The Ontario Securities Commission

OSC Bulletin

June 29, 2023

Volume 46, Issue 26

(2023), 46 OSCB

The Ontario Securities Commission carries out the powers, duties and functions given to it pursuant to the *Securities Commission Act, 2021* (S.O. 2021, c. 8, Sched. 9).

The Ontario Securities Commission exercises its regulatory oversight function through the administration and enforcement of Ontario's *Securities Act* (R.S.O. 1990, c. S.5) and *Commodity Futures Act* (R.S.O. 1990, c. C.20), and administration of certain provisions of the *Business Corporations Act* (R.S.O. 1990, c. B.16).

The Ontario Securities Commission
Cadillac Fairview Tower
22nd Floor, Box 55
20 Queen Street West
Toronto, Ontario
M5H 3S8

Contact Centre:
Toll Free: 1-877-785-1555
Local: 416-593-8314
TTY: 1-866-827-1295
Fax: 416-593-8122
Email: inquiries@osc.gov.on.ca

Capital Markets Tribunal:
Local: 416-595-8916
Email: registrar@osc.gov.on.ca

Published under the authority of the Commission by:
Thomson Reuters
19 Duncan Street
Toronto, Ontario
M5H 3H1
416-609-3800 or 1-800-387-5164

43062585

The OSC Bulletin is published weekly by Thomson Reuters Canada, under the authority of the Ontario Securities Commission.

Printed in the United States by Thomson Reuters.

ISSN 0226-9325

THOMSON REUTERS
19 Duncan Street
Toronto, ON
M5H 3H1
Canada

Customer Support
1-416-609-3800 (Toronto & International)
1-800-387-5164 (Toll Free Canada & U.S.)
Email CustomerSupport.LegalTaxCanada@TR.com

Table of Contents

A. Capital Markets Tribunal

A.2
Other Notices

A.2.1 Cormark Securities Inc. et al.

FOR IMMEDIATE RELEASE
June 20, 2023

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

TORONTO – Take notice that the attendance in the above-named matter scheduled to be heard on June 27, 2023 will instead be heard on June 28, 2023 at 10:00 a.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.2 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
June 22, 2023

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

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

A copy of the Reasons for Decision dated June 21, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.3 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
June 22, 2023

GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO,
File No. 2022-8

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

A copy of the Order dated June 22, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.4 First Global Data Ltd. et al.

FOR IMMEDIATE RELEASE
June 23, 2023

FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ, AND
ANDRE ITWARU,
File No. 2019-22

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

A copy of the Reasons and Decision and the Order dated June 22, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

A.2.5 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
June 26, 2023

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

TORONTO – Take notice that additional merits hearing dates are scheduled for July 19, 2023 at 10:00 a.m., July 20, 2023 at 1:30 p.m. and July 21, 2023 at 10:00 a.m. in the above-named matter.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

1-877-785-1555 (Toll Free)
inquiries@osc.gov.on.ca

This page intentionally left blank

A.3
Orders

A.3.1 Go-To Developments Holdings Inc. et al.

IN THE MATTER OF
GO-TO DEVELOPMENTS HOLDINGS INC.,
GO-TO SPADINA ADELAIDE SQUARE INC.,
FURTADO HOLDINGS INC., AND
OSCAR FURTADO

File No. 2022-8

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

June 22, 2023

ORDER

WHEREAS on June 2, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider a motion by Oscar Furtado to (i) adjourn the witness summary motion brought by Staff of the Commission (**Staff's Motion**); (ii) adjourn the merits hearing; and (iii) order that certain evidence-in-chief be filed by affidavit;

ON READING the Notice of Motion, and motion records and written submissions of each of Furtado and Staff, and on hearing the submissions of the representatives for Furtado, Staff, and the receiver of Go-To Developments Holdings Inc., Go-To Spadina Adelaide Square Inc., and Furtado Holdings Inc.; and

ON CONSIDERING that Staff and Furtado agree that the evidence-in-chief at the merits hearing of Stephanie Collins, Senior Forensic Accountant of the Ontario Securities Commission, and of Furtado, if any, will be introduced by affidavit, and that they have agreed on the schedule for the exchange of the affidavits;

IT IS ORDERED, for reasons to follow, that:

1. the previously scheduled merits hearing dates of August 21, 22, 24, 25, 28, 29, 30 and 31 are vacated, and that the merits hearing shall commence on November 2 and continue on November 3, 6 and 7, 2023, by videoconference, at 10:00 a.m. on each day, or on such other dates and times as may be agreed to by the parties and set by the Governance & Tribunal Secretariat;

2. by 4:30 p.m. on July 6, 2023, the parties shall provide the Registrar with either an agreed upon schedule or their respective submissions regarding the appropriate schedule for:
   a. the final interlocutory attendance in this matter;
   b. the service of each party's hearing brief for the merits hearing containing copies of the documents, and identifying the other things, that the party intends to produce or enter as evidence at the merits hearing;
   c. the service of each party's completed copy of the *E-hearing Checklist* for the merits hearing*;*
   d. the delivery to the Registrar of the electronic documents that each party intends to rely on or enter into evidence at the merits hearing, along with an index file containing hyperlinks to the documents in the hearing brief, in accordance with the *Protocol for E-hearings*; and
   e. any additional dates required for the merits hearing;

3. Staff's Motion will be heard in writing;

4. the respondents shall deliver their memorandum of fact and law and book of authorities regarding Staff's Motion, by no later than 4:30 p.m. on July 6, 2023; and

5. Staff shall deliver their reply memorandum of fact and law and book of authorities regarding Staff's Motion, if any, by no later than 4:30 p.m. on July 13, 2023.

"M. Cecilia Williams"

"Geoffrey D. Creighton"

"Dale R. Ponder"

A.3.2 First Global Data Ltd. et al. – ss. 127(1), 127.1

IN THE MATTER OF
FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ AND
ANDRE ITWARU

File No. 2019-22

Adjudicators: Timothy Moseley (chair of the panel)
William J. Furlong
Dale R. Ponder

June 22, 2023

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

WHEREAS on April 3 and 4, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider the sanctions and costs that the Tribunal should impose on the respondents as a result of the findings in the Reasons and Decision on the merits, issued on September 15, 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 of each of the respondents, no one appearing for First Global Data Ltd.;

IT IS ORDERED THAT:

1. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the *Securities Act* (the **Act**):

   a. Global Bioenergy Resources Inc., Harish Bajaj and Maurice Aziz shall cease trading in any securities or derivatives, or acquiring any securities, permanently;

   b. First Global Data Ltd. shall cease trading in any securities or derivatives, or acquiring any securities, for a period of seven years; and

   c. Andre Itwaru and Nayeem Alli shall cease trading in any securities or derivatives, or acquiring any securities, for a period of five years, except that after each individual has fully paid the amounts ordered against him in paragraphs 5, 6 and 7 below, he may trade in mutual funds, exchange-traded funds, government bonds and guaranteed investment certificates for the account of any Registered Retirement Savings Plan, Registered Retirement Income Fund, or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*) of which only he has sole legal and beneficial ownership, through a registered dealer in Ontario to whom he has given both a copy of this order and a certificate from the Commission confirming that he has paid the monetary sanctions and costs as required;

2. pursuant to paragraph 3 of s. 127(1) of the Act:

   a. any exemptions contained in Ontario securities law shall not apply to Global Bioenergy Resources Inc., Bajaj or Aziz, permanently;

   b. any exemptions contained in Ontario securities law shall not apply to First Global Data Ltd., for a period of seven years; and

   c. any exemptions contained in Ontario securities law shall not apply to Itwaru or Alli, for a period of five years;

3. pursuant to paragraphs 7, 8, 8.1 and 8.2 of s. 127(1) of the Act:

   a. Bajaj and Aziz shall resign any positions that they hold as directors or officers of any issuer or registrant, and are prohibited permanently from becoming or acting as directors or officers of any issuer or registrant; and

   b. Itwaru and Alli shall resign any positions that they hold as directors or officers of any issuer or registrant, and are prohibited for a period of seven years from becoming or acting as directors or officers of any issuer or registrant;

4. pursuant to paragraph 8.5 of s. 127(1) of the Act:

   a. Global Bioenergy Resources Inc., Bajaj and Aziz are prohibited permanently from becoming or acting as a registrant or as a promoter;

   b. First Global Data Ltd. is prohibited for a period of seven years from becoming or acting as a registrant or as a promoter; and

   c. Itwaru and Alli are prohibited for a period of five years from becoming or acting as a registrant or as a promoter;

5. pursuant to paragraph 9 of s. 127(1) of the Act:

   a. Global Bioenergy Resources Inc. shall pay to the Commission an administrative penalty of $825,000;

   b. Bajaj shall pay to the Commission an administrative penalty of $750,000;

c. Aziz shall pay to the Commission an administrative penalty of $725,000;

d. First Global Data Ltd. shall pay to the Commission an administrative penalty of $300,000;

e. Itwaru shall pay to the Commission an administrative penalty of $300,000; and

f. Alli shall pay to the Commission an administrative penalty of $275,000;

6. pursuant to paragraph 10 of s. 127(1) of the Act:

a. First Global Data Ltd., Itwaru and Alli are jointly and severally liable to disgorge to the Commission $1.51 million;

b. Global Bioenergy Resources Inc., Bajaj and Aziz are jointly and severally liable to disgorge to the Commission $2.95 million; and

c. Global Bioenergy Resources Inc. and Aziz are jointly and severally liable to disgorge to the Commission an additional $450,000; and

7. pursuant to s. 127.1 of the Act:

a. First Global Data Ltd., Itwaru and Alli shall pay costs to the Commission in the amount of $523,088, for which amount they shall be jointly and severally liable;

b. Global Bioenergy Resources Inc., Bajaj and Aziz shall pay costs to the Commission in the amount of $452,723, for which amount they shall be jointly and severally liable; and

c. Global Bioenergy Resources Inc. and Aziz shall pay additional costs to the Commission in the amount of $104,474, for which amount they shall be jointly and severally liable.

“Timothy Moseley”

“William J. Furlong”

“Dale R. Ponder”

This page intentionally left blank

A.4
Reasons and Decisions

A.4.1 Bridging Finance Inc. et al. – clause 25.0.1(a) of the Statutory Powers Procedure Act

Citation: *Bridging Finance Inc (Re)*, 2023 ONCMT 24
Date: 2023-06-21
File No. 2022-9

IN THE MATTER OF
BRIDGING FINANCE INC.,
DAVID SHARPE,
NATASHA SHARPE AND
ANDREW MUSHORE

REASONS FOR DECISION
(Clause 25.0.1(a) of the *Statutory Powers Procedure Act*, RSO 1990, c S.22)

Adjudicators:	Russell Juriansz (chair of the panel) Timothy Moseley Sandra Blake	
Hearing:	By videoconference, May 23, 2023	
Appearances:	Brian Greenspan Melissa MacKewn Naomi Lutes Alexandra Grishanova	For David Sharpe
	Lawrence Thacker Jonathan Chen Mari Galloway	For Natasha Sharpe
	Johanna Braden Mark Bailey	For Staff of the Ontario Securities Commission
	Erin Pleet	For the receiver of Bridging Finance Inc.
	No one appearing for Andrew Mushore	

REASONS FOR DECISION

1. OVERVIEW

[1] On May 24, 2023, we dismissed motions by the respondents David Sharpe and Natasha Sharpe to stay this proceeding because of abuse of process.[1] These are our reasons for that decision.

[2] The abuse the Sharpes allege is that in 2021, the Commission filed the Sharpes' compelled testimony in court, in an application for the appointment of a receiver, without first obtaining from the Tribunal an order under s. 17 of the *Securities Act*[2] (the **Act**) authorizing disclosure of that testimony. The Tribunal found that the Commission ought to have obtained such an order.[3]

[3] Under the court order appointing the receiver, the application record, including portions of the compelled testimony, was published on the receiver's website and later in the media. The Sharpes say that it was unnecessary to include the compelled testimony in the application record. The Sharpes submit that it will be impossible for them to have a fair hearing in this enforcement proceeding against them, and that continuing this proceeding would bring the Commission's enforcement regime and the administration of justice into disrepute. They say that this abuse of process justifies a stay.

1 *Bridging Finance Inc (Re),* (2023) 46 OSCB 5020
2 RSO 1990, c S.5
3 *Sharpe (Re)*, 2022 ONSEC 3

[4] We dismissed the motions because the Sharpes failed to persuade us that continuing this proceeding would prejudice either the Sharpes' right to a fair hearing or the integrity of the justice system.

2. ISSUES

[5] A stay of proceedings is a drastic remedy. To justify a stay, the Sharpes were required to show:

a. that prejudice to their right to a fair hearing, or to the integrity of the justice system, will be "manifested, perpetuated or aggravated" through the conduct of the hearing or by its outcome;

b. that there is no alternative remedy capable of redressing the prejudice; and

c. if there is still uncertainty about whether the first two criteria justify a stay, that we should balance the interests in favour of granting a stay (*e.g.*, denouncing misconduct and preserving the integrity of the justice system) against the interests in having a decision on the merits of this proceeding.[4]

[6] We conclude that no prejudice will be manifested, perpetuated or aggravated by continuing with and completing this proceeding. First, the public availability of the compelled evidence does not prejudice the Sharpes' right to a fair hearing. The merits hearing panel can address that potential prejudice by alternative remedies. Second, this is not one of those rare exceptional cases in which having a hearing, even a fair one, would offend society's sense of justice.

3. ANALYSIS

3.1 Have the Sharpes established that their right to a fair hearing would be prejudiced?

[7] We begin by assessing whether the Commission's filing the Sharpes' compelled testimony in court would prejudice their right to a fair hearing. The Sharpes assert that fairness of the hearing will be affected by "witness tainting." They rely on the fact that after their compelled testimony was made public, the OSC conducted 17 interviews with a further 11 witnesses. Six of these witnesses are expected to testify against them at the merits hearing. The Sharpes assert that it may be presumed that these witnesses had access to the Sharpes' compelled testimony. They say that these witnesses may, or at least will appear to, tailor their testimony at the hearing using their knowledge of the Sharpes' compelled testimony.

[8] While this may be so, it is also worth observing that witnesses could have come to know the content of the Sharpes' compelled testimony in other ways. They may have come to know it when the Sharpes' compelled testimony was made public in the separate proceeding in which Staff sought and obtained temporary cease trade orders against Bridging Finance Inc. and others. As well, s. 17(6)(b) of the Act permits an investigator to disclose compelled testimony while examining a witness.

[9] The Sharpes will have ample opportunity at the hearing to test witnesses' testimony, exploring whether and how they learned of the Sharpes' compelled testimony and, if so, whether that knowledge improperly influenced their testimony in some way. Issues of credibility of this nature are routine in many hearings.

[10] We conclude that the possibility that witnesses may have had access to the Sharpes' compelled testimony as a result of the breach does not prejudice the Sharpes' right to a fair hearing.

3.2 Have the Shapes established that proceeding with the hearing will offend society's sense of justice, warranting a stay?

[11] The Sharpes correctly submit that even where a fair hearing is possible, some state conduct is so troublesome that the court or tribunal must distance itself from the conduct to not be seen as condoning the impugned conduct.[5] As the Supreme Court of Canada has said, "There may be exceptional cases in which the past misconduct is so egregious that the mere fact of going forward in the light of it will be offensive. But such cases should be relatively very rare."[6]

[12] We discuss below the circumstances that lead us to conclude this is not one of the rare cases in which a stay should be ordered.

3.2.1 The impugned conduct took place in a different proceeding

[13] As we pointed out in our earlier disclosure decision,[7] the conduct that the Sharpes rely upon to allege abuse, *i.e.*, making their compelled testimony public by filing it in a court proceeding, did not take place in this proceeding. In its March 30,

4 *R v Babos*, 2014 SCC 16 (***Babos***) at para 32
5 *Babos* at para 38
6 *Canada (Minister of Citizenship & Immigration) v Tobiass*, 1997 CanLII 322 (SCC) at para 91
7 *Bridging Finance Inc (Re),* 2023 ONCMT 8 at para 22

2022, decision, the Tribunal rejected OSC Staff's argument that the filing of the compelled testimony in the receivership proceeding was permitted by s. 17(6) of the Act. Staff had argued that the Court application was "in connection with" the proceeding before the Tribunal. The basis of the Tribunal's decision was that the receivership proceeding was a different proceeding to which s. 17(6) did not apply.

[14] Employing the same reasoning, we reject the Sharpes' submission that this proceeding is sufficiently connected to the receivership proceeding that they may claim a stay in this proceeding because of misconduct in the receivership proceeding. The presiding judge in the receivership proceeding would have jurisdiction to deal with misconduct in that proceeding.

[15] The Sharpes rely on illegality they say constitutes conduct which shocks the conscience of the community and is detrimental to the proper administration of justice. They rely on *R v Creswell*[8] to submit that a stay of proceedings is available where it can be demonstrated that illegality in the investigation that led to the charges shocks the community's conscience and would be detrimental to the administration of justice. However, this is not a case in which state actors improperly obtained evidence and the court is asked to denounce the improper conduct by excluding the evidence. It is beyond dispute that the OSC obtained the Sharpes' compelled testimony in full compliance with the Act. The Sharpes' complaint is about what the Commission later did with that evidence. They complain about the filing of properly obtained evidence in the receivership application without first applying for a s. 17 order. *R v Creswell* therefore does not apply.

[16] The Sharpes explain that their failure to seek a remedy in the proceeding in which the improper disclosure took place was because the damage had been irreparably done once media accounts of the compelled testimony were published. We note that the already published media accounts did not stop David Sharpe from seeking an order sealing the compelled testimony at the hearing to extend the cease trading order, which request was heard after the receivership proceeding.

[17] We consider it salient that the Sharpes did not seek a sealing order or any other redress in the receivership application.

3.2.2 There is no evidence of bad faith on the part of OSC Staff

[18] The Sharpes have not tendered any evidence of bad faith on the part of OSC Staff. The Sharpes' attempts to uncover some indications of bad faith have been contentious in earlier hearings in this proceeding. We dismissed their motion for disclosure and their request to summons OSC Staff as fishing expeditions hoping to uncover such evidence without first laying a proper foundation.[9]

[19] We decline to draw an adverse inference of bad faith on the part of OSC Staff because they did not provide sworn testimony on which cross-examination could be conducted explaining their decision not to seek a s. 17 order before filing the compelled evidence in the receivership application. On the record before us, we are satisfied that the OSC, consistent with its position in other cases, did not seek a s. 17 order because it considered that such an order was not required. OSC Staff stated that to the Vice-Chair of the OSC on April 30, 2021, on the initial request for a temporary order, and reiterated that view in an email dated May 12, 2021, to David Sharpe's counsel. OSC Staff took the same position before the Court of Appeal for Ontario in an unrelated case. In ruling that the OSC Staff was wrong in its interpretation in the Tribunal's March 30, 2022, decision, the Tribunal agreed the question was "novel". All that can be said is that OSC Staff took a position on a novel question of law that the Tribunal ruled was mistaken.

[20] The situations in *Clark v Complaints Inquiry Committee*[10] and *R v Y(X)*[11], upon which the Sharpes rely, are markedly different. In *Clark* the investigator gathered information in a confidential investigation through his wife's email. *Y(X)* involved a serious breach of informer privilege. We do not find these cases helpful.

3.2.3 The improper disclosure in the receivership application does not offend society's standards to the extent a stay is warranted

[21] The Sharpes submit that even absent a showing of bad faith we should grant their motion because unlawful actions by state actors may be sufficient to constitute an abuse of process warranting a stay.

[22] We recognize, even in the absence of a showing of bad faith, that the OSC Staff's breach of its own governing legislation in the receivership application is a serious matter. However, the breach in this case is not so egregious that the mere fact of going ahead with this proceeding will be offensive and bring the system of justice into disrepute. We say that for several reasons.

8 2000 BCCA 583
9 *Bridging Finance Inc (Re),* 2023 ONCMT 8 and *Bridging Finance Inc (Re),* 2023 ONCMT 19
10 2012 ABCA 152
11 2011 ONCA 259

[23] First, it is significant that at the time OSC Staff disclosed the compelled testimony in the receivership proceeding, the version of the Act then in force permitted OSC Staff to disclose the compelled testimony in a proceeding before the Tribunal, including both the temporary order proceeding and this enforcement proceeding.

[24] Second, the panel that dismissed[12] David Sharpe's request to preserve the confidentiality of the compelled testimony, in the temporary order proceeding, concluded that the public interest required the compelled testimony to be publicly available. That assessment makes it likely that the Tribunal would have granted a s. 17 order had OSC Staff sought one before it commenced the receivership application.

[25] Third, after the events in this case took place and shortly after the Tribunal's March 30, 2022, decision, the legislature amended s. 17 of the Act. Section 17 now permits the OSC to file compelled testimony in a proceeding commenced under the Act, which would include a receivership application. Clearly, the amendment does not have retroactive effect or cure the OSC's breach. But like all legislation, it should be taken to reflect society's values. We consider the amendment to strongly indicate that the community's sense of fair play and decency has not been shocked by the filing of the compelled testimony in the receivership application in this case.

[26] Fourth, we do not accept the Sharpes' contention that a decision not to stay the proceedings will pervasively undermine the administration of justice at the Commission. We do not accept that, unless the stay is granted, the public and those regulated under the Act will come to believe that the Commission will carry out its mandate with disregard for its governing legislation. We expect that the public and those regulated under the Act will view things as we do – that on this singular issue the OSC Staff proceeded on a mistaken interpretation of the version of s. 17 that was in force at the time.

3.3 Balancing the public interests

[27] Assuming the Sharpes had established the first and second branches of the residual category are satisfied, we would determine that the interests in having a decision on the merits in this proceeding outweigh the interests in favour of granting a stay.

[28] The Sharpes were registrants and the most senior leaders at Bridging, which managed investment vehicles focused on making short-term loans to borrowers. They are alleged to have defrauded institutional and retail investors out of millions of dollars through their dishonesty and deceit. It is alleged that they funnelled investor funds to themselves and Bridging, then concealed their wrongdoing from investors. It is also alleged that the Sharpes obstructed the Commission's investigation and destroyed, concealed and altered Bridging's records and in the case of David Sharpe, intimidated witnesses.

[29] These are extremely grave allegations. If these allegations are true, there would be a great public interest in imposing significant sanctions, possibly including permanent removal from Ontario's capital markets to protect investors. We conclude that in the circumstances of this case, the public interest in proceeding overrides the interests in favour of granting a stay.

4. CONCLUSION

[30] For these reasons, we dismissed motions by the respondents David Sharpe and Natasha Sharpe to stay this proceeding because of abuse of process.

Dated at Toronto this 21st day of June, 2023

"Russell Juriansz"

"Timothy Moseley"

"Sandra Blake"

[12] *Sharpe (Re)*, 2022 ONCMT 18

A.4.2 First Global Data Ltd. et al. – ss. 127(1), 127.1

Citation: *First Global Data Ltd (Re)*, 2023 ONCMT 25
Date: 2023-06-22
File No. 2019-22

IN THE MATTER OF
FIRST GLOBAL DATA LTD.,
GLOBAL BIOENERGY RESOURCES INC.,
NAYEEM ALLI,
MAURICE AZIZ,
HARISH BAJAJ AND
ANDRE ITWARU

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

Adjudicators:	Timothy Moseley (chair of the panel) William J. Furlong Dale R. Ponder	
Hearing:	April 3 and 4, 2023	
Appearances:	Mark Bailey Charlie Pettypiece Vincent Amartey	For Staff of the Ontario Securities Commission
	Rebecca Shoom	For Global Bioenergy Resources Inc.
	Nayeem Alli	Appearing on his own behalf
	Simon Bieber	For Maurice Aziz
	Wendy Sun	For Harish Bajaj
	Kevin Richard	For Andre Itwaru
	No one appearing for First Global Data Ltd.	

REASONS AND DECISION

1. OVERVIEW

[1] On September 15, 2022, this Tribunal found[1] that in more than 100 separate transactions, 80 investors invested approximately $4.46 million in debentures of the respondent First Global Data Ltd. (**First Global**). The fundraising was carried on by the respondent Global Bioenergy Resources Inc. (**GBR Ontario**) and its two principals, the respondents Maurice Aziz and Harish Bajaj. One investor, whom we refer to as **EH**, loaned a further $450,000 directly to GBR Ontario or its Colombian counterpart. The investors lost all their money.

[2] In that decision (the **Merits Decision**), the Tribunal found that:

a. all respondents illegally distributed the First Global debentures, since the sales were completed without a prospectus or an exemption from that requirement;

b. GBR Ontario and Bajaj engaged in the business of trading those debentures without being registered, and Aziz was deemed to have not complied with Ontario securities law in that respect;

c. GBR Ontario, Aziz and Bajaj perpetrated securities fraud with respect to the First Global debentures;

d. GBR Ontario and Aziz perpetrated securities fraud with respect to the loans from EH; and

e. First Global contravened Ontario securities law in issuing one set of interim financial statements that improperly recognized revenue regarding purported licence transactions, and First Global's principals, the respondents Andre Itwaru and Nayeem Alli, were deemed to have not complied with Ontario securities law in that respect.

[1] 2022 ONCMT 25

[3] Staff asks that we impose sanctions against the respondents and that we order them to pay a portion of the Ontario Securities Commission's costs of the investigation and this proceeding. For the reasons we set out below, we conclude that it would be in the public interest to order that:

a. First Global and its principals Itwaru and Alli, jointly and severally, disgorge to the Commission $1.51 million, being the amount retained by First Global from the sale of First Global debentures;

b. GBR Ontario and its principals Bajaj and Aziz, jointly and severally, disgorge to the Commission $2.95 million, being the amount that flowed to or for the benefit of GBR Colombia from the sale of First Global debentures;

c. GBR Ontario and Aziz, jointly and severally, disgorge to the Commission an additional $450,000, being the amount loaned directly from EH;

d. First Global pay an administrative penalty of $300,000, and its principals Itwaru and Alli pay administrative penalties of $300,000 and $275,000, respectively;

e. GBR Ontario pay an administrative penalty of $825,000;

f. Bajaj pay an administrative penalty of $750,000;

g. Aziz pay an administrative penalty of $725,000;

h. the respondents be subject to restrictions on their ability to participate in the capital markets (*e.g.,* prohibitions against trading, and against acting as directors and officers), to varying degrees, as explained further below; and

i. the respondents pay costs as follows:

i. $523,088 by First Global, Itwaru and Alli, jointly and severally;

ii. $452,723 by GBR Ontario, Bajaj and Aziz, jointly and severally; and

iii. an additional $104,474 by GBR Ontario and Aziz, jointly and severally.

[4] We begin our analysis by reviewing the legal framework for sanctions. We then analyze how the facts of this case lead us to the sanctions that we have decided would be appropriate. Finally, we consider Staff's request for costs.

2. ANALYSIS – SANCTIONS

2.1 Introduction

[5] The Tribunal may impose sanctions under s. 127(1) of the *Securities Act* (the **Act**)[2] where it finds that it would be in the public interest to do so. The Tribunal must exercise this jurisdiction in a manner consistent with the Act's purposes, which include the protection of investors from unfair, improper or fraudulent practices, and the fostering of fair and efficient capital markets.[3]

[6] The sanctions listed in s. 127(1) of the Act are protective and preventative, and are intended to be exercised to prevent future harm to Ontario's capital markets.[4]

[7] Sanctions must be proportionate to the respondent's conduct in the circumstances of the case.[5] Fashioning the appropriate sanctions is a highly contextual exercise that is dependent on the facts and findings in the particular case. In the analysis that follows, we refer to decisions of the Tribunal in other cases, which are helpful but of limited precedential value when determining the appropriate length of a market ban or the amount of an administrative penalty.[6]

[8] We break our sanctions analysis down into four sections:

a. a review of the factors applicable to sanctions generally;

b. consideration of how those factors apply to each of the three following sets of transactions:

2 RSO 1990, c S.5
3 *Securities Act*, s. 1.1
4 *Committee for the Equal Treatment of Asbestos Minority Shareholders v Ontario (Securities Commission)*, 2001 SCC 37 at paras 42-43
5 *Bradon Technologies Ltd (Re),* 2016 ONSEC 19 at para 28; and at para 47, citing *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 60
6 *Quadrexx Hedge Capital Management Ltd (Re),* 2018 ONSEC 3 (***Quadrexx***) at para 20

i. the First Global debentures;

ii. First Global's purported licence transactions; and

iii. the loans from EH;

c. in light of those factors, analysis of Staff's request for financial sanctions, being disgorgement orders and administrative penalties; and

d. analysis of Staff's request for restrictions on participation in the capital markets (including prohibitions against trading, and against acting as directors and officers).

2.2 Factors applicable to sanctions

[9] In previous decisions, the Tribunal has identified a non-exhaustive list of factors applicable to the determination of appropriate sanctions. Those include:

a. the respondents' level of activity in the marketplace, or in other words, the "size" of the contravention;

b. the seriousness of the misconduct;

c. the profit made or loss avoided from the misconduct;

d. whether the misconduct was isolated or recurrent;

e. the respondents' experience in the marketplace;

f. any mitigating factors; and

g. the likely effect that any sanction would have on the respondent ("specific deterrence") as well as on others ("general deterrence").[7]

[10] The Tribunal has also previously discussed how a respondent's inability to pay might be relevant when determining financial sanctions. We return to this factor below.

[11] We will now address the above seven factors and how they apply to each of the three sets of transactions at issue. We begin with the First Global debentures.

2.3 First Global debentures

2.3.1 The respondents' level of activity in the marketplace, or, the size of the contravention

[12] The first of the seven factors listed above is often referred to as "the respondents' level of activity in the marketplace". More precisely, it is a collection of characteristics about the activity that made up the contravention. Such characteristics typically include one or more of: the dollar amount, the number of investors affected, the number of individual breaches, and the duration of the misconduct.

[13] The eighty investors in the First Global debentures lost approximately $4.46 million in more than 100 transactions. The amount of the loss places this case neither at the most serious nor the least serious end of the spectrum of cases that come before the Tribunal. The amount is significant, though, and can undermine investor confidence in the integrity of the capital markets, especially because it represented a total loss of the amount invested.[8] Further, the amount combines with the large number of investors to make this a wide-scale fraud.

2.3.2 Seriousness of the misconduct

2.3.2.a Introduction

[14] In assessing the seriousness of the respondents' misconduct, we begin by considering the inherent nature of the contraventions. Then, because frame of mind is particularly relevant for sanctions for fraud, we review each respondent's frame of mind at the time of the contraventions.

---

7 *Belteco Holdings Inc (Re)*, (1998) 21 OSCB 7743 at 7746

8 *North American Financial Group Inc (Re)*, 2014 ONSEC 28 (***North American Sanctions***) at para 41

2.3.2.b The nature of the contraventions

[15] All three types of contraventions relating to the First Global debentures were inherently serious.

[16] The illegal distribution of the debentures violated the prospectus requirement, a cornerstone of Ontario's securities regulatory regime. A prospectus is fundamental to protecting investors because it ensures they have full, true and plain disclosure of information that equips them to properly assess the risks of an investment and make an informed decision.[9]

[17] Engaging in the business of trading securities without being registered, which GBR Ontario, Bajaj and Aziz did, violated another cornerstone of the securities regulatory regime. The registration requirement ensures that those who engage in the business of trading in securities are proficient and solvent, and that they act with integrity. Unregistered trading defeats these necessary legal protections and undermines investor protection and the integrity of the capital markets.[10]

[18] GBR Ontario, Bajaj and Aziz also perpetrated fraud, which is one of the most egregious violations of securities laws. It often causes direct harm to investors, and it undermines confidence in the capital markets.[11]

2.3.2.c The individual respondents' frame of mind at the time of the contravention

[19] We also consider the individual respondents' frame of mind at the relevant time.

[20] Staff did not allege, nor did the merits panel find, that any of the respondents intended to deprive investors of their money. However, the inattentiveness shown by First Global, Itwaru and Alli (whom we refer to as **the First Global parties**) was serious, and the recklessness shown by GBR Ontario, Bajaj and Aziz (whom we refer to as **the GBR parties**) was extreme.

[21] Itwaru seeks to downplay his responsibility. He describes his conduct as "innocent mistakes",[12] and says that everyone makes mistakes. He submits that he was not neglectful in the First Global debenture offering, because First Global's in-house counsel was engaged throughout and prepared the subscription agreements that Itwaru signed. Itwaru also submits that the merits panel accepted that he believed at the time that his only obligation was to ensure that each investor completed an accredited investor certificate. We do not read the merits panel's finding that way, but in any event, we cannot accept Itwaru's submission that there was no neglect on his part. For example, Itwaru testified in the merits hearing that First Global's outside counsel's "urging always was make sure that the investors review the accredited investor certificate [and] make sure that they understand" [emphasis added].[13] By Itwaru's own admission, he took no steps to follow that advice or to ensure that others were doing so.

[22] Alli also attempts to downplay his responsibility. He submits that at every step, he and Itwaru merely followed the instructions of, and received approval from, First Global's board of directors. That submission is implausible and is unsupported by findings by the merits panel or evidence in the record. Even if it were true, it would not relieve Alli of responsibility, since no officer is required to take instructions from the board of directors, other than in exceptional circumstances not applicable here.

[23] As for GBR Ontario's principals, the merits panel found that Bajaj and Aziz were at least reckless as to whether there were sufficient operating assets to produce the necessary income, and as to whether any assets had been pledged as promised to secure the First Global debentures. The panel found that those respondents were "cavalier" in promising that investment in the debentures was 100% secure, guaranteed and risk-free.[14] Bajaj in particular was cavalier about what assets, if any, backed the debentures.[15]

[24] In their submissions, neither Bajaj nor Aziz directly addresses his frame of mind at the time of the contraventions. Instead, they both describe themselves as victims of deception. They may be correct, although there is no finding to that effect. Even if there were, it should not help them. They failed to exercise any reasonable diligence about whether they were being deceived, and that failure caused investors significant losses. It would be perverse to find that the respondents are less culpable because their own recklessness allowed them to be deceived.

2.3.2.d Conclusion about the seriousness of the contraventions related to the First Global debentures

[25] Each of the three contraventions related to the First Global debentures (illegal distribution, engaging in the business of trading without being registered, and fraud) is inherently serious. The investors lost all their funds. None of the individual

---

9 *Limelight Entertainment Inc (Re)*, 2008 ONSEC 4 (***Limelight Merits***) at para 139
10 *Limelight Merits* at para 135; *Black Panther (Re)*, 2017 ONSEC 8 (***Black Panther***) at para 41
11 *Money Gate Mortgage Investment Corporation (Re)*, 2021 ONSEC 10 (***Money Gate***) at para 14
12 Written Submissions of Itwaru, February 9, 2023, at para 29
13 Merits Hearing Transcript, January 14, 2021, at p 49 lines 5–8
14 Merits Decision at paras 7 and 399
15 Merits Decision at para 332

respondents sought to cause a loss for investors, but Itwaru and Alli were inattentive, and Bajaj and Aziz were reckless or cavalier.

2.3.3 Did the respondents benefit (*e.g.*, make a profit or avoid a loss) from the misconduct related to the First Global debentures?

[26] The third of the seven factors listed above asks whether the respondents made a profit, or avoided a loss, as a result of their misconduct. A contravention will generally be worthy of greater sanctions when the contravening party benefits from the misconduct.

[27] First Global benefited directly by receiving $1.51 million of the proceeds from the sale of its debentures. Itwaru and Alli did not benefit directly, but they did benefit indirectly by the infusion of capital into their business that had been experiencing financial difficulties. We cannot accept Itwaru's and Alli's submissions that they did not benefit, which overlook the personal financial interest that they had in First Global's continuing operation and future success.

[28] The remaining $2.95 million flowed to, or for the benefit of, GBR Colombia. Bajaj benefited indirectly as a shareholder of that company, and both Bajaj and Aziz benefited indirectly as shareholders of GBR Ontario, which was generally conflated with GBR Colombia, as the merits panel found and as we explain below. In addition, Bajaj directly benefited by being paid $114,000 in referral fees and $141,000 as reimbursement of expenses that his company incurred.

[29] What the GBR companies and their principals chose to do with the funds afterwards does not change the fact of the benefit in the first place. We therefore cannot agree with GBR Ontario's submission that it derived no benefit because any funds that went into GBR Ontario's bank account were withdrawn and distributed to others.

2.3.4 Were the First Global debenture-related contraventions isolated or recurring?

[30] The fourth of the seven factors asks whether the misconduct was an isolated instance or a recurring series of events.

[31] The misconduct in this case was recurring. The distributions were to 80 investors in 104 separate transactions, over an eight-month period. We reject Itwaru's characterization of these contraventions as isolated.

[32] There is no dispute that the associated misrepresentations giving rise to the finding of fraud were repeated frequently and by various methods of publication.

2.3.5 The individual respondents' experience in the marketplace

[33] The fifth of the seven factors refers to the respondents' experience in the marketplace.

[34] Itwaru's and Alli's experience with a public company was limited to their involvement with First Global. At the time of the misconduct in this case, Itwaru had been First Global's CEO and chair for approximately three years. Alli had been in his role for approximately one year. We do not consider either Itwaru or Alli to have had extensive experience in the marketplace, and particularly with respect to the raising of public funds.

[35] There was no evidence that Bajaj or Aziz had any experience working with public companies, or more generally with the raising of funds from the public. However, both had experience in the financial services industry. Bajaj had previously been a registrant selling scholarship plans, and was a financial advisor. Aziz says that he had worked as an external consultant, connecting businesses to other parties who could help them solve problems.

2.3.6 Mitigating factors

[36] We turn now to identify any mitigating factors.

[37] Staff submits that there are none. Staff asserts that the respondents have neither expressed remorse nor even acknowledged the seriousness of their conduct. We consider those submissions to be an over-generalization, although it is fair to say that every individual respondent tried to distance himself from the misconduct and to blame others.

[38] Staff does acknowledge that all four individual respondents co-operated with Staff's investigation once the issues came to light. However, Staff submits that we ought not to give this co-operation weight, because capital markets participants are expected to co-operate with the regulator. Staff says the respondents were simply doing what they were expected to do.

[39] There is some validity to that, but we do not think the point goes as far as Staff suggests. The expectation of co-operation is less clear for non-registrants, as these respondents are, than it is for registrants. Further, and in general, some respondents co-operate in investigations, and some do not. There should be an incentive for co-operating, and we therefore take the respondents' co-operation into account as a mitigating factor.

[40] We also note that none of the respondents has previously been the subject of regulatory proceedings. Given the seriousness of the contraventions in this case, however, this mitigating factor is of relatively little weight.

[41] Some of the respondents mention the losses that they themselves have incurred. We agree with Staff's submission that we should not regard this as a mitigating factor, since such losses were entirely of the respondents' own making and flowed from the contraventions.

[42] We will now review potential mitigating factors with respect to each individual respondent.

[43] Itwaru submits that it is apparent from his opening statement at the merits hearing (which he delivered himself, not through counsel) that he recognizes the seriousness of his actions and has demonstrated remorse. That is a generous interpretation. When pressed on this point at the hearing before us, Itwaru's counsel pointed to only two sentences in Itwaru's opening statement. In the first, Itwaru declares that he never intended to harm anyone. That may be, but Staff made no such allegation.

[44] In the second sentence, Itwaru refers to work he says is ongoing to reach a resolution that would benefit all of First Global's stakeholders. He further describes that initiative in his affidavit filed on this hearing. We need not review the initiative in detail; it suffices to say that there is no basis to conclude that the initiative is promising. Even if it were, one could reasonably doubt whether previous First Global investors, who lost their entire investment, would be willing to join in another venture in which Itwaru is the president and CEO, and through which the investors would have to be patient "to recover their investments over time", to use words attributed to Itwaru in First Global's news release.[16]

[45] In Itwaru's testimony at the merits hearing, he acknowledged that he made mistakes, and said he is sorry that events unfolded as they did. That is unsurprising, given that according to Itwaru, he lost approximately $900,000 plus the value of his First Global shares.

[46] We accept that Itwaru would like to make things right. Giving him the benefit of the doubt, these facts are some evidence of remorse. However, the value of that remorse is undermined by the absence of a clear acknowledgment of the seriousness of the misconduct and of his role in it, and the kind of introspection that would demonstrate a clear understanding of the root causes of the contraventions.

[47] As for Alli, he asserts that he has taken on over $700,000 of commitments personally to repay investors. The evidence in the record confirms that he did make a repayment of $80,000 to a senior First Global employee. He also made interest payments of approximately $15,000 to investor EH regarding EH's loans to GBR Ontario, although he did so on the basis that he would get repaid by GBR. He further testified that he assumed obligations for an additional US$100,000 and C$60,000 to investors, although this evidence was not corroborated, and it is not clear that Alli indeed bears legal responsibility for these amounts, or that he has actually made any payments to those investors.

[48] Overall, we are not persuaded that any of this evidence reflects true remorse by Alli, as opposed to a reflection of the sense of obligation that he felt as a principal and co-founder of First Global. Similarly, we cannot give credit for other payments he mentions that he made for First Global's operating expenses or to vendors on behalf of First Global, because we have no basis to conclude that he made those payments solely for the benefit of the debenture holders, instead of for his own benefit. As a result, we cannot accept these assertions as a mitigating factor.

[49] Finally, while we are sympathetic to the health challenges Alli describes, we cannot accept his unsubstantiated assertion that they are related in part to this proceeding. In any event, it was his own conduct that precipitated this proceeding.

[50] As for Bajaj, in his affidavit filed for this hearing, he states that he is remorseful for his involvement in the fundraising, including for presentations given to investors and any inaccurate representations. He acknowledges that his involvement harmed investors and deprived them of their savings. He regrets getting involved with Adriana Rios Garcia (who incorporated GBR Colombia and who figured prominently in the merits panel's discussion of the status of the Colombian assets) and Garcia's husband Martin Grenier. Bajaj points out that he lost $25,000 himself in the venture. We note, as Bajaj does, that this amount is a fraction of what some investors lost.

[51] We accept Bajaj's assertions as far as they go, but we cannot give them significant weight. Bajaj's affidavit contains no self-reflection or consideration of his responsibility and role, and what mistakes he made that caused the misrepresentations to investors. Without that self-analysis, his assertions do not offer comfort to those who would be concerned about investor protection and the integrity of the capital markets.

[52] Further, we cannot give effect to Bajaj's submission that we ought to consider the shame or financial pain that any sanction would cause. The challenges that Bajaj faces are of his own making, and consequences such as shame naturally flow from misconduct of this nature, no matter what the sanctions are.

[16] Exhibit B to the affidavit of Andre Itwaru sworn February 8, 2023

[53] As for Aziz, he asserts that he made efforts to help some investors after the problems came to light. However, we have no evidence about any such efforts with respect to the First Global debentures, beyond Aziz being part of conversations that explored the kind of solution that Itwaru was contemplating, as mentioned above.

[54] Finally, we must reject the implication in some of the respondents' submissions that their reliance on legal advice throughout is a mitigating factor. For substantially the reasons set out in the merits decision regarding Bajaj's potential defence of that nature,[17] we find that none of the respondents has provided a sufficient foundation for us to accept their suggestion.

2.3.7 Specific and general deterrence

2.3.7.a The respondents generally

[55] That brings us to the last item in our list of relevant factors, *i.e.*, specific and general deterrence. We begin with comments that apply equally to all respondents.

[56] General deterrence is only one consideration that must be balanced against the other factors relating to sanctions. However, it is always an important consideration, especially for contraventions as serious as those related to the First Global debentures. It must be clear to others who might be inclined to engage in similar misconduct that doing so will attract significant sanctions.

[57] For the purposes of investor protection and confidence in the capital markets, specific deterrence is relevant for all of the respondents, especially in the absence of a clear acknowledgment of what led to the contraventions and investor losses.

2.3.7.b GBR Ontario

[58] We examine GBR Ontario separately because it submits that it is in a different situation. It says that considerations of specific deterrence should not apply to it, because the merits panel made no findings of misconduct by the company apart from those committed by Bajaj and Aziz. It also says that neither individual plays a functional role in managing or operating the company, which has had no operations for several years and has a new director who wants the company to be "clean".

[59] We reject these arguments. A corporation can act only through individuals, so it is illogical to say that the corporation should not be held responsible for misconduct perpetrated by individuals acting on behalf of the corporation. Further, no corporate respondent can absolve itself of findings made against it simply because there have been changes on the board or in management. The merits panel's findings against GBR Ontario stand.

[60] Uncontradicted evidence before us does show that GBR Ontario has no operations, active bank accounts or other assets. It also shows that a substantial investor in the First Global debentures took on roles as a director of GBR Ontario and as its president and treasurer, well after the misconduct by others, in an effort to maximize his chances of recovering some of his investment.

[61] That individual makes clear that he does not intend for GBR Ontario to conduct any further business. In its submissions, GBR Ontario refers to the decision of the British Columbia Securities Commission in *Oei (Re)*, in which that Commission held that in similar circumstances, "there is little public interest necessity" in imposing certain sanctions.[18] However, the same Commission found in an unrelated case that it was in the public interest to impose certain sanctions against dissolved companies because those companies can be easily reinstated.[19] This Tribunal adopted that reasoning when imposing reciprocal sanctions against the same entity following the British Columbia decision.[20]

[62] As this Tribunal did in that case, we prefer the latter reasoning. GBR Ontario can easily be reactivated. In addition, we cannot be certain about control of GBR Ontario, in that despite its current president's assertion that Bajaj has resigned as a director, the corporate profile indicates otherwise, and Bajaj testified that he is still a director as of February 2023. Finally, we think it important for deterrence purposes that a still-existent corporation be held accountable for its actions. Accordingly, we will impose sanctions against GBR Ontario without reference to its current status.

2.3.8 First Global

[63] First Global is apparently defunct, did not participate in this hearing and therefore made no submissions. As with GBR Ontario, we will impose sanctions against First Global without reference to its current status.

---

17 Merits Decision at paras 587-595
18 2018 BCSECCOM 231 at para 128
19 *SBC Financial Group Inc (Re)*, 2018 BCSECCOM 267 at para 45
20 *SBC Financial Group Inc (Re)*, 2018 ONSEC 60 at paras 28-29

2.3.9 Conclusion about factors to be considered

[64] The respondents are not experienced capital markets participants. Their contraventions related to the First Global debentures were inherently serious, numerous, recurring, and of moderate but significant size. Investors lost all of their money. Itwaru and Alli were inattentive, and Bajaj and Aziz were reckless or cavalier. Every individual respondent benefited indirectly from the misconduct, although only Bajaj benefited directly, and not to a great extent.

[65] None of the respondents had previously been the subject of regulatory proceedings, and all of them co-operated with Staff's investigation once the problems came to light. They have, in one way or another, expressed some limited remorse, although no outright acknowledgment or clear understanding of their responsibility and what caused the contraventions.

[66] Both general and specific deterrence are important considerations in our determination of what sanctions would be in the public interest. This applies equally to GBR Ontario, despite its assertions about its current status.

[67] We will return to consider appropriate sanctions relating to the First Global debentures, after we discuss the sanction factors relating first to the purported licence transactions and then to the loans from EH.

2.4 First Global's purported licence transactions

2.4.1 Introduction

[68] In this section we will review the sanction factors as they relate specifically to the purported licence transactions, and to the resulting improper recognition of revenue, for which First Global, Itwaru and Alli are responsible. We will not repeat our discussion from above about their experience in the marketplace, or about the general principles underlying various sanction factors.

2.4.2 The respondents' level of activity in the marketplace, or, the size of the contravention

[69] The improper reporting of revenue was an isolated contravention that arose from only one set of financial statements, but it involved a significant misstatement. As the merits panel found, First Global's restated financial reports for the 21 months ended September 30, 2017, reduced revenue from $17.4 million to $4.7 million and increased First Global's net loss from $505,000 to $12.4 million.

2.4.3 Seriousness of the misconduct

[70] First Global's contravention is inherently serious. Disclosure is another cornerstone of Ontario securities law and is fundamental to the fairness of the capital markets.[21] Prospective and existing investors must be able to rely on financial information presented in an issuer's continuing disclosure. Materially misstating revenue in the publicly disclosed financial statements of a reporting issuer undermines confidence in the capital markets.

[71] Itwaru's and Alli's frame of mind with respect to the inappropriate recognition of revenue is troubling. The merits panel did accept Itwaru's characterization of his approval of the financial statements as a mistake, rather than an intent to falsely inflate revenue. However, Itwaru and Alli deliberately chose to report revenue in the way they did, despite the interim CFO's concerns, their auditor's express disapproval of that approach, and the numerous red flags that the merits panel found ought to have prompted a thorough investigation and a delay in reporting interim results. These facts increase the seriousness of the contravention.

2.4.4 Did the respondents benefit (*e.g.*, make a profit or avoid a loss) from the contravention?

[72] The misreporting did not directly benefit the respondents. However, any material overstatement of revenue likely leads to an unjustified increase in, or maintenance of, the share price, thereby indirectly providing a short-term benefit to the company and to its shareholders. An indirect benefit of that kind flowed to Itwaru and Alli.

2.4.5 Mitigating factors

[73] We see no mitigating factors in respect of this contravention. We reject Itwaru's and Alli's attempts to blame First Global's board and auditor.

2.4.6 Conclusion about factors to be considered

[74] Isolated though it was, the material misstatement of revenue in the face of the interim CFO's and auditor's objections was a significant contravention. It indirectly benefited First Global, Itwaru and Alli. Itwaru and Alli were responsible for

[21] *Cornish v Ontario (Securities Commission)*, 2013 ONSC 1310 (Div Ct) at para 38

ensuring, within reason, that First Global's financial statements fairly presented the company's results. They failed to do so, and have inappropriately blamed others.

2.5 EH loans to GBR

2.5.1 Introduction

[75] The final set of transactions we examine are the loans totaling $450,000 from investor EH. The merits panel found that:

a. both GBR Ontario and Aziz committed fraud in relation to those loans; but

b. it was unclear whether the loans were to GBR Ontario or GBR Colombia, given that various documents in the record conflated the two entities, leading the merits panel to refer to the entities together as simply "GBR" when the context required.

2.5.2 The size and seriousness of the contravention

[76] EH lost the entire $450,000 investment. That amount from EH alone was approximately 10% of the total funds that GBR Ontario raised through sale of the First Global debentures. The amount was significant for GBR, and much more so for EH. That loss, caused by fraudulent conduct of GBR Ontario and Aziz, significantly compromised EH's financial circumstances and health. In addition, Aziz later tried to convince EH to invest the additional funds through a home equity line of credit. That is an aggravating factor.

2.5.3 Did the respondents benefit (*e.g.*, make a profit or avoid a loss) from the contravention?

[77] No matter whether EH's additional $450,000 went to GBR Ontario or GBR Colombia or both, GBR Ontario benefited from the loans' contribution to the pool of money available for the Colombian projects, which GBR Ontario was obligated to ensure were properly funded.

[78] Aziz did not persuade us that because he made interest payments of approximately $75,000 to EH, contributing to his own significant loss, we should conclude that he derived no benefit. As discussed above, a contravention will generally be worthy of greater sanctions when the contravening party derives a benefit from the misconduct. What that party later does with any funds received through the misconduct will usually be irrelevant, unless, for example, the funds are deployed in a way that mitigates the harm caused by the misconduct. In this instance, the conclusion that Aziz benefited stands, but we take into account the fact that Aziz also made the interest payments to EH.

2.5.4 Mitigating factors

[79] The fact that Aziz made the interest payments to EH acts in his favour, because that is preferable to him not having made any such payments. However, we attach little weight to this factor, since it was his fraud in the first place that resulted in EH not receiving the expected interest payments from the expected source.

[80] Apart from that, there are no mitigating factors with respect to this contravention.

2.5.5 Conclusion about factors to be considered

[81] This contravention was substantially similar to the larger fraud relating to the First Global debentures. The amount was not material for the corporate respondents, but was significant for the investor, who lost the entire investment.

2.6 Disgorgement – First Global debentures

2.6.1 Introduction

[82] Having reviewed the applicable factors, we now turn to financial sanctions, beginning with disgorgement, and followed by administrative penalties. After we determine what financial sanctions would be in the public interest without reference to any respondent's financial circumstances, we consider whether any of those sanctions should be reduced for a respondent in light of that respondent's inability to pay.

[83] For disgorgement in respect of the First Global debentures, Staff seeks $4,461,304.67 against all respondents, on a joint and several basis. For the reasons set out below, we conclude that it would be appropriate to order disgorgement of $1.51 million against First Global and its principals, and $2.95 million against GBR Ontario and its principals.

[84] That division of the $4.46 million raised reflects the distinct roles that First Global and GBR Ontario played in the events giving rise to this proceeding. The two companies co-operated in the fundraising, and were dependent on each other for it, but this case is unlike those where two or more legally distinct entities act as one for all practical purposes. Below, we

analyze the interrelationships in this case, following a review of the legal framework relating to disgorgement, and a discussion of the factors applicable when determining an appropriate disgorgement order.

2.6.2 Legal framework

[85] Paragraph 10 of s. 127(1) of the Act authorizes the Tribunal to order that a respondent who has not complied with Ontario securities law disgorge to the Commission "any amounts obtained as a result of the non-compliance".

[86] When considering whether a disgorgement order is appropriate, and if so in what amount, the following non-exhaustive list of factors applies:

a. whether an amount was obtained by a respondent as a result of the non-compliance with Ontario securities law;

b. the seriousness of the misconduct and whether that misconduct caused serious harm, whether directly to original investors or otherwise;

c. whether the amount obtained as a result of the non-compliance is reasonably ascertainable;

d. whether those who suffered losses are likely to be able to obtain redress; and

e. the deterrent effect of a disgorgement order on the respondents and on other market participants.[22]

[87] Some of these factors overlap with the general factors we discussed earlier. There are some differences. We address each of the above factors in turn.

2.6.3 Amounts obtained through non-compliance with Ontario securities law

2.6.3.a Introduction

[88] We begin with the first of the five factors, which calls for us to determine whether each respondent obtained an amount as a result of non-compliance with Ontario securities law.

[89] The parties in this case devoted much of their written and oral submissions to how the words "any amounts obtained as a result of the non-compliance", in s. 127(1)10 of the Act, should apply to them in connection with the First Global debentures. This was especially so because of the unusual structure in this case, where the First Global parties (First Global, Itwaru and Alli) on the one hand, and the GBR parties (GBR Ontario, Bajaj and Aziz) on the other, were jointly involved in raising the approximately $4.46 million of investor funds, but they were not really connected in how the funds were eventually disbursed. First Global kept approximately $1.51 million for its own use, and the remaining $2.95 million was provided ostensibly to or for the benefit of GBR Colombia. The respondents submitted that whatever amount they should be ordered to disgorge, it should not include funds that were directed to the other group of respondents.

[90] The words "any amounts obtained as a result of the non-compliance" do leave room for interpretation. They raise the question of what a respondent's liability should be for illegally obtained funds either where the respondent is not the initial recipient of the funds, or where the respondent does not retain all the funds. Because of the unusual fundraising structure here and the parties' emphasis on this issue, we will review the history of the disgorgement power and its underlying principles.

2.6.3.b History of the disgorgement power

[91] The relevant provision was added to the Act in 2002[23] based on recommendations of the Five Year Review Committee, and came into force in early 2003.[24] The committee thought a new disgorgement power should extend only to profits. That is clear from the heading for the relevant section of the committee's report ("Disgorgement of Profits") and from the committee's description (*e.g.*, "…the amount of disgorgement that may be ordered is limited to the amount of the illegal profits").[25]

[92] However, in a manner that reflects the remedial purpose of the disgorgement power, Tribunal decisions have adopted a broader interpretation. Disgorgement orders are not limited to profit alone.

[93] *Allen (Re)* appears to be the first case in which the Tribunal interpreted the new legislative provision. In that case, the respondent Allen undertook a sales program for the securities of an issuer.[26] He employed salespeople to help him. The

---

22 *Pro-Financial Asset Management Inc (Re)*, 2018 ONSEC 18 (***PFAM***) at para 56

23 *Keeping the Promise for a Strong Economy Act (Budget Measures), 2002*, SO 2002, c 22, s 183

24 *Limelight Entertainment Inc (Re)*, 2008 ONSEC 28 (***Limelight Sanctions***) at para 47; *Mega-C Power Corp (Re)*, 2011 ONSEC 4 (***Mega-C***) at para 53

25 *Five Year Review Committee Final Report – Reviewing the Securities Act (Ontario)*, March 21, 2003, (https://www.osc.ca/sites/default/files/2020-12/fyr_20030529_5yr-final-report.pdf) (***Five Year Report***) at pp 5, 210 and 217-18

26 *Allen (Re)*, 2005 ONSEC 13 (***Allen Merits***) at para 28

issuer paid Allen fees or commissions of $600,624, being 60% of the funds raised.[27] The Tribunal found that Allen had engaged in an illegal distribution, had traded without appropriate registration, and had failed to disclose the commissions he received.[28]

[94] Staff asked that Allen be required to disgorge the full $600,624.[29] Allen submitted that the Tribunal should deduct from this amount the costs of the offering and the 20% commission he paid to his salespeople.[30] The Tribunal rejected Allen's submission. It agreed with Staff that the wording of s. 127(1)10 permits the Tribunal to order disgorgement of the gross amount obtained, and that to restrict the disgorgement order to a net amount would reduce the deterrent effect of the disgorgement sanction.[31]

[95] The Tribunal reinforced this approach in *Limelight Entertainment Inc (Re)*. In that 2008 decision, the Tribunal concluded that it should ask not whether a respondent "profited" from the illegal activity but whether the respondent "obtained amounts" as a result of that activity.[32] That approach, which the Divisional Court later endorsed in another case,[33] is more straightforward, and avoids the need for the Tribunal to calculate how much profit was made.[34]

[96] Putting aside the now-resolved issue about whether disgorgement can extend not just to profit but to all funds initially obtained, a question remains about situations where, as here, funds are obtained by one or more groups of respondents operating together. The degree of overlap between groups, and between one group member's involvement and that of another group member, will vary from case to case. In these cases, to what extent is a respondent potentially liable to disgorge the funds that the group obtained, where the particular respondent did not directly obtain or retain all the funds?

[97] The Tribunal addressed one aspect of this question in *Limelight*, stating that "individuals should not be protected or sheltered from administrative sanctions by the fact that the illegal actions they orchestrated were carried out through a corporation which they directed and controlled."[35] The Tribunal adopted the same approach in 2010 in *Sabourin (Re)*, in which the Tribunal ordered the individual respondent (Sabourin) and certain corporate respondents to disgorge the full amount of funds raised, less the amount that had been returned to investors. The order imposed joint and several liability on Sabourin and the corporate respondents because Sabourin was the directing mind of those corporations, and it would have been impossible to treat them separately.[36]

[98] Some years later, in its sanctions decision in *David Charles Phillips (Re)*, the Tribunal thoroughly reviewed the principles underlying the disgorgement remedy, and reaffirmed that the Tribunal may order disgorgement regardless of whether the particular respondent personally obtained the funds.[37]

[99] In dismissing the appeal from the Tribunal's decision in *Phillips*, the Divisional Court endorsed the Tribunal's approach, holding that it was "consistent with the plain wording of the legislation, the purpose of the legislation and prior case law."[38] As the Divisional Court put it in a later case, the "issue of whether disgorgement orders should be limited to the amount that the fraudsters obtained personally, either directly or indirectly, has been litigated and lost".[39]

[100] To summarize, these decisions and others identify three co-existing purposes for the broader interpretation of "obtained":

a. it ensures that a wrongdoer does not benefit from the misconduct;[40]

b. it deters that wrongdoer and others;[41] and

c. it provides a more straightforward method of calculation.[42]

2.6.3.c Staff's request for joint and several liability for $4.46 million

[101] In the case before us, Staff suggests a different approach. Staff submits that we should order all respondents to disgorge the full $4.46 million, jointly and severally, on two bases. The first basis is a "but for" analysis, which Staff says should

27 *Allen Merits* at para 32
28 *Allen Merits* at paras 98-100
29 *Allen (Re)*, 2006 ONSEC 8 (***Allen Sanctions***) at para 31
30 *Allen Sanctions* at para 35
31 *Allen Sanctions* at paras 36-37
32 *Limelight Sanctions* at para 49
33 *Phillips v Ontario Securities Commission*, 2016 ONSC 7901 (***Phillips v OSC***) at para 71
34 *Limelight Sanctions* at para 49
35 *Limelight Sanctions* at para 59
36 2010 ONSEC 10 (***Sabourin***) at para 70; see also *Quadrexx* at para 46
37 2015 ONSEC 36 (***Phillips Sanctions***) at para 20
38 *Phillips v OSC* at paras 65, 78; *Al-Tar Energy Corp (Re)*, 2011 ONSEC 1 (***Al-Tar***); *Mega-C*
39 *North American Financial Group Inc v Ontario Securities Commission*, 2018 ONSC 136 (Div Ct) (***North American v OSC***) at para 217
40 *Al-Tar* at para 71; *PFAM* at para 48
41 *Al-Tar* at para 71; *PFAM* at para 48
42 *Limelight Sanctions* at para 49

lead to joint and several liability because the amount would not have been raised had it not been for the involvement of all respondents.

[102] That argument has some superficial appeal in this case, because both First Global and GBR Ontario played pivotal roles. GBR Ontario needed a public company to carry out its mission, and First Global permitted itself to be used in that way. However, it does not necessarily follow that the funds would not have been raised but for the participation of all respondents. For example, even though Aziz was fully involved in the illegal distribution, and even though his fraudulent misconduct undoubtedly contributed to the raising of funds (although to an indeterminable degree), it cannot be said that had he not been involved at all, no funds would have been raised. Even putting that aside, though, we reject a "but for" approach, for which Staff offers no authority. It is too automatic, and it excessively stretches the wording of s. 127(1)10.

[103] Staff's second basis for asking for joint and several liability for the entire amount comes closer to the principles set out in previous decisions. Staff submits that because the illegal distribution and fraud in this case were intertwined, and because both forms of misconduct contributed to the full amount being raised, a joint and several order against all parties is in the public interest.

[104] We do not agree with this proposed reformulation of the test for disgorgement generally or, more specifically, for deciding who obtained what amounts as a result of non-compliance. Misconduct is often intertwined, in the sense that a given set of actions can give rise to more than one contravention. That is a different concept from an individual and their company being intertwined, where they should not be regarded as distinct for the purposes of deciding what funds were obtained. We are not persuaded that intertwined misconduct (as opposed to intertwined entities) justifies joint and several liability.

[105] We do agree with Staff's submission that this case is different from those in which the Tribunal ordered limited disgorgement against a respondent whose only role was that of a sales agent, and the amount ordered to be disgorged was restricted to the compensation received by the sales agent.[43] Here, neither Bajaj nor Aziz played a role that was as compartmentalized as that of someone whose only role is as a salesperson. GBR Ontario was the engine for the entire fundraising, with Bajaj as its directing mind.[44] While the merits panel found it unnecessary to decide whether Aziz was a directing mind of GBR Ontario for all purposes, the panel made clear that Aziz played a role well beyond that of a salesperson.[45]

[106] Given that we decline to adopt a "but for" approach or Staff's proposed reformulation of the applicable test, and given that the facts of this case do not reflect a narrowly limited role for the individual respondents, how should we apply "obtained by"? We answer that question separately for each respondent.

2.6.3.d Amounts obtained by the First Global parties

[107] At least initially, First Global obtained the entire $4.46 million, *i.e.*, the proceeds of the sale of the First Global debentures. When a debenture was sold, the funds were deposited directly into the trust account of First Global's lawyer. We address below the implications of some of the funds then being directed elsewhere, but it cannot be seriously disputed that First Global obtained the full amount as a result of non-compliance with Ontario securities law, since all of the proceeds flowed from the illegal distribution.

[108] As for Itwaru, we have no difficulty concluding that he was a directing mind of First Global, despite his submissions to the contrary. We reach that conclusion not just because the merits panel found that he was a "principal" of First Global, and not just because he was First Global's chief executive officer and the chair of its board of directors from the company's inception, although those are all highly persuasive facts. In addition, Itwaru was directly and centrally involved in choosing to commence the debenture offering, and in carrying out the offering, including the negotiation of the foundational agreement between First Global and GBR Colombia. For all these reasons, we apply to Itwaru the principles from *Limelight* and *Sabourin* cited in paragraph [97] above. He should not be viewed separately from the corporation that he, as CEO and principal, directed and controlled.

[109] We apply these same principles to Alli and reach a similar conclusion. Alli was First Global's chief financial officer and a director, and the merits panel described him as a principal of the company. He too was involved in the negotiation of the agreement between First Global and GBR Colombia, and like Itwaru he signed and accepted subscription documents on behalf of First Global. In respect of the debenture offering, Alli was also a directing mind. Alli correctly submits that there is no evidence that he realized any direct profit from the transactions at issue; in fact, says Alli, he has lost significant amounts himself. That may be true, but it does not exclude the indirect benefit described above at paragraph [27], and either way, it does not affect the above analysis about whether he is a directing mind.

43 *Sabourin* at paras 71-72
44 Merits Decision at para 47
45 Merits Decision at paras 143 and 392

[110] For these reasons, we conclude that First Global, Itwaru and Alli all "obtained" the full amount of $4.46 million within the meaning of s. 127(1)10 of the Act.

2.6.3.e Amounts obtained by the GBR parties

[111] In contrast, GBR Ontario did not directly receive any funds from the offering. Further, neither GBR Ontario nor either of its principals Bajaj and Aziz shared an identity with First Global, in the way that Sabourin did with his corporations. GBR Ontario was entirely distinct from First Global. The two corporations did not have common directors or officers, and the only formal relationship between the two companies was contractual. Unlike the situation in *Sabourin*, there is no difficulty here separating the entities.

[112] We therefore have no basis to conclude that at the point in time when investors provided their funds, GBR Ontario "obtained" some or all of the $4.46 million. GBR Ontario and its principals were central to all the fundraising, including of the $1.51 million that went to First Global. However, playing a central role does not amount to "obtaining" the funds raised. GBR Ontario did not obtain any part of the $1.51 million.

[113] That brings us to the remaining $2.95 million. The merits panel found that:

a. GBR Ontario and its principals were raising funds for both First Global and the Colombian natural resource projects;

b. with respect to the Colombian projects, the presentations and marketing documents often conflated GBR Colombia and GBR Ontario, and investors received the message that the two entities were one; and

c. $2.95 million was provided to or for the benefit of GBR Colombia.

[114] For the purposes of determining an appropriate disgorgement order, and to use the reasoning in *Sabourin* and other cases, we should not separate the activities of GBR Ontario from those of GBR Colombia. They were separate corporate entities, but the respondents treated them as if it were all one fundraising and project execution enterprise. Bajaj was a significant shareholder of both. The respondents themselves were unclear about which entity they were referring to at any given time, and most importantly, the message to investors was that "GBR" was one enterprise. For these reasons, we conclude that within the meaning of s. 127(1)10 of the Act, GBR Ontario obtained the $2.95 million.

[115] Should Bajaj and/or Aziz be accountable for that amount as well? We answer "yes" to that question. Bajaj and Aziz were two of three founding shareholders of GBR Ontario, which was incorporated solely to carry out the fundraising. The company carried on no other business at any time, and it acted only through those three individuals. Bajaj was GBR Ontario's president and Aziz was a director. Bajaj and Aziz were both heavily involved in GBR Ontario's fundraising activities (despite Aziz's submission to the contrary). It would be impossible to attribute a specific portion of GBR Ontario's activities or of the funds raised to either Bajaj or Aziz. Further, we cannot accept Aziz's attempt to minimize his accountability because he merely brought people together. He did that, but after he did that, he continued to be involved in the business, including through to his interactions with investor EH.

[116] We also reject Aziz's emphatic submission that we should view him differently because there is no evidence that any funds flowed to him or that he obtained any benefit at all. He expected to receive a substantial interest in GBR Colombia, as is reflected in that company's unanimous shareholders agreement. The wrongfulness of his misconduct is not mitigated by the venture's lack of success.

[117] Aziz was also a shareholder of GBR Ontario, which kept approximately $378,000 of the $2.95 million. In any event, we need not conclude that Aziz did receive funds, because as explained above, his and Bajaj's shared identity with GBR Ontario renders them equally responsible for all of GBR Ontario's activities.

[118] Accordingly, we conclude that GBR Ontario, Bajaj and Aziz all "obtained" $2.95 million within the meaning of s. 127(1)10 of the Act.

2.6.3.f Conclusion about what amounts the respondents obtained as a result of their non-compliance with Ontario securities law

[119] We have concluded that under s. 127(1)10, First Global, Itwaru and Alli obtained $4.46 million as a result of non-compliance with Ontario securities law, and that GBR Ontario, Bajaj and Aziz obtained $2.95 million as a result of non-compliance with Ontario securities law. These amounts are an upper limit for any disgorgement order we may make. We now turn to consider the other factors relevant to determining what orders would be appropriate.

2.6.4 The seriousness of the misconduct, and whether the misconduct caused serious harm

[120] As we found above beginning at paragraph [14], the three contraventions relating to the First Global debentures were serious. This is especially true with respect to the fraud.

2.6.5 Whether the amount obtained as a result of the non-compliance is reasonably ascertainable

[121] In our discussion above about which respondents obtained which amounts, we concluded that the relevant amounts are easily ascertainable. No party suggested otherwise.

2.6.6 Whether those who suffered losses are likely to be able to obtain redress

[122] It is open to a respondent to show that those who suffered losses as a result of the respondent's misconduct are likely to be able to obtain redress. None of the respondents here made that submission. We referred above to efforts that Itwaru and Alli said they have been making to engineer a resolution that might result in the investors recovering some of their losses. However, whatever those efforts have been, they have been unsuccessful to date, and we heard nothing to suggest that there is a reasonable prospect of recovery.

2.6.7 The deterrent effect of a disgorgement order

[123] It is essential both for the protection of investors and for the promotion of confidence in the capital markets that those entrusted with investor money adhere to sound practices that reflect the importance of that trust. None of the respondents in this case demonstrated sufficient care. Any disgorgement order we make must demonstrate unequivocally, to the respondents and others, that great responsibility comes with accepting funds from the investing public.

[124] Alli submits that he has no profit or other gain to give up, and given the failure of First Global and GBR, and the consequent losses for him, there is no need for specific deterrence. Alli assures us he would not engage in similar conduct in the future. He therefore asks that we not order disgorgement against him, but if we do, he suggests an amount of $100,000 with two years to pay. We agree that the specific deterrent value of a disgorgement order against Alli is limited, especially assuming he has suffered the losses he claims, but it is not non-existent. Further, the need for general deterrence and the need to restore confidence in the capital markets remain.

2.6.8 Assessment of appropriate disgorgement regarding the First Global debentures

[125] For the reasons we have set out above, the highest possible disgorgement order would be in the amount of $4.46 million for the First Global parties and $2.95 million for the GBR parties. However, the Tribunal need not order disgorgement of the full amount. The Tribunal retains discretion to apply the remaining four factors and to order a lower amount of disgorgement, or none at all.[46] In exercising that discretion, we balance the potential deterrent effect of our order on the respondent and on others with the other sanctioning factors.[47]

[126] Staff submits that we should order disgorgement of the full $4.46 million amount without any reduction, since the investors lost all of their investments. The respondents submit that we should order no or only nominal disgorgement.

[127] The respondents point out that in *Money Gate Mortgage Investment Corporation (Re)*, the Tribunal reduced the disgorgement amount to reflect the fact that some of the raised funds were used in a manner consistent with the representations made to investors.[48] Here, however, none of the funds raised were used in a manner that conformed to all of the GBR parties' representations. Some of the respondents submitted that in determining an appropriate disgorgement amount we should exclude the $150,000 that may have gone to the development of a biodiesel facility, since that use was consistent with what was represented to investors. However, as Staff submits, the GBR parties also represented that the First Global debentures would be fully guaranteed and secured by assets owned by GBR Colombia.[49] As the merits panel concluded, no title or security interest was ever transferred to or for the benefit of GBR Colombia. No funds were used in a manner completely consistent with the representations made to investors, so there is no basis to reduce the disgorgement amount for reasons similar to those in *Money Gate*.

[128] With respect to the First Global parties, Staff correctly submits that they provided the mechanism through which the funds were raised. However, the circumstances of this case are unusual, given the arrangement between the two separate and distinct groups, through which each group would receive a significant portion of the investor funds they raised. The relationship between First Global and GBR Ontario did not feature the overlapping identity that appeared in *Sabourin*, among other cases. Further, we agree with Itwaru's submission that the finding of fraud against the GBR parties, and the absence of such a finding against the First Global parties, underscores the importance of distinguishing between the two groups in our disgorgement orders. For these reasons, we consider it appropriate to exclude from First Global's liability

46 *Quadrexx* at para 47; *Hutchinson (Re)*, 2020 ONSEC 1 at para 42
47 *Cartaway Resources Corp (Re)*, 2004 SCC 26 at para 64
48 *Money Gate* at para 57
49 Merits Decision at paras 234, 270-271 and 342

the $2.95 million transferred to or for the benefit of GBR Colombia. That leaves the $1.51 million that First Global received through the debenture financing and retained for its own purposes.

[129] That reduction does risk minimizing First Global's central role in being the mechanism by which $2.95 million went to or for the benefit of GBR Colombia. Our decision should not be read to permit corporations (particularly public issuers) and their senior officers to cavalierly allow themselves to be used as a vehicle for improper conduct, and to do so with impunity. In our view, that concern is best addressed by an administrative penalty, which we discuss below.

[130] Having determined that $1.51 million is the appropriate disgorgement amount for First Global, we turn to Itwaru and Alli.

[131] Itwaru asks that we not order disgorgement against him, but if we do, he suggests $25,000. He cites *Energy Syndications Inc (Re)* as an example of a case in which the Tribunal ordered disgorgement of only a portion of the funds raised. In that case, two individual respondents were ordered to disgorge $50,000 each, compared to between $141,000 and $152,000 in sales commissions that each received, in a scheme in which neither individual was a directing mind, and the findings against them did not involve any deliberate deceit or misleading behaviour.[50]

[132] None of the findings against Itwaru in this case involves deliberate deceit or misleading behaviour, but:

a. Itwaru was one of two directing minds of First Global;

b. he was personally engaged in negotiating the foundational agreement with GBR Colombia;

c. he was actively involved in the capital raise on a day-to-day basis by accepting and signing subscription agreements; and

d. the amounts involved here, including investor losses, were significantly higher than in *Energy Syndications*.

[133] That reasoning applies equally to Alli.

[134] We are sympathetic to the implications of a substantial disgorgement order against Itwaru and Alli. They were naïve and overly trusting, but we cannot overlook their inattentiveness as to their responsibilities. We are struck by the fact that on Itwaru's own evidence, First Global's lawyer said directly to them that it was important to ensure that investors understood the subscription agreement. Despite this advice, First Global, Itwaru and Alli completely abdicated that responsibility. Instead, they were comfortable assuming without any verification whatsoever that the GBR parties, whom they had not previously met, were carrying out that critical function. In the face of that, we cannot reduce the extent to which Itwaru and Alli should share accountability with First Global.

[135] As for the GBR parties, Staff correctly notes that they acted as a dealer to find and sign up investors. Their role went well beyond that, though. The GBR parties were not mere conduits of information. They managed the fundraising, and they were responsible for the many misrepresentations made to investors about how the raised funds would be used.

[136] We place no weight on the fact that only a small portion of the $2.95 million remained with GBR Ontario. We are guided by the words of the Divisional Court, which has held that because the purpose of a disgorgement order is to restore confidence in the capital markets, the focus should not be on "whether the fraudsters pocketed the money for themselves". Instead, the focus should be on the fact that the money was improperly diverted at all.[51] What fraudsters do with the funds does not lessen the seriousness of the behaviour, and it is reasonable to impose severe sanctions for their misconduct.

[137] We see no reason to reduce GBR Ontario's liability for disgorgement below the $2.95 million obtained. As we explained above, we are not persuaded by GBR Ontario's submission that practically speaking it is a new company and that we should not hold it responsible for the acts of Bajaj and Aziz.

[138] As for Bajaj, he submits that the deterrent value of any disgorgement order will be reduced because Garcia and Grenier are not respondents. We cannot accept that submission, because it implies that Garcia and Grenier contravened Ontario securities law and that they would therefore have shared liability for part or all of the disgorgement order. Given that they are not parties, we cannot make that finding against them.

[139] Apart from a claim of impecuniosity, which we address below, we see no reason to reduce Bajaj's or Aziz's liability for disgorgement below that of GBR Ontario, the sole-purpose vehicle they created to sell the First Global debentures to raise funds for the Colombian operation.

[50] 2013 ONSEC 40 at paras 71 and 77-79
[51] *North American v OSC* at para 218

[140] Applying the above factors and analysis, we conclude that it would be in the public interest to order disgorgement in the following amounts:

a. $1.51 million by First Global, Itwaru and Alli, jointly and severally; and

b. $2.95 million by GBR Ontario, Bajaj and Aziz, jointly and severally.

[141] In our view, these disgorgement orders are necessary to protect investors, to promote confidence in the capital markets, and to deter these respondents and others from engaging in similar misconduct.

2.7 Disgorgement – loans from EH

[142] Staff seeks disgorgement of an additional $450,000 from GBR Ontario and Aziz, on a joint and several basis, in respect of the loans from investor EH. As we explain below, we will make that order.

[143] While the merits panel was unable to determine with certainty whether EH's $450,000 went to GBR Ontario or GBR Colombia or both (because the documentary and oral evidence was inconsistent), the panel concluded that Aziz perpetrated fraud in respect of those funds, that he did so on behalf of GBR Ontario, and that he was GBR Ontario's directing mind in doing so.[52] Accordingly, both GBR Ontario and Aziz obtained the $450,000 within the meaning of s. 127(1)10 of the Act.

[144] This fraud was isolated to one investor and was recurrent only in the sense that the $450,000 came in two instalments. However, it was serious because of the significance of the amount for EH.

[145] The $450,000 amount is easily ascertainable and is undisputed. Aziz submits, though, that we should deduct the approximately $75,000 of interest payments that he made to EH. Staff submits that we should not do so, and we agree. This Tribunal's disgorgement power does not affect rights as between private parties, and any entitlement EH had to interest is unaffected by whether her loans were obtained in contravention of Ontario securities law. GBR had the use of EH's money. The interest payments compensate for that use. The one Tribunal decision that Aziz cites, in which interest payments were deducted, says only that it does so to "avoid double counting".[53] The decision does not explain further. We prefer the Tribunal's approach in two subsequent cases, where the amount of disgorgement reflected inflows less redemptions, or principal returned to investors, but with no deduction for interest payments.[54]

[146] There is no evidence that EH is likely to obtain redress.

[147] As for the deterrent effect of a disgorgement order regarding EH's loans, we refer to our comments at paragraph [123] above.

[148] Applying the principles set out above with respect to the First Global debentures, we therefore conclude that it is in the public interest to order disgorgement of $450,000 by GBR Ontario and Aziz, jointly and severally.

2.8 Administrative penalties

2.8.1.a Introduction

[149] We will now review Staff's request for administrative penalties. Staff seeks the following:

a. in respect of the First Global debentures:

i. $200,000 against each of First Global, Itwaru and Alli;

ii. $750,000 against each of GBR Ontario and Bajaj; and

iii. $650,000 against Aziz;

b. in respect of the loans from EH to GBR, $250,000 against each of GBR Ontario and Aziz; and

c. in respect of the improperly recognized revenue on First Global's interim financial statements, $200,000 against each of First Global, Itwaru and Alli.

52 Merits Decision at para 482
53 *Maple Leaf Investment Fund Corp*, 2012 ONSEC 8 at para 34
54 *North American Sanctions* at paras 63-65; *2196768 Ontario Ltd (Rare Investments)*, 2015 ONSEC 9 at paras 14, 74

[150] Paragraph 9 of s. 127(1) of the Act provides that if a person or company has not complied with Ontario securities law, the Commission may require the person or company to pay an administrative penalty of not more than $1 million for each failure to comply.

[151] Determining the amount of an administrative penalty is not a science. The parties provided us with precedent decisions, but those precedents reflect a wide range of sanctions that vary according to the circumstances. The sanctions imposed in other cases, and the reasons for those sanctions, largely serve to suggest a possible range of penalties and a principled approach to determining appropriate penalties in this case.

[152] In determining what an appropriate administrative penalty would be, we must take a global view of all the sanctions we impose on each respondent individually, taking into account the disgorgement we order and the fact that subject to limited exceptions, we will prohibit the respondents from participating in the capital markets. We must consider both specific and general deterrence, and the extent to which those objectives are achieved by the other sanctions we impose.[55] The administrative penalties must also be meaningful and not just reflect a "cost of doing business". Factors to be considered in determining an appropriate administrative penalty include:

a. the scope and seriousness of a respondent's misconduct;

b. whether there were multiple or repeated breaches of the Act;

c. whether the respondent realized any profit as a result of his or her misconduct;

d. the amount of money raised from investors;

e. the harm caused to investors; and

f. the level of administrative penalties imposed in other cases.[56]

[153] We have already addressed all but the last of these factors. In our analysis below, we will consider relevant precedents in the context of that earlier discussion.

2.8.1.b First Global debentures

2.8.1.b.i The GBR parties

[154] In respect of the sale of the First Global debentures, we begin by considering the GBR parties' serious contraventions – illegal distribution, being in the business of trading without proper registration, and fraud.

[155] Staff submits that a $750,000 administrative penalty would be appropriate for Bajaj. He proposes a lower but unspecified amount, payable over ten years. His two principal submissions are firstly that his role was more akin to that of a salesperson rather than a directing mind, and secondly, that we must distinguish this case from those in which the respondents deliberately set out to deceive investors and to deprive them of their funds.

[156] We reject Bajaj's description of his role. He was one of GBR Ontario's directing minds, he ran the fundraising, and he was most prominent for investors. He is a former registrant, and his cavalier conduct here is inexcusable given that experience. We prefer Staff's submission as to the appropriate penalty. Below, we will return to Bajaj's proposal for a payment plan.

[157] As for Aziz, Staff proposes $650,000, to reflect his lesser role compared to Bajaj. Aziz submits, without suggesting a specific amount, that the administrative penalty should be significantly lower. We do not accept Aziz's characterization of the gap between his degree of involvement and Bajaj's. Aziz played a key role throughout, signing documents and cheques, selling some of the debentures himself, and speaking at investor meetings. We agree with Staff's proposal.

[158] Staff proposes $750,000 for GBR Ontario. We agree. There is no reason on these facts that GBR Ontario's administrative penalty should be any different from Bajaj's.

[159] In our view, the administrative penalties set out above align with the precedent cases provided to us, including in particular the following cases that involve a similar set of contraventions, *i.e.*, fraud, illegal distribution, and unregistered trading, as well as substantial losses for the investors:

55 *Quadrexx* at para 58
56 *Money Gate* at para 67

a. *Money Gate*, a 2021 decision with administrative penalties of $750,000 and $600,000 against the two individual respondents, who had perpetrated a fraud on more than 150 investors, including by diverting approximately $1.5 million in funds contrary to representations in the offering memoranda;

b. *Meharchand* in 2019, in which the individual respondent was ordered to pay an administrative penalty of $550,000 following a fraud of C$1.5 million and US$140,000 involving more than 100 investors;

c. the 2018 case of *Quadrexx*, in which the Tribunal ordered administrative penalties of $600,000 against each individual respondent for three separate frauds totaling $3.4 million and involving at least 37 investors; and

d. *North American Financial Group*, a 2014 decision in which investors lost approximately 50% of the principal in a $4 million car lease financing scheme, resulting in administrative penalties of $600,000 on each of the individual respondents, who were the directing minds of the corporate respondents.

[160] This case stands at the most serious end of the spectrum of the above precedents, because of the total amount involved, the large number of investors, and the fact that unlike the investors in some of the above cases, the First Global debenture holders lost their entire investment. The GBR respondents' misconduct might warrant even higher administrative penalties had they deliberately set out to defraud the investors, as opposed to merely being reckless and cavalier, and had they not co-operated with Staff once the issues came to light.

2.8.1.b.ii The First Global parties

[161] Unlike the GBR parties, the First Global parties neither engaged in the business of trading without being registered nor committed fraud. Their only contravention in connection with the debentures was the illegal distribution.

[162] Staff proposes an administrative penalty of $200,000 for each of First Global, Itwaru and Alli.

[163] Itwaru proposes an administrative penalty of $7,500. We cannot accept that submission, in view of his role as directing mind of First Global, and his failure to take any reasonable steps to ensure that investors were afforded the protections that First Global's own lawyer had urged.

[164] As the issuer whose securities were sold to investors, First Global was the main gatekeeper. As CEO, Itwaru was in the best position to ensure that First Global carried out its gatekeeper obligations. He did not. Instead, First Global gained the benefit of significant capital while avoiding the cost (in time and money) of the diligence that ought to have accompanied the fundraising. This failure proved to be at the expense of the investors.

[165] In our analysis above about the appropriate disgorgement order against First Global, we highlighted that the amount of $1.51 million that we are ordering includes no component that relates to the $2.95 million that flowed to or for the benefit of GBR Colombia. We indicated that it was important that the administrative penalty we impose against First Global be sufficient to deter public companies and those who direct them from allowing their companies to be used as a vehicle for this kind of misconduct. For this reason, the administrative penalty must be significant.

[166] In our view, a $175,000 administrative penalty is proportional to Itwaru's misconduct and to the magnitude of the harm that resulted.

[167] Alli proposes a penalty of $100,000 payable over two years. As we have discussed, Alli did not have the same ultimate responsibility that Itwaru did, but his involvement was pivotal. As CFO, Alli played a central role in the capital raise. He shared with Itwaru the responsibility to ensure that First Global heeded the advice of its lawyer. We conclude that it is in the public interest to order that Alli pay an administrative penalty of $150,000, reflective of the slightly lesser role that he played with respect to this contravention.

[168] As noted above, First Global (which is defunct) did not appear at the hearing and made no submissions. We have no reason to order an administrative penalty against it that is any different from the $175,000 that we are ordering against Itwaru.

[169] The administrative penalties set out above align with the two precedent contested cases provided to us:

a. *Energy Syndications*, a 2013 case in which the Tribunal imposed a $200,000 administrative penalty on the corporate respondents and their directing mind, jointly and severally, where the respondents had raised $3 million from at least 69 investors in connection with a legitimate underlying business involving the sale of land agreements and solar panel agreements, but the investors suffered significant losses; and

b. *XI Biofuels*, a 2010 case where the Tribunal imposed a $200,000 administrative penalty against the two individual respondents who had raised C$231,000 and US$1.1 million through "a sophisticated

multi-jurisdictional scheme [structured] to avoid regulatory oversight", but through which investors lost hundreds of thousands of dollars.

[170] We note that in each of those cases, the respondents were found not only to have carried out an illegal distribution, but also (unlike the First Global respondents) to have engaged in the business of trading securities without being registered. We have taken into account this difference, as well as the respondents' co-operation with Staff. However, these differences are counterbalanced by an aggravating factor here – that the illegal distribution enabled the GBR parties to commit the fraud. We have also taken into account the passage of time since the above precedents.

[171] Staff also cited two settlements, *Systematech Solutions Inc (Re)*[57] and *GITC Investments and Trading Canada Ltd (Re)*.[58] We place little weight on these settlements because they are negotiated and not determined on a full factual record, although neither case gives us any reason to adjust the figures we determined above. We take the same view of the settlement in *MM Café Franchise Inc (Re)*[59] that Itwaru cited to us.

2.8.1.c EH loans to GBR

[172] Staff requests an administrative penalty of $250,000 for each of GBR Ontario and Aziz with respect to EH's $450,000 loans to GBR. GBR Ontario proposes no administrative penalty at all. Aziz also proposes a lesser but unspecified penalty.

[173] The evidence with respect to these loans largely replicates that associated with the sale of the First Global debentures, with two notable differences: (i) Bajaj was not involved in these loans; and (ii) Aziz tried to convince EH to invest additional funds through a home equity line of credit, which, as we noted above, we consider to be an aggravating factor.

[174] Given the virtually identical underlying foundation, and given that the EH loans represented approximately 10% of the funds raised through the debentures, administrative penalties for these loans should be approximately 10% of those imposed ($750,000 for GBR Ontario and $650,000 for Aziz) in respect of the debentures. For Aziz, we increase that penalty to account for the fact that he played the central role in the EH loans, and to account for his pressure on EH to borrow the funds to invest. We determine that each of GBR Ontario and Aziz should pay an administrative penalty of $75,000.

2.8.1.d Improper recognition of revenue

[175] Staff proposes an administrative penalty of $200,000 for each of First Global, Itwaru and Alli with respect to the improper recognition and reporting of revenue in the one set of interim financial statements.

[176] Itwaru proposes an administrative penalty of $7,500. Alli proposes an administrative penalty of $100,000 payable over two years.

[177] The merits panel found that Alli and Itwaru authorized First Global's non-compliance. Both were fully aware of, and engaged in, the revenue recognition issue. They also both signed the financial reporting documents that contained the impugned accounting treatment and executed certificates of compliance for those documents. They did so over the objections of their interim CFO and their auditor.

[178] The parties did not identify any contested cases that approximate the facts of this finding. Staff cited four settlements. As we noted earlier, we place little weight on sanctions in settlement cases, but in the absence of any contested cases we will briefly refer to the two most relevant.

[179] In *Cronos*, revenue of $7.6 million of revenue was improperly recognized across three separate transactions, and approximately US$235 million of goodwill and intangible assets were overstated. Cronos' chief compliance officer played a significant role in one of the three transactions. Cronos paid a $1.3 million administrative penalty, and the chief compliance officer made a voluntary payment of $50,000.

[180] *Electrovaya* involved repeated disclosure violations relating to "unbalanced and incomplete news releases" and "overly optimistic disclosure." Electrovaya's president and CEO agreed to pay an administrative penalty of $250,000.

[181] The administrative penalties we impose against Itwaru and Alli should reflect the fact that these sanctions follow a contested hearing, and that unlike *Cronos*, here there will be no substantial administrative penalty paid by the issuer. The amounts we order should be well above the amount of the voluntary payment that Cronos's chief compliance officer agreed to.

[182] Given the isolated nature of the revenue recognition issue, and the respondents' co-operation, we consider Staff's request for administrative penalties of $200,000 to be high. It is in the public interest to require each of First Global, Itwaru and

[57] (2013) 36 OSCB 11240
[58] (2015) 38 OSCB 9141
[59] 2017 ONSEC 13

Alli to pay an administrative penalty of $125,000. We do not distinguish between Itwaru and Alli, given the comparability of their involvement on this issue.

2.9 Financial sanctions – ability to pay

[183] Alli and Bajaj ask for special consideration with respect to financial sanctions, because of their circumstances and the impact such sanctions would have on them. Ability to pay is a relevant factor for financial sanctions, although it is generally not the predominant or determining factor.[60]

[184] Neither Alli nor Bajaj has met the test for receiving special consideration.

[185] Alli asks for at least two years to pay any financial sanctions. He bases that time period on his proposed administrative penalty of $100,000 and disgorgement of $100,000. He asks that the time to pay be longer if we impose greater sanctions.

[186] No previous decision was brought to our attention in which, following a contested hearing, the Tribunal permitted a respondent to pay financial sanctions through an instalment plan. Alli gave us no specific reason to do so in this case. We appreciate that the financial sanctions we are ordering are likely to be onerous. That by itself is insufficient reason to add a payment structure over Staff's objection. It is open to Alli, as it is to any respondent who must pay financial sanctions, to negotiate payment terms with the Commission.

[187] Bajaj submitted evidence of his financial circumstances, in support of his requests that: (i) any financial sanctions be reduced or waived; and (ii) he be permitted to pay any financial sanctions by way of an instalment plan. Bajaj has a negative net worth and he earns a small income. He says that he can no longer support his wife or daughter, and that he has become financially dependent on his son. He has had difficulty securing employment.

[188] Staff opposes any accommodation for Bajaj. Staff submits that Bajaj is only 57 years old, and still has an opportunity to earn employment income. Staff also rejects Bajaj's submission that he is too old to carry on any business.

[189] In addition, Staff submits that Bajaj failed to make adequate disclosure regarding a significant asset arising out of the breakdown of his marriage, being a potential equalization interest in matrimonial assets. We were not persuaded that there was any such valuable asset or that Bajaj's disclosure regarding matrimonial assets was deficient.

[190] Bajaj has shown difficult financial circumstances, but we do not accept that his situation is like that of the respondent in *Solar Income Fund* who was excused from financial sanctions because of exceptional financial and personal hardship.[61] The fraud in this case was significantly greater and significantly more egregious, and Bajaj's financial challenges are of his own making.

[191] We agree with Staff's submission that giving too much weight to ability to pay undermines the more important sanctioning objectives described above. The financial sanctions we are ordering are necessary to deter Bajaj and others in the capital markets from engaging in fraudulent conduct.[62]

[192] We reject Bajaj's request for a payment plan for the same reasons as we did with respect to Alli.

2.10 Restrictions on participation in the capital markets

2.10.1 Introduction

[193] As against all respondents, Staff seeks market restrictions, including a prohibition against trading and acquiring securities, and against trading in derivatives, as well as a denial of the benefit of any exemptions contained in Ontario securities law. Staff asks that those restrictions apply:

a. for ten years for First Global, Itwaru and Alli; and

b. permanently for GBR Ontario, Bajaj and Aziz.

[194] As against the individual respondents, Staff seeks additional restrictions, namely that:

a. each individual respondent resign any position he holds as a director or officer of an issuer, registrant or investment fund manager;

b. for ten years for Itwaru and Alli, and permanently for Bajaj and Aziz, each individual respondent be prohibited from becoming or acting as a registrant, investment fund manager or a promoter; and

---

60 *Rezwealth Financial Services Inc (Re)*, 2014 ONSEC 18 at para 69
61 2023 ONCMT 3 (***Solar Income Fund***) at paras 80-85
62 *Al-Tar* at para 49

c. for ten years for Itwaru and Alli, and permanently for Bajaj and Aziz, each individual respondent be prohibited from becoming or acting as a director or officer of an issuer, registrant or investment fund manager.

[195] Staff submits that the requested sanctions are proportionate to the misconduct at issue, are consistent with past cases of comparable misconduct, and appropriately achieve both specific and general deterrence.

[196] Itwaru, Alli and Aziz all seek carveouts from any market participation restrictions, to permit limited personal trading and/or to permit continuation in an officer or director role. We consider those requested carve-outs below, after we assess the proposed sanctions. We begin with the First Global parties.

2.10.2 First Global parties

[197] Of the cases that Staff cited to us in support of the requested sanctions against the First Global parties, the two most helpful are:

a. *Cartu*,[63] in which the Tribunal imposed 15- and 10-year bans against two individual respondents who had effected an illegal distribution and had engaged in the business of trading without being registered; and

b. *Energy Syndications*, in which the Tribunal imposed a 10-year ban on the respondents for the same two contraventions.

[198] In both decisions, as is the case with the First Global parties, there was no finding of fraud.

[199] Itwaru submits that in his case, the market restrictions should be limited to one year. He submits that the cases Staff cites do not support the extent of the market sanctions Staff seeks because his circumstances are very different from cases involving fraud or other deceptive practices. He argues that no director or officer bans are necessary in his case, and he makes the unsubstantiated claim that he needs to be an officer or director to make a living. Alternatively, if we impose any director or officer restrictions, Itwaru submits that they should be limited to six months.

[200] Itwaru submits that we can include in our sanctions order a requirement for him to take and pass one or more courses of instruction regarding duties and obligations of directors and officers and ethical responsibilities. If this is not appropriate for an order of the Tribunal, he says he is willing to undertake to take such a course.

[201] We give no weight to this suggestion. If Itwaru were truly committed to pursuing some governance-related education, it has been open to him to do that at any time. Many years have passed since the problems that gave rise to this proceeding; if Itwaru has not pursued the suggested courses on his own, we see no value in imposing such an obligation now.

[202] As for Alli, he submits that market restrictions against him should be limited to two years. Regarding director and officer bans, Alli volunteers to never serve in either capacity with a public company permanently rather than have a ban formally imposed by order of this Tribunal.

[203] In response, Staff argues that neither Itwaru nor Alli offers any authority to support his request for market and conduct sanctions that are significantly shorter than those found in comparable decisions. Staff rejects Alli's suggestion that he volunteer not to act as a director or officer.

[204] Itwaru's and Alli's misconduct warrants restrictions on their participation in the capital markets. Taking into account our analysis of the sanction factors and considering that First Global was a reporting issuer and each of Itwaru and Alli was a director and senior officer, those restrictions must be meaningful.

[205] Having said that, Staff's requests against Itwaru and Alli are more severe than necessary. It is significant that neither Itwaru nor Alli was alleged to have engaged in the business of trading without being registered. That distinguishes this case from the precedents cited to us. The merits panel did find that the First Global parties breached Ontario securities law in respect of the one set of interim financial statements, and while that contravention is serious, it was an isolated instance. Further, Staff has agreed that the respondents co-operated once the issues came to light.

[206] We conclude that it is in the public interest to order the following against the First Global parties, subject to our discussion below regarding carve-outs:

a. five-year market restrictions against each of Itwaru and Alli;

b. seven-year director and officer bans against each of Itwaru and Alli; and

c. seven-year market restrictions against First Global.

[63] 2022 ONCMT 21

[207] In determining the length of bans that would protect investors and restore confidence in the capital markets, we saw no reason to distinguish between Itwaru and Alli, given their roles and similar levels of involvement. We chose longer terms for the director and officer bans than we did for the trading restrictions because their misconduct directly engages responsibilities they had as directors and officers of First Global. As noted above, First Global is defunct. It is appropriate to order market restrictions against the company for a term that is the longer of the two terms applicable to Itwaru and Alli.

2.10.3 GBR Parties

[208] We turn now to the GBR parties.

[209] Staff seeks permanent trading restrictions and denial of exemptions against GBR Ontario. Once again, GBR Ontario submits that there were no findings of misconduct by it that were distinct from the acts committed by Bajaj and Aziz as directing minds. GBR Ontario says that market restrictions would serve no purpose, because neither Bajaj nor Aziz plays any functional role in the company, and it has had no operations for years. It submits that a reprimand would be sufficient to achieve general and specific deterrence.

[210] For the reasons we expressed above beginning at paragraph [58], we do not accept GBR Ontario's submissions. We agree with Staff that since the company's only activity was as a vehicle for the fraud in this case, it would be in the public interest to order permanent market restrictions against it.

[211] Bajaj submits that banning him permanently from trading and from acting as a director or officer would be punitive and would prevent him from obtaining meaningful employment and securing a necessary source of income to support himself and his daughter. He would continue to be a financial burden on his son and the public. He therefore submits that any market restrictions against him should be limited to five years.

[212] Aziz also submits that any market sanctions against him should be limited to five years and that anything more would be punitive.

[213] In reply, Staff argues that market and conduct bans of only five years would be unprecedented for respondents that engaged in securities fraud. We agree. The Tribunal has repeatedly found that it is in the public interest to deprive permanently those who commit fraud of the privilege of participating in the capital markets. The exceptions are rare and involve unusual mitigating circumstances that are not present here.

[214] Bajaj and Aziz pose an ongoing risk to investors. Taking that into account, and considering our analysis above regarding applicable sanction factors, with particular focus on the size of the contravention and the seriousness of the misconduct, a failure to impose significant sanctions would cause a substantial loss of confidence in the integrity of the capital markets and would expose investors to unnecessary risks. We agree with Staff that it would be in the public interest to impose permanent restrictions on Bajaj and Aziz.

2.11 Market sanctions - carve-outs

2.11.1 Itwaru

[215] We now address the question of whether the individual respondents should benefit from any carve-outs from the market sanctions. We begin with Itwaru.

[216] Itwaru asks us to allow him to trade in his Tax-Free Savings Account and Registered Retirement Savings Plan. Staff does not object. We shall so order, on the following terms that were proposed by Staff in its written submissions, and accepted by Itwaru in oral submissions:

a. trading limited to mutual funds, exchange-traded funds, government bonds and guaranteed investment certificates for the account of any registered retirement savings plan, registered retirement income fund and tax-free savings account (as defined in the *Income Tax Act*[64]) in which Itwaru has sole legal and beneficial ownership; and

b. where the trade is transacted through a registered dealer in Ontario to whom Itwaru has given a copy of our order.

[217] In Staff's written submissions, Staff sought one additional condition, which would deny Itwaru the benefit of this carve-out until he has satisfied any monetary obligations (sanctions or costs) contained in our order. At the hearing, Itwaru did not address that request. Our order will therefore include that term as Staff proposes.

[64] RSC, 1985, c 1 (5th Supp)

[218] Itwaru also asks that any director and officer ban not apply to two corporations with which he remains involved. Those are Azira Corporation, which he describes as his "personal corporation", and Money Moov Payments Inc., the corporation that Itwaru wishes to have acquire shares of First Global as part of the resolution he contemplates, as discussed above.

[219] We are not prepared to grant those carve-outs. Money Moov Payments Inc. has raised investment capital and intends to issue securities to the public market. We are unaware of any Tribunal precedent in which a respondent subject to a director and officer ban was permitted to continue in that role with an issuer of that kind. As for Azira Corporation, Itwaru tendered no evidence about it; the only reference we have is the mention in his written submissions of it being his "personal corporation". That information is insufficient both about the corporation's activities and beneficiaries, among other things.[65] Itwaru has not met his burden of showing that the principles of investor protection and confidence in the capital markets would still be adequately supported if we were to grant the requested carve-outs.

2.11.2 Alli

[220] Alli asks that any trading ban against him be suspended for one year, to enable him to pay any monetary sanctions and costs. He sought no other carve-outs, although when we asked for his position if we were to impose market restrictions for more than the two years he proposed, he agreed that carve-outs similar to those Itwaru seeks (as discussed above) would be satisfactory.

[221] If we are to impose a director and officer ban, Alli submits that it should be for only one year. Alli says that he needs to be an officer or director to make a living, but does not substantiate that statement.

[222] We are sympathetic to his stated desire to earn money to pay monetary sanctions and costs, but it would be unprecedented to impose a trading ban and suspend it for a period of time to allow the respondent to make better use of the capital markets. Such a term would undermine both the specific and general deterrent value of the sanctions, would fail to respond adequately to the seriousness of the misconduct, and would not be in the public interest. However, we are prepared to grant Alli a carve-out on the same terms as those for Itwaru.

2.11.3 Aziz

[223] Aziz requests a trading carve-out, because he is quickly approaching retirement age without any pension plan or other annuity to rely on after he is no longer able to work. He asks that he be able to personally hold or trade securities to invest his own money, if necessary. The carve-out he proposes would not be limited to registered accounts or otherwise.

[224] Staff opposes any carve-out for him.

[225] We agree with Staff that it would not be in the public interest to grant Aziz a trading carve-out (particularly the wide-ranging one he seeks, which precludes the necessary risk assessment), in view of the nature and seriousness of the fraud he committed, and the need for proportionality and deterrence.[66] Further, for us to grant a carve-out for a respondent requires confidence that the respondent fully understands the conditions that are part of the carve-out, and that the respondent will abide by those conditions. Where a respondent commits fraud, especially a particularly serious fraud such as the one here, it is difficult to have the necessary trust. We are unable to be sufficiently confident that Aziz would understand and respect the boundaries of a carve-out.

2.11.4 Bajaj

[226] Bajaj made no clear request for a carve-out of any kind. In his written submissions, he contemplates that for a period of time (he suggests five years), he will be denied the use of any exemptions contained in Ontario securities law. He asks that any denial of exemptions be "except for exemptions used in respect of trading in or acquiring securities in accordance with the exemptions in the above paragraph".[67] We could find no paragraph "above" in the submissions that this relates to.

[227] The lack of clarity is of no consequence. Even had Bajaj clearly asked for a carve-out, we would have denied his request as we did Aziz's. The finding of fraud against him, and the nature and seriousness of the fraud, place this case in the category where an unconditional ban on participation in the capital markets is warranted.

2.12 Reprimand

[228] Staff seeks a reprimand, unless we order the sanctions they requested and our reasons include a clear denunciation of the respondents' conduct. Both those conditions are substantially satisfied. We therefore follow Staff's invitation not to impose a reprimand.

---

65 *Solar Income Fund* at para 154
66 *Black Panther* at paras 68-69; *Lyndz Pharmaceuticals Inc (Re)*, 2012 ONSEC 25 at paras 78-81
67 Written Submissions of Harish Bajaj, February 9, 2023, at para 64(e)

2.13 Conclusion as to sanctions

[229] In our analysis above, we have addressed each element of sanctions separately. However, we have also looked at the sanctions overall for each respondent, and we have ensured that as a whole they are proportionate to that respondent's misconduct.[68] This approach is particularly reflected in the administrative penalties we are imposing against the First Global parties, which, for the reasons we explained above, are higher than they would be had we ordered a greater disgorgement amount against them.

[230] We describe the sanctions in detail at the end of these reasons, but in brief, we order:

a. First Global, Itwaru and Alli, jointly and severally, to disgorge $1.51 million;

b. GBR Ontario, Bajaj and Aziz, jointly and severally, to disgorge $2.95 million in respect of the First Global debentures;

c. GBR Ontario and Aziz, jointly and severally, to disgorge $450,000 in respect of the loans from investor EH;

d. administrative penalties of:

   i. $825,000 against GBR Ontario;

   ii. $750,000 against Bajaj;

   iii. $725,000 against Aziz;

   iv. $300,000 against each of First Global and Itwaru; and

   v. $275,000 against Alli;

e. permanent market restrictions against each of GBR Ontario, Bajaj and Aziz;

f. seven-year market restrictions against First Global;

g. seven-year director and officer prohibitions against Itwaru and Alli; and

h. subject to limited carve-outs applicable after they satisfy any financial sanctions and costs ordered, five-year trading restrictions against Itwaru and Alli.

3. ANALYSIS – COSTS

3.1 Introduction

[231] We turn now to consider Staff's request for costs. Section 127.1 of the Act authorizes the Tribunal to order a respondent to pay the costs of an investigation and of the proceeding that follows it, if the respondent has been found to have contravened Ontario securities law. The obligation to reimburse costs is reasonable, because the Commission's budget, including its enforcement budget, is paid by fees charged to registrants, issuers and others. A costs order is discretionary and is designed to reduce the burden on market participants to pay for investigations and enforcement proceedings.[69]

[232] Staff seeks costs of $1,080,285 as follows:

a. First Global debentures: $452,723 against the GBR parties on a joint and several basis, and $226,361 against the First Global parties on a joint and several basis;

b. Loans from EH to GBR: $104,474 against Aziz and GBR Ontario on a joint and several basis; and

c. First Global purported licence transactions: $296,727 against Itwaru, Alli and First Global on a joint and several basis.

[233] Staff seeks additional costs of $14,145 against Alli in respect of his motion for a stay, brought after the closing of the evidentiary portion of the merits hearing.

[234] For reasons we explain below, we conclude that it would be appropriate to order that the respondents pay costs as Staff requests, except that Alli shall pay no costs in respect of his motion for a stay.

---

68 *MCJC Holdings Inc (Re)* (2002), 26 OSCB 8206 at para 56

69 *Quadrexx* at para 118; *PFAM* at para 111

3.2 Analysis

[235] The costs associated with the investigation and proceeding were understandably significant. This was a long, serious and complex matter. The investigation involved the collection of more than 12,000 documents, approximately 2,000 of which formed part of the record in this proceeding. Staff's allegations, which it was substantially successful in proving, related to three sets of contraventions. The fraud was multi-layered and involved many individuals, several jurisdictions, and an extensive record that was replete with contradictory evidence. The merits hearing lasted more than thirty days.

[236] As is the case with an administrative penalty, determining the amount of a costs award is not a science. We are guided primarily by the following considerations:

a. although a respondent found to have contravened Ontario securities law should expect to pay costs, a large costs award can reasonably be viewed as punitive, and may adversely and inappropriately affect a respondent's willingness, and ability, to pursue a full defence;

b. the misconduct here was very serious, which underscores the importance of a regulatory response;

c. the proceeding was long and complex; and

d. there was no conduct by Staff or the respondents that unnecessarily lengthened the merits hearing, or that contributed meaningfully to shortening it; we reject Staff's suggestion that the respondents unduly complicated the merits hearing because they should have admitted certain allegations against them to narrow the scope of the issues at the merits hearing. Respondents are entitled to preserve their rights to understand the case against them and to defend against the allegations against them.[70]

[237] Staff's evidence shows its costs and disbursements associated with the investigation, pre-hearing activities and merits hearing. Its affidavit lists members of Staff and external counsel, and includes detailed records of the time they spent on these activities. Staff excluded from its calculation various categories, including the time spent by employees who recorded 35 or fewer hours, and by employees in Enforcement Branch functions that support the investigation and litigation functions. After making those deductions, and then using hourly rates the Tribunal has previously adopted for the relevant positions, the costs and disbursements total $2,726,421.53.

[238] Staff then reduced that amount primarily by narrowing the list of employees in each of the investigation and litigation phases to only two, being the primary litigation counsel and the primary investigator. This resulted in an adjusted total of $1,468,643.01.

[239] Relying on an analysis of the number of witnesses for Staff and of the proportion of the total time those witnesses spent testifying, and also considering the number of paragraphs in the merits decision devoted to each of the three principal contraventions in this case, Staff apportioned its costs claim as follows:

a. 65% to the First Global debentures;

b. 10% to the loans from EH to GBR; and

c. 25% to the First Global purported licence transactions.

[240] We do not consider the number of paragraphs in a merits decision that are devoted to each set of transactions to be a reliable indicator of the portion of time spent by Staff. There may be many reasons why greater space in the reasons is devoted to a particular set of transactions. However, Staff's other basis for apportionment, *i.e.*, testimony time of each witness, is a reasonable factor. On that basis alone, Staff's apportionment is fair, and we accept it.

[241] Staff then further reduced the three amounts to arrive at its claim. It did so by applying discounts as follows to reflect Staff's view of its relative success concerning the allegations relating to the various transactions:

a. First Global debentures: a 25% discount to reflect dismissal of the s. 44(2) allegations;

b. Loans from EH to GBR: a 25% discount to reflect dismissal of the s. 44(2) allegations; and

c. First Global purported license transactions: a 30% discount to reflect dismissal of some of the allegations.

[242] With these reductions, Staff claims total costs and disbursements of $1,080,285. That figure represents a reduction of approximately 60% from the starting number, which already reflected the various exclusions mentioned above.

[70] *2241153 Ontario Inc et al (Re)*, 2016 ONSEC 10 at paras 16-17

[243] The respondents do not question the factual basis behind Staff's total. However, they submit that the claim is excessive, and that they should not be required to pay any costs or that they should pay a significantly reduced amount. With respect to Staff's mixed success, various respondents proposed a simple calculation based on the number of statutory (or similar) provisions contravened, compared to the number of contraventions alleged. We reject this approach to calculating costs, which entirely disregards the time associated with investigating and litigating any particular contravention.

[244] Some respondents make specific submissions, as follows.

[245] We are not persuaded by Itwaru's reference to decisions by the Investment Industry Regulatory Organization of Canada (the predecessor to the current Canadian Investment Regulatory Organization), which he submits reflect a more conservative approach to costs. The context for decisions of a self-regulatory organization is different, given that members instead of market participants fund regulatory operations, and we see no reason to depart from this Tribunal's well-established approach to costs.

[246] Itwaru also proposes a greater discount to reflect Staff's mixed success. We cannot agree. The factual matrix underlying Staff's s. 44(2) allegations (which were dismissed) is substantially similar to that underlying the illegal distribution contraventions, and we consider a 25% discount to be more than fair to the respondents.

[247] Similarly, we conclude that while Staff's allegations of inappropriate recognition of revenue were successful only in respect of one of four sets of financial statements, the investigation, analysis and hearing time would not have been significantly reduced had Staff's allegations been limited to the one set of financial statements in respect of which the merits panel found a contravention. The reason no contravention was found in respect of the year-end statements and the Q1 and Q2 statements was the availability of a due diligence defence. The underlying facts and analysis applied equally across all four sets of statements. We have some sympathy for Itwaru's submission that if the allegations in this regard had been limited to the Q3 statements, the substantive allegation might not have been contested, but that is too speculative to be given significant weight. In any event, we consider a 30% discount to be more than fair to the respondents.

[248] Alli points out that Staff did not allege that he perpetrated a fraud. He submits that the costs sought do not reflect that fact. It is true that neither Itwaru and Alli was alleged to have committed fraud. However, it was necessary to hear and analyze facts relating to all parties' interactions with investors in order to understand each respondent's role and responsibilities. By effectively outsourcing the fundraising activity to GBR Ontario and its principals, Itwaru and Alli forced an overall view of the facts. Indeed, that overall view likely operated to the benefit of the First Global parties, by making it clear that it was the GBR Ontario principals who made the misrepresentations to the investors. We see no reason to further discount the costs claimed against Alli.

[249] GBR Ontario submits that we should make no costs order against it because of its current status. For the reasons we set out earlier, we reject this position.

[250] Bajaj proposes a greater deduction because the s. 44(2) allegations were dismissed. We reject this suggestion for the same reasons as with respect to Itwaru.

[251] We were not persuaded by Aziz's submission that Staff unduly lengthened the proceeding. None of the aspects that Aziz cites was improper or unreasonable.

[252] We consider Staff's request for costs in respect of its allegations to be fair and proportionate. Although the amount is high, that reflects the length and complexity of this matter.

[253] We will not order costs, though, in respect of Alli's motion to stay the proceeding. The merits panel did conclude that the motion was brought significantly late in the proceeding, that it was frivolous (because it related to irrelevant matters), and that it "did not approach" the necessary standard for granting a stay.[71] However, despite these findings, we exercise our discretion not to order additional costs against Alli. He was unrepresented by counsel in bringing the motion, and we appreciate that the legal tests relating to a stay motion are not necessarily intuitive.

[254] We would reach the same conclusion even if we were to adopt Staff's submission that we should regard the stay motion as essentially an extension of the hearing, considering the costs of the motion to be part of the costs of the hearing. Even if we were to do that, we would still analyze the motion costs separately, in the same way that Staff has broken down the hearing costs by contravention and by respondent.

3.3 Conclusion about costs

[255] Considering all the above factors, we will order costs as follows:

[71] *First Global Data Ltd (Re)*, 2022 ONCMT 24

a. in respect of the First Global debentures, $452,723 against GBR Ontario, Bajaj and Aziz jointly and severally, and $226,361 against First Global, Itwaru and Alli jointly and severally;

b. in respect of EH's loans to GBR, $104,474 against GBR Ontario and Aziz jointly and severally; and

c. in respect of the purported licence transactions, $296,727 against First Global, Itwaru and Alli jointly and severally.

[256] That results in the following total costs orders:

a. against First Global, Itwaru and Alli, $523,088 jointly and severally;

b. against GBR Ontario, Bajaj and Aziz, $452,723 jointly and severally; and

c. against GBR Ontario and Aziz, an additional $104,474 jointly and severally.

4. CONCLUSION

[257] The sanctions we have specified above are proportionate to the misconduct in this case, and are appropriate when viewed globally in the context of each respondent. The combination of sanctions for a particular respondent:

a. ensures that none of them profited, directly or indirectly, from their misconduct;

b. takes account of the mitigating factors, including in particular the respondents' co-operation with Staff throughout the investigation;

c. differentiates based on degree of culpability; and

d. effects both general and specific deterrence, thereby protecting investors and promoting confidence in the capital markets.

[258] The costs orders are reasonable in the context of the investigation and proceeding, and are fairly apportioned among the respondents and according to the various contraventions of Ontario securities law.

[259] For the reasons set out above, we shall issue an order that provides as follows:

a. pursuant to paragraphs 2 and 2.1 of s. 127(1) of the Act:

i. GBR Ontario, Bajaj and Aziz shall cease trading in any securities or derivatives, or acquiring any securities, permanently;

ii. First Global shall cease trading in any securities or derivatives, or acquiring any securities, for a period of seven years; and

iii. Itwaru and Alli shall cease trading in any securities or derivatives, or acquiring any securities, for a period of five years, except that after each individual has fully paid the amounts ordered against him in subparagraphs (e), (f) and (g) below, he may trade in mutual funds, exchange-traded funds, government bonds and guaranteed investment certificates for the account of any Registered Retirement Savings Plan, Registered Retirement Income Fund or Tax-Free Savings Account (as those terms are defined in the *Income Tax Act*) of which only he has sole legal and beneficial ownership, through a registered dealer in Ontario to whom he has given both a copy of our order and a certificate from the Commission confirming that he has paid the monetary sanctions and costs as required;

b. pursuant to paragraph 3 of s. 127(1) of the Act:

i. any exemptions contained in Ontario securities law shall not apply to GBR Ontario, Bajaj or Aziz, permanently;

ii. any exemptions contained in Ontario securities law shall not apply to First Global, for a period of seven years; and

iii. any exemptions contained in Ontario securities law shall not apply to Itwaru or Alli, for a period of five years;

c. pursuant to paragraphs 7, 8, 8.1 and 8.2 of s. 127(1) of the Act:

   i. Bajaj and Aziz shall resign any positions that they hold as directors or officers of any issuer or registrant, and are prohibited permanently from becoming or acting as directors or officers of any issuer or registrant; and

   ii. Itwaru and Alli shall resign any positions that they hold as directors or officers of any issuer or registrant, and are prohibited for a period of seven years from becoming or acting as directors or officers of any issuer or registrant;

d. pursuant to paragraph 8.5 of s. 127(1) of the Act:

   i. GBR Ontario, Bajaj and Aziz are prohibited permanently from becoming or acting as a registrant or as a promoter;

   ii. First Global Data is prohibited for a period of seven years from becoming or acting as a registrant or as a promoter; and

   iii. Itwaru and Alli are prohibited for a period of five years from becoming or acting as a registrant or as a promoter;

e. pursuant to paragraph 9 of s. 127(1) of the Act:

   i. GBR Ontario shall pay to the Commission an administrative penalty of $825,000;

   ii. Bajaj shall pay to the Commission an administrative penalty of $750,000;

   iii. Aziz shall pay to the Commission an administrative penalty of $725,000;

   iv. First Global shall pay to the Commission an administrative penalty of $300,000;

   v. Itwaru shall pay to the Commission an administrative penalty of $300,000; and

   vi. Alli shall pay to the Commission an administrative penalty of $275,000;

f. pursuant to paragraph 10 of s. 127(1) of the Act:

   i. First Global, Itwaru and Alli are jointly and severally liable to disgorge to the Commission $1.51 million;

   ii. GBR Ontario, Bajaj and Aziz are jointly and severally liable to disgorge to the Commission $2.95 million; and

   iii. GBR Ontario and Aziz are jointly and severally liable to disgorge to the Commission an additional $450,000; and

g. pursuant to s. 127.1 of the Act:

   i. First Global, Itwaru and Alli shall pay costs to the Commission in the amount of $523,088, for which amount they shall be jointly and severally liable;

   ii. GBR Ontario, Bajaj and Aziz shall pay costs to the Commission in the amount of $452,723, for which amount they shall be jointly and severally liable; and

   iii. GBR Ontario and Aziz shall pay additional costs to the Commission in the amount of $104,474, for which amount they shall be jointly and severally liable.

Dated at Toronto this 22nd day of June, 2023

“Timothy Moseley”

“William J. Furlong”

“Dale R. Ponder”

B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Notice of Amendments to Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Changes to Companion Policy 25-102 Designated Benchmarks and Benchmark Administrators

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA NOTICE OF
AMENDMENTS TO MULTILATERAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

AND

CHANGES TO COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

June 29, 2023

Introduction

Today, the securities regulatory authorities (collectively, the **Authorities** or **we**) of the Canadian Securities Administrators (the **CSA**) in British Columbia, Alberta, Saskatchewan, Ontario, Québec, New Brunswick, Nova Scotia, Yukon and Northwest Territories (the **Participating Jurisdictions**) are adopting amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102** or the **Instrument**) and changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (the **CP**).

Together, the amendments to the Instrument and the changes to the CP are referred to as the **Amendments**. The Amendments incorporate provisions for a securities regulatory regime for commodity benchmarks and their administrators.

The text of the Amendments is contained in Annex B and Annex C of this Notice and will also be available on websites of the Participating Jurisdictions, including:

www.lautorite.qc.ca

www.albertasecurities.com

www.bcsc.bc.ca

nssc.novascotia.ca

www.fcnb.ca

www.osc.ca

www.fcaa.gov.sk.ca

www.yukon.ca

justice.gov.nt.ca

In some Participating Jurisdictions, Ministerial approvals are required for the implementation of the Amendments. Subject to obtaining all necessary approvals, the Amendments will come into force on September 27, 2023.

Substance and Purpose

Currently, MI 25-102 provides a comprehensive regime for the designation and regulation of specific financial benchmarks and their administrators, and the regulation of contributors and of certain users. An overview of this regime was provided in the April 29, 2021 CSA Notice of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy.

On April 29, 2021, we also published separately under CSA Notice and Request for Comment Proposed Amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* (the **2021 CSA Request for Comment Notice**) the proposed amendments to MI 25-102 (the **Proposed Amendments**) and the changes to the CP (**the Proposed Changes** and, with the Proposed Amendments, the **Proposals**) regarding commodity benchmarks and administrators of commodity benchmarks.

The Amendments will implement a comprehensive regime for:

- the designation and regulation of commodity benchmarks (**designated commodity benchmarks**), including specific requirements (or exemptions from requirements) for benchmarks dually designated as designated critical benchmarks and designated commodity benchmarks (**critical commodity benchmarks**), and for benchmarks dually designated as designated regulated-data benchmarks and designated commodity benchmarks (**designated regulated-data commodity benchmarks** or **regulated-data commodity benchmarks**), and

- the designation and regulation of persons or companies that administer such benchmarks (**designated benchmark administrators** or **administrators**).

Further details about the rationale for the Amendments are available in the 2021 CSA Request for Comment Notice, specifically pages 4 and 5 under the heading of "Substance and Purpose".

Background

As outlined in the March 14, 2019 CSA Notice and Request for Comment on Proposed National Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy (the **March 2019 CSA Notice**),[1] in 2012, allegations of manipulation of the London inter-bank offered rate (**LIBOR**) led to the loss of market confidence in the credibility and integrity of not only LIBOR, but also in financial benchmarks in general. Although not on the scale of the LIBOR scandal, there have also been examples of manipulation or attempted manipulation of energy price indexes to benefit positions on futures exchanges.[2]

Following the LIBOR controversies, the International Organization of Securities Commissions (**IOSCO**) published the *Principles for Oil Price Reporting Agencies* (the **IOSCO PRA Principles**),[3] setting out principles intended to enhance the reliability of oil price assessments that are referenced in derivative contracts subject to regulation by IOSCO members. This was followed by the publication in July 2013 of the *Principles for Financial Benchmarks* (together with the IOSCO PRA Principles, the **IOSCO Principles**). Although both sets of IOSCO Principles reflect similar concerns regarding the need for safeguards to ensure the integrity of benchmarks, the IOSCO PRA Principles were developed to focus on the specifics of the underlying physical oil markets.[4] Even though the IOSCO PRA Principles were developed in the context of oil price reporting agencies (**PRAs**) in oil derivatives markets, IOSCO has encouraged the adoption of these principles more generally to any commodity derivatives contract that references a PRA-assessed price without regard to the nature of the underlying commodity.[5]

Subsequent to the publication of the IOSCO Principles, the European Union (**EU**) adopted the *Regulation on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds* (**EU BMR**).[6] A detailed overview of the EU BMR was provided in the March 2019 CSA Notice.

We are of the view that adopting the commodity benchmark provisions in the Amendments will codify international best practices, as articulated under the IOSCO PRA Principles.

Currently, the Authorities do not intend to designate any administrators of commodity benchmarks. However, the Authorities may designate administrators and their associated commodity benchmarks in the future on public interest grounds, including where:

1 Available online at https://www.osc.ca/sites/default/files/pdfs/irps/ni_20190314_25-102_designated-benchmarks.pdf.
2 For specific examples, see footnote 87 within IOSCO's September 2011 Final Report on the *Principles for the Regulation and Supervision of Commodity Derivatives Markets*, available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD358.pdf.
3 Available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD391.pdf.
4 See the IOSCO September 2014 Report on the *Implementation of the Principles for Oil Price Reporting Agencies*, specifically Chapter 1, pages 1 and 2, available online at https://www.iosco.org/library/pubdocs/pdf/IOSCOPD448.pdf.
5 See page 7, *supra* note 2.
6 The EU BMR that came into force on June 30, 2016 is available online at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32016R1011&from=EN; the 2016 regulations have been amended as summarized at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02016R1011-20220101&from=EN.

- a commodity benchmark is sufficiently important to commodity markets in Canada, or
- the Authorities become aware of activities that raise concerns that align with the regulatory risks identified below in respect of such parties and conclude that the administrator and commodity benchmark in question should be designated.

Summary of Written Comments Received by the CSA

The comment period for the 2021 CSA Request for Comment Notice ended on July 28, 2021. We received five comment letters. We have considered the comments received and thank all commenters for their input.

Annex A includes the names of the commenters and a summary of their comments, together with our responses.

The comment letters can be viewed on the websites of each of the:

- Alberta Securities Commission at www.albertasecurities.com,
- Ontario Securities Commission at www.osc.ca, and
- Autorité des marchés financiers at www.lautorite.qc.ca.

Summary of Changes to the Proposals

For details of all changes made, Annex D and Annex E contain blacklines of the Amendments compared to the Proposals.

Notable changes include:

(1) Definition of "commodity benchmark"

We have removed the definition of "commodity benchmark" from section 40.1 of the Proposed Amendments and added the substance of that definition to the definition for "designated commodity benchmark" in subsection 1(1) of the Instrument. In addition, we have removed the reference to a commodity that is intangible from the definition in the Instrument. We also revised the guidance in the CP regarding the scope of the definition, to clarify that we consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of securities legislation, and that we may include other intangible products, such as certain crypto assets, that develop as international markets evolve.

(2) Definitions of "front office" and "front office employee"

For clarity, we have split the definition of "front office" into two definitions: "front office" and "front office employee". Since the definitions are used in both section 15 of the Instrument and section 40.10 of the Proposed Amendments (section 40.9 of the Amendments), the definitions were moved to subsection 1(1) of the Instrument. We have also included additional guidance in the CP regarding the meaning of both terms. These changes were made for clarity but do not affect the substance of the requirements where these definitions are used.

(3) Scope of MI 25-102

We added language to sections 40.3 [*Control framework*] (section 40.4 of the Proposed Amendments) and 40.10 [*Governance and control requirements*] (section 40.11 of the Proposed Amendments) of the Instrument to clarify that those provisions apply to the business operations of a designated benchmark administrator only in so far as those operations involve the administration and provision of a designated commodity benchmark.

(4) Publication of information

We added guidance in Part 8.1 [*Designated Commodity Benchmarks*] of the CP regarding our expectations for how a designated benchmark administrator may satisfy the requirements in the Part 8.1 of the Instrument to publish information relating to a designated commodity benchmark. We generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification. However, we recognize that a news release generally will not be necessary for each determination of a designated commodity benchmark under section 40.8 of the Instrument.

(5) Types of input data

Subparagraph 40.5(2)(a)(i) of the Proposed Amendments required a designated benchmark administrator to establish, document and publish how it will use the volume of transactions, concluded and reported transactions, bids, offers and any other market information to determine a designated commodity benchmark.

For clarity, while subparagraph 40.4(2)(a)(i) of the Amendments still requires a designated benchmark administrator to establish, document and publish how it uses input data to determine a designated commodity benchmark, we have removed the reference to "the volume of transactions, concluded and reported transactions, bids, offers and any other market information" from the Amendments and revised the guidance in section 40.4 [*Methodology to ensure the accuracy and reliability of a designated commodity benchmark*] of the CP to clarify our general expectations regarding the priority given to different types of input data in the methodology of a designated commodity benchmark.

(6) Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

We added guidance in paragraph 40.4(2)(j) [*Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark*] of the CP on our expectation that, where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. In addition, we have clarified that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

Local Matters

Where applicable, Annex F provides additional information required by the local securities legislation.

Contents of Annexes

This Notice includes the following annexes:

Annex A:	Summary of Comments and CSA Responses
Annex B:	Amendments to MI 25-102
Annex C:	Changes to CP
Annex D:	Amendments to MI 25-102, blacklined to show changes from the Proposals
Annex E:	Changes to CP, blacklined to show changes from the Proposals

In certain jurisdictions, this Notice also includes:

Annex F:	Local matters (where applicable)

Questions

Please refer your questions to any of the following:

Harvey Steblyk
Senior Legal Counsel, Market Regulation
Alberta Securities Commission
403-297-2468
harvey.steblyk@asc.ca

Michael Bennett
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-8079
mbennett@osc.gov.on.ca

Melissa Taylor
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-596-4295
mtaylor@osc.gov.on.ca

Serge Boisvert
Senior Policy Advisor
Autorité des marchés financiers
514-395-0337 poste 4358
serge.boisvert@lautorite.qc.ca

Roland Geiling
Derivatives Product Analyst
Autorité des marchés financiers
514-395-0337 poste 4323
roland.geiling@lautorite.qc.ca

Faisal Kirmani
Derivatives Oversight Specialist
British Columbia Securities Commission
604-899-6846
fkirmani@bcsc.bc.ca

Michael Brady
Deputy Director, Capital Markets Regulation
British Columbia Securities Commission
604-899-6561
mbrady@bcsc.bc.ca

ANNEX A

SUMMARY OF COMMENTS AND CSA RESPONSES

A. List of Commenters

1. Argus Media Limited
2. S&P Global Platts
3. ICE NGX Canada Inc.
4. Fastmarkets
5. The Canadian Commercial Energy Working Group

B. Defined Terms

In this Annex,

"25-102 CP" means the final version of Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators*.

"April 2021 Notice" means the CSA notice and request for comment dated April 29, 2021 relating to the Proposed Amendments to MI 25-102.

"Final Amendments" means the final version of the amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* and the final version of the changes to 25-102 CP relating to commodity benchmarks, published simultaneously with this June 2023 Notice.

"**MI 25-102**" means the final version of Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*.

"June 2023 Notice" means this notice relating to the Final Amendments.

"Proposed Amendments" means, collectively, the Proposed Amendments to MI 25-102 and the Proposed Changes to 25-102 CP.

"Proposed Amendments to MI 25-102" means the proposed amendments to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* relating to commodity benchmarks published for comment on April 29, 2021.

"Proposed Changes to 25-102 CP" means the proposed changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* relating to commodity benchmarks published for comment on April 29, 2021.

Other terms defined in this June 2023 Notice have the same meaning if used in this Annex.

C. Proposed Amendments to Multilateral Instrument 25-102 and Companion Policy 25-102

General Comments

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
1.	General support for alignment with the EU BMR and the IOSCO Principles	Overall, the commenters expressed their general support for aligning the Canadian regime for the designation and regulation of commodity benchmarks with the EU BMR and the IOSCO Principles.	We thank the commenters for their comments in support of alignment with the EU BMR and the IOSCO Principles.
2.	Differences between the Proposed Amendments to MI 25-102 and the EU BMR and the IOSCO Principles	Four commenters submitted that they have concerns with any differences that may exist as between the Proposed Amendments to MI 25-102, on the one hand, and the EU BMR	The Proposed Amendments to MI 25-102 are, in part, based on the EU BMR, which in turn is based on the IOSCO Principles. Consequently, we consider the Proposed Amendments

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		and the IOSCO Principles on the other. A number of provisions contained in the Proposed Amendments to MI 25-102 go beyond the EU BMR in certain significant respects and are disproportionate and inappropriate. With regard to the provisions in the Proposed Amendments to MI 25-102 which relate to governance, control and reporting obligations applicable to commodity benchmarks, one commenter noted that while the development of both the IOSCO Principles and the EU BMR also began by considering whether to merge financial and commodity benchmark regimes, both decided after extensive analysis and consultation to retain separate regimes. Two commenters also submitted that even in those areas of the Proposed Amendments to MI 25-102 where there is no intention to diverge substantively from the IOSCO Principles, the CSA's text should avoid extensive rewriting of the IOSCO Principles, which regulators and market participants already understand and PRAs already have implemented. They questioned whether the frequent minor variations from the IOSCO text were necessary, offering that a more complete alignment with the IOSCO Principles could lend greater credibility and international recognition to a Canadian commodities benchmark regime.	to MI 25-102 to be generally aligned with the EU BMR and the IOSCO Principles. For Canadian legislative drafting purposes, MI 25-102 uses different language than the EU BMR. However, the language in MI 25-102 is comparable to the language in the EU BMR. Currently, securities regulatory authorities in Canada do not intend to designate any benchmarks or benchmark administrators as designated commodity benchmarks or administrators of designated commodity benchmarks, respectively. However, we will consider designating commodity benchmarks for which an administrator has applied for designation based on an assessment of the factors outlined in the application. In addition, we may use our regulatory discretion to designate commodity benchmarks where such designation is in the public interest. We do understand that imposing inappropriate or unnecessarily burdensome requirements is problematic and will consider regulatory burden before making any decision to designate a commodity benchmark. Consequently, while we have revised certain provisions in the Proposed Amendments to MI 25-102 to address certain comments we have received, we do not believe that the Final Amendments will be unduly onerous for designated commodity benchmark administrators in Canada.
3.	Level of oversight and burden of compliance	One commenter was of the view that the Proposed Amendments to MI 25-102 provide an appropriate level of oversight without imposing undue burdens on commodity benchmark contributors and users. This commenter also expressed that they were pleased that the Proposed Amendments to MI 25-102 generally relieved commodity benchmark contributors and users from obligations that are not necessarily appropriate in the commodities context. One example is that commodity benchmark contributors	We thank the commenters for their comments regarding the need to avoid imposing undue burdens on commodity benchmark contributors and users. See also our response to Item 2 above.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		would not be required to comply with governance and control requirements or designate a compliance officer. However, the commenter went on to caution the CSA against adding regulatory obligations on contributors to commodity benchmarks, noting that if participation rates in price index formation are too low, the resulting prices may not accurately represent market realities. One commenter submitted that the Proposed Amendments could be improved by reducing the regulatory burden through a combination of a risk-based approach to regulating designated regulated-data commodity benchmarks, and a more principles-based approach that aligns with the EU BMR.	
4.	Voluntary designation option	One commenter supported the CSA proposal to offer a voluntary designation option for administrators of commodity benchmarks, but suggested this option could be extended to other third country jurisdictions and not, as is proposed, limited only to the EU.	We thank the commenter for their comment.
5.	No imposition of obligations on contributors	One commenter supported the approach taken in the Proposed Amendments to MI 25-102, submitting that the imposition of obligations on contributors could have material adverse consequences for the representativeness of any commodities benchmark designated under MI 25-102. Specifically, this commenter submitted that there is concern among participants in certain commodity markets that participation rates in price index formation are in danger of being low enough to raise concerns that the resulting prices may not accurately represent market realities; to the extent that additional regulatory obligations are imposed on contributors to such benchmarks, that concern would likely be exacerbated. See also the summarized comments in Items 12, 16 and 21 below.	We thank the commenter for their support. The Proposed Amendments, like the IOSCO Principles and Annex II of the EU BMR, do not have specific requirements for benchmark contributors to designated commodity benchmarks, largely because of the voluntary nature of market participants' contributions of input data and the concern that overregulation of potential contributors could discourage such participants from providing their data. We believe the Final Amendments establish a regime for the regulation of commodity benchmarks that appropriately addresses considerations and concerns while also addressing the potential risks of commodity benchmarks.

Scope of MI 25-102

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
6.	Jurisdictional nexus with Canadian jurisdictions	Several commenters were unclear as to what the jurisdictional nexus is for being in scope of MI 25-102, submitting that while the CSA has laid out that there must be an impact on Canadian commodity and/or financial markets, unlike the EU BMR there does not seem to be a requirement that financial instruments based on a benchmark are traded on a Canadian trading venue. See also the summarized comments in Item 20 below.	As previously indicated, currently, securities regulatory authorities in Canada do not intend to designate any administrators of commodity benchmarks. However, securities regulatory authorities in Canada may designate administrators and their associated commodity benchmarks in the future on public interest grounds, including where: • a commodity benchmark is sufficiently important to commodity markets in Canada, or • securities regulatory authorities in Canada become aware of activities of a benchmark administrator that raise concerns that align with the regulatory risks identified below in respect of such parties and conclude that it is in the public interest for the administrator and commodity benchmark to be designated.
7.	Benchmark and benchmark administrator designation	Two commenters believe the CSA should provide greater clarity and transparency in terms of the assessment and/or method it will adopt to designate benchmark administrators and/or benchmarks in the future in order to avoid market disruption and ensure continued innovation in Canada's benchmarking industry. One commenter recommended that the CSA provide guidance with respect to the minimum thresholds of absolute transaction volume or estimated proportionate volume of the relevant market that a commodity benchmark represents. One commenter submitted that they expect that the CSA will publish notice of any application for designation of a commodity benchmark or for designation of a benchmark administrator of a commodity benchmark, regardless of whether the application for designation is made or initiated by the benchmark administrator, by the relevant regulator or securities regulatory authority, or by any other person.	Currently, securities regulatory authorities in Canada do not intend to designate any benchmarks or benchmark administrators as designated commodity benchmarks or administrators of designated commodity benchmarks, respectively. However, we will consider applications for designation. In the future, we will use our regulatory discretion to designate benchmarks, which may include Canadian benchmarks that are regulated in a foreign jurisdiction, where such designation is in the public interest. We have revised the guidance in 25-102 CP to clarify that we would generally not expect that a designation would be made without the applicable regulator or securities regulatory authority publishing an advance notice to the public, regardless of who applies for the designation.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
8.	Regulated-data benchmarks	While recognizing the foundational role of the IOSCO Principles in the evolution of regulatory oversight of commodities benchmarks, one commenter was of the view that the IOSCO Principles are directed primarily toward survey-style, "assessed" benchmarks. Some of the potential for manipulation of these survey-style assessed benchmarks is inherently mitigated in respect of benchmarks that are determined based on transactions executed on an exchange by: (a) the source of input data (i.e., transactions executed on the exchange); (b) the fact that trading on the exchange is monitored for market manipulation; and (c) the processes for systematically collecting the input data and systematically calculating the benchmark. Accordingly, this commenter believes the proposed provisions for regulated-data commodity benchmarks are generally appropriate for commodity benchmarks determined on the basis of transactions executed on an exchange.	We thank the commenter for their comment.
9.	Benchmark individuals	Another commenter indicated that the term "benchmark individual", as defined in s.1.(1), would include the journalists who produce PRA price assessments as well as the market commentaries, news and other information. Many PRAs do not have a separate dedicated team of "benchmark individuals" who focus exclusively, or even primarily, on the provision of benchmarks; instead all journalists can be expected at various times to participate in the provision of benchmarks, with the result that the governance and other requirements that the CSA are proposing to add from the regime for administrators of financial benchmarks could cover their entire editorial operation.	We thank the commenter for their comment. We do understand that imposing inappropriate or unduly onerous requirements is problematic and will consider regulatory burden before making any decision to designate a benchmark or benchmark administrator. In addition, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may not be appropriate for a particular designated commodity benchmark or designated commodity benchmark administrator.
10.	Definition of "commodity benchmark"	One commenter does not think that a distinction between intangible and tangible commodities in the definition of "commodity benchmark" is appropriate. Rather, this commenter suggested including in the definition benchmarks based on products that are closely related to the functioning of the physical commodity market, in a like manner as benchmarks on the	In response to this comment, we have revised the definition for "commodity benchmark" in the Final Amendments to remove the reference to a commodity that is "intangible". In addition, we have revised 25-102 CP to provide additional guidance regarding the scope of the definition

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		related physical commodities, citing examples including: (a) environmental commodities such as carbon credits, emissions offsets and renewable energy certificates; (b) transportation and capacity commodities such as shipping capacity, pipeline capacity and, in the power markets, financial transmission rights, congestion revenue rights and similar instruments; (c) storage commodities such as natural gas storage and carbon capture storage; and (d) weather and climate.	of "commodity benchmark." If designation is requested or in the public interest, we will assess, on a case-by-case basis, benchmarks and indices on other products.
11.	Non-assessed benchmarks – adding exemptions from certain requirements (Part 8.1)	One commenter encouraged the CSA to contemplate that exemptions from certain requirements in Part 8.1 may be appropriate for a designated commodity benchmark that is determined based on physically settled transactions executed via regulated brokers where the transaction data is inputted and calculated systematically and the methodology does not involve expert judgment in the ordinary course.	Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may not be appropriate for a particular designated commodity benchmark or designated commodity benchmark administrator.

Comments Relating to Specific Parts or Sections

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
12.	S.11 *Reporting of Contraventions*	Several commenters were opposed to the requirements to report contraventions under s.11, and pointed to the approach set out in s.2.4(d) of the IOSCO Principles, as applied by the EU, which approach requires PRAs to escalate any suspicions of abuse within the contributor's organization and not to the regulator. They submitted that the CSA should take into account: (a) constitutional protections applicable to journalists and their sources; (b) the voluntary nature of contributions to PRA benchmarks and the potential adverse effect that the third-party reporting obligations on PRAs could have on contributions; (c) both IOSCO and the EU have extensively considered (a) and (b) in drafting the IOSCO Principles and EU BMR Annex II, respectively; and (d) the requirement is disproportionate in that price contributions can often appear	We thank the commenters for their comments. We have retained the requirements to report contraventions from s.11 of the Proposed Amendments to MI 25-102 because we do not believe that it would be appropriate to limit the language in s.11 to contraventions that have crystallized. We note that existing s.11 of MI 25-102 already applies to financial benchmarks that are designated. However, we recognize that the IOSCO Principles for Financial Benchmarks, the IOSCO Principles for Price Reporting Agencies and the EU BMR distinguish between financial benchmarks and commodity benchmarks with respect to the reporting of contraventions to regulators. If and to the extent that s.11 would impose inappropriate or unduly

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		anomalous, but for entirely legitimate reasons rather than abuse. One commenter pointed out that the corresponding requirement in the EU BMR applies neither to regulated data benchmarks nor to commodity benchmarks, and asked the CSA to align with the EU BMR by exempting designated commodity benchmarks from the application of s.11(1), or in the alternative, to limit the scope of ss.11(1) and (2) by focusing the requirement on monitoring the input data for the designated commodity benchmark(s) that are administered by the designated benchmark administrator.	onerous obligations on a particular administrator of a commodity benchmark that is designated or applies to be designated, or that could otherwise adversely affect the voluntary contribution of input data, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions.
13.	S.19 *Benchmark statement*	While acknowledging that the proposed approach is to apply certain baseline requirements to designated commodity benchmarks in a standardized manner across all types of designated benchmarks, one commenter was of the view that certain requirements in s.19 are duplicative, overly granular and are inappropriate for the regulation of commodity benchmarks and in particular regulated data commodity benchmarks. This commenter urged the CSA to provide additional guidance in 25-102 CP on the expected detail or content of each of the required fields. In addition, this commenter encouraged the CSA to either: (a) exempt a designated regulated data commodity benchmark from the application of s.19; or (b) create a distinct, streamlined provision in Part 8.1 that would apply to designated commodity benchmarks, with appropriate exemptions for designated regulated data commodity benchmarks. The commenter offered that option (b) could be streamlined as follows: • S.19(1)(a)(ii)(B) - This provision requires a designated benchmark administrator to indicate, in writing, the dollar value of the part of the market or economy the designated benchmark is intended to represent. This commenter interpreted this as requiring the benchmark administrator to make a written	The provisions pertaining to benchmark statements are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate in our market and do not consider them to be unduly onerous. In addition, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may not be appropriate for a particular designated commodity benchmark or designated commodity benchmark administrator.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		statement on the size of the overall relevant market - including all market activity that is not included in the data on which the benchmark is determined. Absent publicly available data, this commenter was of the view that it is inappropriate to require a benchmark administrator to specify the size of a market for which it does not have full information. The administrator of a benchmark based on executed transactions has information on the size of market activity represented by those transactions; it may not, however, have information on transactions that are executed outside of its market and for which public reporting is not available. For the purposes of this requirement, different benchmark administrators may use different measures of the relevant market or their proportion thereof, which makes comparison difficult. This commenter continued on to state that if their interpretation was incorrect and the requirement is to publicly state the dollar value of the part of the market that is included in the calculation of the benchmark, and not the dollar value of the overall market, they encouraged the CSA to clarify this in 25-102 CP, or at least in the public summary of responses to the comments on the Proposed Amendments to MI 25-102. • S.19(1)(b) - This provision requires a benchmark administrator to explain the circumstances in which the designated benchmark might, in the opinion of a reasonable person, not accurately and reliably represent that part of the market or economy the designated benchmark is intended to represent. The commenter submitted that this provision is an unnecessary regulatory burden in respect of a designated regulated data commodity benchmark. If the benchmark administrator clearly discloses (a) the methodology;	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		and (b) the market activity represented in each determination of the benchmark, market participants will have sufficient information to make their own determination of whether the benchmark adequately represents the part of the market that the designated benchmark is intended to represent. • S.19(1)(c) - The requirements of this paragraph are duplicative of the requirements relating to disclosure of the methodology. This commenter acknowledged the value to be gained by the market from setting out the methodology, including methodology related to the exercise of expert judgement; however, they thought duplicative disclosure requirements do not add additional value for market participants and create an additional risk of divergence between documents. • S.19(1)(e) - This provision requires the benchmark statement to provide notice that factors, including external factors beyond the control of the designated benchmark administrator, could necessitate changes to, or the cessation of, the designated benchmark. This commenter submitted that the benefit of this requirement to designated commodity benchmark users does not outweigh the additional regulatory burden. In light of the requirement in s.17(2) to publish and seek comment on any significant change to the methodology of a designated commodity benchmark, it is unclear what additional risk s.19(1)(e) is intended to mitigate. The users of a designated commodity benchmark are sophisticated market participants that will carefully select their preferred benchmark from a number of pricing tools available in the market. These sophisticated users are capable of determining on their own that	

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		changes to or the cessation of a benchmark may be necessary.	
14.	S.40.3 *Provisions of MI 25-102 not applicable to designated commodity benchmarks*	One commenter suggested that the CSA could improve the readability of the Proposed Amendments to MI 25-102 by specifying in s.40.3 that Divisions 2 and 3 of Part 8 are not applicable to designated commodity benchmarks. See also the summarized comments in Item 20 below.	We thank the commenter for their comments. We agree that Divisions 2 and 3 of Part 8 generally will not be applicable to designated commodity benchmarks, but we already consider this intent to be sufficiently clear in the Proposed Amendments to MI 25-102 and therefore we are retaining the proposed language.
15.	S.40.4 *Control Framework*	One commenter submitted that requiring a benchmark administrator to re-write its control and oversight frameworks for benchmarks designated by the CSA would be counter-productive and disproportionate to the associated risks. In addition, this commenter submitted that requirements pertaining to governance or oversight functions should not be inconsistent with existing regulatory frameworks and need to be sufficiently flexible to allow benchmark administrators to select a structure most appropriate for their businesses, rather than prescribed regardless of the type of commodity benchmark or organizational structure of the existing benchmark administrator. One commenter offered that the guiding principles established in most international legislative regimes for control frameworks relating to benchmarks are proportionality and the avoidance of excessive administrative burden. This commenter described its governance structure and control framework and submitted that due to the complexity of physical commodity markets and the non-standardized nature of many transactions, the ability to properly monitor data inputs is best managed by individuals with market expertise and good knowledge of the requirements of the methodology employed to generate an assessment or index, operating under flexible regulatory regimes rather than what is set forth in the Proposed Amendments to MI 25-102.	We thank the commenter for their comments regarding the control framework described under s.40.4 of the Proposed Amendments to MI 25-102. We have added clarification to MI 25-102 that s.40.3 (s.40.4 in the Proposed Amendments to MI 25-102) applies to a designated benchmark administrator's operations only to the extent that those operations are related to the administration and provision of the applicable designated commodity benchmark. We have otherwise retained these provisions since we consider them to be appropriate for the Canadian market and do not consider them to be unduly onerous. Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may not be appropriate for a particular designated commodity benchmark or designated commodity benchmark administrator.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		Several commenters stated this requirement is not present in either the IOSCO Principles or the EU BMR Annex II and is not appropriate. They submitted that they are already subject to a rigorous external audit against the IOSCO Principles, and that such annual published audits should provide the CSA and stakeholders in the markets with sufficient reassurance. One of these commenters stated, in relation to the requirements contained in s.40.4, that the CSA should be able to rely on PRAs implementing appropriate controls and procedures as necessary and proportionate, keeping in mind that their benchmark activities: (a) take place in a competitive benchmark market characterized by product substitutability from competing suppliers; (b) do not pose systemic risks; and (c) represent a small percentage of a PRA's overall activities and business income. This commenter concluded by submitting that the CSA should not interfere in the governance of media companies.	
16.	S.40.8 *Quality and integrity of the determination of a designated commodity benchmark*	S.40.8(2)(a) - One commenter was of the view that the default expectation of a methodology should be that all executed transactions that qualify as input data for a particular determination should be included in the determination. The commenter encouraged the CSA to state this expectation in s.40.8(2)(a) or in the related guidance in 25-102 CP. Ss.40.8(2) and 40.10(1)(f)(iii) - One commenter suggested a retreat from participation in the price assessment and index formation process could occur if benchmark administrators are required to make a judgement call in identifying communications that might involve manipulation or attempted manipulation of a designated commodity benchmark. This commenter submitted that a more calibrated approach is contained in the IOSCO Principles, which provide that PRAs are to identify anomalous data, as opposed to suspicious data.	We thank the commenters for their comments regarding s.40.8 of the Proposed Amendments to MI 25-102 (s.40.7 of the Final Amendments). We added guidance in paragraph 40.4(2)(j) [*Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark*] of the CP on our expectation that, where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. We note that s.6(d) of Annex II of the EU BMR requires commodity benchmark administrators to establish and employ procedures to identify anomalous or suspicious data and keep records of decisions to exclude transaction data from the administrator's benchmark

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		Ss.40.8(2)(d) and (e) - One commenter was of the view that the policies and procedures required under these paragraphs are not relevant in respect of designated regulated data commodity benchmarks. To streamline the compliance burden, the commenter encouraged the CSA to explicitly exempt these types of designated commodity benchmarks from the application of these paragraphs.	calculation process. Therefore, we have retained these provisions since we consider them to be aligned with the EU BMR.
17.	S.40.10 *Integrity of the process for contributing input data*	One commenter believed that s.40.10 is not relevant or appropriate to designated regulated data commodity benchmarks, as all the input data for such benchmarks are from transactions executed on an exchange and collected systematically. To streamline the compliance burden, the commenter encouraged the CSA to exempt designated regulated data commodity benchmarks from the application of this section. In the alternative, the commenter urged the CSA to clarify their expectations in 25-102 CP regarding how s.40.10 would apply in respect of a designated commodity benchmark determined solely on the basis of transactions executed via regulated brokers where the transaction data is collected systematically for input into the determination of the designated commodity benchmark.	We thank the commenter for their comment. In response to this comment, we have added additional guidance to 25-102 CP to clarify that s.40.9 (s.40.10 in the Proposed Amendments to MI 25-102) would not apply to a benchmark that is dually designated as a commodity benchmark and a regulated-data benchmark.
18.	S.40.11 *Governance and control requirements*	One commenter encouraged the CSA to review specifically the paragraphs in s.40.11(3) with an eye to appropriately reducing the regulatory burden in respect of a designated commodity benchmark. One commenter submitted that ss.40.11(3)(a) and (c) go beyond what is required to establish a regulatory regime that satisfies the dual objectives of the CSA, namely to promote the continued provision of commodity benchmarks that are free from manipulation and to facilitate a determination of equivalence with certain foreign regulations. Specific requirements in respect of, for example, succession planning, are not required under the EU BMR, and inappropriately place the CSA in the position of regulating the effective	We have added clarification to MI 25-102 that s.40.10 (s.40.11 in the Proposed Amendments to MI 25-102) applies to a designated benchmark administrator's operations only to the extent that those operations are related to the administration and provision of the applicable designated commodity benchmark. We have otherwise retained these provisions since we consider them to be appropriate for the Canadian market and do not consider them to be unduly onerous. Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may not be appropriate for a particular designated commodity benchmark or designated commodity benchmark administrator, particularly

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		management of a designated benchmark administrator's human resources. The commenter also submitted that the requirement in s.40.11(3)(e) is unduly burdensome in a normal course determination of a designated regulated data commodity benchmark, where the input data (i.e., executed transactions) is collected systematically for input into the determination. By normal course, this commenter was referring to each determination where the minimum volume thresholds set out in the methodology disclosed under s.40.5 are met and no expert judgement or alternative data was involved in the determination. The commenter encouraged the CSA to adopt a risk-based approach to balance the benefit of senior level approvals of determinations and processes with the regulatory burden imposed by requiring senior level approval of each determination. This is particularly relevant where the same input data and processes are used to calculate a benchmark family. Specifically, this commenter encouraged the CSA to clarify that, for a designated regulated data commodity benchmark where the input data (i.e., executed transaction data) is collected systematically for input into the determination, senior-level approval of each determination: (a) may be made at the benchmark family level, rather than at the level of each specific designated benchmark within the same market and calculated based on the same input data; and (b) is required at the level of each specific designated benchmark on an exceptions basis only - i.e., in the case of a particular determination that was based on alternative data, expert judgement or any other input permitted under the methodology as disclosed under s.40.5, including as a result of transaction volume that does not meet the minimum volume thresholds set out in the methodology. One commenter submitted that it is neither practical, nor desirable, to impose on an editorial operation a governance regime that has been designed for financial firms,	with respect to a benchmark dually designated as a commodity and regulated-data benchmark that is based solely on executed transactions and no expert judgment is exercised in the determination. In addition, if applicable to an application for designation, we will consider whether it is appropriate to allow a benchmark administrator to group benchmarks into families of benchmarks for the purposes of satisfying various requirements in MI 25-102. For clarity, we may give consideration to whether it is appropriate to treat more than one benchmark as being a family of benchmarks if the benchmarks are calculated using the same input data and process and such benchmarks provide measure of the same or similar market or economic reality.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		particularly as the provision of benchmarks is a relatively small part of a PRA's overall editorial activities. This commenter also suggested that the external audits carried out and published annually in accordance with the IOSCO PRA Principles, should provide the CSA and stakeholders in the markets with sufficient reassurance. Another commenter urged the CSA to remain mindful that references to "benchmark individuals" in s.40.11(3) are references to the journalists who produce PRA price assessments. Regarding ss.40.11(1) and (2), this commenter respectfully asked the CSA not to intervene in the organizational structures of what are editorial operations, but rather to leave this to the PRAs who have extensive experience in producing editorially-based services. The commenter submitted that their journalists operate according to a code of conduct that sets rigorous standards appropriate for an editorial operation, and that this code of conduct is reviewed and updated as necessary, and supported by a continuous program of training. Regarding the provisions in s.40.11(3), the commenter submitted that while these sections are intended to mirror ss.2.5 to 2.8 of the IOSCO Principles and are therefore, in principle, appropriate, the CSA has redrafted these provisions to align them more closely to the language used for financial benchmarks. The commenter pointed out that their preference is to retain IOSCO's language as the EU BMR has done in Annex II. The commenter submitted that the IOSCO text was carefully crafted to take into account the particular characteristics of PRAs and their price assessment activities.	
19.	S.40.14 *Assurance report on designated benchmark administrator*	One commenter submitted that the 10-day publication period contained in s.40.14(3) is unreasonably short, noting that both the EU BMR and UK BMR require publication within three months after the audit is completed. The commenter encouraged the CSA to align the required publication timing to the corresponding requirement in the EU BMR and UK BMR, in respect	We have retained this provision since we consider it to be appropriate for the Canadian market and do not consider it to be unduly onerous. However, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions from provisions of MI 25-102 that may be

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		of designated commodity benchmarks or at least certain types thereof, taking a risk-based approach.	inappropriate or overly onerous for a particular designated commodity benchmark or designated commodity benchmark administrator.

Specific Questions of the CSA

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
20.	*Interpretation* - The definition for "commodity benchmark" excludes a benchmark that has, as an underlying interest, a currency or a commodity that is intangible. Is the scope of the proposed definition, and the guidance in the CP, appropriate to cover the commodity benchmark industry in Canada? Please explain with concrete examples.	Several commenters urged the CSA to align their definition for "commodity benchmark" with the EU BMR, and suggested that for a commodity benchmark to become subject to the Canadian regime it must also be "used" for defined financial services purposes, such as those listed in EU BMR Article 3(7). The commenters submitted that the current definition is not clear and leads to regulatory uncertainty. Therefore, they argued that the definition should be clarified to indicate that an established linkage, beyond mere publication of a price assessment for information purposes, but to some kind of trading purpose, is required to fulfil the definition, in alignment with the IOSCO Principles and the EU BMR. One commenter believed it is important for administrators of commodity benchmarks to have a consistent set of regulations for designated commodity benchmarks based on trades in the physical commodity and those based on trades in products that are closely related to the functioning of the physical commodity market. The commenter did not think that whether a particular commodity is intangible or can be delivered digitally are appropriate characteristics for distinguishing between: (a) instruments and products that are closely related to the functioning of the physical commodity market; and (b) crypto-currencies and other digital assets that are not closely related to the functioning of a physical commodity market. The commenter cited the following examples of products that are actively traded and are closely related to the functioning of the physical commodity market:	We have revised the definition for "commodity benchmark" in the Final Amendments to remove the reference to a commodity that is "intangible". In addition, we have revised 25-102 CP to provide additional guidance regarding the types of benchmarks that we may potentially consider to be commodity benchmarks. If designation is requested or in the public interest, we will assess, on a case-by-case basis, benchmarks and indices on other products. Pursuant to the definitions for "benchmark" in Appendix A to MI 25-102 and in the respective securities acts of Ontario, Québec, British Columbia and Alberta, the use of a benchmark as a reference is a factor in determining whether the benchmark properly falls within the scope of MI 25-102.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		• environmental commodities such as carbon credits, emissions offsets and renewable energy certificates; • transportation and capacity commodities such as shipping capacity, pipeline capacity and, in the power markets, financial transmission rights, congestion revenue rights and similar instruments; • storage commodities such as natural gas storage and carbon capture storage; and • weather and climate. This commenter submitted that a benchmark based on any of the above, if regulated, should be regulated as a designated commodity benchmark in line with a benchmark for the physical commodity market to which it closely relates.	
21.	*Applicable Requirements from the Financial Benchmarks Regime* - Despite a different proposed regime for commodity benchmarks, the [securities regulatory authorities in Canada] expect that certain requirements, applicable to financial benchmarks, would also be applicable, sometimes with minor modifications, to commodity benchmarks. These include, for example, the requirements to report contraventions (section 11), the requirement for a control framework (section 40.4), and governance and control requirements (section 40.11). Are these requirements appropriate in the context of commodity benchmarks? Please explain with concrete examples.	Several commenters strongly opposed these requirements and stated that the application of applicable requirements from the financial benchmarks regime was disproportionate, unworkable, and in breach of constitutional protections for journalism, citing the requirements to report contraventions (s.11), the requirement for a control framework (s.40.4), and the governance and control requirements (s.40.11). The CSA should consider that: (a) PRAs operate in a competitive information market where substitute products are generally available; (b) PRAs have no "skin in the game"; (c) PRA benchmarks do not pose systemic risks; (d) revenues generated from benchmarks are not material in the overall context of PRA publishing revenues; and (e) most widely used commodity benchmarks are produced by journalists. Commenters emphasized the risk that regulatory intervention could discourage the voluntary contributions to PRA benchmarks, leading in turn to less reliable benchmarks. They submitted that this was why neither the IOSCO Principles nor the EU BMR	We thank the commenters for their comments. As previously indicated, if and to the extent that these requirements are inappropriate or unduly onerous for a particular benchmark or benchmark administrator or that could otherwise adversely affect the voluntary contribution of input data, Part 9 of MI 25-102 provides the authority to grant discretionary exemptions.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		impose obligations on contributors to commodity benchmarks (on the basis of a detailed review by both IOSCO and the EU). They pointed to a statement from the Ofgem, the UK energy regulator: "*Some types of regulation may introduce risks to the process. In particular, greater regulatory scrutiny of the information flows could introduce a perception of risk (irrespective of whether the risk is real) to those providing the information. Regulation should increase the quality of the information provided, but could reduce the willingness of parties to provide it. Information is provided on a voluntary basis and the simplest way to mitigate this risk may be to withdraw cooperation and decline to provide it. This in turn can lead to a breakdown in the quality of the price assessment process, with negative consequences for the market and for consumers*." One of these commenters also stated that PRAs are editorial entities staffed by journalists, and that it is not the role of journalists to report their sources to the CSA, or to have to configure their editorial systems and controls to facilitate the following (as the CSA suggests): "we expect the benchmark administrator's systems and controls would enable the designated benchmark administrator to provide all relevant information to the regulator or securities regulatory authority." The commenter asked the CSA to uphold safeguards for journalists, which are essential to their vital role in bringing transparency to commodity markets. Another commenter submitted that a set of baseline requirements applied in a standard manner in respect of all designated benchmarks, regardless of type of benchmark, will promote consistency and best practices among benchmark administrators. However, this commenter also stated that certain of the standard requirements are unnecessarily prescriptive and difficult to comply with, at least in respect of regulated data commodity benchmarks.	
22.	*Dual Designation as a Commodity Benchmark and a Critical Benchmark* - Where the underlying	One commenter suggested that the CSA simply follow the approach	We thank the commenters for their comments.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
	commodity is gold, silver, platinum or palladium, a benchmark dually designated as a commodity benchmark and a critical benchmark would be subject to the requirements applicable to critical financial benchmarks, rather than critical commodity benchmarks. Do you think that there are benchmarks in Canada that could be dually designated as critical commodity benchmarks where the underlying is gold, silver, platinum or palladium, and is there a need to provide for the specific regulation of such benchmarks?	adopted in the IOSCO Principles and the EU BMR. One commenter was of the view that multiple designations could cause market confusion and be very difficult for benchmark administrators to administer. The criteria for designating a commodity benchmark as "critical" are also unclear and do not appear consistent with the EU BMR. In response to the question posed by the CSA, this commenter also stated they were not aware of any such benchmarks.	We have retained the concept and prospect of dual designation as a commodity benchmark and critical benchmark. We consider this approach to be appropriate for the Canadian market because it supports the reduction of market risk, thereby protecting Canadian investors and other Canadian market participants. We disagree with the commenter's views that this approach will cause market confusion or that it will be overly onerous to administer.
23.	*Dual Designation as a Commodity Benchmark and a Regulated-Data Benchmark* - Subsection 40.2(4) provides for certain exemptions for benchmarks dually designated as commodity and regulated-data benchmarks, where such benchmarks are determined from transactions in which the transacting parties, in the ordinary course of business, make or take physical delivery of the commodity. Is carving out such a subset of dually-designated benchmarks necessary for appropriate regulation of commodity benchmarks in Canada? If so, are the exemptions provided for, which generally mirror exemptions for regulated-data benchmarks from Parts 1 to 8 requirements, appropriate? Please explain with concrete examples.	One commenter suggested that the CSA simply follow the approach adopted in the IOSCO Principles and the EU BMR. One commenter responded to the question in the negative, submitting that it is inconsistent and disproportionate for the CSA to have powers to designate regulated data benchmarks as commodity benchmarks and *vice versa*. This commenter suggested that the EU BMR has created discrete regulation applicable to each, since the two are considered mutually exclusive. This commenter saw no rationale for a dual designation regime, which could cause market confusion and would be very difficult for benchmark administrators to implement and administer. There is a lack of clarity in the parameters for regulated-data benchmarks determined from transactions where, in the ordinary course of business, parties make or take physical delivery of the commodity. Many physical commodity price assessments are markets where parties take physical delivery, regardless of whether the data are regulated. This commenter continued on to state that while it is true that certain commodity benchmarks use regulated data, all dimensions of a commodity market combine to represent value of the underlying commodity and hence dual designation is unnecessary and cumbersome, with an unclear regulatory objective. This commenter recommended that given the reduced	We thank the commenters for their comments. We have retained the concept and prospect of dual designation as a regulated-data benchmark and commodity benchmark. We consider this approach to be appropriate for the Canadian market because it supports the reduction of market risk, thereby protecting Canadian investors and other Canadian market participants. We disagree with the commenter's views that this approach will cause market confusion or that it will be overly onerous to administer. In addition, a party applying for designation as a designated commodity benchmark administrator may apply for exemptive relief from certain requirements in MI 25-102 if such requirements would present an undue administrative burden to the commodity benchmark administrator and exemptions from such requirements would not be prejudicial to the public interest in the specific circumstances.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		regulatory burden placed on regulated data benchmarks under the EU BMR, it would be more straightforward to have a regime that applies to commodity benchmarks regardless of whether they use regulated data. Another commenter strongly agreed with the proposed dual designation approach. The commenter thought this risk-based approach appropriately reduces regulatory burden in those areas while still appropriately addressing the regulatory concerns applicable to survey-style indices that are based on assessments of bilateral, OTC transaction information. Some of the same safeguards are present in commodity benchmarks determined based on physically settled transactions executed via regulated broker, where the benchmark methodology does not involve expert judgement in the ordinary course. Specifically, the type of input data and the systematic processes for collecting input data and calculating the benchmark can be helpful mitigants against some of the selective reporting issues and potential attempted manipulation that may occur with a survey-style, assessed benchmark. Nevertheless, the commenter believed that designated regulated data commodity benchmarks should be exempted from the application of certain additional provisions. Further, this commenter encouraged the CSA to consider flexibility in the application of s.40.2(3), in order to facilitate appropriate, risk-based regulation under Part 8.1 of benchmarks based on trading in financially-settled products directly tied to the pricing or functioning of a physical commodity market.	
24.	*Input Data* - We have distinguished between input data that is "contributed" for the purposes of [MI 25-102] (see subsection 1(3)), and data that is otherwise obtained by the administrator. Certain provisions in Part 8.1 impose requirements on a designated benchmark administrator if input data is "contributed", whereas other obligations are imposed irrespective of how input data is	Several commenters suggested that the CSA simply follow the approach adopted in IOSCO Principle 2.2 and the EU BMR, and queried whether the variations from the IOSCO text were necessary. One of these commenters pointed out that its objective is to ensure that all input data used by its editors to inform price assessments is of the highest	For Canadian legislative drafting purposes, MI 25-102 uses different language than the EU BMR. However, the language in MI 25-102 is comparable to the language in the EU BMR.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
	obtained. Where the word "contributed" is not specifically used or implied, we mean all the input data, not only "contributed" data. Taking into consideration the obligations imposed on designated benchmark administrators of commodity benchmarks, through the use or lack of use of "contributed", are the obligations imposed under the provisions of Part 8.1 appropriate? Please explain with concrete examples.	quality, and therefore its focus is on controls and management of input data, rather than whether it is contributed or non-contributed.	
25.	*Input data* - The guidance on paragraph 40.8(2)(a) of [Proposed Changes to 25-102 CP] states that, where consistent with the methodology, we expect the administrator to give priority to input data in a certain order. Does the order of priority of use of input data for purposes of determination of a commodity benchmark, as stated in [Proposed Changes to 25-102 CP], reflect the methodology used for your commodity benchmarks? Are there any other types of input data that should be specified in the order of priority?	One commenter suggested that the CSA simply follow the approach adopted in IOSCO Principle 2.2. One commenter referred to the description of how they prioritized data, as contained in their assessments methodology guide found on their website, and submitted that their approach is sound and consistent with regulatory objectives, including under the IOSCO Principles and the EU BMR.	We thank the commenters for their comments regarding order of priority of use of input data in the Proposed Amendments to MI 25-102. These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate. However, we have revised the guidance in section 40.4 of 25-102 CP to clarify our general expectations regarding the priority given to different types of input data in the methodology of a designated commodity benchmark.
26.	*Methodology* - Under the Proposed Amendments, designated administrators are expected to ensure that particular requirements are met whenever their methodology is implemented and a designated benchmark is determined. Are the elements of the methodology that we propose to regulate, specifically within section 40.5, sufficiently clear such that an administrator would be able to comply with the requirements?	Several commenters suggested that the CSA simply follow the approach adopted in the IOSCO Principles and queried whether the variations from the IOSCO text were necessary. One of these commenters pointed out that s.40.5(1) is vague and seemingly tautological. In order to maintain confidence in a benchmark, an administrator's priority is to follow a published methodology and to regularly examine its methodologies for the purpose of ensuring they reliably reflect the physical market under assessment, and any change should take into account the views of relevant users. The commenter submitted that it follows this approach, which is consistent with the IOSCO Principles and the EU BMR approach, which require transparency and market consultation when material changes are being made to a benchmark methodology.	We thank the commenters for their comments regarding the elements of the methodology that we propose to regulate in the Proposed Amendments to MI 25-102. These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate.
27.	*Conflicts of Interest* - Paragraphs 40.13(1)(a), (b) and (d) mirror the	Several commenters did not believe that it is appropriate to amend the	We thank the commenters for their comments regarding the conflict of

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
	conflict of interest requirements under paragraphs 10(1)(a), (b) and (d) of [MI 25-102], to ensure that certain overarching requirements apply to all designated benchmark administrators. Is this approach appropriate? Do commodity benchmark administrators face potential conflicts of interest that are not addressed by these or the other conflict of interest provisions?	conflict of interest provisions in the IOSCO Principles to align them more closely with the regime for financial benchmarks. The PRA editorial model is not susceptible to conflicts of interest as financial benchmarks often are, because PRAs have no financial interest in whether market prices rise or fall, as their service revenues are subscription-based. They submitted that the CSA should instead implement the proportionate approach taken in the IOSCO Principles, as the EU BMR has done in Annex II. They stated that approach worked well and there was no reason to amend it. One commenter believed it is appropriate to identify and avoid conflicts of interest where an individual directly involved in the provision of a commodity benchmark may be compromised due to a personal relationship or personal financial interests, the objective being to protect the integrity and independence of the provision of the benchmark. This commenter stated that they maintain and strictly enforce their conflicts of interest policy, as is required under the IOSCO Principles and EU BMR.	interest requirements that we propose in the Proposed Amendments to MI 25-102. These provisions are based on corresponding provisions in the EU BMR. We have retained these provisions since we consider them to be appropriate.
28.	*Assurance Report on Designated Benchmark Administrator* – Subsection 40.14(2) requires a designated benchmark administrator of a designated commodity benchmark, whether or not the benchmark is also designated as a critical benchmark, to engage a public accountant to provide a limited or reasonable assurance report on compliance once in every 12-month period. In contrast, pursuant to subsection 36(2), an administrator of a designated interest rate benchmark is required to engage a public accountant to provide such a report, once in every 24-month period, albeit a report is required 6 months after the introduction of a code of conduct for benchmark contributors. Given the general risks raised by the activities of administrators of commodity benchmarks versus of interest rate benchmarks, are the proposed	Several commenters suggested the CSA follow the approach adopted in the EU BMR by providing for the alternative option of an assurance report based on compliance with IOSCO Principles, because it would not be feasible, or proportionate, for designated commodity benchmark administrators to have to undergo separate audits annually against both the IOSCO Principles and Canada's benchmark regime. The commenters indicated that although they may not find it reasonable for administrators of commodity benchmarks to be required to undergo annual audits, when administrators of interest rate benchmarks are required to do so (only) every 2 years, this is the internationally-accepted practice. One commenter was of the view that a designated regulated data commodity benchmark should not be subject to a more frequent reasonable assurance report requirement than is applied to	We thank the commenters for their comments regarding the assurance report requirements in the Proposed Amendments to MI 25-102. However, we have retained the requirements in s.40.13(2) (s.40.14(2) in the Proposed Amendments to MI 25-102) because we consider them to be appropriate for the Canadian market. A party applying for designation as a designated commodity benchmark administrator may apply for exemptive relief from certain requirements in MI 25-102 if such requirements would present an undue administrative burden to the commodity benchmark administrator and exemptions from such requirements would not be prejudicial to the public interest in the specific circumstances.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
	requirements appropriate? Please explain your response.	designated financial benchmarks. In such case, there is less likelihood of manipulation of the underlying transaction data. Accordingly, this commenter submitted that the additional regulatory burden of a more frequent assurance report requirement for designated regulated data commodity benchmarks would outweigh any incremental benefit to users of a designated regulated data commodity benchmark.	
29.	*Concentration Risk* – Pursuant to subsection 20(1), designated benchmark administrators of designated commodity benchmarks would be subject to certain obligations when they cease to provide a designated commodity benchmark. However, market users may potentially have more limited benchmarks to utilize for purposes of their transactions (concentration risk) where a designated benchmark administrator that administers a number of designated commodity benchmarks unexpectedly delays in providing or ceases to provide those benchmarks. Do you think that additional requirements should be added under Part 8.1 to address this concentration risk? If yes, what requirements should be added?	Several commenters did not believe that additional requirements are necessary to address concentration risk as PRAs operate in a competitive information market where product substitutability is generally available. One commenter also submitted that, as per the EU BMR, a benchmark administrator should be required to maintain a certain level of continuity, but such an approach should be proportional. The commenter also offered that the CSA should avoid excessive administrative burden on administrators whose benchmarks pose less cessation risk to the wider financial system, including where there are alternatives available from competitors, which they considered to be generally the case with regard to commodity benchmarks. One commenter was of the view that a market participant who utilizes a benchmark for purposes of their transactions bears the responsibility to ensure it has made provision for a fallback, or backup, benchmark in its contracts.	We thank the commenters for their comments regarding concentration risk. As a result of these comments, we do not believe that further changes to the provisions in the Proposed Amendments to MI 25-102 are appropriate.
30.	*Designated Benchmarks* – If your organization is a benchmark administrator of commodity benchmarks, please: (a) advise if you intend to apply for designation under MI 25-102, (b) advise of any benchmark you intend to also apply for designation under MI 25-102, and (c) indicate the rationale for your intention.	None of the commenters had the immediate intention of applying for designation in Canada. However, one commenter indicated that the best approach for the CSA would be to pursue full alignment with the IOSCO Principles, which would make the Canadian regime more attractive. One commenter thought it was unclear what contracts the benchmark administrator must have with Canada in order for the measures to apply, and whether contracts with market	See our response to Item 6 above.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		participants other than in the EU are in scope. Another commenter submitted that the proposed voluntary designation option could, in principle, prove attractive for administrators of commodity benchmarks seeking international regulatory credibility for their benchmarks, but that the Canadian benchmark regime would have to be aligned closer to the IOSCO Principles than is currently proposed for this to be a viable option.	
31.	*Anticipated Costs and Benefits* – The Notice sets out the anticipated costs and benefits of the Proposed Amendments (in Ontario, additional detail is provided in Annex F). Do you believe the costs and benefits of the Proposed Amendments have been accurately identified and are there any other significant costs or benefits that have not been identified in this analysis? Please explain and/or identify furthers costs or benefits.	One commenter suggested that the Proposed Amendments to MI 25-102 provide no acknowledgement or framework for those benchmark administrators based outside of Canada and, as a result, fail to consider one of the most significant costs which will be faced by those benchmark administrators subject to other benchmark regulations, being costs associated with dual supervision and complying with regulation in multiple jurisdictions. The commenter stated that such costs can be reduced by either: (a) explicitly excluding commodity benchmarks; or (b) making the requirements as close as possible to the IOSCO Principles and EU BMR to reduce administrative burden and implementation costs. Another commenter submitted that the anticipated costs and benefits analysis does not adequately assess expected potential costs. They explained that the brief discussion relies in large part on: (a) intention to not designate any commodity benchmarks; and (b) the Proposed Amendments to MI 25-102 being based on the IOSCO Principles which are directed primarily toward assessed, survey-style commodity benchmarks. If an analysis of anticipated costs and benefits is to be provided, the commenter suggested the analysis should focus on the costs of seeking designation of a benchmark administrator and a commodity benchmark and ongoing compliance with MI 25-102. With respect to the further analysis provided as local matters in Ontario, the commenter noted that the analysis focuses on incremental costs to a	We thank the commenters for their comments regarding the anticipated costs of complying with the requirements of Proposed Amendments to MI 25-102. However, we do not currently intend to designate any commodity benchmarks or benchmark administrators of commodity benchmarks and, if a benchmark administrator of a commodity benchmark were to apply for designation, we expect the benchmark administrator would have determined that the benefits of doing so would outweigh the costs.

No.	Subject (references are to current or proposed sections, items and paragraphs)	Summarized Comment	CSA Response
		benchmark administrator that is already subject to regulation in the EU or UK, and not on the anticipated costs to a commodity benchmark administrator located in Canada that is not already subject to regulation in the EU or UK. One commenter submitted that the Notice and the anticipated costs and benefit analysis appear to not anticipate the potential competitive impact of establishing a regime for regulating designated commodity benchmarks, even where there is no current intention to designate a commodity benchmark. The commenter suggested that it should be anticipated that the establishment of a regulatory regime may elicit applications for regulatory oversight for competitive purposes, particularly absent an indication of minimum absolute or proportionate transaction volume thresholds in order for the CSA to consider an application for designation.	

ANNEX B

AMENDMENTS TO
MULTILATERAL INSTRUMENT 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

1. Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators is amended by this Instrument.

2. Subsection 1(1) is amended

(a) by adding the following definitions:

"designated commodity benchmark" means a benchmark that is

(a) determined by reference to or an assessment of an underlying interest that is a commodity other than a currency, and

(b) designated for the purposes of this Instrument as a "commodity benchmark" by a decision of the securities regulatory authority;

"front office" means any department, division or other internal grouping that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;

"front office employee" means any employee or agent that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;***, and***

(b) in the definition of "subject requirements" by

(i) deleting "and***" at the end of paragraph (d),***

(ii) replacing ";***" with "***, and***" at the end of paragraph (e), and***

(iii) adding the following paragraph

(f) paragraphs 40.13(1)(a) and (b);**.**

3. Subsection 6(3) is amended

(a) by repealing paragraph (a) and substituting the following:

(a) in the case of a benchmark

(i) that is not a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8, and

(ii) that is a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3;***, and***

(b) by repealing subparagraph (b)(ii) and substituting the following:

(ii) in the case of a benchmark that is not a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8,

(ii.1) in the case of a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3, and**.**

4. Subparagraph 13(2)(c)(v) is amended by replacing the lettering of clauses "(i)***" and "***(ii)***" with "***(A)***" and "***(B)***".***

5. Section 15 is amended

(a) in subsection (4) by adding ", or front office employee,***" after "***from any front office***", and***

(b) by repealing subsection (5).

6. Paragraph 39(3)(e) is amended by replacing "conflict of interest identification and management procedures and communication controls,***" with "***measures to identify and eliminate or manage conflicts of interest, including, for greater certainty, communications controls,***".***

7. Section 40 is repealed and the following substituted:

Provisions of this Instrument not applicable in relation to designated regulated-data benchmarks

40. The following provisions do not apply to a designated benchmark administrator or a benchmark contributor in relation to a designated regulated-data benchmark:

(a) subsections 11(1) and (2);

(b) subsection 14(2);

(c) subsections 15(1), (2) and (3);

(d) sections 23, 24 and 25;

(e) paragraph 26(2)(a)**.**

8. The following Part is added:

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

Provisions of this Instrument not applicable in relation to dual-designated benchmarks

40.1.(1) Sections 30 to 33 do not apply to a designated benchmark administrator in relation to a benchmark that is

(a) a designated commodity benchmark, and

(b) a designated critical benchmark.

(2) This Part does not apply to a designated benchmark administrator in relation to a designated commodity benchmark if

(a) the benchmark is a designated critical benchmark, and

(b) the underlying interest of the benchmark is gold, silver, platinum or palladium.

(3) Subsection (4) applies to a designated benchmark administrator in relation to a designated commodity benchmark if all of the following apply:

(a) the benchmark is determined from input data arising from transactions of the commodity that is the underlying interest of the benchmark;

(b) the commodity is of a type in respect of which parties to the transactions referred to in paragraph (a), in the ordinary course of business, make or take physical delivery of the commodity;

(c) the benchmark is a designated regulated-data benchmark.

(4) The following provisions do not apply in the circumstances referred to in subsection (3):

(a) subsections 11(1) and (2);

(b) section 40.8;

(c) section 40.9, other than subparagraph (f)(ii);

(d) paragraph 40.11(2)(a);

(e) section 40.13.

Provisions of this Instrument not applicable in relation to designated commodity benchmarks

40.2. The following provisions do not apply to a designated benchmark administrator, a benchmark contributor or any other person or company specified in the provisions in relation to a designated commodity benchmark:

(a) Part 3, other than subsection 5(1) and sections 6, 11, 12 and 13;

(b) Part 4, other than section 17;

(c) sections 18 and 21;

(d) Part 6;

(e) Part 7.

Control framework

40.3.(1) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that a designated commodity benchmark is provided in accordance with this Instrument.

(2) Without limiting the generality of subsection (1), with respect to the provision of a designated commodity benchmark, a designated benchmark administrator must ensure that its policies, procedures and controls address all of the following:

(a) management of operational risk, including any risk of financial loss, disruption or damage to the reputation of the designated benchmark administrator from any failure of its information technology systems;

(b) business continuity and disaster recovery plans;

(c) contingencies in the event of a disruption to the provision of the designated commodity benchmark or the process applied to provide the designated commodity benchmark.

Methodology

40.4.(1) A designated benchmark administrator must not follow a methodology for determining a designated commodity benchmark unless

(a) the methodology is sufficient to provide a designated commodity benchmark that accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market that the benchmark is intended to represent, and

(b) the accuracy and reliability of the designated commodity benchmark are verifiable.

(2) A designated benchmark administrator must establish, document, maintain, apply and publish the elements of the methodology of the designated commodity benchmark, including, for greater certainty, all of the following:

(a) all criteria and procedures used to determine the designated commodity benchmark, including the following, as applicable:

(i) how input data is used;

(ii) the reason that a reference unit is used;

(iii) how input data is obtained;

(iv) identification of how and when expert judgment may be exercised;

(v) any model, method, assumption, extrapolation or interpolation that is used for analysis of the input data;

(b) the procedures reasonably designed to ensure that benchmark individuals exercise expert judgment in a consistent manner;

(c) the relative importance assigned to the criteria used to determine the designated commodity benchmark, including, for greater certainty, the type of input data used and how and when expert judgment may be exercised;

(d) any minimum requirement for the number of transactions or for the volume for each transaction used to determine the designated commodity benchmark;

(e) if the methodology of the designated commodity benchmark does not require a minimum number of transactions or minimum volume for each transaction used to determine the designated commodity benchmark, an explanation as to why a minimum number or volume is not required;

(f) the procedures used to determine the designated commodity benchmark in circumstances in which the input data does not meet the minimum number of transactions or the minimum volume for each transaction required in the methodology of the designated commodity benchmark, including, for greater certainty,

(i) any alternative methods used to determine the designated commodity benchmark, including, for greater certainty, any theoretical estimation models, and

(ii) if no transaction data exists, procedures to be used in those circumstances;

(g) the time period during which input data must be provided;

(h) the means used to contribute the input data, whether electronically, by telephone or by other means;

(i) the procedures used to determine the designated commodity benchmark if one or more benchmark contributors contribute input data that constitutes a significant proportion of the total input data for the determination of the designated commodity benchmark, including specifying what constitutes a significant proportion of the total input data for the determination of the benchmark;

(j) the circumstances in which transaction data may be excluded in the determination of the designated commodity benchmark.

Additional information about the methodology

40.5. A designated benchmark administrator must, with respect to the methodology of a designated commodity benchmark, publish all of the following:

(a) the rationale for adopting the methodology, including, for greater certainty,

(i) the rationale for any price adjustment techniques, and

(ii) a description of why the time period for the acceptance of input data is adequate for the input data to accurately and reliably represent the value of the underlying interest of the designated commodity benchmark;

(b) the process for the internal review and the approval of the methodology referred to in section 40.6 and the frequency of those reviews and approvals;

(c) the process referred to in section 17 for making significant changes to the methodology.

Review of methodology

40.6. A designated benchmark administrator must, at least once every 12 months, carry out an internal review and approval of the methodology of each designated commodity benchmark that it administers to ensure that the designated benchmark administrator complies with subsection 40.4(1).

Quality and integrity of the determination of a designated commodity benchmark

40.7.(1) A designated benchmark administrator must specify, and document and publish a description of, the commodity that is the underlying interest of a designated commodity benchmark.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the quality and integrity of each determination of a designated commodity benchmark, including for greater certainty, policies and procedures reasonably designed

(a) to ensure that input data is used in accordance with the order of priority specified in the methodology of the designated commodity benchmark,

(b) to identify transaction data that a reasonable person would conclude is anomalous or suspicious,

(c) to ensure that the designated benchmark administrator maintains records of each decision, including the reasons for the decision, to exclude transaction data from the determination of the designated commodity benchmark,

(d) so that a benchmark contributor is not discouraged from contributing all of its input data that meets the designated benchmark administrator's criteria for the determination of the designated commodity benchmark, and

(e) to ensure that benchmark contributors comply with the designated benchmark administrator's quality and integrity standards for input data.

Transparency of determination of a designated commodity benchmark

40.8. A designated benchmark administrator must publish for each determination of a designated commodity benchmark, as soon as reasonably practicable, all of the following:

(a) an explanation of how the designated commodity benchmark was determined, including, for greater certainty, all of the following:

(i) the number of transactions and the volume for each transaction;

(ii) with respect to each type of input data

(A) the range of volumes and the average volume,

(B) the range of prices and the volume-weighted average price, and

(C) the approximate percentage of each type of input data to the total input data;

(b) an explanation of how and when expert judgment was used in the determination of the designated commodity benchmark.

Integrity of the process for contributing input data

40.9. A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure the integrity of the process for contributing input data for a designated commodity benchmark, including, for greater certainty, all of the following:

(a) criteria for determining who may contribute input data;

(b) procedures to verify the identity of a benchmark contributor and a contributing individual and the authorization of the contributing individuals to contribute input data on behalf of the benchmark contributor;

(c) criteria for determining which contributing individuals are permitted to contribute input data on behalf of a benchmark contributor;

(d) criteria for determining the appropriate contribution of transaction data by the benchmark contributor;

(e) if transaction data is contributed from any front office, or front office employee, of a benchmark contributor, or of an affiliated entity of a benchmark contributor, procedures to confirm the reliability of the input data, and the criteria upon which the reliability is measured, in accordance with its policies;

(f) procedures to

(i) identify any communications between contributing individuals and benchmark individuals that might involve manipulation or attempted manipulation of the determination of the designated commodity benchmark for the benefit of any trading position of the benchmark contributor, any contributing individual or third party,

(ii) identify any attempts to cause a benchmark individual not to apply or follow the designated benchmark administrator's policies, procedures and controls,

(iii) identify benchmark contributors or contributing individuals that engage in a pattern of contributing transaction data that a reasonable person would consider is anomalous or suspicious, and

(iv) ensure that the appropriate supervisors within the benchmark contributor are notified, to the extent possible, of questions or concerns by the designated benchmark administrator.

Governance and control requirements

40.10.(1) A designated benchmark administrator must establish and document its organizational structure in relation to the provision of a designated commodity benchmark.

(2) The organizational structure referred to in subsection (1) must establish well-defined roles and responsibilities for each person or company involved in the provision of the designated commodity benchmark, and include, if applicable, segregated reporting lines, to ensure that the designated benchmark administrator complies with the provisions of this Instrument.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the integrity and reliability of the determination of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to ensure

(a) that each of its benchmark individuals has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual,

(b) that the provision of the designated commodity benchmark can be made on a consistent and regular basis,

(c) that succession plans exist to ensure the designated benchmark administrator follows the policies and procedures described in paragraphs (a) and (b) on an ongoing basis,

(d) that each of its benchmark individuals is subject to management and supervision to ensure that the methodology of the designated commodity benchmark is properly applied, and

(e) that the approval of an individual holding a position senior to that of a benchmark individual is obtained before each publication of the designated commodity benchmark.

Books, records and other documents

40.11.(1) A designated benchmark administrator must keep the books, records and other documents that are necessary to account for its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated commodity benchmarks.

(2) A designated benchmark administrator must keep books, records and other documents of all of the following:

(a) all input data, including how the data was used;

(b) each decision to exclude a particular transaction from input data that otherwise met the requirements of the methodology applicable to the determination of a designated commodity benchmark, and the rationale for doing so;

(c) the methodology of each designated commodity benchmark administered by the designated benchmark administrator;

(d) any exercise of expert judgment by the designated benchmark administrator in the determination of the designated commodity benchmark, including the basis for the exercise of expert judgment;

(e) changes in or deviations from policies, procedures, controls or methodologies;

(f) the identities of contributing individuals and of benchmark individuals;

(g) all documents relating to a complaint.

(3) A designated benchmark administrator must keep the records referred to in subsection (2) in a form that

(a) identifies the manner in which the determination of a designated commodity benchmark was made, and

(b) enables an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited assurance report on compliance or reasonable assurance report on compliance.

(4) A designated benchmark administrator must retain the books, records and other documents required to be maintained under this section

(a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later,

(b) in a safe location and a durable form, and

(c) in a manner that permits those books, records and other documents to be provided promptly on request to the regulator or securities regulatory authority.

Conflicts of interest

40.12.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) identify and eliminate or manage conflicts of interest involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,

(b) ensure that expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised,

(c) protect the integrity and independence of the provision of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to

(i) ensure that the provision of a designated commodity benchmark is not influenced by the existence of, or potential for, financial interests, relationships or business connections between the designated benchmark administrator or its affiliates, its personnel, clients and any market participant or persons connected with them,

(ii) ensure that each of its benchmark individuals does not have any financial interests, relationships or business connections that adversely affect the integrity of the designated benchmark administrator, including, for greater certainty, outside employment, travel and acceptance of entertainment, gifts and hospitality provided by the designated benchmark administrator's clients or other commodity market participants,

(iii) keep separate, operationally, the business of the designated benchmark administrator relating to the designated commodity benchmark it administers, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated commodity benchmark, and

(iv) ensure that each of its benchmark individuals does not contribute to a determination of a designated commodity benchmark by way of engaging in bids, offers or trades on a personal basis or on behalf of market participants, except as permitted under the policies and procedures of the designated benchmark administrator,

(d) ensure that an officer referred to in section 6, or any DBA individual who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely affects the integrity of the benchmark determination,

(e) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under sections 19, 20, 40.4, 40.5 and 40.8, and

(f) identify and eliminate or manage conflicts of interest that exist between the provision of a designated commodity benchmark by the designated benchmark administrator, including all benchmark individuals who participate in the determination of the designated commodity benchmark, and any other business of the designated benchmark administrator.

(2) A designated benchmark administrator must ensure that its other businesses have appropriate policies, procedures and controls designed to minimize the likelihood that a conflict of interest will adversely affect the integrity of the provision of a designated commodity benchmark.

(3) In establishing an organizational structure, as required under subsections 40.10(1) and (2), a designated benchmark administrator must ensure that the responsibilities of each person or company involved in the provision of a designated commodity benchmark administered by the designated benchmark administrator do not cause a conflict of interest or a potential conflict of interest.

(4) A designated benchmark administrator must promptly publish a description of a conflict of interest, or a potential conflict of interest, in respect of a designated commodity benchmark

(a) if a reasonable person would consider the risk of harm to any person or company arising from the conflict of interest, or the potential conflict of interest, is significant, and

(b) on becoming aware of the conflict of interest, or the potential conflict of interest, including, for greater certainty, a conflict or potential conflict arising from the ownership or control of the designated benchmark administrator.

(5) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in paragraph (1)(e), and a reasonable person would consider the failure to be significant, the designated benchmark administrator must promptly provide written notice of the significant failure to the regulator or securities regulatory authority.

Assurance report on designated benchmark administrator

40.13.(1) A designated benchmark administrator must engage a public accountant to provide a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated commodity benchmark it administers, regarding the designated benchmark administrator's

(a) compliance with subsection 5(1) and sections 11 to 13, 40.3, 40.4, 40.6, 40.7, and 40.9 to 40.12, and

(b) following of the methodology applicable to the designated commodity benchmark.

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs once every 12 months.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish the report and deliver a copy of the report to the regulator or securities regulatory authority.**.**

9.(1) This Instrument comes into force on September 27, 2023.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 27, 2023, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX C

CHANGES TO COMPANION POLICY 25-102
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

1. Companion Policy 25-102 Designated Benchmarks and Benchmark Administrators is changed by this Document.

2. Part 1 is changed

(a) in the first bullet of the second paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "or commodity***" after "***financial***",***

(b) in the third paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "regardless of who applies for the designation,***" after "***Furthermore,***",***

(c) by adding after the second paragraph under the subheading of "Categories of Designation" the following paragraph

Designated commodity benchmarks, benchmarks dually designated as commodity and regulated-data benchmarks or dually designated as commodity and critical benchmarks are subject to the requirements as specified under Part 8.1 of the Instrument.***,***

(d) in the second sentence of the third paragraph under the subheading of "Categories of Designation" by

(i) replacing " or***" with "***,***" before "***a designated regulated-data benchmark***", and***

(ii) adding "or a designated commodity benchmark***" before the period,***

(e) in the bullets of the third paragraph under the subheading of "Categories of Designation"

(i) by deleting "*and****" in the first bullet,***

(ii) by replacing "*."****" with "***, but not if it is a commodity benchmark,***" in the second bullet, and***

(iii) by adding after the second bullet the following two bullets:

- a designated commodity benchmark may also be designated as a designated regulated-data benchmark, and
- a designated commodity benchmark may also be designated as a designated critical benchmark.***,***

(f) in the fourth paragraph under the subheading of "Categories of Designation" by

(i) replacing " or***" with "***,***" before "***a regulated-data benchmark***", and***

(ii) adding "or a commodity benchmark***" before the period,***

(g) by adding the following under the heading "Definitions and Interpretation"

Subsection 1(1) – Definition of designated commodity benchmark

The Instrument defines a "designated commodity benchmark" to ensure, to the extent possible, a consistent interpretation of this term across the various CSA jurisdictions, despite possible differences in statutory definitions of "commodity". The definition specifically excludes a benchmark that has, as an underlying interest, a currency.

By "commodity benchmark", we generally mean a benchmark based on a commodity with a finite supply that can be delivered either in physical form or by delivery of the instrument evidencing ownership of the commodity. We consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of securities legislation, and may include other intangible products that develop as international markets evolve. Certain crypto assets also may be characterized as intangible commodities. Staff of a securities regulatory authority may recommend that the securities regulatory authority designate a benchmark based on these intangible commodities as a "commodity benchmark" for the purposes of the Instrument.

Subsection 1(1) – Definitions of front office and front office employee in relation to a benchmark contributor

"Front office" is used in the context of a benchmark contributor, or of an affiliated entity of a benchmark contributor, and means any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of the benchmark contributor or the affiliated entity of the benchmark contributor. "Front office employee" is used in the same context and means any employee or agent of a benchmark contributor, or of an affiliated entity of a benchmark contributor, who performs any of those functions. In general, we consider front office employees to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.***,***

(h) by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark"

However, if a designated commodity benchmark is also designated as a critical benchmark, then subsections 40.1(1) and (2) of the Instrument will specify the requirements applicable to such a benchmark.***,***

(i) in the first sentence of the second paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark" by adding "or commodity***" before "***markets***", and***

(j) by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) – Definition of designated regulated-data benchmark"

However, if a commodity benchmark is dually designated as a commodity benchmark and a regulated-data benchmark, then subsections 40.1(3) and (4) of the Instrument will specify the requirements applicable to such a benchmark.***.***

3. Part 4 Input Data and Methodology is changed

(a) by adding "or front office employee***" after "***from front office***" in the subheading of "Subsection 15(4) – Verification of input data from front office of a benchmark contributor",***

(b) by adding "or front office employee***" after "***from any front office***" in the first paragraph under the subheading "Subsection 15(4) – Verification of input data from front office or front office employee of a benchmark contributor", and***

(c) by deleting the following

Subsection 15(5) – Front office of a benchmark contributor

Subsection 15(5) of the Instrument provides that "front office" of a benchmark contributor or an applicable affiliated entity means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.***.***

4. The Companion Policy is changed by adding the following part

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

Publication of information

Under Part 8.1, there are several provisions that require a designated benchmark administrator to publish information relating to a designated commodity benchmark, including:

- subsection 40.4(2) - the elements of the methodology of the designated commodity benchmark;
- section 40.5 - the rationale for adopting the methodology, the process for internal review and approval of the methodology, and the process for making significant changes to the methodology;
- subsection 40.7(1) - a description of the commodity that is the underlying interest of the designated commodity benchmark;
- section 40.8 - an explanation of each determination of the designated commodity benchmark;

- subsection 40.12(4) - a description of a conflict of interest, or a potential conflict of interest, in respect of the designated commodity benchmark; and
- section 40.13 - the publication of a limited assurance report or a reasonable assurance report.

For the purposes of Part 8.1, we generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification in these contexts. However, we recognize that a news release generally will not be necessary for the explanation of each determination of a designated commodity benchmark required under section 40.8. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of publication by email.

In addition to, or as an alternative to, a news release, a designated benchmark administrator may want to consider other ways of helping to ensure that stakeholders and members of the public are aware of the publication of the applicable information on the designated benchmark administrator's website, such as postings on social media or internet platforms, media advisories, newsletters, or other forms of communication.

Subsections 40.1(1) and (2) – Dual designation as a commodity benchmark and a critical benchmark

A designated commodity benchmark may also be designated as a critical benchmark and, in such case, would still be subject to the requirements under Part 8.1. As there are no specific requirements under Part 8.1 for benchmark contributors, such dually-designated benchmarks would not be subject to the requirements under sections 30 to 33 of the Instrument.

If the underlying commodity is gold, silver, platinum or palladium, then rather than being subject to the requirements under Part 8.1, the requirements under Parts 1 to 8 would apply.

Subsections 40.1(3) and (4) – Dual designation as a commodity benchmark and a regulated-data benchmark

If a commodity benchmark is designated as a regulated-data benchmark, then it is not subject to Part 8.1, rather the requirements under Parts 1 to 8 would apply. However, some commodity benchmarks may be determined from transactions where the parties, in the ordinary course of business, make or take physical delivery of the commodity, and those same commodity benchmarks may also meet the requirements for regulated-data benchmarks. Generally, these transactions would also be arm's length transactions. Regulated-data benchmarks determined from such transactions would more closely resemble commodity benchmarks, rather than financial benchmarks, and they would be dually designated as commodity and regulated-data benchmarks. Benchmark administrators of such dually-designated benchmarks would be subject to the requirements under Part 8.1.

However, as provided by subsection 40.1(4), such benchmark administrators would be exempted from certain policy and control requirements relating to the process of contributing input data, from the requirement to publish certain explanations for each determination of the benchmark, and from the requirement for an assurance report. The exemptions under subsection 40.1(4) are meant to ensure that administrators of benchmarks dually designated as commodity and regulated-data benchmarks receive comparable treatment under Part 8.1 as administrators of designated regulated-data benchmarks under Parts 1 to 8.

Given the interpretation provided by paragraph 1(3)(a) of the Instrument as to when input data is considered to have been "contributed", as described earlier in this Policy, input data for regulated-data benchmarks would not generally be considered to be contributed. Therefore, certain requirements that are only applicable if there is a contributor or if input data is contributed, would not apply to a benchmark that is dually designated as a commodity benchmark and a regulated-data benchmark. Examples include the requirements in paragraphs 40.4(2)(g), (h) and (i), paragraphs 40.7(2)(d) and (e) and section 40.9.

For clarity, we would not designate a regulated-data benchmark that is also a commodity benchmark, whether dually designated as such or only as a regulated-data benchmark, as a critical benchmark.

Section 40.2 – Non-application to designated commodity benchmarks

Physical commodity markets have unique characteristics which have been taken into account in determining which requirements should be imposed on designated benchmark administrators in respect of designated commodity benchmarks. Consequently, section 40.2 includes a number of exemptions from certain requirements for such benchmark administrators, either because some are not suitable or because more appropriate substituted requirements are provided under Part 8.1 of the Instrument. Requirements that are relevant to designated benchmark administrators of designated commodity benchmarks have been excepted from the exemptions in section 40.2, and include, among others, the requirements for:

- policies and procedures as set out in subsection 5(1),
- a compliance officer as set out in section 6,
- reporting on contraventions in section 11,
- policies and procedures regarding complaints, as set out in section 12,
- outsourcing under section 13,
- the publishing of a benchmark statement under section 19, and
- providing notice of changes to and cessation of a benchmark, as provided under section 20.

In addition to the guidance provided in this Policy with respect to paragraph 12(2)(c), we expect disputes as to pricing determinations that are not formal complaints to be resolved by the designated benchmark administrator of a commodity benchmark with reference to its appropriate standard procedures. In general, we would expect that if a complaint results in a change in price, whether the complaint is formal or informal, then the details of that change in price will be communicated to stakeholders as soon as possible.

With respect to section 13, for the purposes of securities legislation, a designated benchmark administrator remains responsible for compliance with the Instrument despite any outsourcing arrangement.

Paragraph 19(1)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market the designated benchmark is intended to represent. This relates to the benchmark's purpose. A commodity benchmark may be intended to reflect the characteristics and operations of the referenced underlying physical commodity market and may be used as a reference price for a commodity and for commodity derivative contracts.

Section 40.4 – Methodology to ensure the accuracy and reliability of a designated commodity benchmark

We expect that the methodology established and used by a designated benchmark administrator will be based on the applicable characteristics of the relevant underlying interest of the designated commodity benchmark for that part of the market that the designated commodity benchmark is intended to represent, such as the grade and quality of the commodity, its geographical location, seasonality, etc., and will be sufficient to provide an accurate and reliable benchmark. For example, the methodology for a crude oil benchmark should reflect the following, but not be limited to, the specific crude grade (e.g., sweet or heavy), the location (e.g., Edmonton or Hardisty), the time period within which transactions are concluded during the trading day, and the month of delivery.

We further expect that, where consistent with the methodology of the designated commodity benchmark, priority will be given to input data in the order of priority set out below:

(a) concluded transactions in the underlying market that the designated commodity benchmark is intended to represent;

(b) if the input data referred to in paragraph (a) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, bids and offers in the market described in paragraph (a);

(c) if the input data referred to in paragraphs (a) and (b) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, any other information relating to the market described in paragraph (a) that is used to determine the designated commodity benchmark; and

(d) in any other case, expert judgments.

Subparagraph 40.4(2)(a)(ii) – Specific reference unit used in the methodology

The specific reference unit used in the methodology will vary depending on the underlying commodity. Examples of possible reference units include barrels of oil or cubic meters (m^3) in respect of crude oil, and gigajoules (GJ) or one million British Thermal Units (MMBTU) in respect of natural gas.

Paragraph 40.4(2)(c) – Relative importance assigned to each criterion used in the determination of a designated commodity benchmark

The requirement in paragraph 40.4(2)(c) regarding the relative importance assigned to each criterion, including the type of input data used and how and when expert judgment may be exercised, is not intended to restrict the specific application

of the relevant methodology, but to ensure the quality and integrity of the determination of the designated commodity benchmark.

Paragraph 40.4(2)(j) – Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

Where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, we expect that a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. This is not intended to reduce or restrict a benchmark administrator's flexibility to determine the methodology or to determine whether certain input data is consistent with that methodology. Rather, it is intended to clarify that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

We consider "concluded transactions" to mean transactions that are executed but not necessarily settled.

Section 40.6 – Review of methodology

We expect that a designated benchmark administrator will determine the appropriate frequency for carrying out an internal review of a designated commodity benchmark's methodology based on the specific nature of the benchmark (such as the complexity, use and vulnerability of the benchmark to manipulation) and the applicable characteristics of the part of the market (or changes thereto) that the benchmark is intended to represent. In any event, the administrator must review the methodology at least once every 12 months.

Paragraph 40.7(2)(a) – Quality and integrity of the determination of a designated commodity benchmark

While we recognize a benchmark administrator's flexibility to determine its own methodology and use of market data, we expect an administrator to use input data in accordance with the order of priority specified in its methodology.

Furthermore, we expect that the designated benchmark administrator will employ measures reasonably designed to ensure that input data contributed and considered in the determination of a designated commodity benchmark is *bona fide*. By *bona fide* we mean that parties contributing the input data have executed or are prepared to execute transactions generating such input data and that executed transactions were concluded between parties at arm's length. If the latter is not the case, then particular attention should be paid to transactions between affiliated entities and consideration given as to whether this affects the quality of the input data to any extent.

Section 40.8 – Transparency of determination of a designated commodity benchmark

We expect that, in providing an explanation of the extent to which, and the basis upon which, expert judgment was used in the determination of a designated commodity benchmark, a designated benchmark administrator will address the following:

(a) the extent to which a determination is based on transactions or spreads, and interpolation or extrapolation of input data;

(b) whether greater priority was given to bids and offers or other market data than to concluded transactions, and, if so, the reason why;

(c) whether transaction data was excluded, and, if so, the reason why.

Section 40.8 requires a designated benchmark administrator to publish the specified explanations for each determination of a designated commodity benchmark. However, we recognize that, to the extent that there have been no significant changes, a standard explanation may be acceptable, and any exceptions in the explanation must then be noted for each determination. We generally expect that the specified explanations will be provided contemporaneously with the determination of a benchmark, but recognize that unforeseen circumstances may cause delays, in which case, we still expect that explanation to be published as soon as reasonably practicable.

Section 40.9 – Policies, procedures, controls and criteria of the designated benchmark administrator to ensure the integrity of the process of contributing input data

There are no specific requirements under Part 8.1 for benchmark contributors with respect to commodity benchmarks, as under Part 6 for financial benchmarks, nor, consequently, obligations on designated benchmark administrators to ensure that the benchmark contributors adhere to such requirements. However, section 40.9 does require an administrator to ensure the integrity of the process for contributing input data. We are of the view that such policies, procedures, controls and criteria will promote the accuracy and integrity of the determination of the commodity benchmark.

Paragraph 40.9(d) – Criteria relating to the contribution of transaction data

In establishing criteria that determine the appropriate contribution of transaction data by benchmark contributors, we would expect that the criteria would include encouraging benchmark contributors to contribute transaction data from the back office of the benchmark contributor. We consider the back office of a benchmark contributor to be any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any administrative and support functions, including, as applicable, settlements, clearances, regulatory compliance, maintaining of records, accounting and information technology services on behalf of the benchmark contributor or of the affiliated entity of the benchmark contributor. In general, we consider the back office of a benchmark contributor, or of an affiliated entity of a benchmark contributor, to be comprised of employees or agents who support the generation of revenue for the benchmark contributor or the affiliated entity.

Subsection 40.10(3) – Governance and control requirements

To foster confidence in the integrity of a designated commodity benchmark, we are of the view that benchmark individuals involved in the determination of a commodity benchmark should be subject to the minimum controls set out in subsection 40.10(3). A designated benchmark administrator must decide how to implement its own specific measures to achieve the objectives set out in paragraphs (a) to (e).

Section 40.11 – Books, records and other documents

Subsection 40.11(2) sets out the minimum records that must be kept by a designated benchmark administrator. We expect an administrator to consider the nature of its benchmarks-related activity when determining the records that it must keep.

In addition to the record keeping requirements in the Instrument, securities legislation generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with securities law of the jurisdiction.

Section 40.12 – Conflicts of interest

We expect the policies and procedures required under subsection 40.12(1) for identifying and eliminating or managing conflicts of interest to provide the parameters for a designated benchmark administrator to

- identify conflicts of interest,
- determine the level of risk, to both the benchmark administrator and users of its designated commodity benchmarks, that a conflict of interest raises, and
- respond to a conflict of interest by eliminating or managing the conflict of interest, as appropriate, given the level of risk that it raises.

In establishing an organizational structure, as required under subsections 40.10(1) and (2), that addresses the conflict of interest requirements under subsection 40.12(3), the designated benchmark administrator should ensure that persons responsible for the determination of the designated commodity benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities of the administrator.

Section 40.13 - Assurance report on designated benchmark administrator

Under Part 8.1, there is no requirement for an oversight committee, as provided by section 7. Therefore, for purposes of section 40.13, there is no oversight committee to specify whether a limited assurance report on compliance or a reasonable assurance report on compliance needs to be provided by a public accountant. We would expect the designated benchmark administrator to determine which report is appropriate, based on the specific nature of the designated commodity benchmark, including the complexity, use and vulnerability of the benchmark to manipulation, and the applicable characteristics of the market that the benchmark is intended to represent, or other relevant factors regarding the administration of the benchmark..

5. These changes become effective on September 27, 2023.

ANNEX D

AMENDMENTS TO
MULTILATERAL INSTRUMENT 25-102
***DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS*,**
BLACKLINED TO SHOW CHANGES FROM THE PROPOSALS

(i) Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators is amended by this Instrument.

(ii) Subsection 1(1) is amended

(a) by adding the following ~~definition:~~definitions:

"designated commodity benchmark" means a benchmark that is

(a) determined by reference to or an assessment of an underlying interest that is a commodity other than a currency, and

(b) designated for the purposes of this Instrument as a "commodity benchmark" by a decision of the securities regulatory authority;

"front office" means any department, division or other internal grouping that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;

"front office employee" means any employee or agent that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;***, and***

(b) in the definition of "subject requirements" by

(i) deleting "and***" at the end of paragraph (d),***

(ii) ~~adding~~replacing "~~:~~" with ", and***" at the end of paragraph (e), and***

(iii) adding the following paragraph~~:~~

(f) paragraphs ~~40.14(1~~40.13(1)(a) and (b);**.**

~~***3. Paragraph 6(3)(a) is amended by adding "***in the case of a benchmark that is not a designated commodity benchmark,~~***" before "***monitor~~***".***~~

3. ~~***4.***~~ ***Subsection 6(3) is amended***

(a) by ~~adding the following~~repealing paragraph~~:~~ (a~~.1~~) and substituting the following:

(a) in the case of a benchmark

(i) that is not a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with ~~subsection 5(1), section 40.4 and~~ securities legislation relating to benchmarks~~,~~, including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8, and

~~***5. Subparagraph 6(3)(b)(i) is amended by adding "***or (a.1), as applicable~~***" before ",".***~~

~~***6. Subparagraph 6(3)(b)(ii) is amended***~~

(ii) ~~(a) by adding "~~in the case of a benchmark ~~***that is not***** a designated commodity benchmark,~~***" before "***~~ monitor and assess compliance~~" by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3;***, and***

~~***(b)***~~

(b) ***by deleting "***and***" at the end of the***repealing ***subparagraph.***

7. Paragraph 6(3)(b) is amended by adding the following subparagraph: ***(b)(ii) and substituting the following:***

(ii) in the case of a benchmark that is not a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with securities legislation relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8,

(ii.1) in the case of a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with subsection 5(1), section 40.4 and securities legislation relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3, and**.**

4. ***(a) Subparagraph 13(2)(c)(v) is amended by replacing "the lettering of clauses "***(i)***" and "***(ii)***" with "***(A)***" and "***(B)***".***

5. ***Section 15 is amended***

(a) ***in subsection (4) by adding "***, or front office employee,***" after "***from any front office***", and***

(b) ***by repealing subsection (5).***

6. ***Paragraph 39(3)(e) is amended by replacing "***conflict of interest identification and management procedures and communication controls,***" with "***measures to identify and eliminate or manage conflicts of interest, including, for greater certainty, communications controls***,".***

7. ***Section 40 is repealed and the following substituted:***

A designated regulated-data benchmark is exempt from the following:***" with "***

Provisions of this Instrument not applicable in relation to designated regulated-data benchmarks

40. The following provisions do not apply to a designated benchmark administrator, or a benchmark contributor or any person or company specified in such provisions in relation to a designated regulated-data benchmark:**"**

(a) subsections 11(1) and (2);

(b) subsection 14(2);

(c) subsections 15(1), (2) and (3);

(d) sections 23, 24 and 25;

(e) paragraph 26(2)(a).**.**

(viii) ***The Instrument is amended by adding the following Ppart is added:***

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

Interpretation

40.1. In this Part, "commodity benchmark" means a benchmark that is determined by reference to or an assessment of an underlying interest that is a commodity, but does not include a benchmark that has, as an underlying interest, a currency or a commodity that is intangible.

Application –

Provisions of this Instrument not applicable in relation to dual-designated benchmarks

40.240.1**.(1)** Sections 30 to 33 do not apply to a designated benchmark administrator in relation to a benchmark that is

(a) a designated commodity benchmark that is also , and

(b) a designated critical benchmark.

(2) This Part does not apply to a designated benchmark administrator in relation to a designated commodity benchmark if

(a) the benchmark is ~~also~~ a designated critical benchmark, and

(b) the underlying interest of the benchmark is gold, silver, platinum or palladium.

(3) ~~The provisions set out in subsection~~Subsection (4) ~~do not apply~~applies to a designated benchmark administrator in relation to a designated commodity benchmark if all of the following apply:

(a) the benchmark is determined from input data arising from transactions of the commodity that is the underlying interest of the benchmark;

(b) the commodity is of a type in respect of which parties to the transactions referred to in paragraph (a), in the ordinary course of business, make or take physical delivery of the commodity;

(c) the benchmark is ~~also~~ a designated regulated-data benchmark.

(4) ~~For the purposes of subsection (3), the~~The following provisions do not apply in the circumstances referred to in subsection (3):

(a) subsections 11(1) and (2);

(b) section ~~40.9~~40.8;

(c) section ~~40.10~~40.9, other than subparagraph (~~1)(~~f)(ii);

(d) paragraph ~~40.12(2~~40.11(2)(a);

(e) section ~~40.14~~40.13.

Provisions of this Instrument not applicable in relation to designated commodity benchmarks

~~40.3~~ 40.2. The following provisions do not apply to a designated benchmark administrator, a benchmark contributor or ~~a specified~~any other person or company specified in the provisions in relation to a designated commodity benchmark:

(a) Part 3, other than subsection 5(1) and sections 6, 11, 12 and 13;

(b) Part 4, other than section 17;

(c) sections 18 and 21;

(d) Part 6;

(e) Part 7.

Control framework

~~40.4~~40.3.(1) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that a designated commodity benchmark is provided in accordance with this Instrument.

(2) Without limiting the generality of subsection (1), with respect to the provision of a designated commodity benchmark, a designated benchmark administrator must ensure that its policies, procedures and controls address all of the following:

(a) management of operational risk, including any risk of financial loss, disruption or damage to the reputation of the designated benchmark administrator from any failure of its information technology systems;

(b) business continuity and disaster recovery plans;

(c) contingencies in the event of a disruption to the provision of the designated commodity benchmark or the process applied to provide the designated commodity benchmark.

Methodology

~~40.5~~40.4.**(1)** A designated benchmark administrator must not follow a methodology for determining a designated commodity benchmark unless

(a) the methodology is sufficient to provide a designated commodity benchmark that accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market that the benchmark is intended to represent, and

(b) the accuracy and reliability of the designated commodity benchmark ~~determined using the methodology is~~are verifiable.

(2) A designated benchmark administrator must establish, document, maintain, apply and publish the elements of the methodology of ~~a~~the designated commodity benchmark, including, for greater certainty, all of the following:

(a) all criteria and procedures used to determine ~~a~~the designated commodity benchmark, including~~, but not limited to~~ the following, as applicable:

(i) how ~~the designated benchmark administrator will use input data, including, for greater certainty, how it will use the volume of transactions, concluded and reported transactions, bids, offers and any other market information used to determine the designated commodity benchmark~~input data is used;

(ii) the reason that a ~~specific~~ reference unit ~~will be~~is used;

(iii) how input data ~~will be~~is obtained;

(iv) identification of how and when expert judgment may be exercised ~~in the determination of the designated commodity benchmark~~;

(v) ~~the assumptions and the~~any model ~~or~~, method ~~that will be used for the~~, assumption, extrapolation ~~and~~or interpolation that is used for analysis of the input data;

(b) the procedures reasonably designed to ensure that benchmark individuals exercise expert judgment in a consistent manner;

(c) the relative importance assigned to the criteria used to determine the designated commodity benchmark, including, for greater certainty, the type of input data used and how and when expert judgment may be exercised;

(d) any minimum ~~quantity of~~requirement for the number of transactions or for the volume for each transaction ~~data to be~~ used to determine the designated commodity benchmark;

~~(e) if minimum quantity thresholds referred to in paragraph (d) are not provided, the rationale as to why minimum requirements are not provided;~~

(e) if the methodology of the designated commodity benchmark does not require a minimum number of transactions or minimum volume for each transaction used to determine the designated commodity benchmark, an explanation as to why a minimum number or volume is not required;

(f) the procedures ~~for~~used to determine the ~~determination of a~~ designated commodity benchmark in circumstances in which the input data does not meet the minimum ~~threshold for either the quantity of~~number of transactions or the minimum volume for each transaction ~~data or~~required in the ~~quality~~methodology of the ~~input data~~designated commodity benchmark, including, for greater certainty,

(i) any alternative methods used to determine the designated commodity benchmark, including, for greater certainty, any theoretical estimation models, and

(ii) if no transaction data exists, procedures to be used in those circumstances ~~if no transaction data exists~~;

(g) the time period ~~when~~during which input data must be provided;

(h) the means ~~of contribution of~~used to contribute the input data, whether electronically, by telephone or by other means;

(i) the procedures ~~for how a~~used to determine the designated commodity benchmark ~~is determined~~ if one or more benchmark contributors contribute input data that constitutes a significant proportion of the total input data for the determination of the designated commodity benchmark, including specifying what constitutes a significant proportion of the total input data for the determination of the benchmark;

(j) the circumstances in which transaction data may be excluded in the determination of the designated commodity benchmark.

Additional information about the methodology

~~40.6~~**40.5.** A designated benchmark administrator must, with respect to the methodology ~~used for~~of a designated commodity benchmark, publish all of the following:

(a) the rationale for adopting the methodology, including, for greater certainty,

(i) the rationale for any price adjustment techniques, and

(ii) a description of why the time period for the acceptance of input data is adequate for the input data to accurately and reliably represent the value of the underlying interest of the designated commodity benchmark;

(b) the process for the internal review and the approval of the methodology referred to in section 40.6 and the frequency of ~~such~~those reviews and approvals;

(c) the process referred to in section 17 for making significant changes to the methodology.

Review of methodology

~~40.7~~**40.6.** A designated benchmark administrator must, at least once ~~in~~ every 12 ~~month period~~ months, carry out an internal review and approval of the methodology ~~for~~of each designated commodity benchmark that it administers to ensure that the designated ~~commodity benchmark determined under the methodology accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market the benchmark is intended to represent~~benchmark administrator complies with subsection 40.4(1).

Quality and integrity of the determination of a designated commodity benchmark

~~40.8~~**40.7.(1)** A designated benchmark administrator must specify, and document and publish a description of, the commodity that is the underlying interest of a designated commodity benchmark.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the quality and integrity of each determination of a designated commodity benchmark, including for greater certainty, policies and procedures ~~that~~reasonably designed

(a) to ensure that input data is used in accordance with the order of priority specified in the methodology of the designated commodity benchmark~~;~~,

(b) to identify transaction data that a reasonable person would conclude is anomalous or suspicious~~;~~,

(c) to ensure that the designated benchmark administrator maintains records of each decision, including the reasons for the decision, to exclude transaction data from the determination of the designated commodity benchmark~~;~~,

(d) ~~do not discourage~~so that a benchmark ~~contributors~~contributor is not discouraged from contributing all of ~~their~~its input data that meets the designated benchmark administrator's criteria for the determination of the designated commodity benchmark~~;~~,

(e) to ~~the extent that is reasonable,~~ ensure that

~~(i) input data contributed is representative of the benchmark contributors' concluded transactions relating to the underlying interest of the designated commodity benchmark, and~~

~~(ii)~~ benchmark contributors comply with the designated benchmark administrator's quality and integrity standards for input data.

Transparency of determination of a designated commodity benchmark

~~40.9~~**40.8.** A designated benchmark administrator must publish for each determination of a designated commodity benchmark, as soon as reasonably practicable, all of the following:

(a) ~~a plain language~~an explanation of how the designated commodity benchmark was determined, ~~which explanation includes~~including, for greater certainty, all of the following:

(i) the number ~~and the volume~~ of ~~the~~ transactions ~~submitted~~and the volume for each transaction;

(ii) with respect to each type of input data~~,~~

(A) the range of volumes and the average volume,

(B) the range of prices and the volume-weighted average price, and

(C) the ~~indicative~~approximate percentage of each type of input data to the total input data;

(b) ~~a plain language~~an explanation of ~~the extent to which,~~how and ~~the basis upon which,~~when expert judgment was used in the determination of the designated commodity benchmark~~, including, if applicable, the reasons for not giving priority to concluded and reported transactions~~.

Integrity of the process for contributing input data

~~40.10.(1)~~ **40.9.** A designated benchmark administrator must establish, document, maintain and apply policies, procedures~~,~~ and controls ~~and criteria~~that are reasonably designed to ensure the integrity of the process for contributing input data for a designated commodity benchmark, including, for greater certainty, all of the following:

(a) criteria ~~that determine~~for determining who may contribute input data;

(b) procedures to verify the identity of a benchmark contributor and a contributing individual and the authorization of ~~such~~the contributing individuals to contribute input data on behalf of the benchmark contributor;

(c) criteria ~~that determine~~for determining which contributing individuals are permitted to contribute input data on behalf of a benchmark contributor;

(d) criteria ~~that determine~~for determining the appropriate contribution of transaction data by the benchmark contributor;

(e) if transaction data is contributed from any front office, or front office employee, of a benchmark contributor, or of an affiliated entity of a benchmark contributor, procedures to confirm the reliability of the input data, and the criteria upon which the reliability is measured, in accordance with its policies;

(f) procedures ~~that~~to

(i) identify any communications between contributing individuals and benchmark individuals that might involve manipulation or attempted manipulation of the determination of the designated commodity benchmark for the benefit of any trading position of the benchmark contributor, any contributing individual or third party,

(ii) identify any attempts to cause a benchmark individual ~~to~~ not to apply or follow the designated benchmark administrator~~'~~'s policies, procedures and controls,

(iii) identify benchmark contributors or contributing individuals that engage in a pattern of contributing transaction data that a reasonable person would consider is anomalous or suspicious, and

(iv) ensure that the appropriate supervisors within the benchmark contributor are notified, to the extent possible, of questions or concerns by the designated benchmark administrator.

~~**(2)** In this section, "front office" means any department, division or other internal grouping of a benchmark contributor, or any employee or agent of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of the benchmark contributor.~~

Governance and control requirements

~~40.11~~40.10.**(1)** A designated benchmark administrator must establish and document ~~an~~its organizational structure in relation to the provision of a designated commodity benchmark.

(2) The organizational structure referred to in subsection (1) must establish well-defined roles and responsibilities for each person or company involved in the provision of ~~a~~the designated commodity benchmark ~~administered by the administrator~~, and include, ~~as necessary~~if applicable, segregated reporting lines, to ensure that the designated benchmark administrator complies with the provisions of this Instrument.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the integrity and reliability of the determination of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to ensure

(a) that each of its benchmark individuals has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual,

(b) that the provision of the designated commodity benchmark can be made on a consistent and regular basis,

(c) that succession plans exist to ensure

~~(i) that each of its benchmark individuals continues to have the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual, and~~

~~(ii) the provision of~~ the designated ~~commodity~~ benchmark ~~on a consistent~~administrator follows the policies and procedures described in paragraphs (a) and ~~regular~~(b) on an ongoing basis,

(d) that each of its benchmark individuals is subject to ~~adequate~~ management and supervision to ensure that the methodology of the designated commodity benchmark is properly applied, and

(e) ~~a procedure for obtaining~~that the approval of an individual holding a position senior to that of a benchmark individual ~~prior to~~is obtained before each publication of the designated commodity benchmark.

Books, records and other documents

~~40.12~~40.11.**(1)** A designated benchmark administrator must keep ~~such~~the books, records and other documents that are necessary to account for its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated commodity benchmarks.

(2) A designated benchmark administrator must keep books, records and other documents of all of the following:

(a) all input data, including how the data was used;

(b) each decision to exclude a particular transaction from input data that otherwise met the requirements of the methodology applicable to the determination of a designated commodity benchmark, and the rationale for doing so;

(c) the methodology ~~applicable to the determination~~ of each designated commodity benchmark administered by the designated benchmark administrator;

(d) any exercise of expert judgment by the designated benchmark administrator in the determination of the designated commodity benchmark, including the basis for the exercise of expert judgment;

(e) changes in or deviations from policies, procedures, controls or methodologies;

(f) the identities of contributing individuals and of benchmark individuals;

(g) all documents relating to a complaint.

(3) A designated benchmark administrator must keep the records referred to in subsection (2) in a form that

(a) identifies the manner in which the determination of a designated commodity benchmark was made, and

(b) enables an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited assurance report on compliance or reasonable assurance report on compliance.

(4) A designated benchmark administrator must retain the books, records and other documents required to be maintained under this section

(a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later,

(b) in a safe location and a durable form, and

(c) in a manner that permits those books, records and other documents to be provided promptly on request to the regulator or securities regulatory authority.

Conflicts of interest

~~40.13~~40.12.**(1)** A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) identify and eliminate or manage conflicts of interest involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,

(b) ensure that ~~any~~ expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised,

(c) protect the integrity and independence of the provision of a designated commodity benchmark, including, for greater certainty, ~~by~~policies and procedures reasonably designed to

(i) ~~ensuring~~ensure that the provision of a designated commodity benchmark is not influenced by the existence of, or potential for, financial interests, relationships or business connections between the designated benchmark administrator or its affiliates, its personnel, clients~~,~~ and any market participant or persons connected with them,

(ii) ~~ensuring~~ensure that each of its benchmark ~~individual~~individuals does not have any financial interests, relationships or business connections that adversely affect the integrity of the designated benchmark administrator, including, for greater certainty, outside employment, travel~~,~~ and acceptance of entertainment, gifts and hospitality provided by the designated benchmark administrator's clients or other commodity market participants,

(iii) ~~keeping~~keep separate, operationally, the business of the designated benchmark administrator relating to the designated commodity benchmark it administers, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated commodity benchmark, and

(iv) ~~ensuring~~ensure that each of its benchmark individuals does not contribute to a determination of a designated commodity benchmark by way of engaging in bids, offers or trades on a personal basis or on behalf of market participants, except as permitted under the policies and procedures of the designated benchmark administrator,

(d) ensure that an officer referred to in section 6, or any DBA individual ~~that~~who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely ~~affect~~affects the integrity of the benchmark determination,

(e) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under sections 19, 20, 40.4, 40.5~~, 40.6~~ and ~~40.9~~40.8, and

(f) identify and eliminate or manage conflicts of interest that exist between the provision of a designated commodity benchmark by the designated benchmark administrator, including all benchmark individuals who participate in the determination of the designated commodity benchmark, and any other business of the designated benchmark administrator.

(2) A designated benchmark administrator must ensure that its other businesses have appropriate policies, procedures and controls designed to minimize the likelihood that a conflict of interest will adversely affect the integrity of the provision of a designated commodity benchmark.

(3) In establishing an organizational structure, as required under subsections ~~40.11(1~~40.10(1) and (2), a designated benchmark administrator must ensure that the responsibilities ~~for~~of each person or company involved in the provision of a designated commodity benchmark administered by the designated benchmark administrator do not cause a conflict of interest or a ~~perception of~~potential conflict of interest.

(4) A designated benchmark administrator must promptly publish a description of a conflict of interest, or a potential conflict of interest, in respect of a designated commodity benchmark

(a) if a reasonable person would consider the risk of harm to any person or company arising from the conflict of interest, or the potential conflict of interest, is significant, and

(b) on becoming aware of the conflict of interest, or the potential conflict of interest, including, for greater certainty, a conflict or potential conflict arising from the ownership or control of the designated benchmark administrator.

(5) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in paragraph (1)(e), and a reasonable person would consider the failure to be significant, the designated benchmark administrator must promptly provide written notice of the significant failure to the regulator or securities regulatory authority.

Assurance report on designated benchmark administrator

~~40.14~~**40.13.(1)** A designated benchmark administrator must engage a public accountant to provide a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated commodity benchmark it administers, regarding the designated benchmark administrator~~'~~'s

(a) compliance with subsection 5(1) and sections 11 to 13, 40.3, 40.4, ~~40.5~~40.6, 40.7, ~~40.8,~~ and ~~40.10~~40.9 to ~~40.13~~40.12, and

(b) following of the methodology applicable to the designated commodity benchmark.

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs once ~~in~~ every 12~~-month period~~ months.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish the report and deliver a copy of the report to the regulator or securities regulatory authority.

9. 9.(1) This Instrument comes into force on ~~•~~September 27, 2023.

(2) In Saskatchewan, despite subsection (1), if this Instrument is filed with the Registrar of Regulations after September 27, 2023, this Instrument comes into force on the day on which it is filed with the Registrar of Regulations.

ANNEX E

CHANGES TO
COMPANION POLICY 25-102
***DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS*,**
BLACKLINED TO SHOW CHANGES FROM THE PROPOSALS

1. Companion Policy 25-102 Designated Benchmarks and Benchmark Administrators is changed by this Document.

2. Part 1 is changed

(a) in the first bullet of the second paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "or commodity***" after "***financial***",***

(b) in the third paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "regardless of who applies for the designation,***" after "***Furthermore,***",***

~~(b)~~(c) by adding after the second paragraph under the subheading of "Categories of Designation" the following paragraph~~:~~

Designated commodity benchmarks, benchmarks dually designated as commodity and regulated-data benchmarks or dually designated as commodity and critical benchmarks are subject to the requirements as specified under Part 8.1 of the Instrument.***,***

~~(c)~~(d) in the second sentence of the third paragraph under the subheading of "Categories of Designation" by

(i) replacing "or***" with "***,***" before "***a designated regulated-data benchmark***", and***

(ii) adding "or a designated commodity benchmark***" before the period,***

~~(d)~~(e) in the bullets of the third paragraph under the subheading of "Categories of Designation"

(i) by deleting "and***" in the first bullet,***

(ii) by replacing ".***" with "***, but not if it is a commodity benchmark,***" in the second bullet, and***

(iii) by adding after the second bullet the following two bullets:

- a designated commodity benchmark may also be designated as a designated regulated-data benchmark, and
- a designated commodity benchmark may also be designated as a designated critical benchmark.***~~, and~~***

~~(e)~~(f) in the fourth paragraph under the subheading of "Categories of Designation" by

(i) replacing "or***" with "***,***" before "***a regulated-data benchmark***", and***

(ii) adding "or a commodity benchmark***" before the period~~.~~,***

(g) by adding the following under the heading "Definitions and Interpretation"

Subsection 1(1) – Definition of designated commodity benchmark

The Instrument defines a "designated commodity benchmark" to ensure, to the extent possible, a consistent interpretation of this term across the various CSA jurisdictions, despite possible differences in statutory definitions of "commodity". The definition specifically excludes a benchmark that has, as an underlying interest, a currency.

By "commodity benchmark", we generally mean a benchmark based on a commodity with a finite supply that can be delivered either in physical form or by delivery of the instrument evidencing ownership of the commodity. We consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of securities legislation, and may include other intangible products that develop as international markets evolve. Certain crypto assets also may be characterized as intangible commodities. Staff of a securities regulatory authority may recommend that the securities regulatory authority designate a

benchmark based on these intangible commodities as a "commodity benchmark" for the purposes of the Instrument.

Subsection 1(1) – Definitions of front office and front office employee in relation to a benchmark contributor

"Front office" is used in the context of a benchmark contributor, or of an affiliated entity of a benchmark contributor, and means any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of the benchmark contributor or the affiliated entity of the benchmark contributor. "Front office employee" is used in the same context and means any employee or agent of a benchmark contributor, or of an affiliated entity of a benchmark contributor, who performs any of those functions. In general, we consider front office employees to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.**,**

~~***3. Subsection 1(1) with heading of "Definition of designated critical benchmark" is changed***~~

~~***(a) in the first paragraph by adding at the end of that first paragraph the following sentence:***~~

(h) by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark"

However, if a designated commodity benchmark is also designated as a critical benchmark, then subsections ~~40.2(1~~40.1(1) and (2) of the Instrument will specify the requirements applicable to such a benchmark.~~***, and***~~

(i)~~(b)~~ in the first sentence of the second paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark" by adding "or commodity***" before "***markets***"~~.~~, and***

(j)~~4.~~ by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) ~~with the heading of "~~ – Definition of designated regulated-data benchmark"~~ is changed by adding at the end of the first paragraph the following sentence:~~

However, if a commodity benchmark is dually designated as a commodity benchmark and a regulated-data benchmark, then subsections ~~40.2(3~~40.1(3) and (4) of the Instrument will specify the requirements applicable to such a benchmark.**.**

3~~5~~. Part 4 Input Data and Methodology is changed

(a) by adding "or front office employee***" after "***from front office***" in the subheading of "Subsection 15(4) – Verification of input data from front office of a benchmark contributor",***

(b) by adding "or front office employee***" after "***from any front office***" in the first paragraph under the subheading "Subsection 15(4) – Verification of input data from front office or front office employee of a benchmark contributor", and***

(c) by deleting the following

Subsection 15(5) – Front office of a benchmark contributor

Subsection 15(5) of the Instrument provides that "front office" of a benchmark contributor or an applicable affiliated entity means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliated entity..

4. The Companion Policy is changed by adding the following part~~:~~

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

~~**Section 40.1 Definition of commodity benchmark**~~

~~The Instrument defines a "commodity benchmark" to ensure, to the extent possible, a consistent interpretation of this term across the various CSA jurisdictions, despite possible differences in statutory definitions of "commodity". The definition specifically excludes a benchmark that has, as an underlying interest, a currency, or an intangible commodity that can only be delivered in digital format, including crypto and digital assets.~~

Publication of information

Under Part 8.1, there are several provisions that require a designated benchmark administrator to publish information relating to a designated commodity benchmark, including:

- subsection 40.4(2) - the elements of the methodology of the designated commodity benchmark;
- section 40.5 - the rationale for adopting the methodology, the process for internal review and approval of the methodology, and the process for making significant changes to the methodology;
- subsection 40.7(1) - a description of the commodity that is the underlying interest of the designated commodity benchmark;
- section 40.8 - an explanation of each determination of the designated commodity benchmark;
- subsection 40.12(4) - a description of a conflict of interest, or a potential conflict of interest, in respect of the designated commodity benchmark; and
- section 40.13 - the publication of a limited assurance report or a reasonable assurance report.

For the purposes of Part 8.1, we generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification in these contexts. However, we recognize that a news release generally will not be necessary for the explanation of each determination of a designated commodity benchmark required under section 40.8. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of publication by email.

In addition to, or as an alternative to, a news release, a designated benchmark administrator may want to consider other ways of helping to ensure that stakeholders and members of the public are aware of the publication of the applicable information on the designated benchmark administrator's website, such as postings on social media or internet platforms, media advisories, newsletters, or other forms of communication.

Subsections ~~40.2(1~~40.1(1) and (2) – Dual designation as a commodity benchmark and a critical benchmark

A designated commodity benchmark may also be designated as a critical benchmark and, in such case, would still be subject to the requirements under Part 8.1. As there are no specific requirements under Part 8.1 for benchmark contributors, such dually-designated benchmarks would not be subject to the requirements under sections 30 to 33 of the Instrument.

If the underlying commodity is gold, silver, platinum or palladium, then rather than being subject to the requirements under Part 8.1, the requirements under Parts 1 to 8 would apply.

Subsections ~~40.2(3~~40.1(3) and (4) – Dual designation as a commodity benchmark and a regulated-data benchmark

If a commodity benchmark is designated as a regulated-data benchmark, then it is not subject to Part 8.1, rather the requirements under Parts 1 to 8 would apply. However, some commodity benchmarks may be determined from transactions where the parties, in the ordinary course of business, make or take physical delivery of the commodity, and those same commodity benchmarks may also meet the requirements for regulated-data benchmarks. Generally, these transactions would also be arm's length transactions. Regulated-data benchmarks determined from such transactions would more closely resemble commodity benchmarks, rather than financial benchmarks, and they would be dually designated as commodity and regulated-data benchmarks. Benchmark administrators of such dually-designated benchmarks would be subject to the requirements under Part 8.1.

However, as provided by subsection ~~40.2(4~~40.1(4), such benchmark administrators would be exempted from certain policy and control requirements relating to the process of contributing input data, from the requirement to publish certain explanations for each determination of the benchmark, and from the requirement for an assurance report. The exemptions under subsection ~~40.2(4~~40.1(4) are meant to ensure that administrators of benchmarks dually designated as commodity and regulated-data benchmarks receive comparable treatment under Part 8.1 as administrators of designated regulated-data benchmarks under Parts 1 to 8.

Given the interpretation provided by paragraph 1(3)(a) of the Instrument as to when input data is considered to have been "contributed", as described earlier in this Policy, input data for regulated-data benchmarks would not generally be considered to be contributed. Therefore, certain requirements that are only applicable if there is a contributor or if input data is contributed, would not apply to a benchmark that is dually designated as a commodity benchmark and a regulated-

data benchmark. Examples include the requirements in paragraphs ~~40.5(2~~40.4(2)(g), (h) and (i), ~~and~~ paragraphs ~~40.8(2~~40.7(2)(d) and (e) and section 40.9.

For clarity, we would not designate a regulated-data benchmark that is also a commodity benchmark, whether dually designated as such or only as a regulated-data benchmark, as a critical benchmark.

Section ~~40.3~~40.2 – Non-application to designated commodity benchmarks

Physical commodity markets have unique characteristics which have been taken into account in determining which requirements should be imposed on designated benchmark administrators in respect of designated commodity benchmarks. Consequently, section ~~40.3~~40.2 includes a number of exemptions from certain requirements for such benchmark administrators, either because some are not suitable or because more appropriate substituted requirements are provided under Part 8.1 of the Instrument. Requirements that are relevant to designated benchmark administrators of designated commodity benchmarks have been excepted from the exemptions in section ~~40.3~~40.2, and include, among others, the requirements for:

- policies and procedures as set out in subsection 5(1),
- a compliance officer as set out in section 6,
- reporting on contraventions in section 11,
- policies and procedures regarding complaints, as set out in section 12,
- outsourcing under section 13,
- the publishing of a benchmark statement under section 19, and
- providing notice of changes to and cessation of a benchmark, as provided under section 20.

In addition to the guidance provided in this Policy with respect to paragraph 12(2)(c), we expect disputes as to pricing determinations that are not formal complaints to be resolved by the designated benchmark administrator of a commodity benchmark with reference to its appropriate standard procedures. In general, we would expect that if a complaint results in a change in price, whether the complaint is formal or informal, then the details of that change in price will be communicated to stakeholders as soon as possible.

With respect to section 13, for the purposes of securities legislation, a designated benchmark administrator remains responsible for compliance with the Instrument despite any outsourcing arrangement.

Paragraph ~~19(2~~19(1)(a) of the Instrument provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market the designated benchmark is intended to represent. This relates to the benchmark's purpose. A commodity benchmark may be intended to reflect the characteristics and operations of the referenced underlying physical commodity market and may be used as a reference price for a commodity and for commodity derivative contracts.

Section ~~40.5~~40.4 – Methodology to ensure the accuracy and reliability of a designated commodity benchmark

We expect that the methodology established and used by a designated benchmark administrator will be based on the applicable characteristics of the relevant underlying interest of the designated commodity benchmark for that part of the market that the designated commodity benchmark is intended to represent, such as the grade and quality of the commodity, its geographical location, seasonality, etc., and will be sufficient to provide an accurate and reliable benchmark. For example, the methodology for a crude oil benchmark should reflect the following, but not be limited to, the specific crude grade (e.g., sweet or heavy), the location (e.g., Edmonton or Hardisty), the time period within which transactions are ~~completed~~concluded during the trading day, and the month of delivery~~, and the assessment method used such as a volume weighted average~~.

We further expect that, where consistent with the methodology of the designated commodity benchmark, priority will be given to input data in the order of priority set out below:

(a) concluded transactions in the underlying market that the designated commodity benchmark is intended to represent;

(b) if the input data referred to in paragraph (a) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, bids and offers in the market described in paragraph (a);

(c) if the input data referred to in paragraphs (a) and (b) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, any other information relating to the market described in paragraph (a) that is used to determine the designated commodity benchmark; and

(d) in any other case, expert judgments.

~~**Subparagraph 40.5(2)(a)(i) – Reference to concluded transactions**~~

~~In a number of instances, under Part 8.1, we refer to concluded transactions. For clarity, by concluded transactions, we mean transactions that are executed but not necessarily settled.~~

Subparagraph ~~40.5(2~~40.4(2)(a)(ii) – Specific reference unit used in the methodology

The specific reference unit used in the methodology will vary depending on the underlying commodity. Examples of possible reference units include barrels of oil or cubic meters (m^3) in respect of crude oil, and gigajoules (GJ) or one million British Thermal Units (MMBTU) in respect of natural gas.

Paragraph ~~40.5(2~~40.4(2)(c) – Relative importance assigned to each criterion used in the determination of a designated commodity benchmark

The requirement in paragraph ~~40.5(2~~40.4(2)(c) regarding the relative importance assigned to each criterion, including the type of input data used and how and when expert judgment may be exercised, is not intended to restrict the specific application of the relevant methodology, but to ensure the quality and integrity of the determination of the designated commodity benchmark.

Paragraph 40.4(2)(j) – Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

Where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, we expect that a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. This is not intended to reduce or restrict a benchmark administrator's flexibility to determine the methodology or to determine whether certain input data is consistent with that methodology. Rather, it is intended to clarify that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

We consider "concluded transactions" to mean transactions that are executed but not necessarily settled.

Section ~~40.7~~40.6 – Review of methodology

We expect that a designated benchmark administrator will determine the appropriate frequency for carrying out an internal review of a designated commodity benchmark's methodology based on the specific nature of the benchmark (such as the complexity, use and vulnerability of the benchmark to manipulation) and the applicable characteristics of the part of the market (or changes thereto) that the benchmark is intended to represent. In any event, the administrator must review the methodology at least once ~~in~~ every 12 ~~month period~~ months.

Paragraph ~~40.8(2)(a) - Order of priority of input data specified in the methodology~~40.7(2)(a) – Quality and integrity of the determination of a designated commodity benchmark

While we recognize a benchmark administrator's flexibility to determine its own methodology and use of market data, we expect an administrator to use input data in accordance with the order of priority specified in its methodology. ~~We further expect that, where consistent with such methodology, priority will be given to input data in the following order: (1) concluded and reported transactions, (2) bids and offers, and (3) other information.~~

Furthermore, we expect that the designated benchmark administrator will employ measures reasonably designed to ensure that input data contributed and considered in the determination of a designated commodity benchmark is *bona fide*. By *bona fide* we mean that parties contributing the input data have executed or are prepared to execute transactions generating such input data and that ~~concluded~~executed transactions were ~~executed~~concluded between parties at arm's length. If the latter is not the case, then particular attention should be paid to transactions between affiliated entities and consideration given as to whether this affects the quality of the input data to any extent.

Section ~~40.9~~40.8 – Transparency of determination of a designated commodity benchmark

We expect that, in providing ~~a plain language~~an explanation of the extent to which, and the basis upon which, expert judgment was used in the determination of a designated commodity benchmark, a designated benchmark administrator will address the following:

(a) the extent to which a determination is based on transactions or spreads, and interpolation or extrapolation of input data;

(b) whether greater priority was given to bids and offers or other market data than to concluded ~~and reported~~ transactions, and, if so, the reason why;

(c) whether transaction data was excluded, and, if so, the reason why.

Section ~~40.9~~40.8 requires a designated benchmark administrator to publish the specified explanations for each determination of a designated commodity benchmark. However, we recognize that, to the extent that there have been no significant changes, a standard explanation may be acceptable, and any exceptions in the explanation must then be noted for each determination. We generally expect that the ~~required~~specified explanations will be provided contemporaneously with the determination of a benchmark, but recognize that unforeseen circumstances may cause delays, in which case, we still expect that explanation to be published as soon as reasonably practicable.

Section ~~40.10~~40.9 – Policies, procedures, controls and criteria of the designated benchmark administrator to ensure the integrity of the process of contributing input data

There are no specific requirements under Part 8.1 for benchmark contributors with respect to commodity benchmarks, as under Part 6 for financial benchmarks, nor, consequently, obligations on designated benchmark administrators to ensure that the benchmark contributors adhere to such requirements. However, section ~~40.10~~40.9 does require an administrator to ensure the integrity of the process for contributing input data. We are of the view that such policies, procedures, controls and criteria will promote the accuracy and integrity of the determination of the commodity benchmark.

Paragraph ~~40.10(1)~~40.9(d) – Criteria relating to the contribution of transaction data

In establishing criteria that determine the appropriate contribution of transaction data by benchmark contributors, we would expect that the criteria would include encouraging benchmark contributors to contribute transaction data from the back office of the benchmark contributor. We ~~would~~ consider the back office of a benchmark contributor to be any department, division~~, group~~ or ~~personnel~~other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any administrative and support functions, including, as applicable, settlements, clearances, regulatory compliance, maintaining of records, accounting and information technology services on behalf of the benchmark contributor or of the affiliated entity of the benchmark contributor. In general, we consider the back office ~~staff to be the individuals~~of a benchmark contributor, or of an affiliated entity of a benchmark contributor, to be comprised of employees or agents who support the generation of revenue for the benchmark contributor or the affiliated entity.

Subsection ~~40.11(3~~40.10(3) – Governance and control requirements

To foster confidence in the integrity of a designated commodity benchmark, we are of the view that benchmark individuals involved in the determination of a commodity benchmark should be subject to the minimum controls set out in subsection ~~40.11(3~~40.10(3). A designated benchmark administrator must decide how to implement its own specific measures to achieve the objectives set out in paragraphs (a) to (e).

Section ~~40.12~~40.11 – Books, records and other documents

Subsection ~~40.12(2~~40.11(2) sets out the minimum records that must be kept by a designated benchmark administrator. We expect an administrator to consider the nature of its benchmarks-related activity when determining the records that it must keep.

In addition to the record keeping requirements in the Instrument, securities legislation generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with securities law of the jurisdiction.

Section ~~40.13~~40.12 – Conflicts of interest

We expect the policies and procedures required under subsection ~~40.13(1~~40.12(1) for identifying and eliminating or managing conflicts of interest to provide the parameters for a designated benchmark administrator to

- identify conflicts of interest,
- determine the level of risk, to both the benchmark administrator and users of its designated commodity benchmarks, that a conflict of interest raises, and

- respond ~~appropriately~~ to ~~conflicts~~a conflict of interest by eliminating or managing the conflict of interest, as appropriate, given the level of risk that it raises.

In establishing an organizational structure, as required under subsections ~~40.11(1~~40.10(1) and (2), that addresses the conflict of interest requirements under subsection ~~40.13(3~~40.12(3), the designated benchmark administrator should ensure that persons responsible for the determination of the designated commodity benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities of the administrator.

Section ~~40.14~~40.13 - Assurance report on designated benchmark administrator

Under Part 8.1, there is no requirement for an oversight committee, as provided by section 7. Therefore, for purposes of section ~~40.14~~40.13, there is no oversight committee to specify whether a limited assurance report on compliance or a reasonable assurance report on compliance needs to be provided by a public accountant. We would expect the designated benchmark administrator to determine which report is appropriate, based on the specific nature of the designated commodity benchmark, including the complexity, use and vulnerability of the benchmark to manipulation, and the applicable characteristics of the market that the benchmark is intended to represent, or other relevant factors regarding the administration of the benchmark.

~~6~~5. These changes become effective on ~~•~~September 27, 2023.

ANNEX F

ONTARIO LOCAL MATTERS

Anticipated Costs and Benefits of Amendments

The anticipated costs and benefits of the Amendments are substantially the same as described in Annex F *Ontario Local Matters* of the 2021 CSA Request for Comment Notice.

Authority for the Amendments

In Ontario, the rule making authority for the Amendments is provided in paragraphs 64 to 69 of subsection 143(1) of the *Securities Act* (Ontario).

Delivery to Minister of Finance

In Ontario, the Amendments and other required materials were delivered to the Minister of Finance on June 28, 2023.

The Minister may approve or reject the Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action by August 28, 2023, the amendments to MI 25-102 will come into force and the changes to the CP will come into effect on September 27, 2023.

Amendments to OSC Rule 25-501

Today, the OSC is also publishing a separate notice of amendments to OSC Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* and changes to Companion Policy 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (the **Local Amendments**). The Local Amendments are based on, and consistent with, the Amendments.

B.1.2 OSC Notice of Amendments to Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators and Changes to Companion Policy 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators

OSC NOTICE OF
AMENDMENTS TO ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

AND

CHANGES TO
COMPANION POLICY 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

June 29, 2023

Introduction

The Ontario Securities Commission (the **OSC** or **we**) are adopting amendments to Ontario Securities Commission Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (**OSC Rule 25-501**), and changes to Companion Policy 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (the **CP**).

The text of the amendments to OSC Rule 25-501 and changes to the CP (together, the **Amendments**) are contained in Annex A and Annex B of this Notice, respectively.

The Amendments incorporate provisions for a regime for commodity benchmarks and their administrators. The Amendments are based on, and consistent with, amendments and changes (the **MI 25-102 Amendments**) to Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (**MI 25-102**) and Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* that were published today by certain members of the Canadian Securities Administrators (the **CSA Notice**). OSC Rule 25-501 and the Amendments are required in Ontario because MI 25-102 would not apply to Ontario commodity futures law.

Currently, OSC Rule 25-501 provides a comprehensive regime for the designation and regulation of specific benchmarks and their administrators, and the regulation of contributors and of certain users. An overview of this regime was provided in the April 29, 2021 OSC Notice of OSC Rule 25-501, the CP and consequential amendments[1] and the April 29, 2021 OSC Notice and Request for Comment on Proposed Amendments to OSC Rule 25-501 and Proposed Changes to the CP (the **2021 OSC Request for Comment**).[2] The Amendments in this Notice are the amendments that were contemplated in the 2021 OSC Request for Comment.

The Amendments will implement a comprehensive regime for:

- the designation and regulation of commodity benchmarks, including specific requirements (or exemptions from requirements) for benchmarks dually designated as designated critical benchmarks and designated commodity benchmarks, and for benchmarks dually designated as designated regulated-data benchmarks and designated commodity benchmarks, and
- the designation and regulation of persons or companies that administer such benchmarks (**designated benchmark administrators** or **administrators**).

Substance and Purpose

We are adopting the Amendments for the same reasons as the MI 25-102 Amendments. In particular, the Amendments will codify international best practices and establish a commodity benchmarks regulatory regime that will ensure the integrity of Canada's commodity and capital markets, thereby protecting Canadian investors and other Canadian market participants.

Summary of Changes

For details of all changes made, Annex C and Annex D contain blacklines of the Amendments compared to the proposed amendments published under the 2021 OSC Request for Comment (the **Proposed Amendments**).

1 Available online at: https://www.osc.ca/sites/default/files/2021-05/csa_20210429_25-102_designated-benchmarks.pdf
2 Available online at: https://www.osc.ca/sites/default/files/2021-05/csa_20210429_25-102_designated-benchmarks.pdf

The notable changes made are the same as the notable changes made to the MI 25-102 Amendments. As these changes are not material, we are not publishing the changes for a further comment period. Notable changes include:

(1) Definition of "commodity benchmark"

We have removed the definition of "commodity benchmark" from section 40.1 of the Proposed Amendments and added the substance of that definition to the definition for "designated commodity benchmark" in subsection 1(1) of the Instrument. In addition, we have removed the reference to a commodity that is intangible from the definition in the Instrument. We also revised the guidance in the CP regarding the scope of the definition, to clarify that we consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of securities legislation, and that we may include other intangible products, such as certain crypto assets, that develop as international markets evolve.

(2) Definitions of "front office" and "front office employee"

For clarity, we have split the definition of "front office" into two definitions: "front office" and "front office employee". Since the definitions are used in both section 15 of the Instrument and section 40.10 of the Proposed Amendments (section 40.9 of the Amendments), the definitions were moved to subsection 1(1) of the Instrument. We have also included additional guidance in the CP regarding the meaning of both terms. These changes were made for clarity but do not affect the substance of the requirements where these definitions are used.

(3) Scope of MI 25-102

We added language to sections 40.3 [*Control framework*] (section 40.4 of the Proposed Amendments) and 40.10 [*Governance and control requirements*] (section 40.11 of the Proposed Amendments) of the Instrument to clarify that those provisions apply to the business operations of a designated benchmark administrator only in so far as those operations involve the administration and provision of a designated commodity benchmark.

(4) Publication of information

We added guidance in Part 8.1 [*Designated Commodity Benchmarks*] of the CP regarding our expectations for how a designated benchmark administrator may satisfy the requirements in the Part 8.1 of the Instrument to publish information relating to a designated commodity benchmark. We generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification. However, we recognize that a news release generally will not be necessary for each determination of a designated commodity benchmark under section 40.8 of the Instrument.

(5) Types of input data

Subparagraph 40.5(2)(a)(i) of the Proposed Amendments required a designated benchmark administrator to establish, document and publish how it will use the volume of transactions, concluded and reported transactions, bids, offers and any other market information to determine a designated commodity benchmark.

For clarity, while subparagraph 40.4(2)(a)(i) of the Amendments still requires a designated benchmark administrator to establish, document and publish how it uses input data to determine a designated commodity benchmark, we have removed the reference to "the volume of transactions, concluded and reported transactions, bids, offers and any other market information" from the Amendments and revised the guidance in section 40.4 [*Methodology to ensure the accuracy and reliability of a designated commodity benchmark*] of the CP to clarify our general expectations regarding the priority given to different types of input data in the methodology of a designated commodity benchmark.

(6) Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

We added guidance in paragraph 40.4(2)(j) [*Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark*] of the CP on our expectation that, where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. In addition, we have clarified that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

Summary of Written Comments Received

The comment period for the 2021 OSC Request for Comment ended on July 28, 2021. No comment letters were received.

However, five comment letters were received in respect of the proposed version of the MI 25-102 Amendments. The names of commenters and a summary of their comments, together with the CSA's responses, are contained in Annex A of the CSA Notice.

Anticipated Costs and Benefits of the Amendments

The anticipated costs and benefits of the Amendments are substantially the same as described in the 2021 OSC Request for Comment.

Authority for the Amendments

The rule making authority for the Amendments is provided in paragraph 34 to 39 of subsection 65(1) of the CFA.

Delivery to the Minister of Finance

The Amendments and other required materials were delivered to the Minister of Finance on June 28, 2023.

The Minister may approve or reject the Amendments or return them for further consideration. If the Minister approves the Amendments or does not take any further action by August 28, 2023, the Amendments will come into force on September 27, 2023.

Contents of Annexes

This Notice includes the following annexes:

Annex A:	Amendments to OSC Rule 25-501
Annex B:	Changes to CP
Annex C:	Amendments to OSC Rule 25-501, blacklined to show changes from Proposed Amendments
Annex D:	Changes to CP, blacklined to show changes from Proposed Amendments

Questions

Please refer your questions to either of the following:

Michael Bennett
Senior Legal Counsel, Corporate Finance
Ontario Securities Commission
416-593-8079
mbennett@osc.gov.on.ca

Melissa Taylor
Legal Counsel, Corporate Finance
Ontario Securities Commission
416-596-4295
mtaylor@osc.gov.on.ca

ANNEX A

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

1. Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators is amended by this Instrument.

2. Subsection 1(1) is amended

(a) by adding the following definitions:

"designated commodity benchmark" means a benchmark that is

(a) determined by reference to or an assessment of an underlying interest that is a commodity other than a currency, and

(b) designated for the purposes of this Rule as a "commodity benchmark" by a decision of the Commission;

"front office" means any department, division or other internal grouping that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;

"front office employee" means any employee or agent that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;***, and***

(b) in the definition of "subject requirements" by

(i) deleting "and***" at the end of paragraph (d),***

(ii) replacing ";***" with "***, and***" at the end of paragraph (e), and***

(iii) adding the following paragraph

(f) paragraphs 40.13(1)(a) and (b);**.**

3. Subsection 6(3) is amended

(a) by repealing paragraph (a) and substituting the following:

(a) in the case of a benchmark:

(i) that is not a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8, and

(ii) that is a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3;**,** ***and***

(b) by repealing subparagraph (b)(ii) and substituting the following:

(ii) in the case of a benchmark that is not a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8,

(ii.1) in the case of a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3, and**.**

4. Subparagraph 13(2)(c)(v) is amended by replacing the lettering of clauses "(i)***" and "***(ii)***" with "***(A)***" and "***(B)***".***

5. Section 15 is amended

(a) in subsection (4) by adding ", or front office employee,***" after "***from any front office***", and***

(b) by repealing subsection (5).

6. Paragraph 39(3)(e) is amended by replacing "conflict of interest identification and management procedures and communication controls,***" with "***measures to identify and eliminate or manage conflicts of interest, including, for greater certainty, communications controls,***".***

7. Section 40 is repealed and the following substituted:

Provisions of this Rule not applicable in relation to designated regulated-data benchmarks

40. The following provisions do not apply to a designated benchmark administrator or a benchmark contributor in relation to a designated regulated-data benchmark:

(a) subsections 11(1) and (2);

(b) subsection 14(2);

(c) subsections 15(1), (2) and (3);

(d) sections 23, 24 and 25;

(e) paragraph 26(2)(a)**.**

8. The following Part is added:

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

Provisions of this Rule not applicable in relation to dual-designated benchmarks

40.1.(1) Sections 30 to 33 do not apply to a designated benchmark administrator in relation to a benchmark that is

(a) a designated commodity benchmark, and

(b) a designated critical benchmark.

(2) This Part does not apply to a designated benchmark administrator in relation to a designated commodity benchmark if

(a) the benchmark is a designated critical benchmark, and

(b) the underlying interest of the benchmark is gold, silver, platinum or palladium.

(3) Subsection (4) applies to a designated benchmark administrator in relation to a designated commodity benchmark if all of the following apply:

(a) the benchmark is determined from input data arising from transactions of the commodity that is the underlying interest of the benchmark;

(b) the commodity is of a type in respect of which parties to the transactions referred to in paragraph (a), in the ordinary course of business, make or take physical delivery of the commodity;

(c) the benchmark is a designated regulated-data benchmark.

(4) The following provisions do not apply in the circumstances referred to in subsection (3):

(a) subsections 11(1) and (2);

(b) section 40.8;

(c) section 40.9, other than subparagraph (f)(ii);

(d) paragraph 40.11(2)(a);

(e) section 40.13.

Provisions of this Rule not applicable in relation to designated commodity benchmarks

40.2. The following provisions do not apply to a designated benchmark administrator, a benchmark contributor or any other person or company specified in the provisions in relation to a designated commodity benchmark:

(a) Part 3, other than subsection 5(1) and sections 6, 11, 12 and 13;

(b) Part 4, other than section 17;

(c) sections 18 and 21;

(d) Part 6;

(e) Part 7.

Control framework

40.3.(1) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that a designated commodity benchmark is provided in accordance with this Rule.

(2) Without limiting the generality of subsection (1), with respect to the provision of a designated commodity benchmark, a designated benchmark administrator must ensure that its policies, procedures and controls address all of the following:

(a) management of operational risk, including any risk of financial loss, disruption or damage to the reputation of the designated benchmark administrator from any failure of its information technology systems;

(b) business continuity and disaster recovery plans;

(c) contingencies in the event of a disruption to the provision of the designated commodity benchmark or the process applied to provide the designated commodity benchmark.

Methodology

40.4.(1) A designated benchmark administrator must not follow a methodology for determining a designated commodity benchmark unless

(a) the methodology is sufficient to provide a designated commodity benchmark that accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market that the benchmark is intended to represent, and

(b) the accuracy and reliability of the designated commodity benchmark are verifiable.

(2) A designated benchmark administrator must establish, document, maintain, apply and publish the elements of the methodology of the designated commodity benchmark, including, for greater certainty, all of the following:

(a) all criteria and procedures used to determine the designated commodity benchmark, including the following, as applicable:

(i) how input data is used;

(ii) the reason that a reference unit is used;

(iii) how input data is obtained;

(iv) identification of how and when expert judgment may be exercised;

(v) any model, method, assumption, extrapolation or interpolation that is used for analysis of the input data;

(b) the procedures reasonably designed to ensure that benchmark individuals exercise expert judgment in a consistent manner;

(c) the relative importance assigned to the criteria used to determine the designated commodity benchmark, including, for greater certainty, the type of input data used and how and when expert judgment may be exercised;

(d) any minimum requirement for the number of transactions or for the volume for each transaction used to determine the designated commodity benchmark;

(e) if the methodology of the designated commodity benchmark does not require a minimum number of transactions or minimum volume for each transaction used to determine the designated commodity benchmark, an explanation as to why a minimum number or volume is not required;

(f) the procedures used to determine the designated commodity benchmark in circumstances in which the input data does not meet the minimum number of transactions or the minimum volume for each transaction required in the methodology of the designated commodity benchmark, including, for greater certainty,

(i) any alternative methods used to determine the designated commodity benchmark, including, for greater certainty, any theoretical estimation models, and

(ii) if no transaction data exists, procedures to be used in those circumstances;

(g) the time period during which input data must be provided;

(h) the means used to contribute the input data, whether electronically, by telephone or by other means;

(i) the procedures used to determine the designated commodity benchmark if one or more benchmark contributors contribute input data that constitutes a significant proportion of the total input data for the determination of the designated commodity benchmark, including specifying what constitutes a significant proportion of the total input data for the determination of the benchmark;

(j) the circumstances in which transaction data may be excluded in the determination of the designated commodity benchmark.

Additional information about the methodology

40.5. A designated benchmark administrator must, with respect to the methodology of a designated commodity benchmark, publish all of the following:

(a) the rationale for adopting the methodology, including, for greater certainty,

(i) the rationale for any price adjustment techniques, and

(ii) a description of why the time period for the acceptance of input data is adequate for the input data to accurately and reliably represent the value of the underlying interest of the designated commodity benchmark;

(b) the process for the internal review and the approval of the methodology referred to in section 40.6 and the frequency of those reviews and approvals;

(c) the process referred to in section 17 for making significant changes to the methodology.

Review of methodology

40.6. A designated benchmark administrator must, at least once every 12 months, carry out an internal review and approval of the methodology of each designated commodity benchmark that it administers to ensure that the designated benchmark administrator complies with subsection 40.4(1).

Quality and integrity of the determination of a designated commodity benchmark

40.7.(1) A designated benchmark administrator must specify, and document and publish a description of, the commodity that is the underlying interest of a designated commodity benchmark.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the quality and integrity of each determination of a designated commodity benchmark, including for greater certainty, policies and procedures reasonably designed

(a) to ensure that input data is used in accordance with the order of priority specified in the methodology of the designated commodity benchmark,

(b) to identify transaction data that a reasonable person would conclude is anomalous or suspicious,

(c) to ensure that the designated benchmark administrator maintains records of each decision, including the reasons for the decision, to exclude transaction data from the determination of the designated commodity benchmark,

(d) so that a benchmark contributor is not discouraged from contributing all of its input data that meets the designated benchmark administrator's criteria for the determination of the designated commodity benchmark, and

(e) to ensure that benchmark contributors comply with the designated benchmark administrator's quality and integrity standards for input data.

Transparency of determination of a designated commodity benchmark

40.8. A designated benchmark administrator must publish for each determination of a designated commodity benchmark, as soon as reasonably practicable, all of the following:

(a) an explanation of how the designated commodity benchmark was determined, including, for greater certainty, all of the following:

(i) the number of transactions and the volume for each transaction;

(ii) with respect to each type of input data

(A) the range of volumes and the average volume,

(B) the range of prices and the volume-weighted average price, and

(C) the approximate percentage of each type of input data to the total input data;

(b) an explanation of how and when expert judgment was used in the determination of the designated commodity benchmark.

Integrity of the process for contributing input data

40.9. A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure the integrity of the process for contributing input data for a designated commodity benchmark, including, for greater certainty, all of the following:

(a) criteria for determining who may contribute input data;

(b) procedures to verify the identity of a benchmark contributor and a contributing individual and the authorization of the contributing individuals to contribute input data on behalf of the benchmark contributor;

(c) criteria for determining which contributing individuals are permitted to contribute input data on behalf of a benchmark contributor;

(d) criteria for determining the appropriate contribution of transaction data by the benchmark contributor;

(e) if transaction data is contributed from any front office, or front office employee, of a benchmark contributor, or of an affiliated entity of a benchmark contributor, procedures to confirm the reliability of the input data, and the criteria upon which the reliability is measured, in accordance with its policies;

(f) procedures to

(i) identify any communications between contributing individuals and benchmark individuals that might involve manipulation or attempted manipulation of the determination of the designated commodity benchmark for the benefit of any trading position of the benchmark contributor, any contributing individual or third party,

(ii) identify any attempts to cause a benchmark individual not to apply or follow the designated benchmark administrator's policies, procedures and controls,

(iii) identify benchmark contributors or contributing individuals that engage in a pattern of contributing transaction data that a reasonable person would consider is anomalous or suspicious, and

(iv) ensure that the appropriate supervisors within the benchmark contributor are notified, to the extent possible, of questions or concerns by the designated benchmark administrator.

Governance and control requirements

40.10.(1) A designated benchmark administrator must establish and document its organizational structure in relation to the provision of a designated commodity benchmark.

(2) The organizational structure referred to in subsection (1) must establish well-defined roles and responsibilities for each person or company involved in the provision of the designated commodity benchmark, and include, if applicable, segregated reporting lines, to ensure that the designated benchmark administrator complies with the provisions of this Rule.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the integrity and reliability of the determination of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to ensure

(a) that each of its benchmark individuals has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual,

(b) that the provision of the designated commodity benchmark can be made on a consistent and regular basis,

(c) that succession plans exist to ensure the designated benchmark administrator follows the policies and procedures described in paragraphs (a) and (b) on an ongoing basis,

(d) that each of its benchmark individuals is subject to management and supervision to ensure that the methodology of the designated commodity benchmark is properly applied, and

(e) that the approval of an individual holding a position senior to that of a benchmark individual is obtained before each publication of the designated commodity benchmark.

Books, records and other documents

40.11.(1) A designated benchmark administrator must keep the books, records and other documents that are necessary to account for its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated commodity benchmarks.

(2) A designated benchmark administrator must keep books, records and other documents of all of the following:

(a) all input data, including how the data was used;

(b) each decision to exclude a particular transaction from input data that otherwise met the requirements of the methodology applicable to the determination of a designated commodity benchmark, and the rationale for doing so;

(c) the methodology of each designated commodity benchmark administered by the designated benchmark administrator;

(d) any exercise of expert judgment by the designated benchmark administrator in the determination of the designated commodity benchmark, including the basis for the exercise of expert judgment;

(e) changes in or deviations from policies, procedures, controls or methodologies;

(f) the identities of contributing individuals and of benchmark individuals;

(g) all documents relating to a complaint.

(3) A designated benchmark administrator must keep the records referred to in subsection (2) in a form that

(a) identifies the manner in which the determination of a designated commodity benchmark was made, and

(b) enables an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited assurance report on compliance or reasonable assurance report on compliance.

(4) A designated benchmark administrator must retain the books, records and other documents required to be maintained under this section

(a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later,

(b) in a safe location and a durable form, and

(c) in a manner that permits those books, records and other documents to be provided promptly on request to the Director.

Conflicts of interest

40.12.(1) A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) identify and eliminate or manage conflicts of interest involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,

(b) ensure that expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised,

(c) protect the integrity and independence of the provision of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to

(i) ensure that the provision of a designated commodity benchmark is not influenced by the existence of, or potential for, financial interests, relationships or business connections between the designated benchmark administrator or its affiliates, its personnel, clients and any market participant or persons connected with them,

(ii) ensure that each of its benchmark individuals does not have any financial interests, relationships or business connections that adversely affect the integrity of the designated benchmark administrator, including, for greater certainty, outside employment, travel and acceptance of entertainment, gifts and hospitality provided by the designated benchmark administrator's clients or other commodity market participants,

(iii) keep separate, operationally, the business of the designated benchmark administrator relating to the designated commodity benchmark it administers, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated commodity benchmark, and

(iv) ensure that each of its benchmark individuals does not contribute to a determination of a designated commodity benchmark by way of engaging in bids, offers or trades on a personal basis or on behalf of market participants, except as permitted under the policies and procedures of the designated benchmark administrator,

(d) ensure that an officer referred to in section 6, or any DBA individual who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely affects the integrity of the benchmark determination,

(e) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under sections 19, 20, 40.4, 40.5 and 40.8, and

(f) identify and eliminate or manage conflicts of interest that exist between the provision of a designated commodity benchmark by the designated benchmark administrator, including all benchmark individuals who participate in the determination of the designated commodity benchmark, and any other business of the designated benchmark administrator.

(2) A designated benchmark administrator must ensure that its other businesses have appropriate policies, procedures and controls designed to minimize the likelihood that a conflict of interest will adversely affect the integrity of the provision of a designated commodity benchmark.

(3) In establishing an organizational structure, as required under subsections 40.10(1) and (2), a designated benchmark administrator must ensure that the responsibilities of each person or company involved in the provision of a designated commodity benchmark administered by the designated benchmark administrator do not cause a conflict of interest or a potential conflict of interest.

(4) A designated benchmark administrator must promptly publish a description of a conflict of interest, or a potential conflict of interest, in respect of a designated commodity benchmark

(a) if a reasonable person would consider the risk of harm to any person or company arising from the conflict of interest, or the potential conflict of interest, is significant, and

(b) on becoming aware of the conflict of interest, or the potential conflict of interest, including, for greater certainty, a conflict or potential conflict arising from the ownership or control of the designated benchmark administrator.

(5) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in paragraph (1)(e), and a reasonable person would consider the failure to be significant, the designated benchmark administrator must promptly provide written notice of the significant failure to the Director.

Assurance report on designated benchmark administrator

40.13.(1) A designated benchmark administrator must engage a public accountant to provide a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated commodity benchmark it administers, regarding the designated benchmark administrator's

(a) compliance with subsection 5(1) and sections 11 to 13, 40.3, 40.4, 40.6, 40.7, and 40.9 to 40.12, and

(b) following of the methodology applicable to the designated commodity benchmark.

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs once every 12 months.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish the report and deliver a copy of the report to the Director**.**

9. This Instrument comes into force on September 27, 2023.

ANNEX B

CHANGES TO
COMPANION POLICY 25-501 (COMMODITY FUTURES ACT)
DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS

1. Companion Policy 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators is changed by this Document.

2. Part 1 is changed

(a) in the first bullet of the second paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "or commodity***" after "***financial***",***

(b) in the third paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "regardless of who applies for the designation,***" after "***Furthermore,***",***

(c) by adding after the second paragraph under the subheading of "Categories of Designation" the following paragraph

Designated commodity benchmarks, benchmarks dually designated as commodity and regulated-data benchmarks or dually designated as commodity and critical benchmarks are subject to the requirements as specified under Part 8.1 of the Rule.***,***

(d) in the second sentence of the third paragraph under the subheading of "Categories of Designation" by

(i) replacing " or***" with "***,***" before "***a designated regulated-data benchmark***", and***

(ii) adding "or a designated commodity benchmark***" before the period,***

(e) in the bullets of the third paragraph under the subheading of "Categories of Designation"

(i) by deleting "*and****" in the first bullet,***

(ii) by replacing "*."****" with "***, but not if it is a commodity benchmark,***" in the second bullet, and***

(iii) by adding after the second bullet the following two bullets:

- a designated commodity benchmark may also be designated as a designated regulated-data benchmark, and
- a designated commodity benchmark may also be designated as a designated critical benchmark.***,***

(f) in the fourth paragraph under the subheading of "Categories of Designation" by

(i) replacing " or***" with "***,***" before "***a regulated-data benchmark***", and***

(ii) adding "or a commodity benchmark***" before the period,***

(g) by adding the following under the heading "Definitions and Interpretation"

Subsection 1(1) – Definition of designated commodity benchmark

The Rule defines a "designated commodity benchmark" to ensure, to the extent possible, a consistent interpretation of this term. The definition specifically excludes a benchmark that has, as an underlying interest, a currency.

By "commodity benchmark", we generally mean a benchmark based on a commodity with a finite supply that can be delivered either in physical form or by delivery of the instrument evidencing ownership of the commodity. We consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of Ontario commodity futures law, and may include other intangible products that develop as international markets evolve. Certain crypto assets also may be characterized as intangible commodities. Staff of the Commission may recommend that the Commission designate a benchmark based on these intangible commodities as a "commodity benchmark" for the purposes of the Rule.

Subsection 1(1) – Definitions of front office and front office employee in relation to a benchmark contributor

"Front office" is used in the context of a benchmark contributor, or of an affiliated entity of a benchmark contributor, and means any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of the benchmark contributor or the affiliated entity of the benchmark contributor. "Front office employee" is used in the same context and means any employee or agent of a benchmark contributor, or of an affiliated entity of a benchmark contributor, who performs any of those functions. In general, we consider front office employees to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.***,***

(h) by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark"

However, if a designated commodity benchmark is also designated as a critical benchmark, then subsections 40.1(1) and (2) of the Rule will specify the requirements applicable to such a benchmark.***,***

(i) in the first sentence of the second paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark" by adding "or commodity***" before "***markets***", and***

(j) by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) – Definition of designated regulated-data benchmark"

However, if a commodity benchmark is dually designated as a commodity benchmark and a regulated-data benchmark, then subsections 40.1(3) and (4) of the Rule will specify the requirements applicable to such a benchmark.***.***

3. Part 4 Input Data and Methodology is changed

(a) by adding "or front office employee***" after "***from front office***" in the subheading of "Subsection 15(4) – Verification of input data from front office of a benchmark contributor",***

(b) by adding "or front office employee***" after "***from any front office***" in the first paragraph under the subheading "Subsection 15(4) – Verification of input data from front office or front office employee of a benchmark contributor", and***

(c) by deleting the following

Subsection 15(5) – Front office of a benchmark contributor

Subsection 15(5) of the Rule provides that "front office" of a benchmark contributor or an applicable affiliated entity means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.***.***

4. The Companion Policy is changed by adding the following part

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

Publication of information

Under Part 8.1, there are several provisions that require a designated benchmark administrator to publish information relating to a designated commodity benchmark, including:

- subsection 40.4(2) - the elements of the methodology of the designated commodity benchmark;
- section 40.5 - the rationale for adopting the methodology, the process for internal review and approval of the methodology, and the process for making significant changes to the methodology;
- subsection 40.7(1) - a description of the commodity that is the underlying interest of the designated commodity benchmark;
- section 40.8 - an explanation of each determination of the designated commodity benchmark;

- subsection 40.12(4) - a description of a conflict of interest, or a potential conflict of interest, in respect of the designated commodity benchmark; and
- section 40.13 - the publication of a limited assurance report or a reasonable assurance report.

For the purposes of Part 8.1, we generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification in these contexts. However, we recognize that a news release generally will not be necessary for the explanation of each determination of a designated commodity benchmark required under section 40.8. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of publication by email.

In addition to, or as an alternative to, a news release, a designated benchmark administrator may want to consider other ways of helping to ensure that stakeholders and members of the public are aware of the publication of the applicable information on the designated benchmark administrator's website, such as postings on social media or internet platforms, media advisories, newsletters, or other forms of communication.

Subsections 40.1(1) and (2) – Dual designation as a commodity benchmark and a critical benchmark

A designated commodity benchmark may also be designated as a critical benchmark and, in such case, would still be subject to the requirements under Part 8.1. As there are no specific requirements under Part 8.1 for benchmark contributors, such dually-designated benchmarks would not be subject to the requirements under sections 30 to 33 of the Rule.

If the underlying commodity is gold, silver, platinum or palladium, then rather than being subject to the requirements under Part 8.1, the requirements under Parts 1 to 8 would apply.

Subsections 40.1(3) and (4) – Dual designation as a commodity benchmark and a regulated-data benchmark

If a commodity benchmark is designated as a regulated-data benchmark, then it is not subject to Part 8.1, rather the requirements under Parts 1 to 8 would apply. However, some commodity benchmarks may be determined from transactions where the parties, in the ordinary course of business, make or take physical delivery of the commodity, and those same commodity benchmarks may also meet the requirements for regulated-data benchmarks. Generally, these transactions would also be arm's length transactions. Regulated-data benchmarks determined from such transactions would more closely resemble commodity benchmarks, rather than financial benchmarks, and they would be dually designated as commodity and regulated-data benchmarks. Benchmark administrators of such dually-designated benchmarks would be subject to the requirements under Part 8.1.

However, as provided by subsection 40.1(4), such benchmark administrators would be exempted from certain policy and control requirements relating to the process of contributing input data, from the requirement to publish certain explanations for each determination of the benchmark, and from the requirement for an assurance report. The exemptions under subsection 40.1(4) are meant to ensure that administrators of benchmarks dually designated as commodity and regulated-data benchmarks receive comparable treatment under Part 8.1 as administrators of designated regulated-data benchmarks under Parts 1 to 8.

Given the interpretation provided by paragraph 1(3)(a) of the Rule as to when input data is considered to have been "contributed", as described earlier in this Policy, input data for regulated-data benchmarks would not generally be considered to be contributed. Therefore, certain requirements that are only applicable if there is a contributor or if input data is contributed, would not apply to a benchmark that is dually designated as a commodity benchmark and a regulated-data benchmark. Examples include the requirements in paragraphs 40.4(2)(g), (h) and (i), paragraphs 40.7(2)(d) and (e) and section 40.9.

For clarity, we would not designate a regulated-data benchmark that is also a commodity benchmark, whether dually designated as such or only as a regulated-data benchmark, as a critical benchmark.

Section 40.2 – Non-application to designated commodity benchmarks

Physical commodity markets have unique characteristics which have been taken into account in determining which requirements should be imposed on designated benchmark administrators in respect of designated commodity benchmarks. Consequently, section 40.2 includes a number of exemptions from certain requirements for such benchmark administrators, either because some are not suitable or because more appropriate substituted requirements are provided under Part 8.1 of the Rule. Requirements that are relevant to designated benchmark administrators of designated commodity benchmarks have been excepted from the exemptions in section 40.2, and include, among others, the requirements for:

- policies and procedures as set out in subsection 5(1),
- a compliance officer as set out in section 6,
- reporting on contraventions in section 11,
- policies and procedures regarding complaints, as set out in section 12,
- outsourcing under section 13,
- the publishing of a benchmark statement under section 19, and
- providing notice of changes to and cessation of a benchmark, as provided under section 20.

In addition to the guidance provided in this Policy with respect to paragraph 12(2)(c), we expect disputes as to pricing determinations that are not formal complaints to be resolved by the designated benchmark administrator of a commodity benchmark with reference to its appropriate standard procedures. In general, we would expect that if a complaint results in a change in price, whether the complaint is formal or informal, then the details of that change in price will be communicated to stakeholders as soon as possible.

With respect to section 13, for the purposes of Ontario commodity futures law, a designated benchmark administrator remains responsible for compliance with the Rule despite any outsourcing arrangement.

Paragraph 19(1)(a) of the Rule provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market the designated benchmark is intended to represent. This relates to the benchmark's purpose. A commodity benchmark may be intended to reflect the characteristics and operations of the referenced underlying physical commodity market and may be used as a reference price for a commodity and for commodity derivative contracts.

Section 40.4 – Methodology to ensure the accuracy and reliability of a designated commodity benchmark

We expect that the methodology established and used by a designated benchmark administrator will be based on the applicable characteristics of the relevant underlying interest of the designated commodity benchmark for that part of the market that the designated commodity benchmark is intended to represent, such as the grade and quality of the commodity, its geographical location, seasonality, etc., and will be sufficient to provide an accurate and reliable benchmark. For example, the methodology for a crude oil benchmark should reflect the following, but not be limited to, the specific crude grade (e.g., sweet or heavy), the location (e.g., Edmonton or Hardisty), the time period within which transactions are concluded during the trading day, and the month of delivery.

We further expect that, where consistent with the methodology of the designated commodity benchmark, priority will be given to input data in the order of priority set out below:

(a) concluded transactions in the underlying market that the designated commodity benchmark is intended to represent;

(b) if the input data referred to in paragraph (a) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, bids and offers in the market described in paragraph (a);

(c) if the input data referred to in paragraphs (a) and (b) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, any other information relating to the market described in paragraph (a) that is used to determine the designated commodity benchmark; and

(d) in any other case, expert judgments.

Subparagraph 40.4(2)(a)(ii) – Specific reference unit used in the methodology

The specific reference unit used in the methodology will vary depending on the underlying commodity. Examples of possible reference units include barrels of oil or cubic meters (m^3) in respect of crude oil, and gigajoules (GJ) or one million British Thermal Units (MMBTU) in respect of natural gas.

Paragraph 40.4(2)(c) – Relative importance assigned to each criterion used in the determination of a designated commodity benchmark

The requirement in paragraph 40.4(2)(c) regarding the relative importance assigned to each criterion, including the type of input data used and how and when expert judgment may be exercised, is not intended to restrict the specific application

of the relevant methodology, but to ensure the quality and integrity of the determination of the designated commodity benchmark.

Paragraph 40.4(2)(j) – Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

Where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, we expect that a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. This is not intended to reduce or restrict a benchmark administrator's flexibility to determine the methodology or to determine whether certain input data is consistent with that methodology. Rather, it is intended to clarify that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

We consider "concluded transactions" to mean transactions that are executed but not necessarily settled.

Section 40.6 – Review of methodology

We expect that a designated benchmark administrator will determine the appropriate frequency for carrying out an internal review of a designated commodity benchmark's methodology based on the specific nature of the benchmark (such as the complexity, use and vulnerability of the benchmark to manipulation) and the applicable characteristics of the part of the market (or changes thereto) that the benchmark is intended to represent. In any event, the administrator must review the methodology at least once every 12 months.

Paragraph 40.7(2)(a) – Quality and integrity of the determination of a designated commodity benchmark

While we recognize a benchmark administrator's flexibility to determine its own methodology and use of market data, we expect an administrator to use input data in accordance with the order of priority specified in its methodology.

Furthermore, we expect that the designated benchmark administrator will employ measures reasonably designed to ensure that input data contributed and considered in the determination of a designated commodity benchmark is *bona fide*. By *bona fide* we mean that parties contributing the input data have executed or are prepared to execute transactions generating such input data and that executed transactions were concluded between parties at arm's length. If the latter is not the case, then particular attention should be paid to transactions between affiliated entities and consideration given as to whether this affects the quality of the input data to any extent.

Section 40.8 – Transparency of determination of a designated commodity benchmark

We expect that, in providing an explanation of the extent to which, and the basis upon which, expert judgment was used in the determination of a designated commodity benchmark, a designated benchmark administrator will address the following:

(a) the extent to which a determination is based on transactions or spreads, and interpolation or extrapolation of input data;

(b) whether greater priority was given to bids and offers or other market data than to concluded transactions, and, if so, the reason why;

(c) whether transaction data was excluded, and, if so, the reason why.

Section 40.8 requires a designated benchmark administrator to publish the specified explanations for each determination of a designated commodity benchmark. However, we recognize that, to the extent that there have been no significant changes, a standard explanation may be acceptable, and any exceptions in the explanation must then be noted for each determination. We generally expect that the specified explanations will be provided contemporaneously with the determination of a benchmark, but recognize that unforeseen circumstances may cause delays, in which case, we still expect that explanation to be published as soon as reasonably practicable.

Section 40.9 – Policies, procedures, controls and criteria of the designated benchmark administrator to ensure the integrity of the process of contributing input data

There are no specific requirements under Part 8.1 for benchmark contributors with respect to commodity benchmarks, as under Part 6 for financial benchmarks, nor, consequently, obligations on designated benchmark administrators to ensure that the benchmark contributors adhere to such requirements. However, section 40.9 does require an administrator to ensure the integrity of the process for contributing input data. We are of the view that such policies, procedures, controls and criteria will promote the accuracy and integrity of the determination of the commodity benchmark.

Paragraph 40.9(d) – Criteria relating to the contribution of transaction data

In establishing criteria that determine the appropriate contribution of transaction data by benchmark contributors, we would expect that the criteria would include encouraging benchmark contributors to contribute transaction data from the back office of the benchmark contributor. We consider the back office of a benchmark contributor to be any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any administrative and support functions, including, as applicable, settlements, clearances, regulatory compliance, maintaining of records, accounting and information technology services on behalf of the benchmark contributor or of the affiliated entity of the benchmark contributor. In general, we consider the back office of a benchmark contributor, or of an affiliated entity of a benchmark contributor, to be comprised of employees or agents who support the generation of revenue for the benchmark contributor or the affiliated entity.

Subsection 40.10(3) – Governance and control requirements

To foster confidence in the integrity of a designated commodity benchmark, we are of the view that benchmark individuals involved in the determination of a commodity benchmark should be subject to the minimum controls set out in subsection 40.10(3). A designated benchmark administrator must decide how to implement its own specific measures to achieve the objectives set out in paragraphs (a) to (e).

Section 40.11 – Books, records and other documents

Subsection 40.11(2) sets out the minimum records that must be kept by a designated benchmark administrator. We expect an administrator to consider the nature of its benchmarks-related activity when determining the records that it must keep.

In addition to the record keeping requirements in the Rule, Ontario commodity futures law generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with Ontario commodity futures law.

Section 40.12 – Conflicts of interest

We expect the policies and procedures required under subsection 40.12(1) for identifying and eliminating or managing conflicts of interest to provide the parameters for a designated benchmark administrator to

- identify conflicts of interest,
- determine the level of risk, to both the benchmark administrator and users of its designated commodity benchmarks, that a conflict of interest raises, and
- respond to a conflict of interest by eliminating or managing the conflict of interest, as appropriate, given the level of risk that it raises.

In establishing an organizational structure, as required under subsections 40.10(1) and (2), that addresses the conflict of interest requirements under subsection 40.12(3), the designated benchmark administrator should ensure that persons responsible for the determination of the designated commodity benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities of the administrator.

Section 40.13 - Assurance report on designated benchmark administrator

Under Part 8.1, there is no requirement for an oversight committee, as provided by section 7. Therefore, for purposes of section 40.13, there is no oversight committee to specify whether a limited assurance report on compliance or a reasonable assurance report on compliance needs to be provided by a public accountant. We would expect the designated benchmark administrator to determine which report is appropriate, based on the specific nature of the designated commodity benchmark, including the complexity, use and vulnerability of the benchmark to manipulation, and the applicable characteristics of the market that the benchmark is intended to represent, or other relevant factors regarding the administration of the benchmark..

5. These changes become effective on September 27, 2023.

ANNEX C

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT)
***DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS*,**
BLACKLINED TO SHOW CHANGES FROM THE PROPOSED AMENDMENTS

1. Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators is amended by this Instrument.

2. Subsection 1(1) is amended

(a) by adding the following ~~definition:~~definitions:

"designated commodity benchmark" means a benchmark that is

(a) determined by reference to or an assessment of an underlying interest that is a commodity other than a currency, and

(b) designated for the purposes of this Rule as a "commodity benchmark" by a decision of the Commission;

"front office" means any department, division or other internal grouping that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;

"front office employee" means any employee or agent that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of a benchmark contributor or an affiliated entity of a benchmark contributor;***, and***

(b) in the definition of "subject requirements" by

(i) deleting "and***" at the end of paragraph (d),***

(ii) ~~adding~~replacing "~~,~~" with ", and***" at the end of paragraph (e), and***

(iii) adding the following paragraph~~:~~

(f) paragraphs ~~40.14(1~~40.13(1)(a) and (b);**.**

~~***3. Paragraph 6(3)(a) is amended by adding "***in the case of a benchmark that is not a designated commodity benchmark,***" before "***monitor***".***~~

3. ~~4.~~ Subsection 6(3) is amended

(a) by ~~adding the following~~repealing paragraph~~:~~ (a~~.1~~) and substituting the following:

(a) in the case of a benchmark

(i) that is not a designated commodity benchmark, monitor and assess compliance by the designated benchmark administrator and its DBA individuals with ~~subsection 5(1), section 40.4 and~~ Ontario commodity futures law relating to benchmarks~~;~~. including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8, and

~~***5. Subparagraph 6(3)(b)(i) is amended by adding "***or (a.1), as applicable***" before ",".***~~

~~***6. Subparagraph 6(3)(b)(ii) is amended***~~

(ii) ~~(a) by adding "~~in the case of a benchmark ~~***"***~~ that is ~~not~~ a designated commodity benchmark,***~~"~~ before "*** monitor and assess compliance***~~"~~*** by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3;***, and***

~~(b)~~

(b) by ~~deleting "~~and***~~" at the end of the~~repealing subparagraph~~.~~***

~~7. Paragraph 6(3)(b) is amended by adding the following subparagraph:~~ (b)(ii) and substituting the following:

(ii) in the case of a benchmark that is not a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with Ontario commodity futures law relating to benchmarks including, for greater certainty, the accountability framework referred to in section 5 and the control framework referred to in section 8,

(ii.1) in the case of a designated commodity benchmark, compliance by the designated benchmark administrator and its DBA individuals with ~~subsection 5(1), section 40.4 and~~ Ontario commodity futures law relating to benchmarks including, for greater certainty, subsection 5(1) and section 40.3, and**.**

4. ~~(a)~~ Subparagraph 13(2)(c)(v) is amended by replacing ~~"~~the lettering of clauses "(i)" and "(ii)" with "(A)" and "(B)".

5. Section 15 is amended

(a) in subsection (4) by adding ". or front office employee***" after "***from any front office***", and***

(b) by repealing subsection (5).

6. Paragraph 39(3)(e) is amended by replacing "conflict of interest identification and management procedures and communication controls,***" with "***measures to identify and eliminate or manage conflicts of interest, including, for greater certainty, communications controls,***".***

7. Section 40 is repealed and the following substituted:

~~A designated regulated-data benchmark is exempt from the following:~~ ***~~" with "~~***

Provisions of this Rule not applicable in relation to designated regulated-data benchmarks

40. The following provisions do not apply to a designated benchmark administrator~~,~~ or a benchmark contributor ~~or any person or company specified in such provisions~~ in relation to a designated regulated-data benchmark:~~"~~

(a) subsections 11(1) and (2);

(b) subsection 14(2);

(c) subsections 15(1), (2) and (3);

(d) sections 23, 24 and 25;

(e) paragraph 26(2)(a).**.**

8. The ~~Rule is amended by adding the~~ following P~~p~~art is added:

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

~~**Interpretation**~~

~~**40.1.** In this Part, "commodity benchmark" means a benchmark that is determined by reference to or an assessment of an underlying interest that is a commodity, but does not include a benchmark that has, as an underlying interest, a currency or a commodity that is intangible.~~

~~**Application –**~~

Provisions of this Rule not applicable in relation to dual-designated benchmarks

~~**40.2**~~**40.1.(1)** Sections 30 to 33 do not apply to a designated benchmark administrator in relation to a benchmark that is

(a) a designated commodity benchmark ~~that is also~~ , and

(b) a designated critical benchmark.

(2) This Part does not apply to a designated benchmark administrator in relation to a designated commodity benchmark if

(a) the benchmark is ~~also~~ a designated critical benchmark, and

(b) the underlying interest of the benchmark is gold, silver, platinum or palladium.

(3) ~~The provisions set out in subsection~~Subsection (4) ~~do not apply~~applies to a designated benchmark administrator in relation to a designated commodity benchmark if all of the following apply:

(a) the benchmark is determined from input data arising from transactions of the commodity that is the underlying interest of the benchmark;

(b) the commodity is of a type in respect of which parties to the transactions referred to in paragraph (a), in the ordinary course of business, make or take physical delivery of the commodity;

(c) the benchmark is ~~also~~ a designated regulated-data benchmark.

(4) ~~For the purposes of subsection (3), the~~The following provisions do not apply in the circumstances referred to in subsection (3):

(a) subsections 11(1) and (2);

(b) section ~~40.9~~40.8;

(c) section ~~40.10~~40.9, other than subparagraph (~~1)(~~f)(ii);

(d) paragraph ~~40.12(2~~40.11(2)(a);

(e) section ~~40.14~~40.13.

Provisions of this Rule not applicable in relation to designated commodity benchmarks

~~40.3~~ 40.2. The following provisions do not apply to a designated benchmark administrator, a benchmark contributor or ~~a specified~~any other person or company specified in the provisions in relation to a designated commodity benchmark:

(a) Part 3, other than subsection 5(1) and sections 6, 11, 12 and 13;

(b) Part 4, other than section 17;

(c) sections 18 and 21;

(d) Part 6;

(e) Part 7.

Control framework

~~40.4~~40.3.(1) A designated benchmark administrator must establish, document, maintain and apply policies, procedures and controls that are reasonably designed to ensure that a designated commodity benchmark is provided in accordance with this Rule.

(2) Without limiting the generality of subsection (1), with respect to the provision of a designated commodity benchmark, a designated benchmark administrator must ensure that its policies, procedures and controls address all of the following:

(a) management of operational risk, including any risk of financial loss, disruption or damage to the reputation of the designated benchmark administrator from any failure of its information technology systems;

(b) business continuity and disaster recovery plans;

(c) contingencies in the event of a disruption to the provision of the designated commodity benchmark or the process applied to provide the designated commodity benchmark.

Methodology

~~40.5~~40.4.(1) A designated benchmark administrator must not follow a methodology for determining a designated commodity benchmark unless

(a) the methodology is sufficient to provide a designated commodity benchmark that accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market that the benchmark is intended to represent, and

(b) the accuracy and reliability of the designated commodity benchmark ~~determined using the methodology is~~are verifiable.

(2) A designated benchmark administrator must establish, document, maintain, apply and publish the elements of the methodology of ~~a~~the designated commodity benchmark, including, for greater certainty, all of the following:

(a) all criteria and procedures used to determine ~~a~~the designated commodity benchmark, including~~, but not limited to~~ the following, as applicable:

(i) how ~~the designated benchmark administrator will use input data, including, for greater certainty, how it will use the volume of transactions, concluded and reported transactions, bids, offers and any other market information used to determine the designated commodity benchmark~~input data is used;

(ii) the reason that a ~~specific~~ reference unit ~~will be~~is used;

(iii) how input data ~~will be~~is obtained;

(iv) identification of how and when expert judgment may be exercised ~~in the determination of the designated commodity benchmark~~;

(v) ~~the assumptions and the~~any model ~~or~~, method ~~that will be used for the~~, assumption, extrapolation ~~and~~or interpolation that is used for analysis of the input data;

(b) the procedures reasonably designed to ensure that benchmark individuals exercise expert judgment in a consistent manner;

(c) the relative importance assigned to the criteria used to determine the designated commodity benchmark, including, for greater certainty, the type of input data used and how and when expert judgment may be exercised;

(d) any minimum ~~quantity of~~requirement for the number of transactions or for the volume for each transaction ~~data to be~~ used to determine the designated commodity benchmark;

~~(e) if minimum quantity thresholds referred to in paragraph (d) are not provided, the rationale as to why minimum requirements are not provided;~~

(e) if the methodology of the designated commodity benchmark does not require a minimum number of transactions or minimum volume for each transaction used to determine the designated commodity benchmark, an explanation as to why a minimum number or volume is not required;

(f) the procedures ~~for~~used to determine the ~~determination of a~~ designated commodity benchmark in circumstances in which the input data does not meet the minimum ~~threshold for either the quantity of~~number of transactions or the minimum volume for each transaction ~~data or~~required in the ~~quality~~methodology of the ~~input data~~designated commodity benchmark, including, for greater certainty,

(i) any alternative methods used to determine the designated commodity benchmark, including, for greater certainty, any theoretical estimation models, and

(ii) if no transaction data exists, procedures to be used in those circumstances ~~if no transaction data exists~~;

(g) the time period ~~when~~during which input data must be provided;

(h) the means ~~of contribution of~~used to contribute the input data, whether electronically, by telephone or by other means;

(i) the procedures ~~for how a~~used to determine the designated commodity benchmark ~~is determined~~ if one or more benchmark contributors contribute input data that constitutes a significant proportion of the total input data for the determination of the designated commodity benchmark, including

specifying what constitutes a significant proportion of the total input data for the determination of the benchmark;

(j) the circumstances in which transaction data may be excluded in the determination of the designated commodity benchmark.

Additional information about the methodology

~~40.6~~40.5. A designated benchmark administrator must, with respect to the methodology ~~used for~~of a designated commodity benchmark, publish all of the following:

(a) the rationale for adopting the methodology, including, for greater certainty,

(i) the rationale for any price adjustment techniques, and

(ii) a description of why the time period for the acceptance of input data is adequate for the input data to accurately and reliably represent the value of the underlying interest of the designated commodity benchmark;

(b) the process for the internal review and the approval of the methodology referred to in section 40.6 and the frequency of ~~such~~those reviews and approvals;

(c) the process referred to in section 17 for making significant changes to the methodology.

Review of methodology

~~40.7~~40.6. A designated benchmark administrator must, at least once ~~in~~ every 12~~-month period~~ months, carry out an internal review and approval of the methodology ~~for~~of each designated commodity benchmark that it administers to ensure that the designated ~~commodity benchmark determined under the methodology accurately and reliably represents the value of the underlying interest of the designated commodity benchmark for that part of the market the benchmark is intended to represent~~benchmark administrator complies with subsection 40.4(1).

Quality and integrity of the determination of a designated commodity benchmark

~~40.8~~40.7.(1) A designated benchmark administrator must specify, and document and publish a description of, the commodity that is the underlying interest of a designated commodity benchmark.

(2) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the quality and integrity of each determination of a designated commodity benchmark, including for greater certainty, policies and procedures ~~that~~reasonably designed

(a) to ensure that input data is used in accordance with the order of priority specified in the methodology of the designated commodity benchmark~~;~~,

(b) to identify transaction data that a reasonable person would conclude is anomalous or suspicious~~;~~,

(c) to ensure that the designated benchmark administrator maintains records of each decision, including the reasons for the decision, to exclude transaction data from the determination of the designated commodity benchmark~~;~~,

(d) ~~do not discourage~~so that a benchmark ~~contributors~~contributor is not discouraged from contributing all of ~~their~~its input data that meets the designated benchmark administrator's criteria for the determination of the designated commodity benchmark~~;~~,

(e) to ~~the extent that is reasonable,~~ ensure that

~~(i) input data contributed is representative of the benchmark contributors' concluded transactions relating to the underlying interest of the designated commodity benchmark, and~~

~~(ii)~~ benchmark contributors comply with the designated benchmark administrator's quality and integrity standards for input data.

Transparency of determination of a designated commodity benchmark

~~40.9~~40.8. A designated benchmark administrator must publish for each determination of a designated commodity benchmark, as soon as reasonably practicable, all of the following:

(a) ~~a plain language~~an explanation of how the designated commodity benchmark was determined, ~~which explanation includes~~including, for greater certainty, all of the following:

(i) the number ~~and the volume~~ of ~~the~~ transactions ~~submitted~~and the volume for each transaction;

(ii) with respect to each type of input data~~,~~

(A) the range of volumes and the average volume,

(B) the range of prices and the volume-weighted average price, and

(C) the ~~indicative~~approximate percentage of each type of input data to the total input data;

(b) ~~a plain language~~an explanation of ~~the extent to which,~~how and ~~the basis upon which,~~when expert judgment was used in the determination of the designated commodity benchmark~~, including, if applicable, the reasons for not giving priority to concluded and reported transactions~~.

Integrity of the process for contributing input data

~~40.10.(1)~~ 40.9. A designated benchmark administrator must establish, document, maintain and apply policies, procedures~~,~~ and controls ~~and criteria~~that are reasonably designed to ensure the integrity of the process for contributing input data for a designated commodity benchmark, including, for greater certainty, all of the following:

(a) criteria ~~that determine~~for determining who may contribute input data;

(b) procedures to verify the identity of a benchmark contributor and a contributing individual and the authorization of ~~such~~the contributing individuals to contribute input data on behalf of the benchmark contributor;

(c) criteria ~~that determine~~for determining which contributing individuals are permitted to contribute input data on behalf of a benchmark contributor;

(d) criteria ~~that determine~~for determining the appropriate contribution of transaction data by the benchmark contributor;

(e) if transaction data is contributed from any front office, or front office employee, of a benchmark contributor, or of an affiliated entity of a benchmark contributor, procedures to confirm the reliability of the input data, and the criteria upon which the reliability is measured, in accordance with its policies;

(f) procedures ~~that~~to

(i) identify any communications between contributing individuals and benchmark individuals that might involve manipulation or attempted manipulation of the determination of the designated commodity benchmark for the benefit of any trading position of the benchmark contributor, any contributing individual or third party,

(ii) identify any attempts to cause a benchmark individual ~~to~~ not to apply or follow the designated benchmark administrator~~'~~'s policies, procedures and controls,

(iii) identify benchmark contributors or contributing individuals that engage in a pattern of contributing transaction data that a reasonable person would consider is anomalous or suspicious, and

(iv) ensure that the appropriate supervisors within the benchmark contributor are notified, to the extent possible, of questions or concerns by the designated benchmark administrator.

~~(2) In this section, "front office" means any department, division or other internal grouping of a benchmark contributor, or any employee or agent of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring or brokerage activities on behalf of the benchmark contributor.~~

Governance and control requirements

~~40.11~~40.10.**(1)** A designated benchmark administrator must establish and document ~~an~~its organizational structure in relation to the provision of a designated commodity benchmark.

(2) The organizational structure referred to in subsection (1) must establish well-defined roles and responsibilities for each person or company involved in the provision of ~~a~~the designated commodity benchmark ~~administered by the administrator~~, and include, ~~as necessary~~if applicable, segregated reporting lines, to ensure that the designated benchmark administrator complies with the provisions of this Rule.

(3) A designated benchmark administrator must establish, document, maintain and apply policies and procedures reasonably designed to ensure the integrity and reliability of the determination of a designated commodity benchmark, including, for greater certainty, policies and procedures reasonably designed to ensure

(a) that each of its benchmark individuals has the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual,

(b) that the provision of the designated commodity benchmark can be made on a consistent and regular basis,

(c) that succession plans exist to ensure

~~(i) that each of its benchmark individuals continues to have the necessary skills, knowledge, experience, reliability and integrity for the duties assigned to the individual, and~~

~~(ii) the provision of~~ the designated ~~commodity~~ benchmark ~~on a consistent~~administrator follows the policies and procedures described in paragraphs (a) and ~~regular~~(b) on an ongoing basis,

(d) that each of its benchmark individuals is subject to ~~adequate~~ management and supervision to ensure that the methodology of the designated commodity benchmark is properly applied, and

(e) ~~a procedure for obtaining~~that the approval of an individual holding a position senior to that of a benchmark individual ~~prior to~~is obtained before each publication of the designated commodity benchmark.

Books, records and other documents

~~40.12~~40.11.**(1)** A designated benchmark administrator must keep ~~such~~the books, records and other documents that are necessary to account for its activities as a designated benchmark administrator, its business transactions and its financial affairs relating to its designated commodity benchmarks.

(2) A designated benchmark administrator must keep books, records and other documents of all of the following:

(a) all input data, including how the data was used;

(b) each decision to exclude a particular transaction from input data that otherwise met the requirements of the methodology applicable to the determination of a designated commodity benchmark, and the rationale for doing so;

(c) the methodology ~~applicable to the determination~~ of each designated commodity benchmark administered by the designated benchmark administrator;

(d) any exercise of expert judgment by the designated benchmark administrator in the determination of the designated commodity benchmark, including the basis for the exercise of expert judgment;

(e) changes in or deviations from policies, procedures, controls or methodologies;

(f) the identities of contributing individuals and of benchmark individuals;

(g) all documents relating to a complaint.

(3) A designated benchmark administrator must keep the records referred to in subsection (2) in a form that

(a) identifies the manner in which the determination of a designated commodity benchmark was made, and

(b) enables an audit, review or evaluation of any input data, calculation, or exercise of expert judgment, including in connection with any limited assurance report on compliance or reasonable assurance report on compliance.

(4) A designated benchmark administrator must retain the books, records and other documents required to be maintained under this section

(a) for a period of 7 years from the date the record was made or received by the designated benchmark administrator, whichever is later,

(b) in a safe location and a durable form, and

(c) in a manner that permits those books, records and other documents to be provided promptly on request to the Director.

Conflicts of interest

~~40.13~~40.12.**(1)** A designated benchmark administrator must establish, document, maintain and apply policies and procedures that are reasonably designed to

(a) identify and eliminate or manage conflicts of interest involving the designated benchmark administrator and its managers, benchmark contributors, benchmark users, DBA individuals and any affiliated entity of the designated benchmark administrator,

(b) ensure that ~~any~~ expert judgment exercised by the benchmark administrator or DBA individuals is independently and honestly exercised,

(c) protect the integrity and independence of the provision of a designated commodity benchmark, including, for greater certainty, ~~by~~policies and procedures reasonably designed to

(i) ~~ensuring~~ensure that the provision of a designated commodity benchmark is not influenced by the existence of, or potential for, financial interests, relationships or business connections between the designated benchmark administrator or its affiliates, its personnel, clients~~,~~ and any market participant or persons connected with them,

(ii) ~~ensuring~~ensure that each of its benchmark ~~individual~~individuals does not have any financial interests, relationships or business connections that adversely affect the integrity of the designated benchmark administrator, including, for greater certainty, outside employment, travel~~,~~ and acceptance of entertainment, gifts and hospitality provided by the designated benchmark administrator's clients or other commodity market participants,

(iii) ~~keeping~~keep separate, operationally, the business of the designated benchmark administrator relating to the designated commodity benchmark it administers, and its benchmark individuals, from any other business activity of the designated benchmark administrator if the designated benchmark administrator becomes aware of a conflict of interest or a potential conflict of interest involving the business of the designated benchmark administrator relating to any designated commodity benchmark, and

(iv) ~~ensuring~~ensure that each of its benchmark individuals does not contribute to a determination of a designated commodity benchmark by way of engaging in bids, offers or trades on a personal basis or on behalf of market participants, except as permitted under the policies and procedures of the designated benchmark administrator,

(d) ensure that an officer referred to in section 6, or any DBA individual ~~that~~who reports directly to the officer, does not receive compensation or other financial incentive from which conflicts of interest arise or that otherwise adversely ~~affect~~affects the integrity of the benchmark determination,

(e) protect the confidentiality of information provided to or produced by the designated benchmark administrator, subject to the disclosure requirements under sections 19, 20, 40.4, 40.5~~, 40.6~~ and ~~40.9~~40.8, and

(f) identify and eliminate or manage conflicts of interest that exist between the provision of a designated commodity benchmark by the designated benchmark administrator, including all benchmark individuals who participate in the determination of the designated commodity benchmark, and any other business of the designated benchmark administrator.

(2) A designated benchmark administrator must ensure that its other businesses have appropriate policies, procedures and controls designed to minimize the likelihood that a conflict of interest will adversely affect the integrity of the provision of a designated commodity benchmark.

(3) In establishing an organizational structure, as required under subsections ~~40.11(1~~40.10(1) and (2), a designated benchmark administrator must ensure that the responsibilities ~~for~~of each person or company involved in the provision of a designated commodity benchmark administered by the designated benchmark administrator do not cause a conflict of interest or a ~~perception of~~potential conflict of interest.

(4) A designated benchmark administrator must promptly publish a description of a conflict of interest, or a potential conflict of interest, in respect of a designated commodity benchmark

(a) if a reasonable person would consider the risk of harm to any person or company arising from the conflict of interest, or the potential conflict of interest, is significant, and

(b) on becoming aware of the conflict of interest, or the potential conflict of interest, including, for greater certainty, a conflict or potential conflict arising from the ownership or control of the designated benchmark administrator.

(5) If a designated benchmark administrator fails to apply or follow a policy or procedure referred to in paragraph (1)(e), and a reasonable person would consider the failure to be significant, the designated benchmark administrator must promptly provide written notice of the significant failure to the Director.

Assurance report on designated benchmark administrator

~~40.14~~40.13.**(1)** A designated benchmark administrator must engage a public accountant to provide a limited assurance report on compliance or a reasonable assurance report on compliance, in respect of each designated commodity benchmark it administers, regarding the designated benchmark administrator~~'~~s

(a) compliance with subsection 5(1) and sections 11 to 13, 40.3, 40.4, ~~40.5~~40.6, 40.7, ~~40.8,~~ and ~~40.10~~40.9 to ~~40.13~~40.12, and

(b) following of the methodology applicable to the designated commodity benchmark.

(2) A designated benchmark administrator must ensure an engagement referred to in subsection (1) occurs once ~~in~~ every 12 ~~month period~~ months.

(3) A designated benchmark administrator must, within 10 days of the receipt of a report provided for in subsection (1), publish the report and deliver a copy of the report to the Director.

~~9.~~ 9. This Instrument comes into force on ~~•~~September 27, 2023.

ANNEX D

CHANGES TO
COMPANION POLICY 25-501 (COMMODITY FUTURES ACT)
***DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS*,**
BLACKLINED TO SHOW CHANGES FROM THE PROPOSED AMENDMENTS

1. Companion Policy ~~(Commodity Futures Act)~~ 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators is changed by this Document.

2. Part 1 is changed

(a) in the first bullet of the second paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "or commodity***" after "***financial***",***

(b) in the third paragraph under the subheading of "Designation of Benchmarks and Benchmark Administrators" by adding "regardless of who applies for the designation,***" after "***Furthermore,***",***

~~(b)~~(c) by adding after the second paragraph under the subheading of "Categories of Designation" the following paragraph~~:~~

Designated commodity benchmarks, benchmarks dually designated as commodity and regulated-data benchmarks or dually designated as commodity and critical benchmarks are subject to the requirements as specified under Part 8.1 of the Rule.,

~~(c)~~(d) in the second sentence of the third paragraph under the subheading of "Categories of Designation" by

(i) replacing "or***" with "***,***" before "***a designated regulated-data benchmark***", and***

(ii) adding "or a designated commodity benchmark***" before the period,***

~~(d)~~(e) in the bullets of the third paragraph under the subheading of "Categories of Designation"

(i) by deleting "and***" in the first bullet,***

(ii) by replacing ".***" with "***, but not if it is a commodity benchmark,***" in the second bullet, and***

(iii) by adding after the second bullet the following two bullets:

- a designated commodity benchmark may also be designated as a designated regulated-data benchmark, and
- a designated commodity benchmark may also be designated as a designated critical benchmark.,~~ and~~

~~(e)~~(f) in the fourth paragraph under the subheading of "Categories of Designation" by

(i) replacing "or***" with "***,***" before "***a regulated-data benchmark***", and***

(ii) adding "or a commodity benchmark***" before the period~~.~~.***

(g) by adding the following under the heading "Definitions and Interpretation"

Subsection 1(1) – Definition of designated commodity benchmark

The Rule defines a "designated commodity benchmark" to ensure, to the extent possible, a consistent interpretation of this term. The definition specifically excludes a benchmark that has, as an underlying interest, a currency.

By "commodity benchmark", we generally mean a benchmark based on a commodity with a finite supply that can be delivered either in physical form or by delivery of the instrument evidencing ownership of the commodity. We consider certain intangible commodities, such as carbon credits and emissions allowances, to be commodities for purposes of Ontario commodity futures law, and may include other intangible products that develop as international markets evolve. Certain crypto assets also may be characterized as intangible commodities. Staff of the Commission may recommend that the Commission designate a benchmark based on these intangible commodities as a "commodity benchmark" for the purposes of the Rule.

Subsection 1(1) – Definitions of front office and front office employee in relation to a benchmark contributor

"Front office" is used in the context of a benchmark contributor, or of an affiliated entity of a benchmark contributor, and means any department, division or other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities on behalf of the benchmark contributor or the affiliated entity of the benchmark contributor. "Front office employee" is used in the same context and means any employee or agent of a benchmark contributor, or of an affiliated entity of a benchmark contributor, who performs any of those functions. In general, we consider front office employees to be the individuals who generate revenue for the benchmark contributor or the affiliated entity.,

~~3. Subsection 1(1) with heading of "Definition of designated critical benchmark" is changed~~

~~(a) in the first paragraph by adding at the end of that first paragraph the following sentence:~~

(h) by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark"

However, if a designated commodity benchmark is also designated as a critical benchmark, then subsections ~~40.2(1~~40.1(1) and (2) of the Rule will specify the requirements applicable to such a benchmark.~~, and~~

*(i)~~(b)~~ in the first sentence of the second paragraph under the heading of "Subsection 1(1) – Definition of designated critical benchmark" by adding "*or commodity*" before "*markets*"~~.~~, and*

(j)~~4.~~ by adding the following at the end of the first paragraph under the heading of "Subsection 1(1) ~~with the heading of "~~ – Definition of designated regulated-data benchmark"~~ is changed by adding at the end of the first paragraph the following sentence:~~

However, if a commodity benchmark is dually designated as a commodity benchmark and a regulated-data benchmark, then subsections ~~40.2(3~~40.1(3) and (4) of the Rule will specify the requirements applicable to such a benchmark..

3~~5~~. Part 4 Input Data and Methodology is changed

*(a) by adding "*or front office employee*" after "*from front office*" in the subheading of "Subsection 15(4) – Verification of input data from front office of a benchmark contributor",*

*(b) by adding "*or front office employee*" after "*from any front office*" in the first paragraph under the subheading "Subsection 15(4) – Verification of input data from front office or front office employee of a benchmark contributor", and*

(c) by deleting the following

Subsection 15(5) – Front office of a benchmark contributor

Subsection 15(5) of the Rule provides that "front office" of a benchmark contributor or an applicable affiliated entity means any department, division, group, or personnel that performs any pricing, trading, sales, marketing, advertising, solicitation, structuring, or brokerage activities. In general, we consider front office staff to be the individuals who generate revenue for the benchmark contributor or the affiliated entity..

4. The Companion Policy is changed by adding the following part~~:~~

PART 8.1
DESIGNATED COMMODITY BENCHMARKS

~~**Section 40.1 Definition of commodity benchmark**~~

~~The Instrument defines a "commodity benchmark" to ensure, to the extent possible, a consistent interpretation of this term. The definition specifically excludes a benchmark that has, as an underlying interest, a currency, or an intangible commodity that can only be delivered in digital format, including crypto and digital assets.~~

Publication of information

Under Part 8.1, there are several provisions that require a designated benchmark administrator to publish information relating to a designated commodity benchmark, including:

- subsection 40.4(2) - the elements of the methodology of the designated commodity benchmark;
- section 40.5 - the rationale for adopting the methodology, the process for internal review and approval of the methodology, and the process for making significant changes to the methodology;
- subsection 40.7(1) - a description of the commodity that is the underlying interest of the designated commodity benchmark;
- section 40.8 - an explanation of each determination of the designated commodity benchmark;
- subsection 40.12(4) - a description of a conflict of interest, or a potential conflict of interest, in respect of the designated commodity benchmark; and
- section 40.13 - the publication of a limited assurance report or a reasonable assurance report.

For the purposes of Part 8.1, we generally consider publication of the applicable information on the designated benchmark administrator's website, accompanied by a news release advising of the publication of the information, as sufficient notification in these contexts. However, we recognize that a news release generally will not be necessary for the explanation of each determination of a designated commodity benchmark required under section 40.8. We consider it good practice for a designated benchmark administrator to establish a voluntary subscription-based email distribution list for those parties who wish to receive notice of publication by email.

In addition to, or as an alternative to, a news release, a designated benchmark administrator may want to consider other ways of helping to ensure that stakeholders and members of the public are aware of the publication of the applicable information on the designated benchmark administrator's website, such as postings on social media or internet platforms, media advisories, newsletters, or other forms of communication.

Subsections ~~40.2(1~~40.1(1) and (2) – Dual designation as a commodity benchmark and a critical benchmark

A designated commodity benchmark may also be designated as a critical benchmark and, in such case, would still be subject to the requirements under Part 8.1. As there are no specific requirements under Part 8.1 for benchmark contributors, such dually-designated benchmarks would not be subject to the requirements under sections 30 to 33 of the Rule.

If the underlying commodity is gold, silver, platinum or palladium, then rather than being subject to the requirements under Part 8.1, the requirements under Parts 1 to 8 would apply.

Subsections ~~40.2(3~~40.1(3) and (4) – Dual designation as a commodity benchmark and a regulated-data benchmark

If a commodity benchmark is designated as a regulated-data benchmark, then it is not subject to Part 8.1, rather the requirements under Parts 1 to 8 would apply. However, some commodity benchmarks may be determined from transactions where the parties, in the ordinary course of business, make or take physical delivery of the commodity, and those same commodity benchmarks may also meet the requirements for regulated-data benchmarks. Generally, these transactions would also be arm's length transactions. Regulated-data benchmarks determined from such transactions would more closely resemble commodity benchmarks, rather than financial benchmarks, and they would be dually designated as commodity and regulated-data benchmarks. Benchmark administrators of such dually-designated benchmarks would be subject to the requirements under Part 8.1.

However, as provided by subsection ~~40.2(4~~40.1(4), such benchmark administrators would be exempted from certain policy and control requirements relating to the process of contributing input data, from the requirement to publish certain explanations for each determination of the benchmark, and from the requirement for an assurance report. The exemptions under subsection ~~40.2(4~~40.1(4) are meant to ensure that administrators of benchmarks dually designated as commodity and regulated-data benchmarks receive comparable treatment under Part 8.1 as administrators of designated regulated-data benchmarks under Parts 1 to 8.

Given the interpretation provided by paragraph 1(3)(a) of the Rule as to when input data is considered to have been "contributed", as described earlier in this Policy, input data for regulated-data benchmarks would not generally be considered to be contributed. Therefore, certain requirements that are only applicable if there is a contributor or if input data is contributed, would not apply to a benchmark that is dually designated as a commodity benchmark and a regulated-data benchmark. Examples include the requirements in paragraphs ~~40.5(2~~40.4(2)(g), (h) and (i), ~~and~~ paragraphs ~~40.8(2~~40.7(2)(d) and (e) and section 40.9.

For clarity, we would not designate a regulated-data benchmark that is also a commodity benchmark, whether dually designated as such or only as a regulated-data benchmark, as a critical benchmark.

Section ~~40.3~~40.2 – Non-application to designated commodity benchmarks

Physical commodity markets have unique characteristics which have been taken into account in determining which requirements should be imposed on designated benchmark administrators in respect of designated commodity benchmarks. Consequently, section ~~40.3~~40.2 includes a number of exemptions from certain requirements for such benchmark administrators, either because some are not suitable or because more appropriate substituted requirements are provided under Part 8.1 of the Rule. Requirements that are relevant to designated benchmark administrators of designated commodity benchmarks have been excepted from the exemptions in section ~~40.3~~40.2, and include, among others, the requirements for:

- policies and procedures as set out in subsection 5(1),
- a compliance officer as set out in section 6,
- reporting on contraventions in section 11,
- policies and procedures regarding complaints, as set out in section 12,
- outsourcing under section 13,
- the publishing of a benchmark statement under section 19, and
- providing notice of changes to and cessation of a benchmark, as provided under section 20.

In addition to the guidance provided in this Policy with respect to paragraph 12(2)(c), we expect disputes as to pricing determinations that are not formal complaints to be resolved by the designated benchmark administrator of a commodity benchmark with reference to its appropriate standard procedures. In general, we would expect that if a complaint results in a change in price, whether the complaint is formal or informal, then the details of that change in price will be communicated to stakeholders as soon as possible.

With respect to section 13, for the purposes of Ontario commodity futures law, a designated benchmark administrator remains responsible for compliance with the Rule despite any outsourcing arrangement.

Paragraph ~~19(2~~19(1)(a) of the Rule provides that a required element of the benchmark statement for a designated benchmark is a description of the part of the market the designated benchmark is intended to represent. This relates to the benchmark's purpose. A commodity benchmark may be intended to reflect the characteristics and operations of the referenced underlying physical commodity market and may be used as a reference price for a commodity and for commodity derivative contracts.

Section ~~40.5~~40.4 – Methodology to ensure the accuracy and reliability of a designated commodity benchmark

We expect that the methodology established and used by a designated benchmark administrator will be based on the applicable characteristics of the relevant underlying interest of the designated commodity benchmark for that part of the market that the designated commodity benchmark is intended to represent, such as the grade and quality of the commodity, its geographical location, seasonality, etc., and will be sufficient to provide an accurate and reliable benchmark. For example, the methodology for a crude oil benchmark should reflect the following, but not be limited to, the specific crude grade (e.g., sweet or heavy), the location (e.g., Edmonton or Hardisty), the time period within which transactions are ~~completed~~concluded during the trading day, and the month of delivery~~, and the assessment method used such as a volume weighted average~~.

We further expect that, where consistent with the methodology of the designated commodity benchmark, priority will be given to input data in the order of priority set out below:

(a) concluded transactions in the underlying market that the designated commodity benchmark is intended to represent;

(b) if the input data referred to in paragraph (a) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, bids and offers in the market described in paragraph (a);

(c) if the input data referred to in paragraphs (a) and (b) is not available or is insufficient in quantity to determine the designated commodity benchmark in accordance with its methodology, any other information relating to the market described in paragraph (a) that is used to determine the designated commodity benchmark; and

(d) in any other case, expert judgments.

~~**Subparagraph 40.5(2)(a)(i) – Reference to concluded transactions**~~

~~In a number of instances, under Part 8.1, we refer to concluded transactions. For clarity, by concluded transactions, we mean transactions that are executed but not necessarily settled.~~

Subparagraph ~~40.5(2~~40.4(2)(a)(ii) – Specific reference unit used in the methodology

The specific reference unit used in the methodology will vary depending on the underlying commodity. Examples of possible reference units include barrels of oil or cubic meters (m^3) in respect of crude oil, and gigajoules (GJ) or one million British Thermal Units (MMBTU) in respect of natural gas.

Paragraph ~~40.5(2~~40.4(2)(c) – Relative importance assigned to each criterion used in the determination of a designated commodity benchmark

The requirement in paragraph ~~40.5(2~~40.4(2)(c) regarding the relative importance assigned to each criterion, including the type of input data used and how and when expert judgment may be exercised, is not intended to restrict the specific application of the relevant methodology, but to ensure the quality and integrity of the determination of the designated commodity benchmark.

Paragraph 40.4(2)(j) – Circumstances in which transaction data may be excluded in the determination of a designated commodity benchmark

Where and to the extent that concluded transactions are consistent with the methodology of a designated commodity benchmark, we expect that a benchmark administrator will include all such concluded transactions in the determination of the designated commodity benchmark. This is not intended to reduce or restrict a benchmark administrator's flexibility to determine the methodology or to determine whether certain input data is consistent with that methodology. Rather, it is intended to clarify that where data is determined by the benchmark administrator to be consistent with the methodology of the designated commodity benchmark, we expect all such data to be included in the calculation of the benchmark.

We consider "concluded transactions" to mean transactions that are executed but not necessarily settled.

Section ~~40.7~~40.6 – Review of methodology

We expect that a designated benchmark administrator will determine the appropriate frequency for carrying out an internal review of a designated commodity benchmark's methodology based on the specific nature of the benchmark (such as the complexity, use and vulnerability of the benchmark to manipulation) and the applicable characteristics of the part of the market (or changes thereto) that the benchmark is intended to represent. In any event, the administrator must review the methodology at least once ~~in~~ every 12 ~~month period~~ months.

Paragraph ~~40.8(2)(a) - Order of priority of input data specified in the methodology~~40.7(2)(a) – Quality and integrity of the determination of a designated commodity benchmark

While we recognize a benchmark administrator's flexibility to determine its own methodology and use of market data, we expect an administrator to use input data in accordance with the order of priority specified in its methodology. ~~We further expect that, where consistent with such methodology, priority will be given to input data in the following order: (1) concluded and reported transactions, (2) bids and offers, and (3) other information.~~

Furthermore, we expect that the designated benchmark administrator will employ measures reasonably designed to ensure that input data contributed and considered in the determination of a designated commodity benchmark is *bona fide*. By *bona fide* we mean that parties contributing the input data have executed or are prepared to execute transactions generating such input data and that ~~concluded~~executed transactions were ~~executed~~concluded between parties at arm's length. If the latter is not the case, then particular attention should be paid to transactions between affiliated entities and consideration given as to whether this affects the quality of the input data to any extent.

Section ~~40.9~~40.8 – Transparency of determination of a designated commodity benchmark

We expect that, in providing ~~a plain language~~an explanation of the extent to which, and the basis upon which, expert judgment was used in the determination of a designated commodity benchmark, a designated benchmark administrator will address the following:

(a) the extent to which a determination is based on transactions or spreads, and interpolation or extrapolation of input data;

(b) whether greater priority was given to bids and offers or other market data than to concluded ~~and reported~~ transactions, and, if so, the reason why;

(c) whether transaction data was excluded, and, if so, the reason why.

Section ~~40.9~~40.8 requires a designated benchmark administrator to publish the specified explanations for each determination of a designated commodity benchmark. However, we recognize that, to the extent that there have been no significant changes, a standard explanation may be acceptable, and any exceptions in the explanation must then be noted for each determination. We generally expect that the ~~required~~specified explanations will be provided contemporaneously with the determination of a benchmark, but recognize that unforeseen circumstances may cause delays, in which case, we still expect that explanation to be published as soon as reasonably practicable.

Section ~~40.10~~40.9 – Policies, procedures, controls and criteria of the designated benchmark administrator to ensure the integrity of the process of contributing input data

There are no specific requirements under Part 8.1 for benchmark contributors with respect to commodity benchmarks, as under Part 6 for financial benchmarks, nor, consequently, obligations on designated benchmark administrators to ensure that the benchmark contributors adhere to such requirements. However, section ~~40.10~~40.9 does require an administrator to ensure the integrity of the process for contributing input data. We are of the view that such policies, procedures, controls and criteria will promote the accuracy and integrity of the determination of the commodity benchmark.

Paragraph ~~40.10(1)~~40.9(d) – Criteria relating to the contribution of transaction data

In establishing criteria that determine the appropriate contribution of transaction data by benchmark contributors, we would expect that the criteria would include encouraging benchmark contributors to contribute transaction data from the back office of the benchmark contributor. We ~~would~~ consider the back office of a benchmark contributor to be any department, division~~, group~~ or ~~personnel~~other internal grouping of a benchmark contributor, or of an affiliated entity of a benchmark contributor, that performs any administrative and support functions, including, as applicable, settlements, clearances, regulatory compliance, maintaining of records, accounting and information technology services on behalf of the benchmark contributor or of the affiliated entity of the benchmark contributor. In general, we consider the back office ~~staff to be the individuals~~of a benchmark contributor, or of an affiliated entity of a benchmark contributor, to be comprised of employees or agents who support the generation of revenue for the benchmark contributor or the affiliated entity.

Subsection ~~40.11(3~~40.10(3) – Governance and control requirements

To foster confidence in the integrity of a designated commodity benchmark, we are of the view that benchmark individuals involved in the determination of a commodity benchmark should be subject to the minimum controls set out in subsection ~~40.11(3~~40.10(3). A designated benchmark administrator must decide how to implement its own specific measures to achieve the objectives set out in paragraphs (a) to (e).

Section ~~40.12~~40.11 – Books, records and other documents

Subsection ~~40.12(2~~40.11(2) sets out the minimum records that must be kept by a designated benchmark administrator. We expect an administrator to consider the nature of its benchmarks-related activity when determining the records that it must keep.

In addition to the record keeping requirements in the Rule, Ontario commodity futures law generally requires market participants to keep such books, records and other documents as may reasonably be required to demonstrate compliance with Ontario commodity futures law.

Section ~~40.13~~40.12 – Conflicts of interest

We expect the policies and procedures required under subsection ~~40.13(1~~40.12(1) for identifying and eliminating or managing conflicts of interest to provide the parameters for a designated benchmark administrator to

- identify conflicts of interest,
- determine the level of risk, to both the benchmark administrator and users of its designated commodity benchmarks, that a conflict of interest raises, and
- respond ~~appropriately~~ to ~~conflicts~~a conflict of interest by eliminating or managing the conflict of interest, as appropriate, given the level of risk that it raises.

In establishing an organizational structure, as required under subsections ~~40.11(1~~40.10(1) and (2), that addresses the conflict of interest requirements under subsection ~~40.13(3~~40.12(3), the designated benchmark administrator should ensure that persons responsible for the determination of the designated commodity benchmark:

- are located in a secure area apart from persons that carry out other business activity, and
- report to a person that reports to an executive officer that does not have responsibility relating to other business activities of the administrator.

Section ~~40.14~~40.13 - Assurance report on designated benchmark administrator

Under Part 8.1, there is no requirement for an oversight committee, as provided by section 7. Therefore, for purposes of section ~~40.14~~40.13, there is no oversight committee to specify whether a limited assurance report on compliance or a reasonable assurance report on compliance needs to be provided by a public accountant. We would expect the designated benchmark administrator to determine which report is appropriate, based on the specific nature of the designated commodity benchmark, including the complexity, use and vulnerability of the benchmark to manipulation, and the applicable characteristics of the market that the benchmark is intended to represent, or other relevant factors regarding the administration of the benchmark.

~~6~~5. These changes become effective on ~~•~~September 27, 2023.

B.1.3 OSC Staff Notice 52-724 – Considerations for Public Accounting Firms in Developing Internal Ethics Policies and Procedures

OSC Staff Notice 52-724 – Considerations for Public Accounting Firms in Developing Internal Ethics Policies and Procedures is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

ONTARIO SECURITIES COMMISSION

OSC Staff Notice 52-724

Considerations for Public Accounting Firms in Developing Internal Ethics Policies and Procedures

June 28, 2023

Ontario

Introduction

On September 23, 2022, the Ontario Securities Commission (OSC) announced that it would be making targeted inquiries to certain public accounting firms that conduct audits of Ontario reporting issuers (the Audit Firms).

We conducted our inquiries in response to various ethical violations by public accounting firms recently identified during investigations carried out by the Canadian Public Accountability Board (CPAB), the Canadian regulator that oversees all public accounting firms that audit Canadian reporting issuers, as well as by regulators in other jurisdictions. Auditors perform an essential gatekeeper role in Ontario's capital markets by providing investors with confidence and trust that the information presented in financial statements can be relied upon when making investment decisions. Any actual or perceived issues with the ethical integrity of auditors in performing this critical function can undermine the confidence that the investing public places in financial reporting.

Given the importance of the auditors' gatekeeper role, we wanted to assess how public accounting firms were communicating the need for strong ethical behaviour to invoke a culture of internal compliance within. On that basis, we also raised inquiries of how public accounting firms assess compliance with ethical requirements, as part of their internal policies and procedures.

Purpose

The OSC is publishing this staff notice to communicate observations and identify select areas of focus that public accounting firms should consider when assessing whether their existing policies and procedures are sufficiently robust to safeguard against ethical violations in the audits of financial statements of reporting issuers. The select areas of focus identified in this notice are scalable, allow flexibility to different types and sizes of public accounting firms and their respective practices, and are not meant to suggest a 'one size fits all' approach.

⚠ *The views provided in this staff notice are based on existing requirements[1] in applicable professional and regulatory standards and do not create new requirements for public accounting firms.*

[1] For example, the Canadian Standards on Quality Management in the CPA Canada Handbook – Assurance and the CPA Ontario Code of Professional Conduct.

Executive Summary

As a result of our targeted inquiries to the Audit Firms, we are providing views on the following key areas:

Internal Ethics Policies and Procedures: We have identified practices that public accounting firms should consider as part of their ethics strategy, for example, the clear identification of leaders within the firm with 'ownership' of the ethics policy, targeted ethics education training and guidance, and the establishment of a robust internal whistleblower program.

Dating of Audit Work Performed: Public accounting firms should consider whether their practices are sufficient for monitoring compliance as it relates to the dating of working papers, timely archiving of audit files, and clarity around the determination of what constitutes 'administrative' documentation in order to limit what can be added to the working paper files subsequent to the date of the auditor's report.

Internal Professional Training Programs: Public accounting firms should consider the need for preventative and detective controls to minimize the risk of assurance staff sharing answers, along with timely communication of a 'zero tolerance' policy for such practices.

Scope

The Audit Firms we engaged with are public accounting firms that audit a significant portion of reporting issuers in Ontario. Our inquiries included requests for the following information:

- Copies of internal policies for audit professionals setting out expectations on ethical behaviour,
- Procedures in place to support and assess compliance with internal policies pertaining to ethics and other relevant ethical requirements,
- Policies and procedures in place to support the operation of internal whistleblower programs,
- Practices in place to support and assess compliance around the dating of audit work performed, and
- Practices in place to support the integrity of internal professional training programs, including preventative and detective procedures to reduce the risk that answers used to assess completion of courses by assurance staff have been compromised.

Both CPAB and CPA Ontario have important mandates that include oversight of public accounting firms who conduct financial statements audits of reporting issuers in Canada and Ontario respectively. Our cooperative engagement with CPAB and CPA Ontario on matters relating to the importance of audits being performed with integrity and in accordance with professional standards demonstrates our collective regulatory objectives.

Our work on this initiative involved discussions with CPAB and CPA Ontario to the extent permitted by our authorities to support regulatory alignment on such matters.

Internal Ethics Policies and Procedures

Each of the Audit Firms had a collection of policy manuals available and accessible to employees that promote a culture of professionalism, integrity, quality control and ethics-focussed practices among its professionals. The policies in these manuals were supported by a Code of Conduct that all employees were required to review and confirm compliance with at least annually, which is a common practice for many organizations.

In addition to the code of conduct obligations, each Audit Firm also employed other policies and procedures to support a strong ethical culture. Below are some areas of focus that should be considered by all public accounting firms to assess whether their existing policies and procedures establish quality management objectives, are sufficiently robust to safeguard against ethical violations in the audits of financial statements and support compliance with the relevant ethical requirements of professional and regulatory standards:

- ***Develop an 'ethics strategy' to support development and maintenance of a strong ethical culture –*** Public accounting firms should have an overarching strategy on how to communicate the importance of ethical integrity, develop policies and guidance to support consistent ethical practices and develop procedures to monitor compliance with ethical requirements. Below are examples of areas that could be considered as part of an 'ethics strategy':
    - ***Provide ethics education training and guidance –*** Periodic training programs for employees can reinforce the firm's ethics policies and procedures, provide employees an opportunity to understand how certain policies are applied and communicate any subsequent internal policy updates. The training materials could include, or be supplemented with, specific guidance on how to respond to various 'ethical dilemmas' that commonly occur. This would provide employees greater confidence in applying judgement in determining when information needs to be reported internally (and the potential implications of staying silent).
    - ***Develop processes to monitor and assess the need for updates to policies or guidance –*** In addition to implementing specific procedures to monitor compliance with the firm's ethics policies, developing a formalized process for evaluating ethical incidents and feedback over an extended period of time assists in determining whether there are trends that need to be addressed, or key messages that need to be reinforced or refined, in existing policies or guidance.

- ***Consider opportunities for employee feedback –*** In assessing the effectiveness of a firm's ethics program and ethical culture, a key input can be employee feedback. The perception of the firm from an employee perspective as an ethical workplace and their views on whether the firm has successfully implemented policies or procedures are important factors in establishing a strong ethical culture. For example, issuing a survey to all employees on a periodic basis to collect feedback surrounding a variety of topics and themes, including ethical culture, can be a way to solicit feedback. In addition, employee feedback opportunities should be collected via direct reporting (to a manager, team leader, supervisor, or other designated firm personnel) and integrated into other processes such as performance reviews and employee exit interviews. These opportunities support an environment of continuous improvement and provide an additional channel for employees to raise ethical matters.

- ***Identify a leader responsible for implementing an 'ethics strategy' –*** To support a strong ethical culture it is important to establish an executive-level 'ethics leader' working individually, or with a group of senior leaders, with the ownership and responsibility of implementing, monitoring and continuously improving the firm's ethics policies and procedures. These individuals should also be responsible for ensuring an appropriate process is in place for investigating and responding to violations identified through monitoring or other reporting mechanisms, such as a whistleblower program (discussed in more detail below). The designated individual or group with this responsibility should be communicated to all employees and their performance in implementing an 'ethics strategy' should be evaluated on a periodic basis.

- ***Establish a robust internal whistleblower program –*** An established program that encourages all employees to communicate potential contraventions of policies or requirements can support a strong ethical culture by ensuring all employees know their role and responsibilities in identifying and reporting potential ethical incidents and other forms of misconduct. Employees are more likely to utilize such internal programs when there is strong awareness and training on how the program operates, including who is involved in reviewing and assessing any incident reports received, what actions were taken because of the report, and what communication they will receive as part of the process. Other information communicated broadly to employees about the internal program should include, but is not limited to, the scope of the program, types of conduct that can be reported, examples of when an employee should report an incident, a description of what information should be included in the report and how an individual is protected (i.e., confidentiality and anti-reprisal protections).

  Some key components to supporting a robust internal whistleblower program include establishing confidence that a whistleblower's identity will be protected, and ensuring any incident reported will be reviewed by the appropriate parties.

These factors can be supported in varying ways, which could include an ethics hotline or mailbox hosted by an external third party and an established process through which all incidents are escalated to designated firm personnel who are not involved in the practice of auditing financial statements, when possible.

The latter would help mitigate actual and perceived conflicts of interest of those investigating and assessing the incident reports. It is also important that designated firm personnel receiving incident reports be well educated on how to respond and what steps to take, including how to protect the whistleblower and guard against potential reprisals. It may also be beneficial to communicate other external whistleblower reporting channels made available by regulators, for example, the OSC Whistleblower Program accepts tips on possible violations of Ontario securities law[2].

By making potential whistleblowers aware of multiple reporting channels, including external channels, firms can foster an internal culture of compliance that promotes and welcomes internal reports of potential misconduct.

Dating of Audit Work Performed

To comply with Canadian Auditing Standards, an auditor must obtain sufficient appropriate audit evidence on which to base its audit opinion before issuing an auditor's report.

All significant audit documentation (or 'working papers') the auditor uses to support its opinion are required to be prepared and 'signed-off' prior to the dating and issuance of the auditor's report. The standards also stipulate the timeframe within which auditors must complete the administrative process of assembling the final audit file, subsequent to the date of the auditor's report.

To minimize the risk that audit professionals could include significant audit documentation after the corresponding auditor's reports are dated, public accounting firms should consider whether they have specific policies and procedures whose objectives focus on ensuring that staff understand how to apply the requirements in professional standards with respect to the dating of audit working papers and assembly of audit files. We observed that the Audit Firms generally relied on the use of electronic software to compile, assemble and evidence 'sign-off' of audit working papers.

[2] The OSC Whistleblower Program is designed to complement – not compete with – internal reporting channels. The OSC Whistleblower Program and governing statutes, together, provide robust confidentiality and anti-reprisal protections to encourage individuals to report information about securities misconduct.

The use of electronic software, and the expectation that working papers are prepared and assembled in electronic format, in many cases allowed the Audit Firms to institute automated processes of only allowing sign-offs to be currently dated (i.e., audit professionals are prevented from backdating sign-offs).

Although the above policies and automated sign-offs in electronic software are common tools, additional types of procedures could also be employed. The following are key areas that all public accounting firms should consider to strengthen their policies, controls, and mechanisms for monitoring compliance as it relates to the dating of working papers:

- ***Continuous evaluation of electronic software controls –*** Public accounting firms should obtain a comprehensive understanding of their electronic documentation systems (both internally developed and off the shelf audit software packages) and periodically evaluate the risk of backdating of working paper sign-offs to be confident that any preventative controls in place to support that sign-off cannot be compromised. If issues are identified, additional procedures should be put in place to monitor compliance and prevent the compromised feature from being taken advantage of by audit professionals.
- ***Processes and controls to assess 'administrative' documentation added subsequent to the date of the auditor's report –*** There should be a limited number of instances when documentation is added subsequent to the date of the auditor's report. To support consistent documentation practices, public accounting firms should implement processes and procedures to emphasize that documentation added subsequent to the date of the auditor's report is limited and is required to be administrative in nature (i.e., it does not constitute evidence which forms part of the basis of supporting the auditor's opinion). In addition to developing policies on what types of documentation would be considered 'administrative', implementing procedures to monitor this area will support compliance with standards and reduce the risk of new evidence being included after the auditor's report that would impact the auditor's opinion.
- ***Centralized mechanism for timely archiving of audit files and maintenance of 'final versions' –*** Public accounting firms should employ processes and implement controls to monitor the timely archiving of final audit files. Processes and controls should also be in place to prevent archived audit files from being modified without appropriate consultation and approval by one or more designated individuals who were not part of the audit team.

Internal Professional Training Programs

Ongoing professional development and training programs are mandatory for professional accountants to maintain the professional competence necessary to effectively perform their role and to strengthen public trust in the accountancy profession. In Canada, the provincial accounting bodies that grant the Chartered Professional Accountant (CPA) designation also establish the baseline requirements that professional accountants must undertake on an annual basis to maintain their professional designations.

Canadian quality control standards for public accounting firms require that firms establish policies and procedures, along with sufficient monitoring to ensure that their assurance staff have the necessary competence and capabilities to perform audits.

To support compliance with the above requirements, many public accounting firms administer internal training programs for their audit professionals. Many of these training programs include a mandatory testing component, which must be completed independently, for the individual to obtain a credit for completion.

We observed that the Audit Firms primarily used systems-based platforms to deliver, track and record completion of mandatory training, including the testing component. These platforms typically provide the users with an automated reminder prior to training of the importance of independent completion of the course and the concluding assessment. In addition, we found that the Audit Firms primarily relied on their internal whistleblower programs to identify and report violations of the requirement for staff to independently complete training assessments.

Some of the Audit Firms employed additional procedures to support compliance with their policies related to professional training. The following are examples of key areas where public accounting firms should consider employing additional procedures:

- ***Implementation of preventative controls to minimize the risk of assurance staff sharing answers to training module assessments –*** In addition to warning messages at the beginning of training modules, public accounting firms should consider employing other preventative controls to mitigate the risk of sharing of answers to training assessments such as randomizing the questions used in the assessment process (from a larger pool of possible questions), and / or not disclosing the correct answers upon completion of the assessment. If an external provider is used to support internal training, public accounting firms should understand what tools the provider implements to limit the opportunity for answer sharing and assess whether additional procedures should be considered.

- ***Implementation of appropriate detection level controls (other than reliance on internal whistleblower program) –*** Public accounting firms should consider employing more proactive and direct procedures aimed at detecting instances of unethical behaviour, for example - the use of key terms to periodically conduct an electronic search of system drives and assurance staff emails to identify possible instances of answer sharing.
- ***Appropriate communication of violations and consequences –*** If instances of answer sharing are identified, it is important that public accounting firms communicate internally and on a timely basis zero tolerance for such unethical behavior and that the firm has investigated and taken corrective action. Communication of this nature promotes strong ethical culture.

Conclusion

All public accounting firms should adopt policies and procedures that encourage and support strong ethical behaviour from their employees. The capital markets place absolute confidence in public accounting firms to perform their gatekeeper role with integrity, which includes the application of strong ethical and independent decision making. If there are actual, or perceived, concerns with ethical behaviour at public accounting firms, this can significantly impact and undermine the confidence the investing public places on the assurance opinions issued by specific firms, and the profession in general.

We strongly encourage public accounting firms to review and apply the areas of focus outlined in this notice in developing appropriate ethical policies and procedures. We also remind public accounting firms the importance of reporting material ethical breaches that could impact the quality of assurance services to appropriate regulatory organizations on a timely basis to ensure protection of the public interest. We will continue to monitor this area and consider the need for further steps if additional or ongoing concerns are identified in the future.

Contact Information

Please refer you questions to the following OSC staff:

Cameron McInnis, Chief Accountant
Ontario Securities Commission
(416) 593-3675
cmcinnis@osc.gov.on.ca

Mark Pinch, Associate Chief Accountant
Ontario Securities Commission
(416) 593-8057
mpinch@osc.gov.on.ca

This page intentionally left blank

B.1.4 Notice of Ministerial Approval of Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations Relating to Total Cost Reporting

NOTICE OF MINISTERIAL APPROVAL OF
AMENDMENTS TO
NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS
RELATING TO TOTAL COST REPORTING

Ministerial Approval

On June 20, 2023, the Minister of Finance approved amendments (the **Rule Amendments**) made by the Ontario Securities Commission to National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* relating to reporting embedded fees incurred by clients in respect of prospectus-qualified investment funds (**Total Cost Reporting**).

The Rule Amendments, as well as corresponding changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registration Obligations* (the **CP Changes**), were published on April 20, 2023 in the Bulletin and on the OSC website. The Rule Amendments are also being published today in Chapter B.5 of this Bulletin.

The Rule Amendments and CP Changes will become effective on January 1, 2026.

Questions

Please refer your questions to:

Christopher Jepson
Senior Legal Counsel, Compliance & Registrant Regulation
cjepson@osc.gov.on.ca

B.1.5 CSA Staff Notice 58-315 – Extension of Comment Period – Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices and Proposed Changes to National Policy 58-201 Corporate Governance Guidelines

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA STAFF NOTICE 58-315

EXTENSION OF COMMENT PERIOD

PROPOSED AMENDMENTS TO
FORM 58-101F1 *CORPORATE GOVERNANCE DISCLOSURE* OF
NATIONAL INSTRUMENT 58-101 *DISCLOSURE OF CORPORATE GOVERNANCE PRACTICES*

AND

PROPOSED CHANGES TO
NATIONAL POLICY 58-201 *CORPORATE GOVERNANCE GUIDELINES*

June 28, 2023

On April 13, 2023, the Canadian Securities Administrators (**CSA** or **we**) published for comment proposed amendments to the corporate governance disclosure requirements and policy relating to the director nomination process, board renewal and diversity (the **Proposals**). The Proposals would require disclosure on aspects of diversity beyond the representation of women, while retaining the current disclosure requirements with respect to women. In addition, the Proposals contemplate changes to the corporate governance policy that would enhance the existing corporate governance guidelines relating to the director nomination process and introduce guidelines regarding board renewal and diversity.

Extension of comment period

The comment period on the Proposals is scheduled to close on July 12, 2023. We have received feedback from several stakeholders that it would be beneficial for stakeholders to have additional time to review the Proposals and prepare comments. We are therefore extending the comment period to **September 29, 2023**.

How to provide comments

Stakeholders are invited to provide comments on the Proposals in writing on or before **September 29, 2023**. Instructions on how to submit comments can be found in Annex A.

Questions

Please refer your questions to any of the following:

British Columbia Securities Commission
Melody Chen
Senior Legal Counsel
Legal Services, Corporate Finance
Tel: 604-899-6530
Email: mchen@bcsc.bc.ca

Nazma Lee
Senior Legal Counsel
Legal Services, Corporate Finance
Tel: 604-899-6867
Email: nlee@bcsc.bc.ca

Alberta Securities Commission
Jennifer Smith
Senior Legal Counsel
Office of the General Counsel
Tel: 403-355-3898
Email: jennifer.smith@asc.ca

Nicole Law
Senior Securities Analyst
Corporate Finance
Tel: 403-355-4865
Email: nicole.law@asc.ca

Financial and Consumer Affairs Authority of Saskatchewan
Heather Kuchuran
Director, Corporate Finance
Securities Division
Tel: 306-787-1009
Email: heather.kuchuran@gov.sk.ca

Manitoba Securities Commission
Patrick Weeks
Deputy Director, Corporate Finance
Tel: 204-945-3326
Email: patrick.weeks@gov.mb.ca

Ontario Securities Commission
Jo-Anne Matear
Special Advisor to the Executive on Sustainable Finance and Emerging Regulatory Issues, Executive Office
Tel: 416-593-2323
Email: jmatear@osc.gov.on.ca

Jonathan Blackwell
Senior Accountant, Corporate Finance
Tel: 416-593-8138
Email: jblackwell@osc.gov.on.ca

Jodie Hancock
Senior Accountant, Corporate Finance
Tel: 416-593-2316
Email: jhancock@osc.gov.on.ca

Autorité des marchés financiers
Olivier Girardeau
Director of Sustainable Finance Oversight and Supervision
Tel: 514-395-0337, ext. 4334
Email: olivier.girardeau@lautorite.qc.ca

Martin Latulippe
Senior Policy Advisor
Tel: 514-395-0337, ext. 4331
Email: martin.latulippe@lautorite.qc.ca

Financial and Consumer Services Commission of New Brunswick
Ella-Jane Loomis
Senior Legal Counsel, Securities
Tel: 506-453-6591
Email: ella-jane.loomis@fcnb.ca

Nova Scotia Securities Commission
Abel Lazarus
Director, Corporate Finance
Tel: 902-424-6859
Email: abel.lazarus@novascotia.ca

Valerie Tracy
Securities Analyst
Tel: 902-424-5718
Email: valerie.tracy@novascotia.ca

ANNEX A

HOW TO SUBMIT COMMENTS

Please submit your comments in writing on or before **September 29, 2023**.

If you are not sending your comments by email, please send us an electronic file containing the submissions (in Microsoft Word Format).

Address your submission to all of the CSA jurisdictions as follows:

Alberta Securities Commission

Autorité des marchés financiers

British Columbia Securities Commission

Financial and Consumer Affairs Authority of Saskatchewan

Financial and Consumer Services Commission, New Brunswick

Manitoba Securities Commission

Nova Scotia Securities Commission

Office of the Superintendent of Securities, Newfoundland and Labrador

Office of the Superintendent of Securities, Northwest Territories

Office of the Superintendent of Securities Nunavut

Office of the Yukon Superintendent of Securities

Ontario Securities Commission

Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Send your comments to the following addresses listed below. Your comments will be forwarded to the remaining jurisdictions.

The Secretary Ontario Securities Commission 20 Queen Street West, 22nd Floor, Box 55 Toronto, Ontario M5H 3S8 Fax: 416-593-2318 Email: comment@osc.gov.on.ca	Me Philippe Lebel Corporate Secretary and Executive Director, Legal Affairs Autorité des marchés financiers Place de la Cité, tour Cominar 2640, boulevard Laurier, bureau 400 Québec (Québec) G1V 5C1 Fax: 514-864-6381 Email: consultation-en-cours@lautorite.qc.ca

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of the written comments received during the comment period. All comments received will be posted on the websites of each of the Autorité des marchés financiers at www.lautorite.qc.ca and the Ontario Securities Commission at www.osc.gov.on.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

B.2
Orders

B.2.1 Atalaya Mining Plc

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that the issuer is not a reporting issuer under applicable securities laws – issuer has one large Canadian securityholder that beneficially owns approximately 5.9% of the issuer's outstanding securities – Other than the one large Canadian securityholder, Canadian resident shareholders beneficially own approximately 0.38% of the issuer's outstanding securities – issuer has no present intention of seeking public financing by way of an offering of its securities in any jurisdiction of Canada – No securities of the issuer trade on any market or exchange in Canada – issuer's securities listed on AIM stock exchange – issuer is subject to reporting requirements under UK securities law – Large Canadian securityholder does not object to the order – issuer has issued a press release announcing that it has submitted an application to cease to be a reporting issuer in the Jurisdictions – requested relief granted.

Applicable Legislative Provisions

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

June 22, 2023

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

AND

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

AND

IN THE MATTER OF
ATALAYA MINING PLC
(the Filer)

ORDER

BACKGROUND

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

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

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

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

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 was incorporated under the laws of Cyprus on September 17, 2004.

2. The Filer's registered office is located at 1 Lambousas Street, 1095 Nicosia, Cyprus and the head office is located at 121 Prodromou street, office 705, Strovolos 2064, Nicosia, Cyprus.

3. The Filer is a reporting issuer in Ontario, British Columbia, Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (**Jurisdictions**).

4. The Filer has an authorised share capital of 200,000,000 ordinary shares (the **Shares**). As of March 20, 2023 there were 139,879,209 Shares issued and outstanding.

5. As of March 20, 2023 there were 3,543,500 Share options (**Options**) outstanding. To the best of the Filer's knowledge, no Options are held by Canadian residents.

6. The Filer's Shares were previously listed on the Toronto Stock Exchange (**TSX**), but were delisted from the TSX effective at the close of business on March 20, 2023.

7. The Filer's Shares are admitted to trading on the AIM market of the London Stock Exchange (**AIM**) (having been admitted to trading in May 2005) and trade under the symbol "ATYM".

8. None of the Filer's securities are listed, traded or quoted on a marketplace in Canada (as that term is defined in National Instrument 21-101 *Marketplace Operation*) and the Filer does not intend to have its securities listed, traded or quoted on such a marketplace in Canada.

9. The Filer is applying for a decision that it is not a reporting issuer in the Jurisdictions.

10. In the last twelve months, the Filer has not conducted any offerings, whether by way of a prospectus offering or a private placement, of its securities in Canada, nor does the Filer currently intend to conduct any offerings, whether by way of a prospectus offering or a private placement, of its securities in Canada. The Filer has not taken any steps to create a market for its securities in Canada since its Shares were delisted from the TSX. The Filer has only attracted a *de minimis* number of Canadian investors and the daily average volume of trading of the Shares in the 12 months prior to delisting from the TSX was approximately 1,326,592 Shares which accounted for 1.04% of the Filer's worldwide daily trading volumes.

11. The Filer is not in default of any of the requirements of the Legislation, the Reporting Requirements (as defined below), or any other securities or corporate legislation to which it is subject.

12. In support of the representations in paragraph 13 below, the Filer represents that it requested and reviewed: (i) its shareholder register from its Canadian transfer agent, Computershare Investor Services Inc.; (ii) its shareholder register from its United Kingdom transfer agent, Computershare Investor Services PLC (UK); (iii) a geographical breakdown report from Peel Hunt indicating the geographical location of residence of beneficial shareholders; and (iv) its internal option holder register, for the purpose of ascertaining the representation of Canadian resident beneficial holders of the Filer's securities. The Filer believes that these inquiries were diligent and reasonable in the circumstances.

13. As at February 27, 2023 (the date of the Peel Hunt report), the Filer had 228 registered shareholders, and based on the reasonable and diligent inquiries described above, to the best of the Filer's information, knowledge and belief:

    (a) 8,782,907 Shares of the Filer were beneficially held by entities who could be deemed to be Canadian residents, representing 6.28**%** of the total number of outstanding Shares of the Filer;

    (b) the largest shareholding which may be deemed to be owned or controlled by a Canadian resident are the beneficial holdings of Odyssey Reinsurance Company (a US incorporated reinsurance company), Newline Insurance Company Limited (a UK incorporated insurance company), Brit Reinsurance (Bermuda) Company Limited (a Bermuda reinsurance company) and Brit Syndicates Limited (a UK insurance company), which in aggregate hold 8,251,795 Shares representing approximately 5.9% of the total issued and outstanding Shares. These Shares are all held at Bank of New York Mellon and the underlying beneficial owners being the companies mentioned above. All of the above companies are subsidiaries of Fairfax Financial Holdings Limited (a Canadian incorporated company) (**Fairfax**) and investment management and the related voting rights in respect of all the Shares described above are controlled and directed by Hamblin Watsa Investment Counsel Ltd. (**Hamblin**), a Canadian company that is registered as a portfolio manager with the Ontario Securities Commission and which is also owned by Fairfax;

(c) Other Canadian securityholders hold an aggregate of 531,112 Shares (representing 0.38% of the total issued and outstanding Shares);

(d) Hamblin, as investment manager of the above-noted Fairfax entities, has confirmed in writing to the Filer that (i) it receives disclosure from the Filer under the Reporting Requirements (as defined below); and (ii) it does not object to the Filer's request for an order or decision of the Commission to cease being a reporting issuer in Ontario;

(e) the Filer has no Canadian resident optionholders;

(f) the Filer has no other outstanding securities;

(g) other than Fairfax, the residents of Canada do not beneficially own, directly or indirectly, more than 2% of each class or series of issued and outstanding securities (including debt securities) of the Filer worldwide; and

(h) the residents of Canada, including Fairfax, do not directly or indirectly comprise more than 2% of the total number of beneficial holders of issued and outstanding securities of the Filer worldwide.

14. The Filer is subject to the reporting requirements of the AIM Rules for Companies, as amended (the **Reporting Requirements**). The Reporting Requirements are similar in nature to the reporting requirements under National Instrument 51-102 *Continuous Disclosure Requirements* (**NI 51-102**) and the Filer will remain subject to the reporting requirements of a regulated public market.

15. On January 15, 2015 the Filer became a foreign issuer pursuant to, and has complied with, National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers* (**NI 71-102**).

16. Pursuant to NI 71-102, the Filer is deemed to have complied with most continuous disclosure requirements under NI 51-102 by complying with the Reporting Requirements, filing on SEDAR the equivalent disclosure documents required to be filed or furnished to the regulatory authorities pursuant to the Reporting Requirements and sending to shareholders in Canada the same documents it sends to its shareholders pursuant to the Reporting Requirements, in the same manner and at the same time, or as soon as practicable after, it sends such documents to its shareholders pursuant to such requirements.

17. The Filer has provided advance notice to Canadian resident securityholders in a news release dated May 30, 2023 that it has applied to securities regulatory authorities for a decision that it is not a reporting issuer in Canada and, if that decision is made, the Filer will no longer be a reporting issuer in any jurisdiction of Canada. As of the date of this order the Filer has received no response from its securityholders in response to that press release.

18. The Filer has provided an undertaking to the Ontario Securities Commission stating that Canadian resident shareholders will continue to receive disclosure material as required by the Reporting Requirements for so long as it is subject to those requirements. Disclosure material is also available under the Filer's website at www.atalayamining.com.

19. The Filer, upon the granting of the Order Sought, will no longer be a reporting issuer or the equivalent thereof in any jurisdiction in Canada.

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.

"Erin O'Donovan"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0129

This page intentionally left blank

B.3
Reasons and Decisions

B.3.1 Northview Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – vendor of properties to be acquired by the issuer pursuant to a proposed transaction will ultimately hold units in a subsidiary limited partnership of the issuer, which will be exchangeable into and in all material respects economically equivalent to a corresponding number of units of a class of the issuer's units, which are securities of a reporting issuer – relief granted from the requirement to obtain a formal valuation for the non-cash assets in connection with a related party transaction (i.e. the exchangeable units) – valuation not required for exchangeable units since units exchangeable for certain units of the issuer, which are securities of a reporting issuer; issuer also granted relief from the requirement that each class of units vote separately – after taking into account different economic entitlements of each class based on the different proceeds received per unit from that class at the time of the issuer's initial public offering, all classes of units will be treated equally in the proposed transaction.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 5.4(1), 6.3(1)(d), 8.1(1) and 9.1(2).

Citation: *Re Northview Fund*, 2023 ABASC 100

June 21, 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
NORTHVIEW FUND
(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**) exempting the Filer from the following:

(a) the requirement pursuant to subsection 5.4(1) and paragraph 6.3(1)(d) of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) to obtain a formal valuation of the DDAP Consideration Units (as defined below) (the **DDAP Consideration Units Valuation Relief**);

(b) in respect of each of the Galaxy Transaction and the DDAP Transaction (each as defined below), that part of subsection 8.1(1) of MI 61-101 that requires each class to vote separately (the **Class Voting Exemption**).

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,

(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 Saskatchewan, Manitoba, Québec, and New Brunswick, and

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 or MI 61-101 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:

1. The Filer is a reporting issuer in each jurisdiction of Canada and is not in default of securities legislation in any jurisdiction.

2. The head office of the Filer is in Calgary, Alberta.

3. The Filer is a trust established on April 14, 2020 under the laws of the Province of Ontario and is governed by a second amended and restated declaration of trust dated February 15, 2022 (the **DOT**).

4. The Filer completed its initial public offering on November 2, 2020 in connection with its acquisition of a portion of the assets of Northview Apartment Real Estate Investment Trust (**Northview Apartment REIT**) pursuant a court approved plan of arrangement (the **Northview Arrangement**).

5. The Filer's portfolio consists of approximately 11,100 multi-residential suites, approximately 1,100,000 square feet of commercial real estate and 200 execusuites, all of which is located in Canada.

6. The beneficial interests in the Filer are divided into three classes of units (collectively, the **Units**): class A trust units (**Class A Units**); class C trust units (**Class C Units**); and class F trust units (**Class F Units**). The Class C Units were designed for unitholders of Northview Apartment REIT that elected to receive and retain Class C Units in connection with Northview Apartment REIT's privatization and spin-out, affiliates of KingSett Capital Inc. (**KingSett**), affiliates of Starlight Group Property Holdings Inc., AIMCo Realty Investors LP (**AIMCo**) and any investors subscribing pursuant to a concurrent private placement. The Class C units differed from the Class A Units in that they were not subject to any agency fee or selling concession, and they were not listed on any stock exchange. The Class F Units were designed for fee-based accounts and differed from the Class A Units in that they were not subject to any selling concession, and they were not listed on any stock exchange.

7. The Class A Units are listed on the Toronto Stock Exchange under the symbol "NHF.UN". The Class C Units and Class F Units remain unlisted.

8. As at June 8, 2023, there were 34,446,267 Units issued and outstanding, comprising 6,310,042 Class A Units, 24,408,552 Class C Units and 3,727,673 Class F Units.

9. The holders of the Class A Units, Class C Units and Class F Units have the same rights and obligations, and no holder of Units is entitled to any privilege, priority or preference as compared to any other holder, except that the proportionate entitlement of the holders of Class A Units, Class C Units and Class F Units to participate in distributions made by the Filer and to receive proceeds upon termination or dissolution of the Filer is determined based on the net dollar proceeds received or deemed to have been received by the Filer in respect of such class of units at the time of the Filer's initial public offering and completion of the Northview Arrangement.

10. The Filer's investment objectives are to: (a) own and operate a high-quality, geographically diversified real estate portfolio comprised of income producing multi-residential suites, commercial real estate, and execusuites; (b) generate stable income to support monthly cash distributions; and (c) effect a recapitalization event as recommended by Starlight Investments CDN AM Group LP, the Filer's external asset manager (the **Manager**) and approved by the board of trustees of the Filer (the **Board**), as further defined in the DOT (**Recapitalization Event**). The Proposed Transaction (as defined below) is intended to constitute the Filer's Recapitalization Event.

11. The Filer and Galaxy Value Add Properties LP (the **Galaxy Vendor**) have entered into a purchase and sale agreement pursuant to which the Filer intends to indirectly acquire 12 properties (the **Galaxy Properties**) beneficially owned by the Galaxy Vendor (the **Galaxy Transaction**). KingSett, through its affiliates, is a significant unitholder of the Filer holding more than 10% of the voting rights attributed to all of the Filer's outstanding Units. Affiliates of KingSett control the general partner of the Galaxy Vendor, and as such, the Galaxy Vendor is an affiliated entity of KingSett. As a result, the Galaxy Vendor is a related party of the Filer pursuant to paragraph (h) of the definition of "related party" in MI 61-101.

12. The Filer and D.D. Acquisitions Partnership (**DDAP**) have entered into a purchase and sale agreement pursuant to which the Filer intends to indirectly acquire four properties (the **DDAP Properties**) beneficially owned by DDAP (the **DDAP Transaction**). DDAP is an entity owned and controlled by Mr. Daniel Drimmer, a trustee of the Filer, and DDAP, through its affiliates, is a significant unitholder of the Filer holding more than 10% of the voting rights attributed to all of the Filer's outstanding Units. As a result, DDAP is a related party of the Filer pursuant to paragraph (h) of the definition of "related party" in MI 61-101.

13. The Filer has also entered into a purchase and sale agreement with affiliates of TD Asset Management and Hazelview Investments Inc. (together, the **Winnipeg Vendors**), pursuant to which the Filer intends to acquire a portfolio of properties located in Winnipeg beneficially owned by the Winnipeg Vendors (together with the Galaxy Transaction and the DDAP Transaction, the **Proposed Acquisitions**). The Winnipeg Vendors are not related parties of the Filer.

14. Pursuant to the terms of the DOT, the Filer is permitted to consolidate or subdivide its units, provided that the subdivision or consolidation does not affect the proportionate entitlement of any particular class of units. The Filer is proposing to effect the subdivision (the **Subdivision**) of the existing Class C Units and Class F Units in accordance with their exchange ratios, such that

after the Subdivision each Class C Unit and Class F Unit be economically equivalent to one Class A Unit. The Board has determined that the Subdivision does not affect the proportionate entitlement of any particular class of units.

15. The Filer is also proposing to amend its DOT in order to align the Filer with typical "real estate investment trusts" (the **DOT Amendments**, together with the Proposed Acquisitions, the **Proposed Transaction**), which amendments include the following:

    (a) changing the name of the Filer to "Northview Residential REIT";

    (b) allowing for the issuance of additional units by the Filer;

    (c) concurrently with the Subdivision, amending the exchange ratios to 1:1;

    (d) creating the Special Voting Units (as defined below);

    (e) providing for all future distributions to be made proportionately on the basis of the number of units held;

    (f) internalizing the Filer's management;

    (g) providing for certain other consequential amendments directly relating to the foregoing.

16. The DOT Amendments will not be prejudicial to the rights of unitholders of the Filer and will not impact their economic entitlements. Following the Subdivision, the proportionate entitlement of the holders of Class A Units, Class C Units and Class F Units to participate in distributions made by the Filer and to receive proceeds upon termination or dissolution of the Filer will be equal on a per unit basis.

17. The Proposed Transaction is intended to constitute the Filer's Recapitalization Event. A Recapitalization Event is, pursuant to the terms of the DOT, subject to approval by two-thirds of the votes cast by Unitholders, voting as a single class. In addition, pursuant to MI 61-101, the Proposed Transaction will also be subject to approval by a majority of the votes attached to the Units held by Disinterested Unitholders (as defined below). The Proposed Transaction will be presented to unitholders of the Filer on an aggregate basis for approval, with a single vote conducted in respect of the Proposed Transaction.

18. Subject to satisfaction of the conditions to closing, the Filer will satisfy the purchase price under the Galaxy Transaction through a combination of the indirect assumption of existing mortgage debt, a cash payout and/or assumption of some or all of an existing credit facility and the delivery of Class C Units (the **Galaxy Consideration Units**) of the Filer at a deemed issue price of $15.06 per Class C Unit (the **Issue Price**), which Issue Price was determined by reference to the Filer's net asset value per Unit at the time negotiations commenced for the Proposed Transaction.

19. Subject to satisfaction of the conditions to closing, the Filer will satisfy a portion of the purchase price under the DDAP Transaction through the indirect assumption of existing mortgage debt. After the contribution by DDAP of the DDAP Properties to a new limited partnership that will, upon completion of the Proposed Transaction, be a subsidiary of the Filer (the **New Subsidiary LP**), DDAP will hold limited partnership units in the New Subsidiary LP (the **DDAP Consideration Units**). The DDAP Consideration Units will be exchangeable for the number of Class C Units with an aggregate value, using the Issue Price, equal to the balance of the purchase price. Upon completion of the Proposed Transaction, the Filer will control the general partner of the New Subsidiary LP and a class of the New Subsidiary LP's units, while DDAP will hold only the DDAP Consideration Units. The DDAP Consideration Units will form part of the equity value of the Filer, on a consolidated basis.

20. The DDAP Consideration Units will not be listed and posted for trading on the Toronto Stock Exchange or any other stock exchange.

21. Although the DDAP Consideration Units will not be securities of a reporting issuer, the aggregate number of DDAP Consideration Units will be, in all material respects, economically equivalent to the aggregate number of Class C Units into which they are exchangeable.

22. Transfers of DDAP Consideration Units will not be permitted subject to limited exceptions in respect of transfers to an affiliate.

23. Any additional rights attached in the aggregate to the DDAP Consideration Units (as compared to the Class C Units into which the DDAP Consideration Units will be exchangeable) arise by virtue of the DDAP Consideration Units being limited partnership units, and will be no greater than customary rights associated with limited partnership units intended to achieve economic equivalence, in aggregate, with the Class C Units into which they will be exchangeable. Other than those rights, the DDAP Consideration Units, in the aggregate, will carry no rights that would impact their value, compared to the Class C Units into which they will be exchangeable.

24. Other than in respect of matters affecting the rights, benefits or entitlements of the holders of DDAP Consideration Units, a holder of DDAP Consideration Units will not have the right to exercise any votes in respect of matters to be decided by the partners of the New Subsidiary LP.

Furthermore, the DDAP Consideration Units will not provide the holder thereof with an interest in any asset or property of the New Subsidiary LP, or a right to participate in the earnings of the New Subsidiary LP, except to the extent of receiving distributions that correspond with the distributions that would be payable on the Class C Units into which they will be exchangeable.

25. DDAP will also be issued one special voting unit of the Filer (each a **Special Voting Unit**) for each Class C Unit into which the DDAP Consideration Units are exchangeable. The Special Voting Units will have no economic entitlement or beneficial interest in the Filer. Upon the exchange or surrender of a DDAP Consideration Unit, the associated Special Voting Units will be automatically redeemed and cancelled for no consideration and the former holder will cease to have any rights with respect thereto.

26. As the Galaxy Transaction and the DDAP Transaction are each "related party transactions" within the meaning of MI 61-101, the Filer is required, under paragraph 6.3(1)(d) of MI 61-101, to obtain a formal valuation of the non-cash assets involved in each transaction (the **Non-Cash Valuation Requirement**). Consequently, the Filer is required to obtain formal valuations of each of the Galaxy Properties, the DDAP Properties, the Galaxy Consideration Units and the DDAP Consideration Units.

27. Subsection 6.3(2) of MI 61-101 provides an exemption (the **Valuation Exemption**) from the Non-Cash Valuation Requirement if, among other things

(a) the non-cash consideration or assets are securities of a reporting issuer or are securities of a class for which there is a published market,

(b) the person that would otherwise be required to obtain the formal valuation of those securities states in the disclosure document for the transaction that the person has no knowledge of any material information concerning the issuer of the securities, or concerning the securities, that has not been generally disclosed, and

(c) in the case of a related party transaction for the issuer of the securities, the conditions in subparagraphs (c)(i) and (ii) of section 5.5 of MI 61-101 are satisfied, regardless of the form of the consideration for the securities.

28. The Galaxy Consideration Units are securities of a reporting issuer as contemplated under paragraph 6.3(2)(a) of MI 61-101, and the circumstances of the Galaxy Transaction otherwise meet the Valuation Exemption, therefore the Filer intends to rely upon the Valuation Exemption in respect of the Non-Cash Valuation Requirement for the Galaxy Consideration Units.

29. Absent exemption therefrom, the Non-Cash Valuation Requirement as it relates to the DDAP Consideration Units would require the Filer to obtain a formal valuation in respect of the DDAP Consideration Units. Any such formal valuation would, in all material respects, mirror a formal valuation of the aggregate Class C Units into which such DDAP Consideration Units are exchangeable. As a result, this requirement would be inconsistent with the Valuation Exemption.

30. As related party transactions, each of the Galaxy Transaction and the DDAP Transaction are subject to the requirement of MI 61-101 relating to the approval by a majority of the votes cast by disinterested holders of Units entitled to vote, as specified in subsection 8.1(2) of MI 61-101 (a **Minority Vote**).

31. Conducting a Minority Vote in respect of the Proposed Transaction requires the exclusion of the votes attached to Units beneficially owned, or over which control or direction is exercised, by Mr. Daniel Drimmer, certain officers of the Manager, Mr. Todd Cook, Ms. Sarah Walker, Mr. Karl Bomhof, Ms. Linay Freda, KingSett, AIMCo and each of their respective affiliates. The balance of the unitholders of the Filer (the **Disinterested Unitholders**) are entitled to vote in the Minority Vote in respect of the Proposed Transaction.

32. As at June 8, 2023, to the knowledge of the Filer, the Disinterested Unitholders held approximately the following:

(a) 5,718,503 Class A Units (or approximately 90.63% of the Class A Units);

(b) 5,096,003 Class C Units (or approximately 20.88% of the Class C Units);

(c) 3,727,673 Class F Units (or approximately 100% of the Class F Units).

33. The Proposed Transaction is subject to a number of mechanisms to ensure that the collective interests of the Filer's unitholders are protected, including the following:

(a) negotiation of the Proposed Transaction was overseen by a committee of the Board which was comprised solely of trustees of the Board who are each independent of the Filer and the Manager (the **Independent Committee**);

(b) the Independent Committee retained its own counsel;

(c) the Independent Committee supervised the preparation of the formal valuations of

the Galaxy Properties and the DDAP Properties;

(d) the Independent Committee supervised the preparation of a fairness opinion with respect to the Proposed Transaction;

(e) the Board exercised the requisite standard of care in accordance with the terms of the DOT with respect to the Proposed Transaction;

(f) Mr. Daniel Drimmer and Mr. Rob Kumer (as a nominee of KingSett and its affiliates) did not vote on any resolutions passed by the Board in respect of the Proposed Transaction;

(g) a special meeting of the unitholders of the Filer will be held in order for the Filer's unitholders to consider and, if deemed advisable, approve the Proposed Transaction, such approval to be obtained by (i) two-thirds of the votes cast by Unitholders, voting as a single class and (ii) a majority of the votes attached to the Units held by Disinterested Unitholders (the **Proposed Transaction Vote**);

(h) the Filer will prepare and deliver to its unitholders an information circular (the **Circular**), prepared in accordance with the applicable requirements including the enhanced disclosure requirements mandated by MI 61-101, and will disclose, in accordance with paragraph 6.3(2)(b) of MI 61-101, among other matters, that the Filer has no knowledge of any material non-public information concerning the Filer or its securities that has not been generally disclosed.

34. The DOT provides that unitholders of the Filer vote as a single class in respect of any matter to be voted upon, unless the nature of the business to be transacted at the meeting affects holders of one class of units in a manner materially different from its effect on holders of another class of units, in which case the units of the affected class will vote separately as a class. Each of the Manager, the Filer and the Independent Committee has determined that the Proposed Transaction does not affect holders of one class of Units in a manner materially different from its effect on holders of another class of Units. As a result, the interests of holders of each class of units are aligned.

35. Section 9.7 of the DOT contemplates that in the event the Filer enters into a transaction that is subject to review under MI 61-101, and as a result requires approval from each class voting separately as a class, the Filer will apply to applicable securities regulatory authorities for discretionary relief from such obligation.

36. Holders of one class of Units are not affected in a manner materially different from the effect on holders of any other class of Units. That is, after accounting for their entitlements to the economics of the Filer, which as noted are based on the net dollar proceeds received or deemed to have been received by the Filer in respect of such class of units at the time of the Filer's initial public offering and completion of the Northview Arrangement, holders of one class of Units are affected in the same manner as the holders of any other class of Units (the **Equal Treatment**). Separate class votes by the unitholders of the Filer would have the effect of granting a *de facto* veto right in respect of the Proposed Transaction to the Disinterested Unitholders in each class. Such an outcome would not be in accordance with the reasonable expectations of the unitholders of the Filer, including the Disinterested Unitholders, in view of the Equal Treatment.

37. To the best of the knowledge of the Filer and the Manager, there is no reason to believe that the Filer's unitholders of any particular class would not approve the Proposed Transaction where the unitholders of other classes are in favour.

Decision

Each of the Decision Makers is satisfied that the decision concerning the DDAP Consideration Units Valuation Relief and the Class Voting Exemption meets the test set out in the Legislation to make the decision.

The decision of the Decision Makers under the Legislation is that the DDAP Consideration Units Valuation Relief is granted, provided the following adapted provisions of the Valuation Exemption are satisfied:

(a) the Filer states in the Circular that neither it, nor to the knowledge of the Filer after reasonable inquiry, DDAP, has knowledge of any material information concerning the Filer or its securities, or the New Subsidiary LP or its units, that has not been generally disclosed;

(b) the Circular includes a description of the effect of the distribution of the DDAP Consideration Units on the direct or indirect voting interest of DDAP.

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

"Timothy Robson"
Manager, Legal, Corporate Finance
Alberta Securities Commission

B.3.2 Mackenzie Financial Corporation and The Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions -relief granted under subsection 62(5) of the Securities Act to permit the extension of a prospectus lapse date by 44 days to facilitate the consolidation of the funds' prospectus with the prospectus of different funds under common management – no conditions.

Applicable Legislative Provisions

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

June 13, 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
MACKENZIE FINANCIAL CORPORATION
(the Filer)

AND

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

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer on behalf of the Funds for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that the time limits for the renewal of the simplified prospectus and fund facts for the Funds dated August 15, 2022 (the **Prospectus**) be extended to those time limits that would apply if the lapse date of the Prospectus was September 29, 2023 (the **Exemption Sought**).

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 81-101 *Mutual Fund Prospectus Disclosure* (**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:

The Filer and The Funds

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

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

3. The Filer is the investment fund manager, trustee, and portfolio manager of each of the Funds.

4. Each Fund is an open-ended mutual fund trust established under the laws of Ontario, is a reporting issuer as defined in the securities legislation of each of the Canadian Jurisdictions and is subject to NI 81-102.

5. Securities of each of the Funds are currently distributed in Canadian Jurisdictions pursuant to their respective simplified prospectus, fund facts, and annual information form prepared in accordance with NI 81-101.

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

Reasons for the Exempt.ion Sought

7. Pursuant to subsection 62(1) of the *Securities Act* (Ontario) (the **Act**), the lapse date of the Prospectus is August 15, 2023 (the **Current Lapse Date**). Accordingly, under 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 the 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 the Current Lapse Date; and (iii) a receipt for the final simplified prospectus is obtained within 20 days after the Current Lapse Date.

8. The Filer is also the investment fund manager of 93 other mutual funds listed in Schedule B (the **September Funds**) that currently distribute their securities under a simplified prospectus and fund facts prepared in accordance with NI 81-101 with a lapse date of September 29, 2023 (the **September Prospectus**).

9. The Filer wishes to combine the Prospectus with the September Prospctus in order to reduce renewal, printing, and related costs.

10. Offering the Funds and the September 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 September Funds and combining them under one prospectus (as opposed to two) will allow investors to compare their features more easily.

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

12. 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 September Prospectus.

13. The Filer may make minor changes to the features of the Funds as part of the Prospectus. The ability to consolidate the Prospectus with the September Prospectus will ensure that the Filer can make the operational and administrative features of the respective funds in the prospectuses consistent with each other.

14. There have been no amendments to the Prospectus or any 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.

15. 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.

16. 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.

17. 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

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

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

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

Application File #: 2023/0229

SCHEDULE A

THE FUNDS

Mackenzie USD US Mid Cap Opportunities Fund

Mackenzie Inflation-Focused Fund

SCHEDULE B

THE SEPTEMBER FUNDS

Mackenzie Alternative Enhanced Yield Fund

Mackenzie Balanced ETF Portfolio

Mackenzie Betterworld Canadian Equity Fund

Mackenzie Betterworld Global Equity Fund

Mackenzie Bluewater Canadian Growth Balanced Fund

Mackenzie Bluewater Canadian Growth Fund

Mackenzie Bluewater Global Growth Balanced Fund

Mackenzie Bluewater Global Growth Fund

Mackenzie Bluewater Next Gen Growth Fund

Mackenzie Bluewater North American Balanced Fund

Mackenzie Bluewater North American Equity Fund

Mackenzie Bluewater US Growth Fund

Mackenzie Canadian Bond Fund

Mackenzie Canadian Dividend Fund

Mackenzie Canadian Equity Fund

Mackenzie Canadian Money Market Fund

Mackenzie Canadian Short Term Income Fund

Mackenzie Canadian Small Cap Fund

Mackenzie ChinaAMC All China Bond Fund

Mackenzie ChinaAMC All China Equity Fund

Mackenzie ChinaAMC Multi-Asset Fund

Mackenzie Conservative ETF Portfolio

Mackenzie Conservative Income ETF Portfolio

Mackenzie Corporate Bond Fund

Mackenzie Credit Absolute Return Fund

Mackenzie Cundill Canadian Balanced Fund

Mackenzie Cundill Canadian Security Fund

Mackenzie Cundill Value Fund

Mackenzie Diversified Alternatives Fund

Mackenzie Emerging Markets Fund

Mackenzie Floating Rate Income Fund

Mackenzie Global Dividend Fund

Mackenzie Global Equity Fund

Mackenzie Global Green Bond Fund

Mackenzie Global Macro Fund

Mackenzie Global Resource Fund

Mackenzie Global Small-Mid Cap Fund

Mackenzie Global Strategic Income Fund

Mackenzie Global Sustainable Balanced Fund

Mackenzie Global Sustainable Bond Fund

Mackenzie Global Sustainable High Yield Bond Fund

Mackenzie Global Tactical Bond Fund

Mackenzie Global Women's Leadership Fund

Mackenzie Gold Bullion Fund

Mackenzie Greenchip Global Environmental All Cap Fund

Mackenzie Greenchip Global Environmental Balanced Fund

Mackenzie Growth ETF Portfolio

Mackenzie Income Fund

Mackenzie International Dividend Fund

Mackenzie Ivy Canadian Balanced Fund

Mackenzie Ivy Canadian Fund

Mackenzie Ivy European Fund

Mackenzie Ivy Foreign Equity Currency Neutral Fund

Mackenzie Ivy Foreign Equity Fund

Mackenzie Ivy Global Balanced Fund

Mackenzie Ivy International Fund

Mackenzie Maximum Diversification All World Developed ex North America Index Fund

Mackenzie Maximum Diversification All World Developed Index Fund

Mackenzie Maximum Diversification Canada Index Fund

Mackenzie Maximum Diversification Developed Europe Index Fund

Mackenzie Maximum Diversification Emerging Markets Index Fund

Mackenzie Maximum Diversification Global Multi-Asset Fund

Mackenzie Maximum Diversification US Index Fund

Mackenzie Moderate Growth ETF Portfolio

Mackenzie Monthly Income Balanced Portfolio

Mackenzie Monthly Income Conservative Portfolio

Mackenzie Monthly Income Growth Portfolio

Mackenzie Multi-Strategy Absolute Return Fund

Mackenzie North American Corporate Bond Fund

Mackenzie Precious Metals Fund

Mackenzie Private Equity Replication Fund

Mackenzie Private Global Income Balanced Pool

Mackenzie Private Income Balanced Pool

Mackenzie Strategic Bond Fund

Mackenzie Strategic Income Fund

Mackenzie Tax-Managed Global Equity Fund

Mackenzie Unconstrained Fixed Income Fund

Mackenzie US All Cap Growth Fund

Mackenzie US Dividend Fund

Mackenzie US Mid Cap Opportunities Currency Neutral Fund

Mackenzie US Mid Cap Opportunities Fund

Mackenzie US Small-Mid Cap Growth Currency Neutral Fund

Mackenzie US Small-Mid Cap Growth Fund

Mackenzie USD Global Strategic Income Fund

Mackenzie USD Ultra Short Duration Income Fund

Mackenzie USD Unconstrained Fixed Income Fund

Symmetry Balanced Portfolio

Symmetry Conservative Income Portfolio

Symmetry Conservative Portfolio

Symmetry Equity Portfolio

Symmetry Fixed Income Portfolio

Symmetry Growth Portfolio

Symmetry Moderate Growth Portfolio

B.3.3 Starlight Investments Capital LP and Stone Asset Management Limited

Headnote

Under paragraph 4.1(1)(b) of National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations a registered firm must not permit an individual to act as a dealing, advising or associate advising representative of the registered firm if the individual is registered as a dealing, advising or associate advising representative of another registered firm. The Filers are affiliated entities and have valid business reasons for the individual to be registered with both firms. The Filers have policies in place to handle potential conflicts of interest. The Filers are exempted from the prohibition for a limited period of time.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 4.1 and 15.1.

June 21, 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
STARLIGHT INVESTMENTS CAPITAL LP
(Starlight Capital)

AND

STONE ASSET MANAGEMENT LIMITED
(SAM, and together with Starlight Capital, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for relief from the restriction in paragraph 4.1(1)(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**) (the **Dual Registration Restriction**), pursuant to section 15.1 of NI 31-103, to permit Michael Giordano (the **Representative**) to be registered as an advising representative of each of Starlight Capital and SAM (the **Exemption Sought**).

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 by the Filers in each province of Canada (together with Ontario, the **Jurisdictions**).

Interpretation

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

Representations

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

1. Starlight Capital is a limited partnership formed under the *Limited Partnerships Act* (Ontario) and is registered as an exempt market dealer and a portfolio manager in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec, and Saskatchewan, and as an investment fund manager in Newfoundland and Labrador, Ontario and Québec. The head office of Starlight Capital is in Toronto, Ontario.

2. SAM is an indirect wholly-owned subsidiary of Starlight Capital. SAM is registered as a restricted dealer in Alberta, British Columbia, Manitoba, Ontario and Saskatchewan, as a portfolio manager in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec and Saskatchewan and as an investment fund manager in Newfoundland and Labrador, Ontario and Québec. The head office of SAM is in Toronto, Ontario. SAM currently performs its registrable portfolio management services through two registered advising representatives.

3. SAM is the investment fund manager and portfolio manager of Stone Covered Call Canadian Banks Plus Fund (to be renamed Starlight Canadian Financial Services Covered Call Fund), Stone Dividend Growth Class (to be renamed Starlight Dividend Growth Class), Stone Dividend Yield Hog Fund (to be renamed Starlight Enhanced Yield Fund), Stone Global Balanced Fund (to be renamed Starlight Global Balanced Fund), Stone Global Growth Fund (to be renamed Starlight Global Growth Fund), and Stone Growth Fund (to be renamed Starlight North American Equity Fund) (collectively, the "**Stone Funds**"). SAM also provides discretionary investment management services to high net worth individuals through SAM's private wealth management business ("**SAM Private Wealth**").

4. Since SAM is a wholly-owned subsidiary of Starlight Capital, each such entity is an affiliate of the other and are affiliated registrants.

5. SAM wishes to assign to its affiliate Starlight Capital (i) the investment fund management and portfolio management duties related to the Stone Funds (the "**Change of Manager**") and (ii) the portfolio management duties related to SAM Private Wealth (the "**Private Wealth Assignment**"). It is currently expected that the Change of Manager will be effected on June 21, 2023, and the Private Wealth Assignment will be effected later in 2023.

6. Michael Giordano is a resident of Toronto, Ontario and is a registered advising representative (portfolio manager) in Alberta, British Columbia, Manitoba, Nova Scotia, Ontario, Québec and Saskatchewan. Michael Giordano is also the Vice-President and Senior Portfolio Manager of SAM. As Vice-President and Senior Portfolio Manager at SAM, Michael acts as portfolio manager in respect of the Stone Funds and for all of the SAM Private Wealth clients.

7. SAM's other registered advising representative (portfolio manager), Sean Tascatan, acts as portfolio manager in respect of the Stone Funds. He has no inolvement with or responsibilities related to SAM Private Wealth. Upon the Change of Manager, Sean Tascatan's registration will be moved from SAM to Starlight and his role as portfolio manager of the Stone Funds will remain unchanged.

8. The Filers require the Representative to be dually registered with both SAM and Starlight Capital for a prescribed period of time in order to facilitate the orderly winding up of SAM's business operations. The Representative's dual registration will permit the continued services to the Stone Funds through Starlight Capital and to SAM Private Wealth clients through SAM until SAM surrenders its registration. The Exemption Sought is time-limited.

9. If the Exemption Sought is granted, the Representative will register as an advising representative of Starlight Capital, while maintaining his registration as an advising representative of SAM, during the interim period between the Change of Manager and the Private Wealth Assignment. The Representative will be appointed to the position of registered advising representative (portfolio manager) with Starlight Capital in order to continue to act as portfolio manager of the Stone Funds. The Representative will also be responsible for continuing to provide advice to SAM Private Wealth clients.

10. Starlight Capital requires the investment management capabilities and expertise of the Representative in order to continue portfolio management of the Stone Funds in the ordinary course of business. SAM requires the investment management capabilities and expertise of the Representative in order to continue its management of SAM Private Wealth client accounts in the ordinary course of business. The Representative is in the best position to act in the existing and proposed dual roles with Starlight Capital and SAM.

11. Dual registration would allow the Representative to continue to act as an advising representative of SAM while also acting as an advising representative of Starlight Capital.

12. The terms and conditions, if any, on the Representative's registration as an advising representative of Starlight Capital would be the same as under his advising representative registration with SAM. As of the date hereof, there are no terms and conditions on Michael Giordano's registration as an advising representative of SAM.

13. The Representative will be subject to supervision by, and the applicable compliance requirements of, both Filers.

14. Each of the Filers' respective Ultimate Designated Person will ensure that the Representative has sufficient time and resources to adequately serve each Filer and its clients. Each of the Filers' respective Chief Compliance Officers and management will ensure the Representative has sufficient time and resources to adequately serve each Filer and its clients.

15. Neither Starlight Capital nor SAM is in default of any requirement of securities or derivatives legislation in any of the Jurisdictions.

16. The dual registration of the Representative will not give rise to the conflicts of interest that may be present in a similar arrangement involving unrelated, arm's length firms. The interests of the Filers are aligned, and because the role of the Representative will be the same as his existing role with SAM, the potential for conflicts of interests is remote. Further there is little expected overlap of the business mandates, client base or investment strategies of Starlight Capital and SAM following the Change of Manager.

17. Each Filer has adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representative and will be able to appropriately deal with any such conflicts, should they arise.

18. There is adequate supervision of any identified potential conflicts of interest to ensure that the Representative, and each of the Filers, can take appropriate measures.

19. The Filers do not expect that the dual registration of the Representative will create any additional work and are confident that the Representative will have sufficient time to adequately serve both firms.

20. The relationship between Starlight Capital and SAM and the fact that the Representative is dually registered with both Starlight Capital and SAM will be fully disclosed to clients and prospective clients of Starlight Capital and SAM, as applicable. The Filers will provide written disclosure to the investors of the funds and accounts managed by each Filer, as applicable, of the affiliated registrant relationship between the Filers as well as the dual registration of the Representative in disclosure documents provided by any affected fund to their investors.

21. The Representative will act in the best interest of all clients of each Filer and will deal fairly, honestly and in good faith with these clients.

22. Once the Private Wealth Assignment is completed, the Representative will be a registered advising representative (portfolio manager) of Starlight Capital only and will no longer require dual registration.

23. In the absence of the Exemption Sought, the Filers would be prohibited by the Dual Registration Restriction from permitting the Representative to be registered as an advising representative of each Filer, even though the Filers have controls and compliance procedures in place to deal with such advising and associate advising activities.

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 on the following conditions:

i. The Representative is subject to supervision by, and the applicable compliance requirements of, both Filers;

ii. The Chief Compliance Officer and Ultimate Designated Person of each Filer ensures that the Representative has sufficient time and resources to adequately service each Filer and its respective clients;

iii. The Filers each have adequate policies and procedures in place to address any potential conflicts of interest that may arise as a result of the dual registration of the Representative and deal appropriately with any such conflicts;

iv. The relationship between the Filers and the fact that the Representative is dually registered with both of them is fully disclosed in writing to clients of each of them that deal with the Representative; and

v. The Exemption Sought expires on the date on which SAM's registration is revoked.

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

B.3.4 Wealthsimple Digital Assets Inc.

Headnote

Application for time-limited relief from certain registrant obligations, prospectus requirement and trade reporting requirements – suitability relief to allow the Filer to distribute Crypto Contracts and operate a platform that facilitates the buying, selling and holding of crypto assets – relief granted subject to certain conditions set out in the decision, including investment limits, account appropriateness, disclosure and reporting requirements – relief is time-limited and will expire upon the earlier of January 1, 2024 or the date the filer transitions the platform to its CIRO affiliate – relief granted based on the particular facts and circumstances of the application with the objective of fostering capital raising by innovative businesses in Canada – decision should not be viewed as precedent for other filers in the jurisdictions of Canada.

Statute cited

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

Instrument, Rule or Policy cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, s. 13.3.
OSC Rule 91-506 Derivatives: Product Determination, ss. 2 and 4.
OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Part 3.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO
(the Jurisdiction)
AND
ALBERTA,
BRITISH COLUMBIA,
MANITOBA,
NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR,
NORTHWEST TERRITORIES,
NOVA SCOTIA,
NUNAVUT,
PRINCE EDWARD ISLAND,
QUÉBEC,
SASKATCHEWAN
AND
YUKON

AND

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

AND

IN THE MATTER OF
WEALTHSIMPLE DIGITAL ASSETS INC.
(the Filer)

DECISION

Background

As set out in CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (**Staff Notice 21-327**) and CSA Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (**Staff Notice 21-329**), securities legislation applies to crypto asset trading platforms (**CTPs**) that facilitate or propose to facilitate the trading of instruments or contracts involving crypto assets because the user's contractual right to the crypto asset may itself constitute a security and/or a derivative (**Crypto Contract**).

To foster innovation and respond to novel circumstances, the Canadian Securities Administrators (**CSA**) have considered an interim, time-limited registration that would allow CTPs to operate within a regulated environment, with regulatory requirements tailored to the CTPs' operations. The overall goal of the regulatory framework is to ensure there is a balance between the need to be flexible and to facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer is currently registered in the category of restricted dealer in all provinces. In connection with its registration as a restricted dealer, the Filer previously applied for and received exemptive relief in decisions dated August 7, 2020 and June 18, 2021 on terms substantially similar to this Decision. The Filer's registration is also currently subject to additional terms and conditions in relation to the Filer's provision of staking services.

Under the terms and conditions of the decision *In the Matter of Wealthsimple Digital Assets Inc.* dated June 18, 2021 (the **Prior Decision**) and the terms and conditions imposed on its registration, the Filer has operated, and continues to operate, on an interim basis, a platform (the **Platform**) that permits clients resident in Canada to enter into Crypto Contracts to purchase, hold, stake, sell, deposit and withdraw crypto assets.

The Filer wishes to ultimately carry on these activities through its affiliated entity, Wealthsimple Investments Inc. (**WSII**), which is registered as an investment dealer and a member of the Canadian Investment Regulatory Organization, formerly the Investment Industry Regulatory Organization of Canada (**CIRO**).

The exemptive relief granted under the Prior Decision expired on June 18, 2023.

The Filer has submitted an application to extend its existing exemptive relief in order to continue to operate the Platform on an interim basis until the activities of the Filer are transitioned to WSII, and to incorporate the terms and conditions related to the Filer's provision of staking services into the Decision.

This decision (**Decision**) has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Applicable Jurisdictions (as defined below) will not consider this Decision as constituting a precedent for other filers.

Relief Requested

The securities regulatory authority or regulator in the Jurisdiction has received an application from the Filer (the **Passport Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) extending the time-limited exemption of the Filer from:

a) the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with clients to purchase, hold, sell, deposit, withdraw and stake Crypto Assets (as defined below) (the **Prospectus Relief**); and

b) the requirement in section 13.3 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), before it opens an account, takes investment action for a client or makes a recommendation or exercises discretion to take investment action, to determine on a reasonable basis that the action is suitable for the client (the **Suitability Relief**).

The securities regulatory authority or regulator in the Jurisdiction and each of the other jurisdictions referred to in Appendix A (collectively, the **Coordinated Review Decision Makers**) have received an application from the Filer (collectively with the Passport Application, the **Application**) for a decision under the securities legislation of those jurisdictions exempting the Filer from certain reporting requirements under the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**, and together with the Prospectus Relief and the Suitability Relief, the **Requested Relief**).

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

(a) the Ontario Securities Commission is the principal regulator for the Application (the **Principal Regulator**),

(b) in respect of the Prospectus Relief and the Suitability Relief, the Filer has provided notice that, in the jurisdictions where required, subsection 4.7(1) of Multilateral Instrument 11-102 Passport System (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**), and

(c) the decision in respect of the Trade Reporting Relief is the decision of the Principal Regulator and evidences the decision of each Coordinated Review Decision Maker.

Interpretation

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

For the purposes of this Decision, the following terms have the following meaning:

(a) "Act" means the *Securities Act* (Ontario).

(b) "Acceptable Third-party Custodian" means an entity that:

(i) is one of the following:

1. a Canadian custodian or Canadian financial institution, as those terms are defined in NI 31-103;

2. a custodian qualified to act as a custodian or sub-custodian for assets held in Canada pursuant to section 6.2 [Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada] of National Instrument 81-102 *Investment Funds*;

3. a custodian that meets the definition of an "acceptable securities location" in accordance with the Investment Dealer and Partially Consolidated Rules and Form 1 of CIRO;

4. a foreign custodian (as defined in NI 31-103) for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s); or

5. an entity that does not meet the criteria for a qualified custodian (as defined in NI 31-103) and for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s);

(ii) is functionally independent of the Filer within the meaning of NI 31-103;

(iii) has obtained audited financial statements within the last twelve months which

1. are audited by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction and that meets the professional standards of that jurisdiction;

2. are accompanied by an auditor's report that expresses an unqualified opinion, and

3. unless otherwise agreed to by the Principal Regulator, discloses on their statement of financial position or in the notes of the audited financial statements the amount of liabilities that it owes to its clients for holding their assets, and the amount of assets held by the custodian to meet its obligations to those custody clients, broken down by asset; and

(iv) has obtained a Systems and Organization Controls (SOC) 2 Type 1 or SOC 2 Type 2 report within the last twelve months or has obtained a comparable report recognized by a similar accreditation board satisfactory to the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s);

(c) "Apps" means iOS and Android applications that provide access to the Platform.

(d) "IOSCO" means the International Organization of Securities Commissions.

(e) "Promoter" has the meaning ascribed to that term in Canadian securities legislation.

(f) "Proprietary Token" means a Crypto Asset that is not a Value-Referenced Crypto Asset, and for which the Filer or an affiliate of the Filer acted as the issuer (and mints or burns the Crypto Asset) or a promoter.

(g) "Specified Crypto Asset" means the Crypto Assets listed in Appendix B to this Decision.

(h) "Specified Foreign Jurisdiction" means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, the Republic of Korea, New Zealand, Singapore, Switzerland, the United Kingdom of Great Britain and Northern Ireland and the United States of America.

(i) "Staking" means the act of committing or locking Crypto Assets in smart contracts to permit the owner or the owner's agent to act as a Validator for a particular proof-of-stake consensus algorithm blockchain.

(j) "Validator" means, in connection with a particular proof of stake consensus algorithm blockchain, an entity that operates one or more nodes that meet protocol requirements for a Crypto Asset and participates in consensus by broadcasting votes and committing new blocks to the blockchain.

(k) "Value-Referenced Crypto Asset" means a Crypto Asset that is designed to maintain a stable value over time by referencing the value of a fiat currency or other value or right, or combination thereof.

(l) "Website" means the website www.wealthsimple.com or such other website as may be used to host the Platform from time to time.

Representations

This decision (the **Decision**) is based on the following facts represented by the Filer:

The Filer

1. The Filer is a corporation incorporated under the federal laws of Canada with its principal office in Toronto, Ontario.

2. The Filer is a wholly owned subsidiary of Wealthsimple Financial Corp. (**WFC**), a holding company that owns 100% of the issued and outstanding securities of several operating companies that are registered under applicable securities legislation in each of the provinces and territories of Canada, including Wealthsimple Inc., a registered adviser in the category of portfolio manager, and WSII, formerly Canadian ShareOwner Investments Inc., a registered dealer in the category of investment dealer and member of CIRO.

3. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada. However, a majority of the voting securities of WFC are controlled by subsidiaries and entities affiliated with Power Corporation of Canada. Power Corporation of Canada is a reporting issuer under the legislation of the Applicable Jurisdictions and its securities are listed for trading on the Toronto Stock Exchange.

4. The Filer is registered as a dealer in the category of restricted dealer with the Applicable Jurisdictions.

5. The Filer's books and records, financial controls and compliance systems (including its policies and procedures) are designed to closely resemble in all material respects, except as necessary to address operational differences, those in place today at WSII.

6. The Filer is registered as a money services business under regulations made under the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada).

7. The Filer's personnel consists, and will consist, of software engineers, compliance professionals and finance professionals who each have experience operating in a regulated financial services environment and expertise in blockchain technology. All of the Filer's personnel have passed and new personnel will have passed criminal records and credit checks. The Filer does not have any dealing representatives.

8. Subject to the Decision requested prior to the expiry of the Prior Decision, the Filer is not in default of securities legislation of any jurisdictions of Canada.

9. The Filer and WSII would like the Platform to be transitioned to and operated by WSII.

10. The Filer and WSII have been actively and diligently working with CIRO to transition the operation of the Platform from the Filer to WSII, including:

    (a) analyzing the CIRO Rules to identify areas where exemptive relief from CIRO Rules may be required in light of the Platform and the Filer's activities;

    (b) preparing multiple detailed documentary packages comprehensively describing the Platform, how WSII will comply with CIRO Rules and where exemptive relief may be required;

    (c) preparing responses to written requests for information received from CIRO Staff;

    (d) preparing and presenting on the Platform at numerous meetings with CIRO Staff;

    (e) preparing draft exemptive relief applications, where such relief may be required from CIRO;

(f) updating policies and procedures to reflect the CIRO's requirements;

(g) planning and implementing of changes to WSII's accounting ledger to accommodate crypto asset trading in accordance with the CIRO's requirements; and

(h) developing a structure for the legal transaction by which the Platform operated by the Filer will be transitioned to WSII.

11. Since June 2021, the Filer has engaged numerous additional legal, compliance, trading, anti-money laundering, operational and financial personnel to support the Platform and the transition efforts.

12. The transition efforts have also involved senior operational, legal, trading and financial personnel from WSII, and members of broader product, engineering, security, finance, operations, fraud, communications, compliance and legal teams from the Wealthsimple group of companies have supported the transition efforts, in addition to other responsibilities.

13. The Filer requires additional time to complete the transition of the Platform to WSII. The Filer anticipates the following key steps will need to be taken:

(a) responding to any further requests for information from CIRO;

(b) completing work necessary for WSII's accounting ledger to consume and reflect activity in Crypto Assets;

(c) completing the integration of an order management system into the Crypto Asset trading workflow;

(d) submitting applications for exemptive relief to the CIRO and addressing any comments on those applications;

(e) submitting an application from WSII for exemptive relief from the prospectus and trade reporting requirements;

(f) receiving CIRO approval of the amalgamation of WSII and the Filer; and

(g) completing the amalgamation of the Filer and WSII, including providing notice to the Filer's key stakeholders, including clients, custodians and liquidity providers.

14. The Filer and WSII will continue to work actively and diligently with CIRO to transition the operation of the Platform from the Filer to WSII and under the oversight of CIRO.

Wealthsimple Crypto

15. The Filer operates under the business name of "Wealthsimple Crypto". The Filer was established to operate, on an interim basis, the Platform, which enables clients to buy, sell, hold, deposit, withdraw and stake crypto assets such as Bitcoin, Ether, and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token (each a **Crypto Asset**, collectively the **Crypto Assets**) through the Filer.

16. To use the Platform, each client must open an account (**Client Account**) using the Website or Apps. Client Accounts are governed by a user agreement (**Client Account Agreement**) that is accepted by clients at the time of account opening. The Client Account Agreement governs all activities in Client Accounts, including with respect to all Crypto Assets purchased on, or transferred to, the Platform (**Client Assets**). While clients are entitled to transfer certain Client Assets out of their Client Accounts immediately after purchase, clients may choose to leave their Client Assets in their Client Accounts.

17. The Filer's role under the Crypto Contract is to facilitate the buying, selling, and staking of Crypto Assets and to provide custodial services for all Crypto Assets held in Client Accounts.

18. The Filer's trading of Crypto Contracts is consistent with activities described in Staff Notice 21-327 and constitutes the trading of securities and/or derivatives.

19. The Filer may buy, sell, borrow or hold Crypto Assets in its inventory for operational purposes, such as payment of network/transaction fees required to transfer Crypto Assets and testing. Otherwise, the Filer does not and will not hold any proprietary positions in Crypto Assets for itself and it does not take a long or short position in a Crypto Asset with any party, including clients.

20. The Filer does not have any authority to act on a discretionary basis on behalf of clients and will not offer or provide discretionary investment management services relating to Crypto Assets.

21. The Filer is not a member firm of the Canadian Investor Protection Fund (CIPF) and the Crypto Assets custodied do not qualify for CIPF coverage.

22. The Risk Statement (defined below) includes disclosure that there is no CIPF coverage for the Crypto Assets and clients must acknowledge that they have received, read and understood the Risk Statement before opening an account with the Filer.

Crypto Assets Made Available through the Platform

23. The Filer has established and applies policies and procedures to review Crypto Assets and to determine whether to allow clients on its Platform to enter into Crypto Contracts to buy, sell, stake or hold the Crypto Assets on its Platform in accordance with the know-your-product (KYP) provisions of NI 31-103 (**KYP Policy**). Such review includes, but is not limited to, publicly available information concerning:

    (a) the creation, governance, usage and design of the Crypto Asset, including the source code, security and roadmap for growth in the developer community and, if applicable, the background of the developer(s) that created the Crypto Asset;

    (b) the supply, demand, maturity, utility and liquidity of the Crypto Asset;

    (c) material technical risks associated with the Crypto Asset, including any code defects, security breaches and other threats concerning the Crypto Asset and its supporting blockchain (such as the susceptibility to hacking and impact of forking), or the practices and protocols that apply to them; and

    (d) legal and regulatory risks associated with the Crypto Asset, including any pending, potential, or prior civil, regulatory, criminal, or enforcement action relating to the issuance, distribution, or use of the Crypto Asset.

24. The Filer only offers and only allows clients to enter into Crypto Contracts to buy, sell, stake, and hold Crypto Assets that are not each themselves a security and/or a derivative. The Filer allows clients to enter into Crypto Contracts in respect of certain Value-Referenced Crypto Assets. In light of the guidance in CSA Staff Notice 21-332 *Crypto Asset Trading Platforms: Pre-Registration Undertakings – Changes to Enhance Canadian Investor Protection*, the Filer is engaged in discussions with CSA Staff about continuing to allow clients to enter into Crypto Contracts in respect of certain Value-Referenced Crypto Assets.

25. The Filer does not allow clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps to

    (a) assess the relevant aspects of the Crypto Assets pursuant to the KYP Policy and as described in paragraph 23 to determine whether it is appropriate for its clients;

    (b) approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to clients, and

    (c) monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

26. The Filer is not engaged, and will not engage, in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuers or affiliates or associates of such persons.

27. As set out in the KYP Policy, the Filer determines whether a Crypto Asset available to be bought or sold through a Crypto Contract is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include but are not limited to:

    (a) consideration of statements made by any regulators or securities regulatory authorities of the Applicable Jurisdictions, other regulators in IOSCO-member jurisdictions, or the regulator with the most significant connection to a Crypto Asset about whether the Crypto Asset, or generally about whether the type of Crypto Asset, is a security and/or derivative; and

    (b) if the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under securities legislation of the Applicable Jurisdictions.

28. The Filer monitors ongoing developments related to the Crypto Assets available on its Platform that may cause a Crypto Asset's status as a security and/or derivative or the assessment conducted by the Filer pursuant to its KYP Policy and as described in paragraphs 23 to 27 to change.

29. The Filer acknowledges that any determination made by the Filer as set out in paragraphs 23 to 27 of this Decision does not prejudice the ability of any of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset that a client may enter into a Crypto Contract to buy and sell is a security and/or derivative.

30. The Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available on its Platform and to allow clients to liquidate in an orderly manner their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on its Platform.

Account Opening

31. The Platform is available to any individual who is resident in Canada, who has reached the age of majority in the jurisdiction in which they are resident, and who has the legal capacity to open a securities brokerage account.

32. Clients of the Filer open a Client Account using the Apps or Website, which are owned by Wealthsimple Technologies Inc., a wholly-owned subsidiary of WFC. Clients use their Client Accounts to trade in Crypto Contracts. The Apps and Website clearly indicate that the Platform is operated by the Filer.

33. Clients also use the Apps or Website to open accounts with WSII. Clients' cash is held in these accounts with WSII. WSII does not take orders from clients to buy or sell Crypto Assets. WSII's role is limited to processing debits and credits into and out of a client's cash brokerage account, based on instructions received from a client or from the Filer acting with the client's authorization. Clients' cash is only sent from their account with WSII to the Filer and from the Filer to their account with WSII, unless the client wishes to withdraw their cash from WSII.

34. The Filer does not provide recommendations or advice to clients or conduct a trade-by-trade suitability determination for clients, but rather performs account appropriateness assessments and applies Client Limits (as defined below).

35. As part of the account opening process:

    (a) The Filer complies with the applicable "know your client" account opening requirements under applicable legislation and under Canadian anti-money laundering and anti-terrorist financing laws by collecting know-your-client (**KYC**) information which satisfies the identity verification requirements applicable to reporting entities.

    (b) The Filer assesses "account appropriateness." Specifically, prior to opening a Client Account, the Filer uses electronic questionnaires to collect information that the Filer will use to determine whether it is appropriate for a prospective client to enter into Crypto Contracts with the Filer to buy, sell and/or stake Crypto Assets. The account appropriateness assessment conducted by the Filer considers the following factors:

        (i) the client's experience and knowledge in investing in Crypto Assets;

        (ii) the client's experience in using order execution only online brokerages;

        (iii) the client's financial assets and income;

        (iv) the client's risk tolerance; and

        (v) the Crypto Assets approved to be made available to a client on the Platform.

    (c) After completion of the account appropriateness assessment, a prospective client receives appropriate messaging about using the Platform to enter into Crypto Contracts, which, in circumstances where the Filer has evaluated that entering into Crypto Contracts with the Filer is not appropriate for the client, will include prominent messaging to the client that this is the case and that the client will not be permitted to open a Client Account.

    (d) The Filer has adopted and applies policies and procedures to conduct an assessment to establish appropriate limits on the losses that a client can incur, what limits will apply to such client based on the information collected in paragraph (b) above (**Client Limit**), and what steps the Filer will take when the client approaches or exceeds their Client Limit. After completion of the assessment, the Filer will implement controls to monitor and apply the Client Limit.

    (e) The Filer provides a prospective client with a separate statement of risk (the **Risk Statement**) that clearly explains the following in plain language:

        (i) the Crypto Contracts;

        (ii) the risks associated with the Crypto Contracts;

(iii) a prominent statement that no securities regulatory authority or regulator in Canada has assessed or endorsed the Crypto Contracts or the Crypto Assets made available through the Platform;

(iv) the due diligence performed by the Filer before making a Crypto Asset available through the Platform, including the due diligence performed by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities and derivatives legislation of each of the jurisdictions of Canada and the securities and derivatives laws of the foreign jurisdiction with which the Crypto Asset has the most significant connection, and the risks if the Filer has incorrectly determined that the Crypto Asset is not a security and/or derivative;

(v) that the Filer has prepared a plain language description of each Crypto Asset and of the risks of the Crypto Asset made available through the Platform, with instructions as to where on the Platform the client may obtain the descriptions (each, a **Crypto Asset Statement**);

(vi) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading on the Platform, including criteria that would be considered by the Filer, options available to clients holding such a Crypto Asset, any notification periods and any risks to clients;

(vii) the location and the manner in which Crypto Assets are held for the client, and the risks and benefits to the client of the Crypto Assets being held in that location and in that manner, including the impact of insolvency of the Filer or the Acceptable Third-party Custodian;

(viii) the manner in which the Crypto Assets are accessible by the Filer, and the risks and benefits to the client arising from the Filer having access to the Crypto Assets in that manner;

(ix) that the Filer is not a member of CIPF and the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection;

(x) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

(xi) the date on which the information was last updated.

36. In order for a prospective client to open and operate a Client Account with the Filer, the Filer obtains an electronic acknowledgement from the prospective client confirming that the prospective client has received, read and understood the Risk Statement. Such acknowledgement will be prominent and separate from other acknowledgements provided by the prospective client as part of the account opening process.

37. A copy of the Risk Statement acknowledged by a client is made available to the client in the same place as the client's other statements on the Platform.

38. The Filer applies policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts, crypto assets generally, or a specific Crypto Asset, as the case may be. In the event the Risk Statement is updated, existing clients of the Filer will be promptly notified of the update and provided with a copy of the updated Risk Statement. In the event a Crypto Asset Statement is updated, existing clients of the Filer will be promptly notified, with links to the updated Crypto Asset Statement.

39. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer provides instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website or Apps.

40. Each Crypto Asset Statement includes:

(a) a prominent statement that no securities regulatory authority or regulator in Canada has assessed or endorsed the Crypto Contracts or any Crypto Assets made available through the Platform,

(b) a description of the Crypto Asset, including the background of the developer(s) that created the Crypto Asset, if applicable,

(c) a description of the due diligence performed by the Filer with respect to the Crypto Asset,

(d) any risks specific to the Crypto Asset,

(e) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and the Crypto Assets made available through the Platform,

(f) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision, and

(g) the date on which the information was last updated.

41. The Filer monitors Client Accounts after opening to identify activity inconsistent with the client's account, the account appropriateness assessment, and Crypto Asset assessment. If warranted, the client may receive further messaging about the Platform and the Crypto Assets, specific risk warnings and/or receive direct outreach from the Filer about their activity. The Filer monitors compliance with the Client Limits established in paragraph 35(d). If warranted, the client will receive warnings when their Client Account is approaching its Client Limit, which will include information on steps the client may take to prevent the client from incurring further losses.

42. The Filer also prepares and makes available to its clients educational materials and other informational updates about trading on the Platform and the ongoing development of Crypto Assets and Crypto Asset trading markets. To do so, the Filer builds upon the existing communication channels and techniques used by affiliates in the WFC group of companies.

Platform Operations

43. All Crypto Contracts entered into by clients to buy and sell Crypto Assets are placed with the Filer through the Apps or Website.

44. Clients are able to submit orders, either in units of the applicable Crypto Asset or in fiat currency, 24 hours a day, 7 days a week. Clients are able to deposit and withdraw certain Crypto Assets and Canadian dollars, 24 hours a day, 7 days a week (or where applicable, for fiat currency during banking hours).

45. The Filer establishes, maintains and ensures compliance with policies and procedures that identify and manage conflicts of interest arising from the operation of the Platform and its related services, including conflicts between the interests of its owners, its commercial interests and the responsibilities and sound functioning of the Platform and related services.

46. The Filer relies upon multiple crypto asset trading firms (**Liquidity Providers**) to act as sellers of Crypto Assets that may be purchased by clients. Liquidity Providers also buy any Crypto Assets that clients wish to sell.

47. The Filer evaluates the prices obtained from its Liquidity Providers on an ongoing basis against global benchmarks to provide fair and reasonable pricing to its clients.

48. The Filer has taken or will take reasonable steps to verify that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Applicable Jurisdictions.

49. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.

50. A Crypto Contract is a bilateral contract between the client and the Filer. Accordingly, the Filer is the counterparty to all trades entered by the client on the Platform. For each client transaction, the Filer will be a counterparty to a corresponding Crypto Asset buy or sell transaction with a Liquidity Provider. For each buy or sell transaction initiated by a client, the Filer buys or sells Crypto Assets with Liquidity Providers.

51. After an order has been placed by a client, the Filer obtains a price for the Crypto Asset from a Liquidity Provider, after which the Filer incorporates a fee to compensate the Filer, and presents this total cost to the client. If the client is agreeable, the client confirms the trade. The Filer confirms the transaction with the Liquidity Providers and records in its books and records the particulars of the trade.

52. In a buy transaction under a Crypto Contract, this results in the client instructing the Filer to request cash from the client's account with WSII in order to fund the purchase. In a sell transaction under a Crypto Contract, cash proceeds are transferred by the Filer to the client's account with WSII.

Pre-trade Controls and Settlement

53. The Filer does not allow clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps:

(a) to review the Crypto Asset, including the information specified in paragraph 23,

(b) to approve the Crypto Asset, and Crypto Contracts to buy and sell such Crypto Asset, to be made available to clients,

(c) as set out in paragraph 28, to monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

54. The Filer's books and records record all of the trades executed on the Platform. No order will be accepted by the Filer unless there are sufficient cash or Crypto Assets available in the Client Account to complete the trade.

55. The Filer does not, and will not, extend margin, credit or other forms of leverage to clients in connection with trading Crypto Assets on the Platform, and will not offer derivatives based on Crypto Assets to clients other than Crypto Contracts.

56. The Filer promptly, and no later than two business days after the trade, settles transactions with the Liquidity Providers on a net basis. Where there are net purchases of Crypto Assets with a Liquidity Provider, the Filer arranges for cash to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer. Where there are net sales of Crypto Assets, the Filer arranges for Crypto Assets to be sent from the Filer to the Liquidity Provider in exchange for cash received by the Filer from the Liquidity Provider.

57. Clients receive electronic trade confirmations and monthly statements setting out the details of the transaction history in their Client Account. Clients are able to view their transaction history and account balances in real time by accessing their Client Account using the Apps or Website.

58. In addition to the Risk Statement, Crypto Asset Statement and ongoing education initiatives described in paragraphs 35 to 42, and the account appropriateness assessment described in paragraph 35, the know-your-product assessments described in paragraphs 23 to 28, and the Client Limits described in paragraphs 35(d) and 41, the Filer also monitors client activity, and contacts clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required. The outcome of this engagement with a client may result, in some cases, in a decision by the Filer to close a client's account.

Custody of Crypto Assets

59. The Filer holds clients' Crypto Assets (i) in blockchain wallets or accounts clearly designated for the benefit of clients or in trust for clients, and (ii) separate and apart from its own assets (including crypto assets held in inventory by the Filer for operational purposes) and from the assets of any custodial service provider. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients.

60. The Filer is proficient and experienced in holding Crypto Assets and has established and applies policies and procedures that manage and mitigate custodial risks, including an effective system of controls and supervision to safeguard Crypto Assets. The Filer also maintains appropriate policies and procedures related to information technology security, cyber-resilience, disaster recovery capabilities, and business continuity plans.

61. The Filer has expertise in and has developed anti-fraud and anti-money-laundering monitoring systems, for both fiat and Crypto Assets, to reduce the likelihood of fraud, money laundering, or client error in sending or receiving Crypto Assets to incorrect wallet addresses.

62. The Filer maintains its own hot wallets to hold limited amounts of Crypto Assets that will be used to facilitate client deposit and withdrawal requests and to facilitate trade settlement with Liquidity Providers. However, the majority of Crypto Assets are held with three custodians (the **Custodians**):

(a) Gemini Trust Company LLC (**Gemini**) is a licensed digital asset exchange and a New York trust company regulated by the New York State Department of Financial Services.

(b) Coinbase Custody Trust Company LLC (**Coinbase Custody**) is a licensed digital asset exchange and a New York trust company regulated by the New York State Department of Financial Services.

(c) BitGo Trust Company Inc. (**BitGo Trust**) is licensed as a trust company with the South Dakota Division of Banking.

63. The Filer has conducted due diligence on the Custodians, including, among others, the custodian's policies and procedures for holding Crypto Assets and a review of their respective SOC 2 Type 2 examination reports. The Filer has not identified any material concerns. The Filer has also assessed whether each Custodian meets the definition of an Acceptable Third-party Custodian.

64. The Custodians operate custody accounts for the Filer to use for the purpose of holding the clients' Crypto Assets in trust for clients of the Filer.

65. Those Crypto Assets that the Custodians hold in trust for clients of the Filer are held in segregated omnibus accounts in the name of the Filer in trust for or for the benefit of the Filer's clients and are held separate and distinct from the assets of the Filer, the Filer's affiliates, and the Custodians' other clients.

66. Each Custodian has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian and to mitigate security breaches and cyber incidents. Each Custodian has established and applies written disaster recovery and business continuity plans.

67. The Filer has assessed the risks and benefits of using the Custodians and has determined that in comparison to Canadian custodians (as that term is defined in NI 31-103), it is more prudent and beneficial to use the Custodians, as U.S. custodians, to hold the Crypto Assets the Custodians support with the Custodians than using a Canadian custodian. The Filer also considers it prudent to maintain relationships with more than one custodian so that it can provide back-up custodial services in appropriate circumstances for Crypto Assets supported by the Filer.

68. Neither the Filer nor any Custodian holds client cash. As set out in paragraph 33, each client of the Filer opens a non-registered cash brokerage account with WSII for the sole purpose of holding cash that the client may use to engage in transactions on the Platform.

69. Each of the Custodians maintains an appropriate level of insurance for Crypto Assets held by the Acceptable Third-party Custodian. The Filer has assessed the Custodians' insurance policies and has determined, based on information that is publicly available and on information provided by the Custodians and considering the controls of the Custodians' business, that the amount of insurance is appropriate.

70. The Filer confirms on a daily basis that clients' Crypto Assets held with the Custodians and held by the Filer reconcile with the Filer's books and records to ensure that all clients' Crypto Assets are accounted for. Clients' Crypto Assets held in trust for their benefit in hot wallets and with Custodians are deemed to be the clients' Crypto Assets in case of the insolvency and/or bankruptcy of the Filer or of its Custodians.

71. Clients are permitted to transfer into their Client Account with the Filer, Crypto Assets they obtained outside the Platform or withdraw from their Client Account with the Filer, Crypto Assets they have purchased pursuant to their Crypto Contracts with the Filer or previously deposited with the Filer. The Filer may not support transfers for all Crypto Assets. Upon request by a client, the Filer will promptly deliver possession and/or control of the Crypto Assets purchased under a Crypto Contract to a blockchain address specified by the client, subject to first satisfying all applicable legal and regulatory requirements, including anti-money laundering requirements and anti-fraud controls.

72. The Filer licenses software from Fireblocks Ltd. (**Fireblocks**) which includes a crypto asset wallet that stores private and public keys and interacts with various blockchains to send and receive crypto assets and monitor balances. Fireblocks uses secure multiparty computation to share signing responsibility for a particular blockchain address among multiple independent persons.

73. Fireblocks has obtained a SOC report under the SOC 2 – Type 2 standards from a leading global audit firm. The Filer has reviewed a copy of the SOC 2 – Type 2 audit report prepared by the auditors of Fireblocks, and has not identified any material concerns.

74. Fireblocks has insurance coverage in the amount of US$30 million in aggregate which, in the event of theft of crypto assets from hot wallets secured by Fireblocks due to an external cyber breach of Fireblocks' software or any malicious or intentional misbehaviour or fraud committed by employees, will be distributed among applicable Fireblocks customers, which could include the Filer, pursuant to an insurance settlement agreement.

75. The Filer has licensed software from Digital Assets Services Limited (trading as Coincover) (**Coincover**) to provide additional security for keys to Crypto Assets held by the Filer using Fireblocks, including key pair creation, key pair storage, device access recovery and account access recovery.

76. In addition to the insurance coverage available through Fireblocks for Crypto Assets held in its hot wallets, the Filer has obtained a guarantee through Coincover. Coincover provides a guarantee to the Filer against the theft or loss of cryptocurrency owned, held in trust or managed by the Filer for its clients in a wallet provided by Fireblocks.

77. The insurance obtained by the Filer includes coverage for loss or theft of the Crypto Assets, in accordance with the terms of the Filer's insurance policy, and the Filer has assessed the insurance coverage to be sufficient to cover the loss of Crypto Assets, whether held directly by the Filer or indirectly through the Custodians.

Staking Services

78. The Filer also offers staking services to its clients resident in each of the provinces and territories of Canada by which the Filer arranges to stake Crypto Assets and earn staking rewards for participating clients (the **Staking Services**).

79. The Filer offers clients the Staking Services only for (i) Crypto Assets of blockchains that use a proof of stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain (**Stakeable Crypto Assets**).

80. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

81. The Filer itself does not act as a Validator. The Filer has entered into written agreements with certain of its Custodians and/or with third party Validators to provide services in respect of staking Stakeable Crypto Assets. These Custodians and Validators are proficient and experienced in staking Stakeable Crypto Assets.

82. Before engaging a Validator, the Filer conducts due diligence on the Validator, with consideration for the Validator's management, infrastructure and internal control documentation, security measures and procedures, reputation of operating nodes, use by others, measures to operate nodes securely and reliably, amount of crypto assets staked by the Validator on its own nodes, quality of work, including any slashing incidents or penalties, financial status and insurance, and registration, licensing or other compliance under applicable laws, particularly securities laws. Where the Filer engages a Custodian to provide staking services, the Filer conducts due diligence on how the Custodian provides the staking services and selects the Validators.

83. The Filer currently offers the Staking Services in respect of the Ethereum, Solana and Cardano blockchains. The Filer may offer the Staking Services in respect of other Stakeable Crypto Assets in the future.

84. The Filer, as part of its KYP Policy, reviews the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

    (a) the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (b) the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (c) the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (d) the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

    (e) the Validators engaged by the Filer or the Filer's Custodians, including, but not limited to, information about:

        (i) the persons or entities that manage and direct the operations of the Validator,

        (ii) the Validator's reputation and use by others,

        (iii) the amount of Crypto Assets the Validator has staked on its own nodes,

        (iv) the measures in place by the Validator to operate the nodes securely and reliably,

        (v) the financial status of the Validator,

        (vi) the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

        (vii) any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

        (viii) any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

85. The Filer, as part of its account appropriateness assessment, evaluates whether offering the Staking Services is appropriate for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

86. If, after completion of an account appropriateness assessment, the Filer determines that providing the Staking Services is not appropriate for the client, the Filer will include prominent messaging to the client that this is the case and the Filer will not make available the Staking Services to the client.

87. The Filer only stakes the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer ceases to stake those Stakeable Crypto Assets.

88. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer delivers to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in paragraph 89 below, and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

89. The Filer clearly explains in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which includes:

    (a) the details of the Staking Services and the role of all third parties involved;

    (b) the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Stakeable Crypto Asset for which the Filer provides the Staking Services;

    (c) the details of the Validators that will be used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

    (d) the details of whether and how the custody of staked Stakeable Crypto Assets differs from Stakeable Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

    (e) the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses will be allocated to clients;

    (f) whether the Filer will reimburse clients for any Stakeable Crypto Assets lost due to slashing or other penalties imposed due to Validator error, action or inactivity or how any losses will be allocated to clients;

    (g) whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Crypto Asset protocol, custodian or Validator, where such Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards **(Lock-up Periods**); and

    (h) how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

90. Immediately before each time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer requires the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

    (a) that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

    (b) that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, and the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

    (c) how rewards will be calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

    (d) that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

    (e) whether rewards may be changed at the discretion of the Filer;

    (f) unless the Filer guarantees any Stakeable Crypto Assets lost to slashing, that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network;

(g) if the Filer offers a guarantee to prevent loss of any Stakeable Crypto Assets arising from the Staking Services, including due to slashing, any limits on that guarantee and requirements for a client to claim under the guarantee; and

(h) that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

91. The Staking Services are currently only available by using the Apps. The Filer may make the Staking Services available through the Web Site in the future.

92. To stake Stakeable Crypto Assets, a client may use the Apps to instruct the Filer to stake a specified amount of Stakeable Crypto Assets held by the client on the Platform.

93. For certain Stakeable Crypto Assets, the Filer also allows clients to automatically stake those Stakeable Crypto Assets when purchasing more of the asset. If a client turns on this "auto-stake" feature, Stakeable Crypto Assets are automatically staked upon being purchased by the client. The client can disable this feature at any time.

94. Immediately before each time a client buys Stakeable Crypto Assets that are automatically staked, the Filer provides prominent disclosure to the client that the Stakeable Crypto Asset the client is about to buy will be automatically staked.

95. Subject to any Lock-up Periods that may apply, the client may at any time use the Apps to instruct the Filer to unstake a specified amount of Stakeable Crypto Assets that the client had previously staked.

96. The Filer stakes and unstakes Crypto Assets on an omnibus basis by calculating the total amount of a Stakeable Crypto Asset that clients wish to stake or unstake and adjusting the amount actually staked to reconcile with the net amount that clients have, in total, instructed the Filer to stake or unstake.

97. The Filer holds the staked Stakeable Crypto Assets in trust for or for the benefit of its clients in one or more omnibus staking wallets in the name of the Filer for the benefit of the Filer's clients with the Custodians separate and distinct from (i) the assets of the Filer, the Custodians and the Custodians' other clients; and (ii) the Crypto Assets held for its clients that have not agreed to staking those specific Crypto Assets.

98. To stake clients' Stakeable Crypto Assets, the Filer instructs a Custodian to transfer Stakeable Crypto Assets to an omnibus staking wallet and to sign a blockchain transaction confirming that assets in that wallet are to be staked with a Validator.

99. Similarly, when unstaking Stakeable Crypto Assets, the Filer instructs a Custodian to sign a blockchain transaction confirming that assets in a staking wallet are no longer staked. After expiry of any Lock-up Periods that may prevent the assets from being transferred, the Filer instructs the Custodian to transfer the unstaked assets from the staking wallet to cold storage wallets holding unstaked Stakeable Crypto Assets.

100. The Filer and the Custodians remain in possession, custody and control of the staked Stakeable Crypto Assets at all times. At all times, the Custodians continue to hold the private keys or other cryptographic key material required to stake or unstake clients' Stakeable Crypto Assets or to access staking rewards. Custody, possession and control of staked Stakeable Crypto Assets are not transferred to Validators or any other third parties in connection with the Staking Services.

101. The Filer has established and applies policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

102. Staking rewards are issued periodically and automatically by the blockchain protocol of the Stakeable Crypto Asset and received directly into the staking wallets with the Custodians. Other than any "validator commission" that may be received by a Validator under the rules of the blockchain protocol, Validators do not receive or otherwise have control over staking rewards earned by clients.

103. Staking rewards are typically issued for a specific time period, often referred to as an "epoch". For each "epoch", the Filer promptly determines the amount of staking rewards earned by each client that had staked Stakeable Crypto Assets under the Staking Services.

104. When staking rewards for a Stakeable Crypto Asset are received into staking wallets, the Filer promptly calculates the amount of the staking reward earned by each client using the Staking Services in respect of that asset and credits each client's account accordingly. Staking reward distributions are shown in the Apps and on clients' account statements.

105. For certain Stakeable Crypto Assets, staking rewards are automatically staked by the blockchain protocol to compound rewards. Clients must unstake some or all of these rewards if they wish to sell or transfer them.

106. Where staking rewards are not compounded by the blockchain protocol, the Filer instructs the Custodian to transfer staking rewards from the staking wallets to other omnibus wallets holding client Crypto Assets.

107. Certain Stakeable Crypto Assets are subject to a so-called "warm-up" or "bonding" period after being staked, during which time the Stakeable Crypto Assets do not earn any staking rewards. A client will not receive staking rewards in respect of any of their staked Stakeable Crypto Assets that are still subject to "warm-up" periods.

108. Similarly, a client will not receive staking rewards in respect of Stakeable Crypto Assets that have been unstaked by the client but are still subject to Lock-up Periods.

109. The Filer does not promise or guarantee its clients a specific staking reward rate for any Stakeable Crypto Asset. The Filer does not exercise any discretion to change reward rates.

110. The Filer may show in the Apps or Web Site the current estimated reward rate for Stakeable Crypto Assets. This estimated reward rate is based on data derived from the blockchain for the Stakeable Crypto Asset and adjusted for any applicable validator commission or fees payable to the Filer.

111. The Filer charges a fee to clients using Staking Services based on a percentage of the client's staking rewards. The Filer clearly discloses the fees charged by the Filer for the Staking Services and provides a clear calculation of the rewards earned by each client that agrees to the Staking Services.

112. When staking rewards are received into staking wallets each epoch, the Filer promptly calculates the total amount of the fee payable by clients using the Staking Services for that epoch and transfers an amount of Stakeable Crypto Assets equal to the fee to a separate wallet exclusively holding Crypto Assets belonging to the Filer.

113. For certain Stakeable Crypto Assets, a Validator can, as part of the blockchain consensus protocol, set a percentage of the staking rewards earned by Stakeable Crypto Assets staked with the Validator to be received by the Validator. This is typically referred to as the "validator commission". The validator commission is deducted automatically by the underlying blockchain protocol from staking rewards and transferred by the protocol directly to the Validator. Where a "validator commission" applies, the Filer clearly discloses the existence and amount of the validator commission to clients using the Staking Services.

114. Under the commercial agreements between the Filer and Validators, Validators may pay some of the validator commission to the Filer for arranging the staking of clients' Stakeable Crypto Assets with the Validators. The Filer discloses to clients that it receives a share of validator commissions. Further, the Filer has adopted policies and procedures for the selection of Validators and staking of clients' Stakeable Crypto Assets to Validators to ensure that these decisions are based on factors other than the Filer's financial considerations under these commercial agreements.

115. For Stakeable Crypto Assets that do not have "validator commissions", the Filer pays a fee to the Validator and/or a Custodian for activating and operating nodes for the Filer's clients using the Staking Services. This fee is included in the fee paid by clients to the Filer in connection with the Staking Services.

116. Certain proof of stake blockchain protocols impose penalties where a validator fails to comply with protocol rules. This penalty is often referred to as "slashing" or "jailing". If a Validator is "slashed" or "jailed", a percentage of the tokens staked with that Validator and/or a percentage of staking rewards earned by clients staking to that Validator is permanently lost and/or the Validator will not be selected to participate in transaction validation and any Stakeable Crypto Assets staked with that Validator will not be eligible to earn staking rewards. Accordingly, if a Validator fails to comply with protocol rules, a percentage of Crypto Assets staked or earned by the Filer's clients may be lost (i.e., the balance of the staking wallet will be reduced automatically by the blockchain protocol) and/or the Filer's clients will not earn staking rewards for a period of time.

117. For certain Stakeable Crypto Assets, the Filer may agree to reimburse clients for slashing penalties. The Client Account Agreement clearly provides for the circumstances the Filer will provide this reimbursement in respect of a Stakeable Crypto Asset. The availability of any reimbursement, and any conditions or limits on the reimbursement, are also described in the Risk Statement or the relevant Crypto Asset Statement.

118. To mitigate the risk of slashing or jailing to clients, the Filer may, where feasible, arrange to stake Stakeable Crypto Assets across multiple Validators, so that any penalty resulting from the actions or inaction of a specific Validator does not affect all staked Crypto Assets and the Filer can, if appropriate, re-stake with alternative Validators.

119. In addition, the Filer monitors its Validators for, among other things, downtime, jailing and slashing events and takes any appropriate action to protect Stakeable Crypto Assets staked by clients.

120. For certain Stakeable Crypto Assets that are subject to Lock-up Periods, the Filer may provide clients using the Staking Services with the ability to sell or withdraw assets immediately after unstaking the assets, even though the newly unstaked assets are subject to a Lock-up Period and cannot yet be transferred from the staking wallet.

121. Where the Filer provides this service in connection with a Stakeable Crypto Asset, the Filer provides the liquidity necessary for clients to sell or withdraw Crypto Assets prior to the expiry of Lock-up Periods from the Filer's own inventory of Stakeable Crypto Assets in accordance with its liquidity management policies and procedures. When the Lock-up Period applicable to a clients' unstaked Crypto Assets expires, the Filer returns the now freely transferable assets to its inventory.

122. Where the Filer does not provide this liquidity for a Stakeable Crypto Asset, a client that unstakes Stakeable Crypto Assets must wait until the applicable Lock-up Period expires before the client can sell or transfer those assets.

Capital Requirements

123. The Filer will exclude from the excess working capital calculation all the Crypto Assets, including Proprietary Tokens and all Value-Referenced Crypto Assets, it holds for which there is no offsetting by a corresponding current liability, such as Crypto Assets held for its clients as collateral to guarantee obligations under Crypto Contracts, included on line 1, *Current assets,* of Form 31-103F1. This will result in the exclusion of all the Crypto Assets inventory, including Proprietary Tokens inventory and all of the Value-Referenced Crypto Assets inventory, held by the Filer from Form 31-103F1 (Schedule 1, line 9).

Marketplace and Clearing Agency

124. The Filer does not and will not operate a "marketplace" as that term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, subsection 1(1) of the Act.

125. The Filer does not and will not operate a "clearing agency" or a "clearing house" as the terms are defined or referred to in securities legislation. Any clearing or settlement activity conducted by the Filer is incidental to the Filer engaging in the business of a CTP. Any activities of the Filer that may be considered the activities of a clearing agency or clearing house are related to the Filer arranging or providing for settlement of obligations resulting from agreements entered into on a bilateral basis and without a central counterparty.

Decision

The Principal Regulator is satisfied that the Decision satisfies the test set out in the Legislation for the Principal Regulator to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Trade Reporting Relief, as applicable, satisfies the tests set out in the securities legislation of its jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Trade Reporting Relief, as applicable.

The Decision of the Principal Regulator under the Legislation is that the Prior CSA Decision is revoked and the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation in its jurisdiction is that the Trade Reporting Relief, as applicable, is granted, provided that:

(a) Unless otherwise exempted by a further decision of the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Jurisdiction, the Filer complies with all of the terms, conditions, restrictions and requirements applicable to a registered dealer under securities legislation, including the Legislation, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer.

(b) The Filer is registered as a restricted dealer in the Jurisdiction and the jurisdiction in which the client is resident.

(c) The Filer will continue to work actively and diligently with CIRO to transition the operation of the Platform from the Filer to WSII.

(d) The Filer, and any employee, agent or other representatives of the Filer, will not provide recommendations or advice to any client or prospective client on the Platform.

(e) The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets, and performing its obligations under those contracts. The Filer will seek the appropriate approvals from the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Applicable Jurisdiction, prior to undertaking any other activity governed by securities legislation. The Filer will not offer derivatives based on Crypto Assets other than Crypto Contracts.

(f) The Filer will not operate a "marketplace" as the term is defined in National Instrument 21-101 *Marketplace Operation* and in Ontario, in subsection 1(1) of the Act or a "clearing agency" or "clearing house" as the terms are defined or referred to in securities legislation.

(g) The Filer has and will continue to confirm that it is not liable for the debt of an affiliate or affiliates that could have a material negative effect on the Filer.

(h) At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of clients with one or more custodians that meets the definition of an "Acceptable Third-party Custodian", unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with an Acceptable Third-party custodian or has obtained the prior written approval of the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions to hold at least 80% of the total value of the Crypto Assets with an entity that does not meet certain criteria of an Acceptable Third-party Custodian.

(i) Before the Filer holds Crypto Assets with an Acceptable Third-Party Custodian, the Filer will take reasonable steps to verify that the custodian:

(i) will hold the Crypto Assets for the Filer's clients (i) in an account clearly designated for the benefit of the Filer's clients or in trust for the Filer's clients, (ii) separate and apart from the assets of the custodian's other clients, and (iii) separate and apart from the custodian's own assets and from the assets of any custodial service provider;

(ii) has appropriate insurance to cover the loss of Crypto Assets held at the custodian;

(iii) has established and applies written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian; and

(iv) meets each of the requirements to be an Acceptable Third-party Custodian, except for those criteria in respect of which the custodian does not meet and the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions have provided prior written approval for use of the custodian.

(j) The Filer will promptly notify the Principal Regulator if the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, the South Dakota Division of Banking or the New York State Department of Financial Services makes a determination that a custodians is not permitted by that regulatory authority to hold client Crypto Assets. In such a case, the Filer will identify a suitable alternative custody provider that meets the definition of an Acceptable Third-party Custodian to hold the Crypto Assets.

(k) For the Crypto Assets held by the Filer, the Filer will:

(i) hold the Crypto Assets in trust for the benefit of its clients, and separate and distinct from the assets of the Filer;

(ii) ensure there is appropriate insurance for the loss of Crypto Assets held by the Filer; and

(iii) have established and apply written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.

(l) The Filer will only use Liquidity Providers that it has verified are registered and/or licensed, to the extent required in their respective home jurisdictions, to execute trades in the Crypto Assets and are not in default of securities legislation in any of the Applicable Jurisdictions, and will promptly stop using a Liquidity Provider if (i) the Filer is made aware that the Liquidity Provider is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determined it to be, not in compliance with securities legislation.

(m) The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks and will provide fair and reasonable prices to its clients.

(n) The Filer will assess liquidity risk and concentration risk posed by its Liquidity Providers. The liquidity and concentration risks assessment will consider trading volume data (as provided in paragraph 1(e) of Appendix D) and complete a historical analysis of each Liquidity Provider and a relative analysis between the Liquidity Providers. Consideration should be given to whether the Liquidity Provider has issued its own Proprietary Tokens and to consider limiting reliance on those Liquidity Providers.

(o) Before each prospective client opens a Client Account, the Filer will deliver to the client a Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

(p) The Risk Statement delivered as set out in condition (o) will be prominent and separate from other disclosures given to the client as part of the account opening process, and the acknowledgement will be separate from other acknowledgements by the client as part of the account opening process.

(q) A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Platform.

(r) Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement including the information set out in paragraph 40.

(s) The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and/or Crypto Assets, and,

(i) in the event of any update to the Risk Statement, will promptly notify each existing client of the update and deliver to them a copy of the updated Risk Statement, and

(ii) in the event of any update to a Crypto Asset Statement, will promptly notify clients through electronic disclosures on the Platform, with links to the updated Crypto Asset Statement.

(t) Prior to the Filer delivering a Risk Statement to a client, the Filer will deliver, or will have previously delivered, a copy of the Risk Statement delivered to the client to the Principal Regulator.

(u) For each client, the Filer will perform an appropriateness assessment as described in paragraph 35 prior to opening a Client Account, on an ongoing basis and at least every twelve months.

(v) The Filer has established and will apply and monitor the Client Limits as set out in paragraph 35(d).

(w) The Filer will monitor client activity and contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not appropriate for the client, or that additional education is required.

(x) The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets, that a client, except those clients resident in Alberta, British Columbia, Manitoba and Québec, may purchase and sell on the Platform (calculated on a net basis and is an amount not less than $0) in the preceding 12 months does not exceed a net acquisition cost of $30,000.

(y) In the jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Contract is deemed to be a distribution under securities legislation of that jurisdiction.

(z) The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:

(i) change of or use of a new custodian; and

(ii) material changes to the Filer's ownership, its business operations, including its systems, or its business model.

(aa) The Filer will notify the Principal Regulator, promptly, of any material breach or failure of its or its custodian's system of controls or supervision, and what steps have been taken by the Filer to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.

(bb) The Filer will only trade Crypto Assets or Crypto Contracts based on Crypto Assets that are not in and of themselves securities or derivatives.

(cc) The Filer will evaluate Crypto Assets as set out in paragraphs 23 to 28.

(dd) The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a client, without the prior written consent of the regulator or securities regulatory authority of the Applicable Jurisdictions, where the Crypto Assets was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, fine, or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory

organization, administrative tribunal or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* (Canada), conspiracy, breach of trust, breach of fiduciary duty, insider trading, market manipulation, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar conduct.

(ee) Except to allow clients to liquidate their positions in an orderly manner in those Crypto Contracts or transfer such Crypto Assets to a blockchain address specified by the client, the Filer will promptly stop trading Crypto Contracts where the underlying is a Crypto Asset that (i) the Filer determines it to be, (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada or the foreign jurisdiction with which the Crypto Asset has the most significant connection determines it to be, or (iii) the Filer is made aware or is informed that the Crypto Asset is viewed by a regulator or securities regulatory authority to be, a security and/or derivative.

(ff) The Filer will not engage in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuers or affiliates or associates of such persons.

(gg) The Filer will exclude from the excess working capital calculation all the Crypto Assets, including Proprietary Tokens and all Value-Referenced Crypto Assets, it holds for which there is no offsetting by a corresponding current liability, as described in paragraph 123.

Staking

(hh) The Filer will comply with the terms and conditions in Appendix C in respect of the Staking Services.

Reporting

(ii) The Filer will deliver the reporting as set out in Appendix D.

(jj) Within 7 calendar days from the end of each month, the Filer will deliver to the regulator or securities regulatory authority in each of the Applicable Jurisdictions, a report of all Client Accounts for which the Client Limits established pursuant to paragraph 35(d) were exceeded during that month.

(kk) The Filer will provide certain reporting in respect of the preceding calendar quarter to its Principal Regulator within 30 days of the end of March, June, September and December in connection with the Staking Services, including, but not limited to:

(i) the total number of clients to which the Filer provides the Staking Services;

(ii) the Crypto Assets for which the Staking Services are offered;

(iii) for each Crypto Asset that may be staked:

A. the amount of Crypto Assets staked,

B. the amount of each such Crypto Assets staked that is subject to a Lock-up Period and the length of the Lock-up Period;

C. the amount of Crypto Assets that clients have requested to unstake; and

D. the amount of rewards earned by the Filer and the clients for the Crypto Assets staked under the Staking Services;

(iv) the names of any third parties used to conduct the Staking Services;

(v) any instance of slashing, jailing or other penalties being imposed for validator error and

(vi) the details of why these penalties were imposed; and

(vii) any reporting regarding the Filer's liquidity management as requested by the Principal Regulator.

(ll) The Filer will deliver to the Principal Regulator, within 30 days of the end of each March, June, September and December, either (i) blackline copies of changes made to the policies and procedures on the operations of its wallets (including, but not limited to, establishment of wallets, transfer of Crypto Assets into and out of the wallets, and authorizations to access the wallets) previously delivered to the Principal Regulator or (ii) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.

(mm) In addition to any other reporting required by the Legislation, the Filer will provide, on a timely basis, any report, data, document or information to the Principal Regulator, including any information about the Filer's custodian(s) and the Crypto Assets held by the Filer's custodian(s), that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with the Legislation and the conditions in the Decision, in a format acceptable to the Principal Regulator.

(nn) Upon request, the Filer will provide the Principal Regulator and the regulators or securities regulatory authorities of each of the Non-Principal Jurisdictions with aggregated and/or anonymized data concerning client demographics and activity on the Platform that may be useful to advance the development of the Canadian regulatory framework for trading crypto assets.

(oo) The Filer will promptly make any changes to its business practices or policies and procedures that may be required to address investor protection concerns that may be identified by the Filer or by the Principal Regulator arising from the operation of the Platform.

Time Limited Relief

(pp) This Decision shall expire upon the earlier of:

(i) January 1, 2024; or

(ii) the date of the transition of the Platform to WSII.

(qq) This Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation.

In respect of the Prospectus Relief:

Dated: June 15, 2023

"David Surat"
Manager (Acting), Corporate Finance
Ontario Securities Commission

In respect of the Suitability Relief:

Dated: June 15, 2023

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

In respect of the Trade Reporting Relief:

Dated: June 23, 2023

"Kevin Fine"
Director, Derivatives
Ontario Securities Commission

Application File #: 2023/0140

Appendix A – Local Trade Reporting Rules

In this Decision the "Local Trade Reporting Rules" collectively means each of the following:

(a) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**OSC Rule 91-507**);

(b) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 *Trade Repositories and Derivatives Data Reporting* (**MSC Rule 91-507**);

(c) Part 3, Data Reporting of Multilateral Instrument 96-101 *Trade Repositories and Derivatives Data Reporting* in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**).

Appendix B - List of Specified Crypto Assets

- Bitcoin
- Ether
- Bitcoin Cash
- Litecoin

Appendix C – Staking Terms and Conditions

1. The Staking Services are offered in relation to the Stakeable Crypto Assets that are subject to a Crypto Contract between the Filer and a client.

2. Unless the Principal Regulator has provided its prior written consent, the Filer offers clients the Staking Services only for (i) Crypto Assets of blockchains that use a proof of stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain (i.e., Stakeable Crypto Assets).

3. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

4. The Filer itself does not act as a Validator. The Filer has entered into written agreements with third parties to stake Stakeable Crypto Assets and each such third party is proficient and experienced in staking Stakeable Crypto Assets.

5. The Filer's KYP Policy includes a review of the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

    (a) the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (b) the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (c) the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (d) the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

    (e) the Validators engaged by the Filer or the Filer's Custodians, including, but not limited to, information about:

        (i) the persons or entities that manage and direct the operations of the Validator,

        (ii) the Validator's reputation and use by others,

        (iii) the amount of Stakeable Crypto Assets the Validator has staked on its own nodes,

        (iv) the measures in place by the Validator to operate the nodes securely and reliably,

        (v) the financial status of the Validator,

        (vi) the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

        (vii) any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

        (viii) any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

6. The Filer has policies and procedures to assess account appropriateness for a client includes consideration of the Staking Services to be made available to that client.

7. The Filer applies the account appropriateness policies and procedures to evaluate whether offering the Staking Services is appropriate for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

8. If, after completion of an account-level appropriateness assessment, the Filer determines that providing the Staking Services is not appropriate for the client, the Filer will include prominent messaging to the client that this is the case and the Filer will not make available the Staking Services to the client.

9. The Filer only stakes the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer ceases to stake those Stakeable Crypto Assets.

10. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer delivers to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in paragraph 11 below, and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

11. The Filer clearly explains in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which include, at a minimum:

    (a) the details of the Staking Services and the role of all third parties involved;

    (b) the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Crypto Asset for which the Filer provides the Staking Services;

    (c) the details of the Validators that will be used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

    (d) the details of whether and how the custody of staked Stakeable Crypto Assets differs from Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

    (e) the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses will be allocated to clients;

    (f) whether the Filer will reimburse clients for any Stakeable Crypto Assets lost due to slashing or other penalties imposed due to Validator error, action or inactivity or how any losses will be allocated to clients;

    (g) whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Stakeable Crypto Asset protocol, custodian or Validator, where such Stakeable Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards **(Lock-up Periods**); and

    (h) how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

12. Immediately before each time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer requires the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

    (a) that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

    (b) that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, and the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

    (c) how rewards will be calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

    (d) that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

    (e) whether rewards may be changed at the discretion of the Filer;

    (f) unless the Filer guarantees any Stakeable Crypto Assets lost to slashing, that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network;

    (g) if the Filer offers a guarantee to prevent loss of any Stakeable Crypto Assets arising from the Staking Services, including due to slashing, any limits on that guarantee and requirements for a client to claim under the guarantee; and

    (h) that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

13. Immediately before each time a client buys or deposits Stakeable Crypto Assets that are automatically staked pursuant to an existing agreement by the client to the Staking Services, the Filer provides prominent disclosure to the client that the Stakeable Crypto Asset it is about to buy or deposit will be automatically staked.

14. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Staking Services and/or Stakeable Crypto Assets.

15. In the event of any update to the Risk Statement, for each existing client that has agreed to the Staking Services, the Filer will promptly notify the client of the update and deliver to them a copy of the updated Risk Statement.

16. In the event of any update to a Crypto Asset Statement, for each existing client that has agreed to the Staking Services in respect of the Stakeable Crypto Asset for which the Crypto Asset Statement was updated, the Filer will promptly notify the client of the update and deliver to the client a copy of the updated Crypto Asset Statement.

17. The Filer and the Custodians remain in possession, custody and control of the staked Stakeable Crypto Assets at all times.

18. The Filer holds the staked Stakeable Crypto Assets for its clients in one or more omnibus staking wallets in the name of the Filer for the benefit of the Filer's clients with the Custodians and the staked Stakeable Crypto Assets are held separate and distinct from (i) the assets of the Filer, the Custodians and the Custodians' other clients; and (ii) the Crypto Assets held for its clients that have not agreed to staking those specific Crypto Assets.

19. The Filer has established policies and procedures that manage and mitigate custodial risks for staked Stakeable Crypto Assets, including but not limited to, an effective system of controls and supervision to safeguard the staked Stakeable Crypto Assets.

20. If the Filer permits clients to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-up Period, the Filer establishes and applies appropriate liquidity management policies and procedures to fulfill withdrawal requests made, which may include using the Stakeable Crypto Assets it holds in inventory, setting aside cash for the purpose of purchasing such inventory, and/or entering into agreements with its Liquidity Providers that permit the Filer to purchase any required Crypto Assets. The Filer holds Stakeable Crypto Assets in trust for its clients and will not use Stakeable Crypto Assets of those clients who have not agreed to the Staking Services for fulfilling such withdrawal requests.

21. If the Filer provides a guarantee to clients from some or all of the risks related to the Staking Services, the Filer has established, and will maintain and apply, policies and procedures to address any risks arising from such guarantee.

22. In the event of bankruptcy or insolvency of the Filer, the Filer will assume and will not pass to clients any losses arising from slashing or other penalties arising from the performance or non-performance of the Validator.

23. The Filer monitors its Validators for downtime, jailing and slashing events and takes any appropriate action to protect Stakeable Crypto Assets staked by clients.

24. The Filer has established and applies policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

25. The Filer regularly and promptly determines the amount of staking rewards earned by each client that has staked Stakeable Crypto Assets under the Staking Services and distributes each client's staking rewards to the client promptly after they are made available to the Filer.

26. The Filer clearly discloses the fees charged by the Filer for the Staking Services and provides a clear calculation of the rewards earned by each client that agrees to the Staking Services.

Appendix D – Data Reporting

1. Commencing with the quarter ending June 30, 2023, the Filer will deliver the following information to the Principal Regulator and each of the Coordinated Review Decision Makers in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers with respect to Clients residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December:

    (a) aggregate reporting of activity conducted pursuant to the Platform's operations that will include the following:

        i. number of Client Accounts opened each month in the quarter;

        ii. number of Client Accounts frozen or closed each month in the quarter;

        iii. number of Client Account applications rejected by the platform each month in the quarter based on the account appropriateness factors described in paragraph 35(b);

        iv. number of trades each month in the quarter;

        v. average value of the trades in each month in the quarter;

        vi. number of Client Accounts with a net acquisition cost greater than $30,000 of Crypto Assets at the end of each month in the quarter;

        vii. number of Client Accounts that in the preceding 12 months, excluding Specified Crypto Assets, exceeded a net acquisition cost of $30,000 at the end of each month in the quarter;

        viii. number of Client Accounts at the end of each month in the quarter;

        ix. number of Client Accounts with no trades during the quarter;

        x. number of Client Accounts that have not been funded at the end of each month in the quarter; and

        xi. number of Client Accounts that hold a positive amount of Crypto Assets at end of each month in the quarter; and

        xii. number of Client Accounts that exceeded their Client Limit at the end of each month in the quarter.

    (b) the details of any client complaints received by the Filer during the calendar quarter and how such complaints were addressed;

    (c) a listing of all blockchain addresses, except for deposit addresses, that hold Crypto Assets on behalf of Clients, including all hot and cold wallets;

    (d) the details of any fraudulent activity or cybersecurity incidents on the Platform during the calendar quarter, any resulting harms and effects on clients, and the corrective measures taken by the Filer to remediate such activity or incident and prevent similar activities or incidents from occurring in the future; and

    (e) the details of the transaction volume per Liquidity Provider, per Crypto Asset during the quarter.

2. The Filer will deliver to the Principal Regulator and each of the Coordinated Review Decision Makers, in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers, a report that includes the anonymized account-level data for the Platform's operations for each client residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December for data elements outlined in **Appendix E**.

Appendix E

Data Element Definitions, Formats and Allowable Values

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
Data Elements Related to each Unique Client					
1	Unique Client Identifier	Alphanumeric code that uniquely identifies a customer.	Varchar(72)	An internal client identifier code assigned by the CTP to the client. The identifier must be unique to the client.	ABC1234
2	Unique Account Identifier	Alphanumeric code that uniquely identifies an account.	Varchar(72)	A unique internal identifier code which pertains to the customer's account. There may be more than one Unique Account Identifier linked to a Unique Client Identifier.	ABC1234
3	Jurisdiction	The Province or Territory where the client, head office or principal place of business is, or under which laws the client is organized, or if an individual, their principal place of residence.	Varchar(5)	Jurisdiction where the client is located using ISO 3166-2 - See the following link for more details on the ISO standard for Canadian jurisdictions codes. https://www.iso.org/obp/ui/#iso:code:3166:CA	CA-ON
Data Elements Related to each Unique Account					
4	Account Open Date	Date the account was opened and approved to trade.	YYYY-MM-DD, based on UTC.	Any valid date based on ISO 8601 date format.	2022-10-27
5	Cumulative Realized Gains/Losses	Cumulative Realized Gains/Losses from purchases, sales, deposits, withdrawals and transfers in and out, since the account was opened as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in, transfers out, deposits and withdrawals of the Digital Token to determine the cost basis or the realized gain or loss.	205333
6	Unrealized Gains/Losses	Unrealized Gains/Losses from purchases, deposits and transfers in as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in or deposits of the Digital Token to determine the cost basis.	-30944

[1] Note: Digital Token refers to either data associated with a Digital Token, or a Digital Token referenced in an investment contract.

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
7	Digital Token Identifier	Alphanumeric code that uniquely identifies the Digital Token held in the account.	Char(9)	Digital Token Identifier as defined by ISO 24165. See the following link for more details on the ISO standard for Digital Token Identifiers. https://dtif.org/	4H95J0R2X
Data Elements Related to each Digital Token Identifier Held in each Account					
8	Quantity Bought	Number of units of the Digital Token bought in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	4358.326
9	Number of Buy Trans-actions	Number of transactions associated with the Quantity Bought during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	400
10	Quantity Sold	Number of units of the Digital Token sold in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	125
11	Number of Sell Transactions	Number of transactions associated with the Quantity Sold during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3325
12	Quantity Transferred In	Number of units of the Digital Token transferred into the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	10.928606
13	Number of Transactions from Transfers In	Number of transactions associated with the quantity transferred into the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3
14	Quantity Transferred Out	Number of units of the Digital Token transferred out of the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	603
15	Number of Transactions from Transfers Out	Number of transactions associated with the quantity transferred out of the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	45
16	Quantity Held	Number of units of the Digital Token held in the account as of the end of the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	3641.25461

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
17	Value of Digital Token Held	Value of the Digital Token held as of the end of the reporting period.	Num(25,0)	Any value greater than or equal to zero rounded to the nearest dollar in CAD. Use the unit price of the Digital Token as of the last business day of the reporting period multiplied by the quantity held as reported in (16).	45177788
18	Client Limit	The Client Limit established on each account.	Num(25,2)	Any value greater than or equal to zero rounded to the nearest dollar in CAD, or if a percentage, in decimal format.	0.50
19	Client Limit Type	The type of limit as reported in (18).	Char(3)	AMT (amount) or PER (percent).	PER

B.3.5 Tilray Brands, Inc. et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – application for wholly-owed subsidiaries (Subsidiaries) of parent company (Parent) for a decision under section 13.1 of National Instrument 51-102 Continuous Disclosure Obligations (NI 51-102) exempting Subsidiaries from the requirements of NI 51-102; for a decision under National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings (NI 52-109) exempting Subsidiaries from the requirements of NI 52-109; for a decision under National Instrument 55-104 Insider Reporting Requirements and Exemptions (NI 55-104) exempting insiders of Subsidiaries from the insider reporting requirements; and for a decision under National Instrument 55-102 System for Electronic Disclosure by Insiders exempting insiders of Subsidiaries from the requirement to file an insider profile; Subsidiaries are reporting issuers and have convertible securities outstanding; convertible securities entitle securityholders to acquire common shares of Parent; convertible securities do not qualify as "designated exchangeable securities" under exemption in section 13.3 of NI 51-102; relief granted on conditions substantially similar to the conditions contained in section 13.3 of NI 51-102.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 107 and 144.
National Instrument 51-102 Continuous Disclosure Obligations, ss. 13.1 and 13.3.
National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings, s. 8.6.
National Instrument 55-102 System for Electronic Disclosure by Insiders, s. 6.1.
National Instrument 55-104 Insider Reporting Requirements and Exemptions, s. 10.1.

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
TILRAY BRANDS, INC.
(Tilray),
48NORTH CANNABIS CORP.
(48North)
AND
HEXO CORP.
(HEXO),
collectively, the Filers

DECISION

Background

The securities regulatory authority or regulator of the Jurisdiction (**Decision Maker**) has received an application from the Filers for a decision under the securities legislation of the Jurisdiction (the **Legislation**) that:

(a) the continuous disclosure requirements under the Legislation and the requirements of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) (together, the **Continuous Disclosure Requirements**) do not apply to HEXO;

(b) the requirements of National Instrument 52-109 Certification of Disclosure in Issuers' Annual and Interim Filings (**NI 52-109**) (the **Certification Requirements**) do not apply to HEXO;

(c) the insider reporting requirements under the Legislation, the requirements of National Instrument 55-104 Insider Reporting Requirements and Exemptions and the requirement to file an insider profile under National Instrument 55-102 System for Electronic Disclosure by Insiders (together, the **Insider Reporting Requirements**) do not apply to any insider of HEXO; and

(d) the order of the Decision Maker (the **48North Order**) exempting 48North from the Continuous Disclosure Requirements, the Certification Requirements and the Insider Reporting Requirements, subject to the conditions set out in the 48North Order, including the requirements that HEXO continue to be a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and to file all documents it is required to file under NI 51-102 be revoked and replaced with an updated order granting substantially similar relief,

(collectively, the **Exemption Sought**).

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 section 4.7(2) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, Northwest Territories, Yukon, and Nunavut.

Interpretation

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

Representations

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

(a) HEXO

(i) HEXO is a corporation existing under the *Business Corporations Act* (Ontario) (**OBCA**);

(ii) HEXO's head office is located at 120 de la Rive Road, Gatineau, Quebec and its registered office is located at 222 Bay St. Suite 3000, Toronto, Ontario;

(iii) the authorized capital of HEXO consists of an unlimited number of common shares (the **HEXO Common Shares**) and an unlimited number of special shares issuable in series (the **HEXO Preferred Shares**, and together with the HEXO Common Shares, the **HEXO Shares**);

(iv) the HEXO Common Shares are listed on the Toronto Stock Exchange (**TSX**) and the Nasdaq Stock Exchange (**Nasdaq**) under the symbol "HEXO";

(v) as of June 9, 2023, HEXO was a reporting issuer in each province and territory of Canada;

(vi) as of June 9, 2023, there were issued and outstanding: (A) 43,996,355 HEXO Common Shares; (B) 11,500,000 HEXO Preferred Shares; (C) 2,952,337 options to purchase HEXO Common Shares (**HEXO Options**); (D) 4,136,559 warrants (including the Listed 48North Warrants, as defined below) exercisable for HEXO Common Shares (**HEXO Warrants**); (E) 66,987 HEXO restricted share units (**HEXO RSUs**); and (F) 498,616 HEXO deferred share units (**HEXO DSUs**); and

(vii) as a result of HEXO's acquisition of 48North, there are listed warrants outstanding to purchase 17,863 HEXO Common Shares at an exercise price per whole HEXO Common Share of $1,017.76 with an expiry date of April 2, 2024 (**Listed 48North Warrants**) issued pursuant to a warrant indenture between 48North and Computershare Trust Company of Canada (**Computershare**) dated April 2, 2019, as supplemented by the supplemental warrant indenture dated September 1, 2021 among HEXO, 48North and Computershare (the **Listed 48North Warrant Indenture**).

(b) 48North

(i) 48North is a corporation existing under the *Canada Business Corporations Act* (**CBCA**) and is a wholly owned subsidiary of HEXO;

(ii) as of June 9, 2023, 48North was a reporting issuer in each province of Canada other than Quebec;

(iii) on September 1, 2021, HEXO and 48North completed an arrangement pursuant to section 192 of the CBCA (**48North Arrangement**), pursuant to which HEXO acquired all of the issued and outstanding common shares of 48North by way of a court-approved plan of arrangement;

(iv) following closing of the 48North Arrangement, the Listed 48North Warrants that remained outstanding were listed on the TSX under the trading symbol 'HEXO.WT.A'; and

(v) on August 31, 2021, immediately prior to the consummation of the 48North Arrangement, the OSC issued the 48North Order.

(c) Tilray

(i) Tilray is a corporation existing under the Delaware General Corporation Law;

(ii) Tilray's head office and registered office is located at 245 Talbot St W, Leamington, Ontario;

(iii) the authorized capital of Tilray consists of 980,000,000 common shares (the **Tilray Shares**) and 10,000,000 shares of preferred stock;

(iv) the Tilray Shares are listed on the TSX and the Nasdaq under the trading symbol "TLRY"; and

(v) as of June 9, 2023, Tilray was a reporting issuer in each province and territory of Canada and was an "SEC Foreign Issuer", as defined in National Instrument 71-102 - *Continuous Disclosure and Other Exemptions Related to Foreign Issuers*.

(d) Plan of Arrangement

(i) Tilray and HEXO entered into an arrangement agreement on April 10, 2023, as amended on June 1, 2023 (the **Arrangement Agreement**), pursuant to which, among other things, all of the outstanding HEXO Shares are to be acquired by Tilray by way of a court-approved plan of arrangement (the **Plan of Arrangement**) carried out under the OBCA (the **Arrangement**);

(ii) pursuant to the Plan of Arrangement, (i) in exchange for each HEXO Common Share, Tilray will issue to the holders of HEXO Common Shares 0.4352 (the **Exchange Ratio**) of a Tilray Share (the **Common Share Consideration**) and (ii) in exchange for each HEXO Preferred Share, Tilray will issue to the holders of HEXO Preferred Shares such number of Tilray Shares equal to the number of HEXO Preferred Shares held by such holder multiplied by the quotient obtained from dividing: (1) US$1.22, by (2) the lower of (a) the closing price of the Tilray Shares on the Nasdaq, and (b) the five day volume-weighted average trading price of a Tilray Share on the Nasdaq, each calculated as of the end of the third business day immediately prior to the Effective Time (the **Preferred Share Consideration**), subject to the terms of the Plan of Arrangement;

(iii) as a result of the Arrangement, HEXO will become a wholly owned subsidiary of Tilray;

(iv) on May 10, 2023, HEXO obtained an interim order from the Ontario Superior Court of Justice (Commercial List) (the **Interim Order**) specifying certain requirements and procedures for the HEXO Meeting;

(v) on May 15, 2023, in connection with the Arrangement and the HEXO Meeting, and in accordance with the Interim Order, HEXO mailed to the holders of HEXO Common Shares, HEXO Warrants, HEXO Options, HEXO RSUs and HEXO DSUs a management information circular containing prospectus-level disclosure of the business and affairs of each of HEXO and Tilray and information on the Arrangement, a copy of which has been filed on SEDAR under HEXO's profile;

(vi) the Arrangement is expected to become effective on or before June 21, 2023 (or on such other date to be mutually agreed by the parties) (the **Effective Time**), subject to the completion of certain closing conditions set out in the Arrangement Agreement;

(vii) the completion of the Arrangement was conditional on, among other things: (i) approval of the Arrangement by the affirmative vote of (A) at least 66 ⅔% of the votes cast by holders of HEXO Common Shares present or represented by proxy at a special meeting (**HEXO Meeting**), and (B) a majority of the votes cast by the holders of HEXO Common Shares present or represented by proxy at the HEXO Meeting, excluding the votes of persons whose votes must be excluded in accordance with Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*; and (ii) final approval of the Arrangement by the Ontario Superior Court of Justice (Commercial List) (the **Court**);

(viii) the holders of HEXO Common Shares approved the Arrangement at the HEXO Meeting held on June 14, 2023 by affirmative vote of: (A) greater than 66 ⅔% of the votes cast by holders of HEXO Common

Shares present or represented by proxy at the HEXO Meeting, and (B) a majority of the votes cast by the holders of HEXO Common Shares present or represented by proxy at the HEXO Meeting, excluding the votes of persons whose votes must be excluded in accordance with Multilateral Instrument 61-101 - *Protection of Minority Security Holders in Special Transactions*;

(ix) on June 19, 2023, HEXO obtained a final order from the Court approving the Arrangement;

(x) under the Plan of Arrangement, among other things, the following will occur:

(a) all HEXO Common Shares, other than HEXO Common Shares held by (i) Tilray, and (ii) dissenting shareholders, will be exchanged by the holders thereof, without any further act or formality, for the Common Share Consideration;

(b) HEXO Common Shares held by dissenting shareholders in respect of which dissent rights have been validly exercised and not withdrawn shall be deemed to have been transferred by such dissenting shareholders to HEXO;

(c) all HEXO Preferred Shares, will be exchanged by the holders thereof, without any further act or formality, for the Preferred Share Consideration;

(d) the amended and restated senior secured convertible note of HEXO dated July 12, 2022, held by Tilray will be converted into HEXO Common Shares in accordance with its terms;

(e) each HEXO DSU shall be deemed to be unconditionally redeemed by the holder thereof and such HEXO DSU, without any further action by or on behalf of the holder thereof, shall be assigned and transferred by such holder to the HEXO (free and clear of all liens) in exchange for a cash payment equal to the number of HEXO DSUs credited to such holder multiplied by $1.25, and thereafter each such HEXO DSU shall immediately be cancelled and terminated;

(f) each HEXO RSU, whether vested or unvested, shall be deemed to be unconditionally vested and such HEXO RSU, without any further action by or on behalf of the holder thereof, shall be assigned and transferred by such holder to the HEXO (free and clear of all liens) in exchange for a cash payment equal to the number of HEXO RSUs credited to such holder multiplied by $1.25, and thereafter each such HEXO RSU shall immediately be cancelled and terminated; and

(g) each HEXO Option outstanding immediately prior to the Effective Time shall be adjusted so that, upon exercise of such HEXO Option, the holder shall, upon payment of the exercise price under such HEXO Option, be entitled to receive, in substitution for the number of HEXO Common Shares subject to such HEXO Option, that number of Tilray Shares equal to the product obtained when the number of HEXO Common Shares subject to such HEXO Option immediately prior to the Effective Time is multiplied by the Exchange Ratio (rounded down to the next whole number of Tilray Shares). For greater certainty, the exercise price per Tilray Share under such HEXO Option immediately following the adjustment pursuant to the Plan of Arrangement shall equal the exercise price per HEXO Common Share under such HEXO Option immediately prior to the Effective Time divided by the Exchange Ratio, rounded up to the nearest whole cent; and

(xi) following completion of the Arrangement, the HEXO Warrants, with the exception of any HEXO Warrants that are exercised before the Effective Time, will remain outstanding as warrants of HEXO that upon exercise will entitle the holders thereof to receive the Common Share Consideration such holders would have been entitled to be issued and receive if, immediately prior to the Effective Time, such holder had been the holders of the number of HEXO Common Shares to which such holders were theretofore entitled upon exercise of such HEXO Warrants.

(e) Listing Matters

(i) It is a condition of the Arrangement that the necessary approvals by the Nasdaq and the TSX for the listing on each such exchange of (i) the Tilray Shares to be issued to HEXO shareholders (other than dissenting shareholders) as consideration in exchange for their HEXO Shares pursuant to the Plan of Arrangement; and (ii) the Tilray Shares issuable upon exercise or vesting of the HEXO convertible securities (other than HEXO RSUs and HEXO DSUs deemed to be unconditionally redeemed and assigned and transferred by such holder to HEXO) and HEXO Warrants, have been obtained and maintained. Nasdaq approval is not required for the Arrangement, and Tilray intends to submit to the Nasdaq the applicable notification forms as required under Nasdaq rules. For the purposes of TSX

approval, Tilray intends to rely on the exemption set forth in Section 602.1 of the TSX Company Manual, which provides that the TSX will not apply its rules and standards to certain transactions involving an "eligible interlisted issuer", which is an issuer listed on the TSX that is also listed on another recognized stock exchange (which includes the Nasdaq) and that had less than 25% of the overall trading volume of its listed securities occurring on all Canadian marketplaces in the 12 months immediately preceding the date of an application or notice to the TSX. Tilray qualifies as an "eligible interlisted issuer" in accordance with the foregoing;

(ii) following closing of the Arrangement, (i) the HEXO Common Shares will be delisted from the TSX and Nasdaq, and (ii) the Listed 48North Warrants will continue to be listed on the TSX under the symbol "HEXO.WT.A";

(iii) following the Effective Time, each Listed 48North Warrant will become exercisable for a Tilray Share at an exercise price of approximately $2,338.60 per whole Tilray Share, adjusted to reflect the Exchange Ratio;

(iv) upon completion of the Arrangement, the only securities of HEXO that will be held by persons other than Tilray are the outstanding HEXO Warrants and HEXO Options;

(v) upon completion of the Arrangement, the only securities of HEXO that will be traded on a marketplace (as defined in National Instrument 21-101 - *Marketplace Operation*) will be the Listed 48North Warrants;

(vi) pursuant to the terms of the warrant indentures governing HEXO Warrants (the **HEXO Indentures**) and any supplemental indentures applicable thereto, Tilray and HEXO shall enter into supplemental warrant indentures with Computershare and TSX Trust Company (**TSX Trust**), as applicable, with respect to the HEXO Warrants (including the Listed 48North Warrants);

(vii) pursuant to the terms of the HEXO Indentures, any supplemental indentures applicable thereto and/or the certificates representing, as applicable, the various unlisted warrants outstanding to purchase HEXO Common Shares (the **Unlisted HEXO Warrants**), Tilray will be bound by the terms and covenants thereof and upon exercise of such HEXO Warrants and the payment of the applicable aggregate exercise price, holders will be entitled to receive the Common Share Consideration such holders would have been entitled to be issued and receive if, immediately prior to the Effective Time, such holders had been the registered holders of the number of HEXO Common Shares to which such holders were theretofore entitled upon exercise of such HEXO Warrants;

(viii) HEXO has provided notice to Computershare and TSX Trust and to the holders of the HEXO Warrants with respect to the Arrangement containing details of the consideration to be received upon the exercise of the applicable HEXO Warrants following the Effective Time;

(ix) certain of the HEXO Indentures, including the Listed 48North Warrant Indenture, include a covenant that HEXO will make all requisite filings under applicable Canadian securities legislation including those necessary to remain a reporting issuer not in default in each of the provinces and other Canadian jurisdictions where it is or becomes a reporting issuer;

(x) none of the HEXO Indentures or certificates representing the HEXO Warrants requires HEXO to deliver to holders of HEXO Warrants any continuous disclosure materials of HEXO;

(xi) none of the Filers is in default of any of its respective obligations under securities legislation in the jurisdictions in which it is a reporting issuer;

(xii) HEXO cannot rely on the exemption available in Section 13.3 of NI 51-102 for issuers of exchangeable securities because the HEXO Warrants will not be "designated exchangeable securities" as defined in NI 51-102 as none of the holders of the HEXO Warrants will have voting rights in respect of Tilray in their capacity as warrantholders;

(xiii) assuming the completion of the Arrangement and following the Effective Time, HEXO has no intention of accessing the capital markets in the future by issuing any further securities to the public and it has no intention of issuing securities to the public other than those that will be outstanding on completion of the Arrangement;

(xiv) following completion of the Arrangement, it is information relating to Tilray, and not to HEXO, that will be of primary importance to holders of HEXO Warrants as the HEXO Warrants will be ultimately exercisable for only the Common Share Consideration consisting of Tilray Shares;

(xv) following completion of the Arrangement, as HEXO will be a wholly-owned subsidiary of Tilray, Tilray will consolidate HEXO with Tilray for the purposes of financial statement reporting; and

(xvi) as such, the disclosure required by the Continuous Disclosure Requirements and the Insider Reporting Requirements applicable to HEXO would not be meaningful or of any significant benefit to the holders of the HEXO Warrants or HEXO Options and would impose a significant cost on HEXO.

Decision

The Decision Maker 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 Maker under the Legislation is that, immediately following the Effective Time and the completion of the Plan of Arrangement:

(1) The 48North Order is revoked.

(2) The Continuous Disclosure Requirements do not apply to 48North provided that:

(a) Tilray is the direct or indirect beneficial owner of all of the issued and outstanding voting securities of 48North;

(b) Tilray is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;

(c) 48North does not issue any securities, and does not have any securities outstanding other than:

(i) the Listed 48North Warrants;

(ii) securities issued to and held by Tilray or an affiliate of Tilray;

(iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or

(iv) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**);

(d) 48North files in electronic format:

(i) if Tilray is a reporting issuer in the local jurisdiction, a notice indicating that it is relying on the continuous disclosure documents filed by Tilray and setting out where those documents can be found in electronic format; or

(ii) copies of all documents Tilray is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by Tilray of those documents with a securities regulatory authority or regulator;

(e) Tilray concurrently sends to all holders of any Listed 48North Warrants all disclosure materials that would be required to be sent to holders of similar warrants of Tilray in the manner and at the time required by securities legislation;

(f) Tilray complies with securities legislation in respect of making public disclosure of material information on a timely basis;

(g) Tilray immediately issues in Canada and files any news release that discloses a material change in its affairs; and

(h) 48North issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of 48North that are not also material changes in the affairs of Tilray.

(3) The Certification Requirements do not, following the Effective Time and the completion of the Plan of Arrangement, apply to 48North provided that:

(a) 48North is not required to, and does not, file its own Interim Filings and Annual Filings (as those terms are defined under NI 52-109);

(b) 48North files in electronic format under its SEDAR profile either: (i) copies of Tilray's annual certificates and interim certificates at the same time as Tilray is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on Tilray's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and

(c) 48North is exempt from or otherwise not subject to the Continuous Disclosure Requirements and 48North and Tilray are in compliance with the conditions set out in paragraph (2) above.

(4) The Insider Reporting Requirements not apply, following the Effective Time and the completion of the Plan of Arrangement, to any insider of 48North in respect of securities of 48North provided that:

(a) if the insider is not Tilray or HEXO:

(i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning 48North before the material facts or material changes are generally disclosed; and

(ii) the insider is not an insider of Tilray or HEXO in any capacity other than by virtue of being an insider of 48North;

(b) Tilray is the indirect beneficial owner of all of the issued and outstanding voting securities of 48North;

(c) if the insider is Tilray or HEXO, the insider does not beneficially own any HEXO Warrants other than securities acquired through the exercise of the HEXO Warrants and not subsequently traded by the insider;

(d) Tilray is a reporting issuer in a designated Canadian jurisdiction;

(e) 48North has not issued any securities, and does not have any securities outstanding, other than:

(i) the Listed 48North Warrants;

(ii) securities issued to and held by Tilray or an affiliate of Tilray;

(iii) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or

(iv) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of NI 45-106; and

(f) 48North is exempt from or otherwise not subject to the Continuous Disclosure Requirements and 48North and Tilray are in compliance with the conditions set out in paragraph (2) above.

(5) The Continuous Disclosure Requirements do not apply to HEXO provided that:

(a) Tilray is the direct or indirect beneficial owner of all of the issued and outstanding voting securities of HEXO;

(b) Tilray is a reporting issuer in a designated Canadian jurisdiction (as defined in NI 51-102) and has filed all documents it is required to file under NI 51-102;

(c) HEXO does not issue any securities, and does not have any securities outstanding other than:

(i) the HEXO Warrants;

(ii) the HEXO Options;

(iii) securities issued to and held by Tilray or an affiliate of Tilray;

(iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or

(v) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of NI 45-106;

(d) HEXO files in electronic format:

(i) if Tilray is a reporting issuer in the local jurisdiction, a notice indicating that it is relying on the continuous disclosure documents filed by Tilray and setting out where those documents can be found in electronic format; or

(ii) copies of all documents Tilray is required to file under securities legislation, other than in connection with a distribution, at the same time as the filing by Tilray of those documents with a securities regulatory authority or regulator;

(e) Tilray concurrently sends to all holders of any HEXO Warrants all disclosure materials that would be required to be sent to holders of similar warrants of Tilray in the manner and at the time required by securities legislation;

(f) Tilray complies with securities legislation in respect of making public disclosure of material information on a timely basis;

(g) Tilray immediately issues in Canada and files any news release that discloses a material change in its affairs; and

(h) HEXO issues in Canada a news release and files a material change report in accordance with Part 7 of NI 51-102 for all material changes in respect of the affairs of HEXO that are not also material changes in the affairs of Tilray.

(6) The Certification Requirements do not, following the Effective Time and the completion of the Plan of Arrangement, apply to HEXO provided that:

(a) HEXO is not required to, and does not, file its own Interim Filings and Annual Filings (as those terms are defined under NI 52-109);

(b) HEXO files in electronic format under its SEDAR profile either: (i) copies of Tilray's annual certificates and interim certificates at the same time as Tilray is required under NI 52-109 to file such documents; or (ii) a notice indicating that it is relying on Tilray's annual certificates and interim certificates and setting out where those documents can be found for viewing on SEDAR; and

(c) HEXO is exempt from or otherwise not subject to the Continuous Disclosure Requirements and HEXO and Tilray are in compliance with the conditions set out in paragraph (5) above.

(7) The Insider Reporting Requirements not apply, following the Effective Time and the completion of the Plan of Arrangement, to any insider of HEXO or in respect of securities of HEXO provided that:

(a) if the insider is not Tilray:

(i) the insider does not receive, in the ordinary course, information as to material facts or material changes concerning HEXO before the material facts or material changes are generally disclosed; and

(ii) the insider is not an insider of Tilray in any capacity other than by virtue of being an insider of HEXO;

(b) Tilray is the beneficial owner of all of the issued and outstanding voting securities of HEXO;

(c) if the insider is Tilray, the insider does not beneficially own any HEXO Warrants other than securities acquired through the exercise of the HEXO Warrants and not subsequently traded by the insider;

(d) Tilray is a reporting issuer in a designated Canadian jurisdiction;

(e) HEXO has not issued any securities, and does not have any securities outstanding, other than:

(i) the HEXO Warrants;

(ii) the HEXO Options;

(iii) securities issued to and held by Tilray or an affiliate of Tilray;

(iv) debt securities issued to and held by banks, loan corporations, loan and investment corporations, savings companies, trust corporations, treasury branches, savings or credit unions, financial services cooperatives, insurance companies or other financial institutions; or

(v) securities issued under exemptions from the registration requirement and prospectus requirement in section 2.35 of NI 45-106; and

(f) HEXO is exempt from or otherwise not subject to the Continuous Disclosure Requirements and HEXO and Tilray are in compliance with the conditions set out in paragraph (5) above.

DATED at Toronto, Ontario on this 21st day of June, 2023.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0223

B.3.6 Horizons ETFS Management (Canada) Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Conventional and alternative mutual funds granted exemption from the concentration restrictions in subsections 2.1(1) and 2.1(1) of NI 81-102 to permit each fund to invest in a portfolio consisting of six constituent banks of Solactive Equal Weight Canada Banks Index in accordance with, and as limited by, its investment objective, subject to conditions.

Applicable Legislative Provisions

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

June 27, 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
HORIZONS ETFS MANAGEMENT (CANADA) INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer, on behalf of Horizons Equal Weight Canadian Bank Covered Call ETF (**BKCC**), Horizons Enhanced Equal Weight Banks Index ETF (**BNKL**) and Horizons Enhanced Equal Weight Canadian Banks Covered Call ETF (**BKCL** and, together with BKCC and BNKL, the **Funds**), for exemptive relief (the **Exemption Sought**) under the securities legislation of the principal regulator (the **Legislation**) relieving the Funds from subsection 2.1(1) (in the case of BKCC) and subsection 2.1(1.1) (in the case of BNKL and BKCL) of National Instrument 81-102 - *Investment Funds* (**NI 81-102**), in order to permit the Funds to purchase securities of an issuer, enter into a specified derivatives transaction or purchase an index participation unit even though, immediately after the transaction, more than 10% (in the case of BKCC) or more than 20% (in the case of BNKL and BKCL), as applicable, of the net asset value (**NAV**) of a Fund would be invested, directly or indirectly, in securities of any issuer (the **Concentration Restriction Relief**).

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 the application; and

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

Interpretation

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

The Filer

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

2. The Filer is registered as a portfolio manager in Alberta, British Columbia, Ontario and Québec, an exempt market dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Nova Scotia, Ontario, Prince Edward Island, Québec and Saskatchewan, a commodity trading manager and a commodity trading adviser in Ontario and an investment fund manager in each of Ontario, Québec and Newfoundland and Labrador.

3. The Filer is, or will be, the investment fund manager of each Fund.

The Funds

4. The Funds are, or will be, exchange traded mutual funds governed by the laws of a Jurisdiction of Canada and a reporting issuer under the laws of the Jurisdictions.

5. BNKL and BKCL will each be an "alternative mutual fund", as such term is defined in NI 81-102.

6. BKCC is an existing conventional exchange traded fund.

7. The Filer has filed a preliminary long form prospectus dated June 12, 2023, on behalf of BNKL and BKCL with the securities regulatory authority in each of the Jurisdictions. The securities of BKCC are currently offered under a prospectus dated June 27, 2022.

8. The Funds are, or will be, subject to NI 81-102, subject to any exemptions therefrom that may be granted by the securities regulatory authorities.

9. The Funds are, or will be, subject to National Instrument 81-107 - *Independent Review Committee for Investment Funds* (**NI 81-107**).

10. The Units of BNKL and BKCL will be listed on a designated exchange (the **Designated Exchange**) (subject to satisfying the Designated Exchange's original listing requirements). The Units of BKCC are currently listed on the Designated Exchange.

11. The investment objective of BKCC is to seek to provide, to the extent possible and net of expenses: (a) exposure to the performance of an index of equal-weighted equity securities of diversified Canadian banks (currently, the Solactive Equal Weight Canada Banks Index) (the **Index**); and (b) monthly distributions of dividend and call option income. To mitigate downside risk and generate income, BKCC employs a dynamic covered call option writing program.

12. The investment objective of BNKL is to seek to replicate, to the extent reasonably possible and net of expenses, 1.25 times (125%) the performance of an index of equal-weighted equity securities of diversified Canadian banks (currently, the Index). BNKL will use leverage in order to seek to achieve its investment objective. Leverage will be created through the use of cash borrowings or as otherwise permitted under applicable securities legislation.

13. The investment objective of BKCL is to seek to provide, to the extent reasonably possible and net of expenses: (a) exposure to the performance of an index of equal-weighted equity securities of diversified Canadian banks (currently, the Index); and (b) high monthly distributions of dividend and call option income. BKCL will also employ leverage through cash borrowing and will generally endeavour to maintain a leverage ratio of approximately 125%.

14. BNKL and BKCL will use leverage in order to seek to achieve their investment objectives. Leverage will be created through the use of cash borrowings or as otherwise permitted under applicable securities legislation for alternative mutual funds. BKCC employs a covered call writing strategy, with the result that the performance of BKCC does not seek to directly replicate the performance of the Index. BKCC's current holdings provide exposure to major Canadian Banks (as defined below) in accordance with the Index composition.

15. The Index is an equal-weight index and uses a rules-based methodology. The Index rules require its six Canadian Banks to be equally weighted as at each semi-annual rebalancing date in March and September (each, an **Index Rebalance Date**). In accordance with the Index methodology, on each Index Rebalance Date, the Index is rebalanced such that each Bank is once again equally weighted based on the closing prices on the second Friday in March and September of each year.

16. The investment objective and investment strategy of the Funds, as well as the risk factors associated therewith, including concentration risk, are and will be disclosed in the prospectus of the Funds, as may be amended from time to time.

17. The constituent securities of the Index include the equity securities (the **Shares**) of the six largest Canadian banks: Canadian Imperial Bank of Commerce, Bank of Montreal, National Bank of Canada, Royal Bank of Canada, Toronto Dominion Bank and The Bank of Nova Scotia (each, a **Bank,** and collectively, the **Banks**).

18. BKCC will seek to achieve its investment objective by holding the constituent securities of the Index in approximately the same proportion as they are reflected in the Index and/or may hold securities of one or more exchange traded funds that replicate the performance of the Index.

19. BNKL and BKCL will each seek to achieve its investment objective by borrowing cash to invest in and hold a proportionate share of, or a sampling of the constituent securities of, the Index in order to track approximately 1.25x the performance of the Index. As an alternative to, or in conjunction with investing in and holding the constituent securities, BNKL and BKCL may also invest in other securities, including other mutual funds or exchange traded funds managed by the Filer to obtain exposure to the constituent securities of the Index in a manner that is consistent with the Fund's investment objective. BNKL and BKCL may also hold cash and cash equivalents or other money market instruments in order to meet its obligations. Currently, it is anticipated that BNKL and BKCL will seek to achieve their investment objective by investing, on a leveraged basis, in securities of BKCC, an exchange traded fund managed by the Filer.

20. BNKL and BKCL anticipate maintaining maximum aggregate to cash borrowing, short selling, and specified derivatives of approximately 125% of their respective NAV.

21. In order to ensure that a unitholder's risk is limited to the capital invested, BNKL and BKCL will be regularly monitored in order to maintain a leverage ratio of approximately 125%. If the leverage ratio used by BNKL or BKCL exceeds 133%, the Filer, as quickly as commercially reasonable, will take all necessary steps to reduce the leverage ratio to 125% of the respective NAV.

22. Each Fund's indirect exposure to the portfolio of Banks will be rebalanced at the same frequency as, and on or about the same date as, the Index, such that each Bank is once again equally weighted in the Fund's portfolio at that time (each, a **Portfolio Rebalance Date**, together with the Index Rebalance Date, the **Rebalance Date**). Beginning at each Rebalance Date, and until the immediately next Rebalance Date, the composition of the Banks in the Index and in a Fund's portfolio will increase or decrease based on the Banks' relative and proportionate market values during that time. Similarly, any indirect exposure obtained or reduced by a Fund following a Portfolio Rebalance Date (owing, for example, to subscriptions or redemptions received in respect of Units of the Fund or expenses or distributions paid by the Fund, if any) will be increased or decreased pro rata based on the Banks' relative and proportionate market values and corresponding weight in the Index and in the Fund's portfolio during that time.

23. Since the inception of the Index in March 2007, the maximum weighting of any single Bank in the Index represented 19.71% in the Index. In the case of BNKL and BKCL, on a leveraged basis of 125%, this maximum weighting would represent up to approximately 24.64% of the exposure of a Fund.

24. Accordingly, the Funds wish to be able to invest in and/or gain exposure to the Shares of the Banks, such that immediately after a purchase and/or transaction to gain exposure to the Shares of the Banks, more than 10%, in the case of BKCC, or more than 20%, in the case of BNKL and BKCL, of its net assets may be invested in and/or exposed to the Shares of one Bank for the purposes of determining compliance with the Concentration Restriction.

25. The Shares are listed on the Toronto Stock Exchange (the **TSX**).

26. The Banks are among the largest public issuers in Canada.

Rationale for Investment

27. The Filer notes that, in respect of the Funds, each Fund's strategy to acquire securities of an applicable Bank is, or will be, transparent, passive, and fully disclosed to investors. The Funds will not invest in securities other than the Shares (or other securities designed to gain exposure to the Shares as described herein). BKCL may also obtain exposure to a covered call option writing program through its investments in BKCC in accordance with its investment objectives.

28. Given the composition of the Index, it would be impossible for the Funds to achieve their investment objectives and pursue their investment strategies without obtaining relief from the Concentration Restriction.

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

30. The Exemption Sought is sought to permit the Funds to purchase Shares or securities of investment funds, or enter into specified derivatives transactions in connection therewith, such that, immediately after the transaction, more than 10% (in the case of BKCC), or more than 20% (in the case of BNKL and BKCL) of its net assets would be invested in and/or exposed to the Shares of one Bank for the purposes of determining compliance with the Concentration Restriction (the **Proposed Transactions**).

31. In addition, BNKL and BKCL have been structured as "alternative mutual funds" for purposes of NI 81-102, which is associated with investment funds that already permit higher levels of concentration under section 2.1 of NI 81-102.

32. Neither the Filer nor any Fund is in default of any of its obligations under securities legislation in any of the Jurisdictions (other than BKCC in respect of the Exemption Sought).

Decision

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

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

(a) the Proposed Transactions are in accordance with the investment objectives and investment strategies of the Funds;

(b) each Fund's investment strategies disclose that, following a Rebalance Date, each Fund will be invested in the Banks in equal weights. Outside of a Rebalance Date, any investments by each Fund, if any, will be such that exposure to securities of each applicable Bank is acquired up to the same weights as the exposure to the Bank securities exists in each Fund's portfolio, based on their relative market values at the time of such investment;

(c) each Fund's investment strategies disclose that the Fund's portfolio will be rebalanced as of each Rebalance Date, as described in paragraph 22 above; and

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

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

Application File #: 2023/0277
SEDAR File #: 3550696

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
Shiny Health & Wellness Corp.	June 6, 2023	
Lords & Company Worldwide Holdings Inc.	June 1, 2023	
GHP Noetic Science-Psychedelic Pharma Inc.	June 5, 2023	
Northern Power Systems Corp.	June 14, 2023	
Halo Collective Inc.	June 19, 2023	
Rambler Metals and Mining plc	June 23, 2023	
Pure Gold Mining Inc.	April 6, 2023	June 23, 2023
The Mint Corporation	May 5, 2023	June 19, 2023

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

Company Name	Date of Order	Date of Lapse
Element Nutritional Sciences Inc.	May 2, 2023	June 20, 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	

Company Name	Date of Order	Date of Lapse
Halo Collective Inc.	April 3, 2023	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
Champion Gaming Group Inc.	May 2, 2023	
Element Nutritional Sciences Inc.	May 2, 2023	
Eddy Smart Home Solutions Ltd.	May 2, 2023	
CareSpan Health, Inc.	May 5, 2023	
Canada Silver Cobalt Works Inc.	May 5, 2023	
XTM Inc.	May 2, 2023	
VOLTAGE METALS CORP.	May 2, 2023	
Voxtur Analytics Corp.	May 5, 2023	
Hempsana Holdings Ltd.	May 4, 2023	Jun 26, 2023
FRX Innovations Inc.	May 2, 2023	
Magnetic North Acquisition Corp.	May 8, 2023	
Canopy Growth Corporation	June 2, 2023	
Element Nutritional Sciences Inc.	May 2, 2023	June 20, 2023

B.5
Rules and Policies

B.5.1 Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations

AMENDMENTS TO
NATIONAL INSTRUMENT 31-103
REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS

1. National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.

2. Section 1.1 is amended by adding the following definitions:

"direct investment fund charge" means an amount charged to a client if the client buys, holds, sells or switches securities of an investment fund, including any federal, provincial or territorial sales taxes paid on that amount, other than, for greater certainty, an amount included in the investment fund's fund expenses;

"fund expense ratio" means the sum of an investment fund's management expense ratio and trading expense ratio, expressed as a percentage;

"management expense ratio" has the same meaning as in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*;

"newly-established investment fund" means,

(a) for an investment fund required to file a management report of fund performance, as defined in section 1.1 of National Instrument 81-106 *Investment Fund Continuous Disclosure*, a fund that has not yet filed that report, or

(b) for an investment fund not referred to in paragraph (a), a fund established less than 12 months before the end of the period covered by the statement or report that is required to be delivered by the registered dealer or registered adviser under section 14.17;

"trading expense ratio" means the ratio, expressed as a percentage, of the total commissions and other portfolio transaction costs incurred by an investment fund to its average net asset value, calculated in accordance with paragraph 12 of item 3 of Part B of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* of National Instrument 81-106 *Investment Fund Continuous Disclosure*;**.**

3. Section 14.1.1 is repealed and replaced with the following:

14.1.1 Duty to provide information – investment fund managers

A registered investment fund manager of an investment fund must, within a reasonable period of time, provide a registered dealer or a registered adviser that has a client that owns securities of the investment fund with the information that is required by the dealer or adviser, in order for the dealer or adviser to comply with paragraph 14.12(1)(c), subsections 14.14(4) and (5), 14.14.1(2) and 14.14.2(1) and paragraphs 14.17(1)(h), (i), (j), (m), (p), (q), (r) and (t)**.**

4. The following section is added to Division 1 after section 14.1.1:

14.1.2 Determination of fund expenses per security

(1) For the purpose of section 14.1.1, with respect to the information required in respect of paragraph 14.17(1)(i), the registered investment fund manager must provide the fund expenses per security of the applicable class or series of securities of the investment fund for each day that the client owned those securities, expressed in dollars and calculated using the following formula, making any adjustments to A or B that are reasonably necessary to accurately determine C:

A x B=C, where

A = the fund expense ratio for the day of the applicable class or series of securities of the investment fund;

B = the market value of a security for the day of the applicable class or series of securities of the investment fund;

C = the fund expenses per security for the day in dollars for the investment fund class or series of securities.

(2) Despite section 14.1.1 and subsection (1), unless the investment fund manager reasonably believes that doing so would result in misleading information being reported to clients of the registered dealer or registered adviser, a registered investment fund manager may

(a) use a reasonable approximation of A or B for the purpose of calculating C in the formula in subsection (1), or

(b) provide a reasonable approximation of the information required to be provided for the purpose of paragraphs 14.17(1)(i), (j) or (m).

(3) Despite section 14.1.1 and subsections (1) and (2), in the case of an investment fund that is a newly-established investment fund, the registered investment fund manager is not required to provide the information required under paragraphs 14.17(1)(i), (m) and (r)*.*

5. Subsection 14.17 (1) is amended by adding the following after paragraph (h):

(i) the total amount of fund expenses charged to the investment fund by its investment fund manager or any other party, after making the necessary adjustments to add performance fees and deduct fee waivers, rebates or absorptions, in relation to securities of investment funds owned by the client during the period covered by the report, excluding any charges included in the amounts under paragraph (c) or (f);

(j) the total amount of direct investment fund charges charged to the client by an investment fund, investment fund manager or any other party, in relation to securities of investment funds owned by the client during the period covered by the report, excluding any charges included in the amounts referred to in paragraph (c) or (f);

(k) the total amount of the fund expenses reported under paragraph (i) and the direct investment fund charges reported under paragraph (j);

(l) the total amount of the registered firm's charges reported under paragraph (d) and the investment fund expenses and charges reported under paragraph (k);

(m) the fund expense ratio of each class or series of securities of each investment fund owned by the client during the period covered by the report, including any performance fees and deducting any fee waivers, rebates or absorptions;

(n) if the client owned investment fund securities during the period covered by the report,

(i) the following notification or a notification that is substantially similar, in relation to the total amount of fund expenses reported:

"*Fund expenses are made up of the management fee (which includes trailing commissions paid to us), operating expenses and trading costs. You don't pay these expenses directly. They are periodically deducted from the value of your investments by the companies that manage and operate those funds. Different funds have different fund expenses. They affect you because they reduce the fund's returns. These expenses add up over time. Fund expenses are expressed as an annual percentage of the total value of the fund. They correspond to the sum of the fund's management expense ratio (MER) and trading expense ratio (TER). These costs are already reflected in the current values reported for your fund investments.*

The number shown here is the estimated total dollar amount you paid in fund expenses for all the investment funds you owned last year. This amount depends on each of your funds' fund expenses and the amount you invested in each fund.", and

(ii) the following notification or a notification that is substantially similar, in relation to the fund expense ratios required to be reported under paragraph (m):

"*Please refer to the prospectus or fund facts document of each investment fund for more detailed information about fund expenses and fund performance.*

Please refer to your latest account statement for more information about the market value and the number of securities of the investment funds you currently own.";

(o) the following notification or a notification that is substantially similar:

"*What can you do with this information? Take action by contacting your advisor to discuss the fees you pay, the impact those fees have on the long-term performance of your portfolio and the value you receive in return. If you are a self-directed investor, consider how fees impact the long-term performance of your portfolio, and possible ways to reduce those costs.*";

(p) if the client owned investment fund securities during the period covered by the report and any deferred sales charges were paid by the client, the following notification or a notification that is substantially similar:

"*You paid this cost because you redeemed your units or shares of a fund purchased under a deferred sales charge (DSC) option before the end of the redemption fee schedule and a redemption fee was payable to the investment fund company. Information about these and other fees can be found in the prospectus or fund facts document for each investment fund made available at the time of purchase. The redemption fee was deducted from the redemption amount you received.*";

(q) if the client owned investment fund securities during the period covered by the report and direct investment fund charges, other than deferred sales charges, were charged to the client, a short explanation of the type of fees that were charged;

(r) if information reported under paragraph (i), (j) or (m) is based on an approximation or any other assumption, a notification that this is the case;

(s) if any structured product, labour sponsored investment fund or investment fund the securities of which are distributed solely under an exemption from the prospectus requirement was owned by the client during the period covered by the report, the following notification or a notification that is substantially similar:

"*Please note that other products you may own or may have owned during the reporting period, such as exempt-market investment funds, labour-sponsored investment funds or structured products, may have embedded fees that are not reported here. You can contact us for more information.*";

(t) if the securities of an investment fund were owned by the client during the period covered by the report, the manager of the investment fund is incorporated, continued or organized under the laws of a foreign jurisdiction, and the information reported for those securities under paragraphs (i), (j) or (m) is based on information disclosed under the laws of a foreign jurisdiction, the following notification or a notification that is substantially similar:

"*This report includes information about the fund expenses and fund expense ratio of foreign investment funds. Please note that this information may not be directly comparable to equivalent information for Canadian investment funds, that may include different types of fees.*";

(u) if the registered firm knows or has reason to believe that the client paid, to third parties, custodial fees, intermediary fees or interest charges related to securities owned by the client during the period covered by the report and those fees or charges are not required to be reported to the client by a registrant under this section, the following notification or a notification that is substantially similar:

"*The costs in this report may not include any fees you pay directly to third parties, including custodial fees, intermediary fees or interest charges that may be deducted from your account. You can contact those service providers for more information.*"***.***

6. Section 14.17 is amended by adding the following subsections:

(6) The total amount of fund expenses referred to in paragraph (1)(i) must be determined by adding together the daily fund expenses for each class or series of securities of each investment fund owned by the client for each day that the client owned it during the reporting period, using the following formula to calculate the daily fund expenses:

A x B = C, where

A = the fund expenses per security for the day of the applicable class or series of securities of an investment fund calculated in dollars using the formula in subsection 14.1.2(1);

B = the number of securities owned by the client for that day;

C = the daily fund expenses in dollars for a class or series of securities of an investment fund.

(7) Despite paragraphs (1)(i), (m), and (r), a registered firm may exclude the information required to be reported for an investment fund under those paragraphs if the fund is a newly-established investment fund and the following notification or a notification that is substantially similar is included:

"*The total amount of fund expenses reported may not include cost information for newly-established investment funds*."

(8) Despite paragraphs (1)(i), (j) and (m), if a reasonable approximation was provided by an investment fund manager under subsection 14.1.2(2), or if the registered firm obtained or determined a reasonable approximation under paragraph 14.17.1(2)(a), the firm may report a reasonable approximation of the information required to be reported under paragraphs (1) (i), (j) and (m).

(9) For the purposes of paragraphs (1)(i), (j), (m), (n), (p), (q), (r) and (u), subsections (6), (7) and 14.1.2(3) and section 14.17.1, an investment fund does not include:

(a) a labour sponsored investment fund, or

(b) an investment fund whose securities are distributed solely under an exemption from the prospectus requirement**.**

7. ***The following section is added:***

14.17.1 Reporting of fund expenses and direct investment fund charges

(1) Subject to subsection (2), for the purposes of paragraphs 14.17(1)(i), (j), (m), (p), (q), (r) and (t), the information required to be delivered to clients by a registered dealer or registered adviser must be based on the information provided under section 14.1.1.

(2) If no information is provided under section 14.1.1, or the registered firm reasonably believes that any part of the information provided pursuant to section 14.1.1 is incomplete or that relying on it would cause information required to be delivered to a client to be misleading, that firm must

(a) make reasonable efforts to obtain or determine the information referred to in subsection (1), or obtain or determine a reasonable approximation of that information, by other means, and

(b) subject to subsection (3), rely on the information obtained or determined under paragraph (a).

(3) If the registered firm reasonably believes it cannot obtain or determine information under paragraph (2)(a) that is not misleading, that firm must exclude the information from the calculation of the amount of fund expenses or direct investment fund charges reported to the client, as the case may be, or, in the case of a fund expense ratio, must not report the fund expense ratio, and must disclose that the information is excluded or not reported, as the case may be, in the relevant statement or report**.**

8. (1) This Instrument comes into force on January 1st, 2026.

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:
AGF Canadian All Cap Strategic Equity Fund
AGF Canadian Strategic Balanced Fund
AGF Canadian Strategic Bond Fund
AGF Emerging Markets Strategic Equity Fund
AGF Global Alternatives Strategic Equity Fund
AGF Global Balanced Growth Portfolio Fund
AGF Global Conservative Portfolio Fund
AGF Global Defensive Portfolio Fund
AGF Global Dividend Strategic Equity Fund
AGF Global ESG Equity Fund
AGF Global Growth Portfolio Fund
AGF Global Income Portfolio Fund
AGF Global Moderate Portfolio Fund
AGF Global Strategic Equity Fund
AGF Global Unconstrained Strategic Bond Fund
AGF High Interest Savings Account Fund
AGF Monthly Canadian Dividend Income Fund
AGF North American Small-Mid Cap Fund
AGF US All Cap Growth Equity Fund
AGF US Sector Rotation Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 22, 2023
NP 11-202 Final Receipt dated Jun 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3537793

_____

Issuer Name:
CIBC Asia Pacific Fund
CIBC Asia Pacific Index Fund
CIBC Balanced ETF Portfolio (formerly, CIBC Balanced Passive Portfolio)
CIBC Balanced Fund
CIBC Balanced Growth ETF Portfolio (formerly, CIBC Balanced Growth Passive Portfolio)
CIBC Balanced Index Fund
CIBC Canadian Bond Fund
CIBC Canadian Bond Index Fund
CIBC Canadian Equity Fund
CIBC Canadian Equity Value Fund
CIBC Canadian Index Fund
CIBC Canadian Real Estate Fund
CIBC Canadian Resources Fund
CIBC Canadian Short-Term Bond Index Fund
CIBC Canadian Small-Cap Fund
CIBC Canadian T-Bill Fund
CIBC Conservative ETF Portfolio (formerly, CIBC Conservative Passive Portfolio)
CIBC Dividend Growth Fund
CIBC Dividend Income Fund
CIBC Emerging Markets Fund
CIBC Emerging Markets Index Fund
CIBC Energy Fund
CIBC European Equity Fund
CIBC European Index Fund
CIBC Financial Companies Fund
CIBC Global Bond Fund
CIBC Global Bond Index Fund
CIBC Global Equity Fund
CIBC Global Monthly Income Fund
CIBC Global Technology Fund
CIBC International Equity Fund
CIBC International Index Fund
CIBC International Small Companies Fund
CIBC Managed Balanced Growth Portfolio
CIBC Managed Balanced Portfolio
CIBC Managed Growth Plus Portfolio (formerly, CIBC Managed Aggressive Growth Portfolio)
CIBC Managed Growth Portfolio
CIBC Managed Income Plus Portfolio
CIBC Managed Income Portfolio
CIBC Managed Monthly Income Balanced Portfolio
CIBC Money Market Fund
CIBC Monthly Income Fund
CIBC Nasdaq Index Fund
CIBC Precious Metals Fund
CIBC Short-Term Income Fund
CIBC Smart Balanced Growth Solution
CIBC Smart Balanced Income Solution
CIBC Smart Balanced Solution

CIBC Smart Growth Solution
CIBC Smart Income Solution
CIBC Sustainable Balanced Growth Solution
CIBC Sustainable Balanced Solution
CIBC Sustainable Canadian Core Plus Bond Fund (formerly, CIBC ex. Fossil Fuel Canadian Core Plus Bond Fund)
CIBC Sustainable Canadian Equity Fund (formerly, CIBC ex. Fossil Fuel Canadian Equity Fund)
CIBC Sustainable Conservative Balanced Solution
CIBC Sustainable Global Equity Fund (formerly, CIBC ex. Fossil Fuel Global Equity Fund)
CIBC U.S. Broad Market Index Fund
CIBC U.S. Dollar Managed Balanced Portfolio
CIBC U.S. Dollar Managed Growth Portfolio
CIBC U.S. Dollar Managed Income Portfolio
CIBC U.S. Dollar Money Market Fund
CIBC U.S. Equity Fund
CIBC U.S. Index Fund
CIBC U.S. Small Companies Fund
Principal Regulator – Ontario

Type and Date:
Final Simplified Prospectus dated Jun 20, 2023
NP 11-202 Final Receipt dated Jun 21, 2023

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Project #3521876

Issuer Name:
IA Clarington Canadian Dividend Fund
IA Clarington Canadian Leaders Class
IA Clarington Canadian Small Cap Class
IA Clarington Canadian Small Cap Fund
IA Clarington Core Plus Bond Fund
IA Clarington Dividend Growth Class
IA Clarington Floating Rate Income Fund
IA Clarington Global Dividend Fund
IA Clarington Global Equity Fund
IA Clarington Global Risk-Managed Income Portfolio
IA Clarington Global Value Fund
IA Clarington Inhance Balanced SRI Portfolio
IA Clarington Inhance Bond SRI Fund
IA Clarington Inhance Canadian Equity SRI Class
IA Clarington Inhance Conservative SRI Portfolio
IA Clarington Inhance Global Equity SRI Class
IA Clarington Inhance Global Equity SRI Fund
IA Clarington Inhance Global Small Cap SRI Fund
IA Clarington Inhance Growth SRI Portfolio
IA Clarington Inhance High Growth SRI Portfolio
IA Clarington Inhance Moderate SRI Portfolio
IA Clarington Inhance Monthly Income SRI Fund
IA Clarington Loomis Global Allocation Class
IA Clarington Loomis Global Allocation Fund
IA Clarington Loomis Global Equity Opportunities Fund
IA Clarington Loomis Global Multisector Bond Fund
IA Clarington Loomis U.S. All Cap Growth Fund
IA Clarington Money Market Fund
IA Clarington Monthly Income Balanced Fund
IA Clarington Strategic Corporate Bond Fund
IA Clarington Strategic Equity Income Class
IA Clarington Strategic Equity Income Fund
IA Clarington Strategic Income Fund
IA Clarington Tactical Income Class
IA Clarington Thematic Innovation Class
IA Clarington U.S. Dividend Growth Fund
IA Clarington U.S. Dollar Floating Rate Income Fund
IA Clarington U.S. Equity Class
IA Clarington U.S. Equity Currency Neutral Fund
IA Wealth Balanced Portfolio
IA Wealth Conservative Portfolio
IA Wealth Core Bond Pool
IA Wealth Enhanced Bond Pool
IA Wealth Growth Portfolio
IA Wealth High Growth Portfolio
IA Wealth Moderate Portfolio
Principal Regulator – Quebec

Type and Date:
Final Simplified Prospectus dated Jun 16, 2023
NP 11-202 Final Receipt dated Jun 20, 2023

Offering Price and Description:
-

Underwriter(s) or Distributor(s):
-

Promoter(s):
-

Project #3529780

Issuer Name:
CI Money Market ETF
CI US Money Market ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Jun 21, 2023
NP 11-202 Preliminary Receipt dated Jun 22, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3552120

Issuer Name:
PIMCO Canadian Total Return Bond Fund
PIMCO Climate Bond Fund (Canada)
PIMCO Diversified Multi-Asset Fund (Canada)
PIMCO ESG Income Fund (Canada)
PIMCO Flexible Global Bond Fund (Canada)
PIMCO Global Short Maturity Fund (Canada)
PIMCO Investment Grade Credit Fund (Canada)
PIMCO Low Duration Monthly Income Fund (Canada)
PIMCO Managed Conservative Bond Pool
PIMCO Managed Core Bond Pool
PIMCO Monthly Income Fund (Canada)
PIMCO Unconstrained Bond Fund (Canada)
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 23, 2023
NP 11-202 Final Receipt dated Jun 26, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3531237

Issuer Name:
Vanguard Canadian Aggregate Bond Index ETF
Vanguard Canadian Corporate Bond Index ETF
Vanguard Canadian Government Bond Index ETF
Vanguard Canadian Long-Term Bond Index ETF
Vanguard Canadian Short-Term Bond Index ETF
Vanguard Canadian Short-Term Corporate Bond Index ETF
Vanguard FTSE Canada All Cap Index ETF
Vanguard FTSE Canada Index ETF
Vanguard FTSE Canadian Capped REIT Index ETF
Vanguard FTSE Canadian High Dividend Yield Index ETF
Vanguard FTSE Developed All Cap ex North America Index ETF
Vanguard FTSE Developed All Cap ex North America Index ETF (CAD-hedged)
Vanguard FTSE Developed All Cap ex U.S. Index ETF
Vanguard FTSE Developed All Cap ex U.S. Index ETF (CAD-hedged)
Vanguard FTSE Developed Asia Pacific All Cap Index ETF
Vanguard FTSE Developed Europe All Cap Index ETF
Vanguard FTSE Developed ex North America High Dividend Yield Index ETF
Vanguard FTSE Emerging Markets All Cap Index ETF
Vanguard FTSE Global All Cap ex Canada Index ETF
Vanguard Global Aggregate Bond Index ETF (CAD-hedged)
Vanguard Global ex-U.S. Aggregate Bond Index ETF (CAD-hedged)
Vanguard S&P 500 Index ETF
Vanguard S&P 500 Index ETF (CAD-hedged)
Vanguard U.S. Aggregate Bond Index ETF (CAD-hedged)
Vanguard U.S. Dividend Appreciation Index ETF
Vanguard U.S. Dividend Appreciation Index ETF (CAD-hedged)
Vanguard U.S. Total Market Index ETF
Vanguard U.S. Total Market Index ETF (CAD-hedged)
Type and Date:
Final Long Form Prospectus dated Jun 21, 2023
NP 11-202 Final Receipt dated Jun 22, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3537838

Issuer Name:
IA Clarington Global Equity Exposure Fund
IA Clarington Target Click 2025 Fund
IA Clarington Target Click 2030 Fund
Principal Regulator – Quebec
Type and Date:
Final Simplified Prospectus dated Jun 16, 2023
NP 11-202 Final Receipt dated Jun 21, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3529784

Issuer Name:
CI Money Market ETF
CI U.S. Money Market ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Jun 22, 2023
NP 11-202 Preliminary Receipt dated Jun 22, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3552389

Issuer Name:
Waratah Alternative Equity Income Fund
Waratah Alternative ESG Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 20, 2023
NP 11-202 Final Receipt dated Jun 21, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3541919

Issuer Name:
Lysander Balanced Income Fund
Lysander-Canso Balanced Fund
Lysander-Canso Bond Fund
Lysander-Canso Broad Corporate Bond Fund
Lysander-Canso Corporate Treasury ActivETF
Lysander-Canso Corporate Treasury Fund
Lysander-Canso Corporate Value Bond Fund
Lysander-Canso Credit Opportunities Fund
Lysander-Canso Equity Fund
Lysander-Canso Floating Rate ActivETF
Lysander-Canso Short Term and Floating Rate Fund
Lysander-Canso U.S. Corporate Treasury Fund
Lysander-Canso U.S. Credit Fund
Lysander-Canso U.S. Short Term and Floating Rate Fund
Lysander-Crusader Equity Income Fund
Lysander-Fulcra Corporate Securities Fund
Lysander-Patient Capital Equity Fund
Lysander-Seamark Balanced Fund
Lysander-Seamark Total Equity Fund
Lysander-Slater Preferred Share ActivETF
Lysander-Slater Preferred Share Dividend Fund
Lysander-Triasima All Country Equity Fund
Lysander-Triasima All Country Long/Short Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 23, 2023
NP 11-202 Final Receipt dated Jun 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3539492

Issuer Name:
Venator Alternative Income Fund
Venator Founders Alternative Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Jun 19, 2023
NP 11-202 Final Receipt dated Jun 20, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3549279

Issuer Name:
Mackenzie Northleaf Private Credit Interval Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated June 20, 2023
NP 11-202 Final Receipt dated Jun 22, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3463118

Issuer Name:
Ninepoint High Interest Savings Fund
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated June 21, 2023
NP 11-202 Final Receipt dated Jun 26, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3511801

Issuer Name:
NBI High Yield Bond Fund
NBI Canadian Preferred Equity Private Portfolio
Principal Regulator - Quebec
Type and Date:
Amendment #1 to Final Simplified Prospectus dated June 15, 2023
NP 11-202 Final Receipt dated Jun 21, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3502415

Issuer Name:
Harvest ESG Equity Income Index ETF
Principal Regulator - Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated June 23, 2023
NP 11-202 Final Receipt dated Jun 26, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3414480

NON-INVESTMENT FUNDS

Issuer Name:
Algoma Steel Group Inc.
Principal Regulator - Ontario
Type and Date:
Preliminary Shelf Prospectus dated June 21, 2023
NP 11-202 Preliminary Receipt dated June 22, 2023
Offering Price and Description:
Common Shares Preferred Shares Debt Securities Subscription Receipts Units Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3552210

Issuer Name:
Jo-Jo Capital Canada Ltd.
Principal Regulator - Ontario
Type and Date:
Preliminary CPC Prospectus dated June 23, 2023
NP 11-202 Preliminary Receipt dated June 23, 2023
Offering Price and Description:
Minimum Offering: $200,000.00 - 2,000,000 Common Shares
Maximum Offering: $800,000.00 - 8,000,000 Common Shares
$0.10 per Common Share
Underwriter(s) or Distributor(s):
HAMPTON SECURITIES LIMITED
Promoter(s):
Alexander MacKay
Project #3552842

Issuer Name:
Reconnaissance Energy Africa Ltd.
Principal Regulator - British Columbia
Type and Date:
Preliminary Short Form Prospectus dated June 26, 2023
NP 11-202 Preliminary Receipt dated June 26, 2023
Offering Price and Description:
$*
* Units
Price: $* per Unit
Underwriter(s) or Distributor(s):
CANACCORD GENUITY CORP.
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #3553302

Issuer Name:
Rockmount Capital Corporation
Principal Regulator - Alberta
Type and Date:
Preliminary CPC Prospectus dated June 21, 2023
NP 11-202 Preliminary Receipt dated June 22, 2023
Offering Price and Description:
$350,000.00 - 3,500,000 Common Shares
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3552234

Issuer Name:
Algoma Steel Group Inc.
Principal Regulator - Ontario
Type and Date:
Final Shelf Prospectus dated June 21, 2023
NP 11-202 Receipt dated June 22, 2023
Offering Price and Description:
Common Shares Preferred Shares Debt Securities Subscription Receipts Units Warrants
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3552210

Issuer Name:
Devonian Health Group Inc.
Principal Regulator - Quebec
Type and Date:
Final Shelf Prospectus dated June 22, 2023
NP 11-202 Receipt dated June 26, 2023
Offering Price and Description:
$30,000,000.00 - Subordinate Voting Shares, Debt Securities, Subscription Receipts, Warrants, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3533036

Issuer Name:
enCore Energy Corp.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated June 20, 2023
NP 11-202 Receipt dated June 20, 2023
Offering Price and Description:
US$140,000,000
Common Shares
Warrants
Subscription Receipts
Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3549569

Issuer Name:
Eupraxia Pharmaceuticals Inc.
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated June 22, 2023
NP 11-202 Receipt dated June 22, 2023
Offering Price and Description:
C$200,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3550553

Issuer Name:
Fiera Capital Corporation
Principal Regulator - Quebec
Type and Date:
Final Short Form Prospectus dated June 21, 2023
NP 11-202 Receipt dated June 21, 2023
Offering Price and Description:
$65,000,000.00 - 8.25% Senior Subordinated Unsecured Debentures due December 31, 2026
Price: $1,000 per Debenture
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3548595

Issuer Name:
Grounded Lithium Corp. (formerly VAR Resources Corp.)
Principal Regulator - Alberta
Type and Date:
Final Shelf Prospectus dated June 22, 2023
NP 11-202 Receipt dated June 22, 2023
Offering Price and Description:
$25,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Warrants, Subscription Receipts, Units
Underwriter(s) or Distributor(s):
-
Promoter(s):
Gregg Smith
Greg Phaneuf
Project #3530799

Issuer Name:
Liberty Gold Corp. (formerly Pilot Gold Inc.)
Principal Regulator - British Columbia
Type and Date:
Final Shelf Prospectus dated June 21, 2023
NP 11-202 Receipt dated June 21, 2023
Offering Price and Description:
C$200,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Project #3548942

Issuer Name:
Odessa Capital Ltd.
Principal Regulator - Alberta
Type and Date:
Final CPC Prospectus dated June 22, 2023
NP 11-202 Receipt dated June 23, 2023
Offering Price and Description:
Minimum Offering: $750,000.00 (7,500,000 Common Shares)
Maximum Offering: $1,500,000.00 (15,000,000 Common Shares)
Price: $0.10 per Common Share
Underwriter(s) or Distributor(s):
iA Private Wealth Inc.
Promoter(s):
Michel Lassonde
Project #3534134

Issuer Name:
Padlock Partners UK Fund IV
Principal Regulator - Ontario
Type and Date:
Final Long Form Prospectus dated June 23, 2023
NP 11-202 Receipt dated June 26, 2023
Offering Price and Description:
Minimum: $35,000,000.00 of Class A Units, Class F Units, Class C Units and/or Class U Units
Maximum: $60,000,000.00 of Class A Units, Class F Units, Class C Units and/or Class U Units
Price: $10.00 per Unit
Underwriter(s) or Distributor(s):
CIBC WORLD MARKETS INC.
RICHARDSON WEALTH LIMITED
WELLINGTON-ALTUS PRIVATE WEALTH INC.
CANACCORD GENUITY CORP.
RAYMOND JAMES LTD.
IA PRIVATE WEALTH INC.
Promoter(s):
-
Project #3529393

Issuer Name:
Total Helium Ltd.
Principal Regulator - British Columbia
Type and Date:
Final Short Form Prospectus dated June 21, 2023
NP 11-202 Receipt dated June 21, 2023
Offering Price and Description:
$12,500,000.00 - 25,000,000 Units Issuable upon Exercise of 25,000,000 Special Warrants
Per Special Warrant: $0.50
Underwriter(s) or Distributor(s):
HAYWOOD SECURITIES INC.
Promoter(s):
-
Project #3539377

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	EquityZen Securities LLC	Exempt Market Dealer	June 23, 2023

This page intentionally left blank

Index

This page intentionally left blank