000 Units for Gross Proceeds of $1,500,000.00
Maximum Public Offering of 16,000,000 Units for Gross Proceeds of $2,000,000.00
Price: $0.125 per Unit
Underwriter(s) or Distributor(s):
-
Promoter(s):
Kal Malhi
Project #3460907

Issuer Name:
Silver Eagle Mines Inc.
Principal Regulator - British Columbia
Type and Date:
Amendment dated November 21, 2022 to Preliminary Long Form Prospectus dated August 22, 2022
NP 11-202 Preliminary Receipt dated November 23, 2022
Offering Price and Description:
208,000.00 Common Shares and 208,000 Warrants issued on automatic conversion of previously issued 208,000 First Special Warrants issued at a price of $0.10 per First Special Warrant
1,131,000.00 Common Shares and 1,131,000 Warrants issued on automatic conversion of previously issued 1,131,000 Second Special Warrants issued at a price of $0.05 per Second Special Warrant
Underwriter(s) or Distributor(s):
-
Promoter(s):
Robin Dow
Project #3425217

Issuer Name:
Wesdome Gold Mines Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated November 25, 2022
NP 11-202 Preliminary Receipt dated November 25, 2022
Offering Price and Description:
Common Shares, Preferred Shares, Subscription Receipts, Warrants, Debt Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3462425

Issuer Name:
1933 Industries Inc
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated November 17, 2022
NP 11-202 Receipt dated November 23, 2022
Offering Price and Description:
US$50,000,000
Common Shares, Debt Securities, Subscription Receipts, warrants, Convertible Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3444273

Issuer Name:
Aritzia Inc.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated November 25, 2022
NP 11-202 Receipt dated November 25, 2022
Offering Price and Description:
$70,176,000.00 - 1,360,000 Subordinate Voting Shares
Price: $51.60 per Subordinate Voting Share
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
Promoter(s):
-
Project #3457345

Issuer Name:
Avanti Helium Corp. (formerly Avanti Energy Inc.)
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated November 23, 2022
NP 11-202 Receipt dated November 25, 2022
Offering Price and Description:
$20,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Units, Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3454224

Issuer Name:
Can-Gow Capital Inc.
Principal Regulator - Alberta
Type and Date:
Final CPC Prospectus dated November 22, 2022
NP 11-202 Receipt dated November 24, 2022
Offering Price and Description:
$310,000.00 - 3,100,000 Class A Common Shares Price: $0.10 per Class A Common Share
Underwriter(s) or Distributor(s):
Leede Jones Gable Inc.
Promoter(s):
Brendon McCutcheon
Project #3410863

Issuer Name:
Goodbridge Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Amendment dated November 23, 2022 to Final CPC Prospectus dated August 25, 2022
NP 11-202 Receipt dated November 24, 2022
Offering Price and Description:
Minimum Offering: $200,000.00 - 2,000,000 Common Shares
Maximum Offering: $300,000.00 - 3,000,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
Research Capital Corporation
Promoter(s):
Anthony Viele
Project #3390417

Issuer Name:
Graphene Manufacturing Group Ltd.
Principal Regulator - Alberta
Type and Date:
Final Short Form Prospectus dated November 24, 2022
NP 11-202 Receipt dated November 24, 2022
Offering Price and Description:
C$5,002,250.00 - 1,819,000 Units
Price: C$2.75 per Unit
Underwriter(s) or Distributor(s):
EIGHT CAPITAL
RAYMOND JAMES LTD.
LEEDE JONES GABLE INC.
PI FINANCIAL CORP.
RESEARCH CAPITAL CORPORATION
Promoter(s):
Craig Nicol
Project #3457514

Issuer Name:
Hydro One Holdings Limited
Type and Date:
Final Shelf Prospectus dated November 22, 2022
Receipted on November 22, 2022
Offering Price and Description:
U.S.$3,000,000,000 Debt Securities
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3457491

Issuer Name:
Wesdome Gold Mines Ltd.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated November 25, 2022
NP 11-202 Receipt dated November 25, 2022
Offering Price and Description:
Common Shares, Preferred Shares, Subscription Receipts, Warrants, Debt Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3462425

Issuer Name:
Western Copper and Gold Corporation
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated November 28, 2022
NP 11-202 Receipt dated November 28, 2022
Offering Price and Description:
C$25,000,000.00 - COMMON SHARES, WARRANTS, SUBSCRIPTION RECEIPTS, UNITS
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3459431

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Name Change	From: iCapital IFM, LLC To: iCapital Network Canada Ltd. / Réseau iCapital CAN Ltée	Investment Fund Manager, Portfolio Manager, and Exempt Market Dealer	August 16, 2022
Change in Registration Categories	Optimum Asset Management Inc.	From: Portfolio Manager To: Portfolio Manager, Exempt Market Dealer, Investment Fund Manager	November 23, 2022
Change in Registration Categories	Van Berkom and Associates Inc.	From: Portfolio Manager To: Portfolio Manager and Investment Fund Manager	November 24, 2022

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B.11
SROs, Marketplaces, Clearing Agencies and Trade Repositories

B.11.1 SROs

B.11.1.1 Investment Industry Regulatory Organization of Canada (IIROC) – Amendments Respecting the Codification of Certain UMIR Exemptions – Notice of Commission Approval

NOTICE OF COMMISSION APPROVAL

AMENDMENTS RESPECTING THE CODIFICATION OF CERTAIN UMIR EXEMPTIONS

INDUSTRY REGULATORY ORGANIZATION OF CANADA (IIROC)

The Ontario Securities Commission has approved IIROC's proposed amendments (**Amendments**) to the Universal Market Integrity Rules (**UMIR**) that will codify new exemptions to allow Participants to trade a listed security:

- off-marketplace during a statutory resale restriction where the trading is permitted pursuant to a prospectus exemption
- on a foreign organized regulated market during a regulatory halt where a cease trade order (**CTO**) is in effect and the trading is permitted pursuant to meeting specified conditions set out in the CTO.

IIROC published the Amendments for comment on April 14, 2022. Two comment letters were received. No changes were made to the Amendments in response to the comments received. A summary of the public comments and IIROC's responses to those comments, as well as the IIROC Notice of Approval, including text of the Amendments, can be found at www.osc.ca.

The Amendments come into force on March 1, 2023, being 90 days after the publication of the IIROC Notice of Approval.

In addition, the Alberta Securities Commission; the Autorité des marchés financiers; the British Columbia Securities Commission; the Financial and Consumer Affairs Authority of Saskatchewan; the Financial and Consumer Services Commission of New Brunswick; the Manitoba Securities Commission; the Northwest Territories Office of the Superintendent of Securities; the Nova Scotia Securities Commission; the Nunavut Securities Office; the Office of the Superintendent of Securities, Digital Government and Services, Newfoundland and Labrador; the Office of the Yukon Superintendent of Securities; and the Prince Edward Island Office of the Superintendent of Securities have either not objected to or have approved the Amendments.

B.11.2 Marketplaces

B.11.2.1 Toronto Stock Exchange – Amendments to Toronto Stock Exchange Company Manual – Request for Comments

TORONTO STOCK EXCHANGE

REQUEST FOR COMMENTS

AMENDMENTS TO TORONTO STOCK EXCHANGE COMPANY MANUAL

Toronto Stock Exchange ("**TSX**") is publishing certain proposed amendments (the "**Proposed Amendments**") to the TSX Company Manual (the "**Manual**"). The Amendments provide for public interest changes to Section 606 – Prospectus Offerings of the Manual.

Comments should be in writing and delivered by January 31, 2023 to:

Danielle Mayhew
Legal Counsel, Regulatory Affairs
Toronto Stock Exchange
100 Adelaide Street West, Suite 300
Toronto, Ontario M5H 1S3
Email: tsxrequestforcomments@tsx.com

A copy should also be provided to:

Susan Greenglass
Director
Market Regulation
Ontario Securities Commission
20 Queen Street West
Toronto, Ontario M5H 3S8
Email: marketregulation@osc.gov.on.ca

Comments will be made publicly available unless confidentiality is requested. The Proposed Amendments will only become effective following public notice and comment and approval by the OSC.

Background

TSX is considering the Proposed Amendments as described below in order to reduce the burden faced by issuers and their agents when raising capital via a prospectus offering by providing clarity, predictability and greater transparency of TSX policies.

Section 606 of the Manual sets out certain rules applicable to issuers that are proposing to distribute securities by way of a prospectus offering ("**prospectus offering**" or "**public offering**"). TSX currently requires its listed issuers to provide notice (the "**Notice**") to TSX of the proposed transaction. Upon review of the Notice, and pursuant to the policies set out under Section 606 of the Manual, TSX will determine if the offering is a "bona fide" public offering. Generally, if TSX determines that the offering is, in fact, bona fide, the terms of the offering are accepted by TSX, subject to the applicable provisions of Section 606 of the Manual. Where TSX determines that the offering is not a bona fide public offering, TSX will advise the issuer that the offering will be reviewed under Section 607 - Private Placements of the Manual (the "**Private Placement Rules**"), resulting in the application of additional rules on the transaction (e.g. discount and dilution restrictions).

Subsection 606(b) of the Manual states that in determining whether a prospectus offering is, in fact, a bona fide public offering, TSX will consider the following factors: (i) method of distribution; (ii) participation of insiders; (iii) number of placees; (iv) offering price; and (v) economic dilution. Subsection 606(b) does not, however, include details of how each factor, and the relative importance of how each factor, plays into the ultimate determination by TSX of whether a public offering is truly bona fide.

As stated above, Subsection 606(b) currently lists "offering price" as a factor that may indicate that a prospectus offering is not a bona fide public offering, without stating the acceptable level of discount. The absence of a stated discount was previously not generally problematic, as both stakeholders and TSX understood that up to a 10% discount to the five day volume weighted average trading price ("**Market Price**") of such securities on TSX was customary on a bona fide public offering. In addition, historically, bona fide public offerings have been marketed for a period of time that allowed for price discovery.

The Canadian senior market has since evolved, such that the vast majority of prospectus offerings are no longer "marketed" but instead are executed by way of a "bought deal" offer by a Canadian investment dealer. In some instances, prospectus offerings are executed by way of an overnight marketed deal. Both of these methods require execution of the offering, including the determination of pricing, within a very short timeframe. TSX has also noted that, in a growing number of cases, the securities are

offered at a more significant discount than has previously been seen and will often exceed the generally accepted 10% discount to the Market Price. This is particularly true for both smaller issuers and issuers in specific sectors.

Following a review of deal pricing data from 2014 to 2020 for TSX listed issuers, TSX noted that approximately 85% of prospectus offerings were completed within a 15% discount to Market Price and were acceptable without modification by TSX. For comparison, this 15% discount coincides with the lowest permitted discount available to issuers for private placements under the Private Placement Rules (i.e. a 15% discount is permitted where the price per listed security is above $2.00). For lower priced securities, the allowable discounts are greater than 15% (see Subsection 607(e) of the Manual).

During this same period, TSX was increasingly engaged by issuers, prior to any announcement, to discuss pricing of public offerings in relation to the absence of stated pricing guidelines and an increase in the number of instances where the contemplated discount exceeded 10% to the Market Price. TSX is concerned with: (i) the increased burden placed on issuers as a result of this "pre-clearance"; and (ii) the potential for restrictions on access to capital on a timely basis.

As a result, TSX consulted with various market participants to obtain feedback to determine a more suitable policy regarding what constitutes a bona fide public offering. TSX consulted with: (i) representatives from 18 law firms in Vancouver, Calgary, Toronto and Montreal; (ii) representatives from three equity capital markets dealers; (iii) a corporate governance organization; and (iv) the TSX Listings Advisory Committee, to gather feedback on their experiences and challenges with the current prospectus offering rules as described herein.

Following these consultations, TSX has concluded that it is advisable to set standards to clearly state what constitutes a bona fide public offering. Specifically, the following factors will be considered by TSX: (i) whether the offering has been broadly marketed; (ii) the offering price; and (iii) insider participation.

(i) Broadly Marketed

Pursuant to the Proposed Amendments, for a public offering to be considered "bona fide", it must be "broadly marketed". TSX is proposing to define "**Broadly Marketed**" as an offering where the agent or underwriter either: (i) distributes the offered securities to at least 50 purchasers; or (ii) makes the offer known to the selling group and/or equity capital markets desks at all Canadian investment dealers. If a prospectus offering is not Broadly Marketed, TSX will review the offering under the Private Placement Rules, regardless of insider participation.

(ii) Offering Price

TSX is generally of the view that deference should be given to an issuer's board of directors in fulfilling their fiduciary responsibilities when determining the price of securities to be distributed pursuant to a prospectus. As such, under the Proposed Amendments, assuming that a prospectus offering is Broadly Marketed and there is no insider participation, TSX will generally accept the offering price of the securities offered by way of prospectus, regardless of the discount amount.

Currently, TSX generally uses the Market Price of an issuer's securities when calculating the discounts for prospectus offerings and private placements. However, TSX is of the view that using the Market Price may no longer be appropriate and that it is advisable for TSX to use a more relevant reference price. Therefore, TSX is proposing to use the closing price as defined in Appendix F - Take-Over Bids and Issuer Bids Through the Facilities of Toronto Stock Exchange ("**Appendix F**") of the Manual (the "**Closing Price**") of the most recently completed trading session of the issuer's listed securities as the reference price when analyzing discounts on prospectus offerings.

(iii) Insider Participation

Under the Proposed Amendments, if insiders of an issuer are participating in a prospectus offering, TSX will review the offering as follows.

- If the offering is Broadly Marketed and is priced at less than, or equal to, a 15% discount to the Closing Price, TSX will accept insider participation on the offering such that, as a maximum, insiders of the issuer may maintain their pro rata interest in the issuer. Any insider participation beyond pro rata will be reviewed under the Private Placement Rules.

- If the offering price exceeds a 15% discount to the Closing Price, TSX will review all insider participation in the offering under the Private Placement Rules (which may require shareholder approval of the offering).

For example, if an issuer's listed securities had a Closing Price of $1.00 and the proposed offering price was $0.80 (representing a discount of 20%), all insider participation would be reviewed under the Private Placement Rules. Please refer to the table under "Application of the Proposed Amendments".

Summary and Rationale of the Proposed Amendments

The Proposed Amendments aim to: (i) provide greater clarity and transparency to issuers as they structure prospectus financings, resulting in expanded access to capital by facilitating timely deal making; (ii) reduce the burden of pre-announcement pricing pre-clearance as described below; (iii) address negative perceptions of insider participation at a deep discount; and (iv) allow issuers and their boards to retain the discretion necessary to price prospectus financings as required in their particular circumstances.

	Section of the Manual	Proposed Amendment	Rationale
1.	606(a)	Amend the provision by removing the requirement to include the anticipated number of purchasers under the offering in the letter required to satisfy the notice requirement in Section 606(a) of the Manual, and instead replace it with a requirement to include in the notice, whether the offering was Broadly Marketed.	The Notice currently must include information on the anticipated number of purchasers under the proposed offering, a factor that TSX considers when determining whether the proposed offering is a bona fide prospectus offering (and consequently, whether the Private Placement Rules will be applied to the offering). TSX generally considers a prospectus offering to be "broadly distributed" where there are 50 or more subscribers. After extensive consultation with internal and external stakeholders, TSX received feedback indicating that it may not always be appropriate for TSX to consider the number of subscribers as the sole factor when determining whether an offering is broadly distributed. This requirement may not be meaningful for such a determination where, for example, 50 subscribers purchase a minimal amount of securities in order to satisfy this requirement. Instead, consideration of the marketing process and effort applied by the issuer and its underwriters is more meaningful. As such, TSX is proposing to require that the Notice include a written representation by the issuer as to whether the offering has been Broadly Marketed. "Broadly Marketed", as set out above, is defined as the issuer's agent or underwriter either: (i) distributing the offered securities to at least 50 purchasers; or (ii) making the offer known to the selling group and/or equity capital markets desks at all Canadian investment dealers. TSX is of the view that this definition acknowledges that the number of purchasers and/or the marketing efforts are more indicative of a prospectus offering being broadly distributed.
2.	606(b)	Amend the provision by: (i) removing the factors set our therein with respect to criteria that TSX will consider in determining whether to apply the Private Placement Rules to a prospectus offering;	As stated above, Subsection 606(b) of the Manual enumerates certain factors that TSX considers when determining whether the Private Placement Rules apply to a prospectus offering, without any additional parameters or guidance for issuers. As such, TSX is proposing to delete such factors and replace them with more clear guidance as set out herein.
		(ii) clarifying that notice of distributions that are Broadly Marketed by way of prospectus will be accepted where insiders participate up to their respective pro rata interest and the	TSX is of the view that deference should be given to an issuer's board of directors regarding the pricing of prospectus offerings. However, TSX has concerns about the perception of insider participation in such

	Section of the Manual	Proposed Amendment	Rationale
		offering price is equal to or less than a 15% discount to the Closing Price of the most recently completed trading session of the issuer's listed securities; (iii) clarifying that where the offering price exceeds a 15% discount to the Closing Price of the most recently completed trading session of the issuer's listed securities, the Private Placement Rules will apply to insider purchases; (iv) clarifying that where the offering price is equal to or less than a 15% discount to the Closing Price of the most recently completed trading session of the issuer's listed securities, the Private Placement Rules will apply to any portion of insider purchases exceeding their respective pro rata interest;	offerings where the securities are priced at a greater than 15% discount to the Closing Price. As such, the Proposed Amendments focus on allowing insiders to participate up to their pro rata interest where the price of the securities is within a 15% discount.
		(v) clarifying that where the prospectus offering has not been Broadly Marketed, the Private Placement Rules will apply to the offering; and	As stated above, consultation with our stakeholders revealed that it may not always be appropriate for TSX to consider the number of subscribers as the sole factor when determining whether an offering is broadly distributed. Instead, consideration of the marketing process and effort used by the issuer and its agents or underwriters is more appropriate and meaningful. Please see the rationale for Proposed Amendment #1 above.
		(vi) including a reference in Subsection 606(b) of the Manual to "closing price" as defined in Appendix F when calculating the discounts set out therein.	TSX generally uses the Market Price of an issuer's listed securities when calculating the discounts for prospectus offerings and private placements. However, TSX has been advised by market participants that, given the speed at which prospectus offerings come together, a more relevant price used for the offered securities is the price at which the last board lot for the day had been traded (i.e. the Closing Price as defined above). In addition, there are instances where there are discrepancies in the Market Price calculated by issuers and TSX resulting in increased pre-filing consultations with TSX and unpredictability when structuring an offering. As such, instead of using Market Price in Subsection 606(b), TSX is proposing to reference "closing price" as defined in Appendix F, which refers to the price per security at which the last trade was effected on TSX (or another recognized exchange if there were no trades on TSX) during the trading session immediately prior to the announcement of the offering. TSX is of the view that this proposed definition is appropriate and addresses the concerns raised above.

TSX acknowledges that TSX Staff Notice 2018-0003 ("**Staff Notice**") conflicts with the Proposed Amendment set out in item #2(vi) above regarding the Closing Price. The Staff Notice currently states that when pricing a prospectus offering where there is material undisclosed information, five days for the dissemination of material information is generally required, which may negatively impact and cause delays when negotiating a prospectus offering generally, and bought deals specifically. If the Proposed Amendments are implemented, TSX contemplates also amending the Staff Notice to reflect that, after one full day of trading, a valid reference price (i.e. the Closing Price) can be used.

It should be noted that the exemptions for eligible interlisted issuers as set out in Section 602.1 of the Manual and the financial hardship provisions as set out in Subsection 604(e) of the Manual would continue to be available to issuers, where applicable. In addition, the Private Placement Rules could allow for up to 10% dilution to insiders within the permitted discounts.

Text of the Proposed Amendments

The Proposed Amendments are set out as blacklined text at Appendix A. For ease of reference, a clean copy of the Proposed Amendments is set out at Appendix B.

Application of the Proposed Amendments

The following table sets out examples of various prospectus offerings scenarios to reflect how they would be viewed by TSX pursuant to the Proposed Amendments.

Prospectus Offering	Insider Participation	Discount to Closing Price	Broadly Marketed	Applicable Provision
Scenario 1	Yes - up to pro rata interest	≤ 15%	Yes	Subsection 606(b)(i). This offering will be acceptable to TSX and the Private Placement Rules will not apply to any portion of the offering.
Scenario 2	Yes - in excess of pro rata interest	≤ 15%	Yes	Subsection 606(b)(iii). The Private Placement Rules will apply only to the portion of the insider purchases in excess of their pro rata interest.
Scenario 3	Yes (whether up to pro rata interest or in excess of pro rata interest)	≤ 15%	No	Subsection 606(iv). The Private Placement Rules will apply to the whole offering because it is not Broadly Marketed, regardless of insider participation and discount to Closing Price.
Scenario 4	No	≤ 15%	No	Subsection 606(iv). The Private Placement Rules will apply to the whole offering because it is not Broadly Marketed, regardless of the fact that there is no insider participation.
Scenario 5	Yes (whether up to pro rata interest or in excess of pro rata interest)	> 15%	Yes	Subsection 606(b)(ii). The Private Placement Rules will apply only to the insider purchases.

Prospectus Offering	Insider Participation	Discount to Closing Price	Broadly Marketed	Applicable Provision
Scenario 6	Yes (whether up to pro rata interest or in excess of pro rata interest)	> 15%	No	Subsection 606(iv). The Private Placement Rules will apply to the whole offering because it is not Broadly Marketed.
Scenario 7	No	> 15%	Yes	Subsection 606(b)(i). This offering will be acceptable to TSX and the Private Placement Rules will not apply to the offering.
Scenario 8	No	> 15%	No	Subsection 606(iv). The Private Placement Rules will apply to the whole offering because it is not Broadly Marketed, regardless of the fact that there is no insider participation.

Note: The scenarios above assume that TSX does not exercise discretion under Section 603 - Discretion of the Manual.

Expected Date of Implementation

Following receipt of regulatory approval, the Proposed Amendments are expected to be effective in Q1 2023.

Expected Impact on the Market Structure, Members and, if Applicable, on Investors, Issuers and Capital Markets

The Proposed Amendments are expected to have a positive impact on the market structure, members, investors, issuers and the capital markets. TSX believes that the Proposed Amendments are fair and reasonable, and will not create barriers to access.

Expected Impact of the Proposed Amendments on the TSX's Compliance with Applicable Securities Law

The Proposed Amendments are in compliance with applicable securities laws and do not impact fair access to markets or the maintenance of fair and orderly markets. TSX is of the view that the Proposed Amendments will support the maintenance of fair and orderly markets.

Consultations Undertaken in Formulating the Proposed Amendments, Including the Internal Governance Process

In formulating the Proposed Amendments, the TSX internal governance process for public interest changes was followed, which included receipt of senior management-level approval and consultation with all applicable groups at TSX.

As mentioned above, TSX also consulted with (i) representatives from law firms in Vancouver, Calgary, Toronto and Montreal; (ii) representatives from equity capital dealers; (iii) a corporate governance organization; and (iv) the TSX Listings Advisory Committee to gather feedback on their experiences and challenges with the current prospectus offering rules as described herein.

Any Alternatives Considered

Based on the consultations as set out above, many different alternatives were considered. After these consultations, TSX has determined that the Proposed Amendments are the best course of action in order to promote a fair and orderly market with a high degree of integrity, while reducing the burden faced by issuers when accessing capital.

Does this Approach Currently Exist in other Markets or Jurisdictions?

Senior exchanges in Canada and the U.S. vary in their approaches to public offerings, from implementing specific rules regarding insider participation to setting out factors taken into consideration when determining whether a financing is a bona fide “public offering” for the purposes of shareholder approval rules. These factors include: type of offering, manner of marketing, number of investors and whether there is any existing relationship with the issuer, discount, and impact on control.

Questions

In responding to any of the questions below, please explain your responses.

1. Do you agree with TSX's overall approach with respect to how it proposes to view public offerings under Section 606 of the Manual as described herein?

2. In determining what level of discount exists, where insiders receive standby or commitment fees, or do not purchase via underwriters and subsequently the issuer does not pay the underwriting fee on the insiders' purchase, TSX intends to consider the net proceeds received by the issuer from the prospectus offering, rather than the discounted price paid by the subscriber. Pursuant to this proposed approach, TSX would require disclosure by the issuer of the actual proceeds paid by subscribers benefiting from receiving fees or who are exempt from underwriting fees. Note that where the net proceeds received by the issuer from insiders are, in fact, less than other subscribers, TSX would take the view that this is a different purchase price and therefore would apply the Private Placement Rules to the insider purchase, rather than regard it as part of the prospectus offering. Is this approach appropriate? Are there concerns with the perception that insiders are offered securities at a lower price than other subscribers?

3. With respect to pricing a prospectus offering where there is material undisclosed information, the Staff Notice states that TSX typically views five days as an appropriate benchmark for the dissemination of material information. However, where an abbreviated period of time is required by an issuer, TSX will take into consideration certain factors as set out in this Staff Notice. Given the speed and manner in which market information is now disseminated and TSX's desire to: (i) decrease the burden of TSX pre-clearance; and (ii) increase transparency and predictability of our policies, TSX is considering reducing the number of days required for the dissemination of Material Information (as defined in the Staff Notice) from five days to one day. Does this approach raise any concerns?

4. The Proposed Amendments introduce a definition for "Broadly Marketed". Is the proposed definition appropriate? Are there other measures that TSX should consider? Is "Broadly Marketed" a reasonable standard for public offerings that are led by investment dealers outside of Canada?

APPENDIX A

BLACKLINE OF PUBLIC INTEREST AMENDMENTS

B. Distributions of Securities of a Listed Class

Sec. 606. Prospectus Offerings

(a) Listed issuers proposing to issue securities of a listed class pursuant to a prospectus must file one copy of the preliminary prospectus with TSX concurrently with the filing thereof with the applicable securities commissions. The notice requirement contained in Subsection 602(a) will be satisfied by the filing of the preliminary prospectus, together with a letter which must state: (i) whether any insider has an interest, directly or indirectly, in the transaction and the nature of such interest; (ii) whether and how the transaction could materially affect control of the listed issuer; (iii) ~~the anticipated number of purchasers under~~whether the offering was broadly marketed[1]; and (iv) whether an "if, as and when issued" market may be requested.

(b) (i) TSX will generally accept notice of distributions that are broadly marketed by way of prospectus~~. TSX may, however, apply the provisions of Section 607 to a prospectus distribution. In making such a decision TSX will consider factors such as:~~ where insiders participate up to their respective pro rata interest and the offering price is equal to or less than a 15% discount to the closing price[2] of the most recently completed trading session.

~~i) the method of the distribution;~~

~~ii) the participation of insiders;~~

~~iii) the number of placees;~~

~~iv) the offering price; and~~

~~v) the economic dilution.~~

(ii) Where the offering price exceeds a 15% discount to the closing price of the most recently completed trading session, TSX will apply the provisions of Section 607 to insider purchases.

(iii) Where the offering price is equal to or less than a 15% discount to the closing price of the most recently completed trading session, TSX will apply the provisions of Section 607 to any portion of insider purchases exceeding their respective pro rata interest.

(iv) Where the prospectus offering has not been broadly marketed, TSX will apply the provisions of Section 607 to the offering.

(c) Prior to the filing of the final prospectus, TSX will notify the listed issuer of any required additional documentation. If TSX accepts the offering, TSX will so advise the securities commissions.

(d) The additional securities will normally be listed as soon as the prospectus offering has closed. Upon request, the listing may take place prior to the closing of the offering. TSX staff will advise the listed issuer of the requirements in this regard. Any trading that takes place prior to closing will be on an "if as and when issued" basis.

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1 "broadly marketed" is defined as the agent or underwriter either (i) distributing the offered securities to at least 50 purchasers; or (ii) making the offer known to the selling group and/or equity capital markets desks at all Canadian investment dealers.

2 Please see Appendix F Take-Over Bids and Issuer Bids Through the Facilities of Toronto Stock Exchange for the definition of "closing price".

APPENDIX B

CLEAN VERSION OF PUBLIC INTEREST AMENDMENTS

B. Distributions of Securities of a Listed Class

Sec. 606. Prospectus Offerings

(a) Listed issuers proposing to issue securities of a listed class pursuant to a prospectus must file one copy of the preliminary prospectus with TSX concurrently with the filing thereof with the applicable securities commissions. The notice requirement contained in Subsection 602(a) will be satisfied by the filing of the preliminary prospectus, together with a letter which must state: (i) whether any insider has an interest, directly or indirectly, in the transaction and the nature of such interest; (ii) whether and how the transaction could materially affect control of the listed issuer; (iii) whether the offering was broadly marketed[1]; and (iv) whether an "if, as and when issued" market may be requested.

(b) (i) TSX will generally accept notice of distributions that are broadly marketed by way of prospectus where insiders participate up to their respective pro rata interest and the offering price is equal to or less than a 15% discount to the closing price[2] of the most recently completed trading session.

(ii) Where the offering price exceeds a 15% discount to the closing price of the most recently completed trading session, TSX will apply the provisions of Section 607 to insider purchases.

(iii) Where the offering price is equal to or less than a 15% discount to the closing price of the most recently completed trading session, TSX will apply the provisions of Section 607 to any portion of insider purchases exceeding their respective pro rata interest.

(iv) Where the prospectus offering has not been broadly marketed, TSX will apply the provisions of Section 607 to the offering.

(c) Prior to the filing of the final prospectus, TSX will notify the listed issuer of any required additional documentation. If TSX accepts the offering, TSX will so advise the securities commissions.

(d) The additional securities will normally be listed as soon as the prospectus offering has closed. Upon request, the listing may take place prior to the closing of the offering. TSX staff will advise the listed issuer of the requirements in this regard. Any trading that takes place prior to closing will be on an "if as and when issued" basis.

[1] "broadly marketed" is defined as the agent or underwriter either (i) distributing the offered securities to at least 50 purchasers; or (ii) making the offer known to the selling group and/or equity capital markets desks at all Canadian investment dealers.

[2] Please see Appendix F Take-Over Bids and Issuer Bids Through the Facilities of Toronto Stock Exchange for the definition of "closing price".

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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.