The Ontario Securities Commission

OSC Bulletin

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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).

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FILE NO.: 2023-22

IN THE MATTER OF
PHEMEX LIMITED AND
PHEMEX TECHNOLOGY PTE. LTD.

NOTICE OF HEARING
Subsection 127(1) and 127.1 of the *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Enforcement Proceeding

HEARING DATE AND TIME: September 26, 2023 at 10:00 a.m.

LOCATION: By videoconference

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Capital Markets Tribunal to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on September 5, 2023.

The hearing set for the date and time indicated above is the first attendance in this proceeding, as described in subsection 5(1) of the *Capital Markets Tribunal Practice Guideline.*

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO ATTEND

IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Tribunal in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

AVIS EN FRANÇAIS

L'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Tribunal par écrit dès que possible si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 6th day of September, 2023

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

Please visit capitalmarketstribunal.ca or contact the Registrar at registrar@osc.gov.on.ca.

IN THE MATTER OF
PHEMEX LIMITED AND
PHEMEX TECHNOLOGY PTE. LTD.

STATEMENT OF ALLEGATIONS
(Subsection 127(1) and Section 127.1 of the *Securities Act,* RSO 1990, c S.5)

A. OVERVIEW

1. The Enforcement Branch of the Ontario Securities Commission brings this proceeding to hold Phemex Limited and Phemex Technology Pte. Ltd. (collectively, the **Respondents**) accountable for disregarding Ontario securities law and to signal that crypto asset trading platforms flouting Ontario securities law will face regulatory action.

2. The Respondents operated an online crypto asset trading platform under the trade name "Phemex" (the **Phemex Platform**) on which Ontario investors could trade in securities and derivatives based on exposure to underlying assets that included crypto assets. The Phemex Platform was available to Ontario residents at least during the period between November 25, 2019 and January 6, 2023 (**Material Time**). Since on or about January 7, 2023, the Phemex Platform is no longer accessible to investors using an Ontario internet protocol (**IP**) address.

3. The Respondents are subject to Ontario securities law because, prior to January 7, 2023, the Phemex Platform offered crypto asset products that are securities and derivatives to investors, including Ontario investors. They nonetheless failed to comply with the registration and prospectus requirements under Ontario securities law.

4. Registration and disclosure are cornerstones of Ontario securities law. The registration requirement serves an important gate-keeping function by ensuring that only properly qualified and suitable persons are permitted to engage in the business of trading. Prospectus requirements are fundamental to ensuring investors are provided with full, true and plain disclosure of all material facts relating to the securities being offered.

5. Entities such as the Respondents that do not comply with Ontario securities law expose investors to unacceptable risks and create an uneven playing field within the crypto asset trading platform sector.

B. FACTS

Staff of the Enforcement Branch of the Ontario Securities Commission (**Enforcement Staff**) make the following allegations of fact:

(a) The Phemex Platform

6. The Phemex Platform went live on or around November 25, 2019.

7. During the Material Time, the Phemex Platform could be accessed through the website located at www.phemex.com and through mobile apps on the Google and Apple app stores.

8. Investors accessed the Phemex Platform by first creating an account on the platform using an online application process which does not require know-your-client information such as name, phone number and address.

9. After opening an account, an investor could deposit crypto assets into the account. Investors made crypto asset deposits by transferring crypto assets to a wallet controlled by the Respondents. Through third parties identified on the Phemex Platform, investors were also provided with the option to purchase crypto assets using fiat currency, including Canadian dollars.

10. During the Material Time, the Respondents maintained custody of crypto assets deposited and traded on the Phemex Platform in wallets they controlled. Investors did not have possession or control of crypto assets deposited or traded on the Phemex Platform. Rather, they saw a crypto asset balance displayed in their account on the Phemex Platform. In order to take possession of crypto assets reflected in their account balance, an investor was required to request a withdrawal and was dependent on the Respondents to satisfy that withdrawal request by delivering crypto assets to an investor-controlled wallet.

11. While the Respondents purported to facilitate trading of the crypto assets in its investors' accounts, in practice, they only provided their investors with instruments or contracts involving crypto assets. These instruments or contracts constitute securities and derivatives.

12. During the Material Time, investors were also able to trade crypto asset futures contracts on the Phemex Platform that constitute securities and derivatives. The Phemex Platform allowed investors to engage in leveraged trading of up to 100:1 on various futures contracts.

13. The Phemex Platform offered bonuses, fee discounts and other promotions to solicit trading by investors. The Phemex Platform also employed a multi-level recruiting strategy named the "Phemex All-Star Program" which encouraged existing investors to refer new investors to the Phemex Platform in exchange for commissions based on trading fees collected from those referrals.

14. The Phemex Platform charged fees for trades on the platform and for crypto asset withdrawals.

(b) Operators of the Phemex Platform

15. Phemex Limited and Phemex Technology Pte. Ltd. operated the Phemex Platform during the Material Time.

16. Phemex Limited is a company incorporated under the laws of the British Virgin Islands. An archived version of the Phemex Platform's Terms of Use dated March 18, 2020 states that "Phemex is a platform operated by Phemex Limited".

17. Phemex Technology Pte. Ltd. is a company incorporated under the laws of Singapore. It has been identified on the Google and Apple app stores as the developer of the mobile apps associated with the Phemex Platform.

18. Phemex Technology Pte. Ltd. is a wholly owned subsidiary of Phemex Limited.

19. The Respondents have never been registered with the Commission in any capacity or obtained an exemption from the registration requirement. The Respondents have also never filed a prospectus with the Commission or obtained an exemption from the prospectus requirement.

(c) Phemex's Ontario presence

20. The Phemex Platform was accessible to Ontario residents during the Material Time. The Commission's investigation team was able to open an account on the Phemex Platform and conduct transactions.

21. On or about January 3, 2023, Phemex added Ontario to its list of restricted locations in the Phemex Platform's Terms of Use, after being contacted by the Commission's investigation team regarding its activities in Ontario. No notification about this change was sent to investors.

22. On or about January 7, 2023, the Respondents implemented a restriction based on IP addresses to purportedly restrict Ontario residents from accessing the Phemex Platform (**IP Address Restriction**).

23. Existing investors impacted by the IP Address Restriction were not notified of the reason for the IP Address Restriction. In particular, the Respondents did not notify existing investors that Ontario residents were prohibited from using the Phemex Platform.

24. In addition, the Respondents did not provide any guidance to existing investors impacted by the IP Address Restriction on how to withdraw their assets held on the Phemex Platform in light of the IP Address Restriction.

25. Prior to the implementation of the IP Address Restriction, as of January 6, 2023, the Phemex Platform had a total of 117 accounts for investors who: (a) self-identified as Ontario residents; and/or (b) primarily accessed their accounts using an Ontario IP address (**Ontario Accounts**). These investors traded the products offered on the Phemex Platform, as described above, in the Ontario Accounts.

26. In total, the Respondents obtained at least 39,712.43 USDT (a.k.a. Tether) in fees from the Ontario Accounts based on total trading volume in those accounts which exceeded 74 million USDT.

C. BREACHES AND CONDUCT CONTRARY TO THE PUBLIC INTEREST

27. Enforcement Staff allege the following breaches of Ontario securities law and conduct contrary to the public interest:

    (a) Phemex Limited and Phemex Technology Pte. Ltd. each engaged in, or held itself out as engaging in, the business of trading in securities without the necessary registration or an applicable exemption from the registration requirement, contrary to subsection 25(1) of the *Securities Act*, RSO 1990, c. S.5, as amended (the **Act**);

    (b) Phemex Limited and Phemex Technology Pte. Ltd. each engaged in trading in securities which constitute distributions without complying with the prospectus requirements and without an applicable exemption from the prospectus requirements, contrary to section 53 of the Act; and

    (c) In addition to breaching Ontario securities law as outlined above, Phemex Limited and Phemex Technology Pte. Ltd. each acted in a manner contrary to the fundamental purposes and principles of the Act as set out in sections 1.1 and 2.1 of the Act, and contrary to the public interest. Specifically, by engaging in the business of trading in

securities through the Phemex Platform without the necessary registration, prospectus or exemptions from those requirements and by making the Phemex Platform available in Ontario, the Respondents undermined safeguards intended to protect investors from unfair, improper or fraudulent practices. Furthermore, by failing to comply with the registration and prospectus requirements before offering securities to Ontario residents, with which other crypto asset trading platforms are required to comply, at a cost, the Respondents undermined the fairness, efficiency, and confidence in the Ontario capital markets.

28. These allegations may be amended, and further and other allegations may be added as the Capital Markets Tribunal (the **Tribunal**) may permit.

D. ORDER SOUGHT

29. Enforcement Staff request that the Tribunal make the following orders against the Respondents:

(a) that they cease trading in any securities or derivatives permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2 of subsection 127(1) of the Act;

(b) that they be prohibited from acquiring any securities permanently or for such period as is specified by the Tribunal, pursuant to paragraph 2.1 of subsection 127(1) of the Act;

(c) that any exemptions contained in Ontario securities law do not apply to them permanently or for such period as is specified by the Tribunal, pursuant to paragraph 3 of subsection 127(1) of the Act;

(d) that they submit to a review of their practices and procedures and institute such changes as may be ordered by the Tribunal, pursuant to paragraph 4 of subsection 127(1) of the Act;

(e) that they be reprimanded, pursuant to paragraph 6 of subsection 127(1) of the Act;

(f) that they be prohibited from becoming or acting as a registrant, as an investment fund manager or as a promoter permanently or for such period as is specified by the Tribunal, pursuant to paragraph 8.5 of subsection 127(1) of the Act;

(g) that they pay an administrative penalty of not more than $1 million for each failure to comply with Ontario securities law, pursuant to paragraph 9 of subsection 127(1) of the Act;

(h) that they disgorge to the Commission any amounts obtained as a result of non-compliance with Ontario securities law, pursuant to paragraph 10 of subsection 127(1) of the Act;

(i) that they pay the costs of the Commission investigation and the hearing, pursuant to section 127.1 of the Act; and

(j) such other orders as the Tribunal considers appropriate in the public interest.

DATED this 5th day of September, 2023.

ONTARIO SECURITIES COMMISSION
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A.1.2 Derek Scheinman – ss. 127(1), 127(10)

FILE NO.: 2023-23

IN THE MATTER OF
DEREK SCHEINMAN

NOTICE OF HEARING
Subsections 127(1) and 127(10) of the *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Inter-jurisdictional Enforcement Proceeding

HEARING DATE AND TIME: In writing

PURPOSE

The purpose of this proceeding is to consider whether it is in the public interest for the Capital Markets Tribunal to make the order(s) requested in the Statement of Allegations filed by Staff of the Commission on September 6, 2023.

Take notice that Staff of the Commission has elected to proceed by way of the expedited procedure for a written hearing provided for by Rule 11(3) of the *Capital Markets Tribunal Rules of Procedure and Forms*.

Staff must serve on you this Notice of Hearing, the Statement of Allegations, Staff's hearing brief containing all documents Staff relies on, and Staff's written submissions.

You have **21 days** from the date Staff serves these documents on you to file a request for an oral hearing, if you do not want to follow the expedited procedure for a written hearing.

Otherwise, you have **28 days** from the date Staff served these documents on you to file your hearing brief and written submissions.

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO PARTICIPATE

IF A PARTY DOES NOT PARTICIPATE, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

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AVIS EN FRANÇAIS

L'avis d'audience est disponible en français sur demande d'une partie, que la participation à l'audience peut se faire en français ou en anglais et que les participants doivent aviser le Tribunal par écrit dès que possible si le participant demande qu'une instance soit tenue entièrement ou partiellement en français.

Dated at Toronto this 6th day of September, 2023

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

Please visit capitalmarketstribunal.ca or contact the Registrar at registrar@osc.gov.on.ca.

IN THE MATTER OF
DEREK SCHEINMAN

STATEMENT OF ALLEGATIONS
(Subsections 127(1) and 127(10) of the *Securities Act,* RSO 1990, c S.5)

A. OVERVIEW

1. An inter-jurisdictional enforcement is sought based on a holding of the Ontario Court of Justice (the **OCJ**) that Derek Scheinman (**Scheinman**) engaged in a fraud where he defrauded his business partners and investors of approximately $23 million.

2. This order is sought using the expedited procedure for inter-jurisdictional proceedings set out in Rule 11(3) of the Capital Markets Tribunal's (the **Tribunal**) *Rules of Procedure and Forms*.

B. FACTS

(i) The Sentence

3. Scheinman is a resident of Thornhill, Ontario. He owned and operated a mortgage investment company called DMS Financial Management (**DMS**) from its offices in Richmond Hill, Ontario. He was previously registered with the OSC between April 12, 2000 and July 25, 2002.

4. Scheinman was charged for offenses taking place between August 2, 2006, to March 22, 2017 relating to transactions, business or a course of conduct related to securities.

5. On February 5, 2021, Scheinman pled guilty to two counts of fraud over $5,000 contrary to section 380(1)(a) of the *Criminal Code* of Canada (**CCC**) before the Honourable Justice P. Bourque of the Ontario Court of Justice.

6. On September 24, 2021, Justice Bourque sentenced Scheinman to a four-year sentence less four months credit for time served. Justice Bourque ordered Scheinman be prohibited for five years from seeking, obtaining or continuing any employment, or becoming or being a volunteer in any capacity, that involves having authority over the real property, money or valuable security of another person, pursuant to s. 380.2 of the CCC.

7. The Tribunal is requested to make an inter-jurisdictional enforcement order reciprocating Scheinman's conviction, pursuant to paragraph 1 of subsection 127(10) of the Ontario *Securities Act,* RSO 1990, c S.5, as amended (the **Act**).

(ii) The Fraudulent Scheme

Grossman Silver Horizon Limited Partnership

8. Scheinman defrauded partners in Grossman Silver Horizon Limited Partnership (the **Grossman Partnership**) of approximately $13,000,000. He and his spouse funded a lavish lifestyle including gambling, luxury vacations, properties, and shopping sprees with this money.

9. In 2006, Scheinman formed the Grossman Partnership as an Ontario partnership. The limited partners were Pinecap Mortgage Corporation and 2106271 Ontario Inc. (the **Limited Partners**). DMS was the general partner. The Grossman Partnership's purpose was to invest in and manage mortgages.

10. The Limited Partners funded the Grossman Partnership while Scheinman managed the day-to-day operations of the Grossman Partnership. The Limited Partners had $33,000,000 invested into the Grossman Partnership at one point. In addition to compensation received for his services, DMS and the Limited Partners also entered into a profit-sharing agreement.

11. In 2015, the Limited Partners discovered a discrepancy of $800,000 including several unusual payments relating to a cottage and a condo in Florida both owned by Scheinman. The Limited Partners decided to dissolve the partnership and subsequently retained a lawyer and a forensic accountant.

12. 28 mortgages totaling more than $9,000,000 were revealed to be fictitious. Some real mortgages were discharged but Scheinman reported them to the Limited Partners as still outstanding. Unbeknownst to the Limited Partners, Scheinman opened additional bank accounts for the Grossman Partnership. He had sole signing authority for those accounts and monies meant to fund the mortgages flowed into these accounts.

13. Scheinman used the funds to (i) send money to companies controlled by Scheinman, his spouse, and unrelated third parties; (ii) pay for the expenses of three properties registered to relatives; (iii) pay for his credit card debt; and (iv) withdraw $600,000 in cash.

New Horizon Investment Management Corporation

14. Separately, Scheinman also operated a Ponzi scheme, defrauding investors of $10,000,000 and diverted this money to his spouse and her business, and used it to purchase personal properties in Florida.

15. Scheinman operated another mortgage investment company called New Horizon Investment Management Corporation (**New Horizon**). New Horizon purportedly invested in mortgages as a security for loans for residential real estate and investment properties in Canada. Scheinman had promised New Horizon investors an unrealistic rate of return.

16. There are approximately 30 known investors in New Horizon. They received subscription agreements and share certificates in exchange for their investment. The investors believed that they were investing in mortgages backed by residential real estate.

17. In reality, Scheinman failed to make mortgage investments for years. Instead, he operated a Ponzi scheme where he paid older investors with funds provided by newer investors to maintain the façade of real investment returns. When Scheinman could not make interest payments from the contributions of new investors, he either failed to make the interest payments or he used funds from the Grossman Partnership. Between 2004 and 2017, Scheinman defrauded New Horizon and its investors of approximately $10,000,000.

C. JURISDICTION OF THE CAPITAL MARKETS TRIBUNAL

18. Pursuant to paragraph 1 of subsection 127(10) of the Act, Scheinman's conviction for offences arising from transactions, business or a course of conduct related to securities or derivatives may form the basis for an order in the public interest made under subsection 127(1) of the Act.

19. It is in the public interest to make an order against Scheinman.

20. The Tribunal reserves the right to amend these allegations and to make such further and other allegations as the Tribunal deems fit and the Tribunal may permit.

D. ORDER SOUGHT

21. The Tribunal is requested to make the following inter-jurisdictional enforcement order, pursuant to paragraph 1 of subsection 127(10) of the Act:

    a. against Scheinman that:

        i. pursuant to paragraph 2 of subsection 127(1) of the Act, trading in any securities or derivatives by Scheinman cease permanently;

        ii. pursuant to paragraph 2.1 of subsection 127(1) of the Act, acquisition of any securities by Scheinman be prohibited permanently;

        iii. pursuant to paragraph 3 of subsection 127(1) of the Act, any exemptions contained in Ontario securities law do not apply to Scheinman permanently;

        iv. pursuant to paragraphs 7, 8.1 and 8.3 of subsection 127(1) of the Act, Scheinman resign any positions that he holds as a director or officer of any issuer or registrant;

        v. pursuant to paragraphs 8, 8.2 and 8.4 of subsection 127(1) of the Act, Scheinman be prohibited permanently from becoming or acting as a director or officer of any issuer or registrant;

        vi. pursuant to paragraph 8.5 of subsection 127(1) of the Act, Scheinman be prohibited permanently from becoming or acting as a registrant or promoter; and

    b. such other order or orders as the Tribunal considers appropriate.

DATED this 6th day of September, 2023.

Hansen Wong
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A.1.3 Traders Global Group Inc. and Muhammad Murtuza Kazmi – ss. 127(1), 127(8)

FILE NO.: 2023-21

IN THE MATTER OF
TRADERS GLOBAL GROUP INC. AND
MUHAMMAD MURTUZA KAZMI

NOTICE OF HEARING
Subsections 127(1) and 127(8) *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Application for Extension of Temporary Order

HEARING DATE AND TIME: September 13, 2023 at 10:00 a.m.

LOCATION: By videoconference

PURPOSE

The purpose of this proceeding is to consider whether the Capital Markets Tribunal should grant the Application filed by Staff of the Commission to extend the temporary order issued by the Ontario Securities Commission on August 29, 2023.

REPRESENTATION

Any party to the proceeding may be represented by a representative at the hearing.

FAILURE TO ATTEND

IF A PARTY DOES NOT ATTEND, THE HEARING MAY PROCEED IN THE PARTY'S ABSENCE AND THE PARTY WILL NOT BE ENTITLED TO ANY FURTHER NOTICE IN THE PROCEEDING.

FRENCH HEARING

This Notice of Hearing is also available in French on request of a party. Participation may be in either French or English. Participants must notify the Tribunal in writing as soon as possible if the participant is requesting a proceeding be conducted wholly or partly in French.

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Dated at Toronto this 7th day of September, 2023

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For more information

Please visit capitalmarketstribunal.ca or contact the Registrar at registrar@osc.gov.on.ca.

IN THE MATTER OF
TRADERS GLOBAL GROUP INC. AND
MUHAMMAD MURTUZA KAZMI

APPLICATION OF STAFF OF
THE ONTARIO SECURITIES COMMISSION

(For Extension of a Temporary Order Under Subsections 127(1) and 127(8) of the *Securities Act*, RSO 1990 c S.5)

A. ORDER SOUGHT

The Applicant, Staff of the Ontario Securities Commission (the **Commission**), requests that the Capital Markets Tribunal (the **Tribunal**) make the following orders:

1. An Order extending the Temporary Order of the Commission dated August 29, 2023 (**Temporary Order**) made with respect to Traders Global Group Inc. (**TGG**) and Muhammad Murtuza Kazmi (**Kazmi**) for such period as it considers necessary pursuant to subsection 127(8) of the *Securities Act*, RSO 1990, c S.5 (the **Act**);

2. If necessary, an Order abridging the time required for service pursuant to Rules 3 and 4(2) of the Tribunal's *Rules of Procedure and Forms*; and

3. Such other Order as the Tribunal considers appropriate in the public interest.

B. GROUNDS

The grounds for the request are:

1. In January 2023, the Enforcement Branch commenced its current investigation into TGG and Kazmi following a Request for Assistance from the United States Commodities Futures Trading Commission (**CFTC**);

2. During the course of the investigation, the Enforcement Branch found evidence of the following:

   (a) From at least November 1, 2021 and continuing to the present (the Material Time), TGG, an Ontario based federal corporation, TGG has operated as "My Forex Funds" on its website myforexfunds.com (the MFF Website), and represented itself as a retail foreign exchange and commodities trading firm;

   (b) Kazmi, an Ontario resident, is the principal of TGG;

   (c) The MFF Website offers retail investors, who pay funds to open accounts, the opportunity to become a "professional trader," trade foreign exchange and commodities using third-party "liquidity providers" and share in any trading profits;

   (d) There is virtually no real trading taking place at TGG. For the vast majority of investors, trading is simulated by TGG with various rules in place designed to benefit TGG to the detriment of investors;

   (e) TGG and Kazmi appear to have raised at least USD 294 million from at least 135,000 investors worldwide;

   (f) TGG and Kazmi may have used money received from investors to pay simulated "profits" to other investors and for Kazmi's personal expenses;

   (g) TGG and Kazmi are continuing to raise funds from investors; and

   (h) Each of the accounts offered on myforexfunds.com is a security as an "investment contract" under s. 1(1)(n) of the Act or is otherwise a "security" or a "derivative" under s. 1(1) of the Act;

3. During the course of the investigation, the Enforcement Branch found evidence that:

   (a) TGG and Kazmi may have engaged in conduct that perpetrates a fraud in breach of subsection 126.1(1)(b) of the Act;

   (b) TGG may be engaged in the business of trading securities without registration, contrary to subsection 25(1) of the Act;

   (c) TGG may have distributed securities without filing a prospectus, contrary to subsection 53(1) of the Act; and

   (d) TGG and Kazmi may have provided false and misleading information to the Commission, contrary to subsection 122(1)(a) of the Act;

4. On August 28, 2023, the CFTC filed a Complaint for Injunctive Relief, Civil Monetary Penalties and Other Equitable Relief against TGG, Kazmi and a related TGG entity located in New Jersey, in the United States District Court for the District of New Jersey (the **CFTC Proceeding**);

5. As part of the CFTC Proceeding, the CFTC filed a motion for a Statutory Restraining Order and Preliminary Injunction, which, among other things, sought certain asset freezes, appointment of a temporary receiver over TGG and Kazmi, and a preliminary injunction. The motion was granted by the U.S. District Court on August 29, 2023;

6. On August 29, 2023, the Commission issued the Temporary Order;

7. The Temporary Order provided that:

   (a) all trading in any securities of TGG shall cease;

   (b) all trading in any securities by TGG and Kazmi, or by any person their behalf, including but not limited to any act, advertisement, solicitation, conduct, or negotiation, directly or indirectly in furtherance of a trade, shall cease;

   (c) any exemptions contained in Ontario securities law do not apply to TGG or Kazmi; and

   (d) the Temporary Order shall take effect immediately and shall expire on the 15th day after its making unless extended by order of the Tribunal;

8. The investigation into the conduct described in the Temporary Order and this Application is continuing and is the subject of the CFTC Proceeding;

9. The Order sought by the Commission is necessary to protect investors from serious and ongoing harm and is in the public interest;

10. Subsections 127(1) and 127(8) of the Act; and

11. Such further grounds as counsel may advise and the Tribunal may permit.

C. EVIDENCE

The Applicant intends to rely on the following evidence at the hearing:

1. The Affidavit of Louisa Fiorini, sworn September 6, 2023 and its exhibits;

2. The Affidavit of Matthew Edelstein, sworn September 1, 2023 and its exhibits;

3. The Affidavit of Stephanie Collins, sworn September 5, 2023 and its exhibits; and

4. Such further evidence as counsel may advise and the Tribunal may permit.

Date: September 6, 2023

ONTARIO SECURITIES COMMISSION

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A.2
Other Notices

A.2.1 Phemex Limited and Phemex Technology Pte. Ltd.

FOR IMMEDIATE RELEASE
September 6, 2023

PHEMEX LIMITED AND
PHEMEX TECHNOLOGY PTE. LTD.,
File No. 2023-22

TORONTO – The Tribunal issued a Notice of Hearing on September 6, 2023 setting the matter down to be heard on September 26, 2023 at 10:00 a.m. or as soon thereafter as the hearing can be held in the above-named matter.

A copy of the Notice of Hearing dated September 6, 2023 and Statement of Allegations dated September 5, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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A.2.2 Derek Scheinman

FOR IMMEDIATE RELEASE
September 6, 2023

DEREK SCHEINMAN,
File No. 2023-23

TORONTO – The Tribunal issued a Notice of Hearing pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above-named matter.

A copy of the Notice of Hearing dated September 6, 2023 and Statement of Allegations dated September 6, 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.2.3 Traders Global Group Inc. and Muhammad Murtuza Kazmi

FOR IMMEDIATE RELEASE
September 7, 2023

TRADERS GLOBAL GROUP INC. AND
MUHAMMAD MURTUZA KAZMI,
File No. 2023-21

TORONTO – The Tribunal issued a Notice of Hearing on September 7, 2023 setting the matter down to be heard on September 13, 2023 at 10:00 a.m. to consider whether the Capital Markets Tribunal should grant the Application filed by Staff of the Commission to extend the temporary order issued by the Ontario Securities Commission on August 29, 2023.

A copy of the Notice of Hearing dated September 7, 2023 and Application dated September 6, 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:

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inquiries@osc.gov.on.ca

A.2.4 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
September 8, 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 its Reasons and Decision in the above-named matter.

A copy of the Reasons and Decision dated September 7, 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.2.5 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
September 11, 2023

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

TORONTO – Take notice that an attendance in the above named matter is scheduled to be heard on September 13, 2023 at 9:00 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.2.6 Traders Global Group Inc. and Muhammad Murtuza Kazmi

FOR IMMEDIATE RELEASE
September 11, 2023

TRADERS GLOBAL GROUP INC. AND
MUHAMMAD MURTUZA KAZMI,
File No. 2023-21

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

A copy of the Order dated September 11, 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.2.7 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
September 12, 2023

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

TORONTO – Take notice of the merits hearing time change on September 14, 2023, in the above-named matter. The hearing on September 14, 2023, scheduled to commence at 10:00 a.m. will instead commence at 11:00 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.2.8 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
September 12, 2023

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

TORONTO – Take notice of the merits hearing time change on September 13, 2023, in the above-named matter. The hearing on September 13, 2023, scheduled to commence at 10:00 a.m. will instead commence at 11:00 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.3
Orders

A.3.1 Traders Global Group Inc. and Muhammad Murtuza Kazmi – ss. 127(1), 127(8)

IN THE MATTER OF
TRADERS GLOBAL GROUP INC. AND
MUHAMMAD MURTUZA KAZMI

File No. 2023-21

Adjudicator: James Douglas (chair of the panel)

September 11, 2023

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

WHEREAS Staff of the Ontario Securities Commission brought an application before the Capital Markets Tribunal to extend a temporary order dated August 29, 2023 (the **Temporary Order**);

ON READING the materials filed by Staff, and on being advised that the parties consent to an order on the following terms extending the Temporary Order and adjourning the application hearing originally scheduled for September 13, 2023;

IT IS ORDERED THAT:

1. the Temporary Order is extended until 4:30 pm on October 31, 2023; and

2. the hearing of the application is scheduled for October 30, 2023 at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

“James Douglas”

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A.4
Reasons and Decisions

A.4.1 Go-To Developments Holdings Inc. et al. – Rule 27(3) of the Capital Markets Tribunal Rules of Procedure and Forms

Citation: *Go-To Developments Holdings Inc (Re)*, 2023 ONCMT 29
Date: 2023-09-07
File No. 2022-8

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

REASONS AND DECISION
(Rule 27(3) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

Adjudicators:	M. Cecilia Williams (chair of the panel) Geoffrey D. Creighton Dale R. Ponder	
Hearing:	In writing; final written submissions received July 13, 2023	
Appearances:	Erin Hoult Braden Stapleton	For Staff of the Ontario Securities Commission
	Melissa MacKewn Dana Carson Asli Deniz Eke	For Oscar Furtado

REASONS AND DECISION

1. OVERVIEW

[1] On March 30, 2023, Staff of the Ontario Securities Commission brought a motion for a further and better witness summary from Oscar Furtado, requesting that the Tribunal order Furtado's witness summary to comply with the requirements of Rule 27(3) (the **Witness Summary Motion**).

[2] Furtado served a witness list on November 23, 2022, as required by the *Capital Markets Tribunal Rules of Procedure and Forms* and as ordered by this panel. He identified himself as the only anticipated witness that he may be calling in this matter, and he provided a summary of his anticipated evidence (the **Initial Witness Summary**). The Initial Witness Summary listed topics that Furtado was expected to testify about but did not disclose the substance of his testimony about any of them.

[3] On June 30, 2023, Furtado served a "fresh as amended" witness summary (**Amended Witness Summary**) in response to Staff's Witness Summary Motion. The Amended Witness Summary states that Furtado will testify generally in accordance with the transcripts of his compelled interviews by Staff. Staff's position is that the Amended Witness Summary is also deficient.

[4] For the following reasons, we find that the Amended Witness Summary does not meet the requirements of Rule 27(3).

2. PRELIMINARY ISSUE

[5] Staff initially requested that the Witness Summary Motion be conducted in writing. Furtado did not consent to Staff's request, and the Witness Summary Motion was subsequently scheduled to be heard on June 2, 2023.

[6] Before the June 2, 2023 hearing date, Furtado requested that the motion be adjourned to address other issues in advance of the hearing on the merits. The parties agreed that other issues in this proceeding be dealt with on that date.

[7] At the June 2, 2023 attendance, Furtado agreed the Witness Summary Motion could now be conducted in writing but stated he required time to provide responding submissions. Staff, however, submitted that the Witness Summary Motion should go ahead as scheduled. Furtado also indicated that there was a possibility he might serve a further and better witness summary on Staff, and so make the Witness Summary Motion unnecessary. However, he added that he could not do so in the short term due to his health issues.

[8] On June 22, 2023, we ordered that the motion for a new witness summary be conducted in writing, pursuant to Rule 23(6). We also extended the timelines for the Respondents to file their materials.[1] Since whether a witness summary complies with Rule 27(3), is a purely legal question, we concluded there was good reason to conduct the hearing in writing.

[9] We now turn to the law regarding witness summaries.

3. LAW AND ANALYSIS

3.1 The law

[10] Rule 27 (3) of the Tribunal's Rules provides that a party to a proceeding shall serve on every other party a "summary of the evidence that each witness is expected to give that includes, unless previously disclosed: … (b) the substance of the witness's evidence; and (c) the identification of any document or thing to which the witness is expected to refer."

[11] The Tribunal has previously identified some of the purposes served by requiring pre-hearing disclosure of anticipated oral evidence in the form of witness summaries. For example, witness summaries:

a. allow the parties to understand the issues in the proceeding better;

b. facilitate the narrowing of issues;

c. allow parties to identify and resolve evidentiary issues that may arise at the hearing;

d. facilitate settlement;

e. permit more reliable estimates of the time required to conduct the hearing; and

f. as a result of all of the above, they minimize the time and resources required, and the cost of the hearing to the benefit of the Tribunal and the parties.[2]

[12] When the Tribunal is asked to assess the sufficiency of a witness summary at the pre-hearing stage, the summary must be assessed on its face.[3] The Tribunal's review of the witness summary's sufficiency at this stage "necessarily affords the party delivering the witness summary more latitude than would be the case with a challenge during the merits hearing."[4]

[13] We now briefly describe the Witness Summary and the Amended Witness Summary before turning to the parties' positions and our analysis supporting our conclusion that the Amended Witness Summary is deficient.

3.2 The Initial Witness Summary and the Amended Witness Summary

[14] Furtado's Initial Witness Summary listed the topics about which Furtado would testify if he testifies. Staff submits that the Initial Witness Summary was deficient because it did not disclose the substance of his testimony about each of the topics. It said only that the witness would refer to documents that were included in Staff's disclosure, or would otherwise be provided or were publicly available. It did not disclose the specific documents or things Furtado would refer to in his evidence.

[15] Furtado's Amended Witness Summary states that he will testify generally in accordance with the transcripts of his compelled interviews. It states that he will refer only to documents in Staff's disclosure, or which have otherwise been provided to Staff through prior correspondence or are publicly available.

[16] Staff submits that it appears from the title of the Amended Witness Summary ("Fresh as Amended") and the fact that it does not refer to the initial Witness Summary, that the Amended Witness Summary is intended to replace the Initial Witness Summary. We agree. The focus of our analysis is therefore on whether the Amended Witness Summary complies with Rule 27(3). We conclude it does not.

1 *Go-To Developments Holdings Inc. (Re)* (2023), 46 OSCB 5469
2 *Hutchinson (Re)*, 2019 ONSEC 9 at para 22
3 *BDO Canada LLP (Re)*, 2020 ONSEC 2 at para 30 (***BDO***)
4 *BDO* at para 30

3.3 Parties' positions and our analysis

3.3.1 Does the Amended Witness Summary comply with Rule 27(3)(b)?

[17] Rule 27(3)(b) requires that a witness summary disclose the "substance" of the witness's evidence.

[18] Furtado submits that the Amended Witness Summary complies with Rule 27(3)(b) because it incorporates, by reference, Furtado's compelled interview transcripts. Relying on the Tribunal's decision in *BDO*, Furtado's submits that:

a. a witness summary will fail to comply with the Rules only if it fails to disclose any substance of the witness's anticipated evidence;

b. it can be assumed that compelled interview transcripts contain some substantive testimony even if such transcripts are not before the Tribunal; and

c. therefore, a witness summary that incorporates by reference interview transcripts will disclose some substance of the anticipated testimony and will be compliant with the Rules.[5]

[19] Furtado submits that in *BDO*, the Tribunal found that the witness summaries of nine witnesses, which did not disclose any substance of the witnesses' anticipated testimony other than through the incorporation by reference of the interview transcripts for eight of the nine witnesses, sufficiently disclosed the substance of the witnesses' evidence and therefore complied with Rule 27(3).[6]

[20] In addition, Furtado submits that since he is to tender any in-chief evidence by affidavit in advance of the merits hearing, as agreed to by the parties, the Amended Witness Summary, together with the affidavit evidence, will clearly satisfy the purposes of mutual pre-hearing disclosure of anticipated oral evidence.

[21] Staff submits that the Amended Witness Summary provides no disclosure of intended topics for Furtado's evidence, other than a reference to the transcripts. In contrast, they submit that the Initial Witness Summary did identify categories in which Furtado may provide evidence, but without identifying the substance of the evidence. In *BDO*, the witness summaries, Staff submits, at least identified that each witness was to speak to their involvement, or that of a certain organization, in the audits in issue.[7]

[22] Staff further submits that in *BDO* the Tribunal found that where a witness summary discloses no substance other than by reference to compelled interview transcripts, introductory language such as "including, but not limited to" and "broadly consistent with" raises reasonable concerns about the intended use of such phrases by the respondent"[8]. The respondents in *BDO* conceded that the broad introductory language was "largely nominal". The panel in *BDO* accepted the witness summaries holding that the substance of those witness summaries was "confined to whatever substance may be found in the transcripts of their examinations."[9]

[23] Furtado's Amended Witness Summary states that Furtado "will testify generally in accordance with the transcripts." Staff submits that this language raises the question of what use Furtado intends to make of the words "generally in accordance with", and whether he may attempt to testify beyond the scope of or contrary to the transcripts in reliance on this language. In addition, Staff submits that the concern is exacerbated by the covering letter from Furtado's counsel that accompanied the Amended Witness Summary, which states, "Should Mr. Furtado intend any corrections to the [Transcripts] in the course of reviewing his evidence and preparing for the merits hearing, we will advise staff expeditiously."

[24] We conclude that the Amended Witness Summary does not comply with Rule 27(3)(b). While the Amended Witness Summary arguably provides less substance than the Initial Witness Summary (because it does not refer to categories or topics Furtado will testify about), Tribunal precedent supports a conclusion that incorporating by reference the transcripts of compelled interviews constitutes sufficient substance for the purposes of Rule 27(3)(b) at the pre- hearing challenge stage.

[25] However, by stating that he will "testify generally in accordance with" the transcripts and raising the possibility of future challenges to the contents of the transcripts, Furtado has created sufficient ambiguity about the scope of his evidence that we conclude that the Amended Witness Summary does not disclose the intended substance of his evidence.

3.3.2 Does the Amended Witness Summary comply with Rule 27(3)(c)?

[26] Rule 27(3)(c) requires that a witness summary disclose the "identification of any document or thing to which the witness is expected to refer".

5 *BDO* at paras 31, 33, 34-35
6 *BDO* at para 40
7 *BDO* at para 15
8 *BDO* at paras 36-37
9 *BDO* at paras 19-22, 34-35, 38, 41

[27] Staff submits that the Amended Witness Summary does not comply with Rule 27(3)(c) because it does not list any documents, rather it refers to documents only in broad categories. Further, Furtado has not limited himself to even those broad categories by indicating that he may identify other documents not captured in those broad categories.

[28] Furtado submits that the Amended Witness Summary is compliant with Rule 27(3)(c) and is consistent with routinely accepted practices of the Tribunal.

[29] Both parties rely on *BDO* to support their respective positions. In *BDO* the witness summaries at issue stated that the witnesses were "expected to refer to documents in the hearing brief of *BDO*, which is expected to include, among other documents, *BDO*'s Audit Working Papers and e-mail correspondence relating to the audits in question."[10]

[30] The panel in *BDO* dismissed the reference to the hearing brief as illogical and of no assistance, given that the hearing brief did not exist at the time and was not due to be delivered until closer to the commencement of the merits hearing.[11]

[31] The *BDO* panel went on to exclude the general introductory language "which is expected to include, among other documents" from its consideration of the witness summary as being of no value.[12] The *BDO* panel effectively read the witness summaries as referring to "BDO's Audit Working Papers end e-mail correspondence relating to the audits in question".[13]

[32] The *BDO* panel declined to grant Staff's request for "further and better" witness summaries because the requested order lacked any specifics and there was no basis for the panel to determine a more specific order. Given the broad nature of the allegations in *BDO*, the panel commented it had no basis to conclude that *BDO* would not rely on every document and every e-mail in presenting its case.[14]

[33] Contrary to Furtado's submissions, the circumstances before us differ from those in *BDO*. In *BDO*, the witness summaries disclosed that the witnesses would give evidence about "BDO's Audit Working Papers and e-mail correspondence relating to the audits in question." The Amended Witness Summary before us lacks anything close to that specificity. The reference to "documents that have been included in Staff's disclosure, have otherwise been provided to Staff through prior correspondence, or are publicly available" does not identify any documents in a meaningful way that would facilitate the narrowing of issues, identification and resolution of evidentiary issues or facilitate settlement in this matter.

[34] In addition, Furtado leaves open the possibility that he may identify additional documents outside the very broad category of documents he identified. He states that in such event, he will advise Staff in advance of the hearing and will include any such documents in his hearing brief. In our view the statement further undermines Furtado's position that the Amended Witness Summary identifies the documents that he will refer to in his evidence.

[35] We conclude that the broad and open-ended nature of the description of the documents that Furtado may refer to in his evidence, as described in the Amended Witness Summary, does not sufficiently identify the documents for the purposes of Rule 27(3)(c).

[36] With respect to the substance of Furtado's evidence and the identification of the documents he may refer to in evidence, Furtado states that both will be addressed in the affidavit of his in-chief evidence. We agree with Staff's position that the affidavit is not a substitute for providing a proper witness summary. An affidavit that will be delivered mere weeks before the merits hearing does not achieve the purposes of proper pre-hearing disclosure of anticipated witness evidence as we set out in paragraph 16 above.

4. CONCLUSION

[37] For the reasons above, we conclude that the Amended Witness Summary does not comply with Rule 27(3). We order Furtado to deliver a further and better witness summary to all other parties by September 20, 2023.

Dated at Toronto this 7th day of September, 2023

"M. Cecilia Williams"

"Geoffrey D. Creighton"

"Dale R. Ponder"

[10] *BDO* at para 43
[11] *BDO* at para 44
[12] *BDO* at para 45
[13] *BDO* at para 46
[14] *BDO* at para 51

B. Ontario Securities Commission

B.1
Notices

B.1.1 OSC Staff Notice 81-734 – Summary Report for Investment Fund and Structured Product Issuers

OSC Staff Notice 81-734 – Summary Report for Investment Fund and Structured Product Issuers is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

ONTARIO SECURITIES COMMISSION

OSC Staff Notice 81-734

Summary Report for Investment Fund and Structured Product Issuers

September 13, 2023

Ontario

Contents

Director's Message

I am happy to share this Summary Report (**Report**) which provides an overview of the activities of the Investment Funds and Structured Products Branch (**IFSP**) of the Ontario Securities Commission (**OSC**) for the fiscal year ended March 31, 2023 (**Fiscal 2023**).

The capital markets have been impacted by a challenging economic environment during the year with market volatility, rising interest rates and inflation. There were high-profile collapses of several U.S. and foreign banks, as well as a large crypto asset firm. Investor confidence in the asset management industry is even more critical during economic uncertainty. As a regulator, we must be agile and proactive in responding to emerging issues to ensure investors are protected. Equally important, we work with industry professionals and leaders to facilitate solutions, provide guidance and to foster an environment for innovation and fair competition.

The asset management industry is very dynamic. Constant innovation is needed to compete, to break boundaries and to serve investors more effectively. We have continuously been working with the industry to bring new investment products and solutions to retail investors, with appropriate guardrails.

Our focus on communication, outreach and consultation has allowed staff to get better and more balanced insights in resolving regulatory issues and in setting policy direction and expectations. We leverage our Investor Office resources to understand investors' needs and behaviour. We also provide timely, relevant information with our eNews, an email subscription program.

With the completed launch of the third annual Investment Fund Survey (**IFS**), we are building an extensive database to enhance our risk-based oversight of investment fund issuers. IFS data is also critical to support global efforts to have better information and insight into various risks and leverage in the asset management industry globally. We appreciate the efforts of all IFMs in providing timely and complete responses to the survey requests.

While prospectus filings and new fund creations dipped as compared to the prior year, the number of continuous disclosure reviews rose significantly. We performed several issue-oriented reviews of funds that primarily hold crypto-assets. Our work around environmental, social and governance (**ESG**) funds also continued with a focus on the prospectus disclosure and sales communications of investment funds with an ESG focus. ESG offerings and popularity have evolved quickly, and we hope these reviews have brought greater clarity and consistency to disclosure so that investors can understand what ESG means and make more informed investment decisions about ESG products.

In the policy area, IFSP has continued to make progress on existing burden reduction policy initiatives, including an access-based model for investment fund reporting issuers, and the modernization of continuous disclosure documents. We are excited about this modernization initiative as we have invested significantly in

consumer testing to enhance investors' understanding and engagement in reviewing these important documents. For new initiatives, we have commenced the review of principal distributor practices as well as whether the investment funds settlement cycle must move to T+1. Most recently, the CSA announced that it is examining chargeback practices which will help determine whether rule modernization is needed in this area to enhance investor protection.

We hope you find this Report helpful and informative. As always, if you have a question, comment, or would like to discuss regulatory matters, please reach out to us. Our Staff Contact Information has been included for your convenience.

Raymond Chan
Director, IFSP
Ontario Securities Commission

Introduction

This Report provides an overview of the key operational and policy initiatives of the IFSP Branch that impact investment fund and structured product issuers during Fiscal 2023. Consistent with the prior fiscal year's summary report, the Report can be used as a resource for IFMs, entities who perform services on their behalf and other stakeholders, including investors.

The Report is organized into four key areas:

Part A – Operational Highlights

- Summarizes our key activities, including prospectus reviews, applications for exemptive relief and continuous disclosure reviews.

Part B – Regulatory Policy Initiatives

- Identifies policy initiatives that are ongoing with detail on their status.

Part C – Emerging Issues and Initiatives Impacting Investment Funds

- Summarizes changes that affect the investment funds industry.

Part D – Stakeholder Outreach

- Describes some of the outreach undertaken by the IFSP branch.

Responsibilities of the IFSP Branch

The OSC's mandate is to protect investors from unfair, improper or fraudulent practices, to foster fair, efficient and competitive capital markets and confidence in the capital markets, to foster capital formation, and to contribute to the stability of the financial system and the reduction of systemic risk.

In support of the OSC's mandate, the IFSP Branch is responsible for administering the regulatory framework for investment funds and structured products, including linked notes and scholarship plans, that are sold to Ontario investors. Publicly offered investment fund assets in Canada are comprised broadly of mutual funds (conventional mutual funds, exchange traded funds or **ETFs** and alternative mutual funds) and non-redeemable investment funds (**NRIFs**).

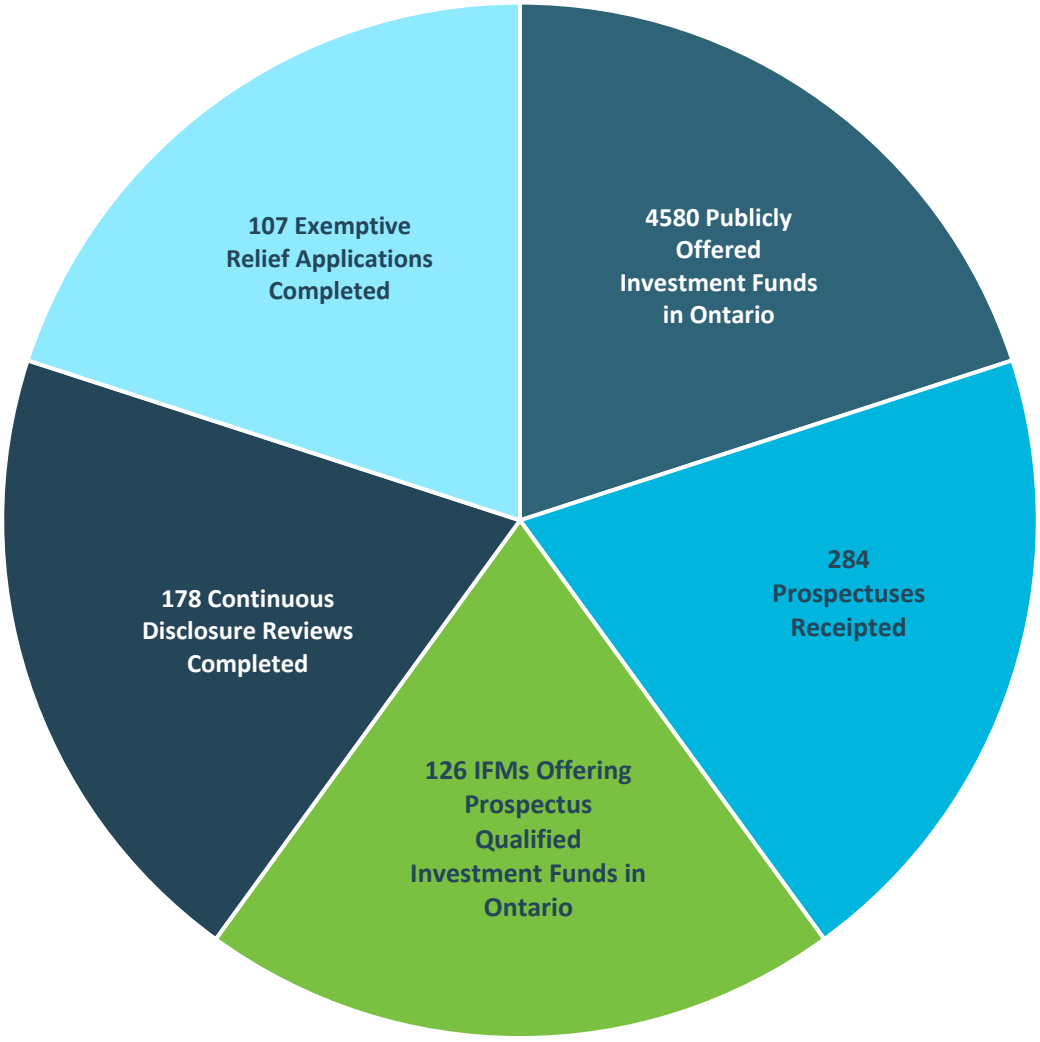
Our key functions include:

- reviewing and assessing product disclosure for all types of publicly offered investment funds,
- considering applications for discretionary relief from securities legislation,
- policy making to adapt to changes in the investment funds industry,
- engagement with stakeholders, including on advisory committees, and through regulatory updates in IFSP eNews articles,
- issuing guidance to stakeholders through staff notices to communicate our expectations on process or policy matters,
- monitoring and responding to emerging capital market and investor protection risks more effectively, using tools such as our continuous

disclosure review program, the IFS, and other information and analytical resources, and

- monitoring and participating in investment fund regulatory developments globally, primarily through our work with the International Organization of Securities Commissions (**IOSCO**), and other financial regulators.

At a Glance - IFSP Activities and Landscape for Fiscal 2023



Structure of the IFSP Branch

The IFSP Branch is organized into three dedicated teams:

Product Offerings Team

Darren McKall, Manager

- responsible for reviewing all investment fund and structured note product filings, including prospectuses and exemptive relief applications

Regulatory Policy Team

Stephen Paglia, Manager

- responsible for rule proposals and amendments affecting investment funds, which often involves collaboration with CSA counterparts

Risk and Analytics Team

Neeti Varma, Manager

- responsible for oversight of investment funds, including monitoring risks and emerging issues, and performing continuous disclosure reviews

What is an Investment Fund

There are two main types of investment funds: mutual funds and NRIFs[1]. Investors in mutual funds are generally able to purchase or redeem securities of mutual funds on demand for a price representing a proportionate interest of the fund's net assets. In contrast, NRIFs, also referred to as closed end funds, generally offer investors minimal, if any, right to redeem securities, and the price received may not necessarily represent a proportionate interest of the fund's net assets.

We get many inquiries from issuers on whether a product fits within the definition of an investment fund. As this topic is one of the most frequently asked questions of IFSP, we are outlining several criteria that may be considered when evaluating whether a product is an investment fund. These criteria are not exhaustive and are provided only as factors to consider. Satisfying or not satisfying any one criterion may not necessarily be indicative of whether an issuer is an investment fund or not. Issuers should collectively consider all the product features along with the criteria to determine whether, on balance, an issuer falls within the investment fund definition under securities law.

Ability to redeem and frequency of redemptions

An investment fund provides investors with an ability to redeem with reference to net asset value (**NAV**). If redemptions are allowed more frequently than annually, staff has interpreted this feature as being "upon demand" as is considered within the definition of a 'mutual fund'. If, however, redemptions are allowed annually only (or less frequently), the issuer may still be considered an investment fund under the 'non-redeemable investment fund' definition if it meets the other tests.

Calculation of NAV and investor entitlement

Upon redemption, consider what the investor receives and whether there is a NAV calculated in accordance with Part 14 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**).

No active management of underlying assets

The definition of 'investment fund' typically contemplates an entity which takes a passive approach to its investee entities. Factors which may indicate active management of an investee company include:

- whether the issuer holds securities representing more than 10% of the outstanding equity or voting securities of the investee company;
- any right of the issuer to appoint board or board observer seats on the investee company or have representation on the board of directors;
- restrictions on the management, or approval or veto rights over decisions made by the management, of the investee company by the issuer;

[1] Refer to definitions in subsection 1(1) of the *Securities Act*, RSO 1990, c. S. 5 and section 1.2 of the Companion Policy to National Instrument 81-106 *Investment Fund Continuous Disclosure* for associated guidance on this issue.

• any right of the issuer to restrict the transfer of securities by other securityholders of the investee company;
• direct involvement in the appointment of managers; and
• a say in material management decisions.

No control of underlying issuers
Investment funds generally do not control or seek to control underlying issuers.

Operations and purpose of the issuer
The primary purpose of an investment fund is to invest monies provided by its security holders in portfolio assets. Accordingly, investment fund issuers do not conduct operating businesses.

Investor expectations
Consider whether there is a reasonable expectation from the investor that they will have their money professionally managed or invested as part of an investment strategy and how the issuer is being marketed to the public.

The above-mentioned criteria may be useful to consider along with the specific facts and features of the issuer. Issuers should also consult with their legal counsel for assistance as being an investment fund involves different continuous disclosure and reporting obligations than other types of issuers, and IFM registration will also be required in these instances.

Investment Funds Market Landscape

Canada's public investment funds are a significant component of the asset portfolios of retail investors, representing over one-third of household financial wealth.[2] As at March 31, 2023, investment funds in Canada have about $2.3 trillion in assets under management (**AUM**)[3]:

Investment Fund Product	AUM as of March 31, 2022	AUM as of March 31, 2023	% of Investment Fund AUM as at March 31, 2023
Conventional Mutual Funds	$2.0 trillion	$1.9 trillion	83%
ETFs	$324.7 billion	$337.1 billion	15%
Closed End Funds	$36.8 billion	$36.2 billion	2%
TOTAL	$2.36 trillion	$2.3 trillion	

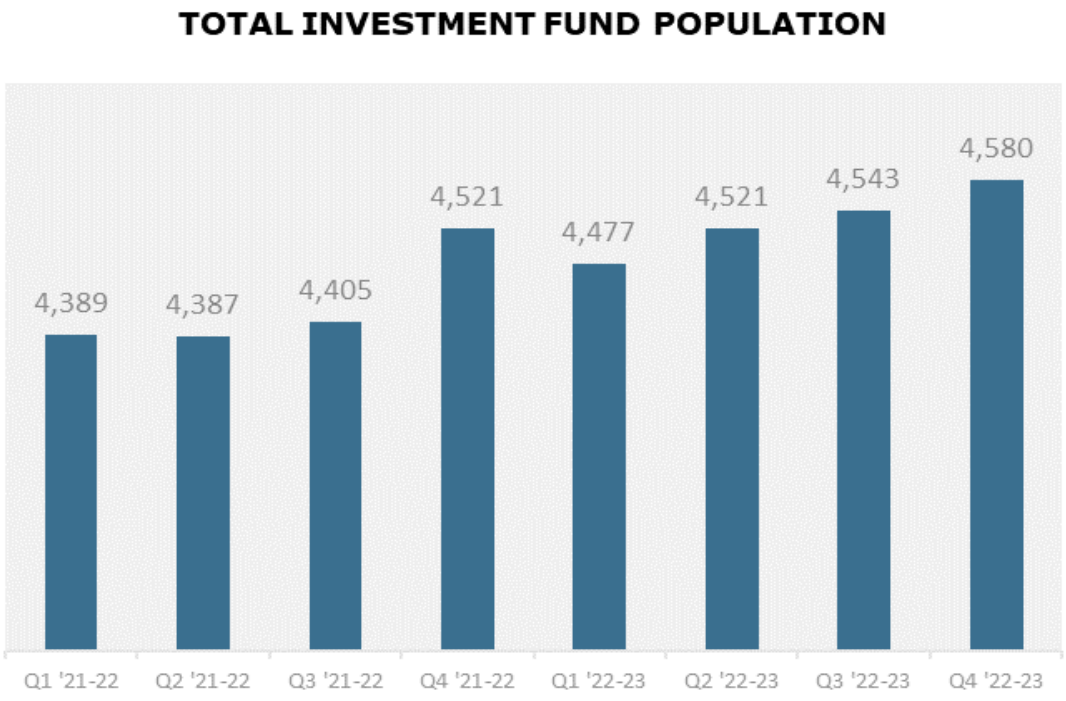
[2] Source: Investor Economics | A Division of ISS Market Intelligence
[3] AUM of mtual funds and ETFs obtained from IFIC Monthly Investment Fund Statistics and closed end fund AUM from TSX

Structured notes outstanding as of March 31, 2023, were approximately $30.4 billion[4].

On a global scale, based on data compiled by IOSCO as part of its 2021 Investment Funds Statistics Survey from participating IOSCO members, Canada accounts for approximately 7% of the conventional mutual funds captured in that survey and approximately 5% of the total net asset value of these funds. Canada sits among the top five jurisdictions globally in both categories.[5]

Indicators of Competition

The total investment funds population has steadily increased over the past several years, but this trend slowed in Fiscal 2023 when the investment funds population in Ontario remained relatively flat. There was an increase of approximately 59 funds in Fiscal 2023 as compared to growth of 144 funds in the previous fiscal year as shown in the chart below:



Source: Internal reporting issuer database showing investment funds active in Ontario

As of December 31, 2022, there were 126 IFMs offering over 4,500 publicly offered investment funds as compared to 128 IFMs in the prior year.[6] The three largest

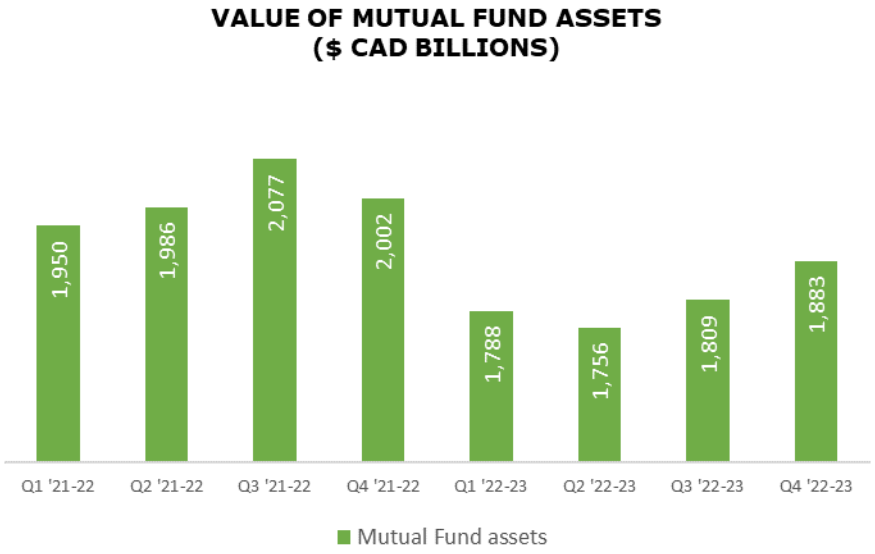
[4] Information provided by filers through OSC Linked Note e-Form
[5] January 2023 IOSCO Investment Fund Statistics Report
[6] Source – 2021 and 2022 Investment Fund Surveys

IFMs had a combined market share of 31%[7] of AUM for all prospectus qualified investment funds, including conventional mutual funds and ETFs. When conventional mutual funds and ETFs are looked at separately, the three largest IFMs who manage mutual funds had a combined market share of 36%[8] of AUM whereas the ETF market appears to be more concentrated with the top three IFMs who manage ETFs accounting for approximately 67% of ETF AUM[9]. However, the ETF market has become more diversified in the past five years based on manufacturer market share.

After rising steadily in the early 2000s, the market share of bank affiliated IFMs has remained relatively flat in the past decade at approximately 45% of prospectus qualified funds[10]. Small to mid-size IFMs have remained competitive and have played a key role in the launch of several novel investment fund products in recent years.

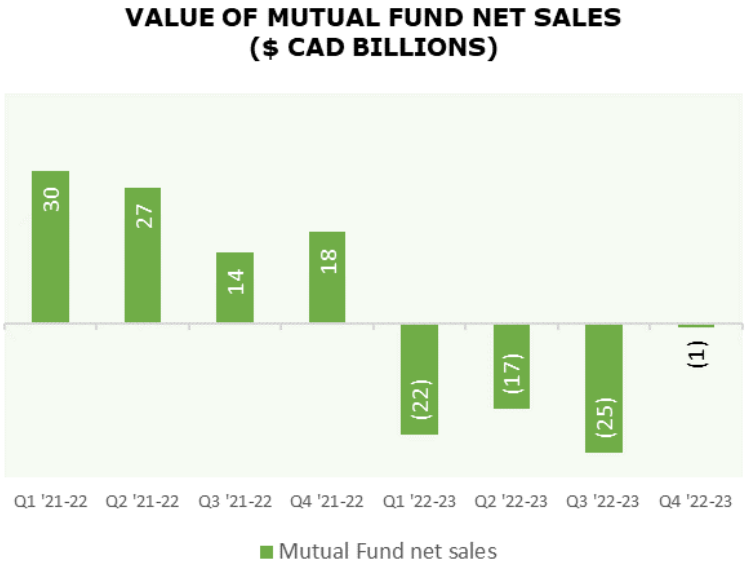
Mutual Fund Assets and Net Redemptions

Total investment fund AUM fell slightly from $2.36 trillion in the previous fiscal year to $2.3 trillion at the end of Fiscal 2023, of which $1.9 trillion is conventional mutual funds. After a strong bounce back in 2021 following the uncertainty of the COVID-19 pandemic, mutual fund AUM declined by 5% during Fiscal 2023 as mutual funds experienced net redemptions during this time. Net redemptions were primarily in the balanced asset class category, while money market mutual funds experienced positive sales, signalling that investors were being more cautious with their investments.



Source: IFIC Industry Statistics

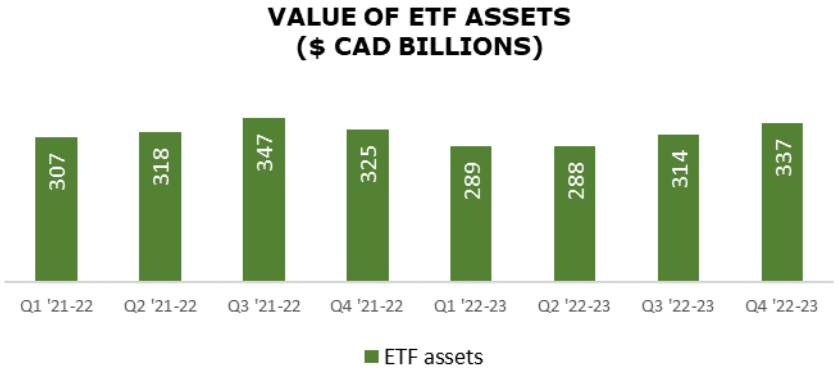
[7] Source - 2022 Risk Assessment Questionnaire (**RAQ**)
[8] Source – 2022 RAQ
[9] Source – CETFA Monthly Report as of March 31, 2023
[10] Source – 2014 and 2022 RAQs



Source: IFIC Industry Statistics

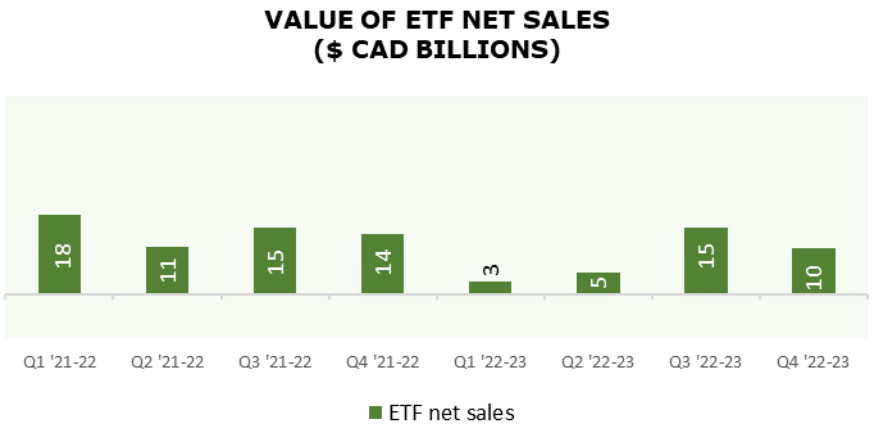
ETF Assets and Net Sales

ETFs also experienced a decline in AUM through most of Fiscal 2023 but rising net sales near the end of the year resulted in a small increase in AUM of 4% from the previous fiscal year. ETF net sales were mostly in the equity asset category and similar to mutual funds, money market ETFs (primarily high interest savings funds) also saw strong inflows compared to previous years[11] as investors sought safety and capital preservation.



Source: IFIC Industry Statistics

[11] Source – IFIC Investment Fund Statistics



Source: IFIC Industry Statistics

Crypto Asset and ESG Funds

As these two areas have evolved quickly in the past couple of years in the investment funds landscape, IFSP staff continue to monitor crypto asset and ESG funds closely.

Crypto Asset Funds

In Ontario, crypto asset funds are offered by eight IFMs and the crypto asset figures and activity for Fiscal 2023 as compared to the prior fiscal year are shown below:

Year	# of Public Crypto Asset Funds in Ontario	AUM of Crypto Asset Funds	# Crypto Asset Funds Receipted	# Crypto Asset Funds Terminated
Fiscal 2023	24[12]	$2.85 billion	2	1
Fiscal 2022	23	$6.9 billion	17	0

While there was one fund termination, much of the decline in AUM is due to the declining value of cryptocurrencies, rather than significant fund outflows. Net redemptions totaled $866 million in Fiscal 2023.

[12] After the end of Fiscal 2023, there were two fewer crypto asset funds. One crypto asset fund was terminated, and another changed its investment objectives and name to reflect it becoming a non-crypto asset fund.

ESG Funds

ESG funds continue to gain awareness and popularity, although like most investment fund products there was a slowdown in product launches in the latter part of the year. AUM of ESG funds totalled $44.7 million in 2022, up slightly from $41.8 million in 2021. Net sales totalled $6.9 million, down from a high of $17.6 million in 2021.[13] The top 10 ESG providers account for 92% of the ESG assets in Canada.[14]

With the increased presence of ESG funds in the market, the Canadian Investment Funds Standards Committee (**CIFSC**) released its responsible investment identification framework in January 2023. The CIFSC categories are aimed at standardizing the classifications of Canadian-domiciled retail mutual funds. The framework includes 6 CIFSC categories, and investment funds can belong to more than one category.

ESG funds remained a focus of the IFSP branch's operational activities during Fiscal 2023, and these initiatives will be described in detail in the next section.

[13] IFIC 2022 Investment Funds Report

[14] Source – Morningstar Q42022 Report "Sustainable-Investing Landscape for Canadian Fund Investors"

Part A: Operational Highlights

The OSC has set service standards and timelines which stakeholders can rely on when interacting with the OSC. The Service Commitment document can be found on our website and includes timelines for prospectus filings and amendments, and the review of exemptive relief applications, which comprise some of our key operational functions. The IFSP Branch is committed to ensuring that services are delivered efficiently and effectively, and in accordance with those standards.

Sections I to III below will highlight each of our main operational functions in more detail, including noteworthy files during Fiscal 2023. Issuer activity around novel prospectus filings and applications for exemptive relief were down this year, and accordingly oversight activities focused on conducting more continuous disclosure reviews.

I. Prospectus Filings

One of our key operational functions is the review of prospectuses and supplements in connection with the distribution of publicly offered investment funds and linked notes. Under Canadian securities law, an issuer must file and obtain a receipt for a prospectus to "distribute" securities to the public or rely upon a prospectus exemption.

Prospectus filings are categorized by IFSP into one of three review types: standard, issue-oriented or full review. Most prospectus filings are subject to standard review, as these generally relate to investment funds that are already in distribution and have been previously reviewed. An issue-oriented review targets specific issues with the filing while a full review is undertaken when the prospectus is for a new manager, new fund or product that has features or characteristics that could raise novel issues. These filings may also be accompanied by a related application for exemptive relief.

Pre-File Process

For unique or novel products, we recommend that filers use the confidential pre-file process for prospectus and exemptive relief applications. Many filers who wish to launch a novel type of product in the market have used this process as it maintains the confidentiality of the product offering as the regulatory issues are resolved. For more information on the pre-file process click here.

Review Process for Substantive Changes

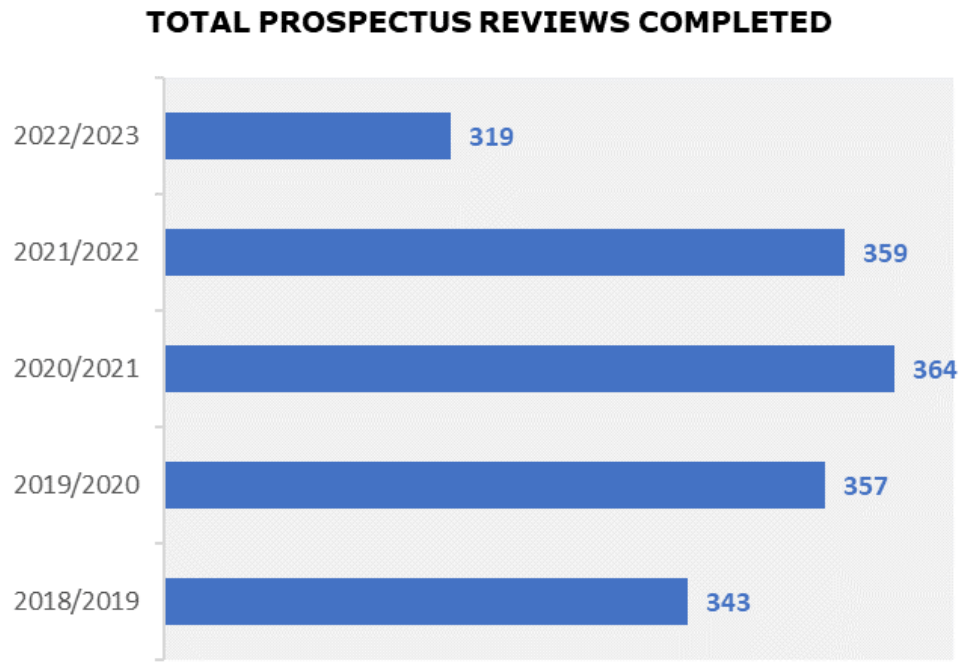
Staff remind IFMs that substantive changes to prospectus disclosure made after a preliminary or *pro forma* prospectus has been filed or cleared for final may cause delays in receiving a receipt for the final prospectus. Delays may occur as staff need to conduct a new review of those changes, and depending on the outcome of that review, may need to reverse the "clear for final" status and issue additional comments. Situations like this may potentially cause lapse date-related issues.

For preliminary prospectuses, consideration will also be given to whether an amended and restated preliminary prospectus will need to be filed. Staff note that such substantive changes to prospectus disclosure will be subject to the same level of review as the disclosure included in the filed preliminary or *pro forma* prospectus. For example, during the fiscal year, staff observed a number of prospectuses in which material ESG related disclosure was added after a preliminary or *pro forma* prospectus was filed or cleared for final. In each case, the additional disclosure was not prompted by comments raised by staff and required additional review time since the additions/revisions were substantive.

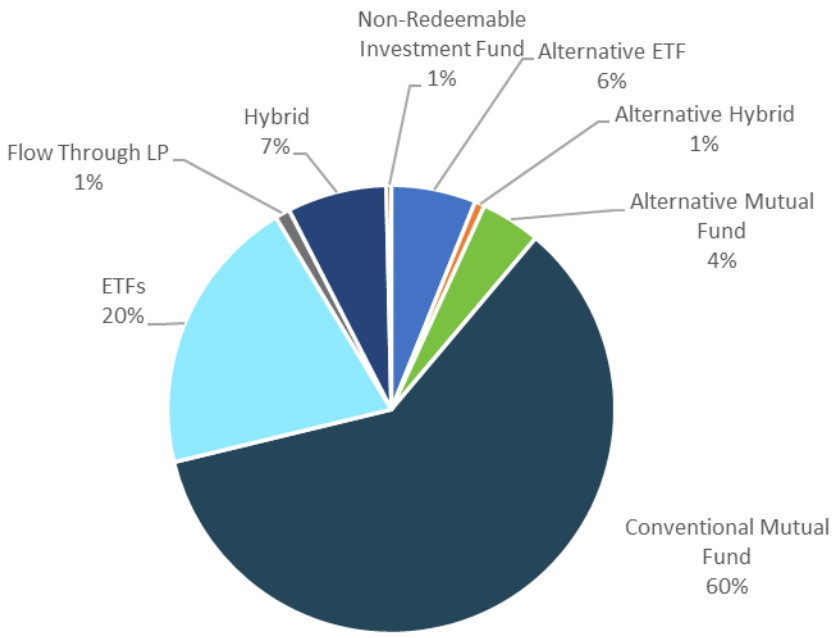
Staff encourage IFMs to file their prospectus amendments and preliminary and *pro forma* prospectuses as early as possible and, if applicable, in advance of their filing deadlines, in order to avoid delays in the prospectus review process.

Data on Prospectus Reviews

Total prospectus filings declined 11% in Fiscal 2023 compared to the previous fiscal year and the total volume was at its lowest level over the last five years. As new fund creations were relatively flat and fund terminations also slowed during Fiscal 2023, the decline in prospectus filings is partly attributable to the continuing consolidation of prospectuses by IFMs. Most of the filings were in the category of standard review for conventional mutual fund and ETF offerings.



DEEP DIVE: BREAKDOWN OF NEW FUNDS RECEIPTED FY2022/2023



[15]

Prospectus Reviews of ESG-Related Funds

During the past fiscal year, staff have continued to review the prospectuses and related documents of funds whose investment objectives reference ESG factors and other funds that use ESG strategies (**ESG-Related Funds**), in accordance with the guidance provided in CSA Staff Notice 81-334 *ESG-Related Investment Fund Disclosure* (the **ESG Staff Notice**), which was published on January 19, 2022 to assist IFMs in improving the disclosure of ESG-Related Funds.

These prospectus reviews have generally been focused on, but are not limited to, the fund's:

- investment objectives and name
- investment strategies
- proxy voting policies and procedures
- risk disclosure
- suitability disclosure

[15] Hybrids are simplified prospectus qualified mutual funds with mutual fund series together with ETF series.

To date, most of the issues raised by staff during these reviews have been in relation to investment strategies disclosure. In particular, most comments have sought to clarify:

- which types of ESG strategies are being used;
- which specific ESG factors are relevant to the portfolio manager's analysis; and
- how such factors are being evaluated and monitored by the portfolio manager.

Staff have also encountered issues relating to the investment strategies disclosure of funds that do not have ESG-related investment objectives but that consider ESG factors, where the consideration of ESG factors plays a more limited role in the investment process. In some cases, we have found that IFMs have included disclosure about how ESG considerations are incorporated into the investment process for their funds, without being clear about the limited role that the consideration of ESG factors and/or the use of ESG strategies plays in the investment process of such funds. For funds where the consideration of ESG factors plays a more limited role, where disclosure is included in their prospectuses about the incorporation of ESG considerations, staff have asked issuers to clarify the limited role that the consideration of ESG factors and/or use of ESG strategies plays in the fund's investment process, including the weight given to ESG factors and the impact that ESG factors will have on the portfolio selection process.

Staff have also raised and resolved issues relating to fund names, investment objectives, ESG risk disclosure, and ESG-related disclosure in the summary of proxy voting policies and procedures. Through these reviews, we have required issuers to improve the prospectus disclosure of ESG-Related Funds, in keeping with the stated purposes of the ESG Staff Notice and the ESG prospectus reviews.

As part of these reviews, staff have also requested and reviewed copies of recent sales communications relating to the funds being reviewed. A discussion of staff's ESG-focused sales communication reviews is included later in this document under the "Reviews of Continuous Disclosure, Sales Communications, and Portfolio Holdings of ESG-Related Funds" heading.

Staff will continue to review the prospectus disclosure of ESG-Related Funds in accordance with the guidance in the ESG Staff Notice.

Noteworthy Prospectus Filings

Some of the novel prospectus filings that were receipted during the fiscal period are summarized below, along with details on any related exemptive relief.

Single Stock ETFs

During the year, IFSP issued final prospectus receipts on behalf of several ETFs that each invest in a single specified U.S. public issuer. The first ETFs were launched in

December 2022 and are based on five large-cap U.S. companies. The fundamental investment objective of each ETF is to link its return to a single specified U.S. issuer. Some of these funds are alternative mutual funds which use a limited amount of leverage through cash borrowing to purchase additional securities of that single issuer. The ETFs received exemptive relief from the concentration restrictions set out in subsections 2.1(1) and 2.1(1.1) of National Instrument 81-102 *Investment Funds* (**NI 81-102**) to permit each ETF to invest in only one single issuer in excess of the investment restrictions contained in those sections.

Decumulation Funds

After a confidential pre-file prospectus application process, two mutual funds were receipted that are targeted to investors in the decumulation phase of their life (i.e., retirement). The two funds have a set term of 20 years, terminating on December 31, 2042:

i. a Decumulation Fund which aims to pay set distributions for the life of the fund and decumulate down to $0 by the termination date; and
ii. the Tontine Trust which aims to provide a tontine payout to surviving unitholders over the course of its last year of operation.

The Tontine Trust utilizes a *tontine feature* to mitigate longevity risk – the risk of outliving one's savings. The Tontine Trust does this by pooling mortality risk across investors and is intended for purchase by investors who are at or nearing retirement. Investors can invest in either of the funds on a stand-alone basis or choose to make a combined investment in both funds, which will aim to provide them a stream of monthly distributions from the Decumulation Fund for 20 years, plus a "longevity hedge" from the Tontine Trust which will make a payout to remaining/surviving unitholders in the last year of operation.

The Tontine Trust is redeemable on demand or death. The fund obtained relief to enable it to pay a redemption price that is less than NAV, which allows the difference between the NAV and the redemption proceeds to be left in the fund for the remaining investors. This amount is eventually paid out when the trust terminates at the 20-year mark.

The decision also permits the fund facts document to include additional information intended to assist investors in understanding the features of the funds and assessing the appropriateness of the funds for their needs.

II. Exemptive Relief Applications

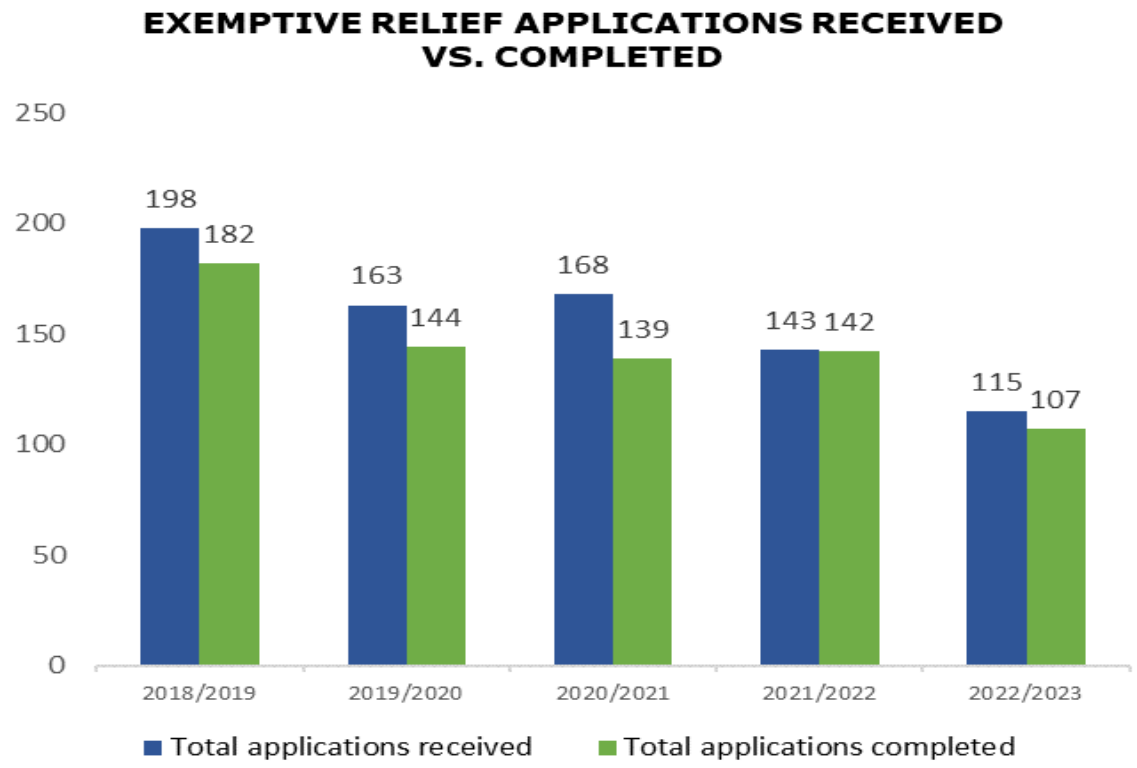
IFSP reviews applications for exemptive relief to determine whether granting the requested relief would not be prejudicial to the public interest and makes a recommendation on that basis. We receive exemptive relief filings that are considered either routine or novel in nature. Routine applications generally mirror a prior decision and contain similar representations and conditions in the decision document as a previous decision. In some cases, routine applications contain changes that would be considered substantive new elements, and these are

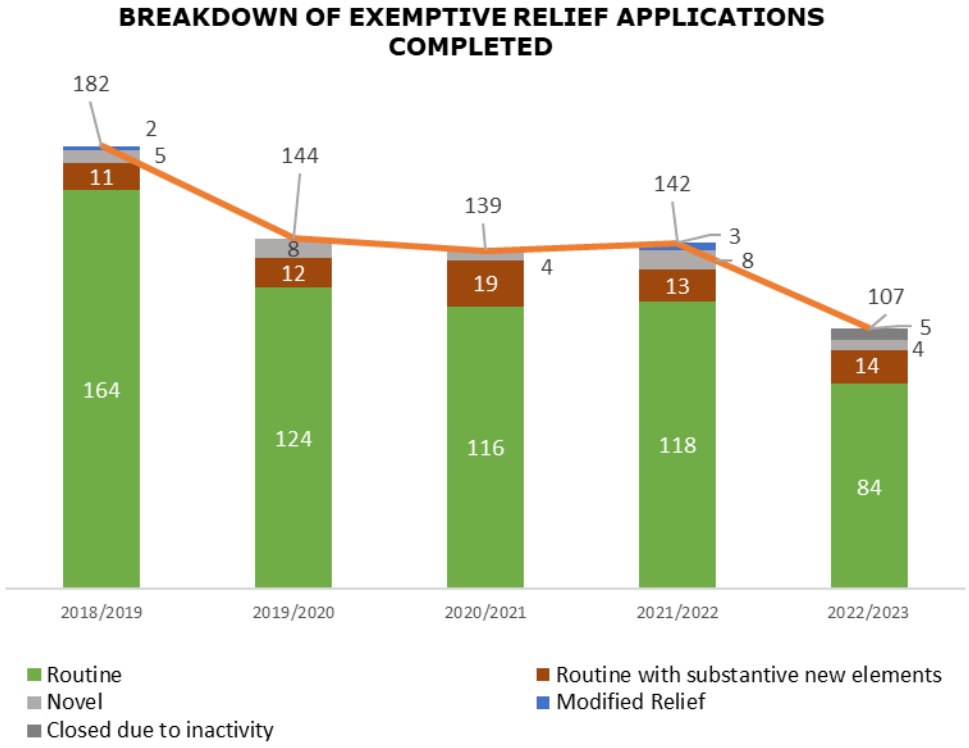
considered based on the fact patterns of the application to determine whether the same or modified conditions of the relief would be appropriate.

Novel applications generally consist of requests for relief that have not previously been granted or that deviate substantially from the fact patterns underlying any prior decisions. These applications generally take longer to review because of their nature and complexity, and we consult with the CSA on all novel applications.

Exemptive relief applications received and completed in Fiscal 2023 compared to the previous fiscal year decreased by 20% and 25%, respectively. This decline in applications was expected due to amendments that came into force in January 2022 as part of our efforts to reduce regulatory burden for investment funds. These amendments included codifying frequently granted exemptions from certain requirements such that IFMs no longer have to apply for exemptive relief in these cases. Consistent with prior years, most of the exemptive relief applications completed were routine in nature, while novel relief applications made up 4% of the applications completed in Fiscal 2023, as compared to 6% in the prior year.

Data on Exemptive Relief Applications





Noteworthy Exemptive Relief Applications

Custody of Physical Battery Metals

In addition to the exemptive relief that was granted in relation to the novel prospectus filings discussed earlier, we also granted exemptive relief from the custodian requirements in part 6 of NI 81-102 in a decision dated October 6, 2022, which permitted a fund to use specified warehouse providers to custody the fund's physical battery metals.

VaR-based Leverage Exposure Limits

Although the OSC was not the principal regulator, staff was engaged on a decision dated February 23, 2023, granting exemptive relief to an alternative mutual fund from the total leverage exposure limits under section 2.9.1 of NI 81-102. The relief was subject to an extensive pre-file review process. The limits in question restrict a fund's combined exposure to derivatives, cash borrowing and short selling to 300% of the fund's NAV, as calculated on a "net notional" basis. The relief permits the fund to exceed this 300% limit, provided that the fund's value-at-risk (**VaR**) exposure, does not exceed 20% of the fund's NAV as measured on an "absolute VaR" basis. VaR is a leverage risk management tool that is commonly used in the alternative fund's space, and both the Undertaking for Collective Investment in Transferable Securities rules in the EU as well as the Investment Company Act (**ICA**) in the U.S., permit funds to use this measure as a leverage risk management tool, particularly for derivatives heavy strategies, within certain parameters detailed

in those rules. The terms of the relief essentially follow the framework in the ICA, which is virtually identical to the EU requirements.

III. Continuous Disclosure Reviews

IFSP regularly conducts reviews of the prospectus and continuous disclosure filings of Ontario-based investment funds. Risk-based criteria are used to select investment funds for reviews of their disclosure documents. We may also choose to conduct targeted reviews of a particular segment, on a particular issue or based on complaints received.

IFSP is analyzing data sources to identify investment fund outliers in key risk areas to conduct focused reviews. A major contributor to this information is the data gathered as part of the annual IFS discussed in Part C of this Report.

Summary of Completed Reviews

Outlined below are the major reviews completed by IFSP during the fiscal period:

Crypto Asset Funds – Review of Continuous Disclosure Documents

With many crypto asset funds having completed their first year of operations, staff conducted an issue-oriented continuous disclosure review on crypto funds which provide exposure exclusively to bitcoin and/or ether. Our review focused on the first set of continuous disclosure documents for the funds' year end of December 31, 2021, or March 31, 2022, as applicable, as well as their recent sales communications, to assess for regulatory compliance. Staff conducted a review of 16 crypto funds managed by the seven IFMs for which Ontario is principal regulator. We issued comment letters to the funds on areas such as valuation, liquidity risk management, crypto trading platforms, as well as other continuous disclosure obligations.

In June 2022, staff became aware of significant redemptions in two crypto ETFs holding bitcoin managed by two separate IFMs, resulting in an approximate reduction of 61% and 38%, respectively, in units outstanding from May 30, 2022. Staff expanded our review scope and made additional inquiries regarding these redemptions. Staff confirmed with the IFMs that the funds were able to meet the redemption requests as part of their normal operating processes, and no investor complaints regarding these large redemptions were received. All redeemed units were paid in cash with settlement on the next business day. The funds did not need to borrow to meet the redemption requests and were able to sell large quantities of crypto assets at the price that was used to value the fund per their respective valuation index.

We also noted that crypto markets relating to bitcoin and ether appear to be liquid, and the crypto funds have not experienced operational disruptions in light of recent volatility in the crypto market. We did not note any significant findings during the review.

Crypto Asset Funds – Custody of Assets

Prompted by the failure of FTX and consistent with the significant work being done on crypto-asset regulation and investor protection, we also commenced an issue-oriented review focused on custody for funds that primarily hold crypto assets. The reviews have focused primarily on the safety of the funds' crypto assets held at the custodian, in particular issues surrounding ownership, segregation of fund assets and the custodial/sub-custodial structure and the effects of the failure of FTX, if any. Furthermore, as part of the reviews, staff have reached out to the funds' auditors to get a better understanding of their audit processes and procedures concerning custody of the funds' assets. The foregoing work is being completed in collaboration with other branches of the OSC that have similar concerns in areas they oversee as it relates to crypto assets.

CSA Staff Notice 81-336 *Guidance on Crypto Asset Investment Funds that are Reporting Issuers* was published on July 6, 2023, to help IFMs understand and comply with securities law requirements for public investment funds holding crypto assets. The results of the custody review are also included therein.

Reviews of Continuous Disclosure, Sales Communications, and Portfolio Holdings of ESG-Related Funds

Following the publication of the ESG Staff Notice in 2022, in addition to the prospectus reviews described previously under "Prospectus Reviews of ESG-Related Funds", staff also began conducting reviews of the continuous disclosure, sales communications, and portfolio holdings of ESG-Related Funds in accordance with the guidance in the ESG Staff Notice. These reviews have been focused on:

- evaluating ESG-related periodic reporting in management reports of fund performance (**MRFPs**) and on fund websites, particularly with regard to changes in investment portfolio composition, progress in meeting ESG-related investment objectives, and outcomes of ESG-related proxy voting and shareholder engagement activities;
- identifying whether the funds being reviewed are holding investments that should be excluded from their portfolios due to the negative screening criteria set out in their own investment strategies prospectus disclosure or that may be considered inconsistent with the ESG values of the fund (e.g., a green fund that has exposure to fossil fuel companies) and addressing such holdings, where necessary;
- identifying whether ESG-Related Funds have voted against ESG-related shareholder proposals, and if so, whether such votes were consistent with the IFM's proxy voting guidelines, and addressing such votes, where necessary;
- reviewing sales communications and websites of both the funds being reviewed and their respective IFMs to ensure they do not include statements that conflict with a fund's regulatory offering documents and are not untrue or misleading; and

- where IFMs indicate in their sales communications and/or regulatory offering documents that their funds incorporate ESG considerations into their investment process, identifying whether IFMs have policies and procedures relating to the incorporation of such considerations and addressing the absence of such policies and procedures, where necessary.

During these reviews, issues have been raised and addressed in relation to all of the above-noted areas.

Where issues have been identified in relation to website disclosure or other sales communications that were misleading or in conflict with the regulatory offering documents of a fund: (i) the sales communication was removed or revised as needed; and/or (ii) the prospectus disclosure was updated to resolve the conflicting information in the sales communication. In certain cases where corrections to an IFM's website have been made at the request of staff in the course of these reviews, staff have applied the process set out in OSC Staff Notice (Revised) 51-711 *Refilings and Corrections of Errors* (**SN 51-711**). In particular, staff have requested the issuance of a news release by the IFM in relation to such corrections and added the applicable investment fund issuers to the OSC's Refilings and Errors List. As noted in the IFSP eNews publication entitled "Use of Refilings and Errors List for corrections to continuous disclosure filings, website and social media" dated January 27, 2023, IFMs are reminded that any deficiency for an investment fund issuer that is identified during a staff review and that leads to corrective disclosure to continuous disclosure filings, the investment fund's website or its social media may result in staff putting the investment fund issuer on the Refilings and Errors List in accordance with the process set out in the SN 51-711.

Staff will continue to review the continuous disclosure, sales communications, and portfolio holdings of ESG-Related Funds in accordance with the guidance in the ESG Staff Notice.

Burden Reduction: New Simplified Prospectus Page Length Reduction

On October 7, 2021 the CSA published final amendments that implement eight initiatives to reduce regulatory burden for investment funds. The changes eliminated duplicative requirements, streamlined regulatory approvals and processes, and codified frequently granted exemptions from certain requirements. These amendments completed the first stage of the CSA's initiative to reduce the regulatory burden on investment fund issuers.

One of these initiatives was the consolidation of the simplified prospectus (**SP**) and the annual information form (**AIF**) for mutual funds by way of a revised Form 81-101F1 Contents of Simplified Prospectus (**Form 81-101F1**). The Form 81-101F1 amendments came into force on January 6, 2022, resulting in investment funds in continuous distribution only needing to file a single streamlined document annually. While an exemption from the new requirements was available in certain circumstances for a limited period of time, that period has since passed.

Based on 50 of the first SP filings that used the revised Form 81-101F1 (30 pro forma, and 20 combined preliminary and pro forma), IFSP staff observed that the page length of SPs prepared using the revised form declined from the combined page length of the SP and AIF documents that were filed the year prior. Staff observed a 25% drop in average page length for the pro forma SP filings (from 158 to 119 pages), and a 19% drop in average page length for the combined preliminary and pro forma SP filings (from 242 to 195 pages). This was despite the average number of mutual funds in the pro forma SPs remaining consistent at about 19 over the two years of filings, and the average number of mutual funds in the combined preliminary and pro forma SPs increasing from 40 to 43. The results of this observation provide quantitative confirmation of the reduced regulatory burden arising from the amendments to consolidate the SP and AIF.

Independent Review Committee

IFSP staff performed a targeted continuous disclosure review focused on National Instrument 81-107 *Independent Review Committee for Investment Funds* (**NI 81-107**). The review covered investment funds managed by 20 IFMs ranging in assets under management from $200 million to over $100 billion and was comprised of both a desk review of fund prospectuses, IRC Reports to Securityholders and IFM websites, as well as letters sent to IRC Chairs and IFMs. This review addressed several themes including, the scope of IRC oversight, term limits of IRC members, IRC diversity, inclusion and size, skills and competencies of IRC members and compensation of IRC members. Staff are working with another CSA jurisdiction and are considering a potential publication of staff guidance and observations based on the review.

Change of Auditor Notifications

The auditor of an investment fund reporting issuer provides an independent opinion on whether the financial statements of the issuer are presented fairly, in all material respects, in accordance with accounting standards. Due to the significant role of the auditor in the financial statements, IFSP staff review change of auditor notifications for investment fund reporting issuers on a quarterly basis. The review includes the change of auditor notification provided by the IFM, the letter from the former auditor and the letter from the successor auditor which are filed on SEDAR in accordance with Part 13 of NI 81-106 and National Instrument 51-102 *Continuous Disclosure Obligations*. For the fiscal year, the review covered 611 investment funds managed by 10 IFMs that filed a change of auditor notification. IFMs generally complied with their reporting obligations, and we remind issuers of their obligations upon the termination or resignation of an auditor, including the requirement to prepare a change of auditor notice and include information on any reportable events.

Reports of Exempt Distributions

Many investment funds are sold to Ontario investors under a prospectus exemption, the most common being the accredited investor exemption under section 2.3 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**). The Form 45-106FI Report of Exempt Distribution (**45-106FI**) is required to be filed with the

OSC under NI 45-106 and the most recent Exempt Distribution Summary can be found on the OSC website. For investment funds, the 45-106F1 is required to be filed no later than 30 days after the end of the calendar year in which the distribution took place.

Typically, most 45-106FI submissions related to investment funds are received in the month of January. The 45-106FI submissions are reviewed to ensure that the activity and late fees, if applicable, have been paid, and to ensure that the 45-106FI information reconciles with the detailed information in the Schedule 1 contained therein. Any issues in the submissions are flagged for follow up.

A summary of the top six flags for the period January to March 2023 are shown below, along with the percentage of the total filings during this period that were flagged:

Nature of Flag	Incidence Rate
Activity fee owing[16]	48.60%
Number of Ontario purchasers differs between 45-106F1 and Schedule 1	20.79%
Incorrect issuer information	9.87%
Late fee owing	6.83%
Purchaser information – Distribution amount differs between 45-106F1 and Schedule 1	5.43%
Distribution dates on 45-106F1 and Schedule 1 do not match	4.44%

Staff remind IFMs who offer exempt funds to ensure that the 45-106F1s are filed in a timely manner to avoid late fees, to include the appropriate activity fee payment and to ensure that the information contained on the 45-106F1 reconciles with the information reported in the detailed Schedule 1. Issuers have an obligation under securities law to meet their reporting obligations and IFMs must comply with these requirements on behalf of their funds.

Standard Continuous Disclosure Reviews

IFSP staff conduct standard continuous disclosure reviews of a sample of filings including annual and interim financial statements, annual reports and annual and interim MRFPs filed on SEDAR. The objective of these reviews is to determine whether issuers are complying with their disclosure obligations under NI 81-106

[16] These filings were flagged as being outstanding at the time of filing the 45-106F1. However, many filers prefer to pay for all their submissions together as one bulk payment by cheque and/or wire transfer after the submissions. These bulk payments were then manually reconciled to the individual submission to resolve most of the flags, and invoices were generated for the remainder to collect payment.

and that the filings are made in a timely manner. The samples are randomly selected based on risk areas which are comprised of material changes, change of auditor, new reporting issuers and issuers with a previous continuous disclosure review issue. During Fiscal 2023, 217 funds across 49 IFMs were selected for review and there were no significant findings.

Investment Fund Exposure to European Bank Contingent Convertible Bonds and U.S. Banking Sector

In light of recent events surrounding the Credit Suisse AT1 bond write downs and possible contagion effects to the European banking sector, staff have been engaged with the CSA Systemic Risk Working Group in monitoring developments and their impact to the Canadian financial system. IFSP staff have been analyzing European bank exposure to Canadian investment funds and based on preliminary assessments from holdings data, this exposure appears to be relatively immaterial in relation to the over $2.3 trillion investment fund industry. Staff have also been actively engaged in monitoring developments in the U.S. banking sector, in particular, recent bank failures by Silicon Valley Bank and Signature Bank, and its exposure to Canadian investment funds as well.

Staff continues to actively monitor key global market developments and their effects on the Canadian investment fund market.

Marketing Materials

Consistent with the prior year, we have performed ad hoc reviews of marketing materials in response to complaints. In Fiscal 2023, most of the complaints dealt with insufficient disclosure on social media platforms like Facebook, Twitter, and LinkedIn. Content limitations with these types of media may prevent IFMs from providing clear, accurate and balanced messages which are necessary when these meet the definition of a sales communication under NI 81-102. Part 15 of NI 81-102 outlines the requirements related to sales communications and Part 5 of OSC Staff Notice 81-720 *Report on Staff's Continuous Disclosure Review of Sales Communications by Investment Funds* provides additional guidance when the sales communication is presented through alternative media. The guidance states that "Staff expect that all information, including disclaimers, should be easily comprehensible to the retail investor on their first viewing of the advertisement." The required warning language in section 15.4 of NI 81-102 should not be more than one click away when using alternative media. These principles should be applied to both the IFM's social media accounts, and those of its employees where they are using their personal platforms such as LinkedIn to market specific funds or performance. IFMs should review the use of personal social media with their employees who use their accounts to market investment funds to ensure that all information presented complies with Part 15 of NI 81-102, including the required warning language, appropriate performance data measurement periods and is not misleading. IFMs should also ensure that they have adequate policies and procedures related to the use and monitoring of social media, and that training is provided to employees where necessary.

Part B: Regulatory Policy

Modernization of the investment funds' regulatory regime and burden reduction continue to be at the forefront of IFSP's policy initiatives affecting investment funds. As always, feedback from stakeholders, including investors, is a critical part of rule making. Unless an exception to the notice requirement applies, the OSC is required to publish proposed rules for public comment which is generally a 90-day period.

This section details the major policy initiatives that were completed or were ongoing during Fiscal 2023:

Access Based Model for Investment Fund Reporting Issuers

On September 27, 2022 the CSA published for comment CSA Notice and Request for Comment - *Proposed Amendments and Proposed Changes to Implement an Access-Based Model for Investment Fund Reporting Issuers*. The proposed amendments will modernize existing delivery practices for investment fund continuous disclosure documents by increasing online availability and accessibility, which recognizes increased investor preference for accessing information electronically. This means investors will have access to information in a timely and environmentally friendly manner while also retaining the option to request documents in the form, paper or electronic, to best suit their needs. Investment funds will benefit from reduced long-term costs and regulatory burden without impacting investor protection. The proposed amendments only apply to investment funds that are reporting issuers and will result in amendments to NI 81-106 and National Instrument 81-101 *Mutual Fund Prospectus Disclosure* to replace the current delivery requirements for investment fund financial statements and management reports of fund performance with an "access-based model".

Comments on the proposed amendments were due December 26, 2022. We received 23 comments which are currently being reviewed by the CSA.

Investment Fund Settlement Cycle

On December 15, 2022, the CSA published CSA Staff Notice 81-335 *Investment Fund Settlement Cycles*. This notice advises that the CSA is not proposing amendments to sections 9.4 and 10.4 of NI 81-102 to mandate a shorter settlement cycle one day after the date of the trade (T+1) for mutual funds. This allows investment funds to have flexibility to determine whether a shorter settlement cycle is appropriate for the fund.

Concurrently, the CSA published for comment proposed amendments to National Instrument 24-101 *Institutional Trade Matching and Settlements* (**NI 24-101**). Among other things, these amendments focus on facilitating the shortening of the standard settlement cycle for equity and long-term debt market trades in Canada from two days after the date of a trade to T+1. Where practicable, mutual funds

should settle primary distributions and redemptions of their securities on T+1 voluntarily. In March 2023, in connection with the publication for comment of NI 24-101, we received public comments about the guidance in the CSA staff notice 81-335. We are in the process of considering those comments.

Proposed Modernization of the Prospectus Filing Model

On January 27, 2022, the CSA published for comment a proposal to modernize the prospectus filing model for investment funds for a 90 day comment period. The proposed amendments will allow investment funds in continuous distribution to file a new prospectus every two years instead of on an annual basis as they currently do. The requirement to file a final prospectus no more than 90 days after the issuance of a receipt for a preliminary prospectus for all investment funds would also be repealed. This policy project is ongoing and is expected to be finalized in the next fiscal period.

Modernization of Continuous Disclosure Documents

The CSA is currently reviewing investment fund continuous disclosure requirements for opportunities to modernize key elements of the regime, such that they are more effective for investors to review and less burdensome for investment funds to produce. A significant focus area is the MRFP. The CSA has contracted with a behavioural insight consulting firm to incorporate best practices for investor comprehension of financial disclosures into a proposed redesign of the MRFP, a key investor communication document. The CSA also engaged the firm to carry out a survey to Canadian retail investors with respect to their continuous disclosure preferences, and to undertake rigorous investor testing to quantitatively assess the impact of any proposed modifications to the MRFP.

The investor testing work was completed in early 2023. The results of the testing are currently under review and will feed into the project working group's consideration of proposed changes.

Review of Principal Distributor Practices

The CSA is reviewing the practices of mutual funds that have principal distributor relationships with registrants to distribute their securities. The first phase of the CSA's review included surveying IFMs and principal distributors about the scope of their arrangements. On September 8, 2022, the survey was sent to IFMs identified as using a principal distributor, with a due date of October 14. The CSA working group reviewed the IFM responses and met with certain IFMs in January 2023 with follow-up questions.

On November 10, 2022, a survey was also sent to principal distributors for the IFMs identified in the September survey, and the deadline for completion was December 15. The CSA working group is currently reviewing the survey responses which will provide a better understanding of current mutual fund sales practices and distribution structures. This will help guide the CSA to determine whether

regulatory amendments to National Instrument 81-105 *Mutual Fund Sales Practices* or other instruments are needed.

Part C: Emerging Issues and Initiatives Impacting Investment Funds

There were several initiatives ongoing during the year which will affect investment funds on a go forward basis, as many of these came into effect after the end of Fiscal 2023.

Changes to OSC Fees Rule

Amendments to OSC Rule 13-502 *Fees* (**Rule 13-502**) came into force on April 3, 2023. The following is a summary of the amendments that are relevant to investment fund issuers:

- Late Fees on Covered Documents (e.g., annual and interim financial statements, annual information forms)
    - Change in the method of calculating the late fee from business days to calendar days such that the late fee is assessed for every day in the year following the date a Covered Document was required to be filed until the date the form is filed, to a maximum of $5,000 for the year.
    - The maximum late fee payable for each Covered Document is attributable to an affiliated entity and not just a single issuer, such that the maximum late fee paid, for a Covered Document, by an investment fund and attributable to a year is deemed to have been paid by one or more investment funds that have the same IFM or IFMs that are affiliates of each other and each of those investment funds has failed to file the same type of Covered Document due by the same date.

- Amendments relating to exempt distributions under NI 45-106
    - The filing fees for a 45-106F1 for a distribution of securities of an issuer under an exemption from the prospectus requirement, is reduced from $500 to $350.
    - Change in the method of calculating the late fee from business days to calendar days, such that the late fee is assessed for every day in the year following the date the form was required to be filed until the date the form is filed, to a maximum of $5,000 for the year.
    - The maximum late fee payable is attributable to an affiliated entity and not just a single issuer, such that the maximum late fee paid for a 45-106F1 by an investment fund and attributable to a year is deemed to have been paid by one or more investment funds that have the same IFM or IFMs that are affiliates of each other and each of those investment funds has failed to file a 45-106F1 due by the same date.

Transition to SEDAR+

During Fiscal 2023, IFMs were busy preparing for the transition to SEDAR+ which went live on July 25, 2023. The CSA adopted National Instrument 13-103 *System for Electronic Data Analysis and Retrieval* + which requires that filers transmit

electronically through SEDAR+ each document required or permitted to be filed with or delivered to a securities regulatory authority under securities legislation. Accordingly, SEDAR+ will be used by all market participants to file, disclose and search for public issuer information in Canada's capital markets.

SEDAR+ brings changes for IFMs who are now required to have a profile in SEDAR+, against which investment fund documents are filed. Each investment fund will also have its own independent profile on SEDAR+.

Cessation of Canadian Dollar Offered Rate

The CSA is encouraging market participants to prepare for the upcoming cessation of the Canadian Dollar Offered Rate (**CDOR**). CDOR is a domestically important interest rate benchmark that is used by market participants across a wide range of financial products and contracts, including derivatives, bonds and loans.

On May 16, 2022, Refinitiv Benchmark Services (UK) Limited (**RBSL**), the administrator of CDOR, announced that CDOR will cease publication after June 28, 2024. The OSC and the Autorité des marchés financiers, as co-lead authorities for RBSL and CDOR, authorized the cessation.

CSA Staff Notice 25-309 *Matters Relating to the Cessation of CDOR and Expected Cessation of Bankers' Acceptances* was published on February 28, 2023. The notice provides market participants with information about certain developments and transition issues regarding the upcoming cessation, including the expected related cessation of the issuance of Bankers' Acceptances (**BA**s) and its impact on money market funds. Due to the popularity of BAs as a short-term money market instrument, money market funds will need to find suitable alternatives to BAs.

Money market mutual funds seeking to use alternative short term investment products to BAs may need exemptive relief from certain provisions in NI 81-102. We remind IFMs that novel applications for exemptive relief take longer to process than routine applications and there is no assurance that exemptive relief will be granted. IFMs should start to consider the impact on their money market funds of this loss of BAs as a money market instrument and consider what action, if any, will be required.

Investment Fund Survey

On January 11, 2023, the OSC launched the 2023 IFS, which like prior years seeks data points including, but not limited to, fund size, type of holdings (by geography and asset class), leverage, ownership, liquidity profiles and asset class exposure of investment funds. The deadline to submit this information was April 28, 2023, and the OSC received data on approximately 5,700 prospectus-qualified and exempt investment funds managed by more than 400 IFMs as part of this exercise.

The IFS was initially launched on April 26, 2021, to seek key information about investment funds with at least $10 million in net assets managed by IFMs

registered in Ontario. The objective of the IFS is to collect comprehensive fund-level data that will enable us to generate new insights into the Canadian investment fund industry. The data gathered is also shared with both domestic and international regulatory partners.

During Fiscal 2023, the OSC initially published survey results from the first two IFSs which collected data for the years ended 2020 and 2021. In September 2023, the OSC began sharing the historic survey results of the IFS via a Tableau public dashboard which can be found on the OSC Investment Fund Survey data landing page.

The IFS results will be updated annually as new data is collected from IFMs. In publishing the data in this manner, our intent is to promote greater transparency in a way that protects IFM confidentiality and greater usability of the aggregated data by stakeholders, while delivering on the OSC's mandate of contributing to financial stability.

Staff is consistently looking to streamline the IFS with other regulatory filings, such as the RAQ, to reduce regulatory burden while maintaining comprehensive oversight of the Canadian investment fund industry and to perform key regulatory functions within the OSC's mandate.

Accordingly, for the January 2024 version of the IFS, staff intend to amend the IFS as follows:

- IFMs registered in Ontario will be required to complete the IFS for all investment funds for which they act as the IFM, including labour-sponsored investment funds and scholarship plans as well as those funds with net assets under $10 million;

- require that IFMs report the following for each investment fund:
    - the annual net performance returns;
    - the management expense ratio;
    - the performance fees charged, if any;
    - the fund Risk Rating.

Cybersecurity Breaches

The increased dependency by IFMs on technology in their fund operations and the growing sophistication of cyber criminals has made cybersecurity threats a valid concern. IFMs generally include cybersecurity risk disclosure under the "What are the Risks of Investing in the Fund" section of the prospectus to alert investors of the potential threat of cybersecurity attacks. IFMs are also required to establish, maintain and apply policies and procedures that establish a system of controls and supervision sufficient to manage the risks associated with their business in accordance with prudent business practices as per paragraph 11.1(b) of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**). Further, where certain functions are outsourced to

service providers, part 11 of the Companion Policy to NI 31-103 indicates that firms are responsible for all functions that they outsource to a service provider and must conduct adequate due diligence of such providers, including an assessment of their internal controls and where appropriate, disaster recovery capabilities. IFMs (and other registrants) may refer to CSA Staff Notice 33-321 *Cyber Security and Social Media* which provides guidance to firms on their cybersecurity policies and procedures.

We encourage IFMs to conduct periodic risk assessments to identify and strengthen vulnerabilities related to cybersecurity and evaluate the effectiveness of incident response and communication plans with impacted fund securityholders. While there is no requirement for IFMs to report cybersecurity breaches to the CSA, this should be considered based on the magnitude of the breach. There may also be other reporting obligations to privacy commissioners under federal or provincial laws. We encourage IFMs to take all reasonable steps to respond to a cybersecurity breach in a timely and diligent manner, including notifying impacted clients and applicable regulators such as the OSC, particularly where clients' information and assets are at risk, or where the breach could impact multiple funds or IFMs due to shared software or a common service provider.

Part D: Stakeholder Outreach

IFSP supports and encourages regular engagement and communication with our stakeholders to provide education and make improvements on our regulatory processes. The following are key IFSP outreach initiatives for our stakeholders:

IFSP Landing Page on OSC Website

The IFSP landing page of the OSC website contains information relevant for investment fund issuers and their respective IFMs. This is a good resource to obtain information on the following areas:

- Types of investment funds
- Prospectus offerings for investment funds in Ontario
- Operating an investment fund in Ontario
- Ongoing disclosure requirements for investment funds in Ontario
- Marketing and sales of investment funds
- IFSP eNews publications
- Applying for discretionary relief
- Investment fund survey
- Investment fund survey data
- Refiling and Errors List
- Latest policy developments affecting investment funds
- Latest orders, rulings and decisions involving investment funds

IFSP eNews

IFSP eNews is a web-based publication which aims to provide timely information about regulatory news and issues to investment fund and structured product issuers and their advisors in the form of articles published on a timely, as-needed basis. IFSP eNews articles are posted on a dedicated page on the OSC website, while IFSP branch email list subscribers also receive each eNews article via an e-mail blast. Registration for email subscription can be done here. Articles that remain relevant from the discontinued Investment Funds Practitioner are now included in the list of IFSP eNews articles.

During the fiscal year, we published several eNews articles:

April 6, 2022: IFSP Branch calls for comments on IOSCO ETF good practices consultation report

May 19, 2022: Review process for substantive changes made subsequent to filing or "clear for final" of preliminary or pro forma prospectuses

May 27, 2022: Notice and reporting requirements for Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers

September 9, 2022: Results of annual investment fund survey

October 18, 2022: IFSP Branch encourages stakeholders to respond to IOSCO survey on index provider conduct

January 27, 2023: Use of Refilings and Errors List for corrections to continuous disclosure filings, websites and social media

Investment Funds Technical Advisory Committee

The Investment Funds Technical Advisory Committee (**IFTAC**) provides an opportunity for stakeholders to engage with the OSC to further effective regulation in the investment funds and structured products space. The IFTAC advises OSC staff on technical compliance challenges in the investment funds product regulatory regime and highlights opportunities for improving alignment between investor, industry, and regulatory goals.

IFTAC meets four times a year with members participating for two-year terms.

Topics discussed by IFTAC over the past year included:

- ESG
- Transition from T+2 to T+1 settlement in Canada and the U.S.
- Statutory liability for ETFs – consultation on the Capital Markets Act
- Investment restrictions, hedging and securities lending
- Blockchain technology and fund distribution

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Contact Information

Ontario Securities Commission

Inquiries and Contact Centre

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416-593-8314 (Local)

inquiries@osc.gov.on.ca

The OSC Inquiries & Contact Centre operates from 8:30 a.m. to 5:00 p.m. Eastern Time, Monday to Friday, and can also be reached on the Contact Us page on the OSC website.

You may also refer to the OSC Phone Directory on the OSC website to contact staff members from other branches and offices at the OSC.

If you have questions or comments about this Report, please contact:

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B.1.2 Notice of Ministerial Approval of Amendments to Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators and Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators related to Commodity Benchmarks

NOTICE OF MINISTERIAL APPROVAL OF AMENDMENTS TO MULTILATERAL INSTRUMENT 25-102 *DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS* AND ONTARIO SECURITIES COMMISSION RULE 25-501 (COMMODITY FUTURES ACT) *DESIGNATED BENCHMARKS AND BENCHMARK ADMINISTRATORS* RELATED TO COMMODITY BENCHMARKS

September 14, 2023

Ministerial Approval

The Ontario Minister of Finance recently approved amendments to the following rules:

- Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators*; and
- Ontario Securities Commission Rule 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (collectively, the **Amendments**).

The Amendments will implement a comprehensive regime for the designation and regulation of commodity benchmarks and persons or companies that administer such benchmarks.

The Amendments, as well as changes to Companion Policy 25-102 *Designated Benchmarks and Benchmark Administrators* and Companion Policy 25-501 (Commodity Futures Act) *Designated Benchmarks and Benchmark Administrators* (collectively, the **CP Changes**), were published in the Bulletin on June 29, 2023. The same material is being published today in Chapter 5 of this Bulletin.

Effective Date

The Amendments and the CP Changes will become effective on September 27, 2023.

Questions

Please refer your questions to either of the following:

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Melissa Taylor
Senior Legal Counsel, Corporate Finance
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B.1.3 Notice of Coming into Force of Amendments to National Instrument 14-101 Definitions and Consequential Amendments

NOTICE OF COMING INTO FORCE OF AMENDMENTS TO
NATIONAL INSTRUMENT 14-101 *DEFINITIONS* AND CONSEQUENTIAL AMENDMENTS

September 14, 2023

On September 13, 2023, pursuant to section 143.4 of the *Securities Act* (Ontario), the following amendments came into force:

- National Instrument 14-101 *Definitions*;
- National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*;
- National Instrument 33-109 *Registration Information*;
- National Instrument 45-106 *Prospectus Exemptions*;
- National Instrument 62-103 *The Early Warning System and Related Take-Over Bid and Insider Reporting Issues*;
- National Instrument 81-102 *Investment Funds*;
- National Instrument 94-102 *Derivatives: Customer Clearing and Protection of Customer Collateral and Positions*;
- Ontario Securities Commission Rule 14-501 *Definitions*; and
- Ontario Securities Commission Rule 45-501 *Ontario Prospectus and Registration Exemptions* (collectively, the **Amendments**).

In connection with the Amendments, the Ontario Securities Commission also adopted changes (the **Policy Changes**) to Companion Policy 52-107CP *Acceptable Accounting Principles and Auditing Standards*. The Policy Changes came into effect on September 13, 2023.

The Amendments and Policy Changes were published in the Bulletin on June 15, 2023 at **(2023), 46 OSCB 5076** and on the OSC website at www.osc.ca.

The text of the Amendments and Policy Changes is published in B.5 of this Bulletin.

B.1.4 CSA Staff Notice 11-346 Withdrawal of Staff Notices

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA STAFF NOTICE 11-346
WITHDRAWAL OF STAFF NOTICES

September 14, 2023

This notice formally withdraws a number of CSA staff notices. In general, the withdrawn material will remain available for historical research purposes on the CSA members' websites that permit comprehensive access to CSA notices.

Staff of the members of the CSA have reviewed a number of CSA staff notices. They have determined that some are outdated, no longer relevant or no longer required. The following CSA staff notices are therefore withdrawn, in the applicable CSA jurisdictions in which they have not already been withdrawn, effective immediately.

CSA Staff Notices

21-313	*Information Processor for Exchange-Traded Securities other than Options*
21-324	*Information Processor for Exchange-Traded Securities other than Options*
23-318	*Withdrawal of Proposed Amendments Regarding Best Execution Disclosure Under National Instrument 23-101 Trading Rules*
23-322	*Trading Fee Rebate Pilot Study*
24-310	*Status Update on Proposed Local Rules 24-503 Clearing Agency Requirements and Related Companion Policies*
31-317	*(Revised) Reporting Obligations Related to Terrorist Financing*
45-328	*Update on Amendments relating to Syndicated Mortgages: National Instrument 45-106 Prospectus Exemptions and National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Changes to Companion Policy 45-106CP Prospectus Exemptions and Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations*
51-360	*(Updated) Frequently Asked Questions Regarding Filing Extension Relief Granted by Way of a Blanket Order in Response to COVID-19*
51-404	*Considerations for Reducing Regulatory Burden for Non-Investment Fund Reporting Issuers*
54-303	*Progress Report on Review of the Proxy Voting Infrastructure*
54-304	*Final Report on Review of the Proxy Voting Infrastructure and Request for Comments on Proposed Meeting Vote Reconciliation Protocols*

Questions

Please refer your questions to any of the following people:

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B.2
Orders

B.2.1 Absolute Software Corporation

Headnote

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

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

Applicable Legislative Provisions

Securities Act, R.S.B.C. 1996, c. 418, ss. 88.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

Citation: 2023 BCSECCOM 434

September 5, 2023

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

AND

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

AND

IN THE MATTER OF
ABSOLUTE SOFTWARE CORPORATION
(the Filer)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in each of the provinces and territories of Canada other than British Columbia and Ontario; and

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2023/0355

B.2.2 Acerus Pharmaceuticals Corporation

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications and National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – application for order that issuer is not a reporting issuer and for full revocation of failure-to-file cease trade order – issuer cease traded due to failure to file annual audited financial statements and annual management's discussion and analysis and related certifications – issuer has completed reorganization under the Companies' Creditors Arrangement Act – issuer has applied for a full revocation of the cease trade order – issuer has applied to cease to be a reporting issuer in each jurisdiction where it is a reporting issuer – full revocation of the failure-to-file cease trade order and cease to be reporting issuer application granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(10)(a)(ii) and 144.
National Policy 11-206 Process for Cease to be a Reporting Issuer Applications.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
ONTARIO

AND

IN THE MATTER OF
A REVOCATION OF A FAILURE-TO-FILE CEASE TRADE ORDER AND
THE PROCESS FOR CEASE TO BE A REPORTING ISSUER APPLICATIONS

AND

IN THE MATTER OF
ACERUS PHARMACEUTICALS CORPORATION
(the Issuer)

Background

1. The Issuer is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission (the **Principal Regulator**) on April 6, 2023.

2. The Issuer has applied to the Principal Regulator under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (**NP 11-207**) for a revocation of the FFCTO (**FFCTO Revocation Order**) pursuant to section 144 of the *Securities Act* (Ontario) (the **Legislation**).

3. The Principal Regulator also received an application from the Issuer for an order (the **Cease to be a Reporting Issuer Order**) under section 1(10)(a)(ii) of the Legislation that the Issuer has ceased to be a reporting issuer in all jurisdictions of Canada in which it is a reporting issuer pursuant to section 21 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* (**NP 11-206**).

4. Under the Process for Cease to be a Reporting Issuer Application (for a passport application):

   (a) The Principal Regulator is the principal regulator for the application; and

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

Interpretation

5. Terms defined in National Instrument 14-101 *Definitions,* NP 11-206, NP 11-207 and MI 11-102 have the same meaning if used in this order, unless otherwise defined.

Representations

6. This decision is based on the following facts represented by the Issuer:

(a) The Issuer is a "reporting issuer" in the provinces of Ontario, Alberta, British Columbia, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador (the **Reporting Jurisdictions**).

(b) The Issuer was incorporated under the *Business Corporations Act* (Ontario) on July 15, 2009 as J5 Acquisition Corp. In July 2011, the Issuer completed a qualifying transaction and renamed itself Trimel Pharmaceuticals Corporation and its shares were de-listed from the TSX Venture Exchange and relisted for trading on the Toronto Stock Exchange (the "TSX"). In September 2015, the name of the Issuer was changed to Acerus Pharmaceuticals Corporation.

(c) The Issuer's registered and head office is located at 7025 Langer Drive, Suite 205, Mississauga, Ontario.

(d) In light of ongoing financial difficulties, the Issuer and its subsidiaries (the **Acerus Group**) filed for creditor protection under the *Companies' Creditors Arrangement Act* (**CCAA**) and received an order (the **Initial Order**) for creditor protection under the CCAA from the Ontario Superior Court of Justice (Commercial List) (the **Court**) on January 26, 2023 (the **CCAA Proceedings**).

(e) Pursuant to the Initial Order, the Court, *inter alia*, appointed Ernst & Young Inc. as monitor (in such capacity, the **Monitor**) of the Acerus Group under the CCAA Proceedings and authorized the Issuer to obtain an interim debtor-in-possession loan from First Generation Capital Inc. (**First Generation**) in order to fund the CCAA Proceedings and for other short-term working capital requirements of the Issuer (the **DIP Loan**).

(f) On March 9, 2023, the Court granted an order (the **SISP Order**) authorizing the Monitor to conduct, with the assistance of the Acerus Group, a sale and investment solicitation process (the **SISP**) intended to solicit interest in the opportunity for a sale of or investment in all or part of the Acerus Group's assets and business operations.

(g) On May 25, 2023, the Issuer announced that a bid by First Generation had been designated as the successful bid under the SISP (the **Successful Bid**) and that in accordance with the SISP Order the Issuer would seek Court approval of the Successful Bid and authority to consummate the transactions provided for therein at an approval hearing to be held on May 30, 2023.

(h) On May 30, 2023, the Court granted an order under the CCAA (the **Sale Approval and Vesting Order**) pursuant to which, *inter alia*, (i) the Court vested certain excluded assets and excluded liabilities in "Residual Co. 1" and "Residual Co. 2" and (ii) the Court authorized the completion of a reorganization transaction (the **Transaction**) partially comprised of the following steps:

  (i) the Issuer would issue to First Generation 1,000,000,000,000,000 Class "A" common shares (the **Class A Common Shares** and such Class A Common Shares subscribed for by First Generation being the **Purchased Shares**) to be paid by the forgiveness by First Generation of certain secured loan agreements of the Acerus Group owing to First Generation and the DIP Loan; and

  (ii) pursuant to articles of reorganization of the Issuer, all equity interests of the Issuer outstanding prior to the issuance of the Purchased Shares, including those common shares then existing (the **Common Shares**), would be deemed terminated and cancelled without consideration and the only equity interests of the Issuer that would remain outstanding would be the Purchased Shares such that First Generation would become the sole shareholder of the Issuer.

(i) Pursuant to the Sale Approval and Vesting Order, having been advised of the provisions of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* relating to the requirement for "minority" shareholder approval in certain circumstances, the Court ordered that no meeting of shareholders or other holders of equity interests of the Acerus Group was required to be held in respect of the Transaction.

(j) On June 28, 2023, the Issuer received a partial revocation order from the OSC to enable the Issuer to complete the Transaction.

(k) The Transaction was completed on July 10, 2023. On July 10, 2023, the Issuer disseminated a news release announcing the completion of the Transaction and filed such news release as well as a material change report on the Issuer's profile on the System for Electronic Document Analysis and Retrieval.

(l) The Common Shares were previously listed on the TSX under the symbol "ASP". The Common Shares were delisted from the TSX effective as of the close of markets on March 3, 2023 as a result of the failure of the Issuer to meet the continued listing requirements of the TSX.

(m) The Common Shares were also previously quoted for trading on the OTC Pink in the United States under the symbol "ASPCF". Such shares are cancelled pursuant to the Sale Approval and Vesting Order.

(n) As a result of the completion of the Transaction, the only outstanding securities of the Issuer are the Purchased Shares held by First Generation. The Issuer has no other outstanding securities (including debt securities).

(o) The Issuer has no current intention to seek public financing by way of an offering of securities in Canada or elsewhere or to make or maintain a market in securities of the Issuer.

(p) The securities of the Issuer are subject to a FFCTO issued by the Principal Regulator on April 6, 2023 that is applicable in the Reporting Jurisdictions for its failure to file, subsequent to the date of the Initial Order and the appointment of the Monitor, Filings (as defined below) under applicable securities laws.

(q) The Issuer is applying for an order revoking the FFCTO and an order that the Issuer has ceased to be a reporting issuer in the Reporting Jurisdictions.

(r) As of the date hereof, the Issuer is not in default of any of the requirements of applicable Canadian securities laws except the obligation to file the following continuous disclosure documents (the **Filings**):

(i) audited annual financial statements for the year ended December 31, 2022, management's discussion and analysis relating to the audit annual financial statements for the year ended December 31, 2022, annual information form for the year ended December 31, 2022, and certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**)*;*

(ii) interim financial statements for the three month period ended March 31, 2023, management's discussion and analysis relating to the interim financial statements for the three month period ended March 31, 2023 and certification of the foregoing filings as required by NI 52-109;

all of which Filings became due after the appointment of the Monitor (collectively, the **Unfiled Disclosure**).

(s) But for the Unfiled Disclosure, the Issuer would be eligible to use the "simplified procedure" under NP 11-206 on the basis that:

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

(ii) the outstanding securities of the Issuer, including debt securities, are beneficially owned, directly or indirectly, by fewer than 15 security holders in each of the jurisdictions of Canada and fewer than 51 security holders in total worldwide; and

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

Order

7. The Principal Regulator is satisfied that the FFCTO Revocation Order and the Cease to be a Reporting Issuer Order meet the tests set out in the Legislation for the Principal Regulator to make the order.

8. The decision of the Principal Regulator under the Legislation is that the FFCTO Revocation Order and the Cease to be a Reporting Issuer Order are granted.

DATED this 25th day of August, 2023.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0326

B.2.3 Fire & Flower Holdings Corp. – s. 144

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – application for partial revocation of failure-to-file cease trade order – issuer cease traded due to failure to file with the Commission interim financial statements, related management's discussion and analysis and related certifications – issuer has applied for a partial revocation of the cease trade order to permit trades of securities of the issuer in connection with a court-approved transaction under the Companies' Creditors Arrangement Act – partial revocation granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., s. 144.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

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

AND

IN THE MATTER OF
FIRE & FLOWER HOLDINGS CORP.

ORDER
(Section 144)

BACKGROUND

1. Fire & Flower Holdings Corp. (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission (the **Principal Regulator**) on August 28, 2023.

2. The Issuer has applied to the Principal Regulator pursuant to section 144 of the *Securities Act* (Ontario) for a partial revocation order of the FFCTO.

INTERPRETATION

3. Terms defined in National Instrument 14-101 *Definitions* or National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* have the same meaning if used in this order, unless otherwise defined.

REPRESENTATIONS

4. This decision is based on the following facts represented by the Issuer:

   a. The Issuer was incorporated under the *Business Corporations Act* (Ontario) on December 12, 2017, and continued under the *Canada Business Corporations Act* on February 12, 2019.

   b. The Issuer is a reporting issuer in each of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Québec, Saskatchewan, and Yukon.

   c. The Issuer's registered and head office is located at 77 King St. West, Suite 400, Toronto, Ontario, Canada.

   d. The Issuer is a technology-powered, adult-use cannabis retailer with retail locations in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, and Yukon.

   e. The authorized capital of the Issuer consists of an unlimited number of common shares (the **Common Shares**). As at the date hereof, there are approximately 45,154,000 Common Shares issued and outstanding. The Issuer also has approximately 1,935,529 options and 17,796,284 Series C Warrant units outstanding. The Issuer has no other outstanding securities (including debt securities).

   f. The Common Shares were listed on the Toronto Stock Exchange (the **TSX**) under the symbol "FAF". The Common Shares were delisted from the TSX effective as of the close of markets on July 14, 2023, as a result of the failure of the Issuer to meet the continued listing requirements of the TSX. The Common Shares are also

quoted for trading on the OTCQX in the United States under the symbol "FFLWF". The Issuer intends to delist the Common Shares from the OTCQX following completion of the Transaction (as hereinafter defined).

g. The FFCTO was issued as a result of the Issuer's failure to file the following continuous disclosure materials as required by applicable Canadian securities laws:

(i) interim financial statements for the period ended June 30, 2023;

(ii) management's discussion and analysis relating to the interim financial statements for the period ended June 30, 2023; and

(iii) certification of the foregoing filings as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (collectively, the **Unfiled Documents**).

h. In light of ongoing financial difficulties, the Issuer and its subsidiaries (the **F&F Group**) filed for creditor protection under the *Companies' Creditors Arrangement Act* (the **CCAA**) and received an order (the **Initial Order**) for creditor protection under the CCAA from the Ontario Superior Court of Justice (Commercial List) (the **Court**) on June 6, 2023 (the **CCAA Proceedings**).

i. Pursuant to the Initial Order, the Court, *inter alia*, appointed FTI Consulting Canada Inc. as monitor (in such capacity, the **Monitor**) of the F&F Group under the CCAA Proceedings and authorized the Issuer to obtain a debtor-in-possession loan from 2707031 Ontario Inc. in the amount of $9,800,000 in order to fund the CCAA Proceedings and other short-term working capital requirements of the F&F Group.

j. On June 21, 2023, the Court granted an order (the **SISP Order**) authorizing the Monitor to conduct, with the assistance of the Issuer, a sale and investment solicitation process (the **SISP**) intended to solicit interest in the opportunity for a sale of or investment in all or part of the Issuer's assets and business operations.

k. On August 17, 2023, the Issuer announced that the bid by 2759054 Ontario Inc., operating as FIKA Cannabis (**FIKA**), had been designated as the successful bid under the SISP (the **Successful Bid**) and that in accordance with the SISP Order the Issuer would seek Court approval of the Successful Bid and authority to consummate the transactions provided for therein.

l. On August 29, 2023, the Court granted an order under the CCAA (the **Sale Approval and Vesting Order**) pursuant to which, *inter alia*, the Court (i) approved the subscription agreement, dated August 17, 2023 with 2759054 Ontario Inc. (the **Subscription Agreement**) and the transaction (the **Transaction**) contemplated therein, including the sale and issuance by the Issuer of 1,000,000,000 Class "A" Common shares (the **Purchased Shares**) to FIKA for the aggregate purchase price of $36,000,000, (ii) authorized the transfer and vesting of all of F&F Group's right, title and interest in certain excluded assets and excluded liabilities to "Residual Co.", (iii) authorized and directed the Issuer to issue the Purchased Shares to FIKA, and vest in FIKA, all right title and interest in and to the Purchased Shares, (iv) authorized the termination and cancellation all capital shares, capital stock, partnership, membership, joint venture or other ownership or equity interest, participation or securities (whether voting or non-voting, whether preferred, common or otherwise, and including share appreciation, contingent interest or similar rights) of the Issuer other than the Purchased Shares, and (v) approved a claims process pursuant to which claimants may file claims against the F&F Group.

m. Pursuant to the Sale Approval and Vesting Order, having been advised of the provisions of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* relating to the requirement for "minority" shareholder approval in certain circumstances, the Court ordered that no meeting of shareholders or other holders of equity interests of the F&F Group is required to be held in respect of the Transaction.

n. In connection with carrying out the SISP Order and obtaining the Sale Approval and Vesting Order, the Issuer has engaged in certain acts in furtherance of trades in the securities of the Issuer, including its entry into the Subscription Agreement (the **Acts**), which Acts were taken at the direction of, and with the approval of, and under the supervision of, the Court. Except for the Acts and the Unfiled Documents, the Issuer is not in default of any requirements of the FFCTO, the securities legislation of any jurisdiction in which the Issuer is a reporting issuer (the **Legislation**), or the rules and regulations made pursuant thereto.

o. Since the issuance of the FFCTO, there have not been any material changes in the business, operations or affairs of the Issuer that have not been disclosed to the public apart from matters relating to the CCAA Proceedings and the Transaction.

p. As the Transaction will involve trades in securities of the Issuer, the closing of the Transaction is conditional on the partial revocation of the FFCTO.

q. The issuance of the Purchased Shares by the Issuer will occur in Ontario.

r. The Purchased Shares will not be qualified for distribution to the public under any applicable Canadian securities laws and will be subject to restrictions on transfer in Canada.

s. Following completion of the Transaction, all securities of the Issuer will remain subject to the FFCTO until a full revocation of the FFCTO is granted.

t. Other than the Transaction, no further trading in securities of the Issuer will be made by the Issuer unless further relief from the FFCTO is sought by the Issuer or a full revocation of the FFCTO is granted.

u. Following completion of the Transaction, the Issuer intends to apply for a full revocation of the FFCTO and a cease to be a reporting issuer order.

ORDER

5. The Principal Regulator is satisfied that a partial revocation order of the FFCTO meets the test set out in the Legislation for the Principal Regulator to make the decision.

6. The decision of the Principal Regulator under the Legislation is that the FFCTO is partially revoked solely to permit the trades in securities of the Issuer (including for greater certainty, acts in furtherance of trades in securities of the Issuer) that are necessary for and are in connection with the Transaction, provided that:

   a. prior to completion of the Transaction, FIKA will receive:

      (i) a copy of the FFCTO;

      (ii) a copy of this order; and

      (iii) written notice from the Issuer, to be acknowledged by FIKA in writing (the **Acknowledgement**), that all of the Issuer's securities, including the securities issued in connection with the Transaction, will remain subject to the FFCTO unless further relief is granted or until a full revocation order is granted, the issuance of which is not certain and that the Issuer intends to apply to cease to be a reporting issuer immediately following closing of the Transaction;

   b. the Issuer undertakes to make available a copy of the Acknowledgement to staff of the Principal Regulator upon request; and

   c. this order will terminate on the earlier of:

      (i) the completion of the Transaction; and

      (ii) 60 days from the date hereof.

DATED this 6th day of September, 2023.

“Lina Creta”
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0397

B.3
Reasons and Decisions

B.3.1 TransCanada Pipelines Limited

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Filer granted exemption from the prospectus requirement in connection with trades of commercial paper/short term debt instruments that do not meet the rating threshold condition requirement of the short-term debt exemption in section 2.35 of National Instrument 45-106 Prospectus Exemptions – Relief granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.A. 2000, c. S-4, s. 144.

Citation: *Re TransCanada Pipelines Limited*, 2023 ABASC 128

August 18, 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
TRANSCANADA PIPELINES LIMITED
(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**) that distributions of certain negotiable promissory notes or commercial paper maturing not more than one year from the date of issue (**Notes**) issued by the Filer and offered for sale in Canada are exempt from the prospectus requirement under the Legislation (the **Exemption Sought**).

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation governed by the *Canada Business Corporations Act*, with its head and registered office located in Calgary, Alberta.

2. All of the outstanding common shares of the Filer are owned by TC Energy Corporation (**TC Energy**). Pursuant to a decision dated January 3, 2019 granted by the Alberta Securities Commission (as principal regulator) and the Ontario Securities Commission pursuant to National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*, the Filer is exempted from the requirements under National Instrument 51-102 *Continuous Disclosure Obligations* to file certain continuous disclosure documents provided that, among other requirements, TC Energy is a reporting issuer in each province and territory of Canada, and has filed all disclosure documents that it is required to file under applicable securities legislation on or before the time those documents would have been required to be filed under such legislation by the Filer.

3. Each of the Filer and TC Energy is a reporting issuer in all of the provinces and territories of Canada and is not in default of securities legislation in any jurisdiction of Canada.

4. The Filer has implemented a commercial paper program that involves the sale, from time to time, of Notes issued by the Filer to purchasers located in Canada.

5. The offering and sale of Notes issued by the Filer are subject to the prospectus requirement under the Legislation.

6. Section 2.35(1) of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**) provides that an exemption from the prospectus requirement of the Legislation for commercial paper (the **CP Exemption**) is only available where such commercial paper: (a) matures not more than one year from the date of issue; (b) "has a credit rating from a designated rating organization ... that is at or above" certain prescribed short-term ratings set forth in section 2.35(1)(b) of NI 45-106; and (c) "has no credit rating from a designated rating organization ... that is below" certain prescribed short-term ratings set forth in section 2.35(1)(c) of NI 45-106.

7. Prior to July 25, 2023, the ratings assigned to the Filer's commercial paper satisfied the requirements of section 2.35(1)(b) and 2.35(1)(c) of NI 45-106 and accordingly, prior to that date, the Notes were offered and sold in Canada pursuant to, and in accordance with, the CP Exemption.

8. On July 25, 2023, DBRS Limited downgraded the rating of the Filer's commercial paper by one grade to "R-2 (High)" (the **Downgrade**).

9. As a result of the Downgrade, TCPL no longer satisfies the rating requirements prescribed in sections 2.35(1)(b) and 2.35(1)(c) of NI 45-106 and is therefore no longer able to rely on the CP Exemption for the distribution of Notes.

10. The Filer ceased distributions of Notes following the Downgrade, but seeks to resume distributions under its commercial paper program in the normal course.

11. All Notes will have a maturity not exceeding 365 days from the date of issuance, and will be sold in denominations of not less than $250,000.

12. The Notes will be offered and sold in Canada only:

    (a) through investment dealers registered, or exempt from the requirement to register, under applicable securities legislation in Canada (**Canadian Dealers**); and

    (b) to persons (**Canadian Qualified Purchasers**) that are "accredited investors" (as defined in NI 45-106), other than those that are any of the following:

        (i) an individual referred to in any of paragraphs (j), (j.1), (k) and (l) of that definition;

        (ii) a person referred to in paragraph (t) of that definition in respect of which any owner of an interest, direct, indirect or beneficial, except the voting securities required by law to be owned by directors, is an individual referred to in any of paragraphs (j), (j.1), (k) and (l) of that definition; and

        (iii) a trust referred to in paragraph (w) of that definition.

13. The Filer will require each Canadian Dealer to apply procedures to ensure that sales of Notes by such Canadian Dealer, as well as any subsequent resales of previously issued Notes by such Canadian Dealer, are made only to Canadian Qualified Purchasers in accordance with paragraph 12 of this decision.

Decision

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

The decision of the Decision Makers is that the Exemption Sought is granted in respect of the distribution of Notes, provided that:

(a) each Note:

(i) is not convertible or exchangeable into, or accompanied by a right to purchase, another security other than a Note;

(ii) is not a "securitized product" (as defined in NI 45-106);

(iii) has a credit rating at or above one of the categories listed below by: a "designated rating organization" (as defined in NI 45-106) listed below; a "DRO affiliate" (as defined in NI 45-106) of an organization listed below; a designated rating organization that is a successor credit rating organization of an organization listed below; or a DRO affiliate of such successor credit rating organization:

Designated Rating Organization	Rating
DBRS	R-2 (High)
Fitch Ratings, Inc.	F1
Moody's Canada Inc.	P-1
S&P Global Ratings Canada	A-1 (Low) (Canada National Scale)

and has no credit rating below:

Designated Rating Organization	Rating
DBRS	R-2 (High)
Fitch Ratings, Inc.	F2
Moody's Canada Inc.	P-2
S&P Global Ratings Canada	A-1 (Low) (Canada National Scale) or A-2 (Global Scale)

(b) each distribution of Notes is made:

(i) to a purchaser that is purchasing as a principal and is a Canadian Qualified Purchaser; and

(ii) through a Canadian Dealer;

(c) each Canadian Dealer has agreed to apply the procedures referred to in paragraph 13 of this decision; and

(d) for each jurisdiction of Canada, the Exemption Sought will terminate on July 31, 2028.

For the Commission:

“Tom Cotter”
Vice-Chair

“Kari Horn”
Vice-Chair

OSC File #: 2023/0337

B.3.2 SLGI Asset Management Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Investment funds that are fixed income funds granted relief from the concentration restriction in subsection 2.1(1) and 2.1(1.1) of National Instrument 81-102 Investment Funds to invest in debt securities issued by the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac) beyond the limits permitted under NI 81-102 – Debt securities of Fannie Mae and Freddie Mac are implicitly guaranteed by the U.S. government – Fannie Mae and Freddie Mac are government sponsored entities in the U.S. and their securities are "government securities" under the U.S. Investment Company Act of 1940 – Fannie Mae and Freddie Mac have a U.S. government equivalent credit rating – Exemptive relief granted from subsection 2.1(1) and 2.1(1.1) of NI 81-102, subject to certain conditions.

Applicable Legislative Provisions

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

September 11, 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
SLGI ASSET MANAGEMENT INC.
(SLGI)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from SLGI, on behalf of all existing and future investment funds that are, or will be, managed by SLGI or an affiliate of SLGI (collectively, the **Filer**) and to which National Instrument 81-102 *Investment Funds* (**NI 81-102**) applies (collectively, the **Funds**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**):

(a) exempting the Funds from subsection 2.1(1) of NI 81-102 to permit a Fund that is a mutual fund, other than an alternative mutual fund, to purchase a security of an issuer, enter into a specified derivative transaction or purchase index participation units (each a **Purchase**) when, immediately after the Purchase, more than 10% of the net asset value of the Fund would be invested in debt obligations issued or guaranteed by either the Federal National Mortgage Association (**Fannie Mae**) or the Federal Home Loan Mortgage Corporation (**Freddie Mac**); and

(b) exempting the Funds from subsection 2.1(1.1) of NI 81-102 to permit a Fund that is an alternative mutual fund or a non-redeemable investment fund to make a Purchase when, immediately after the Purchase, more than 20% of the net asset value of the Fund would be invested in debt obligations issued or guaranteed by either the Fannie Mae or Freddie Mac (collectively, the **Exemption Sought**).

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

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

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

Interpretation

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

1940 Act means the *Investment Company Act of 1940* (United States), as amended from time to time;

Fannie and Freddie Securities means debt obligations issued or guaranteed by either Fannie Mae or Freddie Mac including, without limitation, bonds and mortgage-backed securities and **Fannie or Freddie Security** means any one such debt obligation;

Minimum Rating means a credit rating of BBB- assigned by Standard & Poor's Rating Services (Canada) or an equivalent rating assigned by one or more other designated rating organizations; and

U.S. Government Equivalent Rating means a credit rating assigned by Standard & Poor's Rating Services (Canada), or an equivalent rating assigned by one or more other designated rating organizations, to a Fannie or Freddie Security that is not less than the credit rating then assigned by such designated rating organization to the debt of the U.S. government of approximately the same term as the remaining term to maturity of, and denominated in the same currency as, the Fannie or Freddie Security.

Representations

This decision is based on the following facts represented by the Filer on behalf of itself and the Funds:

The Filer

1. SLGI is a corporation governed by the laws of Canada with its head office in Toronto, Ontario.

2. SLGI is registered: (a) under the securities legislation of Ontario, Québec, and Newfoundland and Labrador as an investment fund manager; (b) under the securities legislation of Ontario as a mutual fund dealer; (c) under the securities legislation of Ontario as a portfolio manager; and (d) under the *Commodity Futures Act* (Ontario) as a commodity trading manager.

3. The Filer is, or will be, the investment fund manager of the Funds. The Filer or a related or third-party portfolio manager retained by the Filer is, or will be, the portfolio manager of the Funds. The portfolio manager of a Fund may also engage a sub-advisor to advise in respect of the investments of such Fund.

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

The Funds

5. Each Fund is, or will be, an investment fund organized and governed by the laws of a province or territory of Canada or the laws of Canada.

6. Each Fund is, or will be, governed by the provisions of NI 81-102, subject to any exemption therefrom that has been, or may be, granted by the securities regulatory authorities.

7. No existing Fund, other than Sun Life U.S. Core Fixed Income Fund, which currently invests in excess of 10% of its net asset value in debt obligations issued or guaranteed by Fannie Mae, is in default of securities legislation in any of the Canadian Jurisdictions.

8. The investment objectives of each Fund that will rely on the Exemption Sought permit, or will permit, the Fund to invest a majority of its assets in fixed income securities. The ability to invest in Fannie and Freddie Securities is, or will be, an important feature of each Fund due to the size and role of Fannie Mae and Freddie Mac in the U.S. mortgage industry and the expertise of the Filer or the applicable portfolio manager or sub-advisor in investing in such securities.

Fannie Mae and Freddie Mac Securities

9. Fannie Mae is a financial services corporation originally established by the U.S. Congress in 1938 to provide U.S. federal government money to local banks to finance home mortgages during the Great Depression. Its business includes borrowing money in the debt markets by selling bonds and providing liquidity to mortgage originators by purchasing whole loans which it then securitizes by issuing mortgage-backed securities. Fannie Mae also earns guarantee fees for assuming the credit risk on mortgage loans.

10. Freddie Mac is a financial services corporation that was created by the U.S. Congress in 1970 to expand the secondary market for mortgages in the United States. It was established to provide competition to Fannie Mae. Like Fannie Mae, the business of Freddie Mac includes buying mortgages in the secondary market, pooling them, and issuing mortgage-backed securities, as well as earning guarantee fees for assuming the credit risk on mortgage loans.

11. Fannie and Freddie Securities provide a substantial portion of the financing for residential mortgages in the U.S.

12. Originally, the obligations of Fannie Mae were explicitly guaranteed by the U.S. government. The explicit guarantee was removed as part of a reorganization of Fannie Mae in 1968. Like Fannie Mae, there is no explicit guarantee of the obligations of Freddie Mac by the U.S. government.

13. Notwithstanding the absence of an explicit guarantee, it is widely assumed that there is an implied guarantee of the obligations of both Fannie Mae and Freddie Mac by the U.S. government. This assumption is based on the view that Fannie Mae and Freddie Mac each are considered to be "too big to fail" due to the critical roles they play as instrumentalities of the U.S. government existing to support the liquidity of the residential real estate mortgage market. Accordingly, it is widely believed that the U.S. government implicitly guarantees the obligations of Fannie Mae and Freddie Mac. This is reflected in Fannie and Freddie Securities currently having a U.S. Government Equivalent Rating.

14. The implied guarantee was evidenced during the 2008 financial crisis. At that time, Fannie Mae and Freddie Mac together owned or guaranteed approximately half of the U.S. U.S.$12 trillion mortgage market and were at risk of defaulting on their obligations. Such a default would have increased the cost of obtaining mortgage financing from other sources, thereby exacerbating the decline in the U.S. residential real estate market, as well as negatively impacting investors (including retirement funds and money market funds) that held Fannie and Freddie Securities. As a result, on September 7, 2008, Fannie Mae and Freddie Mac were placed into conservatorship of the U.S. Federal Housing Financing Agency in order to stabilize them. The U.S. government avoided creating an explicit guarantee of the obligations of Fannie Mae and Freddie Mac due to the negative impact it would have had on the U.S. Treasury. Fannie Mae and Freddie Mac were expressly excluded from the bail-in regime created under Title II of the *Dodd-Frank Wall Street Reform and Consumer Protection Act* (United States) to preclude future U.S. government bail-outs of large financial companies. It is expected that a further act of the U.S. Congress would be required to remove the implied guarantee of Fannie and Freddie Securities as part of a larger reform of the U.S. residential real estate market. No such initiative currently is a priority of the U.S. Congress.

15. Under the 1940 Act, an investment company registered with the U.S. Securities and Exchange Commission seeking to qualify as a "diversified company" is required, among other matters, to invest at least 75% of its total assets in a manner whereby not more than 5% of the value of its total assets is invested in the securities of any single issuer. This restriction is analogous to the diversification requirement imposed on public investment funds in Canada by subsections 2.1(1) and 2.1(1.1) of NI 81-102. Similar to paragraph 2.1(2)(a) of NI 81-102, the 1940 Act excludes a "government security" from the 5% limit described.

16. The definition of "government security" in the 1940 Act differs from that contained in NI 81-102 by including any security issued by a person controlled or supervised by and acting as an instrumentality of the U.S. Government pursuant to authority granted by the U.S. Congress (a **U.S. Government Instrumentality**). Each of Fannie Mae and Freddie Mac is considered to be a U.S. Government Instrumentality and Fannie and Freddie Securities therefore are "government securities" under the 1940 Act.

17. The definition of "government security" in NI 81-102 does not include U.S. Government Instrumentalities. Accordingly, the only U.S. securities which qualify as government securities are those directly issued by, or fully and unconditionally guaranteed by, the U.S. government. Fannie and Freddie Securities do not meet this definition since their obligations are not explicitly fully and unconditionally guaranteed by the U.S. government.

18. As a result, the restrictions in subsection 2.1(1) or 2.1(1.1) of NI 81-102, as applicable, apply to each investment by a Fund in Fannie and Freddie Securities.

19. Fannie and Freddie Securities represent a large, attractive and unique category of investment that cannot be replicated by any other issuer. For this reason, it is important to the Funds that they be entitled to maximize their opportunity to invest in Fannie and Freddie Securities.

20. Investments in Fannie and Freddie Securities are considered by the Filer to be more prudent than investments in equivalent bonds and mortgage-backed securities of other issuers due to the implied guarantee by the U.S. government. Accordingly, if the Exemption Sought is granted, each Fund will have the opportunity to maintain a more prudent portfolio through greater exposure to securities implicitly guaranteed by the U.S. government.

21. The US-based sub-adviser that the Filer has retained to advise certain Funds that expect to rely on this exemptive relief sub-advises an investment fund in the United States that currently holds Fannie and Freddie Securities in excess of 10% of its net asset value. Granting the Exemption Sought will enable such Funds to invest in Fannie and Freddie Securities to the same degree and proportions as the other investment strategies managed by such sub-adviser.

22. The Filer intends, either directly or through portfolio managers or sub-advisors, to research and monitor the investment attributes and trading operations for Fannie and Freddie Securities. Such ongoing research and monitoring will include monitoring proposals to restructure the U.S. residential housing market that may impact the implied guarantee of Fannie and Freddie Securities by the U.S. government. If the U.S. Congress proposes legislation to change or remove the implied guarantee, and the Filer determines in its judgement that, as a result of the announced proposed legislation, there is a significant risk that the Fannie and Freddie Securities held by the Funds could cease to have a U.S. Government

Equivalent Rating or their credit ratings could decline below a Minimum Rating, the Funds will take steps that are reasonably required to dispose of their Fannie and Freddie Securities in an orderly and timely fashion such that the Fannie and Freddie Securities held by the Fund comply with subsection 2.1(1) or 2.1(1.1) of NI 81-102, as applicable.

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) at the time of Purchase, the Fannie or Freddie Security has a U.S. Government Equivalent Rating and a rating not less than the Minimum Rating;

(b) the simplified prospectus or prospectus, as applicable, of each Fund that is a mutual fund, alternative mutual fund or non-redeemable investment fund distributing its securities discloses, or will disclose in the next renewal of its simplified prospectus or prospectus (as applicable) following the date of this decision:

(i) that the Fund has received permission to invest more than 10% (or, in the case of an alternative mutual fund or a non-redeemable investment fund, 20%) of its net assets in each of Fannie Mae and Freddie Mac provided the Fannie and Freddie Securities maintain a U.S. Government Equivalent Rating and a rating not less than the Minimum Rating;

(ii) the maximum amount the Fund may invest in Fannie and Freddie Securities under the heading or sub-heading “Investment Strategies”; and

(iii) risk factors that

(A) the U.S. government may not guarantee payment of Fannie and Freddie Securities; and

(B) describe the risks associated with the Fund investing more than 10% (or, in the case of an alternative mutual fund or a non-redeemable investment fund, 20%) of its net assets in securities of Fannie Mae or Freddie Mac;

(c) if the rating of a Fannie or Freddie Security held by a Fund ceases to have a U.S. Government Equivalent Rating or declines below the Minimum Rating, the Fund will take the steps that are reasonably required to dispose of such Fannie or Freddie Security in an orderly and timely fashion such that the Fannie and Freddie Securities held by the Fund comply with subsection 2.1(1) or 2.1(1.1) of NI 81-102, as applicable; and

(d) if the U.S. Congress

(i) proposes legislation intended to change or remove the implied guarantee by the U.S. government of Fannie Mae and/or Freddie Mac and the Filer determines in its judgement that, as a result of the announced proposed legislation, there is a significant risk that the Fannie and Freddie Securities held by the Funds could cease to have a U.S. Government Equivalent Rating or their credit ratings could decline below the Minimum Rating; or

(ii) enacts legislation that

(A) removes the implied guarantee by the U.S. government of Fannie Mae and/or Freddie Mac; or

(B) specifies a future effective date on which the implied guarantee by the U.S. government of Fannie Mae and/or Freddie Mac will end,

the Funds will take the steps that are reasonably required to dispose of such Fannie and Freddie Securities in an orderly and timely fashion such that the Fannie and Freddie Securities held by the Funds comply with subsection 2.1(1) or 2.1(1.1) of NI 81-102, as applicable.

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

Application File #: 2023/0352
SEDAR File #: 06004899

B.3.3 FG Acquisition Corp.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the formal valuation and minority approval requirements in Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions – issuer is a special purpose acquisition corporation that will have no operations and generate no operating revenues until it completes its qualifying acquisition – issuer's authorized capital consists of class A restricted voting shares which are entitled to be redeemed at the election of the holder prior to the completion of the qualifying acquisition for an amount equivalent to their initial investment, and class B shares that do not have any redemption rights but which have the residual right to share in the assets of the issuer on liquidation or dissolution – the entirety of the gross proceeds from the initial public offering of the class A restricted voting shares were put into an escrow account to be used to, among other things, satisfy any redemptions in respect of the restricted voting shares and fund the qualifying acquisition – the class B shares do not have access to, and cannot benefit from, the funds in the escrow account – only the class A restricted voting shares are listed and posted for trading on an exchange – relief granted subject to conditions, including that the related party transaction constituting the issuer's qualifying acquisition would qualify for the 25% market capitalization exemption if the class A restricted voting shares represented all of the outstanding equity securities of the issuer.

Applicable Legislative Provisions

Multilateral Instrument 61-101 Protection of Minority Security Holders in Special Transactions, ss. 5.4, 5.6, and 9.1(2).

July 14, 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
FG ACQUISITION CORP.
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the "**Legislation**") that the Filer be granted an exemption pursuant to section 9.1 of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("**MI 61-101**") from the minority approval and formal valuation requirements under Part 5 of MI 61-101 as they would apply to the Proposed Transaction (as defined below), which transaction constitutes a related party transaction for the purposes of MI 61-101 (the "**Exemption Sought**").

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

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

(b) the Filer has provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* ("**MI 11-102**") is intended to be relied upon in Alberta, Manitoba, and New Brunswick.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and MI 61-101 have the same meaning if used in this decision, unless otherwise defined. For the purpose of this decision, the following terms have the meaning ascribed to them:

"**Extension**" means one or more extensions to the allowable time period within which the Filer must consummate its qualifying acquisition, to up to a maximum of 36 months from the closing date of the Filer's IPO, that has been approved

by ordinary resolution of the holders of the Class A Restricted Voting Shares and that is also approved by the board of directors of the Filer;

"**Extension Redemption Price**" shall mean an amount per Class A Restricted Voting Share equal to: (A) the pro-rata portion (per Class A Restricted Voting Share) of: (i) the Escrowed Funds available in the Filer's escrow account at the time of the meeting of the shareholders of the Filer at which an Extension is approved, including any interest and other amounts earned thereon, less (ii) an amount equal to the total of (a) applicable taxes payable by the Filer on such interest and other amounts earned in the Filer's escrow account, and (b) actual and expected expenses directly related to the redemption (and for greater certainty, such amount will not be reduced by the deferred underwriting commissions per Class A Restricted Voting Share held in the Filer's escrow account), each as reasonably determined by the Filer, less (B) any taxes of the Filer (including under Part VI.1 of the *Income Tax Act* (Canada)), as reasonably determined by the Filer arising in connection with the redemption of the Class A Restricted Voting Shares divided by the number of shares being redeemed;

"**qualifying acquisition**" shall have the meaning ascribed to such term in the TSX Company Manual;

"**Qualifying Acquisition Redemption Price**" shall mean an amount per Class A Restricted Voting Share equal to the pro-rata portion (per Class A Restricted Voting Share) of: (A) the Escrowed Funds available in the Filer's escrow account at the time immediately prior to the redemption deposit deadline, including interest and other amounts earned thereon; less (B) an amount equal to the total of (i) applicable taxes payable by the Filer on such interest and other amounts earned in the Filer's escrow account, and (ii) actual and expected expenses directly related to the redemption, each as reasonably determined by the Filer. For greater certainty, such amount will not be reduced by the amount of any tax of the Filer under Part VI.1 of the *Income Tax Act* (Canada) or the deferred underwriting commission per Class A Restricted Voting Share held in the Escrow Account;

"**SPAC**" shall mean a special purpose acquisition corporation; and,

"**TSX**" shall mean the Toronto Stock Exchange.

Representations

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

1. The Filer is a SPAC incorporated on October 25, 2021 under, and governed by the laws of, the Province of British Columbia. The Filer was formed for the purpose of effecting its qualifying acquisition pursuant to the acquisition of one or more businesses or assets, by way of a merger, amalgamation, arrangement, share exchange, asset acquisition, share purchase, reorganization, or any other similar business combination involving the Filer. From the time of the Filer'sinitial public offering (the "**IPO**") and until such time as the Filer completes its qualifying acquisition, the Filer has not had any operations and has generated no operating revenues. The Filer is in good standing under its incorporation statute.

2. The Filer's head office is located at 510 West Georgia Street, Suite 1800, Vancouver, BC V6B 0M3.

3. The Filer is a reporting issuer (or the equivalent thereof) in each of the provinces and territories of Canada (other than Quebec) and is not in default of securities legislation in any jurisdiction.

4. Pursuant to the approval of an Extension by holders of the Class A Restricted Voting Shares (as defined below) at a special meeting of shareholders of the Filer held on June 29, 2023 (the "**Meeting**") and by the Filer's board of directors the Filer has until July 5, 2024 to close a qualifying acquisition. If a qualifying acquisition is not completed by July 5, 2024 and the Filer does not receive shareholder approval to further extend its "permitted timeline" prior to that date, the Filer will be required to liquidate.

5. The authorized capital of the Filer consists of an unlimited number of Class A restricted voting shares (the "**Class A Restricted Voting Shares**"), an unlimited number of Class B shares (the "**Class B Shares**"), an unlimited number of common shares (the "**Common Shares**") and an unlimited number of proportionate voting shares (the "**Proportionate Voting Shares**"), each without nominal or par value. As at July 3, 2023, the Filer had 11,500,000 Class A Restricted Voting Shares issued and outstanding, and 2,875,000 Class B Shares issued and outstanding. The Class A Restricted Voting Shares comprised part of the Class A restricted voting units offered to the public pursuant to the final long-form prospectus of the Filer dated April 28, 2022. The Class B Shares were issued to FGAC Investors LLC and CG Investments VII Inc., the Filer's sponsors (the "**Sponsors**"), in connection with the Filer's IPO. FGAC Investors LLC currently holds 2,555,925 Class B Shares and CG Investments VII Inc. currently holds 319,075 Class B Shares, representing in the aggregate 100% of the outstanding Class B Shares and 20% of the outstanding Class A Restricted Voting Shares and Class B Shares.

6. The entirety of the gross proceeds from the Class A Restricted Voting Shares offered under the IPO were put into the Filer's escrow account (the "**Escrowed Funds**") to be used to, inter alia, satisfy the payment of the Extension Redemption Price or the Qualifying Acquisition Redemption Price (the Extension Redemption Price and the Qualifying Acquisition Redemption Price, as applicable, the "**Redemption Price**") due to holders of Class A Restricted Voting Shares upon the exercise of the redemption rights attached to the Class A Restricted Voting Shares, and fund the qualifying acquisition. Any Escrowed Funds which are not used to consummate the qualifying acquisition will be disbursed to the Filer and will, along with any other amounts not expended prior to the consummation of the qualifying acquisition, be used to fund general ongoing expenses of the resulting issuer.

7. Provided that holders of Class A Restricted Voting Shares adhere to the specified timing requirements, such holders are entitled to redeem all or a portion of their Class A Restricted Voting Shares, whether they vote for or against, or do not vote on, the qualifying acquisition for the applicable Redemption Price per Class A Restricted Voting Share. The applicable Redemption Price is payable in cash from the Escrowed Funds, and upon such payment, the holders of Class A Restricted Voting Shares will have no further rights in respect of the Class A Restricted Voting Shares. Any Class A Restricted Voting Shares that are not redeemed will be automatically converted immediately following the closing of the qualifying acquisition into Common Shares on the basis of one Common Share for each Class A Restricted Voting Share converted.

8. The net proceeds from the issuance of the Class B Shares offered to the Sponsors were not put into the Filer's escrow account and may be used towards the Filer's general ongoing expenses and funding the identification and completion of a qualifying acquisition. The holders of Class B Shares do not have access to, and cannot benefit from, the Escrowed Funds, and accordingly, do not have any redemption rights.

9. The Filer intends to file articles of amendment to amend the terms of the Class B Shares such that the Class B Shares (other than the Exchange Preferred Shares discussed below) are convertible into Common Shares (rather than Proportionate Voting Shares) of the Filer upon the closing of a qualifying acquisition, which has been approved by the requisite number of shareholders at the Meeting.

10. The Filer and the Sponsors have entered into a business combination agreement dated as of May 12, 2023 with ThinkMarkets to acquire all of the issued and outstanding shares of ThinkMarkets (the "**Qualifying Acquisition**"). In connection with the closing of the Qualifying Acquisition, up to 2,000,000 Class B Shares (which the Sponsors beneficially own and exercise control and direction over) will be exchanged for a new class of exchange preferred shares (the "**Exchange Preferred Shares**") of the Filer. The terms of the Exchange Preferred Shares are described in the Filer's preliminary non-offering prospectus dated May 12, 2023. Notably, the Exchange Preferred Shares will be convertible into Common Shares having a value equal to U.S.$11.50 per share (based on the 20-day volume weighted average price of the common shares on the TSX, or such other exchange on which the common shares may subsequently be listed, at such time), or a maximum aggregate value of U.S.$23,000,000.

11. The proposed exchange of up to 2,000,000 Class B Shares for Exchange Preferred Shares (the "**Proposed Transaction**") will be an acquisition of shares of the Filer from the Sponsors and constitutes a related party transaction under MI 61-101 that would require the Filer obtain a formal valuation and minority approval (the "**Minority Protections**"), unless an exemption is available.

12. A related party transaction that is subject to MI 61-101 may be exempt from the Minority Protections if, at the time the transaction is agreed to, neither the fair market value of the subject matter of, nor the fair market value of the consideration for, the transaction, exceeds 25% of the issuer's market capitalization (the "**Transaction Size Exemption**").

13. The Filer may not be entitled to rely on the Transaction Size Exemption because the definition of market capitalization is calculated with reference to the aggregate market price of all outstanding equity securities of the Filer.

14. For the purposes of MI 61-101, an equity security is a security that carries a residual right to participate in the earnings of the issuer and, on liquidation or winding-up of the issuer, in its assets. The Class A Restricted Voting Shares do not meet the definition of an "equity security" under MI 61-101 because they are redeemable for a fixed amount equal to a pro rata portion of the funds held in escrow by the SPAC and do not have a residual right to share in the assets of the Filer on a liquidation or dissolution. This redemption feature is unique to the SPAC structure and is required by the rules of the TSX. Prior to the completion of the Qualifying Acquisition, the residual right to share in the assets of the Filer on liquidation or dissolution rests with the Class B Shares. If the Class B Shares were used to calculate the market capitalization, the Transaction Size Exemption may not be available.

15. The Class A Restricted Voting Shares are listed and posted for trading on the TSX under the trading symbol "FGAA.U". The Class B Shares are not listed on any public stock exchange and prior to the completion of a qualifying acquisition, are not transferable absent TSX consent. For the purposes of the TSX and public shareholders, the aggregate market value of the Class A Restricted Voting Shares represents the market capitalization of the Filer.

16. If the market capitalization of the Filer was calculated on the basis of the outstanding Class A Restricted Voting Shares representing all of the outstanding equity securities of the Filer as of the close of business on the last business day of the calendar month preceding the calendar month in which the Proposed Transaction was agreed to, it would be U.S.$116,725,000 and thus, the Proposed Transaction would represent approximately 19.7% of the Filer's market capitalization.

17. The Filer has included in the amended and restated material change report filed June 26, 2023, in connection with the Proposed Transaction, and in its preliminary non-offering prospectus dated May 12, 2023, and will include in its final non-offering prospectus filed in connection with the Qualifying Acquisition, a statement that it has applied for the Exemption Sought and a description of the substance and effects of the Exemption Sought, if granted.

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 Transaction would qualify for the Transaction Size Exemption contained in MI 61-101 if the Class A Restricted Voting Shares represented all of the outstanding equity securities of the Filer;

b) any disclosure document provided to holders of Class A Restricted Voting Shares in connection with the Proposed Transaction and the Qualifying Acquisition (as described above), includes a statement that the Filer has applied for, and been granted, the Exemption Sought, and a description of the substance and effects of the Exemption Sought; and

c) there be no material change to the terms of the Class A Restricted Voting Shares, including the conversion rights associated therewith, as described above and in the Filer's amended and restated notice of articles and articles dated March 30, 2022.

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

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B.4
Cease Trading Orders

B.4.1 Temporary, Permanent & Rescinding Issuer Cease Trading Orders

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Candyverse Brands Inc.	August 14, 2023	August 30, 2023
VOLTAGE METALS CORP.	July 6, 2023	September 5, 2023
Pathway Health Corp.	September 5, 2023	
SQI Diagnostics Inc.	September 5, 2023	
Green Scientific Labs Holdings Inc.	September 5, 2023	
Hunter Technology Corp.	September 5, 2023	
Registered Plan Private Investments Inc.	September 5, 2023	
GABY Inc.	September 5, 2023	
Progressive Planet Solutions Inc.	September 1, 2023	September 6, 2023
FenixOro Gold Corp.	September 6, 2023	
Registered Plan Private Investments Inc.	September 5, 2023	September 7, 2023
Edgewater Wireless Systems Inc.	September 1, 2023	September 11, 2023

B.4.2 Temporary, Permanent & Rescinding Management Cease Trading Orders

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

B.4.3 Outstanding Management & Insider Cease Trading Orders

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

Company Name	Date of Order	Date of Lapse
Agrios Global Holdings Ltd.	September 17, 2020	
Sproutly Canada, Inc.	June 30, 2022	

Company Name	Date of Order	Date of Lapse
iMining Technologies Inc.	September 30, 2022	
Alkaline Fuel Cell Power Corp.	April 4, 2023	
mCloud Technologies Corp.	April 5, 2023	
Element Nutritional Sciences Inc.	May 2, 2023	
CareSpan Health, Inc.	May 5, 2023	
Canada Silver Cobalt Works Inc.	May 5, 2023	
FenixOro Gold Corp.	July 5, 2023	
Minnova Corp.	August 02, 2023	
HAVN Life Sciences Inc.	August 30, 2023	

B.5
Rules and Policies

B.5.1 Amendments to Multilateral Instrument 25-102 Designated Benchmarks and Benchmark Administrators

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.

B.5.2 Changes to Companion Policy 25-102 Designated Benchmarks and Benchmark Administrators

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.

B.5.3 Amendments to Ontario Securities Commission Rule 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators

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.

B.5.4 Changes to Companion Policy 25-501 (Commodity Futures Act) Designated Benchmarks and Benchmark Administrators

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.

B.5.5 Amendments to National Instrument 14-101 Definitions

AMENDMENTS TO
NATIONAL INSTRUMENT 14-101 *DEFINITIONS*

1. National Instrument 14-101 Definitions is amended by this Instrument.

2. Subsection 1.1(3) is amended by

(a) replacing the definition of "Canadian financial institution***" with the following:***

"Canadian financial institution" means

(a) a bank listed in Schedule I or II to the *Bank Act* (Canada),

(b) a body corporate, as defined in the *Trust and Loan Companies Act* (Canada) and to which that Act applies,

(c) an association, as defined in the *Cooperative Credit Associations Act* (Canada) and to which that Act applies,

(d) an insurance company or a fraternal benefit society incorporated or formed under the *Insurance Companies Act* (Canada),

(e) a trust, loan or insurance corporation authorized to carry on business by or under an Act of the legislature of a jurisdiction of Canada,

(f) a credit union, central credit union, caisse populaire, financial services cooperative or credit union league or federation that is incorporated or otherwise authorized to carry on business by or under an Act of the legislature of a jurisdiction of Canada, or

(g) a treasury branch established by or under an Act of the legislature of a jurisdiction of Canada***, and***

(b) replacing the definition of "Handbook***" with the following:***

"Handbook" means

(a) the Chartered Professional Accountants of Canada Handbook - Accounting, as amended from time to time, and

(b) the Chartered Professional Accountants of Canada Handbook - Assurance, as amended from time to time;***.***

3. This Instrument comes into force on September 13, 2023.

B.5.6 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 repealing the definition of "Canadian financial institution***".***

3. Subparagraph 8.19(2)(a)(iii) is repealed.

4. Form 31-103F1 is amended by replacing, in the notes pertaining to line 5, "CICA Handbook***" with "***Handbook***".***

5. This Instrument comes into force on September 13, 2023.

B.5.7 Amendments to National Instrument 33-109 Registration Information

AMENDMENTS TO
NATIONAL INSTRUMENT 33-109 *REGISTRATION INFORMATION*

1. National Instrument 33-109 Registration Information is amended by this Instrument.

2. Schedule C to Form 33-109F6 is amended by replacing, in the notes pertaining to line 5, "CPA Canada Handbook***" with "***Handbook***".***

3. This Instrument comes into force on September 13, 2023.

B.5.8 Amendments to National Instrument 45-106 Prospectus Exemptions

AMENDMENTS TO
NATIONAL INSTRUMENT 45-106 *PROSPECTUS EXEMPTIONS*

1. National Instrument 45-106 Prospectus Exemptions is amended by this Instrument.

2. Section 1.1 is amended by repealing the definitions of "*bank*" and "*Canadian financial institution*".

3. Paragraph 2.43(a) is amended by

(a) adding "*or*" at the end of subparagraph (i),

(b) replacing "*or,*" at the end of subparagraph (ii) with "*and*", and

(c) repealing subparagraph (iii).

4. This Instrument comes into force on September 13, 2023.

B.5.9 Changes to Companion Policy 52-107CP Acceptable Accounting Principles and Auditing Standards

CHANGES TO
COMPANION POLICY 52-107CP *ACCEPTABLE ACCOUNTING PRINCIPLES AND AUDITING STANDARDS*

1. Companion Policy 52-107CP Acceptable Accounting Principles and Auditing Standards is changed by this Document.

2. Section 1.1 is changed by replacing "Handbook of the Canadian Institute of Chartered Accountants (the Handbook)***" with "***Handbook***".***

3. These changes become effective on September 13, 2023.

B.5.10 Amendment to National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues

AMENDMENT TO
NATIONAL INSTRUMENT 62-103 *THE EARLY WARNING SYSTEM AND RELATED TAKE-OVER BID AND INSIDER REPORTING ISSUES*

1. ***National Instrument 62-103 The Early Warning System and Related Take-Over Bid and Insider Reporting Issues* is amended by this Instrument.**

2. ***Subsection 1.1(1) is amended in the definition of "****financial institution****" by***

(a) ***deleting "***or***" at the end of paragraph (b),***

(b) ***replacing "***Northern Ireland;***" with "***Northern Ireland, or***", in paragraph (c), and***

(c) ***adding the following paragraph:***

(d) an authorized foreign bank named in Schedule III of the *Bank Act* (Canada);**.**

3. This Instrument comes into force on September 13, 2023.

B.5.11 Amendments to National Instrument 81-102 Investment Funds

AMENDMENTS TO
NATIONAL INSTRUMENT 81-102 *INVESTMENT FUNDS*

1. National Instrument 81-102 Investment Funds is amended by this Instrument.

2. Appendices B-1, B-2 and B-3 are amended by replacing, wherever it appears, "CICA Handbook − Assurance***" with "***Handbook***".***

3. This Instrument comes into force on September 13, 2023.

B.5.12 Amendment to National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions

AMENDMENT TO
NATIONAL INSTRUMENT 94-102 *DERIVATIVES: CUSTOMER CLEARING AND PROTECTION OF CUSTOMER COLLATERAL AND POSITIONS*

1. ***National Instrument 94-102 Derivatives: Customer Clearing and Protection of Customer Collateral and Positions is amended by this Instrument.***

2. ***Section 1(1) is amended by repealing the definition of "***Canadian financial institution***".***

3. This Instrument comes into force on September 13, 2023.

B.5.13 Amendments to Ontario Securities Commission Rule 14-501 Definitions

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 14-501 *DEFINITIONS*

1. Ontario Securities Commission Rule 14-501 Definitions is amended by this Instrument.

2. Subsection 1.1(2) is amended by repealing the definitions of "financial intermediary***" and "***Ontario financial institution***".***

3. This Instrument comes into force on September 13, 2023.

B.5.14 Amendments to Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions

AMENDMENTS TO
ONTARIO SECURITIES COMMISSION RULE 45-501 *ONTARIO PROSPECTUS AND REGISTRATION EXEMPTIONS*

1. Ontario Securities Commission Rule 45-501 Ontario Prospectus and Registration Exemptions is amended by this Instrument.

2. Section 1.1 is amended by repealing the definition of "Canadian financial institution***".***

3. This Instrument comes into force on September 13, 2023.

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:
Probity Mining 2023-II Short Duration Flow-Through Limited Partnership - British Columbia Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Sep 8, 2023
NP 11-202 Preliminary Receipt dated Sep 8, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06024968

Issuer Name:
Probity Mining 2023-II Short Duration Flow-Through Limited Partnership - National Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Sep 8, 2023
NP 11-202 Preliminary Receipt dated Sep 8, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06024969

Issuer Name:
Sprott Physical Uranium Trust
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Sep 5, 2023
NP 11-202 Preliminary Receipt dated Sep 5, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06023703

Issuer Name:
Hamilton Technology Yield Maximizer ETF
Hamilton U.S. Bond Yield Maximizer ETF
Hamilton U.S. Equity Yield Maximizer ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Sep 8, 2023
NP 11-202 Final Receipt dated Sep 8, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06017362

Issuer Name:
Dynamic Active Balanced ETF Portfolio
Dynamic Active Conservative ETF Portfolio
Dynamic Active Growth ETF Portfolio
Dynamic Active Income ETF Portfolio
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Sep 11, 2023
NP 11-202 Preliminary Receipt dated Sep 11, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06025419

Issuer Name:
Dynamic Active Canadian Bond ETF
Dynamic Active Global Equity Income ETF
Dynamic Active U.S. Equity ETF
Dynamic Active U.S. Investment Grade Corporate Bond ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Sep 11, 2023
NP 11-202 Preliminary Receipt dated Sep 11, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06025418

Issuer Name:
iProfile Canadian Dividend and Income Equity Private Pool
iProfile Enhanced Monthly Income Portfolio – Canadian Fixed Income Balanced
iProfile Enhanced Monthly Income Portfolio – Canadian Neutral Balanced
Principal Regulator – Manitoba
Type and Date:
Preliminary Simplified Prospectus dated Sep 11, 2023
NP 11-202 Preliminary Receipt dated Sep 11, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06025414

Issuer Name:
Dynamic Credit Absolute Return Fund
Dynamic Credit Opportunities Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Sep 7, 2023
NP 11-202 Final Receipt dated Sep 7, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06009418

Issuer Name:
Imperial U.S. Equity Pool
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated August 28, 2023
NP 11-202 Amendment Receipt dated Sep 5, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03448038

Issuer Name:
Sprott Physical Uranium Trust
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated Sep 7, 2023
NP 11-202 Final Receipt dated Sep 8, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06023703

Issuer Name:
Probity Mining 2023-II Short Duration Flow-Through Limited Partnership - Quebec Class
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Sep 8, 2023
NP 11-202 Preliminary Receipt dated Sep 8, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06024970

NON-INVESTMENT FUNDS

Issuer Name:
Enbridge Inc.
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated Sep 5, 2023
NP 11-202 Final Receipt dated Sep 5, 2023
Offering Price and Description:
Common Shares, Preference Shares, Debt Securities (Subordinated Indebtedness), Subscription Receipts
Filing # 06023839

Issuer Name:
Urban Plus Capital Corp.
Principal Regulator – British Columbia
Type and Date:
Final CPC PROSPECTUS dated Sep 5, 2023
NP 11-202 Final Receipt dated Sep 6, 2023
Offering Price and Description:
Minimum Offering: $250,000.00 or 2,500,000 Common Shares
Maximum Offering: $450,000.00 or 4,500,000 Common Shares
Price: $0.10 per Common Share
Filing # 03539451

Issuer Name:
Dream Industrial Real Estate Investment Trust
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Sep 5, 2023
NP 11-202 Final Receipt dated Sep 6, 2023
Offering Price and Description:
Units, Subscription Receipts, Debt Securities
Filing # 06024134

Issuer Name:
NOA Lithium Brines Inc.
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated Sep 5, 2023
NP 11-202 Final Receipt dated Sep 6, 2023
Offering Price and Description:
$100,000,000.00 - Common Shares, Warrants, Units, Subscription Receipts, Debt Securities, Preferred Shares
Filing # 06012049

Issuer Name:
Savaria Corporation
Principal Regulator – Quebec
Type and Date:
Preliminary Short Form Prospectus dated Sep 8, 2023
NP 11-202 Preliminary Receipt dated Sep 8, 2023
Offering Price and Description:
$55,013,000.00 - 3,794,000 Common Shares
Price: $14.50 per Common Share
Filing # 06024347

Issuer Name:
Cathedra Bitcoin Inc. (Formerly, Fortress Technologies Inc.)
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated Sep 6, 2023
NP 11-202 Final Receipt dated Sep 7, 2023
Offering Price and Description:
US$10,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts
Filing # 03553818

Issuer Name:
Red Canyon Resources Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Sep 1, 2023
NP 11-202 Preliminary Receipt dated Sep 5, 2023
Offering Price and Description:
No securities are being offered pursuant to this prospectus
Filing # 06023597

Issuer Name:
Rektron Group Inc.
Principal Regulator – British Columbia
Type and Date:
Amendment to Preliminary Long Form Prospectus dated Sep 1, 2023
NP 11-202 Preliminary Receipt dated Sep 5, 2023
Offering Price and Description:
7,500,000 Units - USD$2.00
2,595,917 Common Shares issuable on deemed exercise of 2,595,917 Special Warrants - USD$1.58
Filing # 03546933

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
New Registration	Beequest Gestion D'actifs Inc.	Portfolio Manager	September 6, 2023
Name Change	From: OTT Financial Canada Inc. To: Moomoo Financial Canada Inc.	Investment Dealer & Futures Commission Merchant	June 29, 2023

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