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FOR IMMEDIATE RELEASE
March 1, 2023

AURELIO MARRONE,
File No. 2020-16

TORONTO – The Tribunal issued its Reasons and Decision and an Order in the above noted matter.

A copy of the Reasons and Decision and the Order dated February 28, 2023 are available at capitalmarketstribunal.ca.

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A.2.2 Mark Odorico

FOR IMMEDIATE RELEASE
March 2, 2023

MARK ODORICO,
File No. 2022-18

TORONTO – The Tribunal issued its Reasons and Decisions and an Order in the above named matter.

A copy of the Reasons and Decisions and the Order dated March 1, 2023 are available at capitalmarketstribunal.ca.

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A.2.3 Nova Tech Ltd

FOR IMMEDIATE RELEASE
March 2, 2023

NOVA TECH LTD,
File No. 2023-6

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

A copy of the Order dated March 2, 2023 is available at capitalmarketstribunal.ca.

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A.2.4 Aaron Wolfe

FOR IMMEDIATE RELEASE
March 3, 2023

AARON WOLFE,
File No. 2023-5

TORONTO – The Tribunal issued its Oral Reasons for Approval of a Settlement in the above-named matter.

A copy of the Oral Reasons for Approval of a Settlement dated February 22, 2023 is available at capitalmarketstribunal.ca.

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A.3
Orders

A.3.1 Aurelio Marrone – ss. 127(1), 127.1

IN THE MATTER OF
AURELIO MARRONE

File No. 2020-16

Adjudicators: M. Cecilia Williams (chair of the panel)
Andrea Burke
William J. Furlong

February 28, 2023

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

WHEREAS on October 21, 2022, the Capital Markets Tribunal held a hearing by videoconference to consider the sanctions and costs that the Tribunal should impose on Aurelio Marrone as a result of the findings in the Reasons and Decision on the merits, issued June 13, 2022;

ON READING the materials filed by the parties, and on hearing the submissions of the representatives for Staff of the Ontario Securities Commission and for Marrone;

IT IS ORDERED THAT:

1. any registration granted to Marrone under Ontario securities law is terminated permanently, pursuant to paragraph 1 of s. 127(1) of the *Securities Act* (the ***Act***);

2. Marrone shall immediately resign any position that he holds as a director or officer of an issuer, pursuant to paragraph 7 of s. 127(1) of the *Act*;

3. Marrone is prohibited permanently from becoming or acting as a director or officer of any issuer, pursuant to paragraph 8 of s. 127(1) of the *Act*;

4. Marrone is prohibited permanently from becoming or acting as a director or officer of any registrant, pursuant to paragraph 8.2 of s. 127(1) of the *Act*;

5. Marrone is prohibited permanently from becoming or acting as a director or officer of any investment fund manager, pursuant to paragraph 8.4 of s. 127(1) of the *Act*;

6. Marrone is prohibited permanently from becoming or acting as a registrant, an investment fund manager or a promoter, pursuant to paragraph 8.5 of s. 127(1) of the *Act*;

7. Marrone shall pay an administrative penalty of $500,000, pursuant to paragraph 9 of s. 127(1) of the *Act*; and

8. Marrone shall pay Staff's costs of the investigation and the hearing in the amount of $85,000, pursuant to s. 127.1 of the *Act*.

"M. Cecilia Williams"

"Andrea Burke"

"William J. Furlong"

A.3.2 Mark Odorico – rule 22(4) of the Capital Markets Tribunal Rules of Procedure and Forms

IN THE MATTER OF
MARK ODORICO

File No. 2022-18

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

March 1, 2023

ORDER
(Rule 22(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

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 HEARING the submissions of Odorico and of the representative of Staff of the New Self-Regulatory Organization of Canada (formerly IIROC) (**New SRO**) and of Staff of the Ontario Securities Commission, and on reading the materials filed by the parties;

IT IS ORDERED that:

1. the transcript of the confidential portion of the November 25, 2022, hearing is to be made public, with the following redactions made:
    a. the words after “with” on line 25, page 8;
    b. the words between “hospital” on line 2, page 10 and “These” on line 5, page 10;
    c. the words between “to” on line 7, page 10 and “It’s” on line 8, page 10;
    d. the words after “that” on line 13, page 10 through to the end of line 14, page 10;
    e. the word after “I’m” on line 5, page 21;
    f. the words between “and” on line 6, page 21 and “riding” on line 7, page 21;
    g. the words between “know” on line 18, page 21 and “you know” on line 20, page 21;
    h. the words between “absence” on line 26, page 21 and “but” on line 27, page 21;
    i. the words between “Odorico” on line 7, page 23 and “Sincerely” on line 14, page 23;
    j. the words between “just” and “but” on line 21, page 23;
    k. the word between “of” and “at” on line 22, page 23;
    l. the words between “suffering” on line 22, page 24 and “do you” on line 23, page 24;
    m. the words between “because” on line 22, page 25 and “that had” on line 23, page 25;
    n. the words between “my house” on line 25, page 25 and “everything” on line 26, page 25;
    o. the words between “saying that” on line 2, page 26 and “I can’t” on line 3, page 26; and
    p. the words between “I’ve got” and “I’m under” on line 16, page 28; and
2. only the redacted version of the transcript of the confidential portion of the hearing shall be available to the public.

“Andrea Burke”

“Sandra Blake”

“Cathy Singer”

A.3.3 Nova Tech Ltd

IN THE MATTER OF
NOVA TECH LTD

File No. 2023-6

Adjudicator: M. Cecilia Williams

March 2, 2023

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

WHEREAS on March 2, 2023, the Capital Markets Tribunal held a hearing by videoconference, to consider the Application filed by Enforcement Staff of the Commission (**Staff**) to extend the temporary order issued by the Commission on February 16, 2023;

ON READING the materials filed by Staff and on hearing the submissions of the representative for Staff, no one appearing for Nova Tech Ltd (**Nova Tech**), although properly served as appears from the Affidavits of Rita Pascuzzi affirmed on February 24 and February 28, 2023;

IT IS ORDERED, for reasons to follow, that until the earlier of 1) 10 days after the issuance of a Statement of Allegations naming Nova Tech as a respondent or 2) 6 months after the issuance of this Order:

1. pursuant to subsection 127(8) and paragraph 2 of subsection 127(1) of the *Securities Act*, all trading in any securities by or of Nova Tech, or by any person on their behalf, shall cease;

2. pursuant to subsection 127(8) and paragraph 2.1 of subsection 127(1) of the *Securities Act*, the acquisition of any securities by Nova Tech shall cease; and

3. pursuant to subsection 127(8) and paragraph 3 of subsection 127(1) of the *Securities Act*, any exemptions contained in Ontario securities law do not apply to Nova Tech.

“M. Cecilia Williams”

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A.4
Reasons and Decisions

A.4.1 Aurelio Marrone – ss. 127(1), 127.1

Citation: *Marrone (Re)*, 2023 ONCMT 9
Date: 2023-02-28
File No. 2020-16

IN THE MATTER OF
AURELIO MARRONE

REASONS AND DECISION
(Section 127.1 and subsection 127(1) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	M. Cecilia Williams (chair of the panel) Andrea Burke William J. Furlong	
Hearing:	By videoconference, October 21, 2022; final written submissions received November 10, 2022	
Appearances:	Johanna Braden	For Staff of the Ontario Securities Commission
	Murray Stieber Christopher Afonso	For Aurelio Marrone

REASONS AND DECISION

1. OVERVIEW AND DECISION

[1] These reasons relate to the sanctions and costs hearing regarding Aurelio Marrone. Marrone, an experienced mutual fund sales representative, was named by a client and friend, MU, as her attorney for health and property, an alternate executor of MU's estate, and the sole beneficiary of that estate. In a merits decision dated June 13, 2022,[1] the Capital Markets Tribunal (**Tribunal**) found that Marrone acted unfairly, dishonestly and in bad faith towards his vulnerable client, MU. Marrone did so by failing to follow the required procedures for dealing with conflicts or potential conflicts of interest, including by:

a. accepting the appointment as attorney for property;

b. failing to renounce his appointment as alternate executor; and

c. not immediately reporting these conflicts of interest, as well as the conflict of interest arising from MU naming him the sole beneficiary under her will while she was clearly vulnerable.

[2] The Tribunal further concluded that this conduct was a serious breach of the rules of the Mutual Fund Dealers Association of Canada (the **MFDA**) and of the policies and procedures of his employer, IPC Investment Corporation (**IPC**), which constituted a breach of subsection 2.1(2) of OSC Rule 31-505, which required Marrone to deal fairly, honestly and in good faith with his clients.

[3] Ontario Securities Commission Staff (**Staff**) seeks an order that:

a. imposes permanent market participation bans, including a director and officer ban, on Marrone;

b. reprimands him;

c. requires him to:

i. pay an administrative penalty of $500,000;

ii. disgorge $1,859,802, the value of MU's estate based on the evidence submitted by Staff; and

1 *Marrone (Re)*, 2022 ONCMT 13 (**Merits Decision**)

iii. pay costs of the investigation and hearing of $100,000.

[4] For the reasons that follow, we find it in the public interest to order that Marrone be permanently banned from the capital markets, including a director and officer ban, pay an administrative penalty of $500,000, and pay costs in the amount of $85,000. We have not ordered Marrone to disgorge any amount he might receive as a beneficiary of MU's estate.

[5] We begin our analysis by reviewing the legal framework for sanctions and how the facts of this case led us to the sanctions that we have decided to order. Next, we consider Staff's request for costs.

2. SANCTIONS ANALYSIS

2.1 What is the legal framework for sanctions?

[6] In making an order for sanctions under s. 127(1) of the Ontario *Securities Act* (the ***Act***)[2], the Tribunal is to impose sanctions that will protect investors and the capital markets from similar conduct in the future.[3] Sanctions are to be preventive and protective, rather than punitive.[4]

[7] Sanctions must be proportionate to the respondent's conduct in the circumstances.[5] It is appropriate for the Tribunal, when making an order in the public interest that is both protective and preventive, to consider specific and general deterrence. It is important for respondents and other like-minded individuals to be deterred from engaging in similar conduct in the future through the imposition of appropriate sanctions.[6]

[8] The Tribunal has established a non-exhaustive list of factors to consider when deciding sanctions, including those we consider most relevant to this case: the seriousness of the misconduct, the respondent's experience in the marketplace, any mitigating factors including the respondent's remorse and recognition of the seriousness of the misconduct, and specific and general deterrence.[7]

[9] Before turning to applying the sanctioning factors to the facts in this instance, we comment on the authorities relied upon by both parties.

2.2 Relevant authorities

[10] The Tribunal has not previously decided a case with facts like these. Therefore, while it is common for the Tribunal to consider comparable recent cases, we are aware of none and the parties brought no such decisions to our attention.

[11] Staff submits that we should make our decision about appropriate sanctions based on first principles and send a strong message to deter registrants from abusing the trust of their vulnerable clients.

[12] Staff has provided an overview of a number of decisions of the MFDA and of the Investment Industry Regulatory Organization of Canada (now both part of the newly consolidated New Self-Regulatory Organization of Canada) (the **SROs**) where respondent investment advisors were sanctioned for failing to disclose conflicts of interest, including conflicts of interest arising where clients designated the respondents as beneficiaries or executors, granted them powers of attorney, or had other personal financial dealings with their clients. Staff brought these decisions to our attention but submits that they are of limited assistance.

[13] Many of those SRO decisions are settlements and, as Staff submits, as negotiated resolutions they typically may have outcomes different than what might be expected from a contested hearing. In addition, in some of the settlements, the financial penalty ordered was less than the financial benefit derived by the respondent. Staff submits that those decisions ought not to be followed in this case. In other of these SRO decisions, the respondent either voluntarily renounced any financial benefit or received a financial penalty at least equal to the financial benefit gained from the misconduct.

[14] Staff also referred us to several Tribunal decisions where registrants were sanctioned for failing to deal fairly, honestly and in good faith with their clients, contrary to OSC Rule 31-505. Staff submits that in these cases, where the respondent has been found to put their interests ahead of those of their clients, the Tribunal has ordered significant financial sanctions, disgorgement, permanent market bans and costs.

[15] The Tribunal cases provided by Staff involve a finding a fraud, generally in the context of raising capital from investors. Staff submits that despite the differences between the facts of these fraud cases and this case, the fraud cases share

2 RSO 1990, c S.5

3 *Re Bradon Technologies Ltd.*, 2016 ONSEC 19 (***Bradon***) at para 26

4 *Bradon* at para 27, citing *Committee for Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43

5 *Re York Rio Resources Inc.*, 2014 ONSEC 9 (***York Rio***) at para 36

6 *Re Moncasa Capital Corp.*, 2013 ONSEC 49 at para 18, citing *Re Cartaway Resources Corp.*, 2004 SCC 26 at para 60

7 *York Rio* at para 34

some features with the facts found in the Merits Decision, in that they all involve registrants who improperly withheld important information from others so as not to compromise their own interests.

[16] Marrone submits that the Tribunal decisions involving findings of fraud are fundamentally different from the facts in this instance and that Staff's attempt to draw a broad connection based on withholding information for personal gain is a false equivalence. Marrone asserts that based on the facts in this case, any comparison to the Tribunal's decisions involving fraud would be misplaced.

[17] Marrone also submits that the SRO decisions provide helpful guidance as to appropriate sanctions.

[18] In the circumstances, we have determined the appropriate sanctions in this instance based on first principles by considering the sanctioning factors as they apply to this case. We find the settlement agreements approved by the SROs to be of limited assistance to our analysis for the very reason that they represent negotiated resolutions that may not necessarily reflect a full consideration of the facts that might have been found and submissions that might have been accepted through a contested hearing.

[19] With respect to other decisions by the SROs, we find them helpful to our understanding of how the SROs view and have dealt with instances of conflicts of interest, particularly in the context of testamentary gifts from clients. However, given the differences in the sanctioning powers of the SROs and the Tribunal, including that the SROs are subject to sanctions guidelines which do not apply to this Tribunal, we find them of limited assistance in coming to our decision about appropriate sanctions.

[20] We do not find the Tribunal's fraud decisions helpful. We agree with Marrone that the facts in those cases are fundamentally different from those found by the panel in the Merits Decision. However, we do take guidance from the fact that this Tribunal has ordered significant financial sanctions in circumstances where a respondent has been found to have breached OSC Rule 31-505.

[21] We now turn to consider the sanctioning factors as they apply to the facts of this case.

2.3 Application of the sanctioning factors

2.3.1 Seriousness of the misconduct

[22] The Merits Panel found that Marrone's breaches of the MFDA Rules and IPC policies and procedures were serious. They related to conflicts of interest, an elderly, financially unsophisticated and terminally ill vulnerable client, and Marrone's failure to immediately and over a protracted period report the conflicts of interest issues to his employer. All these matters are at the heart of the client relationship, which is fundamental to the purpose of OSC Rule 31-505. The Merits Panel rejected Marrone's argument that these were mere technical breaches.[8] Staff reiterated these points in its submissions.

[23] Marrone submits that the breaches in question involved one client with whom he shared a unique pre-existing personal relationship, thus distinguishing this case from circumstances where an advisor who is a stranger inserts themselves into a client's estate. He submits that there was no repeated pattern of misconduct. He also submits that he did not act on either his appointment as attorney for property or as alternate executor for MU's estate, and that any actual or perceived conflict as a result of the Power of Attorney appointments was limited to a brief period. In addition, Marrone submits that he did not cause any financial harm to MU, has yet to receive any benefit from the estate, and may never receive any benefit from the estate, given that the estate and MU's will are subject to ongoing litigation. Marrone also emphasizes the fact that the Merits Panel did not find that he coerced or exploited MU in any way. In these circumstances, the sanctions sought by Staff are, in Marrone's submission, punitive.

[24] We agree with the Merits Panel and conclude that Marrone's misconduct is serious. Registrants are in a position of trust with their clients. Clients need to have confidence that their advisors will not place their interests ahead of their clients' interests. This is all the more important where the client is vulnerable, as MU was given her advanced age, terminal illness, lack of formal education and financial sophistication, and her personal relationship with Marrone. MU's vulnerability was reinforced, in our view, by the fact that the lawyer who prepared her will and powers of attorney wanted a capacity assessment performed and yet a formal capacity assessment was never obtained.

[25] Additionally, the seriousness of Marrone's conduct is heightened by three further factors. The first factor is the materiality of the amounts that Marrone managed for MU (which represented all of MU's financial assets, except for her condominium, and one third of Marrone's book of business).

8 Merits Decision at para 191

[26] The second factor is the extent of Marrone's involvement with the preparation and execution of MU's estate documentation. Marrone:

a. provided MU with a list of lawyers and, after she chose RD, arranged all the meetings between MU and RD;[9]

b. Marrone was advised by RD, after RD's first meeting with MU, that he did not believe MU was capable to give instructions and that Marrone should get an opinion about her competency from the appropriate government agency;[10]

c. a doctor, who was not identified as a competency assessment officer, provided Marrone with a certificate stating that MU was capable of giving instructions about her health, which Marrone hand-delivered to RD;[11]

d. RD provided Marrone with copies of the draft powers of attorney and will;[12]

e. Marrone was present in MU's hospital room on both occasions when RD arrived to have the estate documents signed, although he left when asked by RD to do so;[13]

f. Marrone was aware that, on RD's first visit to have MU sign the documents, MU was not prepared to sign and asked RD why she would leave her estate to Marrone when she had family;[14] and

g. RD provided Marrone, on MU's instructions, with the signed copies of the estate documentation.[15]

[27] We note that the Merits Panel did not find that Marrone coerced or exploited MU. However, these facts that demonstrate the extent of Marrone's involvement with the preparation and execution of MU's estate documents (i) heighten his actual and perceived conflicts of interest and (ii) reinforce how obvious it should have been to Marrone that he had obligations to immediately address these conflicts.

[28] The third factor is Marrone's failure to immediately report the conflicts of interest. Because of that failure, we cannot know what steps IPC might have taken on learning of the facts giving rise to those conflicts. We also cannot know what steps MU might have taken on being advised of the conflicts.

[29] We do not agree with Marrone's submission that his pre-existing personal relationship with MU somehow lessens the seriousness of the misconduct. Indeed, as found by the Merits Panel, Marrone's close friendship with MU actually increased MU's vulnerability and was an aggravating factor.[16]

[30] Furthermore, in all the circumstances, we reject Marrone's submission that because he did not cause financial harm to MU, significant sanctions are not appropriate. While the level of financial harm suffered by a victim can be an important factor when determining the level of seriousness of misconduct and imposing sanctions, it is neither the only factor nor is it a necessary factor to a conclusion that misconduct is serious and warrants significant sanctions. In this case, it is our view that the factors outlined are not lessened by the fact that MU may not have suffered financial harm in these circumstances and we find that Marrone's misconduct was very serious. We note that two of the MFDA decisions cited by Marrone involved settlement decisions regarding conflicts of interest where the fact that the client did not suffer financial harm was considered to be a mitigating factor.[17] As indicated earlier, we find settlements to be of limited assistance to us in our analysis and neither of these decisions takes away from our comments above about the seriousness of Marrone's misconduct.

2.3.2 Respondent's experience in the market

[31] Marrone was a registered mutual fund salesperson, employed for 20 years with IPC and its predecessor firm. He managed a book of business representing approximately 150 clients with approximately $6 million in mutual fund investments.

[32] The Merits Panel found that Marrone was aware of the IPC policies and procedures throughout his many years as an IPC Approved Person.[18] In December 2016, prior to his appointment as MU's attorney for property and health, alternate executor and sole beneficiary in May 2017, Marrone affirmed he had "read, fully understood, and will comply with" the requirements in IPC's National Policies and Procedures Manual 4.2 and the Compliance Bulletins issued by IPC from

9 Merits Decision at paras 87-88, 98, 111
10 Merits Decision at paras 90-93
11 Merits Decision at para 95
12 Merits Decision at paras 97-100
13 Merits Decision at paras 101-112
14 Merits Decision at paras 103-104
15 Merits Decision at paras 114-118
16 Merits Decision at paras 58 and 174
17 *Sukman (Re)*, 2016 CanLII 29420 (CA MFDAC) (***Sukman***) at para 17; *Karasick (Re)*, 2015 CanLII 39865 (CA MFDAC) at para 52(f)
18 Merits Decision at para 167

time to time.[19] Marrone admitted that he understood he could not accept "gratuities" from clients, and he understood that all direct or indirect monetary benefits he received from clients must flow through IPC. Staff reiterated these points in its submissions.

[33] We conclude that, given Marrone's 20 years of experience and knowledge of his employer's policies and procedures, his failure to comply with his obligations as a registrant, including with IPC's policies and procedures, and his choice to put his own interests ahead of those of his vulnerable client is deserving of significant sanctions.

2.3.3 Mitigating factors

[34] We note that Marrone has no history of discipline or misconduct. This one mitigating factor is insufficient, in our view, to counter the weight of the other sanctioning factors in our analysis.

[35] Staff submits that there is no evidence that Marrone accepts the seriousness of his misconduct. He is not entitled therefore to the mitigating benefit that accompanies admissions and genuine remorse.

[36] Marrone submits that Staff is seeking penalties that suggest Marrone manipulated and took advantage of MU's vulnerabilities, while the Merits Panel made no such findings. Marrone also submits that his non-compliance with IPC's policies and procedures did not cause any financial harm to MU. In addition, Marrone submits that he never acted under the Power of Attorney or the alternate executorship and that he has yet to receive (and may never receive) any benefit from MU's testamentary bequest.

[37] We agree that Marrone is entitled to make a full answer and defence to the allegations against him. However, Marrone continues to consider his personal relationship with MU as a positive, distinguishing factor rather than the aggravating factor the Merits Panel found it to be. We agree with Staff's submissions that Marrone's submissions during this sanctions and costs hearing continued to imply that his breaches were minor or technical in nature, a position rejected by the Merits Panel.[20] In addition, Marrone, in our view, misses the main conclusion in the Merits Decision that he failed to deal, honestly, and in good faith with his client MU by accepting the appointment as attorney for property, failing to renounce his appointment as alternate executor and not immediately reporting these conflicts of interest as well as the conflict of interest arising from MU naming him the sole beneficiary under her will, while she was clearly vulnerable. As we note in [30], that Marrone did not financially harm MU is of little relevance.

[38] We conclude that Marrone has failed to acknowledge the importance of the industry's rules and his employer's policies regarding managing conflicts of interest and has not recognized the seriousness of his misconduct. He is not, therefore, entitled to the mitigating benefit that can come from a recognition of the misconduct and a genuine expression of regret. Furthermore, it is our view that his failure to acknowledge the seriousness of his misconduct weighs in favour of the need for specific deterrence.

2.3.4 Specific and general deterrence

[39] Staff submits that significant sanctions are required to achieve specific and general deterrence. As regards specific deterrence, Staff submits that Marrone knew the applicable rules and policies about the management of conflicts of interest, yet when faced with multiple conflicts he acted in his own interest rather than following those rules and policies. Staff also submits that Marrone has not demonstrated any insight into his misconduct, by continuing to imply that the breaches were minor or technical in nature.

[40] Staff submits that general deterrence is a central concern in this matter. Investors need to trust that their dealing representatives, in whom they have placed extraordinary trust, especially in instances of vulnerable clients, are treating them honestly, fairly and in good faith. Dealing representatives need to clearly understand that the consequences of ignoring conflicts of interests or putting their interests ahead of their clients cannot be considered the cost of doing business.

[41] Marrone submits that there is no need for specific deterrence as this case is unique given the close, family-like relationship between Marrone and MU and the fact that there is no evidence of there having been any issues or concerns with any of Marrone's other clients. Similarly, Marrone submits that general deterrence is not required as this is not a case of an advisor taking advantage of or manipulating a client.

[42] Marrone's misconduct is a breach of an obligation that is at the heart of the client relationship. We find that Marrone continues not to recognize the fact that his close, personal relationship with a vulnerable client aggravated, rather than mitigated, conflicts of interest that had to be managed in accordance with the policies and procedures of his firm and the MFDA. In our view, specific deterrence is required as a result.

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19 Merits Decision at para 166

20 Merits Decision at para 191

[43] In addition, it is our view that other registrants need to understand that a breach of their duty to deal honestly, fairly and in good faith with their clients, by not managing client conflicts of interest in the interests of their clients, will have serious consequences. We agree with Staff that sanctions should be such that registrants will realise the risks associated with putting their interests ahead of their client's are too high.

2.4 What are the appropriate sanctions?

[44] We have concluded that Marrone's misconduct was serious, he had significant experience in the market, he was aware of his firm's policies and procedures for managing conflicts of interest and chose not to comply with them, and his lack of recognition of the seriousness of his misconduct denies him the mitigating benefit that can come from an admission or demonstration of genuine remorse. In the circumstances, and considering the need for specific and general deterrence, significant sanctions are warranted in the public interest. We address the specific sanctions below.

2.4.1 Market bans

[45] We find that permanent market bans, including a permanent director and officer ban, are appropriate in this case.

[46] Staff submits that permanent market bans, including director and officer bans, are required to protect the public, preserve public confidence in the mutual fund industry, and ensure specific and general deterrence. Staff submits that permanent market bans are consistent with the decisions of the SROs in conflict of interest cases.

[47] Unlike the SROs, the Tribunal has the authority to restrict a respondent's right to be or act as a director or officer. Staff submits that it is also appropriate that Marrone be permanently banned from being or acting as a director or officer as avoiding potential and actual conflicts of interest and properly managing conflicts, including disclosing them, is a cornerstone obligation of those holding these offices. Staff submits that Marrone's breaches show he cannot be trusted to uphold such obligations.

[48] In addition, Staff submits that permanent market bans will not prevent Marrone from earning a living but will prevent him from abusing his status as a registrant.

[49] Marrone submits that permanent market bans are inappropriate in the circumstances. Marrone has not worked as a mutual fund sales agent since IPC dismissed him without cause in January 2018. Marrone asserts that potential employers have withheld job offers due to the MFDA's investigation and he has not sought further employment as a mutual fund salesperson. Marrone submits that, as a result, he has effectively already experienced a market ban of five years, and no additional ban should be ordered.

[50] Marrone submits that an order banning him from being or acting as a director or officer is not appropriate because the conduct at issue in this case was limited to his role as an advisor.

[51] Marrone submits that specific and general deterrence would not be achieved in this case. The findings against him, he submits, were isolated to a set period involving only one client, with whom he shared a unique pre-existing personal relationship. He submits there is no evidence to suggest the breaches form part of a repeated pattern of behaviour.

[52] We conclude that permanent market bans are appropriate in this case for the following reasons. Marrone, as a registrant, was in a position of trust with a vulnerable client. The Merits Panel took his pre-existing relationship with his client into consideration and concluded that it was an aggravating, rather than mitigating, factor. Clients need to be able to trust that their advisors will properly manage conflicts and potential conflicts by putting their clients' interests ahead of their own. This obligation is at the heart of the client relationship. The Merits Panel found that Marrone put his interests ahead of his client's interests and, as a result, failed to deal honestly, fairly and in good faith with her. Marrone and other like-minded individuals need to understand that a breach of this obligation will not be tolerated and will have serious consequences.

[53] We conclude that a permanent director and officer ban is appropriate to be included in the market bans. We agree with Staff that management of conflicts of interest is a fundamental obligation of directors and officers. Marrone has demonstrated that he cannot uphold that obligation.

2.4.2 Administrative penalty

[54] We conclude that an administrative penalty of $500,000 is appropriate in this case.

[55] Staff submits that an administrative penalty of $500,000 reflects the aggravated nature of the breach and the need to protect vulnerable clients and is proportionate to the amount of money at issue in this matter. Staff emphasizes that the administrative penalty has to be proportional to the amounts at issue, and be large enough, given the size of the benefit that might be obtained, to send the message to Marrone and others that it is not worth the risk to put one's interests ahead of the interests of one's client.

[56] Marrone submits that the administrative penalty proposed by Staff is punitive and based on decisions that are not congruent with the facts of this case as they are either Tribunal decisions involving findings of fraud or SRO decisions with fraud-like elements. Marrone submits that, of the SRO decisions, three are helpful as they involve elements similar to this case where the fines imposed ranged from $10,000 to $80,000.[21] Two of these cases were settlements and one involved an agreed statement of facts.

[57] In addition, Marrone submits that his ability to work as a mutual fund sales representative has been permanently impaired. He estimates that his total loss of potential income since 2018 for his remaining work-life is approximately $1,300,000 to $1,700,000. These losses, Marrone submits, eclipse the administrative penalty sought by Staff and are an argument against a significant administrative penalty.

[58] We reject Marrone's position. In the circumstances of this case, it is our view that any loss of income suffered by Marrone is a foreseeable consequence of his misconduct and is irrelevant to our determination of the appropriate administrative penalty. Marrone did not provide any evidence regarding his financial status or any efforts to replace his income. Accordingly, we give this submission no weight.

[59] As we indicated earlier, given the unique nature of this case we do not find any of the cases cited by either party of particular assistance. The unique nature of this case is the significance of the conflicts of interest, which was elevated by the following factors:

a. MU's vulnerability;

b. the size of her account and the fact that it represented a significant proportion of Marrone's book of business;

c. the value of MU's estate;

d. the extent of Marrone's involvement with the preparation and execution of MU's estate documentation; and

e. the fact that Marrone's conduct deprived IPC and MU of the opportunity to address the conflicts of interest presented by MU appointing Marrone as her attorney and alternate executor, and naming him as her sole beneficiary.

[60] In this instance, and recognizing that the maximum amount of an administrative penalty is $1 million for each breach,[22] we find that an administrative penalty of $500,000 is appropriate. The amount of the administrative penalty also appropriately sends the message that Tribunal sanctions cannot be viewed as a mere licensing fee for failing to properly address conflicts of interest.

2.4.3 Reprimand

[61] Staff also seeks an order that Marrone be reprimanded. We decline to make that order.

[62] Staff submits that reprimands censure misconduct and reinforce the importance of compliance with Ontario securities law,[23] and are an appropriate sanction for registrants who breach the rules they are expected to know and uphold. Staff did not make any submissions that identified anything unique to this case as warranting a reprimand.

[63] Marrone made no specific submissions regarding a reprimand.

[64] If a reprimand is treated as an automatic add-on to other sanctions, its value may be diminished in other circumstances where a reprimand is better suited.[24] We conclude that it is neither necessary nor in the public interest to issue a reprimand in this case where a breach of Ontario securities law has been found, significant sanctions are imposed and the reasons for decision sufficiently condemn the misconduct.

2.4.4 Disgorgement

[65] We decline to issue an order for disgorgement, for the following reasons.

[66] Staff seeks an order that Marrone disgorge an amount equal to any benefit he receives from MU's estate resulting from the fact that MU's will names him as sole beneficiary. The estate's value, based on the evidence submitted by Staff, is approximately $1,859,802 and Staff seeks an order for disgorgement of this amount. The estate and MU's will were the subject of ongoing litigation at the time of the sanctions and costs hearing and it was not known when or how that litigation would be resolved, what the value of the estate would be at the time of resolution, or whether Marrone would receive any

21 *Coccimiglio (Re)*, 2019 IIROC 27; *Sukman*; *McCullough (Re)*, 2017 IIROC 27

22 *Act*, s 127(1)

23 *Stableview (Re)*, 2022 ONCMT 17 at para 26

24 *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10 (***Money Gate***) at para 39

amounts from the estate. Staff submits that, accordingly, the disgorgement order should provide that it may be varied if Marrone's interest in the estate is reduced.

[67] Marrone submits that disgorgement should not be ordered because this would override or interfere with MU's testamentary intentions, there is no causal connection between the breach of Ontario securities law found by the Merits Panel and Marrone's interest under MU's will, nothing in the *Act* or MFDA Rules prohibits Marrone from receiving a benefit under a client's will, and a disgorgement order would, in any event, be unfair in circumstances where Marrone has not received, and may never receive, any proceeds from MU's estate.

[68] The Tribunal may order disgorgement of any amounts obtained as a result of the non-compliance with Ontario securities law.[25] By ensuring that persons do not benefit from their misconduct, a disgorgement order serves the goals of general and specific deterrence.[26]

[69] The preliminary issue for determination by us is whether Marrone obtained (or kept) his interest as sole beneficiary of MU's estate as a result of his non-compliance with Ontario securities law. We conclude, for the reasons set out below, that this pre-condition to a disgorgement order is not met on the facts of this case. Given this conclusion, it was not necessary for us to consider Marrone's other submissions as to why a disgorgement order should not be issued.

[70] The Merits Decision does not find or conclude that Marrone obtained or kept his interest as the sole beneficiary of MU's estate as a result of a breach of Ontario securities law. Furthermore, we conclude that the findings of fact in the Merits Decision also do not permit us to find or conclude that Marrone obtained or has kept his interest as a beneficiary of MU's estate as a result of a breach of Ontario securities law.

[71] The Merits Decision concluded that: "Marrone acted unfairly, dishonestly and in bad faith towards his vulnerable client by failing to follow the required procedures for dealing with conflicts or potential conflicts of interest, which was a significant breach of the MFDA Rules and IPC policies and procedures, and this constituted a breach of OSC Rule 31-505."[27] This was the breach of Ontario securities law that was found.

[72] The Merits Panel found breaches of MFDA Rules 2.3.2(a)(1) and 2.3.1(a)(ii) arising from Marrone's acceptance of the Power of Attorney for property and his failure to renounce his appointment as alternate executor. In addition, the Merits Panel's finding of a breach of Ontario securities law was based upon Marrone's failure to comply with MFDA Rule 2.1.4, which mandates a multi-step process for the identification, reporting, assessment, and management of conflicts of interest[28] and his failure to comply with IPC's policies and procedures Manual 4.2 that mirrored MFDA Rule 2.1.4.[29] Marrone was found to have breached Ontario securities laws because, in part, he failed to immediately disclose to IPC the conflict or potential conflict of interest arising from his being designated as sole beneficiary and alternate executor under MU's will and being appointed attorney for property.

[73] There is nothing in the Merits Decision that supports a conclusion that Marrone's failure to properly disclose MU's testamentary bequest to IPC either resulted in Marrone being named as a beneficiary under MU's will or remaining as a beneficiary under MU's will.

[74] To the contrary, the Merits Decision addresses the question of what might have happened had Marrone disclosed the bequest to IPC and goes only so far as to observe that such disclosure "may have put his significant inheritance at risk."[30] The Merits Decision's recognition of the possibility that timely compliance by Marrone with his disclosure obligations "may" have put the inheritance under MU's will at risk, is very different than a finding on a balance of probabilities that Marrone's failure to disclose the conflict accounts for or resulted in his interest or continued interest under MU's will.

[75] Based on the available record, we are not in a position to know or decide what would have transpired had Marrone immediately disclosed MU's testamentary gift to IPC. Nor can we know or decide what MU would have done and whether she might have revoked the bequest had she been advised of the conflict or potential conflict of interest.

[76] Regarding the preliminary issue of whether Marrone obtained (or kept) his interest as sole beneficiary of MU's estate as a result of non-compliance with Ontario securities law, Staff made oral submissions that a sufficient nexus between Marrone's benefit under MU's will and Marrone's breach of Ontario securities law exists. In Staff's submission, a sufficient nexus exists because Marrone's failure to disclose the conflict to IPC prevented IPC from investigating and dealing with the conflict and also meant that MU was not advised of the conflict and was unable to react to it. Staff also submitted that his breach of Ontario securities law is the only reason that no one can say what would have happened to Marrone's interest under MU's will had the conflict been appropriately disclosed. Staff submitted that it would be regulatory mischief if a disgorgement order is not made and Marrone is entitled to retain benefits under MU's will, especially given that

25 *Act*, s 127(1)
26 *Money Gate* at para 44
27 Merits Decision at para 195
28 Merits Decision at para 139
29 Merits Decision at paras 142, 167
30 Merits Decision at para 179

Marrone could not properly have accepted money from MU when she was alive. Staff's arguments did not satisfy us that a disgorgement order can be made in this case.

[77] Although the MFDA guidance on accepting monetary benefits from clients, which provides that "all monetary and non-monetary benefits provided directly or indirectly to or from clients must flow through the Member"[31] is referenced in the Merits Decision, it did not ground the Merits Decision's finding of a breach of Ontario securities law. At the merits hearing, Marrone submitted that being a beneficiary of a client's estate is not a breach of MFDA Rules or IPC policies and procedures, that IPC policies do not prohibit the receipt of monetary benefits from a client, and that he is not in breach of IPC policies as he has not yet received any benefit from the estate.[32] Despite these matters being raised and argued, the Merits Panel did not find that receipt of a benefit by Marrone by way of his designation as sole beneficiary under MU's will (or Marrone's failure to disavow MU's testamentary bequest) was a breach of MFDA Rules or IPC policies and procedures or a breach of Ontario securities law.

2.4.5 Conclusion regarding the appropriate sanctions

[78] We conclude that it is in the public interest to order that Marrone be permanently banned from the capital markets, including a director and officer ban, and pay an administrative penalty of $500,000.

3. COSTS ANALYSIS

[79] The Tribunal may order a person to pay the costs of an investigation and hearing if the Tribunal is satisfied that the person has not complied with Ontario securities law.[33] A costs order is not a sanction. It is a means to recover investigation and hearing costs. Respondents should contribute to enforcement costs where there has been a finding that they contravened Ontario securities law.[34]

[80] The Tribunal considers several factors when making a costs order,[35] including those most relevant, in our view, to this case:

a. the seriousness of the allegations and the parties' conduct;

b. the reasonableness of the requested costs;

c. OSC Staff's conduct during the investigation and the proceeding, and how it contributed to the costs of the investigation and the proceeding;

d. whether the respondent contributed to a shorter, more efficient, and more effective hearing; and

e. whether the respondent participated in a responsible, informed and well-prepared way.

[81] Staff seeks costs of $100,000, which it submits reflects a discount of almost 60 percent of the costs it incurred.

[82] Staff submits that the costs are reasonable. This case involved a coordinated effort between the MFDA and Staff, who worked together on the case and acted jointly as litigation counsel. The Merits Panel expressly concluded that this was an efficient and effective use of both MFDA and Staff resources, resulting in a more efficient investigation.[36]

[83] Staff has not included in its request any costs for work by MFDA counsel, investigators, or the MFDA investigator witness. Staff included in its costs calculation only the time spent by Staff's lead investigator, lead counsel during the investigation and lead counsel during the merits hearing. All other Staff costs were excluded. With these exclusions, Staff's costs came to $235,000. Staff is, however, seeking $100,000.

[84] The merits hearing took place on 11 days over 5 months, followed by written submissions. Staff submits that Marrone contributed to the length of the proceeding as he made no admissions and advanced multiple arguments as to why the allegations against him should be dismissed in their entirety, all of which were rejected by the Merits Panel. Staff also submits that Marrone's choice to testify over three hearing days contributed to the length and complexity of the proceeding, as the Merits Panel did not find him a credible witness and did not believe the story he was telling.[37]

[85] Marrone submits that a significant amount of Staff's costs was incurred investigating and litigating whether Marrone took advantage of MU, and the true nature of Marrone's relationship with MU, including preparing witnesses who offered little

31 Merits Decision at para 155
32 Merits Decision at para 157
33 *Act*, ss 127.1(1), 127.1(2)
34 *2241153 Ontario Inc. (Re)*, 2016 ONSEC 10 at para 16
35 *Bradon* at paras 114-115
36 Merits Decision at para 50
37 Merits Decision at para 57

probative evidence. The Merits Panel ultimately accepted that Marrone and MU were personal friends and placed little weight on the evidence of two of the seven witnesses called by Staff.[38] Yet, Marrone had to counter this evidence.

[86] Marrone originally proposed that Staff's requested costs be reduced by the amount associated with the hearing days devoted to the evidence of those two witnesses. He subsequently withdrew that request. Marrone submitted that while the costs Staff sought were excessive, it was difficult to provide a specific alternate cost calculation as Staff's affidavit in support of costs provided insufficient particulars. In oral submissions Marrone suggested costs in the range of $25,000 to $50,000. We find that suggested range to be too low.

[87] In our view, a cost order of $85,000 is appropriate. In arriving at this amount for costs, we do not treat the fact that Staff's cost request excludes the MFDA's costs as an additional discount to Staff's costs. It is not clear to us that the Tribunal's ability to order payment of investigation and hearing costs under s. 127.1 accords us the authority to order payment of the costs of another organization. We note that hearing costs are limited to those incurred by or on behalf of the Commission, while there is no such limitation in respect of investigation costs. In the absence of any submissions on this point, we decline to consider the exclusion of MFDA's costs as an additional discount, without drawing any conclusions on the question of whether s. 127.1 might permit the Tribunal to order payment of investigation costs of SROs.

[88] We disagree with Staff that advancing a vigorous defence should have an impact on costs in this instance. A respondent is entitled to make full answer and defence to the allegations against them. While the Merits Panel did not find Marrone credible, there is nothing in the Merits Decision to suggest that his defence was improper, vexatious or unreasonable.

[89] We agree with Marrone that there should be some discount to the costs claimed by Staff to reflect the fact that investigative and hearing time was spent on a theory and witnesses that the Merits Panel ultimately discounted. As noted, Marrone did not offer specific guidance on how such a discount should be arrived at, which would have been of assistance to us in determining the specific quantum of the discount. We have chosen to apply a discount to Staff's requested amount resulting in a costs order of $85,000. This further discount is not based upon any precise assumptions or specific assessment of investigative and hearing time spent on the theory and witnesses that the Merits Panel discounted. Rather, the discount was arrived at by exercising our discretion to consider that Staff expended time and resources pursuing a theory that was ultimately not accepted by the Merits Panel.

4. CONCLUSION

[90] For the above reasons, we shall issue an order that provides that:

a. any registration granted to Marrone under Ontario securities law is terminated permanently, pursuant to paragraph 1 of s. 127(1) of the *Act*;

b. Marrone shall immediately resign any position that he holds as a director or officer of an issuer, pursuant to paragraph 7 of s. 127(1) of the *Act*;

c. Marrone is prohibited permanently from becoming or acting as a director or officer of any issuer, pursuant to paragraph 8 of s. 127(1) of the *Act*;

d. Marrone is prohibited permanently from becoming or acting as a director or officer of any registrant, pursuant to paragraph 8.2 of s. 127(1) of the *Act*;

e. Marrone is prohibited permanently from becoming or acting as a director or officer of any investment fund manager, pursuant to paragraph 8.4 of s. 127(1) of the *Act*;

f. Marrone is prohibited permanently from becoming or acting as a registrant, an investment fund manager or a promoter, pursuant to paragraph 8.5 of s. 127(1) of the *Act*;

g. Marrone shall pay an administrative penalty of $500,000, pursuant to paragraph 9 of s. 127(1) of the *Act*; and

h. Marrone shall pay Staff's costs of the investigation and the hearing in the amount of $85,000, pursuant to s. 127.1 of the *Act*.

Dated at Toronto this 28th day of February, 2023

"M. Cecilia Williams"

"Andrea Burke"

"William J. Furlong"

[38] Merits Decision at paras 61, 65

A.4.2 Mark Odorico – s. 8(4) of the Securities Act and rule 22(4) of the Capital Markets Tribunal Rules of Procedure and Forms

Citation: *Odorico (Re)*, 2023 ONCMT 10
Date: 2023-03-01
File No. 2022-18

IN THE MATTER OF
MARK ODORICO

REASONS AND DECISIONS
(Subsection 8(4) of the *Securities Act* RSO 1990 c S.5 and
Rule 22(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

Adjudicators:	Andrea Burke (chair of the panel) Sandra Blake Cathy Singer	
Hearing:	By videoconference, November 25, 2022; final written submissions received January 30, 2023	
Appearances:	Mark Odorico	For himself
	Kathryn Andrews	For Staff of the New Self-Regulatory Organization of Canada (formerly the Investment Industry Regulatory Organization of Canada)
	Marie Abraham Erin Hoult	For Staff of the Ontario Securities Commission

REASONS AND DECISIONS

1. OVERVIEW

[1] This is a motion by Mark Odorico (**Odorico**), a self-represented party, for a stay (the **Stay Motion**) of two decisions of the Investment Industry Regulatory Organization of Canada (**IIROC**) dated April 7, 2022[1] and August 15, 2022,[2] (collectively the **IIROC Decisions**) until the disposition of his application to the Tribunal for a hearing and review of the IIROC Decisions (the **Review Application**). The Review Application is scheduled to be heard on March 7, 2023.

[2] Pursuant to the IIROC Decisions, Odorico was disciplined for certain conduct, including misappropriating client funds, effecting unauthorized trades in a client account and failing to cooperate with Staff of the New Self-Regulatory Organization of Canada (formerly IIROC) (**New SRO Staff**) in its investigation. Sanctions imposed included a fine of $125,000, disgorgement of $579,000 and a permanent ban from registration with IIROC. In the absence of a stay, the sanctions ordered by IIROC remain in effect, as they have been since July 15, 2022 (when the penalty order was made with reasons to follow).

[3] The hearing of the Stay Motion was conducted by videoconference on November 25, 2022, and an order was issued dismissing the Stay Motion, with reasons to follow.[3]

[4] At the outset of the hearing of the Stay Motion, Odorico made an additional request of the panel for an order that his oral testimony at the hearing be kept confidential and not be made available to the public. We agreed to proceed with Odorico's testimony in the absence of the public pending further submissions from the parties prior to concluding the Stay Motion, primarily because Odorico had not filed an affidavit in support of the Stay Motion and the scope of his intended testimony was not known, making it difficult to consider and make a ruling in advance.

[5] New SRO Staff and Staff of the Ontario Securities Commission (**Commission Staff**) opposed the request for confidentiality and in the alternative suggested that Odorico's testimony be kept confidential until the parties received a copy of the hearing transcript and had an opportunity to make further submissions in writing on which parts of the transcript, if any, should remain confidential. We agreed and ordered that the transcript containing Odorico's testimony remain confidential pending further order of the Tribunal.[4] We note that the transcript is not strictly restricted to Odorico's evidence, but also includes submissions.

1 *Re Odorico* 2022 IIROC 6
2 *Re Odorico* 2022 IIROC 21
3 (2022) 45 OSCB 9924 (**November 28 Order**)
4 November 28 Order

[6] These are our reasons for dismissing the Stay Motion and our decision and reasons for allowing limited select parts of the Stay Motion transcript to remain confidential on the basis that the limited select parts offend the personal dignity of Odorico.

2. BACKGROUND

[7] Odorico was once a registered representative with CIBC World Markets. He ceased to be registered with IIROC on April 30, 2019.

[8] The IIROC disciplinary hearing took place on March 1 and 2, 2022, after numerous adjournments were requested and received by Odorico between 2021 and 2022.

[9] The IIROC panel found that:

a. between March 2014 and October 2018, Odorico misappropriated funds from three clients, contrary to Dealer Member Rule 29.1 (prior to September 1, 2016) and Consolidated Rule 1400 (after September 1, 2016);

b. between January 2016 and February 2019, Odorico effected unauthorized trades in a client's account, contrary to Dealer Member Rule 29.1 (prior to September 1, 2016) and Consolidated Rule 1400 (after September 1, 2016); and

c. in May 2020, Odorico failed to co-operate with New SRO Staff who were conducting an investigation, contrary to section 8104 of the Consolidated Rules.

[10] Following further adjournment requests, only one of which was granted, a sanctions and costs hearing was held before IIROC on July 15, 2022. On August 15, 2022, the IIROC panel released it reasons for ordering the following sanctions and costs against Odorico:

a. fines totalling $125,000;

b. disgorgement in the amount of $579,000;

c. a permanent ban on registration with IIROC in any capacity; and

d. costs in the amount of $25,000.

[11] On August 14, 2022, Odorico filed the Review Application with the Tribunal. On October 27, 2022, he filed the Stay Motion.

[12] The Stay Motion was heard on November 25, 2022. The Review Application is scheduled to be heard on March 7, 2023.

3. LAW AND ANALYSIS FOR GRANTING A STAY

3. The test for a stay

[13] The Tribunal has the authority to grant a stay of the IIROC Decisions pending the disposition of Odorico's Review Application pursuant to s. 8(4) of the Ontario *Securities Act*[5] and to impose conditions on such a stay pursuant to s. 16.1(2) of the *Statutory Powers Procedure Act* (the ***SPPA***).[6]

[14] The following three-part test for the granting of a stay is articulated by the Supreme Court of Canada[7] and has been adopted by the Tribunal in numerous cases:[8]

a. there is a serious issue to be tried;

b. the moving party would suffer irreparable harm if the stay was refused; and

c. the balance of convenience favours granting the stay.

[15] Odorico bears the onus of establishing that all three parts of the above test have been met.

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5 RSO 1990, c S.5

6 RSO 1990, c S.22; see also *Argosy Securities Inc (Re)*, 2015 ONSEC 38 (***Argosy***) at paras 14-16

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

8 *Eley (Re)*, 2020 ONSEC 30 (***Eley***) at para 14; *Argosy* at para 12

[16] New SRO Staff opposes the Stay Motion. Commission Staff takes no position with respect to the outcome of the Stay Motion.

[17] We will consider each element of the above test in turn.

3.2 Is there a serious issue to be tried?

[18] The threshold to establish that there is a serious issue to be tried is low. The Tribunal is required to make a preliminary assessment, not a prolonged examination, of the merits of the Review Application to be satisfied that the application is neither vexatious nor frivolous.[9]

[19] Odorico's Review Application is relatively sparse but does raise the following matters:

a. the financial penalties and permanent ban imposed by IIROC were excessive and unfair in the circumstances;

b. Odorico was not treated fairly in light of his health condition and needed more time to be properly represented at the IIROC hearing; and

c. Odorico did not do anything wrong in connection with the client investment account.

[20] These same matters (unfair process, insufficient time to properly prepare and participate in the hearing and defend the allegations, and undeserved and punitive penalties) are raised in Odorico's Stay Motion.

[21] Odorico submits that due to his health issues he was unable to properly represent himself before IIROC and as a result, he is facing large fines and has been banned for life, which he believes is unfair as it impedes him from earning an income.

[22] New SRO Staff submits that while it believes that the Review Application is ultimately without merit, it concedes that the Review Application is neither vexatious nor frivolous.

[23] Based on a preliminary assessment, we are satisfied that the low threshold to establish that there is a serious issue to be tried has been met and that the Review Application is neither vexatious nor frivolous. Accordingly, Odorico has satisfied this first part of the test.

3.3 Will Odorico suffer irreparable harm if a stay is not granted?

[24] The second part of the test requires the Tribunal to determine whether a refusal to grant the Stay Motion could so adversely affect Odorico's interests that the harm could not be remedied.[10]

[25] Irreparable refers to the nature of the harm suffered rather than its magnitude. It is harm which either cannot be quantified in monetary terms or which cannot be cured.[11] Evidence to demonstrate irreparable harm must be "clear and not speculative".[12]

[26] Odorico submits that a permanent ban from registration with IIROC constitutes irreparable harm. He further submits and testifies that he has suffered financial hardship and damage to his reputation that he can never regain, and that he is unable to pay the amounts ordered by IIROC until he finds a job.

[27] New SRO Staff submits that Odorico has not been an IIROC registrant since April 30, 2019. Further, Odorico has provided no documentary evidence of his financial condition to support his oral testimony.

[28] New SRO Staff cites both the *Azeff* and *Eley* decisions to support its opposition to the Stay Motion. In *Azeff,* the Divisional Court denied a stay and noted that there was "little evidence as to the full and accurate state of the Appellants' finances".[13] Conversely, in *Eley*, the Tribunal granted a stay after considering evidence which demonstrated that the applicant's career as a registered representative and portfolio manager was the primary source of income for him and his family, and that he faced a real prospect of irreparable damage to his career, income, business and reputation as a registered representative if the stay was not granted.[14]

[29] Based on the evidence before us, we do not find that Odorico will suffer irreparable harm if the Stay Motion is not granted. It has been more than three and a half years since Odorico was registered with IIROC. We have no evidence that a stay

9 *RJR-MacDonald* at paras 49-50

10 *RJR-MacDonald* at para 58; *Argosy* at para 24

11 *RJR-MacDonald* at para 59

12 *Sazant v College of Physicians & Surgeons (Ontario),* 2011 Carswell Ont 15914 (ONCA) at para 11

13 *Azeff v Ontario Securities Commission*, October 19, 2015, endorsement of Kruzick J. (***Azeff***) at p 2

14 *Eley* at paras 25 and 30

will further his prospects of employment as a registered representative and portfolio manager, nor that a stay will unwind any financial impacts to him that may have flowed as a consequence of his retirement or the IIROC investigation and proceedings. While we are sympathetic to Odorico's financial condition that was described to us, we have no evidence before us other than Odorico's oral assertions to support his submissions of impecuniosity. Financial hardship or inability to pay a fine is not, in and of itself, irreparable harm and Odorico made no submissions and provided no evidence as to how efforts by New SRO Staff to enforce the fines would result in irreparable harm. Furthermore, a stay will not remedy or address any damage to Odorico's reputation, which he submits has already occurred.

3.4 Does the balance of convenience favour granting a stay?

[30] The third part of the test requires an assessment of which of the parties will suffer greater harm from granting or denying the stay.[15]

[31] Given that we have found that Odorico has failed to establish that he will suffer irreparable harm if a stay is not granted, we do not need to consider this part of the three-part test and conclude that Odorico's request for a stay is dismissed.

4. LAW AND ANALYSIS REGARDING CONFIDENTIALITY

4.1 Introduction

[32] We now turn to Odorico's request that the confidential transcript of the Stay Motion remain fully confidential or have portions redacted. New SRO Staff and Commission Staff opposed his request and submitted that very limited portions of the transcript should remain confidential. We dismiss Odorico's request that the entire transcript be kept confidential and find that limited portions will be marked confidential on the basis that they offend the personal dignity of Odorico and the public interest in privacy outweighs the public interest in the open court principle.

4.2 Law

[33] Subsection 9(1) of the *SPPA* provides that the Tribunal may hold a hearing in the absence of the public where it is of the opinion that avoiding disclosure of intimate financial or personal matters or other matters during the hearing outweighs adherence to the principle that hearings should be open to the public. Rule 22(2) of the Capital Markets Tribunal *Rules of Procedure and Forms* (**Rules**) contains a similar provision and Rule 22(4) provides that a panel may order that part of an adjudicative record (including a hearing transcript) be confidential if the circumstances in Rule 22(2) apply to the adjudicative record.

[34] We are also mindful of the Capital Markets Tribunal *Practice Guideline* which states that personal information relevant to the resolution of a matter is generally not treated as confidential.

[35] In applying s. 9(1) of the *SPPA* (as well as Rules 22(2) and 22(4) of the Rules) it is helpful to consider the common law relating to confidentiality in court or administrative tribunal proceedings.[16]

[36] New SRO Staff and Commission Staff cite the recent Supreme Court of Canada decision in *Sherman*[17] and submit that the threshold is high when rebutting the open justice principle. A person must establish that:

a. court openness poses a serious risk to an important public interest;

b. the order sought is necessary to prevent this serious risk to the identified interest because reasonable available alternate measures will not prevent this risk; and

c. as a matter of proportionality, the benefits of the order outweigh its negative effects.[18]

[37] The Supreme Court of Canada describes the bar as being higher and more precise than a "sweeping privacy interest". The open court principle brings necessary limits to the right to privacy.[19] Open court proceedings by their nature can be a source of discomfort and embarrassment and these intrusions on privacy are generally seen as of insufficient importance to overcome the presumption of openness.[20] Rather, the individual must establish "that there is a serious risk that, without an exceptional order, the affected individual will suffer an affront to their dignity."[21]

15 *RJR-MacDonald* at para 62
16 *Hudbay Minerals Inc (Re),* 2009 ONSEC 18 at para 28
17 *Sherman Estate v Donovan*, 2021 SCC 25 (***Sherman***)
18 *Sherman* at para 38
19 *Sherman* at para 58
20 *Sherman* at para 56
21 *Sherman* at para 34

[38] There is no exhaustive list as to what constitutes an affront to dignity.[22] We must consider the facts before us. We therefore turn to the submissions of the parties and to the details of the transcript.

4.3 Analysis

[39] Odorico submits that his preference is for the entire transcript to remain confidential. Alternatively, he proposes that the bulk of his testimony be redacted, submitting that should the information be made public he would suffer great harm to his current health condition.

[40] New SRO Staff and Commission Staff propose redactions to the Stay Motion transcript in only a handful of instances. Their proposed redactions focus on the type of doctor Odorico visited, detailed particulars of his symptoms at hospitalization and a doctor's note previously redacted by the Tribunal.[23] They submit that the balance of the transcript does not contain information that would cause Odorico to suffer an affront to his dignity.

[41] We have no doubt that Odorico may feel embarrassed about portions of his testimony and submissions. Arguably, there are portions of the transcript that go to dignity issues. However, we must also consider the disclosure that is relevant to the public interest in support of our decision and reasons on the Stay Motion.

[42] While we concur that Odorico has not met the threshold for a confidentiality order to be applied to the entire transcript, we find that there are certain parts of the transcript that would, without redaction, cause an affront to the personal dignity of Odorico where the public interest in privacy outweighs the public interest in the open court principle. Those include the proposed redactions by New SRO Staff and Commission Staff as well as some additional redactions sought by Odorico.

[43] We find that certain intimate details about Odorico's current health and some of his personal and family issues are highly sensitive and go to personal dignity while not being relevant to our decision on the Stay Motion and can remain confidential. We also find that certain intimate details about Odorico's health at the time of the IIROC hearing, including language tracking his particular diagnosis or doctor's advice, can also remain confidential. However, the details about how Odorico's health impacted his ability to properly participate in and defend himself at the IIROC proceedings as well as the details about his financial circumstances that we have not agreed should be redacted, should be public having regard to a balancing of privacy concerns against the fundamental principle of public access to proceedings. In our view, this information is important and requires transparency considering all the relevant circumstances, including the grounds advanced by Odorico in the Stay Motion and in the Review Application.

5. CONCLUSION

[44] For the reasons set out above, we dismissed Odorico's Stay Motion.

[45] We also order that the transcript of the confidential portion of the November 25, 2022, hearing is to be made public, with the following redactions made:

a. the words after "with" on line 25, page 8;

b. the words between "hospital" on line 2, page 10 and "These" on line 5, page 10;

c. the words between "to" on line 7, page 10 and "It's" on line 8, page 10;

d. the words after "that" on line 13, page 10 through to the end of line 14, page 10;

e. the word after "I'm" on line 5, page 21;

f. the words between "and" on line 6, page 21 and "riding" on line 7, page 21;

g. the words between "know" on line 18, page 21 and "you know" on line 20, page 21;

h. the words between "absence" on line 26, page 21 and "but" on line 27, page 21;

i. the words between "Odorico" on line 7, page 23 and "Sincerely" on line 14, page 23;

j. the words between "just" and "but" on line 21, page 23;

k. the word between "of" and "at" on line 22, page 23;

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22 *Sherman* at para 77

23 *Odorico (Re)*, 2022 ONCMT 36

l. the words between “suffering” on line 22, page 24 and “do you” on line 23, page 24;

m. the words between “because” on line 22, page 25 and “that had” on line 23, page 25;

n. the words between “my house” on line 25, page 25 and “everything” on line 26, page 25;

o. the words between “saying that” on line 2, page 26 and “I can’t” on line 3, page 26; and

p. the words between “I’ve got” and “I’m under” on line 16, page 28;

and only the redacted version of the transcript of the confidential portion of the hearing shall be available to the public.

Dated at Toronto this 1st day of March, 2023

“Andrea Burke”

“Sandra Blake”

“Cathy Singer”

A.4.3 Aaron Wolfe – ss. 127(1), 127.1

Citation: *Wolfe (Re)*, 2023 ONCMT 11
Date: 2023-02-22
File No. 2023-5

IN THE MATTER OF
AARON WOLFE

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

Adjudicators:	M. Cecilia Williams (chair of the panel) Geoffrey D. Creighton	
Hearing:	By videoconference, February 22, 2023	
Appearances:	Hanchu Chen	For Staff of the Ontario Securities Commission
	Nadia Campion	For Aaron Wolfe

ORAL REASONS FOR APPROVAL OF A SETTLEMENT

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

[1] Staff of the Ontario Securities Commission has alleged Aaron Wolfe engaged in illegal insider trading, contrary to s 76(1) of the *Securities Act* (the **Act**).

[2] Staff and Wolfe seek approval of a settlement agreement they have entered into regarding this allegation. We conclude that it would be in the public interest to approve the settlement for the following reasons.

[3] We begin with the factual background, which is set out in detail in the settlement agreement. We summarize the most important facts here.

[4] Wolfe, a non-registrant, obtained material non-public information from a third party who was in a special relationship with Tahoe Resources Inc. (**Tahoe**) about a proposed acquisition of Tahoe before the transaction was generally disclosed. At the time Tahoe was a reporting issuer in Ontario and was publicly listed on the Toronto Stock Exchange. The proposed acquisition was material to Tahoe. After the acquisition was announced, Tahoe's share price rose 49% relative to the closing price the previous day.

[5] With knowledge of the material non-public information, Wolfe purchased 100,000 shares in Tahoe valued at approximately $302,935 and sold all the shares five days later for a profit of $125,064. Wolfe has admitted that this profitable trade was the result of illegal insider trading and a breach of Ontario securities law and that his conduct was contrary to the public interest.

[6] There is one mitigating factor in Wolfe's favour. He co-operated with Staff by agreeing to the terms of the settlement and making every effort to resolve this matter without a contested hearing.

[7] Wolfe asked, and Staff did not object, that we consider additional factors to Wolfe's credit. Those factors are detailed in the Settlement Agreement. They include that Wolfe is remorseful, acknowledges and accepts full responsibility for his conduct, has never been a registrant, and has never been the subject of any enforcement action by a securities or other regulatory body.

[8] That brings us to the sanctions and other measures to which the parties have agreed.

[9] Staff and Wolfe have agreed that Wolfe will pay an administrative penalty of $200,000, disgorge his profit of $125,064 and pay costs of $15,000. These financial terms are subject to a payment plan, which is detailed in the draft order attached to the Settlement Agreement. The parties have also agreed that Wolfe shall be subject to a 5-year market access ban, with specific carve-outs to permit Wolfe to receive securities as payment for professional services rendered by him, meet financial commitments and continue to contribute to registered accounts.

[10] We have reviewed the settlement agreement in detail, and we have had the benefit of a confidential settlement conference with counsel for both parties.

[11] Our role at this settlement hearing is to determine whether the negotiated results fall within a range of reasonable outcomes, and whether it would be in the public interest to approve the settlement. This Tribunal respects the negotiation process and accords significant deference to the resolutions the parties have reached.

[12] The settlement underscores the fact that illegal insider trading is unfair to investors, erodes confidence in capital markets, and constitutes a significant breach of Ontario securities law. Wolfe's misconduct here is serious. His agreement to co-operate and resolve this matter is an important mitigating factor.

[13] The agreed upon sanctions will achieve both specific and general deterrence, and they properly reflect the serious nature of the misconduct. They are within the range of reasonable outcomes.

[14] It is in the public interest for us to approve the settlement, and we will therefore issue an order substantially in the form of the draft attached to the settlement agreement.

Dated at Toronto this 22nd day of February, 2023

"M. Cecilia Williams"

"Geoffrey D. Creighton"

B. Ontario Securities Commission

B.2
Orders

B.2.1 Freshii Inc.

Headnote

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

Applicable Legislative Provisions

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

March 2, 2023

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
FRESHII INC.
(the Filer)

ORDER

Background

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

Under the Process for Cease to be 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, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Yukon, Northwest Territories and Nunavut.

Interpretation

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

Representations

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

1. the Filer is not an OTC reporting issuer under Multilateral Instrument 51-105 *Issuers Quoted in the U.S. Over-the-Counter Markets*;

2. the outstanding securities of the Filer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 securityholders in each of the jurisdictions of Canada and fewer than 51 securityholders in total worldwide;

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

4. the Filer is applying for an order that the Filer has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

5. the Filer is not in default of securities legislation in any jurisdiction.

Order

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

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

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0085

B.2.2 Brookfield Corporation – s. 6.1 of NI 62-104

Headnote

Section 6.1 of National Instrument 62-104 Take-Over Bids and Issuer Bids – Exemption from formal issuer bid requirements in Part 2 of NI 62-104 in connection with the repurchase of preferred shares, which constitutes an issuer bid under NI 62-104 – all issued and outstanding class of preferred shares subject to repurchase held by a single shareholder who is a sophisticated investor and would qualify as an "accredited investor" and does not require an issuer bid circular nor other protections of the formal issuer bid requirements – Relief from formal issuer bid requirements granted, subject to conditions.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
BROOKFIELD CORPORATION

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of Brookfield Corporation (formerly Brookfield Asset Management Inc., the "**Filer**") to the Ontario Securities Commission (the "**Commission**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") exempting the Filer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchase by the Filer of 2,000,000 of its Class A Preference Shares, Series 15 (collectively, the "**Subject Shares**") from an "accredited investor" within the meaning of National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**") (the "**Selling Shareholder**");

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Filer having represented to the Commission that:

1. The Filer is a corporation governed by the *Business Corporations Act* (Ontario).

2. The registered and head office of the Filer is located at 181 Bay Street, Suite 100, Toronto, Ontario, M5J 2T3.

3. The Filer is a reporting issuer in each of the provinces and territories of Canada, and the Filer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized share capital of the Filer consists of an unlimited number of Class A Limited Voting Shares ("**Class A Shares**"), an unlimited number of Class B Limited Voting Shares ("**Class B Shares**"), an unlimited number of Class A preference shares issuable in series ("**Class A Preference Shares**") and an unlimited number of Class AA preference shares issuable in series ("**Class AA Preference Shares**"). As of December 31, 2022, 2,000,000 Class A Preference Shares, Series 15 (being the Subject Shares) were issued and outstanding.

5. The Subject Shares are held entirely by the Selling Shareholder.

6. The Class A Shares are publicly listed and posted for trading on the Toronto Stock Exchange and the New York Stock Exchange under the symbol "BN".

7. The Subject Shares are not listed on any stock exchange and are not convertible into Class A Shares, Class B Shares, Class A Preference Shares, Class AA Preference Shares or any other shares. The Subject Shares are not entitled to vote except with respect to certain matters affecting such shares as a class or series.

8. No class or series of shares currently issued and outstanding are convertible into the Subject Shares.

9. The corporate headquarters of the Selling Shareholder are located in the Province of Ontario.

10. The Subject Shares are currently redeemable at the option of the Filer. The redemption price for the Subject Shares is $25.00 per share, together with all accrued and unpaid dividends thereon.

11. The Subject Shares are entitled to a preference over the Class A Shares and Class B Shares and over any other shares ranking junior to the Subject Shares with respect to priority in payment of dividends and in the distribution of assets (to the extent of the redemption price for such shares) in the event of the Filer's liquidation, dissolution or winding-up, whether voluntary or involuntary, or any other distribution of the Filer's assets among shareholders for the purpose of winding-up the affairs of the Filer.

12. The terms attaching to the Subject Shares in the Filer's articles permit, subject to applicable law, the purchase for cancellation by the Filer of all or any part of the outstanding Subject Shares by private contract at the lowest price or prices at which, in the opinion of the Filer's board of directors, such shares are then obtainable but not exceeding $25.00 per share together with an amount equal to all accrued and unpaid dividends thereon and the cost of purchase.

13. The Selling Shareholder is at arm's length to the Filer and is not an "insider" of the Filer, an "associate" of an "insider" of the Filer, or an

"associate" or "affiliate" of the Filer, as such terms are defined in the Securities Act (Ontario) (the "Act"). The Selling Shareholder is an "accredited investor" within the meaning of NI 45-106.

14. The Selling Shareholder is the original holder of the Subject Shares.

15. The Filer and the Selling Shareholder intend to enter into an agreement of purchase and sale (the "**Agreement**") pursuant to which the Filer will agree by way of private contract to acquire all of the Subject Shares from the Selling Shareholder (the "**Proposed Purchase**") for a purchase price (the "**Purchase Price**") that will be negotiated at arm's length between the Filer and the Selling Shareholder.

16. The purchase of the Subject Shares by the Filer pursuant to the Agreement will constitute an "issuer bid" for the purposes of NI 62-104, to which the applicable Issuer Bid Requirements would apply.

17. The purchase of the Subject Shares by the Filer does not require the approval of other holders of other classes and/or series of shares ranking as to dividends or capital prior to or *pari passu* with the Subject Shares.

18. The Filer is unable to acquire the Subject Shares from the Selling Shareholder in reliance on any exemptions from the Issuer Bid Requirements in NI 62-104.

19. The purchase of Subject Shares will not adversely affect the Filer or the rights of any of the Filer's securityholders and will not materially affect control of the Filer.

20. Other than the Purchase Price, no fee or other consideration will be paid by the Filer to the Selling Shareholder in connection with the Proposed Purchase.

21. At the time that the Agreement is negotiated or entered into by the Filer and the Selling Shareholder and at the time of the Proposed Purchase, neither the Filer, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Filer that has not been generally disclosed.

22. The Selling Shareholder has been advised of this order and has not raised any objection to its granting nor the resulting exemption from the Issuer Bid Requirements.

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

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Filer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchase, provided that:

(a) at the time of the Proposed Purchase, no person or company, other than the Selling Shareholder as of the date of this decision, holds the Subject Shares;

(b) at the time that the Agreement is negotiated or entered into by the Filer and the Selling Shareholder and at the time of the Proposed Purchase, neither the Filer, nor any personnel of the Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Filer that has not been generally disclosed; and

(c) the Agreement to be entered into between the Filer and the Selling Shareholder includes an acknowledgement from the Selling Shareholder that (i) the Filer is relying on an exemption from the Issuer Bid Requirements, (ii) that the Selling Shareholder is an “accredited investor” within in the meaning of NI 45-106, and (iii) that they will not receive an issuer bid circular from the Filer or be afforded the other protections in Part 2 of NI 62-104.

DATED at Toronto, Ontario this 28th day of February, 2023.

“David Mendicino”
Manager, Office of Mergers & Acquisitions
Ontario Securities Commission

B.2.3 Brookfield Office Properties Inc. – s. 6.1 NI 62-104

Headnote

Section 6.1 of National Instrument 62-104 Take-Over Bids and Issuer Bids – Exemption from formal issuer bid requirements in Part 2 of NI 62-104 in connection with the repurchase of preferred shares, which constitutes an issuer bid under NI 62-104 – all issued and outstanding class of preferred shares subject to repurchase held by two shareholders who are sophisticated investors and would qualify as an "accredited investor" and does not require an issuer bid circular nor other protections of the formal issuer bid requirements – Relief from formal issuer bid requirements granted, subject to conditions.

Applicable Legislative Provisions

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

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

AND

IN THE MATTER OF
BROOKFIELD OFFICE PROPERTIES INC.

ORDER
(Section 6.1 of National Instrument 62-104)

UPON the application (the "**Application**") of Brookfield Office Properties Inc. (the "**Filer**") for an order pursuant to section 6.1 of National Instrument 62-104 *Take-Over Bids and Issuer Bids* ("**NI 62-104**") exempting the Filer from the requirements applicable to issuer bids in Part 2 of NI 62-104 (the "**Issuer Bid Requirements**") in respect of the proposed purchase by the Filer of 800,000 of its Class AAA Preference Shares, Series Z (collectively, the "**Subject Shares**") from two shareholders of the Subject Shares (collectively, the "**Selling Shareholders**");

AND UPON considering the Application and the recommendation of staff of the Commission;

AND UPON the Filer having represented to the Commission that:

Representations

1. The Filer is a corporation governed by the *Canada Business Corporations Act*.

2. The registered and head office of the Filer is located at 181 Bay Street, Suite 100, Toronto, Ontario, M5J 2T3.

3. The Filer is a reporting issuer in each of the provinces of Canada, and the Filer is not in default of any requirement of the securities legislation in the jurisdictions in which it is a reporting issuer.

4. The authorized share capital of the Filer consists of an unlimited number of Class A preference shares issuable in series ("**Class A Preference Shares**"), 6,000,000 Class AA preference shares issuable in series ("**Class AA Preference Shares**"), an unlimited number of Class AAA preference shares issuable in series ("**Class AAA Preference Shares**"), an unlimited number of Class B preference shares issuable in series ("**Class B Preference Shares**") and an unlimited number of common shares ("**Common Shares**"). As of December 31, 2022, 800,000 Class AAA Preference Shares, Series Z (being the Subject Shares) were issued and outstanding.

5. The Subject Shares are held entirely by the Selling Shareholders.

6. The following series of Class AAA Preference Shares are publicly listed and posted for trading on the Toronto Stock Exchange: Series AA, Series CC, Series EE, Series GG, Series II, Series N, Series P, Series R, Series T, Series V, Series W and Series Y (collectively, the "**Listed Issuer Shares**").

7. The Subject Shares are not listed on any stock exchange and are not convertible into any Listed Issuer Shares, Class A Preference Shares, Class AA Preference Shares, Class AAA Preference Shares, Class B Preference Shares, Common Shares or any other shares. The Subject Shares are not entitled to vote except with respect to certain matters affecting such shares as a class or series.

8. No class or series of shares currently issued and outstanding are convertible into the Subject Shares.

9. The corporate headquarters of each of the Selling Shareholders is located in the Province of Ontario.

10. The Subject Shares are currently redeemable at the option of the Filer. The redemption price for the Subject Shares is $25.00 per share, together with all accrued and unpaid dividends thereon.

11. The Subject Shares are entitled to a preference over the Common Shares and any other shares ranking junior to the Subject Shares with respect to priority in payment of dividends and in the distribution of assets (to the extent of the redemption price for such shares) in the event of the Filer's liquidation, dissolution or winding-up, whether voluntary or involuntary, or any other distribution of the Filer's assets among shareholders for the purpose of winding-up the affairs of the Filer.

12. The terms attaching to the Subject Shares in the Filer's articles permit, subject to applicable law, the purchase for cancellation by the Filer of all or any part of the outstanding Subject Shares by invitation

for tenders to all of the holders of record of the Class AAA Preference Shares, Series Z at the lowest price or prices at which, in the opinion of the Filer's board of directors, such shares are then obtainable but not exceeding $25.00 per share together with an amount equal to all accrued and unpaid dividends thereon and the cost of purchase (the "**Purchase Price**").

13. The Selling Shareholders are "accredited investors" within the meaning of National Instrument 45-106 *Prospectus Exemptions* ("**NI 45-106**"). One of the Selling Shareholders is an "affiliate" (as such term is defined in the Securities Act (Ontario)) of the Filer.

14. The Selling Shareholders (or a predecessor thereof) are the original holders of the Subject Shares.

15. The Filer intends on inviting all holders of record of the Class AAA Preference Shares, Series Z to tender their shares for purchase for cancellation by the Filer at the Purchase Price by way of private contract (the "**Tender**").

16. Following the Tender, the Filer may enter into an agreement of purchase and sale with each of the Selling Shareholders (each an "**Agreement**") pursuant to which the Filer will agree to acquire all of the Subject Shares held by such Selling Shareholder (each a "**Proposed Purchase**").

17. The purchase of the Subject Shares by the Filer pursuant to the Agreements will each constitute an "issuer bid" for the purposes of NI 62-104, to which the applicable Issuer Bid Requirements would apply.

18. The Filer is unable to acquire the Subject Shares from any of the Selling Shareholders in reliance on any exemptions from the Issuer Bid Requirements in NI 62-104.

19. The purchase of Subject Shares will not adversely affect the Filer or the rights of any of the Filer's securityholders and will not materially affect control of the Filer.

20. The purchase of Subject Shares does not require the approval of other holders of other classes and/or series of shares ranking as to dividends or capital prior to or *pari passu* with the Subject Shares.

21. Other than the Purchase Price for the Subject Shares, no fee or other consideration will be paid by the Filer to the Selling Shareholders in connection with the Proposed Purchases.

22. At the time that an Agreement is negotiated or entered into by the Filer and a Selling Shareholder and at the time of such Proposed Purchase, neither the Filer, nor any personnel of the applicable Selling Shareholder that negotiated the Agreement or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreement and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the *Securities Act* (Ontario) and hereinafter referred to as the "**Act**") in respect of the Filer that has not been generally disclosed.

23. The Selling Shareholders have been advised of this order and have not raised any objection to its granting nor the resulting exemption from the Issuer Bid Requirements.

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

IT IS ORDERED pursuant to section 6.1 of NI 62-104 that the Filer be exempt from the Issuer Bid Requirements in connection with the Proposed Purchases, provided that:

(a) at the time of each Proposed Purchase, no person or company, other than the Selling Shareholders as of the date of this decision, holds the Subject Shares;

(b) all holders of the Subject Shares will be invited to Tender and enter into an Agreement on identical terms with the Filer pursuant to a Proposed Purchase;

(c) at the time that the Agreements are negotiated or entered into by the Filer and the Selling Shareholders and at the time of the Proposed Purchases, neither the Filer, nor any personnel of the Selling Shareholders that negotiated the Agreements or made, participated in the making of, or provided advice in connection with, the decision to enter into the Agreements and sell the Subject Shares, will be aware of any "material change" or "material fact" (each as defined in the Act) in respect of the Filer that has not been generally disclosed; and

(d) the Agreements to be entered into between the Filer and the Selling Shareholders include an acknowledgement from the Selling Shareholders that (i) the Filer is relying on an exemption from the Issuer Bid Requirements, (ii) that the applicable Selling Shareholder is an "accredited investor" within in the meaning of NI 45-106, and (iii) that they will not receive an issuer bid circular from the Filer or be afforded the other protections in Part 2 of NI 62-104.

DATED at Toronto, Ontario this 28th day of February, 2023.

"David Mendicino"
Manager, Office of Mergers & Acquisitions
Ontario Securities Commission

B.2.4 Recipe Unlimited Corporation – s. 1(6) of the OBCA

Headnote

Applicant deemed to have ceased to be offering its securities to the public under the Business Corporations Act (Ontario).

Applicable Legislative Provisions

Business Corporations Act, R.S.O. 1990, c. B.16 as am., s. 1(6).

THE *BUSINESS CORPORATIONS ACT* (ONTARIO), R.S.O. 1990, C. B.16, AS AMENDED (the OBCA)

AND

IN THE MATTER OF RECIPE UNLIMITED CORPORATION (the Applicant)

ORDER (subsection 1(6) of the OBCA)

UPON the application of the Applicant to the Ontario Securities Commission (the **Commission**) for an order pursuant to subsection 1(6) of the OBCA to be deemed to have ceased to be offering its securities to the public;

AND UPON the Applicant having represented to the Commission that:

1. The Applicant is an "offering corporation" as defined in subsection 1(1) of the OBCA;

2. The Applicant's head office is located in Ontario;

3. The Applicant has no intention to seek public financing by way of an offering of securities;

4. On November 11, 2022 the Applicant was granted an order (the **Reporting Issuer Order**) pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or the equivalent in any other jurisdiction of Canada in accordance with the simplified procedure set out in National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications*; and

5. The representations set out in the Reporting Issuer Order continue to be true.

AND UPON the Commission being satisfied that to grant this order would not be prejudicial to the public interest;

IT IS HEREBY ORDERED by the Commission pursuant to subsection 1(6) of the OBCA, that the Applicant is deemed to have ceased to be offering its securities to the public.

DATED at Toronto on this 1st day of March, 2023.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0493

B.2.5 Canaccord Genuity Corp.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b), 15.1.

Citation: 2023 BCSECCOM 80

February 17, 2023

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

AND

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

AND

IN THE MATTER OF
CANACCORD GENUITY CORP.
(the Filer)

ORDER

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each, a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon by the Filer and its Registered Individuals (as defined below) in each of the other provinces and territories of Canada; and

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

Interpretation

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

Representations

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

1. The Filer is a corporation existing under the laws of the Province of Ontario. The head office of the Filer is located in Vancouver, British Columbia.

2. The Filer is registered as (i) an investment dealer in each of the provinces and territories of Canada; (ii) a futures commission merchant in Manitoba and Ontario, and (iii) a derivatives dealer in Québec.

3. The Filer is a Dealer Member of the New Self Regulatory Organization of Canada (**SRO**).

4. The Filer is a wholly owned subsidiary of Canaccord Genuity Group Inc. (**CGGI**). CGGI, through its principal subsidiaries, is a financial services firm with operations in wealth management and capital markets. CGGI, through predecessor corporations, has been in business since 1950. CGGI, together with its subsidiaries, operates in North America, the United Kingdom, Europe, Asia, Australia and the Middle East. The Filer's institutional business provides a broad range of services to non-individual institutional clients.

5. The Filer is not in default of securities or commodity futures legislation in any province or territory of Canada, other than with respect to the subject matter of this decision. The Filer and certain of its registered individuals were in default of the requirements in paragraph 13.18(2)(b) of NI 31-103 from December 31, 2021 to the date of this decision.

6. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the

Filer has approximately fifty-one (51) Registered Individuals.

7. The current titles used by the Registered Individuals include the words “Senior Vice-President”, “Vice President”, “Managing Director” and “Director”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**).

8. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience and a Registered Individual's sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

9. The Registered Individuals interact only with institutional clients that are, each, a non-individual "institutional client" as defined in SRO Investment Dealer and Partially Consolidated Rule 1201 (the **Clients**).

10. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

11. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

12. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.

13. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual “institutional clients” as defined in SRO Investment Dealer and Partially Consolidated Rule 1201.

This decision will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

“Mark Wang”
Director, Capital Markets Regulation
British Columbia Securities Commission

OSC File #: 2022/0334

B.3
Reasons and Decisions

B.3.1 AGF Investments Inc. and AGF Global Dividend Strategic Equity Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted to conventional mutual fund to file a simplified prospectus, an annual information form, and a fund facts document following the requirements of NI 81-101 as it was in force prior to January 6, 2022 – Relief granted to permit the Filer to consolidate the mutual fund into its main prospectus upon renewal in June 2023 under the requirements of current NI 81-101 requirements – relief subject to conditions including that the Filer incorporate the mutual fund into its main prospectus upon renewal in June 2023.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., s. 147.
National Instrument 81-101 Mutual Fund Prospectus Disclosure, s. 6.1.

December 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
AGF INVESTMENTS INC.
(the Filer)
AND
AGF GLOBAL DIVIDEND STRATEGIC EQUITY FUND
(the Fund)

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 on behalf of each of the Filer and the Fund, a mutual fund to be established and managed by the Filer and that will be a reporting issuer subject to National Instrument 81-102 *Investment Funds* (**NI 81-102**). The Exemption Sought (as defined below) is to permit the Fund to be exempted from filing its initial offering documents in accordance with the current provisions of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and the current form requirements in NI 81-101 that each came into force on January 6, 2022 (collectively, the **New NI 81-101 Requirements**), such that the Fund may be permitted to file a simplified prospectus, an annual information form and a fund facts document (**Fund Facts**) in reliance on the provisions of NI 81-101 and on the requirements of Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**), Form 81-101F2 *Contents of Annual Information Form* (**Form 81-101F2**) and NI 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), as they were each in force immediately prior to the implementation of the New NI 81-101 Requirements (collectively, the **Previous NI 81-101 Requirements**) (the **Exemption Sought**).

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions* (**NI 14-101**), MI 11-102 and NI 81-101 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 amalgamated under the laws of the Province of Ontario, with its head office located in Toronto, Ontario.

2. The Filer is registered in the categories of (a) exempt market dealer in the Provinces of Alberta, British Columbia, Manitoba, Ontario, Quebec and Saskatchewan, (b) portfolio manager in each of the provinces and territories of Canada, (c) investment fund manager in the Provinces of Alberta, British Columbia, Newfoundland and Labrador, Ontario and Quebec, (d) a mutual fund dealer in the Provinces of British Columbia, Ontario and Quebec and (e) a commodity trading manager in the Province of Ontario.

3. The Filer will be the manager of the Fund.

4. The Filer is not in default of securities legislation in any province or territory of Canada (the **Jurisdictions**).

The Fund

5. If the Exemption Sought is granted, the securities of the Fund will be qualified for distribution in one or more of the Jurisdictions and distributed to investors pursuant to a simplified prospectus, an annual information form and Fund Facts prepared in accordance with the Previous NI 81-101 Requirements.

Generally

6. On October 7, 2021, the Canadian Securities Administrators published amendments implementing eight initiatives aimed at reducing regulatory burden for investment funds. One of the initiatives was to consolidate the then form of simplified prospectus and the then form of annual information form for investment fund issuers, into a single simplified prospectus. The amendments repealed the requirement for a mutual fund in continuous distribution to file an annual information form by repealing Form 81-101F1 and replacing it with a new, streamlined Form 81-101F1. Although the amendments came into force on January 6, 2022, the Canadian Securities Administrators provided an exemption from compliance with the New 81-101 Simplified Prospectus Requirements for the period before September 6, 2022.

7. As it is now past September 6, 2022, without the Exemption Sought, the Filer would be required to prepare and file a simplified prospectus and Fund Facts in respect of the Fund pursuant to the New NI 81-101 Requirements.

8. Once the Fund is created and launched, the Filer plans to incorporate the Fund into the renewal simplified prospectus for its fund family known as the "**AGF Platform Funds**", which currently have a lapse date of June 22, 2023 (the **AGF Platform Funds' Renewal Prospectus**). The AGF Platform Funds Renewal Prospectus will be renewed under a simplified prospectus only, in accordance with the requirements of the New NI 81-101 Requirements, and will also file Fund Facts for each AGF Platform Fund in accordance with the New NI 81-101 Requirements. As of the date hereof, the AGF Platform Funds currently offer, and will continue to offer until the date of renewal on or about June 22, 2023, securities under a simplified prospectus, annual information form and Fund Facts which are based on the provisions of the Previous NI 81-101 Requirements.

9. As the Filer has not yet prepared or finalized an updated form of simplified prospectus or Fund Facts that is or will be compliant with the New NI 81-101 Requirements, the Filer therefore submits that it is more efficient and expedient to draft and file a simplified prospectus, annual information form and Fund Facts for the Fund using the Previous 81-101 Requirements, which is consistent with the offering documents currently employed by the other mutual funds in the AGF Platform Funds family.

10. This approach will also allow the Filer to avoid the administrative difficulties and inefficiencies, as well as the potential duplication of resources and effort, of seeking to finalize a new form of simplified prospectus and Fund Facts for the sole purpose of creating and launching the Fund, and instead, will afford the Filer more time to consider the New NI 81-101

Requirements wholistically on behalf of the AGF Platform Funds as a family of funds upon their renewal in 2023. Accordingly, the Exemption Sought, if granted, is expected to result in cost savings to the Filer.

11. The Filer will ensure that any disclosure contained in the simplified prospectus, annual information form and Fund Facts for the Fund will be accurately incorporated into the AGF Platform Funds' Renewal Prospectus in June 2023, at which time the offering documents of the AGF Platform Funds, including the Fund, will be renewed utilizing a form of simplified prospectus and Fund Facts that are each in compliance with the New NI 81-101 Requirements.

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 Filer files the simplified prospectus, annual information form and Fund Facts in respect of the Fund in accordance with the Previous NI 81-101 Requirements;

(b) the Filer incorporates the Fund into the AGF Platform Funds' Renewal Prospectus in June 2023, which simplified prospectus and Fund Facts will be in compliance with the New NI 81-101 Requirements; and

(c) the Filer includes disclosure regarding this decision under the heading "Exemptions and Approvals" in the Fund's annual information form.

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

Application File #: 2022/0539

B.3.2 iA Private Wealth (USA) Inc. and iA Private Wealth Inc.

Headnote

Application for an order pursuant to section 74 of the Securities Act (Ontario) that a registered U.S. investment adviser, affiliated with an Ontario registered investment dealer, be exempted, subject to certain conditions, from requirements of subsection 25(3) of the Act in respect of advice provided by its representatives in respect of the U.S. tax-advantaged retirement savings, education or disability savings plans of clients formerly resident in the U.S.

Applicable Legislative Provisions

Securities Act (Ontario), R.S.O. 1990, c. S.5, as am., s. 25.

February 24, 2023

IN THE MATTER OF
THE SECURITIES ACT,
RSO 1990, C S.5, AS AMENDED
(the "Act")
OF ONTARIO
(the "Jurisdiction")

AND

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

AND

IN THE MATTER OF
iA PRIVATE WEALTH (USA) INC.
("iUSA")
AND
iA PRIVATE WEALTH INC.
("iAPW")
(collectively, the "Filers")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the Act of the Jurisdiction of the principal regulator for a decision exempting iUSA and those of its individual representatives who are also registered under the Act as dealing representatives, in the approval categories of portfolio manager and registered representative, of iAPW ("**Dual Representatives**") from the adviser registration requirement under the Act, s 25(3) in respect of advice provided by the Dual Representatives, acting on behalf of iUSA, to an individual ("**Ex-U.S. Client**") if the advice is in respect of the Ex-U.S. Client's tax-advantaged retirement savings, education savings or disability savings plan ("**U.S. Plan**"), and (i) the U.S. Plan is located in the United States of America ("**U.S.**"), (ii) the Ex-U.S. Client is a holder of or contributor to the U.S. Plan, and (iii) the Ex-U.S. Client was previously resident in the U.S. ("**Requested Exemptive Relief**").

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

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

b) the 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 Quebec, British Columbia, Alberta, Saskatchewan, Manitoba, Nova Scotia, New Brunswick, Prince Edward Island, Newfoundland and Labrador, Yukon, Nunavut, the Northwest Territories (the "**Other 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 Filers:

1. iAPW is a federally incorporated, wholly owned subsidiary of Industrial Alliance Insurance and Financial Services Inc. ("**iAFC**", a Quebec corporation), which in turn is a wholly owned subsidiary of iA Financial Corporation Inc. (a Quebec corporation), a publicly held company. iAPW's head office is in Montreal, Quebec.

2. iAPW carries on business in Ontario ("**Jurisdiction**"), Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Québec, Saskatchewan, Yukon ("**Other Jurisdictions**"), with offices located in the Jurisdiction and in Alberta, British Columbia and Quebec.

3. iAPW provides a broad array of wealth management services to residents of Canada, including financial planning, wills and estates planning, tax planning, insurance planning and brokerage services.

4. iAPW is registered as an investment dealer in the Jurisdiction and each of the Other Jurisdictions and as a derivatives dealer in Quebec. It is a dealer member of the Investment Industry Regulatory Organization of Canada ("**IIROC**").

5. iAPW is not in default of securities legislation in any jurisdiction of Canada.

6. iAPW does not trade (or provide advice with respect to the trading) in securities to, with, or on behalf of clients resident in the U.S. ("**U.S. Clients**").

7. iAPW is not registered under U.S. federal securities law or any other applicable U.S. securities law to, and does not, carry on the business of a registered broker-dealer or registered investment adviser in the U.S.

8. iUSA is a federal corporation and a wholly owned subsidiary of federally incorporated iA Wealth Group (USA) Inc., which in turn is a wholly owned subsidiary of iAFC. iUSA's head office is in Toronto, Ontario.

9. At this time, iUSA has no physical presence in the U.S., and carries on business in the Jurisdiction and each of the Other Jurisdictions, with offices located in the Jurisdiction and each of the Other Jurisdictions in which iAPW has offices.

10. The Filers operate their independent businesses out of the same premises in the Jurisdiction and each of the Other Jurisdictions that offices are located in.

11. iUSA provides advisory services and may provide financial planning to U.S. Clients in reliance upon OSC Rule 32-505 *Conditional Exemption from Registration for United States Broker-Dealers and Advisers Servicing U.S. Clients from Ontario* and equivalent exemptions in Other Jurisdictions.

12. As of July 13, 2022, iUSA is registered as an investment adviser under *The Investment Advisers Act of 1940* ("**1940 Act**"), which is U.S. federal legislation.

13. iUSA is not in default of securities legislation of any jurisdiction of Canada, U.S. federal securities law or any other applicable U.S. securities law.

14. iUSA is not registered under the securities laws of any jurisdiction of Canada.

15. iUSA has engaged Pershing Advisor Solutions LLC ("**Pershing Advisor Solutions**") for trading, custody, clearing and settlement services pursuant to the terms of a Brokerage Custody Services Agreement dated July 16, 2022, as amended from time to time ("**Brokerage Custody Agreement**").

16. In accordance with the provisions of the Brokerage Custody Agreement, Pershing LLC ("**Pershing**"), an affiliate of Pershing Advisor Solutions, carries iUSA's client accounts and provides prime brokerage services to the clients of iUSA.

17. Pershing Advisor Solutions is an introducing broker-dealer, a Delaware limited liability company and a member of the Financial Industry Regulatory Authority ("**FINRA**"). Pershing is a broker-dealer and securities clearing firm, a Delaware limited liability company, and a member of FINRA and the New York Stock Exchange.

18. Each of the Dual Representatives acts on behalf of both Filers in one of the Filers' offices located in the Jurisdiction or one of the Other Jurisdictions in which the Filers maintain offices. Each Dual Representative is registered as a dealing representative of iAPW in one or more of the Jurisdiction and the Other Jurisdictions.

19. None of the Dual Representatives is in default of securities legislation of any jurisdiction of Canada, U.S. federal securities law, or any other applicable U.S. securities law.

20. Each Dual Representative, when acting on behalf of iAPW, advises only clients of iAPW resident in the jurisdiction(s) of her or his registration as a dealer and U.S. Clients formerly resident in Canada in respect of their registered plans and non-registered accounts which are based in Canada.

21. When acting on behalf of iUSA, each Dual Representative currently advises only U.S. Clients.

22. iUSA and the Dual Representatives, acting on behalf of iUSA, desire to advise Ex-U.S. Clients with respect to the trading of securities in their U.S. Plans despite such Ex-U.S. Clients' residency in the Jurisdiction and Other Jurisdictions. A Dual Representative, acting on behalf of iUSA would only advise Ex-U.S. Clients resident in the Jurisdiction or in the Other Jurisdictions if she or he is registered as a dealing representative of iAPW in the relevant jurisdiction in which the Ex-U.S. Clients reside.

23. As a newly registered investment adviser under the 1940 Act, iUSA is in the initial stage of its operations and having only started offering its services to U.S. Clients in July 2022, the impact of the advice that iUSA proposes to provide to Ex-U.S. Clients, when compared to the overall advising activities of iUSA, may fluctuate significantly in iUSA's initial stage of operations.

24. It is iUSA's intention that, by the date that is 18 months after the date of this decision, the advice that it will provide to Ex-U.S. Clients will be ancillary to iUSA's principal business which is advising U.S. Clients and that, as iUSA's client base continues to grow, U.S. Clients will comprise most of iUSA's total revenue and Ex-U.S. Clients will represent less than 10% of its total revenue by the date that is 18 months after the date of this decision.

25. By the date that is 18 months after the date of this decision, iUSA expects that the amount of revenue derived from Ex-U.S. Clients will represent less than 10% of its total revenue at the end of each quarter in any financial year. If the total revenue derived from Ex-U.S. Clients exceeds 10% of its total revenue at the end of each quarter in any financial year, iUSA will file within 10 days a letter to the OSC advising of same. The letter will refer to this decision and the requirement, and identify the percentage of the revenue derived from Ex-U.S. Clients, and the date on which the revenue exceeded 10% of its total quarter-end revenue. The letter will also refer to the date on which the exceeded threshold was discovered.

26. The Dual Representatives have the proficiency, education and experience to provide advice to Ex-U.S. Clients with respect to the trading of securities in their U.S. Plans.

27. Pershing will provide trading, custody, clearing and settlement services for all Ex-U.S. Clients of iUSA (in respect of their U.S. Plans) pursuant to the Brokerage Custody Agreement.

28. Pershing Advisor Solutions and its affiliates rely upon the exemption from the dealer registration requirement of the securities laws of the Jurisdiction and each of the Other Jurisdictions pursuant to s 8.18 of National Instrument 31-103 ("**NI 31-103**") *Registration Requirements, Exemptions and Ongoing Registrant Obligations* in connection with inter alia trades in "foreign securities" with a "permitted client" (each as defined in NI 31-103). Therefore, iUSA and the Dual Representatives will only advise Ex-U.S. Clients who are "permitted clients" with respect to the trading of "foreign securities" (each as defined in NI 31-103) in their U.S. Plans while Pershing Advisor Solutions and its affiliates act as dealers in respect of Ex-U.S. Client accounts.

29. When providing advice to Ex-U.S. Clients with respect to the trading of securities in their U.S. Plans, iUSA and the Dual Representatives will comply with U.S. federal securities law and any other applicable U.S. securities law.

30. For purposes of the Act, and as a market participant, each of the Filers is required by subsection 19(1) of the Act to: (i) keep such books, records and other documents as are necessary for the proper recording of its business transactions and financial affairs, and the transactions that it executes on behalf of others; and (ii) keep such books, records and documents as may otherwise be required under the Act.

31. All Ex-U.S. Clients of iUSA will enter into a client agreement and associated account opening documentation with iUSA. All communications with Ex-U.S. Clients will be through iUSA and the Dual Representatives and will be under iUSA branding.

32. To avoid client confusion, all Ex-U.S. Clients of iUSA will receive disclosure that explains the relationship between iUSA and iAPW.

33. iUSA confirms that there are currently no regulatory actions of the type contemplated by the Notice of Regulatory Action attached as Appendix "A" hereto in respect of iUSA or any predecessors or specified affiliates of iUSA. iAPW is in compliance with its obligations under applicable securities law to report regulatory actions relating to iAPW and its specified affiliates to securities regulators and/or self-regulatory organizations having jurisdiction over iAPW.

AND WHEREAS upon being satisfied that it would not be prejudicial to the public interest for the OSC to grant the Requested Exemptive Relief on the basis of the terms and conditions proposed,

IT IS ORDERED that pursuant to subsection 74(1) of the Act, the Requested Exemptive Relief is granted, provided that:

a) the advice is for an individual who is ordinarily resident in Canada but previously resident in the U.S., if such advice is in respect of the Ex-U.S. Client's U.S. Plan, and

   I. the U.S. Plan is located in the U.S.;

   II. the Ex-U.S. Client is a holder of or contributor to the U.S. Plan; and

   III. the Ex-U.S. Client was previously resident in the U.S.;

b) the only physical presence or offices that iUSA has in the Jurisdiction and Other Jurisdiction are the premises that it shares with iAPW;

c) iUSA does not advertise for or solicit new clients in the Jurisdiction;

d) iUSA remains registered as an investment adviser under the 1940 Act;

e) iUSA and each of the Dual Representatives are in compliance with and remain in compliance with any applicable adviser licensing or registration requirements under applicable U.S. securities legislation;

f) iAPW remains registered under the Act as an investment dealer and is a dealer member of IIROC;

g) each Dual Representative providing advice on behalf of iUSA is registered under the Act as a dealing representative in a category that would permit it to advise Ex-U.S. Clients with respect to the trading of securities in their U.S. Plans in compliance with the Act, as if the U.S. Plans were instead tax-advantaged retirement savings plan located in Canada;

h) iUSA will notify the OSC of any regulatory action after the date of this decision in respect of the Filer, or any predecessors or specified affiliates of iUSA by completing and filing Form 32-102F2, as may be amended from time to time, with the OSC within 10 days of the commencement of such action;

i) iAPW complies with its obligations under applicable securities law to report regulatory actions relating to iAPW and its specified affiliates to securities regulators and/or self regulatory organizations having jurisdiction over iAPW;

j) iUSA discloses to the Ex-U.S. Clients that it, and the Dual Representatives providing advice on its behalf, are not subject to full regulatory requirements otherwise applicable under the Act;

k) iUSA and the Dual Representatives, will, in the course of their dealings with Ex-U.S. Clients, act fairly, honestly and in good faith;

l) iUSA:

   I. enters into customer agreements and associated account opening documentation with all Ex-U.S. Clients, such that all communications with Ex-U.S. Clients will be through iUSA and the Dual Representatives, and will be under iUSA branding;

   II. provides all Ex-U.S. Clients with disclosure that explains the relationship between iUSA and iAPW;

m) the execution of each trade identified or recommended by iUSA, and each Dual Representative providing the advice on its behalf, for an Ex-U.S. Client resident in the Jurisdiction, or in one of the Other Jurisdictions, will be conducted by a person registered as a dealer under the Act in a category that would permit them to execute the trade, or otherwise exempt them from the dealer registration requirement of the securities laws of the relevant jurisdiction in which the Ex-U.S. Client resides for purposes of the trade;

n) 9 months after the date of this decision (the "**Notice Date**"), iUSA notifies the OSC of the percentage of the revenue derived from Ex-U.S. Clients compared to its total revenue, as of the Notice Date;

o) if the revenue iUSA derives from Ex-U.S. Clients is expected to exceed 10% of its total revenue 18 months after the date of this decision, iUSA takes reasonable steps to reduce its client base or obtain registration as an adviser in the Jurisdiction by the date that is 18 months after the date of this decision (taking into consideration the OSC's service standards for reviews of registration applications for new business submissions);

p) if this decision does not terminate pursuant to condition (r)(I), and if iUSA's revenue derived from Ex-U.S. Clients ("**Ex-U.S. Revenue**") at the end of a quarter in any given financial year exceeds 10% of iUSA's total quarter-

end revenue to date for that financial year, iUSA will, within 10 days of making that determination, do the following,

I. cease charging and/or accruing Ex-U.S. Revenue until such time as:

A) iUSA has been notified in writing by the OSC that all requirements of paragraph p)II) below, and all requirements of the Remediation Plan (as that term is defined below), have been satisfied;

B) iUSA has paid all capital market participation fees and associated late fees, calculated in accordance with OSC Rule 13-502 *Fees*, that would have been payable by it for the financial year in which its Ex-U.S. Revenue exceeded 10% of its total annual revenue to date, had it been registered under the Act for the duration of that financial year;

II. deliver to the OSC a letter that does the following:

A) refers to this decision and the requirements of this paragraph p),

B) identifies the date the Ex-U.S. Revenue exceeded 10% of iUSA's total quarter-end revenue to date,

C) identifies the Ex-U.S. Revenue as a percent of total quarter-end revenue to date as of the date the 10% threshold was exceeded,

D) explains why the 10% threshold was exceeded, and

E) provides a plan that is satisfactory to the OSC that describes what remedial actions iUSA will take in response to the fact that the Ex-U.S. Revenue has exceeded the 10% threshold, including for example and without limitation, reducing its client base or applying for appropriate registration under the Act (the "**Remediation Plan**"),

q) iUSA will not take any steps towards completing the Remediation Plan until the firm has received written confirmation from the OSC that the Remediation Plan is acceptable to the OSC. Upon receipt of such written confirmation, iUSA shall carry out the Remediation Plan in a timely fashion.

r) this decision will terminate on the earlier of:

I. 18 months after the date of this decision, if, at that date, the Ex-U.S. Revenue exceeds 10% of iUSA's total revenue to date for that financial year;

II. five years after the date of this decision; and

III. the coming into force of a change in Ontario securities law (as defined in the Act) that exempts iUSA from the registration requirement in the Act in connection with the advice it provides to an Ex-U.S. Client with respect to the U.S. Plan on terms and conditions other than those set out in this decision.

Dated at Toronto this 24th day of February 2023.

"Debra Foubert"
Director, Compliance and Registrant Regulation
Ontario Securities Commission

Application File #: 2022/0460

Appendix "A"

FORM 32-102F2 NOTICE OF REGULATORY ACTION

Definitions

Parent-- a person or company that directly or indirectly has significant control of another person or company.

Significant control a person or company has significant control of another person or company if the person or company:

- directly or indirectly holds voting securities representing more than 20 per cent of the outstanding voting rights attached to all outstanding voting securities of the other person or company, or
- directly or indirectly is able to elect or appoint a majority of the directors (or individuals performing similar functions or occupying similar positions) of the other person or company.

Specified affiliate -- a person or company that is a parent of a firm, a specified subsidiary of a firm, or a specified subsidiary of a firm's parent.

Specified subsidiary -- a person or company of which another person or company has significant control.

All of the questions below apply to any jurisdiction and any foreign jurisdiction. The information must be provided in respect of the last 7 years.

1. Has the firm, or any predecessors or specified affiliates of the firm entered into a settlement agreement with any financial services regulator, securities or derivatives exchange, self-regulatory organization (SRO) or similar agreement with any financial services regulator, securities or derivatives exchange, SRO or similar organization?

Yes_____ No_____

If yes, provide the following information for each settlement agreement:

Name of entity
Regulator/organization
Date of settlement (yyyy/mm/dd)
Details of settlement
Jurisdiction

2. Has any financial services regulator, securities or derivatives exchange, SRO or similar organization:

		Yes	No
(a)	Determined that the firm, or any predecessors or specified affiliates of the firm violated any securities regulations or any rules of a securities or derivatives exchange, SRO or similar organization?		
(b)	Determined that the firm, or any predecessors or specified affiliates of the firm made a false statement or omission?		
(c)	Issued a warning or requested an undertaking by the firm, or any predecessors or specified affiliates of the firm?		
(d)	Suspended or terminated any registration, licensing or membership of the firm, or any predecessors or specified affiliates of the firm?		
(e)	Imposed terms or conditions on any registration or membership of the firm, or predecessors or specified affiliates of the firm?		
(f)	Conducted a proceeding or investigation involving the firm, or any predecessors or specified affiliates of the firm?		
(g)	Issued an order (other than an exemption order) or a sanction to the firm, or any predecessors or specified affiliates of the firm for securities or derivatives-related activity (e.g. cease trade order)?		

If yes, provide the following information for each action:

Name of Entity	
Type of Action	
Regulator/organization	
Date of action (yyyy/mm/dd)	Reason for action
Jurisdiction	

3. Is the firm aware of any ongoing investigation of which the firm or any of its specified affiliates is the subject?

Yes_____ No_____

If yes, provide the following information for each investigation:

Name of entity
Reason or purpose of investigation
Regulator/organization
Date investigation commenced (yyyy/mm/dd)
Jurisdiction

Name of firm
Name of firm's authorized signing officer or partner
Title of firm's authorized signing officer or partner
Signature
Date (yyyy/mm/dd)

Witness

The witness must be a lawyer, notary public or commissioner of oaths.

Name of witness
Title of witness
Signature
Date (yyyy/mm/dd)

This form is to be submitted through the Ontario Securities Commission’s Electronic Filing Portal: https://www.osc.gov.on.ca/filing

B.3.3 Hamilton Capital Partners Inc. and Hamilton Canadian Bank Equal-Weight Index ETF

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – An ETF replicates the performance of an equal weight Canadian bank index, currently, the Solactive Equal Weight Canada Banks Index by investing in a portfolio consisting only of the six largest banks in Canada granted relief from the concentration restriction in NI 81-102.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss.2.1(1), 2.1(1.1) and 19.1.

February 28, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

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

AND

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

AND

HAMILTON CANADIAN BANK EQUAL-WEIGHT INDEX ETF
(the ETF).

DECISION

Background

The principal regulator in Ontario has received an application from the Filer on behalf of the ETF for a decision under the securities legislation of Ontario (the **Legislation**) for exemptive relief (the **Exemption Sought**) relieving the ETF from subsection 2.1(1) of National Instrument 81-102 – *Investment Funds* (**NI 81-102**), which prohibits a mutual fund from purchasing a security of an issuer, entering into a specified derivatives transaction or purchasing an index participation unit if, immediately after the transaction, more than 10% of the net asset value (NAV) of the mutual fund, taken at market value at the time of the transaction, would be invested in securities of any issuer (the **Concentration Restriction**) to permit the ETF to replicate the performance of an equal weight Canadian bank index, currently, the Solactive Equal Weight Canada Banks Index (the **Index**).

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

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

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

Interpretation

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

Representations

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

General

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

2. The Filer is the trustee, portfolio manager and investment fund manager of the ETF.

3. The Filer is registered as: (i) an investment fund manager in Ontario, Quebec and Newfoundland & Labrador; (ii) an exempt market dealer in Ontario; and (iii) a portfolio manager in Ontario.

4. The ETF will be an exchange traded mutual fund trust governed by the laws of Ontario and a reporting issuer under the laws of the Jurisdictions.

5. The Filer will file a preliminary long form prospectus on behalf of the ETF with the securities regulatory authority in each of the Jurisdictions. It is anticipated that such filing will occur by, on or about, March 1, 2023.

6. The ETF will be subject to NI 81-102, subject to any exemptions therefrom that may be granted by the securities regulatory authorities.

7. The ETF will be subject to National Instrument 81-107 Independent Review Committee for Investment Funds.

8. Subject to meeting the listing requirements of the TSX, units of the ETF will be listed on the TSX.

9. The ETF will seek to achieve its investment objective through direct or indirect exposure to the constituent securities of the Index.

10. The Filer is not in default of securities legislation in any of the Jurisdictions.

The Index

11. The constituent issuers of the Index are the top six Canadian banks listed on the TSX or other recognized exchange in Canada by market capitalization (the **Banks** and each a **Bank**). Currently, the constituents of the Index are Bank of Montreal, The Bank of Nova Scotia, Canadian Imperial Bank of Commerce, National Bank of Canada, Royal Bank of Canada, and The Toronto-Dominion Bank.

12. The Index uses a rules-based methodology that is rebalanced semi-annually on an equal weight basis (a **Rebalance Date**).

13. Based on discussions with Staff, the Filer understands the Index may not be considered a “permitted index” as such term is defined in NI 81-102.

The ETF

14. The investment objective of the ETF will be to replicate, to the extent reasonably possible and before the deduction of fees and expenses, the performance of an equal weight Canadian bank index, currently, the Index.

15. The ETF will seek to achieve its investment objective by obtaining direct or indirect exposure to the constituent securities of the Index (being the Banks), in substantially the same proportion as the Index, in order to track the Index’s performance. As an alternative to, or in conjunction with investing in and holding the constituent securities, the ETF may also invest in other securities, including other investment funds to obtain direct or indirect exposure to the constituent securities of the Index in a manner that is consistent with the ETF’s investment objective. The ETF may also hold cash and cash equivalents or other money market instruments in order to meet its obligations.

16. Following a Rebalance Date, the investment portfolio of the ETF will be rebalanced, and the ETF will acquire and/or dispose of the appropriate number of Bank securities in order to track the portfolio weighting of the Index.

17. Outside of a Rebalance Date, any investments by the ETF (owing, for example, to subscriptions received in respect of units of the ETF), if any, will be such that securities are acquired up to the same weights as such securities exist in the ETF’s portfolio, based on their relative market values, at the time of such investment.

18. The ETF may therefore, on a Rebalance Date, invest up to, approximately, 16.7% in any one Bank security.

19. In order to achieve its investment objective, and based on its investment strategy, the ETF will therefore invest in a portfolio of Banks, such that immediately after a purchase, more than 10% of the ETF’s NAV may be invested in any one Bank security for the purposes of determining compliance with the Concentration Restriction.

20. The investment objective and investment strategy of the ETF, as well as the risk factors associated therewith, including concentration risk, will be disclosed in the prospectus of the ETF, as may be renewed, or amended from time to time. The names of the Banks will also be disclosed in the prospectus of the ETF, as may be renewed, or amended from time to time.

Rationale for Investment

21. The Concentration Restriction is generally meant to protect a mutual fund from liquidity issues and the risks associated with investing a large portion of its assets in the securities of a single issuer. A portfolio that is not well diversified is more likely to experience significant losses (and gains) than one that is more broadly diversified.

22. In view of the Filer, the policy concern raised by the Concentration Restriction is not as applicable to the ETF as it is to certain other mutual funds as the fundamental investment objective of the ETF, its investment strategies and the risks associated therewith, will be clearly disclosed in the ETF's prospectus, and will be disclosed in each renewal prospectus of the ETF.

23. The Filer also notes that its strategy to acquire securities of an applicable Bank will be transparent, passive, and fully disclosed to investors. The ETF will not invest in securities other than applicable Bank securities (or securities designed to gain exposure to the Bank securities as described herein). In addition, the names of the applicable Banks invested will be listed in the ETF's prospectus. Consequently, unitholders of the ETF will be aware of the risks involved with an investment in the securities of the ETF.

24. Given the expected composition of the ETF's portfolio, it will be impossible for the ETF to achieve its investment objective and pursue its investment strategy without obtaining relief from the Concentration Restriction.

25. The units of the ETF will be highly liquid securities as designated brokers will act as intermediaries between investors and the ETF, standing in the market with bid and ask prices for the units of the ETF to maintain a liquid market for the units of the ETF. The majority of trading in units of the ETF will occur in the secondary market.

26. If required to facilitate distributions or pay expenses of the ETF, securities of the applicable Bank securities will be sold pro-rata across the ETF's portfolio according to their relative market values at the time of such sale.

27. Future subscriptions for ETF securities, if any, will be used to acquire securities of each applicable Bank up to the same weights as the Bank securities exist in the ETF's portfolio, based on their relative market values at the time of such subscription.

28. In view of the Filer, the ETF is akin to a "fixed portfolio investment fund", as such term is defined in NI 81-102, in that it will: (a) have fundamental investment objectives that include holding and maintaining a fixed portfolio of publicly traded equity securities of one or more issuers, the names of which are disclosed in its prospectus; and (b) trade the securities referred to in paragraph (a) only in the circumstances disclosed in its prospectus.

29. The Filer further notes that a "fixed portfolio investment fund" is exempt from the Concentration Restriction, provided purchases of securities are made in accordance with its investment objectives. Given the similarities between the ETF and "fixed portfolio investment funds", the Filer submits it would not be unreasonable to grant the Exemption Sought.

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

31. The liquidity of the common shares of the Banks is evidenced by the markets for options in connection therewith. A liquid market for options on the common shares of the Banks is provided by the Montreal Exchange.

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

Decision

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

(a) the investment in a Bank is made in accordance with the ETF's investment objectives and investment strategies to replicate, to the extent reasonably possible and before the deduction of fees and expenses, the performance of the Index;

(b) the ETF's investment strategies disclose that, as of a Rebalance Date, the ETF will invest in the Banks up to the stated maximum percentages described at paragraph 18, above. Outside of a Rebalance Date, any investments by the ETF, if any, will be such that securities of each applicable Bank are acquired up to the same

weights as the Bank securities exist in the ETF's portfolio, based on their relative market values at the time of such investment;

(c) the ETF's investment strategies disclose the rebalance frequency of the ETF's portfolio; and

(d) the ETF includes in its prospectus and on subsequent renewals: (i) disclosure regarding the Exemption Sought under the heading "Exemptions and Approvals"; and (ii) a risk factor regarding the concentration of the ETF's investments in the Banks and the risks associated therewith.

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

Application File #: 2023/0045
SEDAR File #: 3498162

B.3.4 Addenda Capital Inc.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the prohibition on the use of corporate officer titles by certain registered individuals in respect of institutional clients – Relief does not extend to interactions by registered individuals with retail clients.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions, s. 3.6.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 1.1, 13.18(2)(b) and 15.1.
Derivatives Act (Québec) and Derivatives Regulation (Québec), respectively under section 86 and 11.1.

[TRANSLATION]

February 23, 2023

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

AND

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

AND

IN THE MATTER OF
ADDENDA CAPITAL INC.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that pursuant to section 15.1 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103 that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought**).

The principal regulator has also received an application from the Filers for a decision under the derivatives legislation of Québec, that the Filer and its Registered Individuals (as defined below) are exempt from the prohibition in paragraph 13.18(2)(b) of NI 31-103, as applicable by section 11.1 of the *Derivatives Regulation* (Québec), CQLR, c. I-14.01, r. 1, pursuant to section 86 of the *Derivatives Act* (Québec), CQLR, c. I-14.01, that a registered individual may not use a corporate officer title when interacting with clients, unless the individual has been appointed to that corporate office by their sponsoring firm pursuant to applicable corporate law, in respect of Clients (as defined below) (the **Exemption Sought for Derivatives**).

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

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

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

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

The decision regarding the Exemption Sought for Derivatives is the decision of the principal regulator.

Interpretation

Terms defined in MI 11-102 and National Instrument 14-101 *Definitions*, and NI 31-103 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. The Filer is a corporation formed under the *Business Corporation Act* (Québec) and has its head office in Montréal, Québec.

2. The Filer is registered as (i) an investment fund manager in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, and Saskatchewan, (ii) portfolio manager and exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan, and Yukon, (iii) commodity trading manager in Ontario and (iv) derivatives portfolio manager in Québec.

3. Other than with respect to the subject of this decision, the Filer is not in default of securities legislation, commodity futures legislation or derivatives legislation in any of the Applicable Jurisdictions.

4. The Filer is a private investment management firm focused on pension plans, insurance companies, corporate assets and foundations as well as private wealth management.

5. The Filer is the sponsoring firm for registered individuals that interact with clients and use a corporate officer title without being appointed to the corporate office of the Filer pursuant to applicable corporate law (the **Registered Individuals**). The number of Registered Individuals may increase or decrease from time to time as the business of the Filer changes. As of the date of this decision, the Filer has approximately 14 Registered Individuals.

6. The current titles used by the Registered Individuals include “Director” and “Vice-President”, and the Registered Individuals may use additional corporate officer titles in the future (collectively, the **Titles**).

7. The Filer has a process in place for awarding the Titles, which sets out the criteria for each of the Titles. The Titles are based on criteria including seniority and experience, and a Registered Individual’s sales activity or revenue generation is not a primary factor in the decision by the Filer to award one of the Titles.

8. The Registered Individuals interact only with institutional clients that are, each, a non-individual “permitted client”, as defined in subsection 1.1 of NI 31-103 (the **Clients**).

9. Section 13.18 of NI 31-103 prohibits registered individuals in their client-facing relationships from, among other things, using titles or designations that could reasonably be expected to deceive or mislead existing and prospective clients. Paragraph 13.18(2)(b) of NI 31-103 specifically prohibits the use of corporate officer titles by registered individuals who interact with clients unless the individuals have been appointed to those corporate offices by their sponsoring firms pursuant to applicable corporate law.

10. There would be significant operational and human resources challenges for the Filer to comply with the prohibition in paragraph 13.18(2)(b). In addition, the Titles are widely used and recognized throughout the institutional segment of the financial services industry within Canada and globally, and being unable to use the Titles has the potential to put the Filer and its Registered Individuals at a competitive disadvantage as compared to non-Canadian firms that are not subject to the prohibition and who compete for the same institutional clients.

11. Given their nature and sophistication, the use of the Titles by the Registered Individuals would not be expected to deceive or mislead existing and prospective Clients.

12. For the reasons provided above, it would not be prejudicial to the public interest to grant the Exemption Sought.

Decision

Exemption Sought

Each of the Decision Makers is satisfied that the decision in respect of the Exemption Sought meets the test set out in the Legislation.

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "permitted clients" as defined in NI 31-103.

This decision in respect of the Exemption Sought will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to NI 31-103 or other applicable securities law that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

Exemption Sought for Derivatives

The principal regulator is satisfied that the decision in respect of the Exemption Sought for Derivatives meets the test set out in the derivatives legislation of Quebec.

The decision of the principal regulator in respect of the Exemption Sought for Derivatives under the derivatives legislation of Québec is that the Exemption Sought for Derivatives is granted, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "permitted clients" as defined in NI 31-103.

This decision in respect of the Exemption Sought for Derivatives will terminate six months, or such other transition period as may be provided by law, after the coming into force of any amendment to the derivatives legislation of Quebec that affects the ability of the Registered Individuals to use the Titles in the circumstances described in this decision.

"Éric Jacob"
Superintendent, Client Services and Distribution Oversight
Autorité des marchés financiers

OSC File #: 2022/0560

B.3.5 Lithium Royalty Corp.

Headnote

National Instrument 43-101 Standards of Disclosure for Mineral Projects (NI 43-101) – relief from requirement to file technical reports granted to issuer having royalty interests or stream interests – Filer to become a reporting issuer pursuant to a proposed initial public offering – relevant technical disclosure for royalty interests or stream interests previously disclosed by operators or owners of the mineral projects.

Applicable Legislative Provisions

National Instrument 43-101 Standards of Disclosure for Mineral Projects, ss. 4.1(1) and 9.1(1).

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
LITHIUM ROYALTY CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the Legislation) pursuant to section 9.1 of National Instrument 43-101 *Standards of Disclosure for Mineral Projects* (NI 43-101) that the obligation contained in section 4.1(1) of NI 43-101 to file a technical report for the royalties covering the Properties (as defined below) upon the Filer becoming a reporting issuer does not apply to 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 section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Québec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, the Yukon, the Northwest Territories and Nunavut (the Non-Principal 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 a corporation existing under the laws of Canada, with a head office in Toronto, Ontario.

2. The Filer is not a “reporting issuer” under the Legislation or applicable securities legislation in any Non-Principal Jurisdiction.

3. The Filer is not in default of the requirements of applicable securities legislation in the Jurisdiction or any Non-Principal Jurisdiction.

4. The Filer, at the time of the filing of the Final Prospectus (as defined below), will hold, among other assets, a royalty interest in the Grota do Cirilo property and the Tres Quebradas property (collectively, the Properties) operated by Sigma Lithium Corporation (Sigma), and Zijin Mining Group Co. Limited (Zijin), respectively.

5. Under section 4.2(1) of NI 43-101, an issuer is required to file a technical report that relates to a mineral project on a property material to the issuer upon the issuer filing certain documents, including a preliminary prospectus.

6. The definition of "mineral project" under section 1.1 of NI 43-101 includes a "royalty interest or similar interest".

7. Under section 4.1(1) of NI 43-101, an issuer is required to file a technical report for a mineral property material to the issuer upon becoming a reporting issuer in a jurisdiction of Canada.

8. The Filer will become a reporting issuer under the Legislation and the applicable securities legislation in the Non-Principal Jurisdictions following the filing of, and obtaining a receipt for, a final prospectus (the Final Prospectus) in connection with a proposed initial public offering. The Filer has filed a preliminary prospectus for the initial public offering on February 21, 2023 (the Preliminary Prospectus).

9. The Filer anticipates that its royalty interests in the Properties will make the Properties material to the Filer.

10. The Filer made scientific and technical disclosure regarding the Properties in the Preliminary Prospectus and will make such disclosure in the Final Prospectus.

11. The Filer is not the owner or operator of the Properties.

12. According to the public disclosure record of Sigma, the Grota do Cirilo property is owned and operated directly or indirectly by Sigma, which is a reporting issuer in all of the provinces and territories of Canada.

13. A technical report for the Grota do Cirilo property entitled Grota do Cirilo Lithium Project NI 43-101 Technical Report (the Grota do Cirilo Report) was filed by Sigma on January 16, 2023. The Grota do Cirilo Report is available on SEDAR under Sigma's profile at www.sedar.com. According to the public disclosure record of Sigma, the Grota do Cirilo Report was prepared in accordance with NI 43-101.

14. According to the public disclosure record of Zijin, (i) the Tres Quebradas property is owned and operated directly or indirectly by Zijin, whose securities trade on the Shanghai Stock Exchange and the Hong Kong Stock Exchange (the latter being a specified exchange under NI 43-101), and (ii) Zijin would be a "producing issuer" for purposes of NI 43-101 based on its gross revenue derived from mining operations for the year ended December 31, 2021 as reflected in its audited financial statements for that period. Zijin is not a reporting issuer in any jurisdiction of Canada.

15. Zijin acquired Neo Lithium Corp. (Neo) in January, 2022, then a reporting issuer in Canada. A technical report entitled Feasibility Study (FS) – 3Q Project NI 43-101 Technical Report (the Tres Quebradas Report) was filed by Neo on November 25, 2021. The Tres Quebradas Report is available on SEDAR under Neo's profile at www.sedar.com. According to the public disclosure record of Neo, the Tres Quebradas Report was prepared in accordance with NI 43-101.

16. The Filer will identify in any document that it files and which is listed in section 4.2(1) of NI 43-101 the source of the scientific and technical information it discloses on the Properties.

17. To the best of the Filer's knowledge, information and belief, the current or predecessor owners or operators of the Properties have disclosed the scientific and technical information that is material to the Filer.

Decision

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

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

DATED this 1st day of March, 2023.

"Michael Balter"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2022/0463

B.3.6 Aurinia Pharmaceuticals Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted permitting issuer to send-proxy-related materials to registered securityholders and beneficial owners using a delivery method permitted under U.S. federal securities law – issuer will send proxy-related materials in compliance with Rule 14a-16 under the Securities Exchange Act of 1934 of the United States of America and will provide additional information relating to meetings and delivery and voting processes.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 9.1, 9.1.5, and 13.1.
National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer, ss. 2.7, 9.1.1, and 9.2.

February 24, 2023

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

AND

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

AND

IN THE MATTER OF
AURINIA PHARMACEUTICALS INC.
(Filer)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief from the requirements in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) to permit the Filer to:

(a) send proxy-related materials to registered holders (Registered Holders) of securities entitled to vote at any meeting of securityholders of the Filer using a delivery method permitted under U.S. federal securities laws (the Registered Holder Notice-and-Access Relief); and

(b) send proxy-related materials to beneficial holders (Beneficial Holders) of securities entitled to vote at any meeting of securityholders of the Filer using a delivery method permitted under U.S. federal securities laws (the Beneficial Holder Notice-and-Access Relief, and together with the Registered Holder Notice-and-Access Relief, the Requested Relief);

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

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

Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 51-102 and NI 54-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. the Filer is a corporation amalgamated under the Alberta *Business Corporations Act* on December 1, 2011;

2. the Filer's head office is located at 1203 - 4464 Markham Street, Victoria, British Columbia;

3. the Filer is a commercial-stage biopharmaceutical company focused on developing and commercializing therapies to treat targeted patient populations that are suffering from serious diseases with a high unmet medical need;

4. the Filer is a reporting issuer or the equivalent under the securities legislation of each of the provinces in Canada and is currently not in default of any applicable requirements under the securities legislation thereof;

5. as of February 9, 2023, the filer had 142,576,689 common shares (the Common Shares) issued and outstanding;

6. the Common Shares are listed and posted for trading on the Nasdaq Global Market (Nasdaq) under the symbol "AUPH"; the Common Shares are not listed in Canada;

7. the Filer is an "SEC issuer" as defined in NI 51-102 and is required to comply with applicable U.S. securities laws in all respects;

8. the Filer has determined that it currently does not qualify as a "foreign private issuer" under Rule 3b-4 of the *Securities Exchange Act of 1934 Act*, as amended (1934 Act) and is required to comply with the U.S. proxy rules applicable to U.S. domestic registrants;

9. in accordance with section 9.1.5 of NI 51-102, a reporting issuer that is an SEC issuer can send proxy-related materials to registered holders under section 9.1 of NI 51-102 using a delivery method permitted under U.S. federal securities law, if both of the following apply:

    (a) the SEC issuer is subject to, and complies with Rule 14a-16 (the U.S. Notice-and-Access Rules) under the 1934 Act;

    (b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50% of the votes for the election of directors, and none of the following apply:

        (i) the majority of the executive officers or directors of the issuer are residents of Canada;

        (ii) more than 50% of the consolidated assets of the issuer are located in Canada;

        (iii) the business of the issuer is administered principally in Canada

        (the Automatic Registered Holder Exemption);

10. in accordance with section 9.1.1(1) of NI 54-101, despite section 2.7 of NI 54-101, a reporting issuer that is an SEC issuer can send proxy- related materials to beneficial holders using a delivery method permitted under U.S. federal securities law if all of the following apply:

    (a) the SEC issuer is subject to and complies with the U.S. Notice-and-Access Rules;

    (b) the SEC issuer has arranged with each intermediary through whom the beneficial holder holds its interest in the reporting issuer's securities to have each intermediary send the proxy-related materials to the beneficial owner by implementing the procedures under Rule 14b-1 or Rule 14b-2 under the 1934 Act that relate to the procedures in the U.S. Notice-and-Access Rules;

    (c) residents of Canada do not own, directly or indirectly, outstanding voting securities of the issuer carrying more than 50% of the votes for the election of directors, and none of the following apply:

        (i) the majority of the executive officers or directors of the issuer are residents of Canada;

        (ii) more than 50% of the consolidated assets of the issuer are located in Canada;

(iii) the business of the issuer is administered principally in Canada

(the Automatic Beneficial Holder Exemption and, together with the Automatic Registered Holder Exemption, the Automatic Exemptions);

11. the Filer is unable to rely on the Automatic Exemptions as more than 50% of the consolidated assets of the Filer are located in Canada; despite this:

(a) over 85% of the Filer's outstanding voting securities carrying the right to vote for the election of the Filer's directors are held by persons that are not residents of Canada;

(b) the majority of the executive officers and directors of the Filer are not residents of Canada;

(c) the business of the Filer is principally administered outside of Canada considering the location of its executives, directors, principal business segments and operations;

(d) the majority of the Filer's employees are located outside of Canada and 100% of the Filer's revenues in 2022 were generated outside of Canada; and

(e) all of the trading volume of the Common Shares occurs on Nasdaq and the Common Shares are not listed in Canada;

12. for any meeting of securityholders of the Filer for which the Filer elects to deliver proxy-related materials by using notice-and-access (each, a Notice-and-Access Meeting), the Filer will send proxy-related materials to holders of voting securities in compliance with the U.S. Notice-and-Access Rules;

13. the U.S. Notice-and-Access Rules allow the Filer to furnish proxy-related materials by sending Registered Holders entitled to vote at a Notice-and-Access Meeting a notice of internet availability of proxy materials (the Notice) 40 calendar days or more prior to the date of the applicable Notice-and-Access Meeting and sending the record holder, broker or respondent bank the Notice in sufficient time for the record holder, broker or respondent bank to prepare, print and send the Notice to Beneficial Holders entitled to vote at a Notice-and-Access Meeting at least 40 calendar days before the date of the Notice-and-Access Meeting and making all proxy-related materials identified in the Notice, including the management proxy circular, publicly accessible, free of charge, at a website address specified in the Notice;

14. the Notice will comply with the requirements of the U.S. Notice-and-Access Rules and include instructions regarding how a securityholder entitled to vote at the applicable Notice-and-Access Meeting may request a paper or e-mail copy of the proxy-related materials at no charge; the U.S. Notice-and-Access Rules permit the Filer and, in turn, the record holder, broker, or respondent bank, to send only the Notice to Beneficial Holders, provided that all applicable requirements of the U.S. Notice-and-Access Rules have been satisfied;

15. NI 51-102 requires the Filer to deliver proxy-related materials to Registered Holders and NI 54-101 requires the Filer to deliver proxy-related materials to intermediaries for delivery to those Beneficial Holders of securities entitled to vote at a meeting of securityholders of the Filer that have requested materials for meetings of the Filer;

16. in lieu of delivering to each Registered Holder the proxy-related materials required under NI 51-102, for each Notice-and-Access Meeting the Filer will deliver by mail or electronically (if permitted by applicable law) the Notice to each Registered Holder;

17. in lieu of delivering to each Beneficial Holder the proxy-related materials required under NI 54-101, for each Notice-and-Access Meeting the Filer will deliver to Broadridge Financial Solutions, Inc., its affiliates, successor or an equivalent provider of proxy services (collectively, Broadridge), the Notice for delivery to each Beneficial Holder; Broadridge will deliver the English-only Notice to all Beneficial Holders by postage-paid mail or electronically (if permitted by applicable law); Broadridge will act as the Filer's agent for delivery purposes and the Filer will pay all of the expenses involved in printing and delivering the Notice to all requesting Beneficial Holders;

18. the Notice sent by the Filer to securityholders entitled to vote at a Notice-and-Access Meeting will include the following information:

(a) the date, time and location of the Notice-and-Access Meeting as well as information on how to obtain directions to be able to attend the Notice-and-Access Meeting and vote in person or to designate another person to attend, vote and act on the securityholder's behalf;

(b) a clear and impartial description of each matter to be voted on at the Notice-and-Access Meeting, including the recommendations of the board of directors of the Filer regarding those matters;

(c) a plain language explanation of the U.S. Notice-and-Access Rules, including instructions on how to access the form of proxy and an explanation that the proxy-related materials for such Notice-and-Access Meeting have been made available online;

(d) an explanation of how to obtain a paper or e-mail copy of the proxy-related materials for such Notice-and-Access Meeting at no charge, including the date by which securityholders should make the request to facilitate timely delivery, and an indication that the securityholders will not otherwise receive a paper or e-mail copy;

(e) the website addresses for SEDAR and EDGAR, the Filer's website and a third-party hosting website where the proxy-related materials are posted;

(f) a reminder that the Notice is not a form of voting and presents only an overview of the more complete proxy-related materials, which contain important information and are available online or by mail, and to review such materials for such Notice-and-Access Meeting before voting;

(g) any control/identification numbers that securityholders need to access their form of proxy;

(h) an explanation of the methods available for securityholders to vote at the Notice-and-Access Meeting; and

(i) the date by which a validly completed form of proxy or voting instruction form must be deposited in order for the securities represented by the form of proxy or voting instruction form to be voted at the Notice-and-Access Meeting or any adjournment;

19. Registered Holders and Beneficial Holders requesting the proxy-related materials will receive the same materials required to be sent to securityholders under the U.S. Notice-and-Access Rules;

20. a Beneficial Holder who wants to attend a Notice-and-Access Meeting in person will be required to obtain a proxy from their applicable intermediary;

21. for each Notice-and-Access Meeting, Broadridge will notify all Canadian intermediaries on whose behalf it or a related company acts as agent under NI 54-101 to advise them of the Filer's reliance on the U.S. Notice- and-Access Rules and this decision;

22. for each Notice-and-Access Meeting, the Filer will retain Broadridge to respond to requests for the proxy- related materials from all Beneficial Holders and retain its registrar and transfer agent, Computershare Trust Company of Canada (Transfer Agent, and together with Broadridge, the Agents) to respond to requests for proxy-related materials from all Registered Holders; the Notice from the Filer will direct Registered Holders and Beneficial Holders to contact the applicable Agent at a specified toll-free telephone number, by e-mail or via the internet to request a printed or e-mail copy, if available, of the proxy-related materials for the Notice-and-Access Meeting; the Agents will give notice to the Filer of the receipt of requests for printed or e-mailed copies, if available, and the Filer will provide English-only materials to the Agents in compliance with the requirements of the U.S. Notice-and-Access Rules;

23. to comply with the U.S. Notice-and-Access Rules, the Filer will not receive any information about the Registered Holders and Beneficial Holders that contact the Agents other than the aggregate number of proxy- related material packages requested by the Registered Holders and Beneficial Holders and will reimburse the Agents for delivery requests; and

24. the Filer has consulted with the Agents in developing the mailing and voting procedures for Registered Holders and Beneficial Holders described in this decision.

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 Requested Relief is granted, provided that, in respect of a Notice-and-Access Meeting, at the time the Filer sends the notification of meeting and record dates for such

meeting in accordance with section 2.2 of NI 54-101, the Filer meets all of the requirements of the Automatic Exemptions other than those set out in:

(a) section 9.1.5(b)(ii) of NI 51-102, in the case of the Automatic Registered Holder Exemption, and

(b) section 9.1.1(1)(c)(ii) of NI 54-101, in the case of the Automatic Beneficial Holder Exemption.

"Gordon Smith"
Acting Director, Corporate Finance
British Columbia Securities Commission

OSC File #: 2022/0572

B.3.7 I.G. Investment Management, Ltd. 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 extension of lapse date of funds' prospectus to facilitate its combination with the prospectus of other funds under common management.

Applicable Legislative Provisions

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

March 6, 2023

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

AND

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

AND

IN THE MATTER OF
I.G. INVESTMENT MANAGEMENT, LTD.
(the Filer or IGIM)

AND

IN THE MATTER OF
THE FUNDS LISTED IN SCHEDULE A
(the Funds)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the **Decision Maker**) has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdictions (the **Legislation**) that the time limits for the renewal of the simplified prospectus and fund facts for the Funds dated April 1, 2022 (the **Prospectus**) be extended to those time limits that would apply if the lapse date of the Prospectus was June 28, 2023 (the **Exemption Sought**).

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

(i) the Manitoba 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 British Columbia, Alberta, Saskatchewan, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon Territory and Nunavut (together with the **Jurisdictions**, the **Canadian Jurisdictions**); and

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

Interpretation

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

Representations

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

Background Facts

The Filer

1. The Filer is a corporation continued under the laws of Ontario with its head office in Winnipeg, Manitoba.

2. The Filer is registered as a Portfolio Manager and an Investment Fund Manager in Manitoba, Ontario, and Quebec and as an Investment Fund Manager in Newfoundland and Labrador.

3. The Filer is the trustee and manager of each of the Funds.

4. The Filer is not in default of securities legislation in any of the Canadian Jurisdictions.

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

6. None of the Funds is in default of securities legislation in any of the Canadian Jurisdictions.

7. Securities of each of the Funds are currently distributed in the Canadian Jurisdictions pursuant to their respective simplified prospectus, fund facts and annual information form.

Reasons for the Lapse Date Extension

8. Pursuant to subsection 2.5(2) of NI 81-101 and subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse date of the Prospectus is April 1, 2023. Accordingly, pursuant to subsections 2.5(3) and 2.5(4) of NI 81-101 and subsection 62(2) of the Act, the distribution of securities of each Fund would have to cease on its current lapse date unless: (i) the Funds file a *pro forma* simplified prospectus within 30 days before the current lapse date; (ii) the final simplified prospectus is filed within 10 days after its current lapse date; and (iii) a receipt for the final simplified prospectus is obtained within 20 days after its current lapse date.

9. The Filer is the investment fund manager of 69 other funds listed in Schedule B (the **June Funds**) that currently distribute their securities under a simplified prospectus, fund facts, and annual information form with a lapse date of June 28, 2023 (the **June Prospectus**).

10. The Filer wishes to combine the Prospectus with the June Prospectus in order to reduce renewal, printing, and related costs.

11. Offering the Funds and the June Funds under one prospectus would facilitate the distribution of the Funds in the Canadian Jurisdictions under the same prospectus and enable the Filer to streamline disclosure across the Filer's fund platform. The Funds share many common operational and administrative features with the June Funds and combining them under one prospectus (as opposed to two) will allow investors to compare their features more easily.

12. It would be impractical to alter and modify all the dedicated systems, procedures, and resources required to prepare the June Prospectus and unreasonable to incur the costs and expenses associated therewith, so that the June Prospectus can be filed earlier with the Prospectus.

13. If the Exemption Sought is not granted, it will be necessary to renew the Prospectus twice within a short period of time in order to consolidate the Prospectus with the June Prospectus.

14. The Filer may make minor changes to the features of the Funds as part of the Prospectus. The ability to file the Prospectus with the June Prospectus will ensure that the Filer can make the operational and administrative features of the respective funds consistent with each other.

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

16. Given the disclosure obligations of the Funds, should a material change in the affairs of any of the Funds occur, the Prospectus will be amended as required under the Legislation.

17. 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.

18. The Exemption Sought will not affect the accuracy of the information contained in the Prospectus and therefore will not be prejudicial to the public interest.

Decision

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

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

“Chris Besko”
Director, The Manitoba Securities Commission

Application File #: 2023/00084
SEDAR File #: 3492749

SCHEDULE A

THE FUNDS

IG Mackenzie U.S. Dollar Fund – Global Equity
IG Mackenzie U.S. Dollar Fund – Global Equity Balanced
IG Mackenzie U.S. Dollar Fund – Global Fixed Income Balanced
IG Mackenzie U.S. Dollar Fund – Global Neutral Balanced
IG U.S. Taxpayer Portfolio – Global Equity
IG U.S. Taxpayer Portfolio – Global Equity Balanced
IG U.S. Taxpayer Portfolio – Global Fixed Income Balanced
IG U.S. Taxpayer Portfolio – Global Neutral Balanced

SCHEDULE B

THE JUNE FUNDS

IG Mackenzie Canadian Corporate Bond Fund
IG Mackenzie Canadian Money Market Fund
IG Mackenzie Floating Rate Income Fund
IG Mackenzie Global Bond Fund
IG Mackenzie High Yield Fixed Income Fund
IG Mackenzie Income Fund
IG Mackenzie Mortgage and Short Term Income Fund
IG Mackenzie U.S. Money Market Fund
IG PIMCO Global Bond Fund
IG Putnam U.S. High Yield Income Fund Investors Cornerstone Portfolio
IG Beutel Goodman Canadian Balanced Fund
IG Mackenzie Dividend Fund
IG Mackenzie Global Dividend Fund
IG Mackenzie Mutual of Canada
IG Mackenzie Strategic Income Fund
IG Mackenzie U.S. Dividend Registered Fund
IG Beutel Goodman Canadian Equity Fund
IG Beutel Goodman Canadian Small Cap Fund
IG FI Canadian Equity Fund
IG Franklin Bissett Canadian Equity Fund
IG Mackenzie Betterworld SRI Fund
IG Mackenzie Canadian Dividend & Income Equity Fund
IG Mackenzie Canadian Equity Fund
IG Mackenzie Canadian Small/Mid-Cap Fund
IG Mackenzie Canadian Small/Mid-Cap Fund II
IG Mackenzie U.S. Equity Fund
IG Mackenzie U.S. Opportunities Fund
IG Putnam U.S. Growth Fund
IG T. Rowe Price U.S. Large Cap Equity Fund
IG BlackRock International Equity Fund
IG JPMorgan Emerging Markets Fund
IG Mackenzie European Equity Fund
IG Mackenzie European Mid-Cap Equity Fund
IG Mackenzie Global Fund
IG Mackenzie Global Fund II
IG Mackenzie International Small Cap Fund
IG Mackenzie Ivy European Fund
IG Mackenzie North American Equity Fund
IG Mackenzie Pacific International Fund
IG Mackenzie Pan Asian Equity Fund
IG Mackenzie Global Financial Services Fund
IG Mackenzie Global Natural Resources Fund
IG Mackenzie Global Science & Technology Fund
IG Core Portfolio – Balanced
IG Core Portfolio – Balanced Growth
IG Core Portfolio – Global Income
IG Core Portfolio – Growth

IG Core Portfolio – Income
IG Core Portfolio – Income Balanced
IG Core Portfolio – Income Focus
IG Core Portfolio – Income Plus (formerly Investors Income Plus Portfolio)
IG Managed Payout Portfolio
IG Managed Payout Portfolio with Enhanced Growth
IG Managed Payout Portfolio with Growth
IG Managed Growth Portfolio – Canadian Focused Equity (formerly Investors Retirement Growth Portfolio)
IG Managed Growth Portfolio – Canadian Neutral Balanced (formerly Investors Retirement Plus Portfolio)
IG Managed Growth Portfolio – Global Equity (formerly Investors Growth Portfolio)
IG Managed Growth Portfolio – Global Equity Balanced (formerly Investors Growth Plus Portfolio)
IG Managed Growth Portfolio – Global Neutral Balanced
IG Managed Risk Portfolio – Balanced
IG Managed Risk Portfolio – Growth Focus
IG Managed Risk Portfolio – Income Balanced
IG Managed Risk Portfolio – Income Focus
IG Climate Action Portfolio – Global Equity
IG Climate Action Portfolio – Global Equity Balanced
IG Climate Action Portfolio – Global Fixed Income Balanced
IG Climate Action Portfolio – Global Neutral Balanced
BlackRock – IG Active Allocation Pool IV
JPMorgan – IG Emerging Markets Pool

B.3.8 CI Investments Inc. and its Affiliates

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from paragraphs 2.2(1)(a), 2.5(2)(a), (a.1) and (c) of National Instrument 81-102 Investment Funds to allow an investment fund subject to NI 81-102 to invest up to 10% of net asset value in U.S. Underlying ETFs subject to the U.S. Investment Company Act of 1940, subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.2(1)(a), 2.5(2)(a), (a.1) and (c), 19.1.

March 6, 2023

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

AND

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

AND

IN THE MATTER OF
CI INVESTMENTS INC.
(CI)
AND
ITS AFFILIATES
(collectively, the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from CI, on behalf of existing and future investment funds that are or will be managed by the Filer (the **Funds**), for a decision under the securities legislation of the principal regulator (the **Legislation**):

(a) revoking and replacing the Previous Decision (as defined below); and

(b) exempting each Fund from the following provisions of National Instrument 81-102 *Investment Funds* (**NI 81-102**) in order to permit the Funds to invest in securities of existing and future exchange-traded funds (**ETFs**) that are not index participation units (**IPUs**) and whose securities are, or will be, listed for trading on a stock exchange in the United States (the **Underlying ETFs**):

(i) paragraph 2.2(1)(a) (the **Control Restriction)** to permit each Fund to purchase securities of an Underlying ETF even though, immediately after the purchase, the Fund would hold securities representing more than 10% of: (i) the votes attaching to the outstanding voting securities of the Underlying ETF, or (ii) the outstanding equity securities of the Underlying ETF (the **Control Relief**);

(ii) paragraphs 2.5(2)(a) and (a.1) to permit each Fund to purchase and/or hold securities of an Underlying ETF even though the Underlying ETF is not subject to NI 81-102; and

(iii) paragraph 2.5(2)(c) to permit each Fund to purchase and/or hold securities of an Underlying ETF even though the Underlying ETF is not a reporting issuer in any province or territory of Canada.

(collectively, the **Exemption Sought**)

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

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

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

Interpretation

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

Representations

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

CI

1. CI is a corporation amalgamated under the laws of the Province of Ontario with its head office and registered office located in Toronto, Ontario.

2. CI is registered as follows:

   (a) as an investment fund manager under the securities legislation in Ontario, Québec and Newfoundland and Labrador;

   (b) as a portfolio manager and exempt market dealer under the securities legislation of each of the Canadian Jurisdictions; and

   (c) as a commodity trading counsel and commodity trading manager under the *Commodity Futures Act* (Ontario).

3. CI is not in default of securities legislation in any of the Canadian Jurisdictions.

4. The Filer acts, or will act, as the investment fund manager of each Fund.

The Previous Decision

5. In a previous decision granted to CI on May 29, 2017 (the **Previous Decision**), CI was granted relief from subsection 2.1(1) and paragraphs 2.2(1)(a) and 2.5(2)(a), (c) and (e) of NI 81-102 to permit the Funds to invest in securities of ETFs that are not IPUs, including Canadian and U.S. underlying ETFs. The Filer is requesting that the Previous Decision be revoked and replaced with this decision for the following reasons:

   (a) The Previous Decision did not grant relief from paragraph 2.5(2)(a.1) of NI 81-102 to permit the Funds that are or will be alternative mutual funds to invest in the Underlying ETFs since such paragraph came into effect on January 3, 2019 or to permit the Funds that are or will be non-redeemable investment funds to invest in the Underlying ETFs.

   (b) The Previous Decision granted relief to permit non-alternative mutual funds that are managed by the Filer to invest in securities of Canadian ETFs that are not IPUs. This relief is no longer required due to changes to section 2.5(2)(a) of NI 81-102 (effective January 3, 2019), which permit such funds to invest 100% of their assets in non-alternative mutual funds subject to NI 81-102 (including ETFs), regardless of the form of prospectus they file**.**

   (c) The Previous Decision granted relief to permit the Funds to pay sales or redemption fees on the purchase or redemption of securities of the underlying funds (collectively, **Brokerage Fees**). This relief is no longer required due to changes to section 2.5(5) of NI 81-102 (effective January 3, 2019), which permit payment of Brokerage Fees provided that the affiliated underlying funds are investment funds that are listed for trading on a stock exchange.

The Funds

6. Each Fund is, or will be, an investment fund organized and governed by the laws of Canada or a Canadian Jurisdiction.

7. Each Fund is, or will be, governed by the applicable provisions of NI 81-102, subject to any exemptions therefrom that have been, or may in the future be, granted by the securities regulatory authorities.

8. Each Fund is, or will be, a reporting issuer in one or more Canadian Jurisdictions.

9. Each Fund is, or will be, subject to National Instrument 81-107 *Independent Review Committee for Investment Funds*.

10. The Funds may, from time to time, wish to invest in Underlying ETFs.

11. Each existing Fund is not in default of applicable securities legislation in any Canadian Jurisdiction.

The Underlying ETFs

12. The securities of an Underlying ETF will not meet the definition of IPU in NI 81-102 because the only purpose of the Underlying ETF will not be to:

    (a) hold the securities that are included in a specified widely quoted market index in substantially the same proportion as those securities are reflected in that index; or

    (b) invest in a manner that causes the Underlying ETF to replicate the performance of that index.

13. The securities of an Underlying ETF are, or will be, listed on a recognized exchange in the United States and the market for them is, or will be, liquid because it is, or will be, supported by designated brokers. As a result, the Filer expects a Fund to be able to dispose of such securities through market facilities in order to raise cash, including to fund the redemption requests of its securityholders.

14. An Underlying ETF may be managed by the Filer.

15. An investment in an Underlying ETF by a Fund will otherwise comply with section 2.5 of NI 81-102, including that:

    (a) No Underlying ETF will hold more than 10% of its net asset value (**NAV**) in securities of another investment fund unless the Underlying ETF (a) is a clone fund, as defined in NI 81-102, or (b) in accordance with NI 81-102, purchases or holds securities (i) of a money market fund, as defined in NI 81-102, or (ii) that are IPUs issued by an investment fund; and

    (b) No Fund will pay management or incentive fees which to a reasonable person would duplicate a fee payable by an Underlying ETF for the same service.

16. Each Underlying ETF is, or will be, a publicly offered mutual fund subject to the United States *Investment Company Act of 1940* (the **Investment Company Act**).

17. Absent the Exemption Sought, an investment by a Fund in an Underlying ETF would:

    (a) be prohibited by paragraphs 2.5(2)(a) or (a.1) of NI 81-102, as applicable, because such Underlying ETF may not be subject to NI 81-102;

    (b) be prohibited by paragraph 2.5(2)(c) of NI 81-102 because such Underlying ETF may not be a reporting issuer in any Canadian Jurisdiction; and

    (c) not qualify for the exception in paragraph 2.5(3)(a) of NI 81-102 because the securities of the Underlying ETF are not IPUs.

18. The key benefits of a Fund investing in the Underlying ETFs are greater choices, improved portfolio diversification and potentially enhanced returns. For example:

    (a) an investment in the Underlying ETFs will provide the Funds with access to specialized knowledge, expertise and/or analytical resources of the investment adviser to the Underlying ETFs;

    (b) the Underlying ETFs provide a potentially better risk profile, diversification and improved liquidity/tradability than direct holdings of asset classes to which the Underlying ETFs provide exposure; and

    (c) the investment strategies of the Underlying ETFs offer significantly broader exposure to asset classes, sectors and markets than those available in the existing Canadian ETF market.

19. The Filer submits that having the option to allocate a limited portion of each Fund's assets to Underlying ETFs will increase diversification opportunities and may improve a Fund's overall risk/reward profile.

20. An investment in an Underlying ETF by a Fund is an efficient and cost effective alternative to obtaining exposure to securities held by the Underlying ETF rather than purchasing those securities directly by the Fund.

21. An investment in an Underlying ETF by a Fund should pose limited investment risk to the Fund because each Underlying ETF will be subject to the Investment Company Act, subject to any exemption therefrom that may in the future be granted by the securities regulatory authorities.

22. Due to the potential size disparity between the Funds and the Underlying ETFs, it is possible that a relatively small investment, on a percentage of NAV basis, by a relatively larger Fund in securities of an Underlying ETF could result in such Fund holding securities representing more than 10% of: (i) the votes attaching to the outstanding voting securities of the Underlying ETF, or (ii) the outstanding equity securities of that Underlying ETF, contrary to the Control Restriction.

23. Absent the Control Relief, an investment by a Fund in securities of an Underlying ETF will not qualify for the exemption set out in paragraph 2.2(1.1)(b) of NI 81-102 in respect of the Control Restriction because securities of the Underlying ETFs are not IPUs.

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 investment by a Fund in securities of an Underlying ETF is in accordance with the investment objectives of the Fund;

(b) a Fund does not purchase securities of an Underlying ETF if, immediately after the purchase, more than 10% of the NAV of the Fund, in aggregate, taken at market value at the time of the purchase, would consist of securities of Underlying ETFs;

(c) a Fund does not short sell securities of an Underlying ETF;

(d) securities of each Underlying ETF are listed on a recognized exchange in the United States;

(e) each Underlying ETF is, immediately before the purchase by a Fund of securities of that Underlying ETF, an investment company subject to the Investment Company Act in good standing with the United States Securities and Exchange Commission; and

(f) the prospectus of each Fund discloses, or will disclose in the next renewal of its prospectus following the date of this decision, in the investment strategy section, the fact that the Fund has obtained the Exemption Sought to permit investments in Underlying ETFs on the terms described in this decision.

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

Application File #: 2022/0530
SEDAR File #s: 3460607, 3460611, 3460613, 3460614, 3460615, 3460616, 3460617, 3460618, 3460619

B.3.9 Village Farms International, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted permitting issuer to send-proxy-related materials to registered securityholders and beneficial owners using a delivery method permitted under U.S. federal securities law – issuer will send proxy-related materials in compliance with Rule 14a-16 under the Securities Exchange Act of 1934 of the United States of America and will provide additional information relating to meetings and delivery and voting processes.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 9.1, 9.1.5 and 13.1.
National Instrument 54-101 Communication with Beneficial Owners of Securities of a Reporting Issuer, ss. 2.7, 9.1.1 and 9.2.

March 2, 2023

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

AND

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

AND

IN THE MATTER OF
VILLAGE FARMS INTERNATIONAL, INC.
(Filer)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) for relief from the requirements in National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and National Instrument 54-101 *Communication with Beneficial Owners of Securities of a Reporting Issuer* (NI 54-101) to permit the Filer to:

(a) send proxy-related materials to registered holders (Registered Holders) of securities entitled to vote at any meeting of securityholders of the Filer using a delivery method permitted under U.S. federal securities laws (the Registered Holder Notice-and-Access Relief); and

(b) send proxy-related materials to beneficial holders (Beneficial Holders) of securities entitled to vote at any meeting of securityholders of the Filer using a delivery method permitted under U.S. federal securities laws (the Beneficial Holder Notice-and-Access Relief and, together with the Registered Holder Notice-and-Access Relief, the Requested Relief).

Under the Process for Exemptive Relief Applications in Multiple Jurisdictions:

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

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

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

Interpretation

¶ 2 Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 51-102 and NI 54-101 have the same meaning if used in this decision, unless otherwise defined.

Representations

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

1. the Filer is a corporation governed by the *Business Corporations Act* (Ontario) pursuant to articles of continuance dated November 9, 2022;

2. the Filer's head office is located at 4700-80th Street, Delta, British Columbia;

3. the Filer owns and operates sophisticated, highly intensive agricultural greenhouse facilities in British Columbia and Texas, where it produces, markets and sells premium-quality tomatoes, bell peppers and cucumbers; the Filer, through certain of its subsidiaries, produces and supplies cannabis and cannabidiol (CBD) products to be sold to other licensed providers and provincial governments across Canada and internationally;

4. the Filer is a reporting issuer (or the equivalent thereof) under the securities legislation of each of the provinces and territories of Canada and is currently not in default of any applicable requirements of the securities legislation thereunder;

5. the Filer has outstanding approximately 110,238,929 common shares (the Common Shares) as of the close of business on February 14, 2023;

6. the Common Shares are listed and posted for trading on the Nasdaq Capital Market (Nasdaq) under the trading symbol "VFF"; the Common Shares are not listed in Canada;

7. the Filer is an "SEC issuer" as defined in NI 51-102 and is required to comply with applicable U.S. securities laws in all respects;

8. the Filer has determined that it currently does not qualify as a "foreign private issuer" under Rule 3b-4 of the 1934 Act and is required to comply with the U.S. proxy rules applicable to U.S. domestic registrants;

9. in accordance with section 9.1.5 of NI 51-102, a reporting issuer that is an SEC issuer can send proxy-related materials to registered holders under section 9.1 of NI 51-102 using a delivery method permitted under U.S. federal securities law if both of the following apply:

   (a) the SEC issuer is subject to, and complies with, Rule 14a-16 under the 1934 Act (the U.S. Notice-and-Access Rules);

   (b) residents of Canada do not own, directly or indirectly, outstanding voting securities carrying more than 50% of the votes for the election of directors, and none of the following apply:

      (i) the majority of the executive officers or directors of the issuer are residents of Canada;

      (ii) more than 50% of the consolidated assets of the issuer are located in Canada;

      (iii) the business of the issuer is administered principally in Canada;

   (the Automatic Registered Holder Exemption);

10. in accordance with section 9.1.1(1) of NI 54-101, despite section 2.7 of NI 54-101, a reporting issuer that is an SEC issuer can send proxy-related materials to beneficial holders using a delivery method permitted under U.S. federal securities law if all of the following apply:

   (a) the SEC issuer is subject to, and complies with, the U.S. Notice-and-Access Rules;

   (b) the SEC issuer has arranged with each intermediary through whom the beneficial holder holds its interest in the reporting issuer's securities to have each intermediary send the proxy-related materials to the beneficial owner by implementing the procedures under Rule 14b-1 or Rule 14b-2 under the 1934 Act that relate to the procedures in the U.S. Notice-and-Access Rules;

   (c) residents of Canada do not own, directly or indirectly, outstanding voting securities of the issuer carrying more than 50% of the votes for the election of directors, and none of the following apply:

      (i) the majority of the executive officers or directors of the issuer are residents of Canada;

      (ii) more than 50% of the consolidated assets of the issuer are located in Canada;

      (iii) the business of the issuer is administered principally in Canada;

(the Automatic Beneficial Holder Exemption and, together with the Automatic Registered Holder Exemption, the Automatic Exemptions);

11. the Filer is unable to rely on the Automatic Exemptions as more than 50% of the consolidated assets of the Filer are located in Canada and the business of the Filer is administered principally in Canada; despite this:

    (a) over 70% of the Filer's outstanding voting securities carrying the right to vote for the election of the Filer's directors are held by persons that are not residents of Canada;

    (b) the majority of the Filer's executive officers are not residents of Canada, with the majority being residents of the United States, including the President & Chief Executive Officer and Executive Vice President, Chief Financial Officer;

    (c) the majority of the Filer's directors are not residents of Canada (two out of six are residents of Canada, with the remaining four of the Filer's directors being residents of the United States); and

    (d) all of the trading volume of the Common Shares occurs on Nasdaq and the Common Shares are not listed in Canada;

12. for any meeting of securityholders of the Filer for which the Filer elects to deliver proxy-related materials by using notice-and-access (each, a Notice-and-Access Meeting), the Filer will send proxy-related materials to holders of voting securities in compliance with the U.S. Notice-and-Access Rules;

13. the U.S. Notice-and-Access Rules allow the Filer to furnish proxy-related materials by sending Registered Holders entitled to vote at a Notice-and-Access Meeting a notice of internet availability of proxy materials (the Notice) 40 calendar days or more prior to the date of the applicable Notice-and-Access Meeting and sending the record holder, broker or respondent bank the Notice in sufficient time for the record holder, broker or respondent bank to prepare, print and send the Notice to Beneficial Holders entitled to vote at the applicable Notice-and-Access Meeting at least 40 calendar days before the date of such Notice-and-Access Meeting and making all proxy-related materials identified in the Notice, including a management proxy circular, publicly accessible, free of charge, at a website address specified in the Notice;

14. the Notice will comply with the U.S. Notice-and-Access Rules and include instructions regarding how a securityholder entitled to vote at the applicable Notice-and-Access Meeting may request a paper or e-mail copy of the proxy-related materials at no charge; the U.S. Notice-and-Access Rules permit the Filer and, in turn, the record holder, broker or respondent bank, to send only the Notice to Beneficial Holders provided that all applicable requirements of the U.S. Notice-and-Access Rules have been satisfied;

15. NI 51-102 requires the Filer to deliver proxy-related materials to Registered Holders of securities entitled to vote at a meeting of securityholders of the Filer and NI 54-101 requires the Filer to deliver proxy-related materials to intermediaries for delivery to those Beneficial Holders of securities entitled to vote at a meeting of securityholders of the Filer that have requested materials for meetings of the Filer;

16. in lieu of delivering to each Registered Holder the proxy-related materials required under NI 51-102, for each Notice-and-Access Meeting the Filer will deliver by mail or electronically (if permitted by applicable law) the Notice to each Registered Holder;

17. in lieu of delivering to each Beneficial Holder the proxy-related materials required under NI 54-101, for each Notice-and-Access Meeting, the Filer will deliver to Broadridge Financial Solutions, Inc., its affiliates, successor or an equivalent provider of proxy services (collectively, Broadridge), the Notice for delivery to each Beneficial Holder; Broadridge will deliver the English-only Notice to all Beneficial Holders by postage-paid mail or electronically (if permitted by applicable law); Broadridge will act as the Filer's agent for such purposes and the Filer will pay all of the expenses involved in printing and delivering the Notice to all requesting Beneficial Holders;

18. the Notice sent by the Filer to securityholders entitled to vote at a Notice-and-Access Meeting will include the following information:

    (a) the date, time and location of such Notice-and-Access Meeting as well as information on how to obtain directions to be able to attend such Notice-and-Access Meeting and vote in person;

    (b) a clear and impartial description of each matter to be voted on at such Notice-and-Access Meeting;

    (c) a plain language explanation of the U.S. Notice-and-Access Rules, including that the circular, form of proxy and voting instruction form for such Notice-and-Access Meeting have been made available online and that securityholders may request a paper or e-mail copy at no charge;

(d) an explanation of how to obtain a paper or e-mail copy of the circular, form of proxy and voting instruction form for such Notice-and-Access Meeting including a toll-free telephone number, e-mail address, and an internet website where the request can be made, and the date by which securityholders should make the request to facilitate timely delivery, and an indication that they will not otherwise receive a paper or e-mail copy;

(e) the website addresses for SEDAR, EDGAR, the Filer's website and other third party hosting website where the proxy-related materials are posted;

(f) a reminder that the Notice is not a form of voting and that securityholders must review the circular for such Notice-and-Access Meeting before voting;

(g) an explanation of the methods available for securityholders to vote at such Notice-and-Access Meeting; and

(h) instructions on how to access the form of proxy (including any control/identification numbers that the securityholder needs to access his, her or its form of proxy), provided that such instructions do not enable a securityholder to execute a proxy without having access to the circular;

19. Registered Holders and Beneficial Holders requesting the proxy-related materials will receive the same materials required to be sent to securityholders under the U.S. Notice-and-Access Rules;

20. a Beneficial Holder who wants to attend a Notice-and-Access Meeting in person will be required to obtain a proxy from their applicable intermediary;

21. for each Notice-and-Access Meeting, Broadridge will notify all Canadian intermediaries on whose behalf it or a related company acts as agent under NI 54-101 to advise them of the Filer's reliance on the U.S. Notice-and-Access Rules and this decision in its communication with the Beneficial Holders;

22. for each Notice-and-Access Meeting, the Filer will retain Broadridge to respond to requests for the proxy related-materials from all Beneficial Holders and will retain Computershare Investor Services Inc., its affiliates, successor or an equivalent provider of transfer agent or proxy services (collectively, Computershare and together with Broadridge, the Agents) to respond to requests for the proxy related-materials from Registered Holders; the Notice from the Filer will direct Registered Holders and Beneficial Holders to contact the Agent, as applicable, at a specified toll-free telephone number, by e-mail or via the internet to request printed or e-mail copies of the proxy-related materials for the applicable Notice-and-Access Meeting; the Agents will give notice to the Filer of the receipt of requests for printed or e-mail copies and the Filer will provide English-only materials to the Agents in compliance with the requirements of the U.S. Notice-and-Access Rules;

23. to comply with the U.S. Notice-and-Access Rules, the Filer will not receive any information about the Registered Holders and Beneficial Holders that contact the Agents other than the aggregate number of proxy-related material packages requested by the Registered Holders or Beneficial Holders and will reimburse the Agents for delivery of requests; and

24. the Filer has consulted with the Agents in developing the mailing and voting procedures for the Registered Holders and Beneficial Holders described in this decision.

Decision

¶ 4 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 Requested Relief is granted, provided that, in respect of a Notice-and-Access Meeting, at the time the Filer sends the notification of meeting and record dates for such meeting in accordance with section 2.2 of NI 54-101, the Filer meets all of the requirements of the Automatic Exemptions other than those set out in:

(a) section 9.1.5(b)(ii) and (iii) of NI 51-102, in the case of the Automatic Registered Holder Exemption, and

(b) section 9.1.1(1)(c)(ii) and (iii) of NI 54-101, in the case of the Automatic Beneficial Holder Exemption.

"John Hinze"
Director, Corporate Finance
British Columbia Securities Commission

OSC File #: 2022/0574

B.3.10 Auspice Capital Advisors Ltd.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Alternative mutual funds granted relief from section 2.9.1 of National Instrument 81-102 Investment Funds to permit the use of Value at Risk (VaR) to calculate exposure – VaR limited to 20% of NAV – Relief granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of relief requested from Item 3 of Part I of Form 81-101F3 Contents of Fund Facts Document and Item 4 of Part B of Form 81-101F1 Contents of Simplified Prospectus to exempt the mutual fund from the requirement to disclose its maximum aggregate exposure to leverage as calculated pursuant to Section 2.9.1 of NI 81-102 – Relief subject to conditions including the establishment of a derivatives risk management program and use of third-party verification of VaR calculations.

Relief granted from 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), and 15.8(3)(a.1) of NI 81-102 to permit an alternative mutual fund, that has not distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months, to include in their sales communications performance data for the period when the fund was not a reporting issuer – Relief granted from section 15.1.1 of NI 81-102 to permit a mutual fund to use performance data from periods prior the fund being a reporting issuer in calculating fund's investment risk level in accordance with Appendix F Investment Risk Classification Methodology to NI 81-102 and to disclose the risk level in the fund facts and ETF Facts – Relief granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of relief requested from (i) Item 4 and 5 of Part I of Form 81-101F3 Contents of Fund Facts Document, to permit the mutual fund to disclose in its fund facts the risk level calculated in accordance with the relief granted from NI 81-102 and to include in its fund facts the past performance data for the periods when the fund was not a reporting issuer, and (ii) Item 10(b) of Part B of Form 81-101F1 Contents of Simplified Prospectus to permit the mutual fund to disclose the risk level methodology used in accordance with relief from NI 81-102 – Relief subject to conditions.

Relief granted from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1, and Items 3(1) and 4 of Part C of Form 81-106F1, to permit a mutual fund to include in annual and interim management reports of fund performance the financial highlights and past performance of the fund that are derived from the fund's annual financial statements that pertain to time periods when the fund was not a reporting issuer – Relief subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.9.1, 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), 15.8(3)(a.1), 15.1.1, and 19.1

February 23, 2023

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

AND

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

AND

IN THE MATTER OF
AUSPICE CAPITAL ADVISORS LTD.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) to grant the Filer, Auspice Diversified Trust (**ADT**) and Auspice One Fund Trust (**AOFT**, and together with ADT, the **Funds** and individually, a **Fund**) exemptive relief from

Leverage

(a) the requirements of

(i) Section 2.9.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**), which limits an alternative mutual fund's aggregate exposure to cash borrowing, short selling and specified derivatives transactions to 300% of the fund's net asset value;

(ii) Item 4 and instruction (4) of Part B of Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) and item 3 of Part I of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), which all require an alternative mutual fund to disclose its maximum aggregate exposure to leverage as calculated pursuant to Section 2.9.1 of NI 81-102

(collectively, the **Leverage Relief**); and

Performance

(b) the requirements of

(i) Subsection 15.3(2), paragraph 15.3(4)(c), subparagraph 15.6(1)(a)(i), and paragraphs 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102, to permit each Fund to include its past performance data in sales communications notwithstanding that the past performance data will relate to a period prior to that Fund offering its units under a simplified prospectus, including with respect to the Auspice One Fund LP (**AOF LP**) as pertains to AOFT (the **past performance data**);

(ii) Paragraph 15.1.1(a) of NI 81-102 and items 2 and 4 of Appendix F *Investment Risk Classification Methodology* to NI 81-102 (the **Risk Classification Methodology**) to permit each Fund to include its past performance data in determining its investment risk level in accordance with the Risk Classification Methodology;

(iii) Paragraph 15.1.1(b) of NI 81-102, and item 4(2)(a) and instruction (1) of item 4 of Form 81-101F3, to permit each Fund to disclose its investment risk level as determined by including its past performance data in accordance with the Risk Classification Methodology;

(iv) Item 10(b) of Part B of Form 81-101F1, to permit each Fund to use its past performance data to calculate its investment risk rating in its simplified prospectus;

(v) Items 5(2), 5(3) and 5(4) and instruction (1) of Part I of Form 81-101F3 in respect of the requirement to comply with subsection 15.3(2), paragraph 15.3(4)(c), subparagraph 15.6(1)(a)(i), and paragraphs 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102, to permit each Fund to include in its fund facts document the past performance data of that Fund notwithstanding that such performance data relates to a period prior to that Fund offering its units under a simplified prospectus, including with respect to AOF LP as pertains to AOFT, and that such Fund has not distributed its units under a simplified prospectus for 12 consecutive months;

(vi) Section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**). for the purposes of the relief requested from Form 81-101F1 and Form 81-101F3;

(vii) Items 3.1(7), 4.1(1) (in respect of the requirement to comply with subsection 15.3(2)) and paragraph 15.3(4)(c) of NI 81-102, items 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**), and items 3(1) and 4 of Part C of Form 81-106F1 to permit each Fund to include in its annual and interim management reports of fund performance (**MRFP**) the past performance data and financial highlights of that Fund notwithstanding that such performance data and financial highlights relate to a period prior to that Fund offering its units under a simplified prospectus, including with respect to AOF LP as pertains to AOFT; and

(viii) Section 4.4 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) for the purposes of relief requested herein from Form 81-106F1;

(collectively, the **Performance Relief** and together with the Leverage Relief, the **Exemption Sought**).

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

(a) the Alberta Securities Commission is the principal regulator for this application (the **Principal Regulator**);

(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 jurisdiction of Canada, other than Alberta and Ontario; and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and NI 81-101 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, ADT, AOF LP and AOFT

1. The Filer is registered as a portfolio manager, investment fund manager and exempt market dealer in Alberta, as a commodity trading manager, investment fund manager and exempt market dealer in Ontario, as an investment fund manager in British Columbia, Québec, and Newfoundland and Labrador, and as an exempt market dealer in British Columbia and Québec. The Filer's head office is in Calgary, Alberta.

2. The Filer initially launched the Managed Futures LP (the **Partnership**) in 2006. Units of the Partnership were offered by means of an offering memorandum to qualified Canadian investors on a private placement basis.

3. The investment objective of the Partnership was to generate returns on investments in exchange traded futures, options, forward contracts for commodities, financial instruments and currencies, including physical commodities, and exchange traded funds (**Commodity Interests**) that generate returns that are independent of equity, fixed income and real estate investments.

4. In June 2009, the Filer launched ADT as a pooled fund. Units of ADT are offered by means of an offering memorandum to qualified Canadian investors on a private placement basis.

5. Initially, ADT invested substantially all of its assets in units of the Partnership.

6. The Partnership was dissolved on June 10, 2020, and ADT now invests directly in Commodity Interests. The investment objective of ADT is now the same as the investment objective of the Partnership prior to its dissolution.

7. ADT is a trust governed by the laws of Alberta.

8. The Filer established AOF LP in August 2020. Units of AOF LP were offered by means of an offering memorandum to qualified Canadian investors on a private placement basis.

9. The investment objective of AOF LP was to achieve superior absolute and risk-adjusted returns as compared to balanced funds or long-equity funds, with the added benefits of protection and performance during sustained downward trends.

10. AOF LP was a limited partnership governed by the laws of Alberta. AOF LP was dissolved on December 31, 2022.

11. In June 2021, the Filer launched AOFT. Units of AOFT are offered by means of an offering memorandum to qualified Canadian investors, including registered retirement savings plans and other similar retirement vehicles, on a private placement basis. AOFT was created to give registered plans and other smaller investors access to the investment strategies of AOF LP.

12. The investment objective of AOFT is the same as the investment objective of AOF LP.

13. Until December 31, 2022, AOFT invested substantially all of its assets in units of AOF LP. AOFT now directly implements the same investment strategies that AOF LP did, and directly invests in the same securities and derivatives that AOF LP did prior to its dissolution.

14. AOFT is a trust that is governed by the laws of Alberta.

15. The Filer and the Funds are not in default of securities legislation in any jurisdiction of Canada.

Alternative Mutual Funds

16. The Filer wishes to offer units of ADT and AOFT to interested retail investors by means of a simplified prospectus and fund facts document as alternative mutual funds that comply with the requirements of NI 81-102 and all other applicable securities legislation, including NI 81-101, National Instrument 81-105 *Mutual Fund Sales Practices*, NI 81-106 and National Instrument 81-107 *Independent Review Committee for Investment Funds*.

17. Except for the Exemption Sought, each Fund will comply with the requirements for alternative mutual funds in NI 81-102.

Leverage

18. The Filer's diversified program is a rules-based, unconstrained (e.g., ADT and AOFT are not constrained from participating in opportunities, long and short, in a variety of asset classes), systematic multi-strategy investment program that is designed to deliver superior, non-correlated returns at critical times.

19. The Filer uses a combination of short selling and specified derivatives that at times results in ADT's and AOFT's aggregate exposure to cash borrowing, short selling and specified derivatives transactions exceeding 300% of the applicable Fund's net asset value, but in a manner that does not expose either Fund to an inappropriate level of leverage risk.

20. The correlations of most alternative investment strategies to equity benchmarks such as the S&P 500 are high. In contrast, most managed futures strategies that are used by commodity trading advisors (each a **CTA**) like the Filer are historically uncorrelated and risk reducing.

21. Furthermore, notional exposures of futures contracts move with price and do not represent risk. Risk, as measured by futures exchanges, is a function of price and volatility, both of which are captured in value-at-risk (**VaR**) (as defined in Appendix A), but not notional exposure. As noted below, VaR is a better measure of risk for the Funds.

22. For example, the total aggregate exposure of each Fund as calculated pursuant to section 2.9.1 of NI 81-102 is typically between 150% and 500%, and has averaged 285% since inception for ADT. Notwithstanding this range, risk is still managed by the Filer at a consistent level, and there is no relationship between aggregate notional exposure and the volatility of returns that the Filer has delivered for 16 years. The Filer targets and manages to a 10% to 12% volatility level, and in order to do so, aggregate notional exposure varies significantly. Historically, periods of higher than average aggregate notional exposure have not represented periods of higher volatility (or risk), and periods of lower than average aggregate notional exposure have not represented periods of lower volatility (or risk).

23. The Filer on behalf of each Fund has used multiple definitions of risk to capture un-correlated returns while remaining adaptable to changing market conditions. The Filer also systematically manages risk across multiple constraints at the sector and the market level.

24. The current regulatory framework in Section 2.9.1 of NI 81-102 does not appropriately or adequately address the uniqueness of the investment strategies that CTAs like the Filer employ.

25. The key differences between what the Filer and other CTAs do versus other typical portfolio managers is they

    (a) trade futures on margin, which is different than stocks and bonds (e.g., for stocks and bonds exchange margin requirements are determined by the value of the securities, whereas for futures, exchange margin requirements are determined by notional exposure and volatility (the primary inputs to VaR models));

    (b) are systematic and technical versus being fundamental and discretionary;

    (c) utilize systematic risk management, capital allocation and drawdown management techniques; and

    (d) provide returns that have historically reduced overall profit risk versus risk replacement or adding additional risk.

26. The European Union approved a new regulation of mutual funds in 2010 in the fourth European Directive covering Undertakings for Collective Investment in Transferable Securities (**UCITS IV**), which introduced a VaR based approach to regulatory risk management for investment funds that extensively use derivatives.

27. This approach allows for two methods of VaR limits, "relative" and "absolute", as defined in Appendix A, and which in general terms can be summarized as follows:

    (a) Relative: This approach uses a ratio of up to 200% between the VaR of the portfolio and the VaR of a reference portfolio.

(b) Absolute: This approach is generally used when there is no reference portfolio or benchmark and allows the one-month VaR to be up to 20% of the net asset value of the portfolio.

28. UCITS IV also includes rules for the computation of VaR and requires regular stress- and back-testing to complement the VaR estimation.

29. On October 28, 2020 the U.S. Securities and Exchange Commission adopted new Rule 18f-4 under the *Investment Company Act of 1940* (17 CFR § 270.18f-4, the **SEC Rule**), which modernized the regulatory framework for derivatives use by registered funds. The SEC Rule is generally the same as the UCITS IV rule as it adopted a 200% limit for funds using a relative VaR approach, and a 20% VaR limit for funds using an absolute VaR approach.

30. When dealing with a fund that is managed using a multi-asset approach like the Filer and other CTAs do, a VaR-based approach is a better means of managing risk because, unlike notional amounts which do not measure risk or volatility, VaR enables risk to be measured in a reasonably comparable and consistent manner.

31. The risk-based approach in the SEC Rule, which relies on VaR, stress testing, and overall risk management, addresses concerns about fund leverage for investment portfolios managed by CTAs like the Filer, while allowing such portfolios to continue to use derivatives for a variety of purposes.

32. The Filer has employed VaR-based risk management for its funds, including each of the Funds, for several years that are consistent with both the SEC Rule and the UCITS IV rules. Since the Filer's inception, it has been using volatility-based risk measures as its primary risk metric.

33. ADT and AOFT should be managed on the basis that they comply with VaR limits that do not exceed 20% of the net asset value of ADT or AOFT at any time.

34. Allowing the Filer's funds as public funds to use an absolute VaR methodology is the better risk mandate that CTAs like the Filer use and should give investors access to an investment product that will diversify their holdings and may result in superior non-correlated returns at critical times. Of the two VaR approaches ("absolute" and "relative") used in the UCITS IV rules and the SEC Rule, the absolute approach is the approach that is most suitable for CTAs as there typically is no reference portfolio that would be appropriate for a CTA strategy.

35. With minor exceptions, both ADT and AOFT have consistently operated well below a 20% absolute VaR limit.

36. The Filer already uses a VaR model and has the necessary policies and procedures in place, and, when they are public funds, each Fund will adhere to a 20% absolute VaR limit and operate in accordance with the conditions set out in Appendix A, which are based on the SEC Rule.

37. The Filer will use a historical simulation VaR model with respect to each of the Funds, when they are public funds, that will not change. In addition, the Filer will upload the investment portfolios of ADT and AOFT each business day to the Bloomberg MARS system in order to have the daily reports from the Bloomberg MARS system (each a **Bloomberg Report**) confirm that each of ADT and AOFT is compliant with the applicable VaR test as set out in Appendix A on each business day.

38. The Filer has appointed a "derivatives risk manager" (a **DRM**) and has developed a "Derivatives Risk Management Program" (the **DRMP**) that is consistent with and adheres to the conditions set out in Appendix A, which are based on the SEC Rule. A copy of the DRMP has been provided to the Principal Regulator.

39. The Filer's DRMP incorporates the well documented policies and procedures for risk monitoring, risk management, and risk reporting of a fund's VaR methodology to regulators as developed by securities regulators in the U.S. and the EU.

Performance

40. Since the commencement of operations of each Fund, the units of that Fund, including with respect to AOF LP as pertains to AOFT, have been distributed to investors on a prospectus-exempt basis in accordance with National Instrument 45-106 *Prospectus Exemptions* in each jurisdiction of Canada.

41. Each Fund will distribute its units pursuant to a simplified prospectus and fund facts document (the **Disclosure Documents**). Upon the issuance of a final receipt for the Disclosure Documents of each Fund, that Fund will become a reporting issuer in each jurisdiction of Canada and, except for the Exemption Sought, will become subject to the requirements of NI 81-102 that relate to alternative mutual funds and the requirements of NI 81-106 that apply to investment funds that are reporting issuers.

42. Each Fund will be managed on the same basis after it becomes a reporting issuer as it was during the period before it became a reporting issuer. The investment objective, fees and day-to-day administration will not change when a Fund becomes a reporting issuer.

43. Except as set out herein, each Fund has complied with the investment restrictions and practices contained in NI 81-102 since inception.

44. The Filer proposes to use each Fund's past performance data to determine its investment risk level and to disclose that investment risk level in the Disclosure Documents for each class of units of that Fund. Without the Performance Relief, the Filer, in determining and disclosing each Fund's investment risk level in the Disclosure Documents for each class of units of that Fund, cannot use performance data of that Fund that relates to a period prior to that Fund becoming a reporting issuer, including with respect to AOF LP in relation to AOFT.

45. The Filer proposes to include in the fund facts documents for each class of units of each Fund past performance data in the charts required by items 5(2), 5(3) and 5(4) of Form 81-101F3 under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return", respectively, related to periods prior to that Fund becoming a reporting issuer in each jurisdiction of Canada. Without the Exemption Sought, the fund facts documents of each Fund cannot include performance data of that Fund that relates to a period prior to that Fund becoming a reporting issuer, including with respect to AOF LP in relation to AOFT.

46. As a reporting issuer, each Fund is required under NI 81-106 to prepare and send MRFPs to all holders of its securities on an annual and interim basis. Without the Exemption Sought, the MRFPs of each Fund cannot include financial highlights and performance data of that Fund that relates to a period prior to that Fund becoming a reporting issuer, including with respect to AOF LP in relation to AOFT.

47. The performance data and other financial data of each Fund for the time period before it became a reporting issuer is significant and meaningful information for existing and prospective investors of units of that Fund.

Decision

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

Leverage Relief

1. The decision of the Decision Makers under the Legislation is that the Leverage Relief is granted, provided that

   (a) the Filer has appointed a DRM;

   (b) the Filer and each Fund complies with the absolute VaR test, as defined in Appendix A, and complies with all of the additional leverage conditions for funds set out in Appendix A;

   (c) the Filer discloses in the Disclosure Documents the maximum VaR that each Fund is permitted to incur, and the Filer discloses in the annual and interim MRFP of each Fund the maximum amount of VaR incurred by each Fund over the applicable period;

   (d) the Filer files a copy of its initial DRMP with the Principal Regulator;

   (e) the Filer notifies the Principal Regulator promptly of any changes to its DRM or DRMP;

   (f) no later than 30 days after the end of each month, the Filer prepares and retains a monthly portfolio investment report containing the elements set out in its DRMP, and, no later than 60 days after the end of each fiscal quarter, files with the Principal Regulator the monthly portfolio investment reports for that quarter;

   (g) the Filer does not change the VaR model that it is using with respect to each Fund.

   (h) the Filer uploads the investment portfolios of ADT and AOFT each business day to the Bloomberg MARS system in order to have the applicable Bloomberg Reports confirm that each of ADT and AOFT is compliant with the applicable VaR test as set out in Appendix A on each business day;

   (i) the Filer provides to the Principal Regulator on a quarterly basis a copy of each daily Bloomberg Report for the last quarter for both ADT and AOFT;

   (j) the Filer notifies the Principal Regulator within one business day if either ADT or AOFT is offside the 20% VaR test for more than five consecutive business days, providing the information set out in the Auspice VaR Breach Memo, as defined in the DRMP;

(k) the Filer promptly (e.g., within 24 hours) provides the Principal Regulator with any other information that the Principal Regulator may request regarding the inter-month calculations and risk metrics the Filer is using; and

(l) the Filer appropriately documents its risk methodology for ADT and AOFT in accordance with the requirements of the Risk Classification Methodology.

Performance Relief

2. The decision of the Decision Makers under the Legislation is that the Performance Relief is granted, provided that

(a) any sales communication, fund facts documents and MRFP that contains performance data of the units of a Fund relating to a period of time prior to when the Fund was a reporting issuer discloses that

(i) the Fund was not a reporting issuer during such period;

(ii) the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer;

(iii) the Filer obtained exemptive relief on behalf of the Fund to permit the disclosure of performance data of the units of the Fund relating to a period prior to when the Fund was a reporting issuer, including with respect to AOF LP in relation to AOFT; and

(iv) with respect to any MRFP, the financial statements of the Fund for such period are posted on the Filer's website and are available to investors upon request; and

(b) the Filer posts the financial statements of each Fund on the Filer's designated website and delivers those financial statements to investors upon request.

Expiration

3. This decision expires on February 22, 2027.

"Denise Weeres"
Director, Corporate Finance
Alberta Securities Commission

Application File #: 2023/0028

APPENDIX A

ADDITIONAL LEVERAGE CONDITIONS

In these conditions,

"absolute VaR test" means that the VaR of a fund's portfolio does not exceed 20% of the value of the fund's net assets;

"board", with respect to a fund, means the fund manager's board of directors;

"derivatives risk manager" means an officer or officers of the fund's investment adviser responsible for administering the program and policies and procedures required by condition 1 below, provided that the derivatives risk manager:

(1) may not be a portfolio manager of the fund, or if multiple officers serve as derivatives risk manager, a majority of the derivatives risk managers must not be portfolio managers of the fund; and

(2) must have relevant experience regarding the management of derivatives risk;

"derivatives risks" means the risks associated with a fund's derivatives transactions or its use of derivatives transactions, including leverage, market, counterparty, liquidity, operational, and legal risks and any other risks the derivatives risk manager deems material;

"derivatives transaction" means

(1) any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument, under which a fund is or may be required to make any payment or delivery of cash or other assets during the life of the instrument or at maturity or early termination, whether as margin or settlement payment or otherwise; and

(2) any short sale borrowing.

"designated index" means an unleveraged index that is approved by the derivatives risk manager for purposes of the relative VaR test and that reflects the markets or asset classes in which the fund invests and is not administered by an organization that is an affiliated person of the fund, its investment adviser, or principal underwriter, or created at the request of the fund or its investment adviser, unless the index is widely recognized and used. In the case of a blended index, none of the indexes that compose the blended index may be administered by an organization that is an affiliated person of the fund, its investment adviser, or principal underwriter, or created at the request of the fund or its investment adviser, unless the index is widely recognized and used;

"designated reference portfolio" means a designated index or the fund's securities portfolio. Notwithstanding the first sentence of the definition of designated index in these conditions, if the fund's investment objective is to track the performance (including a leverage multiple or inverse multiple) of an unleveraged index, the fund must use that index as its designated reference portfolio;

"independent director" means a director who would be independent within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*;

"relative VaR test" means that the VaR of the fund's portfolio does not exceed 200% of the VaR of the designated reference portfolio;

"securities portfolio" means the fund's portfolio of securities and other investments, excluding any derivatives transactions, that is approved by the derivatives risk manager for purposes of the relative VaR test, provided that the fund's securities portfolio reflects the markets or asset classes in which the fund invests (i.e., the markets or asset classes in which the fund invests directly through securities and other investments and indirectly through derivatives transactions);

"value-at-risk" or "VaR" means an estimate of potential losses on an instrument or portfolio, expressed as a percentage of the value of the portfolio's assets (or net assets when computing a fund's VaR), over a specified time horizon and at a given confidence level, provided that any VaR model used by a fund for purposes of determining the fund's compliance with the relative VaR test or the absolute VaR test must:

(1) take into account and incorporate all significant, identifiable market risk factors associated with a fund's investments, including, as applicable:

(i) equity price risk, interest rate risk, credit spread risk, foreign currency risk and commodity price risk;

(ii) material risks arising from the nonlinear price characteristics of a fund's investments, including options and positions with embedded optionality; and

(iii) the sensitivity of the market value of the fund's investments to changes in volatility;

(2) use a 99% confidence level and a time horizon of 20 trading days; and

(3) be based on at least three years of historical market data.

Conditions

1. ***Derivatives risk management program.*** The fund must adopt and implement a written derivatives risk management program (**program**), which must include policies and procedures that are reasonably designed to manage the fund's derivatives risks and to reasonably segregate the functions associated with the program from the portfolio management of the fund. The program must include the following elements:

   i. ***Risk identification and assessment.*** The program must provide for the identification and assessment of the fund's derivatives risks. This assessment must take into account the fund's derivatives transactions and other investments.

   ii. ***Risk guidelines.*** The program must provide for the establishment, maintenance, and enforcement of investment, risk management, or related guidelines that provide for quantitative or otherwise measurable criteria, metrics, or thresholds of the fund's derivatives risks. These guidelines must specify levels of the given criterion, metric, or threshold that the fund does not normally expect to exceed, and measures to be taken if they are exceeded.

   iii. ***Stress testing.*** The program must provide for stress testing to evaluate potential losses to the fund's portfolio in response to extreme but plausible market changes or changes in market risk factors that would have a significant adverse effect on the fund's portfolio, taking into account correlations of market risk factors and resulting payments to derivatives counterparties. The frequency with which the stress testing under this paragraph is conducted must take into account the fund's strategy and investments and current market conditions, provided that these stress tests must be conducted no less frequently than weekly.

   iv. **Backtesting.** The program must provide for backtesting to be conducted no less frequently than weekly, of the results of the VaR calculation model used by the fund in connection with the relative VaR test or the absolute VaR test by comparing the fund's gain or loss that occurred on each business day during the backtesting period with the corresponding VaR calculation for that day, estimated over a one-trading day time horizon, and identifying as an exception any instance in which the fund experiences a loss exceeding the corresponding VaR calculation's estimated loss.

   v. ***Internal reporting and escalation –***

      A. ***Internal reporting.*** The program must identify the circumstances under which persons responsible for portfolio management will be informed regarding the operation of the program, including exceedances of the guidelines specified in paragraph 1.ii. of these conditions and the results of the stress tests specified in paragraph 1.iii. of these conditions.

      B. ***Escalation of material risks.*** The derivatives risk manager must inform in a timely manner persons responsible for portfolio management of the fund, and also directly inform the board as appropriate, of material risks arising from the fund's derivatives transactions, including risks identified by the fund's exceedance of a criterion, metric, or threshold provided for in the fund's risk guidelines established under paragraph 1.ii. of these conditions or by the stress testing described in paragraph 1.iii. of these conditions.

   vi. ***Periodic review of the program.*** The derivatives risk manager must review the program at least annually to evaluate the program's effectiveness and to reflect changes in risk over time. The periodic review must include a review of the VaR calculation model used by the fund under condition 2 below (including the backtesting required by paragraph 1.iv. of these conditions) and any designated reference portfolio to evaluate whether it remains appropriate.

2. ***Limit on fund leverage risk.***

   i. The fund must comply with the relative VaR test unless the derivatives risk manager reasonably determines that a designated reference portfolio would not provide an appropriate reference portfolio for purposes of the relative VaR test, taking into account the fund's investments, investment objectives, and strategy. A fund that does not apply the relative VaR test must comply with the absolute VaR test.

ii. The fund must determine its compliance with the applicable VaR test at least once each business day. If the fund determines that it is not in compliance with the applicable VaR test, the fund must come back into compliance promptly after such determination, in a manner that is in the best interests of the fund and its securityholders.

iii. If the fund is not in compliance with the applicable VaR test within five business days,

A. The derivatives risk manager must provide a written report to the board and explain how and by when (i.e., number of business days) the derivatives risk manager reasonably expects that the fund will come back into compliance;

B. The derivatives risk manager must analyze the circumstances that caused the fund to be out of compliance for more than five business days and update any program elements as appropriate to address those circumstances; and

C. The derivatives risk manager must provide a written report within thirty calendar days of the exceedance to the board explaining how the fund came back into compliance and the results of the analysis and updates required under paragraph 2.iii.B. of these conditions. If the fund remains out of compliance with the applicable VaR test at that time, the derivatives risk manager's written report must update the report previously provided under paragraph 2.iii.A. of these conditions and the derivatives risk manager must update the board on the fund's progress in coming back into compliance at regularly scheduled intervals at a frequency determined by the board.

3. ***Board oversight and reporting –***

i. ***Approval of the derivatives risk manager.*** The board, including a majority of independent directors of the fund manager, if any, must approve the designation of the derivatives risk manager.

ii. ***Reporting on program implementation and effectiveness.*** On or before the implementation of the program, and at least annually thereafter, the derivatives risk manager must provide to the board a written report providing a representation that the program is reasonably designed to manage the fund's derivatives risks and to incorporate the elements provided in paragraphs 1.i. through vi. of these conditions. The representation may be based on the derivatives risk manager's reasonable belief after due inquiry. The written report must include the basis for the representation along with such information as may be reasonably necessary to evaluate the adequacy of the fund's program and, for reports following the program's initial implementation, the effectiveness of its implementation. The written report also must include, as applicable, the derivatives risk manager's basis for the approval of any designated reference portfolio or any change in the designated reference portfolio during the period covered by the report; or an explanation of the basis for the derivatives risk manager's determination that a designated reference portfolio would not provide an appropriate reference portfolio for purposes of the relative VaR test.

iii. ***Regular board reporting.*** The derivatives risk manager must provide to the board, annually or at such other frequency determined by the board, a written report regarding the derivatives risk manager's analysis of exceedances described in paragraph 1.ii. of these conditions, the results of the stress testing conducted under paragraph 1.iii of these conditions, and the results of the backtesting conducted under paragraph 1.iv of these conditions since the last report to the board. Each report under this paragraph must include such information as may be reasonably necessary for the board to evaluate the fund's response to exceedances and the results of the fund's stress testing.

4. [Not applicable]

5. [Not applicable]

6. ***Recordkeeping –***

i. **Records to be maintained.** A fund must maintain a written record documenting the following, as applicable:

A. The fund's written policies and procedures required by paragraph c.1. of these conditions, along with

1. The results of the fund's stress tests under paragraph 1.iii. of these conditions;

2. The results of the backtesting conducted under paragraph 1.iv. of these conditions;

3. Records documenting any internal reporting or escalation of material risks under paragraph 1.v.B. of these conditions; and

4. Records documenting the reviews conducted under paragraph 1.vi of these conditions.

B. Copies of any materials provided to the board in connection with its approval of the designation of the derivatives risk manager, any written reports provided to the board relating to the program, and any written reports provided to the board under paragraphs 2.iii.A. and C. of these conditions.

C. Any determination and/or action the fund made under paragraphs 2.i. and ii. of these conditions, including a fund's determination of: The VaR of its portfolio; the VaR of the fund's designated reference portfolio, as applicable; the fund's VaR ratio (the value of the VaR of the fund's portfolio divided by the VaR of the designated reference portfolio), as applicable; and any updates to any VaR calculation models used by the fund and the basis for any material changes thereto.

ii. ***Retention periods.***

A. A fund must maintain a copy of the written policies and procedures that the fund adopted under condition 1. that are in effect, or at any time within the past seven years were in effect, in an easily accessible place.

B. A fund must maintain all records and materials that paragraphs 6.i.A.1. through 4. and 6.i.B. through D. of these conditions describe for a period of not less than seven years (the first two years in an easily accessible place) following each determination, action, or review that these paragraphs describe.

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
IntelliPharmaCeutics International Inc.	March 6, 2023	
Plant-Based Investment Corp.	March 6, 2023	
Tetra Bio-Pharma Inc.	March 6, 2023	
Silo Wellness Inc.	March 6, 2023	

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
Molecule Holdings Inc.	March 1, 2023	

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	
iMining Technologies Inc.	September 30, 2022	
PNG Copper Inc.	November 30, 2022	
Luxxfolio Holdings Inc.	January 5, 2023	
Molecule Holdings Inc.	March 1, 2023	

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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:
CIBC Private Wealth Canadian Dividend Growth Pool
CIBC Private Wealth North American Yield Equity Pool
CIBC Private Wealth North American Yield Pool
Principal Regulator - Ontario
Type and Date:
Final Simplified Prospectus dated Mar 1, 2023
NP 11-202 Final Receipt dated Mar 2, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #03474717

Issuer Name:
Nuveen Environmental Impact Bond Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Feb 28, 2023
NP 11-202 Final Receipt dated Mar 2, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #03472514

Issuer Name:
Harvest Diversified Equity Income ETF
Harvest Travel & Leisure Income ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Mar 2, 2023
NP 11-202 Preliminary Receipt dated Mar 2, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #03499156

Issuer Name:
NCM Core Income Fund
NCM Conservative Income Portfolio
Principal Regulator - Alberta
Type and Date:
Amendment No. 2 to Final Simplified Prospectus dated Feb 12, 2023
NP 11-202 Final Receipt dated Feb 28, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #03368749

Issuer Name:
NBI Global Real Assets Income ETF
Principal Regulator - Quebec
Type and Date:
Amendment No. 1 to Final Long Form Prospectus dated Feb 24, 2023
NP 11-202 Final Receipt dated Mar 1, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #03354236

Issuer Name:
Auspice Diversified Trust
Auspice One Fund Trust
Principal Regulator – Alberta (ASC)
Type and Date:
Final Simplified Prospectus dated Feb 28, 2023
NP 11-202 Final Receipt dated Mar 1, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #03480276

Issuer Name:
IG Mackenzie Global Consumer Companies Fund
IG Mackenzie Global Health Care Fund
IG Mackenzie Global Infrastructure Fund
IG Mackenzie Global Precious Metals Fund
Principal Regulator – Manitoba
Type and Date:
Final Simplified Prospectus dated Feb 27, 2023
NP 11-202 Final Receipt dated Mar 3, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #03480675

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NON-INVESTMENT FUNDS

Issuer Name:
Artemis Gold Inc.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated March 3, 2023
NP 11-202 Preliminary Receipt dated March 3, 2023
Offering Price and Description:
Up to $400,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3499869

Issuer Name:
AVINO SILVER & GOLD MINES LTD.
Principal Regulator - British Columbia
Type and Date:
Preliminary Shelf Prospectus dated February 28, 2023
NP 11-202 Preliminary Receipt dated March 1, 2023
Offering Price and Description:
US$50,000,000.00 - Common Shares, Warrants, Subscription Receipts, Debt Securities, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3497275

Issuer Name:
Ayr Wellness Inc. (formerly, Ayr Strategies Inc.)
Principal Regulator - Ontario
Type and Date:
Amendment dated March 1, 2023 to Preliminary Shelf Prospectus (NI 44-102) dated November 30, 2022
NP 11-202 Preliminary Receipt dated March 1, 2023
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3468897

Issuer Name:
Desert Mountain Energy Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated March 2, 2023
NP 11-202 Preliminary Receipt dated March 2, 2023
Offering Price and Description:
Up to approximately $20,000,000 [□] Units - Price: $[□] per Unit
Underwriter(s) or Distributor(s):
Beacon Securities Limited
Promoter(s):
-
Project #3499241

Issuer Name:
Global Atomic Corporation
Principal Regulator - Ontario
Type and Date:
Preliminary Short Form Prospectus dated March 6, 2023
NP 11-202 Preliminary Receipt dated March 6, 2023
Offering Price and Description:
$50,000,001.00 - 16,666,667 Units
Price: $3.00 per Unit
Underwriter(s) or Distributor(s):
RED CLOUD SECURITIES INC.
Promoter(s):
-
Project #3500277

Issuer Name:
Magna International Inc.
Type and Date:
Preliminary Shelf Prospectus dated February 28, 2023
(Preliminary) Receipted on February 28, 2023
Offering Price and Description:
$0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3497121

Issuer Name:
Rocket Gold Corp.
Principal Regulator - British Columbia
Type and Date:
Preliminary Long Form Prospectus dated February 27, 2023
NP 11-202 Preliminary Receipt dated February 28, 2023
Offering Price and Description:
Minimum of 3,000,000 Common Shares and Up to a Maximum of 5,000,000 Common Shares
Price: $0.10 per Common Share
Minimum of $300,000.00 and up to a Maximum of $500,000.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
Richard Penn
Project #3496648

Issuer Name:
The Toronto-Dominion Bank
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated March 1, 2023
NP 11-202 Preliminary Receipt dated March 2, 2023
Offering Price and Description:
0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3498920

Issuer Name:
U.S. GoldMining Inc.
Principal Regulator - British Columbia
Type and Date:
Amendment dated March 2, 2023 to Preliminary Long Form Prospectus dated February 10, 2023
NP 11-202 Preliminary Receipt dated March 3, 2023
Offering Price and Description:
US$20,000,000.00 - 2,000,000 Units
Offering Price: US$10.00 per Unit
Underwriter(s) or Distributor(s):
BMO NESBITT BURNS INC.
LAURENTIAN BANK SECURITIES, INC.
Promoter(s):
-
Project #3490558

Issuer Name:
ZenaTech, Inc.
Type and Date:
Amendment #1 dated March 2, 2023 to Preliminary Long Form Prospectus dated December 5, 2022
(Preliminary) Receipted on March 3, 2023
Offering Price and Description:
No securities are being offered or sold pursuant to this Prospectus
Underwriter(s) or Distributor(s):
-
Promoter(s):
Shaun Passley
Project #3469864

Issuer Name:
Canada Nickel Company Inc.
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated February 27, 2023
NP 11-202 Receipt dated February 28, 2023
Offering Price and Description:
$18,208,763.00 - 9,210,800 Common Shares
$1.77 per Offered Share
$2.86 per Flow-Through Share
Underwriter(s) or Distributor(s):
SCOTIA CAPITAL INC.
RED CLOUD SECURITIES INC.
CORMARK SECURITIES INC.
ECHELON WEALTH PARTNERS INC.
HAYWOOD SECURITIES INC.
RESEARCH CAPITAL CORPORATION
Promoter(s):
-
Project #3489806

Issuer Name:
Capstone Copper Corp.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated March 1, 2023
NP 11-202 Receipt dated March 2, 2023
Offering Price and Description:
$750,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3488547

Issuer Name:
Magna International Inc.
Type and Date:
Final Shelf Prospectus dated February 28, 2023
Receipted on February 28, 2023
Offering Price and Description:
$0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3497121

Issuer Name:
Morguard North American Residential Real Estate Investment Trust
Principal Regulator - Ontario
Type and Date:
Final Short Form Prospectus dated March 3, 2023
NP 11-202 Receipt dated March 3, 2023
Offering Price and Description:
$50,000,000.00 - 6.00% Convertible Unsecured Subordinated Debentures
Per Debenture: $1,000
Underwriter(s) or Distributor(s):
RBC DOMINION SECURITIES INC.
TD SECURITIES INC.
SCOTIA CAPITAL INC.
CIBC WORLD MARKETS INC.
BMO NESBITT BURNS INC.
Promoter(s):
-
Project #3494170

Issuer Name:
Raging Rhino Capital Corp.
Principal Regulator - British Columbia
Type and Date:
Final CPC Prospectus dated February 28, 2023
NP 11-202 Receipt dated March 1, 2023
Offering Price and Description:
$250,000.00 - 2,500,000 COMMON SHARES
PRICE: $0.10 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3438629

Issuer Name:
The Toronto-Dominion Bank
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated March 1, 2023
NP 11-202 Receipt dated March 2, 2023
Offering Price and Description:
$0.00
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3498920

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Canfin Private Wealth Inc.	Portfolio Manager	February 28, 2023

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