The Ontario Securities Commission

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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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A.1.1 Traynor Ridge Capital Inc. et al. – s. 127(8), (1), (2)

FILE NO.: 2023-34

IN THE MATTER OF
TRAYNOR RIDGE CAPITAL INC.,
TR1 FUND,
TR1-I FUND,
TR3 FUND AND
TR1 GP LTD.

NOTICE OF HEARING
Subsections 127(8), 127(1) and 127(2) of the *Securities Act,* RSO 1990, c S.5

PROCEEDING TYPE: Application for Extension of Temporary Order

HEARING DATE AND TIME: In writing

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 Commission on October 30, 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.

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 14th day of November, 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.

File No.:

IN THE MATTER OF
TRAYNOR RIDGE CAPITAL INC.,
TR1 FUND,
TR1-I FUND,
TR3 FUND AND
TR1 GP LTD.

APPLICATION OF STAFF OF THE ONTARIO SECURITIES COMMISSION

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

A. ORDER SOUGHT

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

1. An Order extending the Temporary Order of the Commission dated October 30, 2023 made with respect to Traynor Ridge Capital Inc. (**Traynor**), TR1 Fund, TR1-I Fund (together the **TR1 Funds**), TR3 Fund (formerly the TR1 Fund LP), and TR1 GP Ltd. (**TR1 GP**) until February 8, 2024;

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

3. An order that this application be heard in writing pursuant to Rule 23(3); and

4. Such other Order as the Capital Markets Tribunal considers appropriate in the public interest.

B. GROUNDS

The grounds for the request are:

Background:

1. Traynor, a company incorporated under the laws of Canada, is registered under the *Securities Act*, RSO 1990, c. S.5 (the ***Securities Act***) as an investment fund manager, an advisor in the category of portfolio manager and as a dealer in the category of exempt market dealer;

2. Prior to his recent death, Christopher Callahan was Traynor's sole director, officer and shareholder. He was also Traynor's Ultimate Designated Person and Chief Compliance Officer as required by the *Securities Act*. Callahan was registered as an Advising Representative and Dealing Representative. Other than Callahan, Traynor only has only one other individual registered under the *Securities Act*, William Chyz, who is also registered as an Advising Representative and Dealing Representative;

3. Prior to the appointment of the Receiver, there were no persons or entities able to exercise control over Traynor following Callahan's death. Callahan was the mind and management of Traynor and was the only person or entity legally empowered to make decisions on behalf of Traynor;

4. TR3 Fund, formerly TR1 Fund LP, is a limited partnership that was formed on January 17, 2020 and made available to accredited investors resident in any province or territory of Canada. TR1 GP Ltd. is the general partner for TR1 Fund LP. Callahan was the sole director and officer of TR1 GP Ltd. Traynor was appointed as investment manager of TR3 Fund;

5. Each of the TR1 Funds are open-ended investment funds established as a trust under the laws of the Province of Ontario on January 1, 2022, with Traynor acting as the trustee. The TR1 Fund is made available to accredited investors, whereas the TR1-I Fund is made available to ultra high net worth and institutional investors;

6. The TR1 Funds have common investment strategies and objectives. Both funds invest net subscription proceeds from the sale of their units in redeemable participating shares of the TR1 International Fund (the **International Fund Shares**). The TR1 International Fund, in turn, invests substantially all of the funds received from the issuance of the International Fund Shares in a corresponding class of redeemable participating shares of the TR1 Master Fund (together with the TR1 International Fund, the **Cayman Funds**);

7. Each of the Cayman Funds is an exempted company incorporated with limited liability in the Cayman Islands on November 23, 2021. A board of directors (which included Callahan prior to his death) (the **Cayman Directors**) has overall

responsibility for the management and administration of the Cayman Funds. All investment decisions for the TR1 Funds, TR3 Fund and the Cayman Funds (together, the **Funds**) were made by Callahan;

8. Traynor is the investment fund manager of the TR1 Funds and the TR3 Fund. Traynor is also the investment advisor for the Cayman Funds;

Traynor had no Controlling Mind

9. On October 27, 2023, the Canadian Investment Regulatory Organization advised the Enforcement Branch of the Ontario Securities Commission (the **OSC Enforcement**) that several introducing firms had settled trades for Traynor but could not recapture the costs of the trades from one of Traynor's prime brokers. As a result, the dealers have suffered losses;

10. On October 28, 2023, Traynor's counsel advised OSC Enforcement that Callahan was deceased. OSC Enforcement asked if there was any additional information about who was in control of the firm, but no such information was available or expected from the family;

11. On October 30, 2023, OSC Enforcement met with Chyz and Traynor's counsel to discuss recent events and understand Traynor's plan moving forward. At that meeting, Chyz advised that his role at Traynor was limited to sales and marketing, that he had no trading experience nor involvement is any investment decision making, or the surrounding process. Counsel for Traynor also advised that there is no one with signing authority for Traynor and no person who can make decisions on behalf of Traynor;

12. On November 2, 2023, the OSC Enforcement met with Traynor's counsel, the two remaining Cayman Directors and their Cayman counsel who advised, among other things that it was Traynor (Callahan) who made all investment decisions for the Cayman Funds and interacted with the prime brokers on behalf of the Cayman Funds;

Temporary Order

13. On October 30, 2023, the Commission issued a Temporary Order (the **Temporary Order**), pursuant to subsections 127(1) and (5.1) of the *Securities Act* ceasing immediately trading in any securities by or of Traynor and by or of TR1 GP Ltd., and in the securities of the TR1 Funds and the TR3 Fund. The Temporary Order also imposed terms and conditions on Traynor's registration, prohibiting Traynor from: (i) reducing its capital in any manner, (ii) reducing or repaying any subordinated indebtedness, and (iii) directly or indirectly making payments to any director, officer, partner, shareholder, related company, or affiliate;

14. The Temporary Order took effect immediately and, unless extended by order of the Capital Markets Tribunal, will expire on November 14, 2023;

Appointment of the Receiver

15. Based on the above grounds, the Commission applied on November 3, 2023 to the Ontario Superior Court of Justice (Commercial List) (the **Court**) for an order appointing Ernst & Young Inc. as receiver and manager (in such capacities, the **Receiver**), without security, of all the assets, undertakings and property of Traynor and the Funds (the **Receivership Application**). The Receivership Application was heard on November 3, 2023. The Court granted the application and issued an Order on November 3, 2023 appointing the Receiver (the **Appointment Order**);

Extension of the Temporary Order

16. The Receiver advises that an extension of the Temporary Order will assist the Receiver in carrying out its mandate under the Appointment Order. The Receiver has requested a carve out as required for the Receiver, or its agent, to carry out its functions as set out in the Appointment Order;

17. The Receiver consents to this Application and consents to it being heard in writing;

18. OSC Enforcement has also received information that a preliminary review of Traynor's trading activity shows some trading without any change in beneficial or economic ownership. OSC Enforcement has commenced an investigation into this trading activity, which investigation is ongoing;

19. In light of the appointment of the Receiver, OSC Enforcement does not seek to extend the terms and conditions placed on Traynor's registration in the Temporary Order;

20. The Order sought by OSC Enforcement is necessary to protect investors and is in the public interest;

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

22. Rules 3, 4(2), 13 and 23 of the Capital Markets Tribunal *Rules of Procedure and Forms*; and

23. Such further and other grounds a counsel may advise and the Tribunal may permit.

B. EVIDENCE

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

1. The Affidavit of Ria Sharma sworn November 13, 2023; and

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

Date: November 13, 2023

STAFF OF THE
ONTARIO SECURITIES COMMISSION

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A.2
Other Notices

A.2.1 TeknoScan Systems Inc. et al.

FOR IMMEDIATE RELEASE
November 8, 2023

TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM,
File No. 2022-19

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

A copy of the Order dated November 8, 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.2.2 Troy Richard James Hogg et al.

FOR IMMEDIATE RELEASE
November 10, 2023

TROY RICHARD JAMES HOGG,
CRYPTOBONTIX INC.,
ARBITRADE EXCHANGE INC.,
ARBITRADE LTD.,
T.J.L. PROPERTY MANAGEMENT INC. AND
GABLES HOLDINGS INC.,
File No. 2022-20

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

A copy of the Order dated November 10, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.3 Cormark Securities Inc. et al.

FOR IMMEDIATE RELEASE
November 10, 2023

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

TORONTO – Take notice that an attendance in the above named matter is scheduled to be heard on November 15, 2023 at 10:00 a.m.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

media_inquiries@osc.gov.on.ca

For General Inquiries:

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

A.2.4 Mithaq Canada Inc. and Aimia Inc.

FOR IMMEDIATE RELEASE
November 13, 2023

MITHAQ CANADA INC. AND
AIMIA INC.,
File No. 2023-28

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

A copy of the Order dated November 13, 2023 and the Amended Application dated November 8, 2023 is available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

For Media Inquiries:

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For General Inquiries:

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inquiries@osc.gov.on.ca

A.2.5 Canada Cannabis Corporation et al.

FOR IMMEDIATE RELEASE
November 14, 2023

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

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

A copy of the Reasons and Decision and the Order dated November 13, 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.2.6 Derek Scheinman

FOR IMMEDIATE RELEASE
November 14, 2023

DEREK SCHEINMAN,
File No. 2023-23

TORONTO – The Tribunal issued its Reasons and Decision and an Order pursuant to Subsections 127(1) and 127(10) of the *Securities Act* in the above-named matter.

A copy of the Reasons and Decision and the Order both dated November 13, 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.2.7 Traynor Ridge Capital Inc. et al.

FOR IMMEDIATE RELEASE
November 14, 2023

TRAYNOR RIDGE CAPITAL INC.,
TR1 FUND,
TR1-I FUND,
TR3 FUND AND
TR1 GP LTD.,
File No. 2023-34

TORONTO – The Tribunal issued a Notice of Hearing on November 14, 2023 to be heard in writing 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 October 30, 2023.

A copy of the Notice of Hearing dated November 14, 2023, Application dated November 13, 2023 and the Temporary Order dated October 30, 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.2.8 Traynor Ridge Capital Inc. et al.

FOR IMMEDIATE RELEASE
November 14, 2023

TRAYNOR RIDGE CAPITAL INC.,
TR1 FUND,
TR1-I FUND,
TR3 FUND AND
TR1 GP LTD.,
File No. 2023-34

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

A copy of the Order dated November 14, 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.3
Orders

A.3.1 TeknoScan Systems Inc. et al.

IN THE MATTER OF
TEKNOSCAN SYSTEMS INC.,
H. SAMUEL HYAMS,
PHILIP KAI-HING KUNG AND
SOON FOO (MARTIN) TAM

File No. 2022-19

Adjudicators: Andrea Burke (chair of the panel)
James Douglas

November 8, 2023

ORDER

WHEREAS on November 7, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider, among other things, a motion by H. Samuel Hyams to adjourn the start of the merits hearing in this proceeding, and a motion by TeknoScan Systems Inc. (**TeknoScan**), Philip Kai-Hing Kung and Soon Foo (Martin) Tam for an adjournment of the merits hearing and other relief;

ON READING the materials filed by the parties, and on hearing the submissions of the representatives for each of H. Samuel Hyams, TeknoScan, Kung and Tam, and the representative for Staff of the Ontario Securities Commission;

IT IS ORDERED, for reasons to follow, that:

1. pursuant to Rule 29(1) of the *Capital Markets Tribunal Rules of Procedure and Forms*, Hyams' motion for an adjournment is granted and the previously scheduled merits hearing dates of November 14, 15, 16 and 17 and December 7, 12, 14, 15 and 18, 2023, are vacated;

2. TeknoScan's, Kung's and Tam's motion is granted in part, and the August 3, 2023 order in this proceeding is varied such that by 4:30 p.m. on December 15, 2023, TeknoScan, Kung, Tam and Hyams shall:

    a. serve Staff with a hearing brief containing copies of the documents, and identifying the other things, that each party intends to produce or enter as evidence at the merits hearing; and

    b. provide to the Registrar a copy of the *E-Hearing Checklist;*

3. the August 3, 2023 order is also varied such that by 4:30 p.m. on January 22, 2024, each party shall provide to the Registrar the electronic documents that the party intends to rely on or enter into evidence at the merits hearing, along with an index file containing hyperlinks to the documents in the hearing brief, in accordance with the *Protocol for E-hearings*;

4. a further attendance in this matter is scheduled for January 10, 2024, at 9:00 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; and

5. additional merits hearing dates are scheduled for January 29, 30, 31 and April 2, 3, 4, 5, 8 and 9, 2024 at 10:00 a.m. on each hearing day, at the Capital Markets Tribunal located at 20 Queen Street West, 17th Floor, Toronto, Ontario, such that the merits hearing in this matter will commence on January 29, 2024 and continue on January 30 and 31, February 13, 15, 16, 20, 21, 22, 23, 26, 27, 28, and 29, and April 2, 3, 4, 5, 8 and 9, 2024, or on such other dates and times as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

"Andrea Burke"

"James Douglas"

A.3.2 Troy Richard James Hogg et al.

IN THE MATTER OF
TROY RICHARD JAMES HOGG,
CRYPTOBONTIX INC.,
ARBITRADE EXCHANGE INC.,
ARBITRADE LTD.,
T.J.L. PROPERTY MANAGEMENT INC. AND
GABLES HOLDINGS INC.

File No. 2022-20

Adjudicators: Sandra Blake (chair of the panel)
Andrea Burke
M. Cecilia Williams

November 10, 2023

ORDER

WHEREAS on November 10, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider a motion by Troy Richard James Hogg, Arbitrade Exchange Inc., T.J.L. Property Management Inc. and Gables Holdings Inc. (the **Moving Parties**) to adjourn the merits hearing in this proceeding and vary deadlines set by the Tribunal's order dated April 19, 2023;

ON READING the materials filed by the Moving Parties and Staff of the Ontario Securities Commission, and on hearing the submissions of the representatives for Staff, and Hogg, appearing on his own behalf and on behalf of the corporate Moving Parties, no one appearing on behalf of the remaining respondents;

IT IS ORDERED, for reasons to follow, that:

1. the motion to adjourn the merits hearing is dismissed;

2. the Tribunal's April 19, 2023 order is varied such that by 4:30 p.m. on November 17, 2023, the Moving Parties shall:

    a. serve Staff with a hearing brief containing copies of the documents, and identifying the other things, that they intend to produce or enter as evidence at the merits hearing;

    b. provide to the Registrar a completed copy of the *E-Hearing Checklist*; and

    c. provide to the Registrar the electronic documents that they intend to rely on or enter into evidence at the merits hearing, along with an index file containing hyperlinks to the documents in the hearing brief, in accordance with the *Protocol for E-Hearings*.

"Sandra Blake"

"Andrea Burke"

"M. Cecilia Williams"

A.3.3 Mithaq Canada Inc. et al.

IN THE MATTER OF
MITHAQ CANADA INC.

AND

IN THE MATTER OF
AIMIA INC.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF
A DECISION OF THE TORONTO STOCK EXCHANGE

File No. 2023-28

Adjudicators: Timothy Moseley (chair of the panel)
James D. G. Douglas
Dale R. Ponder

November 13, 2023

ORDER

WHEREAS Mithaq Canada Inc., Aimia Inc. and the Toronto Stock Exchange (**TSX**) requested the Capital Markets Tribunal to make an order for the filing of TSX materials with respect to Mithaq Canada Inc.'s amended application dated November 8, 2023;

ON BEING ADVISED that Mithaq Canada Inc. and Aimia Inc. consent to this Order and Staff of the Ontario Securities Commission and the Toronto Stock Exchange do not oppose this Order;

IT IS ORDERED that the TSX shall serve and file the record of the TSX with respect to the TSX Decision, and any written reasons for the TSX Decision, by no later than 4:30 p.m. on Monday, November 13, 2023.

"Timothy Moseley"

"James D. G. Douglas"

"Dale R. Ponder"

IN THE MATTER OF
MITHAQ CANADA INC.

AND

IN THE MATTER OF
AIMIA INC.

AND

IN THE MATTER OF
A HEARING AND REVIEW OF
A DECISION OF THE TORONTO STOCK EXCHANGE

APPLICATION OF MITHAQ CANADA INC.

(In connection with a transactional proceeding under Rule 16,
and a hearing and review of a decision of the Toronto Stock Exchange, and
under Sections 8, 21.7, 104 and 127 of the *Securities Act*, RSO 1990, c.S.5)

A. ORDER SOUGHT

The Applicant, Mithaq Canada Inc. (the "Offeror"), requests that the Tribunal make the following order(s):

1. **Orders relating to the Shareholder Rights Plan (defined below) as follows:**

   (a) An order pursuant to section 127 of the *Securities Act* cease trading all securities issued, or that may be issued, under the Shareholder Rights Plan (defined below) and under any replacement shareholder rights plan that may be adopted by the board of directors of Aimia (the "Board").

2. **Orders relating to the Private Placement (defined below) as follows:**

   (a) An order setting aside any decision of the Toronto Stock Exchange that does not require Aimia to obtain shareholder approval of the Private Placement (the "TSX Decision") pursuant to section 21.7 of the *Securities Act*;

   (b) A stay of any TSX Decision pursuant to sections 8(4) and 21.7(2) of the *Securities Act* until such time as the Ontario Securities Commission (the "Commission") determines the issues herein;

   (c) An order pursuant to sections 8(3), 104 and 127 of the *Securities Act* directing that Aimia obtain shareholder approval of the Private Placement with the following four conditions:

      (i) the Board delay the closing of the Private Placement until after shareholder approval is obtained at the required shareholder meeting,

      (ii) the Board obtain shareholder approval of the Private Placement by asking shareholders either to ratify the Private Placement or to instruct the Board to reverse the Private Placement,

      (iii) only uninterested shareholders in the Private Placement, namely shareholders who are not proposed investors in the Private Placement nor any voting rights obtained through the Private Placement, be permitted to vote at the required shareholder meeting, and

      (iv) that if the shareholders vote to instruct the Board to reverse the Private Placement that the Board implement those instructions by taking all necessary steps to reverse the Private Placement;

   (d) An order permanently cease trading the Private Placement pursuant to section 127(1)2 of the *Securities Act*; and

   (e) A temporary cease trade order pursuant to section 127(5)2 of the *Securities Act*, effective immediately, cease trading the Private Placement and restraining the exercise of any voting rights acquired thereunder until such time as the Commission determines the issues herein, and in the alternative, an order that any shares issued in the Private Placement not be included in the number of outstanding shares for the purpose of the Offeror satisfying the Statutory Minimum Tender Condition (as defined below).

3. An order for an expedited hearing;

4. An order requiring the TSX to produce the written reasons for the TSX Decision, if any, and the TSX Decision record no later than November 13, 2023, the agreed upon date for such production; and

5. Such further and other relief as counsel may advise and the Commission may deem appropriate.

B. GROUNDS

The grounds for the request are:

Overview

6. This Application arises in the context of three defensive tactics that the Board has adopted in response to Mithaq Canada Inc.'s unsolicited take-over bid of Aimia, announced on October 5, 2023 (defined below as the "Offer"), and in response to Mithaq's exercise of its fundamental rights as a shareholder seeking review of the narrow margins of the Board's re-election at Aimia's annual general meeting on April 18, 2023 (the "Meeting"):

   (a) Aimia's continuance of meritless litigation brought against Mithaq in the Ontario Superior Court seeking remedies designed to entrench the Board's position, deny Mithaq a fundamental shareholder right to exercise corporate oversight powers, and impact the ability of shareholders to respond to the Offer;

   (b) Aimia's adoption (without shareholder approval) of the Shareholder Rights Plan (defined below) that no longer serves any purpose in light of the Private Placement, and in any event, is more restrictive than the applicable statutory requirements with the result that neither the Offer (nor any other unsolicited take-over bid) will be likely to succeed; and

   (c) Aimia's recent announcement of the Private Placement (again without shareholder approval), with a target closing date of October 19, 2023, will have a material dilutive effect on existing shareholders and will effectively prevent the Offer (or any other value enhancing transaction, including at a higher price than the Offer, as a result of the pricing of the Warrants (defined below)) from succeeding.

   These three defensive tactics adopted by the Board are designed to frustrate an open and even-handed take-over bid process and to deny shareholders the opportunity to respond to the Offer (or any other take-over bid or value enhancing transaction) while entrenching a Board that is subject to an ongoing review of their recent election. None of the defensive tactics have any *bona fide* corporate objectives. They were not designed to maximize value to shareholders "in a genuine attempt to obtain a better bid." In the circumstances, the Commission's public interest mandate is engaged. The Commission ought to exercise its discretion to intervene to remedy the harmful consequences to all Aimia shareholders from the defensive measures adopted and to preserve the integrity of Ontario's capital markets.

Background

7. Mithaq Canada Inc. (the "Offeror") is a wholly-owned subsidiary of Mithaq Capital SPC ("Mithaq"). Mithaq is the largest shareholder of Aimia Inc. As of May 25, 2023, Mithaq owns or controls 30.96% of the common shares of Aimia ("Aimia Shares"). Its share acquisitions and potential plans in respect of its Aimia shareholdings have been disclosed in accordance with Ontario securities law.

8. On February 21, 2023, Mithaq disclosed that it owned or controlled 19.99% of Aimia Shares.

9. On March 3, 2023, Aimia filed its notification of its 2023 Annual General Meeting for a record date of March 6, 2023 (the "Meeting"), effectively providing no notice to shareholders. Although Aimia was permitted to abridge the requirement that notification of meeting and record dates be sent 25 days before the record date, Aimia failed to file the abridgement certificate as required under Ontario securities law contrary to the requirements of section 2.20 of National Instrument 54-101 *Communications with Beneficial Owners of Securities of a Reporting Issuer*.

10. Aimia called the Meeting for April 18, 2023, weeks earlier than Aimia had historically held its annual general meetings.

11. Leading up to the Meeting, Mithaq and other shareholders, including Milkwood Capital (UK) Ltd. ("Milkwood") and Christopher Mittleman, communicated about their investments in Aimia and concerns they had with the Board. The law encourages such communications as part of the regime allowing shareholders to oversee and hold management accountable.

12. Mithaq and other Aimia shareholders explored whether to nominate an alternative slate of directors in connection with the Meeting. No agreement was reached to pursue a dissident slate and no joint actor relationships, as defined in securities law, and requiring disclosure to the market, were formed.

13. On April 6, 2023, Mithaq issued a press release disclosing that it intended to vote against the re-election of the Aimia Board of Directors (the "Board"). Mithaq encouraged other shareholders to vote "no".

14. Mithaq promoted the vote "no" campaign before the Meeting. In doing so, it cited Mithaq's concerns that Aimia was plagued by mismanagement and poor governance and that the Board was not suited to act in the best interests of Aimia and its stakeholders. In addition to problematic capital allocation decisions and acquisitions, Mithaq was concerned about Aimia's disappointing performance, misaligned investment strategies and misguided focus on private markets, the low share ownership of the Board (in the aggregate, less than 3% of the Aimia Shares), and unfair compensation structure.

15. Aimia responded by issuing numerous press releases and filing a complaint with the Commission alleging that Mithaq had failed to disclose that it was acting jointly or in concert with other Aimia shareholders, including Milkwood and Mittleman. Mithaq denied (and continues to deny) the undisclosed joint actor allegations and responded to the complaint on April 14, 2023.

16. In advance of the Meeting, Mithaq requested that an independent chair, not affiliated with Aimia and whose position was not at stake in the Meeting, chair the Meeting to ensure impartiality. Aimia did not respond.

17. The Meeting went ahead on April 18, 2023. Mithaq's procedural fairness concerns were not addressed. The Meeting was chaired by Lehmann, a director and member of Aimia senior management. Mr. Lehmann was not an independent chair: a "no" vote at the Meeting would have led to him resigning as a director and a new set of directors could have removed him from senior management.

18. Mithaq voted against the re-election of the Board at the Meeting.

19. On April 19, 2023, Aimia reported that the chair of the Board was not re-elected at the Meeting and none of the other director nominees received greater than 52.41% of the votes cast at the Meeting in their favour.

20. In light of the closeness of the results and the lack of independence governing the vote at the Meeting, Mithaq requested the ability to review the proxies voted in connection with the Meeting. Aimia repeatedly rejected that request primarily on the basis of shareholder privacy.

21. On April 27, 2023, Mithaq filed an Application in the Ontario Superior Court seeking various relief to facilitate its requested proxy review. Notwithstanding its shareholder privacy objection to the proxy review, Aimia produced certain proxy records to Mithaq without taking any steps to redact or protect any shareholder personal information.

22. On the basis of a preliminary review of the proxy records produced by Aimia, Mithaq has concerns that the Board improperly excluded proxies to manipulate the results of the Meeting in its favour.

23. In response to Mithaq's attempts to conduct the proxy review, Aimia commenced litigation in the Ontario Superior Court to prevent Mithaq from, among other things, requisitioning a special shareholder meeting, voting its Aimia Shares, and acquiring additional Aimia Shares.

24. Since the Offer, Aimia has proposed additional grounds of relief and raised additional allegations in an amended pleading, which Mithaq has not consented to and for which a Court order will be required before the amendments can be made.

25. The amended allegations repeat the allegation that leading up to the Meeting Mithaq was in an undisclosed joint actor relationship with Milkwood and Mittleman. However, there are no allegations that Mithaq is currently in an undisclosed joint actor relationship nor are there any allegations that the Offer was made as part of any undisclosed joint actorship.

26. On May 25, 2023, Mithaq disclosed its ownership of 30.96% of Aimia Shares. At the same time, Mithaq disclosed that it was contemplating a number of alternatives with respect to its investment in Aimia (the "May 25 Early Warning Report"). This was a continuation of its disclosure made in its February 3, 2023 Early Warning Report, in which Mithaq disclosed that it may explore, "alternatives with respect to its investment in Aimia, including, but not limited to, developing plans or intentions or taking actions itself or with joint actors".

27. In light of the above steps taken by the Board and Mithaq's related concerns, on June 5, 2023, counsel to Mithaq wrote to the TSX advising of its concerns that the Board might adopt additional defensive tactics to further entrench itself and to hinder corporate democratic processes.

28. Of particular concern to Mithaq was the possibility that the Board would adopt a shareholder rights plan or commence a private placement of Aimia Shares, without shareholder approval, to dilute Mithaq's holdings and to materially affect control of Aimia. Doing so would permit the Board to manipulate the outcome of any proxy contest or take-over bid, possible alternatives Mithaq had outlined it was considering in the May 25 Early Warning Report.

29. With respect to Aimia's shareholders, there is: (i) no evidence of an Aimia shareholder complaint or concern about Mithaq, the Meeting or Mithaq's share ownership, even after Aimia's allegations were well-publicized by it before the Meeting; (ii) no evidence of an Aimia shareholder making a regulatory or civil litigation complaint; and (iii) no evidence of an Aimia shareholder supporting Aimia's litigation against Mithaq despite Aimia well-publicizing the litigation.

The Offer

30. On October 3, 2023, the Offeror announced its intention to make an offer for all the issued and outstanding common shares of Aimia that it or its affiliates did not already own.

31. On October 5, 2023, the Offeror made an all-cash offer for all Aimia Shares at a price of $3.66 per share (the "Offer"). The Offer represents a premium of 20% over the October 2, 2023 unaffected, pre-announcement trading price of Aimia Shares and a 23% premium over the 20-day VWAP. The Offer was validly commenced by the Offeror, publishing an advertisement as contemplated by section 2.9(1)(a) of NI 62-104, and in connection with commencing the Offer, the Offeror satisfied the requirements of sections 2.10(1) and 2.10(2)(a) of NI 62-104. The Offeror has also taken the necessary steps to ensure that the requirements of section 2.10(2)(b) are satisfied by the deadline contemplated therein.

32. The Offer will remain open for acceptance until 11:59 p.m. (Vancouver time) on January 18, 2024, unless otherwise extended, accelerated, or withdrawn by the Offeror. The Offer is subject to customary conditions, including, among others, the non-waivable condition that there have been validly deposited under the Offer and not withdrawn that number of Aimia Shares representing more than 50% of the outstanding Aimia Shares, together with the associated rights, excluding those Aimia Shares beneficially owned, or over which control or direction is exercised, by the Offeror, any associate or affiliate of the Offeror, or any person acting jointly or in concert with the Offeror. This condition is consistent with the minimum tender condition provided for in Ontario securities law (the "Statutory Minimum Tender Condition").

33. Aimia issued a press release on October 10, 2023 indicating that it had formed a special committee of the Board to assess the Offer. Aimia advised that a director's circular setting out the Board's recommendation with respect to the Offer is expected to be filed by October 20, 2023, as required by applicable securities laws. However, the Board's decision to proceed with the Private Placement, which is expected to close around October 19, 2023, and the commentary on the Offer contained in Aimia's October 10, 2023 press release indicate that the Board and special committee have prejudged the Offer.

34. Aimia's October 10 press release states that "the Offer is subject to unprecedented terms that create significant uncertainty with respect to whether the Offer will be completed." This statement is misleading. There is nothing unprecedented about the number or scope of bid conditions, which are consistent with other unsolicited takeover bids. The conditions are necessary to protect all shareholders' investment in the company, including Mithaq's, as they discourage the Board and Aimia management from taking more self-interested defensive actions that could further depreciate company value and deprive shareholders of the Offer.

Aimia's litigation against Mithaq is an abuse of process

35. Since the Offer, as noted above, Aimia has broadened the scope of its litigation against Mithaq. In particular, Aimia makes a number of allegations and seeks various relief designed to frustrate the Offer, including allegations that the Offer fails to comply with various securities law requirements, such as the formal valuation requirement for insider bids, the pre-bid integration rule, the mandatory early warning regime, and the moratorium provisions. There is no basis for these allegations. Contrary to Aimia's allegations, the Offer complies with the requirements of Ontario securities law.

36. A fundamental allegation in Aimia's litigation against Mithaq is that Mithaq received material non-public information from an alleged joint actor. Since first raising this allegation, Aimia's President Michael Lehman, has acknowledged on cross-examination that the allegation is baseless. Aimia's counsel has similarly confirmed there is no merit to the allegation on the basis of the evidence Aimia has received.

37. In the circumstances, Aimia's litigation against Mithaq is an abuse of process and a clearly abusive defensive tactic serving no *bona fide* corporate objective.

No requirement for formal valuation

38. In its litigation against Mithaq, Aimia incorrectly asserts that a formal valuation was required to be included in the take-over bid circular for the Offer.

39. While the Offer is an "insider offer", as defined in Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* ("MI 61-101"), no formal valuation was required to be included in the take-over bid circular because neither the Offeror nor any of its affiliates or joint actors has or has had any board or management representation of Aimia or knowledge of any material information concerning Aimia or Aimia shares that has not been generally disclosed. As a result, the Offeror was entitled to rely on the exemption under section 2.4 of MI 61-101.

40. As set out above, the Offeror was not, and is not, in a joint actor relationship with Milkwood and/or Mittleman, nor any other person. Mithaq did not fail to disclose any such relationship in accordance with Ontario securities law.

41. Even if the Offeror and any of Milkwood and/or Mittleman were joint actors, none of them have or have had, in the past 12 months prior to the Offer date, any board or management representation in respect of Aimia or knowledge of any material information concerning Aimia that has not been generally disclosed.

42. Mittleman ceased to be an officer of Aimia on March 29, 2022 and ceased to be a director of Aimia on May 6, 2022. After that time, he was an officer of a subsidiary of Aimia until March 27, 2023; however, a subsidiary of an offeree does not qualify as an "offeree issuer" for purposes of MI 61-101.

43. In addition, the Offer was not made by Mithaq with knowledge of any material information concerning Aimia that has not been generally disclosed.

44. Although Aimia alleges in its litigation that Mithaq received material non-public information from Mittleman, Aimia and its counsel have since conceded that, based on the evidence available to Aimia, Mithaq was not provided with any such material non-public information.

No requirement for a "higher price" in the Offer

45. Under the Ontario securities law pre-bid integration rule in section 2.4(1) of National Instrument 62-104 *Take Over Bids and Issuer Bids* ("NI 62-104"), the law imposes a minimum floor for the consideration offered in a takeover bid, namely the highest price paid by the offeror for common shares of the offeree in the 90 days leading up to the date of the take-over bid.

46. In its litigation against Mithaq, Aimia wrongly asserts that Mithaq's acquisition of shares in Q1 2023 triggered a formal takeover bid as a result of its alleged joint actorship with Milkwood and/or Mittleman. Aimia also alleges that the price that would have been required at that time for a take-over bid, as a result of Mithaq's purchase history in the 90 days leading up to the triggering of the mandatory take-over bid requirements in Q1 2023 and the application of the pre-bid integration rule, would have been higher than Aimia Share's trading price on October 2, 2023, which is the basis of the Offer.

47. The implication of these allegations is that the Offer is at a lower price than the price that would have been offered to shareholders had Mithaq complied with the mandatory take-over bid requirements and the pre-bid integration requirements in Q1 2023. There is no basis for this.

48. As set out above, the joint actorship allegations are without foundation.

49. In any event, even if the mandatory take-over bid requirements were triggered in Q1 2023, Mithaq was entitled to rely on the exemption to the pre-bid integration requirements under 2.6 of NI 62-104, because the purchases made by the Offeror were made in the normal course on a published market and satisfied all of the following conditions:

    (a) no broker acting for the Offeror performed services beyond the customary broker's functions in regard to the purchases;

    (b) no broker acting for the Offeror received more than the usual fees or commissions in regard to the purchases than are charged for comparable services performed by the broker in the normal course;

    (c) the Offeror or any person acting for the Offeror did not solicit or arrange for the solicitation of offers to sell securities of the class subject to the bid, except for the solicitation by the Offeror or members of the soliciting dealer group under the bid; and

    (d) the seller or any person acting for the seller does not, to the knowledge of the offeror, solicit or arrange for the solicitation of offers to buy securities of the class subject to the bid.

No breach of the early warning regime or the moratorium provisions by the Offeror

50. Aimia's litigation against Mithaq also contains baseless allegations relating to the Offeror's breach of the early warning regime and the moratorium provisions set out in NI 62-103 and in NI 62-104.

51. For the reasons set out above, because Mithaq was not in an undisclosed joint actor relationship at any time (including prior to the Offer), it has not failed to comply with the early warning regime set out in NI 62-103 and in NI 62-104 nor did its purchases of Aimia Shares on or after December 6, 2022 breach the moratorium provisions in section 5.3 of NI 62-104.

Shareholder Rights Plan is an abusive defensive tactic

52. On June 7, 2023, the Board adopted a shareholder rights plan (the "Shareholder Rights Plan" or the "SRP").

53. In its press release announcing the SRP, Aimia indicated that the SRP was adopted in response to Mithaq increasing its stake from 19.9% to its current 30.96% position. The purpose of the SRP was to ensure that "all shareholders are treated fairly in connection with any offer to acquire the outstanding common shares of Aimia and that the Board has the opportunity to identify, solicit, develop and negotiate value-enhancing alternatives to any unsolicited take-over bid."

54. The SRP is more restrictive than applicable Ontario securities law. In particular, the SRP imposes on prospective takeover bids a minimum tender condition that is broader than the minimum tender condition provided for in NI 62-104 (the "Statutory Minimum Tender Condition"). The Statutory Minimum Tender Condition requires that the bid be subject to a minimum tender condition of more than 50% of the common shares excluding only those common shares held by the offeror or anyone acting jointly or in concert with the offeror.

55. By contrast to the Statutory Minimum Tender Condition, under the SRP, to be a permitted take-over bid (*i.e.*, one that will not trigger the SRP), the bid must be subject to a minimum tender condition of more than 50% of the Aimia Shares held by "independent shareholders", a defined term in the SRP which extends significantly beyond the requirements of the Statutory Minimum Tender Condition to exclude, for example, Aimia Shares held by Aimia employees under various benefit plans. These plans are controlled by Aimia and could thus be manipulated to impact the minimum tender condition under the SRP in the Board's discretion.

56. In the case of the Offer, the effect of this broad minimum tender condition in the SRP is that the take-up of Aimia Shares under the Offer would almost certainly trigger the SRP.

57. Additionally, the shareholder ratification requirement in the SRP is inconsistent with the TSX rules as it fails to require a vote that would both include and exclude Mithaq as a securityholder that is exempted from the SRP (as a result of Mithaq holding in excess of the 20% triggering threshold contained in the SRP).

58. These elements of the SRP, in addition to the timing of its adoption to respond to Mithaq's current ownership of Aimia Shares, suggest that rather than providing an opportunity for identifying value-enhancing alternatives to unsolicited takeover bids, the true aim of the SRP is to prevent any unsolicited takeover bid, particularly one from Mithaq, from succeeding.

59. As of the date of the Offer, Aimia had not announced an intention to seek approval of the SRP by December 7, 2023, six months from adopting the SRP in accordance with TSX rules. However, it is not clear that the Board will not adopt a Replacement SRP to become effective December 7, 2023.

60. Subsection 1.1(2) of National Policy 62-202 *Take-Over Bids – Defensive Tactics* ("NP 62-202") provides that the primary objective of the take-over bid provisions of the *Securities Act* is "the protection of the *bona fide* interest of shareholders of the target company." A secondary objective is "to provide a regulatory framework within which take-over bids may proceed in an open and even-handed environment."

61. Section 127 of the *Securities Act* provides the Commission with a "broad discretion" and jurisdiction to intervene in activities related to the Ontario capital markets when it is in the public interest to do so. In the context of take-over bids, the Commission's public interest jurisdiction affords it the ability to preserve an "open take-over bid process" by preventing defensive measures by a target's management that are abusive of shareholder rights without furthering a *bona fide* corporate objective.

62. NP 62-202 expressly states that the issuance of securities representing a significant percentage of the outstanding securities of the target, such as occurs when a shareholders rights plan is triggered, could constitute a defensive tactic warranting the Commission's oversight. A shareholders rights plan will no longer serve a *bona fide* corporate objective when the plan no longer serves the purpose of maximizing shareholder value.

63. In this case, the SRP does not serve the purpose of maximizing shareholder value and choice, and instead has the effect of denying shareholders the ability to participate in the Offer (and any other unsolicited takeover bid). Although the Offer complies with the requirements for a takeover bid under Ontario Securities law, the effect of the broad minimum tender condition in the SRP is that the take-up of Aimia Shares under the Offer would trigger the SRP.

64. Further, the commencement of the Private Placement confirms that there is no longer any *bona fide* corporate objective for the SRP.

65. As such, the Shareholder Rights Plan is an improper defensive tactic within the meaning of NP 62-202. To ensure that Aimia's shareholders have the opportunity to respond to the Offer, the Commission ought to exercise its public interest jurisdiction to cease trade the rights issuable under the SRP. In the event that a replacement shareholder rights plan is adopted that also frustrates the ability of Aimia's shareholders to respond to the Offer, the rights issuable under it must also be cease traded.

Private Placement is an abusive defensive tactic

66. On October 13, 2023, Aimia announced a private placement of up to 10,475,000 Aimia Shares and 10,475,000 Aimia Share purchase warrants (the "Warrants") to a new group of undisclosed investors (the "Private Placement"). The terms of the Private Placement provide this investor group with up to 3 out of 8 Board seats.

67. As disclosed in Aimia's press release announcing the Private Placement, each Aimia Share and accompanying Warrant is intended to be issued at $3.10 and each Warrant will be exercisable at $3.70 per Aimia Share. Assuming the Private Placement is fully subscribed and all Warrants are exercised, the maximum number of Aimia Shares issuable under the Private Placement represents 24.89% of the currently issued and outstanding Aimia Shares (on an undiluted basis).

68. Aimia claims that the Private Placement is expected to raise gross proceeds of up to $32.5 million, which Aimia says is required and which it will use to fund its operations over the next 12 to 24 months and to support its strategic investment plan and other contingencies.

69. Aimia also claims the Private Placement will not materially affect control of Aimia and that no investor will beneficially own more than 10% of the issued and outstanding Aimia Shares as a result of the Private Placement.

70. Aimia's disclosure of the Private Placement omitted significant material information, including the identities of the proposed investors, whether or not the proposed investors are existing Aimia shareholders, and the respective terms of their investments. There was also insufficient disclosure justifying the need for the capital with only a vague reference to Aimia's capital needs.

71. Contrary to Aimia's claims, the Private Placement is not designed to maximize value to shareholders and is instead an abusive defensive tactic intended to (i) entrench the Board, (ii) manipulate the outcome of the Offer (or subsequent offers), and (iii) materially affect control of Aimia. The following support these conclusions:

    (a) The dilutive effect of the Private Placement will materially affect shareholders' voting rights, including in connection with any meeting of shareholders to vote on the election of directors (as Mithaq is seeking from the Ontario Superior Court in its ongoing litigation against Aimia) and in connection with ratification of the SRP (if it is sought).

    (b) The issuance of a material number of additional Aimia Shares in the face of the Offer, which requires satisfaction of the Statutory Minimum Tender Condition, materially raises the bar for such condition to be satisfied and accordingly raises the possibility that the Offer (or any other subsequent offer) will not succeed.

    (c) The price of the Warrants is $3.70 per Aimia Share, just four cents higher than the Offer price of $3.66 per Aimia Share, which effectively discourages anyone from making a take-over bid (or from proposing another value-enhancing transaction) at a price higher than $3.70, because if such an offer were made the Warrants would likely be immediately exercised resulting in a material dilution thereby increasing the likelihood that any such offer would not succeed.

    (d) Aimia did not extend the Private Placement opportunity to existing Aimia shareholders (contrary to Aimia's commitment at the time of the SRP to treat all shareholders fairly in connection with any offer to acquire the outstanding common shares of Aimia).

    (e) The proposed new investor group will receive up to 3 out of 8 Aimia board seats, amounting to disproportionate board representation.

72. The effects of the Private Placement outlined above are contrary to the purposes of acceptable defensive measures, as set out in NP 62-202, which are ones designed to enhance and maximize value to shareholders "in a genuine attempt to obtain a better bid."

73. Moreover, contrary to the TSX Manual (as set out below), Aimia failed to obtain shareholder approval of the Private Placement where the issuance of rights in the Private Placement will materially affect Aimia's control. Given the effect that the Private Placement will have on the Offer, failing to require shareholder approval for the Private Placement has the effect of depriving shareholders of making a fully-informed collective decision on the Offer. Such an effect is contrary to the take-over bid rules and expressed as a concerning feature of a defensive measure in NP 62-202.

74. When exercising its discretion to review a private placement in accordance with NP 62-202 and section 127 of the *Securities Act*, the Commission needs to balance the extent to which the private placement serves *bona fide* corporate objectives with the securities law principles of facilitating shareholder choice with regard to corporate control transactions and promoting open and even-handed bid environments.

75. Weighing against the abusive effects of the Private Placement outlined above, which includes the effect of frustrating shareholders choice and ability to consider the Offer, are no *bona fide* corporate objectives for the Private Placement. The financing to be derived from the Private Placement is not necessary to support Aimia's operations.

76. While Aimia's press release announcing the Private Placement refers to an undisclosed "independent" opinion confirming Aimia's need for capital as of September 5, 2023, no additional details are provided, including in respect of Aimia's capital needs. Such an opinion is highly unusual and the fact that it was sought raises an inference that the need for the purported financing was not supported by Aimia's cash position disclosed in Aimia's most recent financial statements.

77. In any event, any alleged need for financing is not supported by the cash position disclosed in Aimia's most recent financial statements and is contrary to recent statements made by Aimia management.

78. For example, Aimia's second quarter earnings release, issued on August 11, 2023, note that as of June 30, 2023, Aimia had $116.9 million in cash, cash equivalents, and liquid securities. Further, on September 27, 2023 Aimia management disclosed that during 2023 to 2024 investors should expect "re-initiation of NCIB [normal-course issuer bids] and aggressive share buybacks." Such plans are inconsistent with the need for additional financing. Moreover, these capital plans and business strategies are diametrically opposed in effect on existing shareholders to the materially dilutive Private Placement.

79. As such, the Private Placement is an improper defensive tactic within the meaning of NP 62-202. To ensure that Aimia's shareholders have the opportunity to respond to the Offer, the Commission ought to exercise its public interest jurisdiction to cease trade the Private Placement. In the alternative, the Commission ought to make an order that the shares in the Private Placement not be included in the number of outstanding shares for the purpose of the Statutory Minimum Tender Condition.

80. Section 604(a)(i) of the TSX Company Manual (the "Manual") sets out that security holder approval will generally be required if an issuance materially affects control of the listed issuer. "Materially affect control" is defined in the Manual as the ability of any security holder or combination of security holders acting together to influence the outcome of a vote of security holders.

81. The record suggests that the undisclosed investors in the Private Placement may be acting together, whether in a joint actor relationship or otherwise. Together with the dilutive impact the Private Placement will have on existing shareholders rights as well as the number of Aimia Shares that are issuable under the Private Placement, there can be no doubt that the undisclosed investors in the Private Placement will act together to influence the outcome of a vote of Aimia shareholders. Shareholder approval is therefore required pursuant to section 604(a)(i) of the Manual.

82. Section 603 of the Manual gives the TSX further discretion to impose conditions on the issuance of securities. This requires TSX to consider the effect that the Private Placement will have on the quality of the marketplace, including factors such as the involvement of insiders or other related parties and the material effect on control of the listed issuer.

83. In response to Aimia's announcement of the Private Placement, on October 16, 2023, Mithaq's counsel wrote to the TSX outlining its concerns with the Private Placement and its view that the Private Placement will require that Aimia obtain shareholder approval.

84. In its letter to the TSX, Mithaq disclosed its intention to commence this Application. On the basis of the Commission's broad public interest jurisdiction to address absusive defensive measures and with a view to ensuring an efficient process, Mithaq requested that the TSX defer any consideration of the Private Placement until after this Application has been heard.

85. Section 104 of the *Securities Act* provides the Commission with jurisdiction to make an order requiring compliance with Part XX of the *Act* and the regulations related to this Part, including NP 62-202. Subsection 8(3) of he *Securities Act* confers upon the Commission the authority to review a decision of the TSX and to "make such other decision as the Commission considers proper."

86. Together with the Commission's public interest jurisdiction under section 127, the Commission's jurisdiction under sections 8(3) and 104 is broader than the TSX's jurisdiction. The Commission is entitled to review any TSX Decision under Section 603 or 604 of the Manual on a *de novo* basis. If the TSX does not defer and does not require shareholder approval of the Private Placement, the Commission ought to exercise its jurisdiction to require that Aimia obtain shareholder approval of the Private Placement before it closes on the four conditions set out above.

87. The four conditions sought by the Applicant are required to give practical and legal effect to a decision by the Commission requiring a shareholder vote on the Private Placement. These conditions are as minimally intrusive as is reasonably possible in the circumstances and are not unduly burdensome.

88. The shareholder vote must ask shareholders to either ratify the Private Placement or to instruct the Board to reverse the Private Placement.

89. If the shareholders vote against the Private Placement at the requested shareholders' meeting, a reversal of the Private Placement will be required to give effect to the shareholder vote to which they would be entitled to under TSX rules. A failure to reverse in such circumstances would reward Aimia for its inadequate process in seeking to close the Private Placement.

90. The factors relevant in determining whether it is in the public interest for the Commission to impose the reversal condition sought by the Applicant weigh in favour of imposing such a condition, including for the following reasons:

    (a) Aimia reasonably ought to have known of the Offeror's objections to the TSX Decision without shareholder approval but nonetheless deliberately chose to close the Private Placement without sufficient time to permit shareholders to effectively communicate their objections to the TSX or the Commission;

    (b) the proposed investors in the Private Placement reasonably ought to have known of the Applicant's objections in light of the proxy review, the Offer, and the ongoing litigation between the parties and ought to have known that the TSX, and the Commission upon a review of the TSX decision, has discretion to require shareholder approval in appropriate circumstances;

    (c) Aimia failed to adequately disclose material information relating to the Private Placement in its public announcement of the transaction; and

    (d) there will be no impracticalities or hardship suffered by the reversal in the circumstances.

91. Fairness dictates that only those shareholders who are not proposed investors in the Private Placement ought to be entitled to vote at a shareholder meeting seeking ratification of the Private Placement or its reversal. Moreover, the shareholder vote should not include any voting rights obtained through the Private Placement.

Expedited hearing and cease trade orders are required

92. Given the date that Aimia intends to close the Private Placement (October 19, 2023), Mithaq seeks a temporary cease trade order pursuant to section 127(5) of the *Securities Act* and an expedited hearing.

93. In the absence of a temporary cease trade order, the Private Placement will materially impact the Offer and will also serve the Board's entrenching aims in the context of other shareholder votes that are or may be required in the coming months by diluting the relative voting power of Mithaq and other shareholders dissatisfied with the Board and Aimia management's performance. These votes include ratification of the SRP (if it is sought) as well as any new vote on the election of Aimia directors that may be ordered by the Court in Mithaq's litigation against Aimia. Both are votes in which the Board has a clear interest in the outcome.

94. In addition, the cease trade order pursuant to section 127(5) is required to give practical effect to the requested order sought under subsection 8(3) of the *Securities Act* to require a shareholder vote on the Private Placement.

95. The Applicant requests the record of any TSX Decision and any written reasons for the Decision.

96. The Applicant reserves the right to supplement its grounds for this Application, including once it has received any TSX Decision.

C. EVIDENCE AND SUBMISSIONS

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

(a) the Affidavit of Asif Seemab to be affirmed;

(b) any TSX Decision, together with the record of the Decision and any written reasons for the Decision; and

(c) such other evidence as counsel for the Applicant may advise.

Dated: November 8, 2023

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A.3.4 Canada Cannabis Corporation et al.

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

File No. 2019-34

Adjudicators: Russell Juriansz (chair of the panel)
James Douglas
Cathy Singer

November 13, 2023

ORDER

WHEREAS on June 14, 15 and August 15, 2023, the Capital Markets Tribunal held hearings by videoconference to consider a motion by Silvio Serrano for disclosure of certain materials, including unredacted transcripts of the compelled interview of Benjamin Ward, and in the alternative, a stay of this proceeding against him;

ON READING the materials filed by the parties, and on hearing the submissions of the representatives for all parties, including *amicus curiae*;

IT IS ORDERED THAT this proceeding against Serrano is stayed.

"Russell Juriansz"

"James Douglas"

"Cathy Singer"

A.3.5 Derek Scheinman – s. 127(1), (10)

IN THE MATTER OF
DEREK SCHEINMAN

File No. 2023-23

Adjudicator: Sandra Blake (chair of the panel)

November 13, 2023

ORDER
(Subsections 127(1) and 127(10) of the
Securities Act, RSO 1990, c S.5)

WHEREAS the Capital Markets Tribunal held a hearing in writing, to consider a request by Staff of the Ontario Securities Commission for an order imposing sanctions against Derek Scheinman pursuant to subsections 127(1) and 127(10) of the *Securities Act* (the **Act**);

ON READING the materials filed by Staff, Scheinman having not filed any materials, though properly served;

IT IS ORDERED THAT:

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

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

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

4. 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;

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

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

"Sandra Blake"

A.3.6 Traynor Ridge Capital Inc. et al. – s. 127(1), (5.1)

IN THE MATTER OF
TRAYNOR RIDGE CAPITAL INC.,
TR1 FUND,
TR1-I FUND,
TR1 FUND LP AND
TR1 GP LTD.

TEMPORARY ORDER
Subsections 127(1) & 127(5.1)

WHEREAS it appears to the Ontario Securities Commission (the **Commission**) that:

Traynor's Business

1. Traynor Ridge Capital Inc. (**Traynor**) was incorporated under the laws of Canada on July 31, 2019. Christopher P. Callahan (**Callahan**) was the sole director, officer and shareholder of Traynor.

2. Since 2020, Traynor has been registered with the Ontario Securities Commission as an investment fund manager, as an adviser in the category of portfolio manager and as a dealer in the category of exempt market dealer.

3. Traynor only has two registered individuals, Callahan and another individual who is registered as an Advising Representative and Dealing Representative.

4. Until his recent death, Callahan was Traynor's Ultimate Designated Person (**UDP**), Chief Compliance Officer (**CCO**), Advising Representative and Dealing Representative.

5. Traynor manages three prospectus-exempt funds, TR1 Fund, TR1-I Fund and TR1 Fund LP (together, the **TR1 Funds**).

6. TRI GP Ltd. is the General Partner of TR1 Fund LP.

Traynor's Financial Difficulties

7. During the week of October 23, 2023, three introducing firms executed trades for Traynor and their carrying broker could not recapture the costs of the trades. As a result, the three dealers have potential losses totalling approximately $85 million to $95 million.

8. CIBC World Markets Inc., Traynor's prime broker, has terminated its prime brokerage service agreement with Traynor because the firm had become unresponsive to CIBC World Markets.

9. The three introducing firms were executing trades on behalf of Traynor and the TR1 Funds.

Death of Callahan

10. On Saturday, October 28, 2023, Traynor's prior counsel advised the Enforcement Branch that Callahan was dead.

11. Callahan's death leaves Traynor without a UDP and CCO, and without a director or officer in charge of the firm.

AND WHEREAS further investigation of these events is required;

AND WHEREAS the death of Callahan appears to leave Traynor without a UDP and CCO contrary to sections 11.2 and 11.3 of NI 31-103;

AND WHEREAS it appears to the Commission that Traynor is in serious financial difficulty and may be capital deficient contrary to subsection 12.1(2) of NI 31-103;

AND WHEREAS the Commission is of the opinion that the time required to conclude a hearing could be prejudicial to the public interest as set out in subsection 127(5.1) of the Act;

AND WHEREAS the Commission is of the opinion that it is in the public interest to make this order;

IT IS ORDERED pursuant to subsection 127(1) of the Act that the registration of Traynor is subject to the terms and conditions outlined in **Appendix "A**" to this Order;

IT IS FURTHER ORDERED that the trading in any securities by or of Traynor and by or of TR1 GP Ltd, and in the securities of the TR1 Funds shall cease;

IT IS FURTHER ORDERED that a copy of this Temporary Order will be prominently posted by Traynor on the home page of its website at www.traynoridge.com; and

IT IS FURTHER ORDERED that this Temporary Order shall take effect immediately and shall expire on the fifteenth day after its making unless extended by order of the Capital Markets Tribunal.

DATED at Toronto this 30th day of October, 2023.

"Grant Vingoe"

Appendix "A" – Terms and Conditions

The registration of Traynor Ridge Capital Inc. (the **Firm**) under the *Securities Act*, R.S.O. 1990, s. S.5, as amended (the **Act**) is subject to the terms and conditions pursuant to subsections 127(1)1 and 127(5.1) of the Act, effective immediately.

1. The Firm shall not reduce its capital in any manner including by redemption, re-purchase or cancellation of any of its shares;

2. Reduce or repay any indebtedness which has been subordinated; and

3. Directly or indirectly make any payments by way of loan, advance, bonus, dividend, repayment of capital or other distribution of assets to any director, officer, partner, shareholder, related company, or affiliate.

A.3.7 Traynor Ridge Capital Inc. et al. – s. 127(1), (2), (8)

IN THE MATTER OF
TRAYNOR RIDGE CAPITAL INC.,
TR1 FUND,
TR1-I FUND,
TR3 FUND AND
TR1 GP LTD.

File No. 2023-34

Adjudicator: Timothy Moseley

November 14, 2023

ORDER
(Subsections 127(1), (2) and (8) of the
Securities Act, RSO 1990, c S.5)

WHEREAS the Capital Markets Tribunal held a hearing in writing to consider an application by Staff of the Ontario Securities Commission to extend a temporary order dated October 30, 2023;

ON READING the materials filed by Staff and on considering that Ernst & Young Inc. in its capacity as receiver and manager of all the assets, undertakings and property of the respondents Traynor Ridge Capital Inc. (**Traynor**), TR1 Fund, TR1-I Fund, TR3 Fund and TR1 GP Ltd. (the **Receiver**) appointed pursuant to an order of the Ontario Superior Court of Justice dated November 3, 2023 (the **Appointment Order**) consents to the relief sought;

IT IS ORDERED, pursuant to ss. 127(1)2, 127(2) and 127(8) of the *Securities Act*, that until February 8, 2024, and except as may be required for the Receiver, or any agent on its behalf, to carry out the Receiver's functions as set out in the Appointment Order:

1. trading in any securities by or of Traynor and by or of TR1 GP Ltd. shall cease; and

2. trading in the securities of the TR1 Fund, TR1-I Fund and TR3 Fund shall cease.

"Timothy Moseley"

A.4
Reasons and Decisions

A.4.1 Canada Cannabis Corporation et al.

Citation: *Canada Cannabis Corporation (Re)*, 2023 ONCMT 41
Date: 2023-11-13
File No. 2019-34

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

REASONS AND DECISION

Adjudicators:	Russell Juriansz (chair of the panel) James Douglas Cathy Singer	
Hearing:	By videoconference, June 14, 15, and August 15, 2023	
Appearances:	Robert Stellick	For Silvio Serrano
	James Camp	For Peter Strang
	Johanna Braden Brian Weingarten	For Staff of the Ontario Securities Commission
	Nader R. Hasan Stephen Aylward	For Amicus Curiae

REASONS AND DECISION

1. OVERVIEW

[1] The respondent, Silvio Serrano, brought a motion for the following relief:

a. an order compelling Staff of the Ontario Securities Commission to disclose to the respondents unredacted transcripts of Benjamin Ward's compelled interviews and the unredacted confidential order of then Commission Vice-Chair Vingoe dated February 21, 2020 (the **Confidential Order**) that ordered portions of those transcripts be redacted;

b. an order varying or setting aside the Confidential Order if necessary to obtain such disclosure; and

c. in the alternative, an order staying this enforcement proceeding against him.

[2] We find that the full unredacted transcripts meet the test for disclosure and that Serrano requires them in order to make full answer and defense. However, the Confidential Order prevents Staff from making full disclosure and we decline to either vary the Confidential Order or issue a competing order. In the circumstances, we find the impairment of Serrano's ability to make full answer and defence leads to an abuse of process and we stay this proceeding against Serrano for the reasons set out below.

2. BACKGROUND

[3] The following chronology demonstrates the long and tortuous history of this proceeding:

a. **June 11, 2017** — the Commission made an order under s. 11 of the *Securities Act*[1] (the ***Act***) authorizing an investigation into matters relating to the corporate respondents, Benjamin Ward and another individual;

b. **June 27, June 28 and August 14, 2018** — Staff examined Ward pursuant to a s. 13 summons;

c. **September 13, 2019** — Staff filed a Statement of Allegations pursuant to ss. 127 and 127.1 of the *Act* naming Serrano, along with Canada Cannabis Corporation, Canadian Cannabis Corporation, Benjamin Ward and Peter Strang, as respondents;

d. **February 21, 2020** — Vice-Chair Vingoe, sitting alone, made the Confidential Order that certain portions of the compelled interview of Ward be kept confidential. He also ordered that the Confidential Order, the Confidential Reasons, and all materials filed in connection with the Confidential Order be kept confidential;

e. **April 7, 2020** — Staff disclosed redacted versions of the Ward transcripts to the respondents with the redactions labelled "By Confidential Order of the Commission". This was the first that the moving party had heard there was a Confidential Order;

f. **April 29, 2020** — Serrano brought a motion and an application before the Commission in its adjudicative capacity (before the creation of the Capital Markets Tribunal). The motion sought disclosure of the Confidential Order and Confidential Reasons, all material filed on any motion to redact the transcripts, the statutory basis authorizing Staff and/or the Commission to redact the transcripts, the statutory basis on which the Confidential Order was sought and made, and all information contained in or related to the Confidential Order that was not proscribed by its terms. The application sought a variation or revocation of the Confidential Order if necessary to grant the relief sought in the motion;

g. **June 10 and July 24, 2020** — at a hearing to determine the procedure that the motion and application would follow, Staff took the position it was legally prohibited from identifying information relating to the Confidential Order and Confidential Reasons. Furthermore, Staff argued that it was legally prohibited from explaining why it was prohibited;

h. **August 5, 2020** — a one-member panel of the Commission issued a procedural order, for reasons to follow, providing that the hearing would proceed in four phases: (i) First Non-Confidential Phase, (ii) Appointment of *amicus curiae* (a "friend of the Tribunal" appointed to represent the interests of justice and to assist with the panel's determination of the issues raised in the motion and application), (iii) Confidential Phase in the absence of the public and the respondents and (iv) Second Non-Confidential Phase;

i. **May 18, 2021** — more than nine months later, the reasons for the August 5, 2020, procedural order were issued;[2]

j. **May 19 and July 5, 2021** — a differently constituted three-member panel of the Commission heard the motion on May 19 and July 5, 2021;

k. **April 28, 2022** — the panel dismissed a challenge to its composition and partially granted Serrano's motion and application. It ordered that the respondents be provided with redacted copies of the Confidential Order and the Confidential Reasons;[3]

l. **April 29, 2022** — the *Securities Commission Act, 2021*[4] was proclaimed into force, establishing the Tribunal as an independent division of the Commission;

m. **September 27, 2022** — Serrano served this motion, which, as noted, seeks disclosure of unredacted transcripts of Ward's interviews and unredacted copies of the Confidential Order and Confidential Reasons or a stay of the proceeding against him;

n. **November 4, 2022** — the Tribunal approved a settlement of the proceeding against the corporate respondents and Ward;[5]

o. **January 27, 2023** — the Tribunal issued an order setting out the procedure to be followed for the hearing of this motion. The reasons for that decision are outlined in section 3.1 below; and

p. **June 14, 15 and August 15, 2023** — the Tribunal heard the motion in public and confidential phases.

1 RSO 1990, c S.5
2 *Canada Cannabis Corporation (Re)*, 2021 ONSEC 13
3 *Canada Cannabis Corporation (Re)*, 2022 ONSEC 9
4 SO 2021, c 8, Sched 9
5 *Canada Cannabis Corporation (Re)*, 2022 ONCMT 34

[4] Any submissions made or filed in the confidential portion of this motion shall remain confidential except to the extent we believe that references to them in these reasons do not compromise the interests that the Confidential Order and Confidential Reasons are designed to protect. However, even with the constraints imposed by the confidentiality of certain submissions, we believe that our reasons provide the parties and the public with sufficient information to understand the basis for our decisions.

3. PRELIMINARY ISSUES

3.1 Procedure on this motion

[5] When we issued our order dated January 23, 2023,[6] ruling how this motion should proceed, we indicated we would provide reasons for that order together with the reasons on the motion itself.

[6] Given the manifest confidentiality issues involved, we ordered that the procedure for the hearing of this motion largely mirror the procedure ordered for the hearing of Serrano's earlier motion and application for disclosure of the Confidential Order and Confidential Reasons. All parties, except the corporate respondents and Ward, who had by that time settled the proceeding against them, made submissions on the proper procedure to follow for hearing the motion. Staff proposed we follow the procedure on the earlier motion and application, while Serrano and Strang opposed, arguing that all aspects of the motion should be heard in the presence of all respondents and the public.

[7] After reviewing the Confidential Order, Confidential Reasons and unredacted Ward transcripts, and considering the parties' submissions, we concluded that the procedure ordered to be followed on the earlier motion achieved the necessary result of preserving the confidentiality of the material at stake on the motion before us, pending any further order we might make. In the circumstances, acceding to the procedure advocated by Serrano and Strang would have been tantamount to granting the relief sought by Serrano before hearing or deciding the merits of the motion. The terms of our order were intended to ensure procedural fairness to all parties while respecting, for the time being, the confidentiality proscriptions of the Confidential Order.

[8] Our order therefore provided that the hearing of the motion would proceed in three phases, a First Non-Confidential Phase, a Confidential Phase in the absence of Serrano, Strang and the public, and a Second Non-Confidential Phase. It further provided for the appointment of *amicus* to represent the interests of justice. The order permitted all parties to be present and to make submissions at the First Non-Confidential Phase and the Second Non-Confidential Phase. We ordered the Confidential Phase to proceed *in camera*, with only Staff and *amicus* in attendance. Staff, *amicus*, Serrano and Strang participated in the hearing, although Strang filed no notice of motion, motion record or other materials and largely relied upon the submissions of Serrano and *amicus* in support of his request that any relief granted to Serrano should also be granted to him.

[9] We did not invite the corporate respondents or Ward to participate in the hearing of the motion and none of them made a request to do so. However, we requested that Ward be provided with notice through his counsel of the scheduled hearing dates.

3.2 Strang's request for relief

[10] Only Serrano brought a motion seeking the relief set out above. At a preliminary attendance on October 19, 2022, the Tribunal ordered that Strang shall serve and file his motion for disclosure and a stay by November 10, 2022.[7] Strang failed to file any motion. At the hearing of this motion, Strang adopted Serrano's submissions and stated he was seeking the same relief. Staff objected to this request as he had failed to file any materials and submitted that if a stay were to be ordered, Staff should be provided an opportunity to decide whether it will continue the proceeding against Strang or respond to any future motion brought by Strang, based on the reasoning in our decision.

[11] While our reasoning on this motion may well apply to both parties, our order is limited to Serrano as his is the only motion before us.

4. ISSUES

[12] The issues on this motion are:

a. Is Serrano entitled to disclosure of the confidential materials?

b. Does the Confidential Order prevent Staff from fully complying with its disclosure obligations in this proceeding?

c. Do we have jurisdiction to vary the Confidential Order, and if so, should we do so?

6 (2023) 46 OSCB 880
7 (2022), 45 OSCB 9145

d. If full disclosure cannot be provided, should we stay the proceeding against Serrano?

5. ANALYSIS

5.1 Is Serrano entitled to disclosure of the confidential materials?

[13] All parties agreed that we have the power to control our processes and procedures under s. 25.0.1 of the *Statutory Powers Procedure Act* (***SPPA***).[8] The parties also agreed that, in the ordinary course, this power would allow us to make an order for production by Staff, if relevant and not otherwise privileged, of the transcripts and other documents of which Serrano seeks disclosure.

[14] The disclosure obligation of Staff is similar to that which applies to the Crown in criminal proceedings as set out in *R. v. Stinchcombe*.[9]

[15] Rule 27(1) of the *Capital Markets Tribunal Rules of Procedure and Forms* requires Staff to:

a. provide to every other party copies of all non-privileged documents in Staff's possession that are relevant to an allegation;

b. identify to every other party all other things in Staff's possession that are relevant to an allegation; and

c. where inspection of an original document or thing identified in (a) or (b) is requested by a party, make the document or thing available for inspection.

[16] This Tribunal has stated:

> Respondents have the right to disclosure of all information that might be relevant to defending the proceedings against them. Information is not to be withheld if there is a reasonable possibility that the non-disclosure of the information will impair the right of the party to make full answer and defence, unless the non-disclosure is justified by the law of privilege.[10]

[17] In this case, we are satisfied there is a reasonable possibility that the non-disclosure of many of the redactions in the Ward transcripts will significantly impair the right of the respondents to make full answer and defence. The respondents could reasonably use the redacted information in making important decisions that would affect the conduct of their defence. There is no suggestion that the law of privilege justifies nondisclosure. While there may be cases where non-disclosure of potentially relevant information may not impair a respondent's right to a fair hearing, this is not such a case. Many of the redactions are clearly relevant.

[18] This Tribunal should order that the relevant redactions be disclosed to the respondents in order to ensure that the proceeding before it is being conducted justly. However, the making of such an order would be unacceptable for the reasons outlined below.

5.2 Does the Confidential Order prevent Staff from complying with its disclosure obligations?

[19] While the Tribunal should order Staff to disclose the redactions, Staff would not be able to comply with such an order without breaching the Confidential Order.

[20] The Confidential Order is unambiguous. It orders that the "unredacted Transcript that discloses the Compelled Information shall be kept confidential…". Considering the Confidential Reasons do not change the unequivocal effect of the Confidential Order. The Confidential Reasons contemplate the possibility that the respondents might "decide whether they should initiate a motion to obtain access to the confidential […] materials or otherwise take issue with the redactions." The Confidential Reasons also state, "If such a motion is made, a panel can decide at that time how best to balance the interests at stake in connection with any such motion seeking disclosure." However, the panel ends that discussion by observing that subsequent requests for disclosure "could ultimately affect whether Staff decides, in its sole discretion, to continue the proceedings against some or all of the respondents at all." Notwithstanding this discussion, the panel issued the Confidential Order, and, as we have noted, it clearly and definitively prohibits disclosure of the redacted information.

[21] We conclude that the Confidential Order prevents Staff from disclosing the redacted information.

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8 RSO 1990, c S.22
9 1991 CanLII 45 (SCC); *Cormark Securities Inc (Re),* 2023 ONCMT 23 at para 16
10 *Bridging Finance Inc (Re)*, 2023 ONCMT 8 at para 12

5.3 Do we have jurisdiction to vary the Confidential Order, and should we do so?

[22] We received extensive submissions about whether we have the jurisdiction to vary or vacate the Confidential Order to permit disclosure of the redacted material. Given the express terms of the Confidential Order, varying it to allow disclosure would amount to vacating it.

[23] The parties disputed whether s. 144.1 of the *Act,* considered together with Ontario Regulation 43/22 issued under the *Securities Commission Act, 2021,* enables us to vacate an order that the predecessor statutory tribunal issued before the creation of this Tribunal.

[24] We do not need to review the parties' submissions or decide our jurisdiction, as we would not vacate the Confidential Order even if we had jurisdiction to do so.

[25] Other than the passage of time, there has been no substantive change in the basis on which the Vice-Chair issued the Confidential Order. Assuming we had the necessary jurisdiction, we are not persuaded we should take a different view of the record that was before the Vice-Chair. No new material facts have come to light that would undermine the Vice-Chair's reasoning or the conclusion he reached.

5.4 If Staff cannot provide full disclosure, should we stay the proceeding against Serrano?

5.4.1 The test for a stay

[26] A stay of proceedings is the most drastic remedy a tribunal can order. A stay is warranted only in those exceptional cases in which:

a. there is prejudice to a party's right to a fair hearing or the integrity of the justice system that will be manifested, perpetuated or aggravated through the conduct of the proceeding, or by its outcome;

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

c. where there is still uncertainty over whether a stay is warranted, the interests in favour of granting a stay must outweigh the interest that society has in having a final decision on the merits.[11]

[27] The main category of cases in which a stay is warranted is where the party's right to a fair hearing has been prejudiced and whether that prejudice will be carried forward through the conduct of the proceeding. There is a residual category in which a stay is warranted because proceeding would be offensive to societal notions of fair play and decency and would be harmful to the integrity of the justice system.

5.4.2 Discussion

[28] We have concluded that the respondents are entitled to disclosure of the relevant redacted material and that we would not vary the Confidential Order, assuming we had jurisdiction to do so. The Vice-Chair anticipated his order might prevent complete disclosure and commented that the result might be that Staff would decide not to continue the proceeding against some respondents. Staff, however, remains steadfast in its intention to proceed against the remaining respondents.

[29] In a routine case the Tribunal would order Staff to provide the required disclosure. We briefly considered making such an order, which would place Staff in the position that it would have to decide not to proceed to avoid breaching the Confidential Order. While this would avoid the drastic remedy of an ordered stay, it would result in two contradictory orders in the same proceeding — one requiring Staff to keep the redacted material confidential and the other requiring Staff to disclose the redacted material to the respondents. Having two contradictory orders in the same proceeding would result in harm to the administration of justice and would bring the integrity of this Tribunal's process into disrepute. It would undermine society's faith in the soundness and fairness of the adjudicative process under the *Act.* The result would be an abuse of process that would warrant a stay of the proceeding under the separate residual category of abuse.[12]

[30] The resolution of this predicament is a stay of the proceeding against Serrano. We appreciate that a stay of a proceeding is a most drastic remedy of last resort[13] and that the public has a great interest in having serious allegations determined on the merits. However, requiring Serrano to proceed without disclosure of the redacted material would cause him actual prejudice. That actual prejudice would be manifested, perpetuated, and aggravated when carried forward to the hearing of the merits. The ongoing unfairness to Serrano justifies a stay of the proceeding against him.[14]

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11 *R v Babos*, 2014 SCC 16 (***Babos***) at para 32
12 *Babos* at para 35
13 *R v O'Connor,* 1995 CanLII 51 (SCC) at para 77
14 *Babos* at para 34

5.5 There is no alternative remedy

[31] There is no alternative remedy capable of resolving the situation. There is no uncertainty that a stay of proceedings is warranted to prevent manifest prejudice to Serrano and to protect the integrity of the adjudicative process. However, if we were to reach the third stage of the test for a stay,[15] we would conclude that the public interest in having the allegations against Serrano determined is outweighed by the need to preserve the fairness and integrity of the Tribunal's process.

6. CONCLUSION

[32] For these reasons, we will issue an order that this proceeding be stayed against the moving party, Serrano.

Dated at Toronto this 13th day of November, 2023

"Russell Juriansz"

"James Douglas"

"Cathy Singer"

[15] *Babos* at para 31

A.4.2 Derek Scheinman – s. 127(1), (10)

Citation: *Scheinman (Re)*, 2023 ONCMT 42
Date: 2023-11-13
File No. 2023-23

IN THE MATTER OF
DEREK SCHEINMAN

REASONS AND DECISION
(Subsections 127(1) and 127(10) of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	Sandra Blake (chair of the panel)	
Hearing:	In writing, final written submissions received October 5, 2023	
Appearances:	Hansen Wong	For Staff of the Ontario Securities Commission
	No one appearing for Derek Scheinman	

REASONS AND DECISION

1. INTRODUCTION AND BACKGROUND

[1] On February 5, 2021, Derek Scheinman pled guilty and was convicted in the Ontario Court of Justice of defrauding investors in a mortgage investment corporation of at least $10 million and defrauding the limited partners of a partnership over which he had control of at least $13 million.[1]

[2] Staff of the Ontario Securities Commission seeks an order from the Capital Markets Tribunal to protect Ontario investors by permanently prohibiting Scheinman from participating in Ontario's capital markets. Staff relies on the inter-jurisdictional enforcement provisions found in s. 127(10) of the Ontario *Securities Act*[2] (the ***Act***), which provides that the Tribunal may make an order in the public interest in respect of a person who has been convicted of an offence arising from a course of conduct related to securities.

[3] For the reasons below, I find that Scheinman's conviction arose from transactions and a course of conduct related to securities and it is in the public interest to issue an order imposing the permanent bans requested by Staff.

2. SERVICE AND PARTICIPATION

[4] Staff served Scheinman on September 12, 2023, with the Notice of Hearing, Statement of Allegations and Staff's Hearing Materials by courier at the address provided by Correctional Services Canada as the address where Scheinman is on supervised parole.[3] No signature was obtained on delivery. Therefore, pursuant to rule 6(3)(e) of the Capital Markets Tribunal Rules of Procedure and Forms (the **Rules**), I find that service was properly effected on Scheinman the fifth business day after the materials were sent, being September 19, 2023.

[5] The Notice of Hearing states that this proceeding shall be heard in writing and that Scheinman had 21 days from the date of service to file a request for an oral hearing, and 28 days from the date of service to file a hearing brief and written submissions. Pursuant to rule 11(3) of the Rules, the deadlines for Scheinman to request an oral hearing and to serve and file written submissions were October 10 and 17, 2023, respectively. No request for an oral hearing was made and no materials were filed on behalf of Scheinman.

[6] I am satisfied that Scheinman was provided with adequate notice of this proceeding. Pursuant to the *Statutory Powers Procedure Act*[4] and rule 21(3) of the Rules, the Tribunal may proceed in Scheinman's absence.

3. CRIMINAL CONVICTION AND SENTENCING

[7] Between 2006 and 2017, Scheinman operated a financial services business accepting money to invest in mortgages.[5] Through an entity he managed, Grossman Silver Horizon Limited Partnership (the **Grossman Partnership**), and a

1 Exhibit 1, Staff's Hearing Brief, Reasons for Sentence before the Honourable Justice P. Bourque dated September 24, 2021, (Ontario Court of Justice) in the matter of *R v Derek Scheinman*, Tab 2 (**Reasons for Sentence**) at pp 2-3
2 RSO 1990, c S.5
3 Exhibit 2, Affidavit of Service of Rita Pascuzzi sworn October 5, 2023
4 RSO 1990, s S.22, s 7(2)
5 Exhibit 1, Staff's Hearing Brief, Agreed Statement of Facts - *R v. Derek Scheinman*, Tab 5 (**Agreed Statement of Facts**) at p 2

corporation known as New Horizon Mortgage Investment Corporation (**New Horizon**), Scheinman controlled tens of millions of dollars of investment proceeds.

[8] The Limited Partners of Grossman Partnership provided all the capital for investing in mortgages.[6] In the Agreed Statement of Facts, filed in connection with the criminal proceeding, Scheinman admitted that he created fictious mortgages and diverted $13 million from the Grossman Partnership.[7]

[9] Some of the funds diverted from Grossman Partnership were paid to investors in New Horizon. However, most of the funds were diverted for personal expenses and funding Scheinman's lavish lifestyle.[8]

[10] Investors in New Horizon, a mortgage investment corporation operated by Scheinman, were brought in by promises of high returns or because they knew Scheinman personally. Although investors received subscription agreements and share certificates, reporting was sporadic. Account statements were received shortly after initial investments, but over time Scheinman stopped communicating.[9] The Agreed Statement of Facts states that Scheinman defrauded New Horizon and its investors of approximately $10 million.[10]

[11] Scheinman pled guilty to two counts of fraud over $5,000 contrary to s. 380(1)(a) of the *Criminal Code*.[11]

[12] On September 24, 2021, Scheinman was sentenced to a four-year sentence less four months to be served in a federal penitentiary.[12] He was also 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.[13] Finally, property listed in an Order for Disposition of Property was ordered forfeited to Her Majesty the Queen in right of Ontario to be disposed of pursuant to the order.[14]

4. ANALYSIS

[13] The issues to be decided are as follows:

a. Has Scheinman been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities?

b. Is it in the public interest to order sanctions against Scheinman?

c. If it is in the public interest to order sanctions, what sanctions are appropriate?

4.1 Has Scheinman been convicted in any jurisdiction of an offence arising from a transaction, business or course of conduct related to securities?

[14] Scheinman was convicted in Ontario of two counts of fraud and admits in the Agreed Statement of Facts to engaging in fraudulent conduct related to securities.[15]

[15] I must determine whether the criminal offence arose from a transaction, business or course of conduct related to securities or derivatives. I conclude that it did for the reasons below.

[16] The term "security" is defined in s. 1(1) of the *Act* to include an "investment contract". The Supreme Court of Canada has held that an investment contract will be found where: (1) there is an investment of funds with a view to a profit; (2) in a common enterprise; and (3) the profits are to be derived solely from the efforts of others.[16]

[17] With respect to the Grossman Partnership, the Limited Partners made investments of money into a real estate business venture with Scheinman (or with his company) with an intention to profit. The money was pooled and then invested into mortgage loans. The success of the investment depended entirely on Scheinman as he was responsible for managing the business venture. Consequently, the business arrangement between Scheinman and the Limited Partners constitutes an "investment contract".

6 Agreed Statement of Facts at p 1
7 Agreed Statement of Facts at p 2
8 Agreed Statement of Facts at p 2
9 Agreed Statement of Facts at p 3
10 Agreed Statement of Facts at p 4
11 RSC, 1985, c C-46
12 Reasons for Sentence at p 9
13 Exhibit 1, Staff's Hearing Brief, Prohibition Order (Financial Employment/Volunteer Work) dated September 24, 2023, Tab 3
14 Exhibit 1, Staff's Hearing Brief, Order for Disposition of Property dated September 24, 2021, Tab 4
15 Reasons for Sentence at p 5
16 *Pacific Coast Coin Exchange v Ontario Securities Commission*, 1977 CanLII 37 (SCC) at 129

[18] The term "security" also includes in its definition "a share, stock, unit, unit certificate, participation certificate, certificate of share or interest, preorganization certificate or subscription."[17]

[19] With respect to New Horizon, investors purchased units and received subscription agreements and share certificates in consideration for their investment, therefore also meeting the definition of a "security" under the *Act*.

[20] Scheinman thereby engaged in a course of conduct related to securities.

4.2 Is it in the public interest to order sanctions against Scheinman?

[21] Scheinman is subject to a Prohibition Order of the Ontario Court of Justice prohibiting him 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.

[22] In *Tang (Re)*,[18] the Tribunal held that only the Tribunal, not the courts, has the capacity to protect the investing public from future harm.

[23] Having regard to the Tribunal's mandate to protect the investing public and the purposes of the *Act* set out in s. 1.1, including to provide protection to investors from unfair, improper or fraudulent practices, I find that it is in the public interest to order sanctions against Scheinman.

4.3 What sanctions are appropriate?

[24] Staff submits that Scheinman should be permanently prohibited from participating in Ontario's capital markets.

[25] Justice Bourque of the Ontario Court of Justice accepted Scheinman's guilty plea as the "only real mitigating factor" because it "is in itself is a statement of remorse."[19] The matter resolved sooner than if there had been a trial, especially during the pandemic. None of the victims had to testify and be subject to cross-examination.[20]

[26] Consistent with Justice Bourque's findings, I find the following aggravating factors in determining appropriate sanctions:

a. The seriousness of the fraudulent misconduct is significant. Scheinman defrauded investors of at least $10 million and the Limited Partners of Grossman Partnership of at least $13 million, affecting the lives of many innocent people.

b. The duration and sophistication of the fraud is considerable. This was not an "act of bad judgment or desperation"[21] but a criminal act that continued over many years.

c. Scheinman was previously registered under the *Act* as a salesperson under the category of Mutual Fund Dealer and Limited Market Dealer.[22] As a former registrant, he knew or ought to have known that his conduct was in breach of the *Act*.

[27] Scheinman's conduct was fraudulent, making it among the most egregious kinds of misconduct related to the capital markets. His conduct demonstrates that he cannot be trusted. A permanent ban from the capital markets is required to protect investors by restraining future conduct by Scheinman that would be detrimental to the integrity of the capital markets. A permanent ban is also necessary to act as a general deterrent to other like-minded individuals who might be inclined to engage in similar conduct.

5. CONCLUSION

[28] For the reasons above, I find that it is in the public interest to impose the sanctions requested by Staff. I therefore order that:

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

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

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17 *Act,* s 1(1), definition of "security" at (e)
18 2016 ONSEC 13 at paras 47, 64
19 Reasons for Sentence at p 4
20 Reasons for Sentence at p 4
21 Reasons for Sentence at p 4
22 Exhibit 1, Staff's Hearing Brief, Section 139 Certificate re: Derek Scheinman dated May 17, 2023, Tab 6

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

d. 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;

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

f. pursuant to paragraph 8.5 of subsection 127(1) of the *Act*, Scheinman is prohibited permanently from becoming or acting as a registrant or promoter.

Dated at Toronto this 13th day of November, 2023

“Sandra Blake”

B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA/CIRO Staff Notice 23-332 Summary of Comments and Responses to CSA/IIROC Staff Notice 23-329 Short Selling in Canada

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA/CIRO STAFF NOTICE 23-332
SUMMARY OF COMMENTS AND RESPONSES TO
CSA/IIROC STAFF NOTICE 23-329 SHORT SELLING IN CANADA

November 16, 2023

On December 8, 2022, the Canadian Securities Administrators (**CSA**) and the Investment Industry Regulatory Organization of Canada (**IIROC**, a predecessor organization to the Canadian Investment Regulatory Organization (**CIRO**)) published Joint CSA / IIROC Staff Notice 23-329 Short Selling in Canada (**Staff Notice 23-329**) to provide an overview of the existing regulatory landscape surrounding short selling, give an update on current related initiatives and request public feedback on areas for regulatory consideration.

The CSA and CIRO received 23 comment letters from a wide range of stakeholders, including industry associations, exchanges, dealers, issuers and individuals.

Staff of the CSA and CIRO (**we**) thank all of the commenters for taking the time and effort to respond. Copies of these comments are publicly available on the websites of the Autorité des marchés financiers, the CIRO and the Ontario Securities Commission. Appendix A provides a summary of the comments received and responses prepared by CSA and CIRO staff.

There was no consensus on the appropriate regulatory regime for short selling. Some commenters believed the current rules governing short selling were adequate and needed only minor amendments, if any. Others believed that more substantial amendments were needed. Only one commenter believed short selling should not be allowed. Several commenters urged regulators to consider the impact of the move to a T+1 settlement cycle next year on any regulatory initiatives.[1]

We reiterate comments made in Staff Notice 23-329 that short selling plays an important role in the financial markets by promoting transparency and contributing to liquidity and price discovery, and thus contributing to market integrity and investor protection. Short selling can also be a legitimate investment management strategy used for mitigating portfolio risk by hedging short positions against long positions, so that losses are mitigated regardless of the direction of the market. As with many other trading-related activities, short selling may be a means to manipulate the market. For this reason, a balanced regulatory regime needs to address activity that harms issuers, investors and the capital markets generally (which is not limited to short selling). It also needs robust oversight so that harmful conduct is detected and addressed. As noted in some comment letters, an overly restrictive regime could inhibit legitimate short selling, with negative implications for liquidity and price discovery.

Areas for Further Study

The following areas were discussed in the comment letters as possible matters for further study and analysis:

Pre-Borrow Requirements

Some commenters believed that short sellers should have to make arrangements to borrow the securities sold prior to entering a short sell order on a marketplace. Others suggested that a less stringent "locate" rule be adopted, which would impose a duty on a dealer making or facilitating a short sale to have a reasonable belief that the shares are readily available for borrowing in time to deliver on the settlement date but would not necessarily require making arrangements to borrow in advance. Others cautioned

[1] *See* CSA Staff Notice 24-318 – Preparing for the Implementation of T+1 Settlement (https://www.osc.ca/en/securities-law/instruments-rules-policies/2/24-318/csa-staff-notice-24-318-preparing-implementation-t1-settlement)

that there is no evidence that settlement failures are a significant problem and regulators must be mindful of additional costs that any new requirements in this area would impose on market participants.

Different Treatment of Junior Issuers

There was relatively minimal support for a short sale regime that differentiates junior and senior issuers. Some commenters believed that more research and analysis is needed before any rules in this area are proposed.

Shortening Timeline for Reporting Failed Trades

There was no consensus that the current CIRO requirement to report failed trades that remain outstanding 10 days after the expected settlement date be shortened. Some commenters believed this should not be considered until the industry has adjusted to the move to T+1 settlement next year.

Transparency

There were a number of suggestions running the gamut from EU-style public short position reporting (at the short seller level) to prohibiting brokers making a short sale from using the "anonymous" broker number.[2] While many commenters believed more transparency of short sales, short positions and failed trades would be beneficial to the market, others cautioned that too much transparency could inhibit short selling, with negative implications for liquidity and price discovery.

Mandatory Close-Outs/Buy-Ins of Short Positions

A number of commenters supported introducing mandatory buy-ins[3] or close-outs[4] of short positions, similar to rules in place in the U.S. and adopted but not yet in force in the European Union.

Next Steps

While no specific changes to regulatory provisions are being proposed at this time, staff will further review whether any changes may be appropriate in the Canadian context. Any policy proposal that results from this work would be published for public comment in the normal course.

CIRO is actively considering ways to clarify and support its existing requirement to have a reasonable expectation to settle a short sale trade on the settlement date. Subject to CIRO Board approval, it is expected that proposals will be published for comment in early 2024. These proposals by CIRO do not preclude additional work in this area.

In addition, the CSA and CIRO are expected to form in early 2024 a staff working group to more broadly examine short selling issues in the Canadian market context, beginning with an analysis of potential mandatory close-out or buy-in requirements. Any proposed CSA or CIRO rule changes that result from the working group's recommendations or otherwise, including regulatory responses to international developments, would be published for public comment in the normal course. Any proposals will take into account the impact of the move to T+1 settlement cycle implementation.

Questions

Please refer your questions to any of the following CSA or CIRO staff:

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[2] The anonymous option enables brokers to appear as a generic broker #001 on public order and trade records.

[3] A buy-in is initiated by a buyer who has not received the securities purchased on the date for settlement. The buyer purchases securities in the market to cover the delivery failure, and the seller who failed to deliver is responsible for any increase in price between the failed trade and the buy-in trade(s). The European Union Central Securities Depositories Regulation (**CSDR**) and associated regulatory technical standards require a buy-in to be initiated within a prescribed period. These provisions have been enacted but the date of entry into force has been delayed multiple times. They are now scheduled to enter into force on November 2, 2025, but the entire CSDR is under review.

[4] Close-out requirements apply to a dealer that has failed to deliver securities sold on the date for settlement (whether in connection with a long sale or short sale). The dealer must close out the fail position by borrowing securities or purchasing them in the open market. This is the approach in SEC Rules 203 and 204, which set out timeframes by which the close out must occur.

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Appendix A

Summary of Comments and Responses to Joint CSA / IIROC Staff Notice 23-329 *Short Selling in Canada*

List of Commenters

1. Alève Mine
2. Alternative Investment Management Association
3. Canadian Advocacy Council of CFA Societies Canada
4. Canadian Investor Relations Institute
5. Canadian Securities Exchange
6. Canadian Security Traders Association, Inc
7. Cboe Global Markets, Inc., Neo Exchange Inc. and MATCHNow
8. Christian Levine Law Group
9. Cybin Inc.
10. Grant Sawiak
11. Investment Industry Association of Canada
12. John Tyler
13. McMillan LLP
14. PI Financial Corp
15. Portfolio Management Association of Canada
16. RBC Capital Markets
17. Saputo Inc.
18. Save Canadian Mining
19. Scotiabank Global Banking and Markets
20. Stikeman Elliott LLP
21. TD Securities Inc
22. TILT Holdings Inc.
23. TMX Group Limited

Summary of Comments	Responses
General Comments	
• A majority of the commenters were of the view that short selling is a legitimate trading practice critical for our capital markets as it improves liquidity, facilitates price discovery and market efficiency. Only one commenter thought short selling should be prohibited. • Many commenters view Canada's regulatory regime regarding short selling as fundamentally sound, striking an appropriate balance between risk management and efficiency. Some commenters viewed the Canadian regime as less stringent than in Europe, Australia or US and called for more regimented guidelines/rules around short selling.	• We would like to thank all those who submitted their comments. • As stated in the Staff Notice 23-329, our view is that short selling is a legitimate trading practice that helps market participants manage risk, contributes to market liquidity and price discovery by including negative views in pricing. We believe the regulatory regime should address activity that increases risks to investors and makes markets less efficient.
• Short selling is concerning to some commenters as it has a risk of becoming abusive and is associated with the risk of dissemination of false and misleading statements. Others noted that manipulative and deceptive acts can be undertaken in the marketplaces with or without borrowing securities.	• Overall, we recognize the negative effects of abusive short selling practices and encourage anyone that have evidence of short seller misconduct to contact the securities regulator in their jurisdiction. Also, CIRO continues to monitor for abusive trading strategies including those that involve short selling. In particular, through real-time market surveillance CIRO actively monitors and reviews instances of potential price manipulation in trading on a marketplace, including all long, short, and Short-Marking Exempt trades in equities. • With respect to dissemination of false and misleading statements, it is a well-established offence under the Canadian securities regime.[5] Short sellers disseminating such information would be liable under that regime.
• A commenter claimed the Canadian settlement system is susceptible to abuses and lacks regulation and enforcement.	• Canada has a well-developed securities regulatory regime that includes prohibitions on manipulative and deceptive activities coupled with robust oversight of trading and settlement fails by CIRO and the provincial regulators. Anyone with specific evidence of misconduct, including misconduct concerning short selling or settlement, should bring it to the attention of the applicable regulatory authorities.
Question 1: Should the existing regulatory regime around pre-borrowing in certain circumstances be strengthened? What requirements would be appropriate? Specifically, should there be "pre-borrow" requirements similar to those in the U.S., as described above? Please provide supporting rationale and data.	
• Commenters were split on this question. A number of commenters supported the implementation of pre-borrow or locate requirements similar to US and/or EU. • Some commenters noted that the Ontario Capital Markets Modernization Taskforce (**Ontario Taskforce**) in its final report concluded that Ontario short selling regime is not stringent enough and recommended that IIROC revise UMIR to require a dealer to confirm the ability to borrow securities prior to accepting a short sale order.	• We acknowledge that the commenters did not have a unified position on this question and appreciate the commentary providing both pros and cons to locate and pre-borrow requirements. • CIRO is actively considering ways to strengthen and clarify its requirement to have a reasonable expectation to settle a short sale trade on a settlement date. Subject to CIRO Board approval, it is expected that relevant proposals will be published for comment in early 2024. These

[5] s. 92(4.1) of the *Securities Act* (Alberta); s. 50 of the *Securities Act* (British Columbia); s. 112.3 of the *Securities Act* (Manitoba); s. 181 of the *Securities Act* (New Brunswick); s. 122(1)(b) of the *Securities Act* (Newfoundland and Labrador); s. 146(1) of the *Securities Act* (Northwest Territories); s. 132B(1) of the *Securities Act* (Nova Scotia); s. 146(1) of the *Securities Act* (Nunavut); s. 126.2 of the *Securities Act* (Ontario); s. 55.11 of the *Securities Act* (Saskatchewan); ss. 196, 197 of the *Securities A*ct (Quebec); s. 146(1) of the *Securities Act* (Prince Edward Island); s. 146(1) of the *Securities Act* (Yukon); Rule 2.2 of the Universal Market Integrity Rules (**UMIR**)

• Some commenters oppose the imposition of pre-borrow or locate requirements for the following reasons:
  ○ high cost for the industry;
  ○ insufficient evidence to support the requirement;
  ○ Further research and analysis would be useful given the conflicting results from IIROC's Failed Trade Study (which reflected an increase in failed trades in Canada, particularly junior securities, compared to IIROC's previously published studies);
  ○ dealers' practices already align with US counterparts. UMIR requirement to have a reasonable expectation to settle on settlement date is not substantially different from the locate requirement under U.S. Reg SHO, which requires a broker-dealer have "reasonable grounds to believe that the security can be borrowed so that it can be delivered on the date delivery is due" before accepting a short sale;
  ○ Many institutional investors already have set processes in place to confirm borrow availability prior to short selling;
  ○ adverse effects on price discovery;
  ○ disadvantageous for junior markets, dealers as well as retail and small institutional investors.
• A commenter recommended short sellers adopt the best practice of confirming that securities are available or are likely to be available to be borrowed.
	proposals by CIRO do not preclude additional work in this area.
	• We note that mandatory pre-borrow requirements may have a more adverse effect on certain types of dealers and their clients, who may not have access to the same pools of securities available to be borrowed as other dealers. This could create an unlevel playing field.

Pre-borrow vs. locate requirements • A few commenters distinguished between the locate and pre-borrow requirements noting that the U.S. has a locate requirement. • A commenter recommended a locate requirement before shorting, but not necessarily a pre-borrow.	• We thank all those who responded for their comments.
Question 2: What would be the costs and benefits of implementing such requirements?	
Costs • Several commenters think that the costs and regulatory burden to market participants to implement pre-borrow requirements will be significant and should be carefully considered. • Additional requirements might make certain securities harder to short and thus, negatively affect price discovery and market functioning. • A commenter acknowledged that implementing a pre-borrow requirement will increase costs but believes these costs will be passed through to short sellers and will contribute to more discipline by short sellers. • Some commenters noted that the cost would be minimal as most prime brokers are already subject to such requirements in other global markets. • A commenter believes that that costs to implement either pre-borrow or locate requirements would be comparable to the Client Identifiers project that became effective in 2021.	• We thank commenters for sharing their views on costs and benefits of implementing the pre-borrow requirements. To the extent that any further policy analysis on this issue is conducted, comments received will be considered.

Benefits The benefits of implementing pre-borrow requirements would be: • enhanced investor confidence and market efficiency and reduced systemic risk, • increased participation of foreign investors in Canadian bought deals, and • improved perception of individual market participants of the Canadian Capital Markets.	• We thank all those who responded for their comments. To the extent that any further policy analysis on this issue is conducted, comments received will be considered.
Question 3: Does the current definition of a "failed trade" appropriately describe a failed trade?	
• The vast majority of commenters believe that the current definition of a “failed trade” does not need to be changed. • A commenter supported changing the current definition of “failed trade” to define it as any short sale that fails to deliver securities within a reasonable timeframe.	• Thank you for confirming that, overall, the current definition of a "failed trade" remains appropriate. • CIRO’s definition of a “failed trade” in UMIR section 1.1 for a trade resulting from a short sale means “a trade on behalf of an account that has failed to make securities available or make arrangements to borrow securities to settle the trade on the date fixed for settlement of the trade *irrespective of whether the trade has been settled in accordance with the rules or requirements of a clearing agency*.” [emphasis added]
Question 4: Should a timeline shorter than ten days following the expected settlement date be considered? What would be an appropriate timeline? Please provide rationale and supporting data.	
• Commenters were split on this question. Several commenters support or recommend considering shortening the reporting timelines to under 10 days following the expected settlement date. • Some commenters suggested that the appropriate timing should be two or three days after T+2 settlement cycle but might have to be reduced once T+1 is implemented. A couple of commenters also suggested aligning with the close-out requirements in the U.S. • Several other commenters opposed the change, noting that it is likely to result in an additional compliance burden and costs for market participants. Additional analysis might be warranted after the industry has adapted to T+1 settlement cycle.	• Thank you for sharing your views with respect to the timing of failed trade reporting. To the extent that any further policy analysis on this issue is conducted, we will consider the comments received.
Question 5: Should additional public transparency requirements of short selling activities or short positions be considered? Please indicate what such requirements should be and the frequency of any disclosure. Please also provide a rationale and empirical data to support your suggestions or to support why changes are not needed.	
Additional disclosure and frequency • Many commenters considered current transparency requirements appropriate. • Some commenters supported additional transparency requirements in the form of increased frequency of disclosure of short selling activity and/or short positions.	• We note that CIRO publishes short sale trading statistics and reports twice monthly on its website. • Thank you for sharing your views with respect to the timing of failed trade reporting. To the extent that any further policy analysis on this issue is conducted, we will consider the comments received.
Other types of disclosure • A commenter suggested disclosure of estimated, derived short interest data on a daily basis at a cost that makes it reasonably available to all market participants.	• To the extent that any further policy analysis will be conducted, we will consider the comments received.

• A commenter suggested including short sale markers in real-time on public market data feeds, and brokers should be prohibited from using the "anonymous" marker for short sell orders.	

Publication of individual short positions
• Several commenters believe that short sellers should be required to publicly disclose their short positions on a regular basis.
• Others believed that such disclosure should be more nuanced and had the following suggestions:
  ○ publication should only occur after a short seller has closed the position,
  ○ publication of individual short positions should only apply to short sellers that disseminate market-moving information about an issuer,
  ○ disclosure of identity of those individual accounts who engage in systematic short sales, but not all short sales / short positions,
  ○ consider reporting for large short positions by investment managers, as proposed by the U.S. Securities and Exchange Commission in 2022.
• Several commenters opposed the publication of individual short positions citing the following reasons:
  ○ reduction of firms' willingness to enter into short sales,
  ○ discouraging short selling for legitimate purposes such as hedging, and
  ○ negative impact on liquidity and price discovery.
• A commenter indicated that the requirement for long position disclosure is based on shareowners' ability to vote and exert control over an enterprise, which does not apply to short sellers. Additional transparency measures have the potential to unfairly punish those contributing to price discovery.
	• We note that several stakeholders support disclosure of individual short position on a regular basis. We thank the commenters for providing specific comments with respect to disclosure of individual short positions.
	• To the extent that any further policy analysis is conducted on transparency requirements, disclosure of individual short positions, we will consider the comments received.

Publication of failed trade data • A few commenters supported the publication of failed trade data, pointing to the similar requirements in the U.S., Australia and EU.	• We thank all those who responded for their comments. To the extent that any further policy analysis will be conducted, we will consider the comments received.
Question 6: Should additional reporting requirements regarding short selling activities be considered by the securities regulatory authorities? Please indicate what such requirements should be and the frequency of any disclosure. Please also provide a rationale and empirical data to support your suggestions or to support why changes are not needed.	
• Most of the commenters who responded to this question did not see the need to introduce additional reporting requirements and were satisfied with the current regulatory reporting. • A commenter encouraged the regulators to assess how more stringent short selling reporting is working in other jurisdictions and whether it might have resulted in fewer "short and distort" campaigns. • A few commenters did support additional reporting noting that current bi-weekly reporting to CIRO is not sufficient for the markets and regulators to properly identify and	• We appreciate that most of the commenters do not support additional reporting requirements. We thank the stakeholders who offered specific suggestions regarding additional reporting. To the extent that any further policy analysis is conducted, we will consider the comments received.

address predatory short selling. It was noted that reporting by global custodians and international dealers is lacking. • A commenter suggested to consider a new requirement for institutional investment managers to report short positions on a monthly basis and then make aggregate short data publicly available. • A commenter recommended reviewing the existing Extended Failed Trade reporting framework, which it considered to be cumbersome and ineffective at identifying problems, and issuing clear guidance on the reporting process.	
Question 7: As noted above, IIROC's study of failed trades showed that correlations between short sales and settlement issues in junior securities were more significant, and that junior securities experience more settlement issues compared to other securities. Should specific reporting, transparency or other requirements be considered for junior issuers? Please provide additional relevant details to support your response.	
• The vast majority of commenters believed that the requirements should be the same for both junior and senior issuers. • Only a few commenters suggested that it would be appropriate for the junior segment to have more frequent public disclosure of short positions, more prescriptive buy-in requirements and align transparency requirements with the U.S. Reg SHO. • Several commenters suggested further research and analysis in this area.	• We appreciate the majority of commenters reporting that transparency and other requirements should be applied equally to both senior and junior issuers. To the extent any further policy analysis is conducted in this area, we will consider the comments received.
Question 8: Would mandatory close-out or buy-in requirements similar to those in the U.S. and the European Union be beneficial for the Canadian capital markets? Please provide rationale and data substantiating the costs and benefits of such requirements on market participants.	

• The commenters were split on this question.
• Many commenters generally supported mandatory buy-in requirements citing the following reasons:
  ○ Canada's regulations are inadequate compared to the requirements in other jurisdictions (US, EU and Australia),
  ○ the most recent 2022 Failed Trade Study demonstrates that failed trades are of predominant concern in Canada. In addition, International Organization of Securities Commissions (**IOSCO**) 2009 Regulation of Short Selling Report recommends imposing a strict settlement (such as mandatory buy-ins) of failed trades as a minimum requirement,
  ○ implementing such measures would increase investor confidence and market efficiency and align Canada's regulations more closely to the practice in global markets,
  ○ the benefits of reducing predatory short selling and protecting investors and companies outweigh the costs such as additional compliance costs for broker dealers.
• Some of commenters indicated mandatory buy-in may not be required if there were sufficient locate or pre-borrow requirements.
	• We appreciate that commenters are split on this issue and provided arguments both for and against implementing mandatory close-out / buy-in requirements.
	• The International Monetary Fund's 2014 Financial Sector Assessment Program - IOSCO Objectives and Principles of Securities Regulation found the Canadian regulatory regime compliant with IOSCO principles.

• A commenter noted that mandatory buy-ins should only be considered after the market has adjusted to T+1 settlement. • A commenter noted that the administrative delays, causing a delivery failure related to transfer agents in connection with long sales, should be considered if implementing mandatory buy-ins.	
• Some commenters were indifferent or support further analysis on mandatory buy-ins.	• We thank all those who responded for their comments.

• Several commenters opposed the implementation of mandatory buy-ins citing the following reasons:
  ○ there is insufficient evidence or data supporting such measures,
  ○ buy-ins should be voluntary. A mandatory regime would create inefficiency in securities settlement, act as a barrier to entry, and impact market liquidity negatively,
  ○ the vast majority of failed trades is administrative or operational. Mandatory close-out or buy-ins would lead to undue risk on the settlement process and unnecessary losses and trigger additional fails. A purchase resulting from a mandatory buy-in to cover a short would be likely to fail, since such buy-ins would likely face intermediaries seeking to earn an arbitrage profit and would be selling short, and
  ○ a mandatory buy-in requirement is not in the best interest of market participants, investors, issuers or the Canadian capital markets. It would impact both short sales and long sales that do not settle on settlement data. It could also hurt capital raising in the junior markets through perceived reduction in value of offerings and associated warrants.
• A commenter indicated that if required, buy-in requirements should only be in the form of policies and procedures for carrying dealers to reasonably avoid extended failed trades among their clients.
• A commenter noted that, while there is insufficient evidence to require mandatory buy-ins, in terms of costs, focusing on buy-ins (rather than pre-borrow or locate) would be a tailored response on the perceived problem and the responsible parties.
	• We thank all those who responded for their comments. To the extent that any further policy analysis will be conducted, we will consider the comments received.

Other comments	
IIROC's Failed Trade Study (2022) • Some commented on IIROC's 2007 and 2022 Failed Trade Studies noting that it was difficult to draw meaningful comparisons between the two studies and thus, to assess whether IIROC's conclusions from the 2007 Failed Trade Study were correct, or remain correct, and thus form an appropriate basis for the current regime.	• The 2022 Study was not intended to be a refresh of the 2007 Study and was not designed to be directly compared to the 2007 Study. CIRO was able to use CDS data and new capabilities in the 2022 Study with a broader scale and depth of analysis.
CSA Activist Short Selling Update (2022) • A commenter believed there was a discrepancy in data used in 2022 CSA Activist Short Selling Update: instead of using issuers targeted by campaigns, the data used reflects the number of campaigns launched.	• The commenter's claims were based on an incorrect interpretation of activist short seller data, prepared by Insightia, the same data source used by the CSA. The CSA's analysis shows the number

Commenter's analysis of the same data was contrary to the CSA's findings that a higher proportion of US based issuers are targeted by activist short sellers than Canadian based issuers.	of issuers targeted and not the number of campaigns. Most issuers had only one campaign launched by one activist, therefore the difference between campaign and issuer counts was insignificant. • The CSA's comparison with US markets was based on an average estimate over multiple years using data from the World Federation of Exchanges, which the CSA acknowledges does not include junior exchange issuers. However, including these issuers would not significantly change the CSA's conclusions that a far greater proportion of U.S. issuers are targeted compared to Canadian issuers.
IOSCO Principles • Several stakeholders commented on the compliance with IOSCO Principles on the Regulation of Short Selling (**IOSCO Principles**). • Some commenters believed that the current regulatory framework for short selling in Canada is generally consistent with the with IOSCO Principles. • Some commenters thought that it may not be consistent with the first two IOSCO Principles.[6]	• As noted above, the International Monetary Fund's 2014 Financial Sector Assessment Program - IOSCO Objectives and Principles of Securities Regulation found the Canadian regulatory regime compliant with IOSCO Principles.
Other regulatory initiatives • Some commenters strongly urged that any changes should wait until after the industry has adapted to the move to T+1.	• We appreciate that other regulatory initiatives might need to be considered prior to or in parallel with any proposals in relation to the short selling regime. In particular, we are mindful of the upcoming transition to a T+1 settlement cycle.
Guidance on reasonable expectation to settle • Some commenters viewed CIRO Notice 22-0130[7] as implementing a change in standard. • A commenter viewed this notice as requiring a new higher standard for "reasonable certainty" that a participant can access sufficient securities to settle any resulting trade by settlement date. • A commenter indicated that while the reasons for and impact of this change was not explained in the notice, it would be difficult for a short seller to engage in repeated "naked" shorts under the existing UMIR regime, since continuing to trade after repeated failed trades would force the dealer to cease accepting the short sell orders	• No new interpretation was provided in CIRO Notice 22-0130. The guidance only clarified the existing UMIR Policy 2.2 requirement. CIRO is actively considering ways to strengthen and clarify its requirement to have a reasonable expectation to settle a short sale trade on a settlement date.
Uptick rule • Some commenters asked for the re-introduction of the uptick rule.	• To the extent that any further policy analysis on this issue is conducted, we will consider the comments received.

[6] IOSCO Report on the Regulation of Short Selling sets out the following Four Principles for the effective regulation of short selling:
a) Short selling should be subject to appropriate controls to reduce or minimize the potential risks that could affect the orderly and efficient functioning and stability of financial markets;
b) Short selling should be subject to a reporting regime that provides timely information to the market or to market authorities;
c) Short selling should be subject to an effective compliance and enforcement system;
d) Short selling regulation should allow appropriate exceptions for certain types of transactions for efficient market functioning and development.

[7] Notice 22-0130 – Rules Notice – Guidance Note – ***Guidance on Participant Obligations to have Reasonable Expectation to Settle any Trade Resulting from the Entry of a Short Sale Order*** (August 17, 2022).

U.S. rules and proposals • **SEC Rule 13f-2** Some commenters asked regulators to consider requirements similar to the recently-adopted SEC Rule 13f-2, which will require, among other things, certain investment managers to report large short positions on a monthly basis. • **SEC Rule 14e-4** A commenter suggested aligning with SEC's Short Tender Rule 14e-4 which precludes persons to tender more shares than they own. • **SEC's circuit breaker rule** Some commenters asked regulators to consider a requirement similar to SEC's circuit breaker rule (Rule 201 of Reg SHO). One commenter indicated this requirement should only be implemented for issuers on a non-venture exchange.	• To the extent that any further policy analysis on this issue is conducted, we will consider the comments received with respect to SEC rules.
Prospectus offerings and Private Placements • Some commenters asked regulators to restrict short selling in connection with prospectus offerings and private placements.	• To the extent that any further policy analysis on this issue is conducted, we will consider the recommendations by the taskforce.
Statutory private right of action • A commenter recommended a statutory private right of action for target issuers and their shareholders with respect to short campaigns.	• We note that implementation of this suggestion will require amendments to securities legislation.
Ontario Capital Markets Modernization Taskforce (Ontario Taskforce) • Several commenters suggested that recommendations from the Ontario Taskforce should be considered.	• To the extent that any further policy analysis on this issue is conducted, we will consider the recommendations by the taskforce.

B.1.2 OSC Notice 11-798 – Statement of Priorities – Request for Comments Regarding Statement of Priorities for Fiscal Year 2024-2025

ONTARIO SECURITIES COMMISSION

OSC Notice 11-798 – Statement of Priorities

Request for Comments Regarding Statement of Priorities for Fiscal Year 2024-2025

Each year the Ontario Securities Commission (OSC) delivers a Business Plan to the Minister of Finance and publishes it on its website. The Business Plan includes the priorities the Commission will undertake in the upcoming fiscal year in connection with the OSC's mandate, and the legislation that the OSC administers.

Before finalizing the priorities included in the annual Business Plan, the priorities are summarized and published by the OSC in a proposed Statement of Priorities (SoP). The proposed SoP provides a listing of the priorities and associated activities, with a summary of the reasons for the adoption of these priorities. Stakeholder comment and feedback is requested on the priorities included in the proposed SoP.

This proposed SoP supports the OSC's commitment to be both effective and accountable in delivering on its mandate to provide protection to investors from unfair, improper or fraudulent practices; to foster fair, efficient and competitive capital markets and confidence in capital markets; to foster capital formation; and to contribute to the stability of the financial system and the reduction of systemic risk.

The proposed SoP for the fiscal year 2024-2025 has a 30-day comment period. The OSC will consider stakeholder comments and make any necessary revisions prior to finalizing and publishing its final 2024-2025 Statement of Priorities within the Business Plan for the Fiscal Years Ending 2025-2027.

Comments

Any comments should be made in writing by Monday, December 18, 2023 and sent to:

The Secretary
Ontario Securities Commission
20 Queen Street West, 22nd Floor
Toronto Ontario M5H 3S8
E-mail: comments@osc.gov.on.ca

Comments received will be posted on the OSC website at www.osc.ca. Therefore, you should not include personal information directly in comments to be published. It is important that you state on whose behalf you are making the submission.

Content may be moderated so that all posts are respectful and professional.

[Editor's Note: The Statement of Priorities is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Statement of Priorities.]

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OSC

ONTARIO
SECURITIES
COMMISSION

OSC Statement of Priorities

for the fiscal year

2024-2025

Ontario

Introduction

OSC Statement of Priorities

The Ontario Securities Commission (OSC) is pleased to present the proposed Statement of Priorities for the fiscal year 2024-2025 (SoP). This proposed SoP supports the OSC's commitment to be both effective and accountable in delivering on its mandate to provide protection to investors from unfair, improper or fraudulent practices; to foster fair, efficient and competitive capital markets and confidence in capital markets; to foster capital formation; and to contribute to the stability of the financial system and the reduction of systemic risk.

The OSC regulates the largest capital market in Canada and our actions have impacts for Ontario and the rest of Canada. The OSC is committed to promoting fair, efficient and competitive capital markets in Ontario, a prerequisite for economic growth, and has identified a broad range of initiatives to improve the existing regulatory framework. We strive to anticipate changes in the market and act decisively to promote public confidence in our capital markets, protect investors, promote innovation, foster capital formation and support market integrity. While the OSC continues to streamline regulation and implement our expanded mandate to promote competition and foster capital formation, delivering strong investor protection remains a top priority in all initiatives and actions we undertake. We will continue to proactively identify and monitor emerging issues, trends, and risks in our capital markets.

The OSC is moving the regulatory agenda forward by improving the way we approach our work and engage with investors, industry participants and other regulators to understand the issues and their concerns. In addition to the statutory comment process for rules and policies, the OSC interacts extensively with stakeholders through various advisory committees, roundtables, and other means of consultation, to inform operational approaches and policy development. The OSC engages with investor advocacy groups and investors directly to gain insights to better understand investor needs and interests.

Our significant work in the international regulatory environment, such as our participation in the International Organization of Securities Commissions (IOSCO), our engagement with US federal regulatory agencies and the North American Securities Administrators Association (NASAA), is another key means to gain insights into emerging issues and standards that can be integrated into our policy development and oversight activities, as well as providing opportunities to influence and contribute to international initiatives and standard setting. These actions are essential to reach solutions that balance the inclusion of innovation and competition in the marketplace with the maintenance of appropriate investor safeguards.

The OSC works as part of the Canadian Securities Administrators (CSA) to harmonize rules and their application across the country. The OSC is also a member of the Heads of Regulatory Agencies (HoA), an important federal-provincial forum for cooperation on financial sector issues. Chaired by the Bank of Canada, the HoA brings together the Department of Finance Canada, the Office of the Superintendent of Financial Institutions (OSFI), as well as the Autorité des marchés financiers, the British Columbia Securities Commission, the Alberta Securities Commission and the OSC.

The Environment

Ontario's capital markets play a crucial role in fostering growth across all sectors of the economy and providing opportunities for investors to build financial wealth through savings. In supporting investment and capital allocation in our markets, we must monitor, assess, and respond to changes in the regulatory environment in which we operate.

That regulatory environment is influenced by many factors, including economic conditions, technological evolution, changing investor needs, and changes in the regulation of the broader domestic and global financial system. Below are some of the developments that we have considered in preparing this proposed SoP.

Economic Conditions

Changing macro-economic conditions will continue to be a central driver in financial decisions for firms and investors for the coming year. The post-COVID surge in economic activity was spurred on by a combination of the reopening of the economy and strong consumer spending. That led to much higher inflation than had been experienced in recent memory. In response, the Bank of Canada, and its global peers, increased interest rates significantly as a way of restraining rising prices.

For the coming period, tighter financial conditions are likely to slow capital raising activity. Higher interest rates are expected to last for some time, and this will impact financial decisions by firms and households. For example, already indebted firms may have challenges in refinancing that debt in the coming years and households with variable rate borrowing may need to reduce discretionary spending (and investing) to make ends meet.

Technological Evolution

The expanding and evolving offerings of financial products and services brought on by technological change is a focus for the OSC and other securities regulators. As market participants embrace innovative practices, the potential benefits of further innovation and more efficient markets need to be balanced with an understanding that there are potential risks that should be mitigated. The OSC continues to implement new approaches, invest resources and support a testing environment around new technologies to support responsible innovation and modernize our compliance oversight activities.

Despite declining valuations and several notable firm failures, crypto asset markets continue to be a focus for investors and therefore, regulators. In 2022, the OSC found that 13% of Canadians held crypto assets or crypto funds[1] and we have seen an expansion in the availability of retail investment funds that provide crypto-asset exposure. The growing interest in this asset class emphasizes the need for the OSC to ensure that participants in this market follow appropriate investor protection standards and that crypto asset markets are fair and efficient.

[1] https://www.osc.ca/sites/default/files/2022-10/inv_research_20220928_crypto-asset-survey_EN.pdf

The discussion of technological evolution has recently been dominated by Artificial Intelligence (AI) and, more specifically, generative AI applications (e.g., ChatGPT and others). As the OSC's research shows (Artificial Intelligence in Capital Markets), while adoption of these technologies in our capital markets remains at an intermediate stage, they have the potential for transformative change. Firms are looking to unlock value from efficiency gains by automating previously manual tasks and developing entirely new products and services. However, AI also has the potential for misuse in deceptive practices and fraud. Globally, regulators, industry and government are examining this technology to promote responsible adoption and assess the need for regulatory change and we are active participants in those discussions.

Changing Investor Needs

The make-up of investors in Ontario is also evolving. By the end of this fiscal year, Ontario's population is expected to reach 16 million people. Net migration will account for 85% of population growth and the share of seniors will soon surpass 20% of all Ontarians.[2] These changing demographics remain important factors in our research, education and outreach activities that inform our regulatory approach.

We also continue to see evolving investor demands in terms of the information used in their investment decision making. We continue to focus on the information investors receive about their investment products, the sales practices to which they are subject and their ability to make informed decisions about competing products and services.

Institutional and retail investors interest in environmental, social and governance (ESG) investing continues to grow. The OSC remains focused on promoting adoption of standards and increasing the extent of information disclosure in areas such as climate-related disclosure and corporate diversity.

Confidence, Cooperation and Coordination

Expectations of stakeholders on market regulators are heightened in the face of innovation and evolving risks to market integrity and investors. The landscape of risks – both within our regulatory perimeter and on the horizon – is always changing, with challenges including cyber security threats, geopolitical risks and personal data protections.

Trust-building with Ontario investors continues to be a key driver of OSC practices that support our credibility as an innovative, modern, and agile regulator. Effective cooperation and coordination with other agencies and across jurisdictions are key to consistent standards and practices while addressing common challenges. The OSC contributes to and shapes policy discussions among domestic and international counterparts on issues relevant to our regulatory remit.

[2] https://www.ontario.ca/page/ontario-demographic-quarterly-highlights-first-quarter

Strategic Direction

Over the last several years, the OSC has undergone significant change, including the separation of the regulatory and adjudicative functions, as well as several recommendations from the Value for Money Audit by the Ontario Auditor General (2021) and the Ontario Government's Capital Markets Modernization Taskforce (2021). Together, these changes have prompted the need for a new and refreshed strategic plan to ensure that we are well-positioned for the future.

Through consideration of current and potential future trends in capital markets and securities regulation, we are exploring options for our strategic direction, and defining our priorities for the next six years.

To gain a breadth and depth of perspective, we have consulted with key external stakeholders, including market participants, industry organizations, and government bodies. Their valuable input is an essential part of shaping our strategy and ensuring that we stay well-connected and aligned with our industry.

The strategic plan will inform our priorities over the next six years, and we look forward to completing this important work and publishing it in the Spring of 2024. While the strategic plan is not yet finalized, the analysis and critical thinking we have done throughout the strategic planning process has enabled us to establish this proposed SoP with a view to the future. We will continue to integrate strategic initiatives within our detailed business plans and our future Statement of Priorities as appropriate.

Comments provided on this proposed SoP will be an additional input in finalizing the strategic plan.

Core Regulatory Operations

The vast majority of OSC staff resources continue to be committed to its fundamental core regulatory operations, providing stability, transparency, and continuity in the regulation of Ontario's capital markets.

Our core regulatory operations encompass three main categories of activities:

Authorizations (receipting, registration, and recognition)

- Review and receipting of prospectuses in connection with corporate finance and investment funds and structured products public offerings
- Registration of firms and individuals in the categories of dealers, portfolio managers, investment fund managers and commodity categories
- Recognition and exemption of market infrastructure entities
- Exemptive relief applications by a range of market participants including issuers, investment funds, registrants, and market infrastructure entities.

Compliance/Oversight/Supervision

- Compliance reviews of registrants, including pre-registration reviews, topical sweeps and for cause reviews

- Ongoing compliance and oversight related to the implementation of the Client Focused Reforms
- Registrant conduct oversight including denials of registration, the imposition of terms and conditions and suspensions of registrations in appropriate cases and subject to first providing the applicant or registrant with an opportunity to be heard
- Outreach to market participants
- Continuous disclosure review programs for both corporate finance reporting issuers and investment fund issuers
- Ongoing compliance and monitoring of investment funds operational requirements
- Real time review programs to assess disclosures and compliance with applicable requirements for take-over bids and related party transactions, as well as staff participation in contested merger and acquisition (M&A) hearings before the Capital Markets Tribunal when necessary
- Compliance oversight of derivatives dealers and trade repositories
- Compliance reviews of issuer offering documents and registrants participating in the exempt market, including syndicated mortgages
- Designation and oversight of credit rating organizations
- Ongoing monitoring and compliance reviews of periodic filings with the OSC including insider reports on SEDI and reports of exempt distribution
- Activities to support systemic risk management and contribute to financial stability
- Market infrastructure oversight, including recognition, designation, exemption and ongoing oversight of various entities including self-regulatory organizations, exchanges, alternative trading systems, clearing agencies and designated entities that comprise the market infrastructure ecosystem
- Oversight of the listed issuer function for OSC-recognized exchanges
- Oversight of designated benchmarks and benchmark administrators
- Oversight of the Ombudsman for Banking Services and Investments (OBSI) to assess whether it continues to meet expected standards concerning, among other things, governance and transparency obligations.

Enforcement

- Assessment of matters that may constitute a breach of Ontario securities law and referrals for possible investigation and/or disruption activities
- Investigation and prosecution of regulatory enforcement matters, including market abuse matters
- The Quasi-Criminal Serious Offences Team (QSOT), in cooperation with policing partners, continues to focus on fraudulent behaviour and recidivism
- Administration of the Whistleblower program and coordinating international cooperation efforts with other regulators, including developing international disruption methods.

Key Priorities

The Plan sets out the priority initiatives on which the OSC intends to focus its resources and actions in fiscal 2024-2025, above and beyond the core regulatory operations mentioned above.

Many of these priority initiatives are multi-year initiatives continuing from the previous fiscal year. As certain prior year initiatives are completed or move to the implementation phase, they are no longer separately reflected as priority initiatives but are considered part of our core regulatory and operational work. This includes supporting the implementation of the total cost reporting amendments and monitoring the ongoing transition relating to the order-execution-only (OEO) ban and deferred sales charge ban.

All detailed initiatives and activities are included in the detailed business plans of relevant branches.

The following are the key priorities for the proposed SoP:

1. Develop and publish OSC Strategic Plan
2. Advance Work on Environmental, Social, and Governance Disclosures for Reporting Issuers
3. Consider Broader Diversity on Boards and in Executive Roles at Reporting Issuers
4. Assess implementation of Client Focused Reforms and consider impact of limited product shelves
5. Advance Initiatives to Strengthen the Short Selling Framework
6. Study the Limitation of Advice in the Order-Execution Only Channel
7. Advance Cooperation with Indigenous Peoples and Work to Understand and Integrate their Perspectives and Interests
8. Enhance Information Sharing with the Canadian Public Accountability Board
9. Conduct Initiatives for Retail Investors Through Specific Education, Policy, Research and Behavioural Science Activities
10. Strengthen the Dispute Resolution Framework of the Ombudsman for Banking Services and Investments and Modernize OSC's Disgorgement Framework
11. Strengthen Oversight and Enforcement in the Crypto Asset Sector
12. Modernize Delivery Options of Regulatory and Continuous Disclosure Filings for Issuers
13. Facilitate Financial Innovation
14. Further Initiatives that Promote Capital Formation and Foster Competition
15. Execute OSC's Inclusion and Diversity Strategy
16. Integrate Digital and Data Capabilities and Processes to Support Effective Decision Making, Risk Monitoring and Streamlined Operations

Reporting on Progress

The OSC reports on its accomplishments in various ways:

- We publicly report on regulatory operations through quarterly service standards reporting, which shows how we are tracking against our service commitment standards. If a target is not met, we provide an explanation
- Each year the OSC publishes a Report Card, within the OSC's Annual Report, which identifies the status of the key priorities included in the OSC's Statement of Priorities for the recently completed fiscal year, including performance highlights and success measures and highlights key accomplishments and statistics related to our core regulatory work
- Various branches within the OSC produce Summary, or Activity Reports, which are published on the OSC Website.

Current and Future Programs and Activities

1 Develop and Publish OSC Strategic Plan

As described above, our initial analysis undertaken as part of the development of our strategic plan has been considered when developing our proposed SoP. In the next year, we will focus our efforts on activities to launch our strategic plan. To support the launch of our six-year strategic plan we will focus our efforts on foundational and organizational enablers and early activities to ready us for implementation.

Actions in 2024-2025 will include:

- Publish OSC Strategic Plan
- Assess and align core organizational enablers to ensure organizational programs, including a talent strategy, the investment in technology and data analytics, and operating models are designed to support the implementation of the strategic plan
- Develop performance measurement frameworks with relevant KPIs to track progress against strategic goals and outcomes
- Finalize a detailed prioritization framework for strategic initiatives and begin implementing initiatives identified as first phase priorities.

Planned Outcomes:

- The OSC implements its six-year strategic plan and is positioned to deliver against our expanded statutory mandate within the evolving capital market and securities regulation ecosystem.

2 Advance Work on Environmental, Social, and Governance Disclosures for Reporting Issuers

The Spring 2021 Ontario Budget included a commitment for the government to publicly consult on environmental, social and governance (ESG) disclosures, and consider the recommendations of the Ontario Capital Markets Modernization Taskforce. The Taskforce recommended mandating disclosure by public companies of material ESG information, specifically climate-related disclosure that is compliant with the Task Force on Climate-Related Financial Disclosure (TCFD) recommendations. The Taskforce's final report highlighted that, globally and in Ontario, there is increased investor interest in issuers reporting on ESG-related information and creating a uniform standard of disclosure to level the playing field for all issuers.

In October 2021, the CSA published proposed National Instrument 51-107 *Disclosure of Climate-related Matters* (NI 51-107) for comment. The proposed instrument would require reporting issuers (other than investment funds) to disclose certain climate-related information in compliance with the TCFD recommendations (subject to certain modifications). Since publication of the CSA's proposed climate-related disclosure rule, important international developments have occurred. In March 2022, the United States Securities and Exchange Commission (SEC) proposed amendments to rules that would require registrants to provide certain climate-related information in their registration statements and annual reports.

In January 2022, the CSA published CSA Staff Notice 81-334 *ESG-Related Investment Fund Disclosure* (CSA Staff Notice 81-334) on the disclosure practices of investment funds as they relate to ESG considerations, particularly funds whose investment objectives reference ESG factors and other funds that use ESG strategies. The Notice also provides guidance on the types of investment funds that may market themselves as being focused on ESG. The OSC has also co-led IOSCO's Sustainable Finance Taskforce workstream aimed at promoting good practices among asset managers and ESG ratings and data providers.

On June 26, 2023, the International Sustainability Standards Board (ISSB) published IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information and IFRS S2 Climate-related Disclosures (the ISSB Standards). In addition, the Canadian Sustainability Standards Board (CSSB), which will support the uptake of the ISSB Standards in Canada and facilitate interoperability between the ISSB Standards and any forthcoming CSSB standards, announced achieving operational status on June 26, 2023, having appointed a quorum of members.

As announced on July 5, 2023, the CSA intends to conduct further consultations to adopt disclosure standards based on the ISSB Standards, with any necessary modifications for the Canadian context, and also looks forward to engaging and collaborating with the CSSB with respect to the ISSB Standards. OSC Staff have also been involved in the work of the IOSCO's Sustainable Finance Taskforce, including the Corporate Reporting Workstream, which assessed the ISSB Standards, leading to IOSCO's endorsement of the final ISSB Standards on July 25, 2023.

The OSC is completing a focused review of ESG disclosures by investment funds in accordance with CSA Staff Notice 81-334 and anticipate publishing an updated CSA Staff Notice 81-334 by March 2024.

Actions in 2024-2025 will include:

- Continue development of a revised climate-related disclosure rule for reporting issuers (other than investment funds), based on the ISSB Standards with any modifications considered necessary and appropriate in the Canadian context
- Develop a better understanding of the needs of, and the regulatory impacts on, Indigenous Peoples in relation to the climate-related disclosures initiative through engagement with Indigenous organizations
- Conduct further targeted consultations with stakeholders to support this work
- Continue leadership role on IOSCO's Sustainable Finance Taskforce's steering group, including co-leading the workstream on promoting good practices in the asset management industry and for ESG ratings and data providers.

Planned outcomes:

- Investors have access to the ESG information needed to inform their investment and voting decisions
- Reporting issuers have clarity on their ESG disclosure requirements.

3 Consider Broader Diversity on Boards and in Executive Roles at Reporting Issuers[3]

The OSC, together with other participating CSA jurisdictions, adopted disclosure requirements in 2014 related to the representation of women on boards and in executive officer positions at TSX-listed companies and other non-venture issuers. The objective of these disclosure requirements is to increase transparency for investors and other stakeholders on the representation of women on boards and in executive officer positions, and the approach that issuers take in respect of such representation. Since that time, there have been significant events in the U.S., Canada and around the world that have intensified the focus on racism, and that includes a heightened focus on the issue of racial diversity on boards and in executive roles.

In May 2020, the CSA announced further research and consultations in consideration of broader diversity on boards and in executive roles, including the representation of people who self-identify as Black, Indigenous, persons of colour, persons with disabilities, or LGBTQ2SI+. Work completed since that time included consultations with a wide range of stakeholders, research on the approaches taken in other jurisdictions, further reviews of the disclosures currently being provided by TSX-listed companies and a virtual OSC roundtable in October 2021 to discuss broader diversity (beyond gender) on boards and in executive officer positions, with a specific focus on targets, term limits and diversity data.

On April 13, 2023, the CSA published a notice and request for comment which set out proposed amendments to the corporate governance disclosure requirements in Form 58-101F1 *Corporate Governance Disclosure* of National Instrument 58-101 *Disclosure of Corporate Governance Practices* and changes to the corporate governance guidelines in National Policy 58-201 *Corporate Governance Guidelines* pertaining to board nominations, board renewal and diversity. The proposed amendments would require disclosure on aspects of diversity beyond the representation of women, while retaining the current disclosure requirements with respect to women.

Work completed since the publication of the proposed amendments include further one-on-one consultations with a wide range of stakeholders and a public OSC roundtable held in September 2023 to seek additional stakeholder input. Consistent with the OSC's commitment to broaden its engagement with Indigenous Peoples, the OSC developed a unique Indigenous engagement strategy to obtain feedback from Indigenous organizations in the fall of 2023.

Actions in 2024-2025 will include:

- Consider the feedback received on the proposed amendments (including those through our engagements), and work with the CSA to find an approach that meets the needs of Canadian investors and reporting issuers (other than investment funds)
- Consider approaches taken by other regulators with the goal of minimizing market fragmentation in this area.

Planned outcomes:

- Investors have access to the diversity, director nomination and board renewal information needed to inform their investment and voting decisions.

[3] For Corporate Finance Reporting Issuers only

4 Assess implementation of Client Focused Reforms and Consider Impact of Limited Product Shelves

In August 2023, the CSA and CIRO published joint Staff Notice 31-363 *Client Focused Reforms: Review of Registrants' Conflicts of Interest Practices and Additional Guidance*, a report on its sweep to determine the level of understanding and compliance with the conflict of interest provisions of the Client Focused Reforms (CFRs).

All material conflicts of interest are required to be identified and either avoided completely or their impact mitigated in the best interests of a firm's clients. As we have previously stated, additional measures will be considered if the CFRs are not attaining the desired outcomes for investors. Additionally, we are concerned about what impact predominantly proprietary products shelves may have on client outcomes (e.g., higher fees and inferior performance) and other possible negative outcomes may result if financial institutions offer predominantly proprietary products and independent products are not readily available for investors and their advisors to consider.

Actions in 2024-2025 will include:

- Conduct further investigation, in conjunction with CIRO and the CSA, to consider the shelf formulation approaches taken by registrants and the decisions to rely on predominantly proprietary products
- Conduct additional CFR sweeps, in conjunction with CIRO and the CSA, to determine understanding and compliance with the Know Your Client, suitability and Know Your Product requirements of the CFRs and communicate the outcome to stakeholders.

Planned Outcomes:

- Heightened awareness by firms of their CFR obligations including consequences for identified deficiencies
- Consideration of the need for additional measures to protect the goals of the CFRs and to enhance the competitive landscape for investment products.

5 Advance Initiatives to Strengthen the Short Selling Framework

We have recently completed our review of comments in response to the notice issued by the CSA and CIRO regarding regulation of short selling activity in Canada (Joint CSA/IIROC Staff Notice 23-329 Short Selling in Canada) and published CSA/CIRO Staff Notice 23-332 Summary of Comments and Responses to CSA/IIROC Staff Notice 23-329 Short Selling in Canada on November 16, 2023. CIRO is actively considering ways to strengthen and clarify its requirements to have a reasonable expectation to settle a short sale trade on settlement date. Additionally, Canada today lacks an affirmative investment dealer obligation to buy-in customers who "fail to deliver" securities to their firms or make arrangements to borrow the securities after a defined period of time. We will continue to consider with CIRO and the CSA initiatives to strengthen the regulation of short selling, including whether mandatory close-out or buy-in requirements to address short sale settlement failures may be appropriate in the Canadian context. Additional accelerated "fail to deliver" reporting will also need to be considered.

Actions in 2024-2025 will include:

- Explore, together with the CSA and CIRO, the introduction of a mandatory buy-in requirement and enhanced fail to deliver reporting in Canada
- Support CIRO, with the CSA, in clarifying and strengthening the obligation to have a reasonable expectation to settle a short sale on the settlement date.

Planned Outcomes:

- Promote fair and efficient markets, and investor confidence that market developments are considered and responses are developed as appropriate
- Investor confidence that the regulatory regime governing short sales continues to be effective and appropriate.

6 Study the Limitation of Advice in the Order-Execution Only Channel

There is an increasing consensus that the present limitations on advice being provided by OEO firms are preventing important information from being provided to do-it-yourself (DIY) investors who are increasingly seeking advice from unregistered channels, including social media platforms. Information that is shared online may be incomplete or misleading, and in some cases may not comply with securities laws. In addition, these limitations may impede the communication of important warnings to investors concerning products or services, including leveraged products, meme stocks, options trading and margin.

Actions in 2024-2025 will include:

- Consider, in conjunction with CIRO, whether OEO firms can provide non-tailored advice to meet the needs of DIY investors while not diluting the value of robust established advice channels so the two are not confused.

Planned Outcomes:

- Investor protection is enhanced through access to quality information from verified sources.

7 Advance Cooperation with Indigenous Peoples and Work to Understand and Integrate their Perspectives and Interests

As part of our phased approach to develop an action plan for truth and reconciliation, the OSC will continue to work collaboratively with Indigenous Peoples and organizations. The OSC will work to understand and integrate their perspectives and interests, as appropriate, in relevant areas of securities regulation and policy work, and improve engagement with Indigenous Peoples and organizations.

Our work on truth and reconciliation is also linked to our broader internal inclusion and diversity priority.

Actions in 2024-2025 will include:

- Develop an OSC action plan for truth and reconciliation
- Integrate learnings to more meaningfully engage with Indigenous Peoples, including as part of its work on the climate-related disclosures and corporate diversity initiatives
- Contribute to the CSA Taskforce on Indigenous Peoples in the Capital Markets.

Planned outcomes:

- Establish and maintain mutually beneficial relationships with Indigenous Peoples and organizations
- OSC better understands the way its regulatory activities impact Indigenous Peoples
- Truth and reconciliation are promoted by the OSC by developing an action plan for truth and reconciliation in collaboration with Indigenous Peoples and organizations in Ontario.

8 Enhance Information Sharing with the Canadian Public Accountability Board

Information sharing between regulatory bodies, such as the Canadian Public Accountability Board (CPAB), helps enable the OSC to effectively oversee market participants, resulting in increased investor confidence. Currently the OSC and CPAB are updating their Memorandum of Understanding (MoU) concerning mutual cooperation and information sharing to identify additional information the two parties will share under existing legislation. The OSC and CPAB are continuing to discuss further opportunities to improve information sharing practices, which could include proposals that would need to be supported by amendments to the Ontario CPAB Act and/or amendments to CPAB's rules.

Actions in 2024-2025 will include:

- Continue discussion on potential improvements in information sharing protocols and, if required, propose amendments to the Ontario CPAB Act and/or CPAB rules to address information sharing restrictions
- Continue consultations with CPAB and CSA staff to finalize enhanced protocols for information sharing
- Develop systems and processes for receiving information from CPAB as part of the enhanced protocols for information sharing.

Planned Outcomes:

- Information sharing practices that improve the quality and timeliness of information sharing between CPAB and the OSC
- Protect investors from the risk of improper financial reporting practices by public companies.

9 Conduct Initiatives for Retail Investors Through Specific Education, Policy, Research and Behavioural Science Activities

Capital markets are evolving and becoming increasingly complex, with new investment opportunities and products continually being introduced. Investors are the lifeblood of our capital markets, and their interests must be top of mind to ensure that appropriate protections are in place, they have the information needed to make informed financial decisions and confidence in the capital markets is maintained. The OSC undertakes a broad range of operational and policy activities for the benefit of investors and to accomplish these outcomes.

In addition, the OSC will continue to identify ways to improve investor education and protection, responding to changing demographic profiles of investors and shifts in investing behaviour. The OSC will also continue expanding its applications of behavioural science to policy making and operations, to improve regulatory effectiveness and produce better investor outcomes. Through the Investor Office Research and Behavioural Insights Team (IORBIT), the OSC will continue applying the methods and techniques of behavioural science to policy and operational activities. The OSC will also continue to support the OSC's independent Investor Advisory Panel in fulfilling its mandate. Collectively, these and other efforts are intended to lead to greater investor protection and confidence in capital markets. A range of initiatives will be completed in support of this priority.

Actions in 2024-2025 will include:

- Continue programs to enhance investor education and financial literacy, including through the recently relaunched website GetSmarterAboutMoney.ca that introduced artificial intelligence, enhanced accessibility, innovative design and behavioural science tools and insights
- Continue implementation and evolution of the OSC Seniors Strategy
- Conduct and publish timely and responsive investor research
- Pursue policy and regulatory initiatives that are responsive to investor research findings, such as with respect to the influence of gamification and other digital engagement practices.

Planned Outcomes:

- Investors continue to make more informed decisions using of the OSC's financial education resources and channels such as GetSmarterAboutMoney.ca
- Enhance protection of seniors and vulnerable investors
- Improve effectiveness of OSC policies and programs through the application of behavioural science
- More policy projects incorporate behavioural science, improving policy effectiveness and resulting in better investor outcomes and registrant conduct
- Policy initiatives are evidence-based and reflect thoughtful consideration of research findings and investor perspectives
- Better informed investment decisions through continued investor education.

10 Strengthen the Dispute Resolution Framework of the Ombudsman for Banking Services and Investments and Modernize OSC's Disgorgement Framework

Investors can be at risk for potential loss, damage or harm because of an act or omission of a registered firm or individual. The OSC strives to improve investor access to redress in these types of situations, including by strengthening dispute resolution services. A fair, efficient and accessible dispute resolution service is an essential element of an investor protection framework. The OSC, together with our CSA partners, continues to develop a proposal for comment that contemplates providing an independent dispute resolution service, such as OBSI, with the authority to make binding compensation decisions. The proposal is intended to be responsive to reports and consultations that considered the benefits of, and recommended, granting OBSI binding authority, including the independent evaluations of OBSI, the Capital Markets Modernization Taskforce final report, and the International Monetary Fund's Financial Sector Assessment Program review of Canada in 2019.

On November 2, 2023, the Ontario government introduced legislation to provide a new statutory process for the distribution of money received by the OSC under disgorgement orders made under the *Securities Act* and *Commodity Futures Act*. The new process is intended to streamline the OSC's ability to distribute disgorged funds to eligible investors who have suffered direct financial losses in prescribed circumstances. The legislation remains subject to approval of the Ontario Legislature. If approved, it will come into force after the OSC develops and makes rules setting out conditions of eligibility and the details of the distribution process. The legislation and associated OSC rule would implement recommendations of the Ontario Auditor General and the Capital Markets Modernization Taskforce.

Actions in 2024-2025 will include:

- Consider stakeholder feedback in the development of a final framework and proposed legislative amendments to provide an independent dispute resolution service, such as OBSI, with the authority to make binding compensation decisions
- With other members of the Joint Regulators Committee and OBSI, continue to review, discuss and support progress of activities in response to the independent evaluation of OBSI's investment mandate
- Publish a proposed rule for public comment governing the distribution of disgorged amounts collected by the OSC and consider the feedback received on the proposed rule.

Planned Outcomes:

- Better results for retail investors in obtaining redress and dispute resolution, and enhanced oversight of an independent dispute resolution service, such as OBSI, which will foster investor confidence
- Investors do not experience undue pressure to accept offers to settle claims for less than they are entitled to receive
- Retail investors' need for an accessible procedure is balanced with the need for fairness, proportionality, efficiency and finality for all parties to an investment-related dispute
- Closer alignment of dispute resolution services in Canada with the services available to parties in many other comparable international jurisdictions which have implemented a binding ombudservice regime for investment-related disputes

- A more transparent and efficient framework for distributing disgorged funds to harmed investors designed to support better and timelier investor redress
- Enhance retail investor confidence in the capital markets.

11 Strengthen Oversight and Enforcement in the Crypto Asset Sector

The OSC continues to see a number of crypto asset trading platforms with different business models that offer a broad range of crypto assets to their clients in Ontario, including retail investors. Given the considerable risks of investing in this market segment, it is important to continue efforts to bring crypto asset trading platforms into compliance with securities laws. Recent insolvencies involving several crypto asset firms have highlighted the significant investor protection risks of trading crypto assets, particularly where such trading is conducted through unregistered platforms based outside of Canada. Appropriate regulatory oversight is critical for building investor confidence in this market segment.

The OSC continues to work with the CSA and CIRO (previously IIROC), to strengthen its approach to oversight of crypto asset trading platforms and to bring crypto firms engaging in dealer or marketplace activities into compliance with securities laws, as set out in both Joint Canadian Securities Administrators/Investment Industry Regulatory Organization of Canada Staff Notice 21-329 *Guidance for Crypto Asset Trading Platforms: Compliance with Regulatory Requirements* published in March 2021, and in Joint CSA/IIROC Staff Notice 21-330 *Guidance for Crypto-Trading Platforms: Requirements relating to Advertising, Marketing and Social Media Use* published in September 2021. Further to these Staff Notices, CSA Staff Notice 21-332 *Crypto Asset Trading Platforms: Pre-Registration Undertakings Changes to Enhance Canadian Investor Protection* (CSA Staff Notice 21-332) was published in February 2023, notifying firms that wish to continue to operate in Canada, while they seek registration, to file a Pre-Registration Undertaking (PRU) with the CSA. The PRU includes certain provisions including, but not limited to, requirements on custody and segregation of crypto assets held on behalf of Canadian clients; restrictions on offering margin, credit and leverage; restrictions on value-referenced crypto assets and proprietary tokens; and investment limits. In addition, the OSC has commenced compliance reviews of the registered crypto asset trading platforms.

In CSA Staff Notice 21-332, the CSA also reaffirmed its view that value-referenced crypto assets, some of which are commonly referred to as stablecoins, may constitute securities and/or derivatives. CSA Staff Notice 21-333 *Crypto Asset Trading Platforms: Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients* was published in October 2023, setting out an interim framework for crypto asset trading platforms to continue trading certain value-referenced crypto assets with Canadian clients, as the CSA continues it work in this area.

In addition, in July 2023, CSA Notice 81-336 *Guidance on Crypto Asset Investment Funds* was published to help fund managers understand and comply with securities law requirements for public investment funds holding crypto assets.

Actions in 2024-2025 will include:

- Apply regulatory obligations to crypto firms that provided a PRU, pending completion of the registration or approval process
- Coordinate with CIRO in facilitating crypto firms becoming members
- Continue implementing and refining the program for ongoing oversight of crypto asset trading platforms, including conducting compliance reviews of registered firms
- Identify and address non-compliance with securities laws, including bringing enforcement actions in appropriate cases
- Further develop internal capabilities, including technology tools, and specialized skills in crypto asset trading platform oversight
- When warranted, continue to add crypto firms to investor warning lists
- Propose amendments to codify key operational safeguards when investment funds invest in crypto assets
- Help investors make informed decisions about investing in crypto assets by continuing to provide educational resources across all digital and social media channels, including getsmarteraboutcrypto.ca
- Continue development of a regulatory framework for value-referenced crypto assets.

Planned Outcomes:

- Crypto asset trading platforms operate with appropriate regulatory oversight and enforcement action is taken in appropriate cases
- Reduce misleading information in crypto asset trading platform advertising, marketing and social media
- Achieve an appropriate balance in supporting novel businesses and fostering innovation and competitive capital markets while promoting investor protection
- Increase public awareness of these complex products, platforms, and potential frauds/scams
- Provide a balanced and transparent framework for public investment funds to offer crypto asset exposure.

12 Modernize Delivery Options of Regulatory and Continuous Disclosure Filings for Issuers

Electronic access to documents facilitates more efficient communication with investors, reduces regulatory burden for issuers, and modernizes the way documents are made available for the benefit of investors and issuers.

In April 2022, the CSA published for comment CSA Notice *Proposed Amendments and Proposed Changes to Implement an Access Equals Delivery Model for Non-Investment Fund Reporting Issuers* to implement an access model for corporate finance issuers in connection with certain prospectuses, annual financial statements, interim financial reports and their related Management Discussion and Analysis. Under the proposed access model, investors retain the ability to receive paper copies of these documents on request or pursuant to standing instructions. To support proper implementation of the proposed access model in Ontario, the *Securities Act* (Ontario) (the Act) was amended in the fall of 2022 to permit a document that is required to be

delivered, forwarded, distributed or sent to a person or company under certain provisions of the Act to be made available in another way instead.

The proposed access model for prospectuses of corporate finance issuers was generally well received by commenters. The CSA is in the process of revising the proposed amendments to reflect certain of the comments received and to improve or clarify drafting. Provided all necessary approvals are obtained, final amendments to implement an access model for prospectuses, generally, are expected to be published by the end of fiscal 2023-2024. In response to stakeholder feedback, the CSA is considering ways to enhance the access model for continuous disclosure documents of corporate finance reporting issuers to address investor protection concerns, including potential negative effects on retail investors, and anticipates publishing for comment a revised access model for continuous disclosure documents by the end of fiscal 2023-2024.

The OSC also published proposed amendments in September 2022 to replace the current investment fund delivery requirements for financial statements and management reports of fund performance, with an access instead of delivery model. The proposed model for investment funds requires investment funds to i) have a designated website for posting filings, ii) issue, file, and post a news release when filings are made, and iii) deliver filing documents to investors upon their request or based on their standing instructions. Fund Facts and ETF Facts will continue to be delivered to investors in accordance with current requirements. The comment period ended in December 2022 and 21 comment letters were received.

Actions in 2024-2025 will include:

- Consider stakeholder feedback in the development of the final amendments to implement an access model for certain continuous disclosure documents of corporate finance reporting issuers
- Consider stakeholder feedback in the development of the proposed access model for investment funds continuous disclosure filings.

Planned Outcomes:

- Alternate delivery models for corporate finance reporting issuers and investment fund issuers that modernize the way certain documents are made available to investors, reduces undue regulatory burden and related costs for issuers, and promotes a more environmentally friendly manner of communicating information, with paper delivery remaining optional.

13 Facilitate Financial Innovation

Innovation offers economic opportunities and choice for investors. The OSC aims to foster innovative and globally competitive capital markets in Ontario that put investors first, help innovative businesses succeed and attract investments from around the world. The OSC will continue to be proactive in responding to ongoing change and evolution in our capital markets through the work of our various branches.

The Office of Economic Growth and Innovation (the Innovation Office) is a dedicated office within the OSC with a mandate to foster innovation and growth in Ontario's capital markets through its businesses support, modernizing regulation, and outreach and engagement initiatives. Through OSC LaunchPad and OSC TestLab, the OSC creates onramps for responsible innovation in our markets. Our modernizing regulation initiatives help us evaluate the impacts of new technology and capital market trends and collaborate with other

regulators to research, adopt and advance leading practices. We use outreach and engagement with the innovation ecosystem to align our initiatives with evolving technology and capital market trends, and the needs of entrepreneurs, innovators, and market participants in Ontario.

Actions in 2024-2025 will include:

- Facilitate testing that supports capital formation for startups and small to medium sized business in Ontario through OSC TestLab
- Conduct research and engage with stakeholders for input into how we can better support innovation and modernize our regulations
- Develop testing theme(s) for future OSC TestLab cohort(s)
- Engage with stakeholders, including entities that can support Ontario's innovation ecosystem such as innovation hubs and accelerators, venture investors, academic institutions, and other regulators.

Planned Outcomes:

- Responsive and timely support for innovative businesses and business models
- Business support and modernizing regulation initiatives aligned with stakeholder priorities
- New relationships and strategic partnerships with key stakeholders in Ontario's innovation ecosystem
- Announce future testing theme for OSC TestLab.

14 Further Initiatives that Promote Capital Formation and Foster Competition

In April 2021, the Ontario government amended the OSC's legislative mandate to include fostering competitive capital markets and capital formation. This expanded mandate provides additional areas of focus for the OSC's operational and policy development activities, as well as our approach to regulatory decisions. In pursuing this expanded mandate, the OSC remains committed to all the components of the OSC's mandate which are assessed in totality to ensure their significance in any decision or recommendation is balanced. This balancing exercise is tailored to the facts and circumstances of each situation as the OSC seeks to act in the best interests of the capital markets in Ontario.

In particular, investor protection and fostering confidence in capital markets remain at the forefront to ensure that high standards of fitness and business conduct are in place and observed.

To demonstrate the OSC's efforts to promote capital formation in our capital markets and fostering competition, we have undertaken various multiyear initiatives, including:

- Creating the Innovation Office, which is dedicated to fostering innovation, supporting economic growth, and reducing regulatory barriers, fees, anti-competitive behaviour, and response times
- In October 2022, the OSC issued Ontario Instrument 45-507 *Self-Certified Investor Prospectus Exemption* (Interim Class Order) (OI 45-507) for an 18-month pilot ending on April 25, 2024. OI 45-507 provides a time-limited prospectus exemption that allows purchasers in Ontario, who may not meet the financial thresholds or other criteria required to qualify as an accredited investor, to invest in Ontario issuers provided that they meet other criteria intended to demonstrate financial knowledge, investment knowledge or relevant industry-specific experience

- In November 2022, the CSA issued a consultation paper on Access to Real Time Market Data seeking feedback on the overall feasibility and effectiveness of the proposed options for access to consolidated real-time market data (RTMD). Consolidated RTMD is key for market participants, investors, and their advisors to make informed investment, routing, and execution decisions
- In March 2023, the OSC published OSC Rule 44-502 Extension to Ontario Instrument 44-501 *Certain Prospectus Requirements for Well-known Seasoned Issuers*, which came into force in July 2023. The Rule extends the blanket relief to create a temporary well-known seasoned issuer (WKSI) regime in Canada.
- Introduced the Listed Issuer Financing Exemption (LIFE) prospectus exemption aimed at providing issuers listed on a Canadian stock exchange with a more efficient way to raise capital

Actions 2024-2025 will include:

- Monitor use of OI 45-507 and consider potential rule amendments that introduce a prospectus exemption based on relevant educational and business experience
- Consider need to issue a rule to extend OI 45-507 for an additional interim period
- Finalize recommendations for policy changes, based on the feedback obtained in response to consultation paper on access to RTMD
- Continue to support new entrants, innovation and novel business models
- Consider taking steps to reduce the length of the hold period applicable to securities distributed under the accredited investor exemption by seasoned reporting issuers
- Consider taking steps to allow exempt market dealers to participate as selling group members in prospectus offerings and be sponsors of reverse-takeover transactions, subject to reasonable conditions
- Consider exemptive relief for not-for-profit angel groups in order to support capital raising for startups and address the unique circumstances of angel groups, including a possible blanket order
- Consider and address registration regime and issues in connection with introducers/finders
- Consider consultations for a Long-Term Asset Fund regime similar to the programs found in the United Kingdom and European Union.

Planned Outcomes:

- Enhance access for businesses and financial services providers to Ontario's capital markets
- Enhance access for qualified investors to an enhanced range of investment opportunities
- Streamline regulatory requirements and processes to make it easier to participate in Ontario's capital markets
- Growth in Ontario's capital markets through increased capital formation and competition, which is carried out in a manner that is consistent with all components of our mandate.

15 Execute OSC's Inclusion and Diversity Strategy

The OSC is building and sustaining diversity in our OSC community and ensuring that the employee experience is equitable and inclusive for everyone. Ensuring an employee experience that is diverse, equitable, and inclusive contributes to recruitment, retention, and wellbeing at the OSC. By celebrating and recognizing our

employees' uniqueness and individuality, we foster an inclusive and accountable culture where everyone can contribute while feeling safe and having a sense of belonging.

This priority is also linked to our priority to advance cooperation with Indigenous Peoples and work to integrate their perspectives and interests to develop an action plan for truth and reconciliation. In that regard, the OSC's vision is to build a culturally aware and inclusive workforce that reflects the diversity of Indigenous communities and peoples in Ontario. We will work collaboratively with Ontario Indigenous Peoples and organizations, investors, and market participants to foster a culture of integrity and investor confidence for the benefit of all.

Actions in 2024-2025 will include:

- End-to-end review of talent acquisition process to identify opportunities and relevant areas for Inclusion and Diversity (I&D) process and policy enhancement to create a bias-free selection process to ensure equal opportunity, both in the intermediate term and longer term
- Take actions outlined in the BlackNorth Initiative (BNI) CEO pledge, which include continuing to strengthen the organization's I&D Strategy through data and measurement for all stages of the employee lifecycle and expanding external partnerships for attracting diverse candidates
- Implementing OSC's Inclusion & Diversity Learning Pathway, including cultural awareness training to better understand how to work effectively with Indigenous Peoples and to help build a workplace that actively thinks about inclusion and consciously creates spaces that allows all to feel comfortable, honoured, and valued regardless of their identity.

Planned Outcomes:

- Policies and practices that are equitable and inclusive for all employees, including in the areas of recruitment, talent development, secondment, promotion, code of conduct, and respectful workplace
- A workplace where employees experience inclusion, equality and engagement
- Achieve, measure and expand upon the goals and targets set out in the BNI CEO pledge
- Inclusion and Diversity policies and an OSC culture that reflect the spirit of truth and reconciliation, and greater engagement with and integration of ideas from Indigenous Peoples
- Build a culturally aware and inclusive workforce that reflects the diversity of Indigenous communities and peoples in Ontario
- Contributing to an inclusive workplace through attracting and retaining a diverse workforce.

16 Integrate Digital and Data Capabilities and Processes to Support Effective Decision Making, Risk Monitoring and Streamlined Operations

Ever increasing market complexity is generating greater reliance on data, analytics and digitally streamlined operations. It is important that the OSC has digital and data capabilities to operate in today's digital and data first environment, with a focus on (a) achieving operational efficiencies through modern tools, technologies,

and processes and (b) becoming a data driven regulator through data and analytics capabilities and an uncompromising data and analytics culture.

The OSC is investing in technology and infrastructure to enable the organization with the right digital and data capabilities. These capabilities will significantly improve our operational efficiencies, allowing for better identification of trends and risks to support decision-making, compliance and enforcement activities, systemic risk oversight and policy development.

With modern tools, technologies and a robust data and analytics framework, the OSC is prepared to deliver on our mandate and foster investors' confidence in the capital markets through innovative regulatory practices.

Actions in 2024-2025 will include:

- Continue to enhance and evolve OSC's enterprise data analytics and reporting capabilities to support core regulatory operations and policy work
- Continue to enhance our OTC Derivatives Datamart and analytics to support systemic risk monitoring and various policy objectives
- Continue the roll out of the platform supporting streamlined end-to-end regulatory activities and integrated case management
- Continue the roll out of OSC's external portal, to streamline participant's interaction with the OSC.

Planned Outcomes:

- Access to data that can be easily used for analysis and reporting purposes, supporting the OSC in data driven decision making and identification of emerging risks. Enable data driven policy development and regulatory responses
- Streamlined operations leading to efficient information sharing and increased collaboration between branches and industry stakeholders
- Effective systemic risk oversight supported by timely access and analysis of integrated derivatives OTC trade data to support risk identification and compliance.

B.2
Orders

B.2.1 Canaccord Genuity G Ventures Corp.

Headnote

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

Applicable Legislative Provisions

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

November 7, 2023

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

AND

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

AND

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

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0473

B.2.2 Pure Gold Mining Inc.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer Applications – Application for an order that the issuer is not a reporting issuer under applicable securities laws – 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 except it has not filed certain continuous disclosure documents – Requested relief granted.

Applicable Legislative Provisions

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

June 16, 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
PURE GOLD MINING INC.
(the Filer)

ORDER

Background

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

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

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

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

(c) the 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 a company existing under the *Business Corporations Act* (British Columbia) (the BCBCA) with its registered and records office located in British Columbia;

2. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador;

3. on October 31, 2022, the Filer filed an application with the Supreme Court of British Columbia (the Court) seeking an initial order for creditor protection (the Initial Order) under the *Companies' Creditors Arrangement Act* (the CCAA); the Initial Order sought, among other matters: (i) a stay of creditor claims and proceedings in favour of the Filer; (ii) authorization for the Filer to borrow under an interim financing credit facility from Sprott Private Resource Lending II (Collector) LP (Sprott) to meet the Filer's immediate cash needs including for the preservation of its property and other assets; and (iii) the appointment of KSV Restructuring Inc. as court-appointed monitor of the Filer (the Monitor);

4. on October 31, 2022, the Filer obtained the Initial Order from the Court under the CCAA; KSV Restructuring Inc. was appointed as the Monitor; the Initial Order authorized the Filer to borrow under an interim financing credit facility from Sprott in order to meet the Filer's immediate cash needs for the continuation of its business activities and the preservation of its property;

5. as a result of the Filer receiving protection under the CCAA, the TSX Venture Exchange (the TSXV) advised the Filer that the trading of the common shares of the Filer (the Shares) would be transferred to the NEX Board of the TSXV (the NEX), effective at the opening of the market on November 2, 2022;

6. on November 9, 2022, the Court granted a Sales and Investment Solicitation Process Order (the SISP Order); the SISP Order: (i) approved a sales and investment solicitation process for all the assets, undertakings and property of the Filer, including the Filer's mineral project located in Ontario (the SISP); and (ii) approved the engagement of National Bank Financial Inc. as the Filer's sales agent for the purpose of the SISP;

7. on November 9, 2022, in addition to the SISP Order, the Court granted orders: (i) extending the stay of proceedings granted under the CCAA until January 27, 2023; (ii) authorizing the Filer to borrow additional funds under the interim financing credit facility from Sprott in order to meet the Filer's immediate cash needs for the continuation of its business activities and preservation of its property; (iii) approving a key employee retention plan in respect of certain key employees of the Filer; and (iv) restating and amending the Initial Order granted on October 31, 2022;

8. by way of orders of the Court on January 23, 2023, March 7, 2023 and May 10, 2023, the stay of proceedings in the CCAA proceedings has been extended up to and including June 12, 2023. It is expected that the stay of proceedings will be further extended as part of the CCAA restructuring process;

9. the Shares were delisted from the London Stock Exchange on February 20, 2023 as a result of the Filer's request to voluntarily delist; the Shares were suspended from trading on the NEX on April 4, 2023 for failing to meet the NEX's continued listing requirements;

10. On May 17, 2023, West Red Lake Gold Mines Ltd. (WRLG) and the Filer, among others, entered into a share purchase agreement whereby WRLG will acquire all of the issued and outstanding Shares of the Filer (the Acquisition) on a closing date in June 2023 (the Effective Date);

11. on May 29, 2023, the Court granted an approval and reverse vesting order;

12. the approval and reverse vesting order includes approval for the Acquisition and the Reverse Vesting (as defined below);

13. on June 6, 2023, the Filer incorporated a new corporation under the laws of the BCBCA (NewCo), with authorized share capital consisting of one class of voting and fully participating common shares (the NewCo Common Shares), and one class of nonparticipating, redeemable and retractable voting shares (the NewCo Voting Shares); the Filer also subscribed for 100 NewCo Voting Shares and NewCo will be added to the CCAA proceeding;

14. at the close of business on June 9, 2023, the Filer's Shares were delisted from the NEX;

15. on June 14, 2023, all outstanding Shares were exchanged for NewCo Common Shares, such that the Filer became a wholly-owned subsidiary of NewCo (the Reverse Vesting); the NewCo Voting Shares held by the Filer were simultaneously redeemed by NewCo and all of the Filer's outstanding options, warrants and any other securities convertible into or exercisable for Shares, were cancelled for no consideration;

16. as a condition to the closing of the Acquisition, the Filer must cease to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer prior to the Effective Date;

17. the Filer has no intention to seek public financing by way of an offering of securities;

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

19. 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;

20. the Filer is not in default of securities legislation in any jurisdiction, except that the Filer has not filed, on or before March 31, 2023, its annual information form, its annual audited financial statements, its management discussion and analysis in respect of such statements for the year ended December 31, 2022, and its

unaudited interim financial statements and its management discussion and analysis in respect of such statements for the three months ended March 31, 2023, as required under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52109) (collectively, the Filings);

21. the Filer was subject to a failure-to-file cease trade order (the FFCTO) issued on April 6, 2023 as a result of its failure to file the Filings and on June 14, 2023 was granted a partial revocation of the FFCTO pursuant to section 171 of the *Securities Act* (British Columbia);

22. the Filer is not eligible to use the simplified procedure in section 19 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it is in default of the Filings;

23. 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;

24. 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;

25. the Filer, upon the grant of the Order Sought, will no longer be a reporting issuer in any jurisdiction of Canada; and

26. Newco will declare bankruptcy following closing of the Acquisition at such time as determined by the Monitor.

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 #: 2023/0212

B.2.3 Pure Gold Mining Inc.

Headnote

Section 144 of the Securities Act (Ontario) – application for a partial revocation of a cease trade order – issuer cease traded due to failure to file audited annual financial statements, annual management discussion and analysis, annual information form and certification of annual filings – issuer has applied for a partial revocation of the cease trade order to permit the issuer to proceed with a reorganization plan under the Companies' Creditors Arrangement Act and complete a transaction whereby all of the issued and outstanding shares of the issuer are acquired by another reporting issuer – partial revocation granted subject to conditions.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am. ss. 127 and 144.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

June 16, 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
PURE GOLD MINING INC.
(the Filer)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral

Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, Saskatchewan, Manitoba, New Brunswick, Nova Scotia, Prince Edward Island, Newfoundland and Labrador, and

(c) the 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 a company existing under the *Business Corporations Act* (British Columbia) (the BCBCA) with its registered and records office located in British Columbia;

2. the Filer is a reporting issuer in British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island, and Newfoundland and Labrador;

3. on October 31, 2022, the Filer filed an application with the Supreme Court of British Columbia (the Court) seeking an initial order for creditor protection (the Initial Order) under the *Companies' Creditors Arrangement Act* (the CCAA); the Initial Order sought, among other matters: (i) a stay of creditor claims and proceedings in favour of the Filer; (ii) authorization for the Filer to borrow under an interim financing credit facility from Sprott Private Resource Lending II (Collector) LP (Sprott) to meet the Filer's immediate cash needs including for the preservation of its property and other assets; and (iii) the appointment of KSV Restructuring Inc. as court-appointed monitor of the Filer (the Monitor);

4. on October 31, 2022, the Filer obtained the Initial Order from the Court under the CCAA; KSV Restructuring Inc. was appointed as the Monitor; the Initial Order authorized the Filer to borrow under an interim financing credit facility from Sprott in order to meet the Filer's immediate cash needs for the continuation of its business activities and the preservation of its property;

5. as a result of the Filer receiving protection under the CCAA, the TSX Venture Exchange (the TSXV) advised the Filer that the trading of the common shares of the Filer (the Shares) would be transferred to the NEX Board of the TSXV (the NEX), effective at the opening of the market on November 2, 2022;

6. on November 9, 2022, the Court granted a Sales and Investment Solicitation Process Order (the SISP Order); the SISP Order: (i) approved a sales and investment solicitation process for all the assets, undertakings and property of the Filer, including the Filer's mineral project located in Ontario (the SISP); and (ii) approved the engagement of National Bank Financial Inc. as the Filer's sales agent for the purpose of the SISP;

7. on November 9, 2022, in addition to the SISP Order, the Court granted orders: (i) extending the stay of proceedings granted under the CCAA until January 27, 2023; (ii) authorizing the Filer to borrow additional funds under the interim financing credit facility from Sprott in order to meet the Filer's immediate cash needs for the continuation of its business activities and preservation of its property; (iii) approving a key employee retention plan in respect of certain key employees of the Filer; and (iv) restating and amending the Initial Order granted on October 31, 2022;

8. by way of orders of the Court on January 23, 2023, March 7, 2023 and May 10, 2023, the stay of proceedings in the CCAA proceedings has been extended up to and including June 12, 2023. It is expected that the stay of proceedings will be further extended as part of the CCAA restructuring process;

9. the Shares were delisted from the London Stock Exchange on February 20, 2023 as a result of the Filer's request to voluntarily delist; the Shares were suspended from trading on the NEX on April 4, 2023 for failing to meet the NEX's continued listing requirements;

10. On May 17, 2023, West Red Lake Gold Mines Ltd. (WRLG) and the Filer, among others, entered into a share purchase agreement whereby WRLG will acquire all of the issued and outstanding Shares of the Filer (the Acquisition) on a closing date in June 2023 (the Effective Date);

11. on May 29, 2023, the Court granted an approval and reverse vesting order;

12. the approval and reverse vesting order includes approval for the Acquisition and the Reverse Vesting (as defined below);

13. on June 6, 2023, the Filer incorporated a new corporation under the laws of the BCBCA (NewCo), with authorized share capital consisting of one class of voting and fully participating common shares (the NewCo Common Shares), and one class of nonparticipating, redeemable and retractable voting shares (the NewCo Voting Shares); the Filer also subscribed for 100 NewCo Voting Shares and NewCo will be added to the CCAA proceeding;

14. at the close of business on June 9, 2023, the Filer's Shares were delisted from the NEX;

15. on June 14, 2023, all outstanding Shares were exchanged for NewCo Common Shares, such that the Filer became a wholly-owned subsidiary of NewCo (the Reverse Vesting); the NewCo Voting Shares held by the Filer were simultaneously redeemed by NewCo and all of the Filer's outstanding options, warrants and any other securities convertible into or exercisable for Shares, were cancelled for no consideration;

16. as a condition to the closing of the Acquisition, the Filer must cease to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer prior to the Effective Date;

17. the Filer has no intention to seek public financing by way of an offering of securities;

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

19. 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;

20. the Filer is not in default of securities legislation in any jurisdiction, except that the Filer has not filed, on or before March 31, 2023, its annual information form, its annual audited financial statements, its management discussion and analysis in respect of such statements for the year ended December 31, 2022, and its unaudited interim financial statements and its management discussion and analysis in respect of such statements for the three months ended March 31, 2023, as required under National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) and related certificates as required under National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (NI 52109) (collectively, the Filings);

21. the Filer was subject to a failure-to-file cease trade order (the FFCTO) issued on April 6, 2023 as a result of its failure to file the Filings and on June 14, 2023 was granted a partial revocation of the FFCTO pursuant to section 171 of the *Securities Act* (British Columbia);

22. the Filer is not eligible to use the simplified procedure in section 19 of National Policy 11-206 *Process for Cease to be a Reporting Issuer Applications* as it is in default of the Filings;

23. 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;

24. 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;

25. the Filer, upon the grant of the Order Sought, will no longer be a reporting issuer in any jurisdiction of Canada; and

26. Newco will declare bankruptcy following closing of the Acquisition at such time as determined by the Monitor.

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 #: 2023/0214

B.2.4 Dialogue Health Technologies Inc.

Headnote

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

Applicable Legislative Provisions

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

[Original text in French]

November 7, 2023

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

AND

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

AND

IN THE MATTER OF
DIALOGUE HEALTH TECHNOLOGIES INC.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, Regulation 11-102 and, in Québec, in *Regulation 14-501Q on definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. the Filer is not an OTC reporting issuer under *Regulation 51-105 respecting 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 *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

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

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

Order

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

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

“Marie-Claude Brunet-Ladrie”
Directrice de la surveillance des émetteurs et initiés
Autorité des marchés financiers

OSC File #: 2023/0461

B.2.5 Liminal BioSciences Inc.

Headnote

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

Applicable Legislative Provisions

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

[Original text in French]

November 3, 2023

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

AND

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

AND

IN THE MATTER OF
LIMINAL BIOSCIENCES INC.
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

Terms defined in *Regulation 14-101 respecting Definitions*, Regulation 11-102 and, in Québec, in *Regulation 14-501Q on definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

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

1. the Filer is not an OTC reporting issuer under *Regulation 51-105 respecting 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 *Regulation 21-101 respecting Marketplace Operation* or any other facility for bringing together buyers and sellers of securities where trading data is publicly reported;

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

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

Order

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

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

“Marie-Claude Brunet-Ladrie”
Directrice de la surveillance des émetteurs et initiés
Autorité des marchés financiers

OSC File #: 2023/0455

B.2.6 ICE NGX Canada Inc. – s. 78 of the CFA and s. 144 of the OSA

Headnote

Section 78 of the Commodity Futures Act (Ontario) and section 144 of the Securities Act (Ontario) – Application for an order varying an existing order exempting ICE NGX Canada Inc. from the requirement to be recognized as a commodity futures exchange and an exchange to allow it to trade contracts based on environmental products – requested order granted.

Applicable Legislative Provisions

Commodity Futures Act, R.S.O. 1990, c. C.20, as am., s. 78.
Securities Act, R.S.O. 1990 c. S.5, as am., ss. 21, 144.

IN THE MATTER OF
THE COMMODITY FUTURES ACT,
R.S.O. 1990, CHAPTER C.20,
AS AMENDED
(CFA)

AND

IN THE MATTER OF
THE SECURITIES ACT,
R.S.O. 1990, CHAPTER S.5,
AS AMENDED
(OSA)

AND

IN THE MATTER OF
ICE NGX CANADA INC.
(NGX)

VARIATION TO EXEMPTION ORDER
(Section 78 of the CFA and Section 144 of the OSA)

WHEREAS the Commission granted an order dated July 27, 2012 (**2012 Order**):

(a) pursuant to section 80 of the CFA, exempting NGX from the requirement to be registered as a commodity futures exchange under section 15 of the CFA;

(b) pursuant to section 38 of the CFA, exempting trades by NGX participants (**Participants**) in Ontario (**Ontario Participants**) in contracts on NGX (**Contracts**) from the registration requirement under section 22 of the CFA;

(c) pursuant to section 38 of the CFA, exempting trades by Ontario Participants in Contracts from the requirements under section 33 of the CFA; and

(d) pursuant to section 147 of the OSA, exempting NGX from the requirement to be recognized as an exchange under section 21 of the OSA;

AND WHEREAS NGX filed an application (the **Environmental Products Application**) requesting the 2012 Order be varied to authorize NGX to offer Contracts for products based on environmental quality, including emissions or emission credits (**Environmental Products**);

AND WHEREAS NGX has represented to the Commission as follows.

1. The Environmental Products will be traded and cleared through the Trading System and Clearing System, respectively, each as defined in the 2012 Order.

2. Access to the Trading System and the Clearing System is restricted to Participants, each of which:

   (a) has entered into a Contracting Party's Agreement;

   (b) has, or is controlled directly or indirectly, by an entity which has a net worth exceeding $5,000,000 or total assets exceeding $25,000,000 (**NGX Sophistication Thresholds**); and

(c) uses the Trading System and Clearing System only as principal.

3. The Environmental Products are Contracts that fall under the definitions of "commodity futures contract" or "commodity futures option" set out in section 1 of the CFA.

4. NGX seeks to provide Ontario Participants with access to trading in Environmental Products in Ontario.

AND WHEREAS based on the 2012 Order and the representations made to the Commission, the Commission is satisfied that it is not prejudicial to the public interest to vary the 2012 Order;

IT IS ORDERED by the Commission that:

(a) the 2012 Order is varied by inserting “and products based on environmental quality, including emissions and emission credits” immediately following “… and crude oil products” in representation number 2;

(b) the 2012 Order is varied by inserting “and environmental quality” immediately preceding “related commodities” in representation number 3; and

(c) section 9 *Products* of Schedule “E” Terms and Conditions to the 2012 Order is amended by replacing “and renewable energy certificates” with “renewable energy certificates, and products based on environmental quality, including emissions or emission credits,”

provided that NGX continues to comply with the applicable terms and conditions set out in Schedule "E" to the 2012 Order.

DATED this 9th day of November, 2023.

“Michelle Alexander”
Manager, Market Regulation Branch
Ontario Securities Commission

B.2.7 Rockshield Acquisition Corp.

Headnote

National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions – Application by an issuer for a revocation of a cease trade order issued by the Commission – cease trade order issued because the issuer had failed to file certain continuous disclosure materials required by securities law – defaults subsequently remedied by bringing continuous disclosure filings up-to-date – cease trade order revoked.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 127 and 144.

Citation: 2023 BCSECCOM 495

REVOCATION ORDER

ROCKSHIELD ACQUISITION CORP.

UNDER THE SECURITIES LEGISLATION OF
BRITISH COLUMBIA
AND
ONTARIO
(the Legislation)

Background

¶ 1 Rockshield Acquisition Corp. (the Issuer) is subject to a failure-to-file cease trade order (the FFCTO) issued by the regulator or securities regulatory authority in each of British Columbia (the Principal Regulator) and Ontario (each a Decision Maker) respectively on April 5, 2023.

¶ 2 The Issuer has applied to each of the Decision Makers under National Policy 11-207 *Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions* (NP 11-207) for an order revoking the FFCTO.

¶ 3 This order is the order of the Principal Regulator and evidences the decision of the Decision Maker in Ontario.

Interpretation

¶ 4 Terms defined in National Instrument 14-101 *Definitions* or in NP 11-207 have the same meaning if used in this order, unless otherwise defined.

Order

¶ 5 Each of the Decision Makers is satisfied that the order to revoke the FFCTO meets the test set out in the Legislation for the Decision Makers to make the decision.

¶ 6 The decision of the Decision Makers under the Legislation is that the FFCTO is revoked as it applies to the Issuer.

¶ 7 October 26, 2023

"Allan M. Lim", CPA, CA
Manager, Corporate Disclosure
Corporate Finance

OSC File #: 2023/0396

B.2.8 ABC Technologies Holdings Inc.

Headnote

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

Applicable Legislative Provisions

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

November 10, 2023

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

AND

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

AND

IN THE MATTER OF
ABC TECHNOLOGIES HOLDINGS INC.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2023/0532

B.2.9 PolyMet Mining Corp.

Headnote

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

Applicable Legislative Provisions

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

November 10, 2023

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

AND

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

AND

IN THE MATTER OF
POLYMET MINING CORP.
(the Filer)

ORDER

Background

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2023/0507

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B.3
Reasons and Decisions

B.3.1 Agrinam Acquisition Corporation

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 – the class B shares are not posted for trading on an exchange – relief granted subject to conditions, including that the related party transaction associated with 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).

November 7, 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
AGRINAM ACQUISITION CORPORATION
(the "Filer")

DECISION

Background

The principal regulator in the Jurisdiction ("**Decision Maker**") has received an application (the "**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 Exchange (as defined below), which 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 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, Saskatchewan, 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:

"**Class A Restricted Voting Units**" means Class A restricted voting units offered to the public pursuant to the final long-form prospectus of the Filer dated June 10, 2022, each comprised of one Class A Restricted Voting Share, one IPO Warrant and one Right (each as defined below);

"**Extension**" means one or more extensions to the Permitted Timeline, from 15 months to up to 36 months (without the requirement to fund any additional amounts into the escrow account) or from either 18 months to 21 months to up to 36 months (after the Filer has exercised its applicable Three-Month Extension Options), that has been approved by ordinary resolution of the holders of Class A Restricted Voting Shares and that is also approved by the board of directors of the Filer, in which case the redemption rights in article 28.5(b) of the Filer's amended and restated articles shall apply;

"**IPO**" means the Filer's initial public offering of its Class A Restricted Voting Units;

"**Permitted Timeline**" means the allowable time period within which the Filer must consummate its qualifying acquisition, being 15 months from the closing date of the IPO, or up to 21 months from the closing date of the IPO if the Filer has extended the available time to consummate a qualifying acquisition by up to two successive three-month periods by exercising its applicable Three-Month Extension Options, and as such allowable time period may be further extended to up to 36 months in the event it is extended by way of an Extension, and provided that, with 10 days' advance notice by way of a news release, the Filer may shorten the Permitted Timeline with the approval of the board of directors of the Filer;

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

"**SPAC**" means a special purpose acquisition corporation;

"**Three-Month Extension Options**" means the option of the Filer to extend the Permitted Timeline in each case by three-months (up to a maximum of two successive three-month periods) from 15 months up to 18 months and from 18 months up to 21 months, provided the Filer has deposited the requisite amounts into the escrow account, such amount being an aggregate of U.S.$400,000 in cash for each extension; and

"**TSX**" means 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 December 1, 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's 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 Homero 109, Polanco, Polanco V Secc, Miguel Hidalgo, Ciudad de México, CDMX, 11560 and its registered office is located at Waterfront Centre, 200 Burrard St #1200, Vancouver, British Columbia V7X 1T2.

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 an Extension whereby the Filer exercised one of the Three-Month Extension Options, the Filer has until December 15, 2023 to close a qualifying acquisition. If a qualifying acquisition is not completed by December 15, 2023, and the Filer does not, prior to that date, exercise the second Three-Month Extension Option by depositing U.S.$400,000 in cash into the Filer's escrow account or receive shareholder approval for an Extension, the Filer will be required to liquidate.

5. The Filer is authorized to issue an unlimited number of Class A restricted voting shares ("**Class A Restricted Voting Shares**"), an unlimited number of Class B shares ("**Class B Shares**"), an unlimited number of common shares ("**Common Shares**") and an unlimited number of proportionate voting shares, each without nominal or par value. As at

October 31, 2023, the Filer had 2,538,637 Class A Restricted Voting Shares issued and outstanding, and 3,450,000 Class B Shares issued and outstanding.

6. The Class A Restricted Voting Shares comprised part of the Class A Restricted Voting Units offered to the public in connection with the IPO. The Class B Shares were issued to Agrinam Investments, LLC, (the "**Sponsor**"), and certain of the Sponsor's and the Filer's affiliates, directors and officers (collectively, the "**Founders**") in connection with the IPO. The Filer also has an aggregate of (a) 13,800,000 warrants (the "**IPO Warrants**"), (b) 8,710,000 funding warrants (the "**Funding Warrants**"), and (c) 12,000,000 rights to receive, for no additional consideration, one-tenth (1/10) of one Class A Restricted Voting Share following the closing of a qualifying acquisition (the "**Rights**"), outstanding. The IPO Warrants and Rights were issued to holders of the Class A Restricted Voting Units and the Funding Warrants were issued to the Founders (including the Sponsor), each in connection with the IPO. As of October 31, 2023, the Sponsor holds 3,339,601 Class B Shares and 1 Class A Restricted Voting Share, representing 96.8% of the Filer's issued and outstanding Class B Shares and approximately 55.77% of the Filer's total issued and outstanding shares (including the Class A Restricted Voting Shares and Class B Shares and assuming no exercise of the IPO Warrants, Funding Warrants or Rights). The Sponsor also holds 8,627,200 Funding Warrants. As such, the Sponsor is a "related party" of the Filer, as that term is defined in MI 61-101.

7. In connection with the IPO, the entirety of the gross proceeds from the Class A Restricted Voting Shares, along with the gross proceeds of a portion of the sale of the Funding Warrants and contemporaneous capital contributions by the Sponsor to the Class A Restricted Voting Shares, were put into the Filer's escrow account (the "**Escrowed Funds**") to be used to, *inter alia*, satisfy the payment of the redemption price (the "**Redemption Price**") due to holders of Class A Restricted Voting Shares upon the exercise of the redemption right attached to the Class A Restricted Voting Shares, and fund a qualifying acquisition. Any Escrowed Funds which are not used to consummate a qualifying acquisition will be disbursed to the Filer and will, along with any other amounts not expended prior to the consummation of a qualifying acquisition, be used to fund general ongoing expenses of the resulting issuer.

8. 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.

9. The net proceeds from the issuance of the Class B Shares offered to the Founders and Sponsor 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.

10. The Filer has entered into a business combination agreement (the "**Business Combination Agreement**") dated as of October 4, 2023 with Freight Farms, Inc. ("**Freight Farms**") and Agrinam Merger Sub, Inc., a wholly owned subsidiary of the Filer incorporated pursuant to the laws of Delaware, United States of America ("**Merger Sub**") pursuant to which the parties will complete a triangular merger whereby, among other things, Freight Farms will merge with Merger Sub and the Filer will acquire all of the issued and outstanding shares of Freight Farms in exchange for Common Shares (the "**Proposed Transaction**"). The Proposed Transaction will be considered Agrinam's qualifying acquisition.

11. Demeter Agrimex, LLC ("**Demeter**") and Maquia Capital Family Office, LLC ("**MCFO**", and together with Demeter, the "**Lenders**") are affiliates of the Sponsor.

12. The Lenders and the Sponsor entered into a convertible subordinated loan agreement (the "**Loan Agreement**") with Freight Farms on August 17, 2023, whereby the Lenders agreed to jointly and severally loan to Freight Farms the sum of U.S.$4,000,000 (the "**Loan**"), consisting of two tranches of U.S.$2,000,000. The Loan accrues simple interest at 10% per annum on any principal amount drawn on any tranche, calculated from the date of disbursement with respect to any such drawn principal; provided, however, that in the event of an Exchange (as defined below), the Loan shall be deemed to have accrued simple interest at 15% per annum instead of 10%. The Loan, together with all accrued but unpaid interest payable thereon, shall mature and become due and payable in full upon demand by the Sponsor at any time after the one-year anniversary of the disbursement of any principal under the first tranche (the "**Maturity Date**"). No payment of principal or interest of the Loan may be made prior to the Maturity Date without the written consent of the Lenders. Pursuant to the Loan Agreement, following the closing of the qualifying acquisition, the outstanding amount owing on the Loan, which amount includes the outstanding principal of the Loan, together with all accrued but unpaid interest payable thereon (the "**Outstanding Amount**"), will automatically convert into Common Shares (the "**Exchange**"), resulting in the issuance of the Filer's securities to affiliates of the Sponsor. It is anticipated that the Common Shares issued to the

Lenders in connection with the Exchange will have a value approximately equal to the Outstanding Amount (being U.S.$4,180,016.71, assuming a closing date of December 15, 2023 for the qualifying acquisition).

13. The Exchange constitutes a related party transaction (the "**Related Party Transaction**") under MI 61-101 and would require the Filer to obtain a formal valuation and minority approval (the "**Minority Protections**"), unless an exemption is available.

14. 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**").

15. 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.

16. 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, 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.

17. Class A Restricted Voting Shares are listed and posted for trading on the TSX under the trading symbol "AGRI.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.

18. 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 qualifying acquisition was agreed to, it would be U.S.$26,757,233.98 and thus, the Related Party Transaction would represent approximately 15.6% of the Filer's market capitalization.

19. The Filer has included in the material change report filed on October 13, 2023, in connection with the Proposed Transaction, and confirms that it will include in its non-offering prospectus to be filed in connection with its 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 be granted provided that:

(a) the Exchange would qualify for the Transaction Size Exemption 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 Exchange (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 articles dated June 10, 2022, as amended September 14, 2023.

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

B.3.2 1832 Asset Management L.P. and Dynamic Credit Absolute Return Fund

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief granted from certain provisions of NI 81-101, NI 41-101, NI 81-102 and NI 81-106 to permit new ETF series of continuing funds to use the past performance, financial data, start date and fund expenses of corresponding terminating funds in their sales communications, simplified prospectus, ETF facts documents, management reports of fund performance and financial statements – subject to conditions.

Applicable Legislative Provisions

National Instrument 81-101 Mutual Fund Prospectus Disclosure, ss. 2.1 and 6.1(1).
Form 81-101F1 Contents of Simplified Prospectus, Item 8(2) of Part B.
National Instrument 81-102 Investment Funds, ss. 2.3(1)(f), 3.1, 15.1.1, 15.3(2), 15.6(1)(a)(i)(A), 15.6(1)(b), 15.6(1)(d)(i), 15.8(2)(a), 15.8(2)(a.1), 15.8(3)(a), 15.8(3)(a.1), and 19.1(1).
National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 2.1, 2.3, 4.4 and 17.1(1).
Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, Items 3.1(1), 3.1(7), 3.1(7.1), 3.1(8), 4.1(1), 4.1(2), 4.2(1), 4.2(2), 4.3(1)(a) and 4.3(1)(b) of Part B, and Items 3(1) and 4 of Part C.

November 7, 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
1832 ASSET MANAGEMENT L.P.
(the Filer)

AND

IN THE MATTER OF
DYNAMIC CREDIT ABSOLUTE RETURN FUND
(the Continuing Fund)

DECISION

Background

The principal regulator in the Jurisdiction (as defined below) has received an application from the Filer, on behalf of the Continuing Fund, a mutual fund that will offer Series A, F, FH, H, O and OP units, for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that grants exemptive relief to the Filer and the Continuing Fund as set forth below (collectively, the **Exemption Sought**):

(a) an exemption from section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) and the Instructions of Part I of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**) for the purpose of the following exemptions sought from Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**):

(i) to modify Item 8(2) of Part B of Form 81-101F1 and Item 2 of Part I of Form 81-101F3 to permit each series of the Continuing Fund to disclose its "series start date" as the start date of the series of DCARF I within the simplified prospectus and each Fund Fact (as defined below) of the Continuing Fund; and

(ii) Item 10(b) of Part B of Form 81-101F1 to permit each series of the Continuing Fund to use the Terminating Funds' past performance data to calculate each series of the Continuing Fund's investment risk rating when complying with Item 4 of Appendix F Investment Risk Classification Methodology (**Appendix F**) to National Instrument 81-102 *Investment Funds* (**NI 81-102**);

(b) an exemption from section 2.1 of NI 81-101 for the purposes of the following exemptions sought from Form 81-101F3:

(i) Item 2 of Part I of Form 81-101F3 to permit each series of the Continuing Fund to disclose its "series start date" as the start date of the series of DCARF I within the simplified prospectus and each Fund Fact of the Continuing Fund;

(ii) Item 2 of Part I of Form 81-101F3 to permit each series of the Continuing Fund to disclose the management expense ratio (**MER**) of the series of the Terminating Funds as its information in the applicable Fund Facts;

(iii) Item 5 of Part I of Form 81-101F3 to permit each series of the Continuing Fund to use the past performance data of the Terminating Funds in the "Average return", "Year-by-year returns" and "Best and worst 3-month returns" sections in the Fund Facts for each series of the Continuing Fund; and

(iv) Item 1.3 of Part II of Form 81-101F3 to permit each series of the Continuing Fund to use the MER, the trading expense ratio and the expenses of the Terminating Funds in the "Fund expenses" section of the applicable Fund Facts;

(c) an exemption from sections 15.3(2), 15.6(1)(a)(i)(A), 15.6(1)(b), 15.6(1)(d)(i), 15.8(2)(a), 15.8(2)(a.1), 15.8(3)(a) and 15.8(3)(a.1) of NI 81-102 to permit each series of the Continuing Fund to use the performance data of the Terminating Funds in sales communications and reports to unitholders (collectively, **Fund Communications**) of the Continuing Fund;

(d) an exemption from Section 15.1.1 of NI 81-102 and Items 2 and 4 of Appendix F to NI 81-102 to permit each series of the Continuing Fund to calculate its investment risk level using the performance history of the Terminating Funds (together with paragraphs (a), (b) and (c) above, the **Past Performance Relief**);

(e) an exemption from sections 2.1 and 2.3 of NI 81-106 to permit the Continuing Fund to file comparative annual and interim financial statements that include, in respect of each series of the Continuing Fund, information derived from the financial statements of the Terminating Funds;

(f) an exemption from section 4.4 of NI 81-106 for relief from the requirements of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**) set out below, to permit the Continuing Fund to include in its annual and interim management reports of fund performance (**MRFPs**), in respect of each series of the Continuing Fund, the performance data and information derived from the financial statements and other financial information (collectively, the **Financial Data**) of the Terminating Funds, as follows:

(i) Items 3.1(1), 3.1(7), 3.1(7.1) and 3.1(8) of Part B of Form 81-106F1 to permit each series of the Continuing Fund to use the financial highlights of the Terminating Funds in its Form 81-106F1;

(ii) Items 4.1(1), 4.1(2), 4.2(1), 4.2(2), 4.3(1)(a) and 4.3(1)(b) of Part B of Form 81-106F1 to permit each series of the Continuing Fund to use the past performance data of the Terminating Funds in its Form 81-106F1; and

(iii) Items 3(1) and 4 of Part C of Form 81-106F1 to permit each series of the Continuing Fund to use the financial highlights and past performance data of the Terminating Funds in its Form 81-106F1 (together with paragraph (d) above, the **Continuous Disclosure Relief**).

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

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

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

Interpretation

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

Continuing Fund means Dynamic Credit Absolute Return Fund.

DCARF I means Dynamic Credit Absolute Return I Fund.

DCARF II means Dynamic Credit Absolute Return II Fund.

Funds means the Continuing Fund and the Terminating Funds.

Fund Facts means a prescribed summary disclosure document required pursuant to NI 81-101 in the form prescribed by Form NI 81-101F3, in respect of one or more series of units of the Continuing Fund being distributed under a simplified prospectus.

Terminating Funds means DCARF I and DCARF II.

Representations

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

The Filer

1. The Filer is a limited partnership formed and organized under the laws of the province of Ontario. The general partner of the Filer is 1832 Asset Management G.P. Inc., an Ontario corporation wholly-owned by the Bank of Nova Scotia, with its head office located in Toronto, Ontario.

2. The Filer is registered as: (i) a portfolio manager in all of the provinces of Canada and in the Northwest Territories and the Yukon; (ii) an exempt market dealer in all of the provinces of Canada (except Prince Edward Island and Saskatchewan); (iii) an investment fund manager in Ontario, Quebec, Newfoundland and Labrador and the Northwest Territories; (iv) a commodity trading manager in Ontario; (v) an adviser in Manitoba; and (vi) a derivatives portfolio manager in Quebec.

3. The Filer is the investment fund manager and portfolio manager of the Terminating Funds and will be the investment fund manager and portfolio manager of the Continuing Fund upon creation.

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

The Funds

5. Each of the Terminating Funds is a mutual fund structured as a trust that is organized and governed by the laws of the Province of Ontario. Upon creation, the Continuing Fund will be a reporting issuer in the Jurisdiction(s) in which its units are distributed.

6. Subject to any exemptions that may be granted by the applicable securities regulatory authorities, the Continuing Fund will be an open-ended mutual fund subject to the provisions of NI 81-102. Unitholders will have the right to vote at a meeting of unitholders in respect of matters prescribed by NI 81-102.

7. Units of DCARF I are not qualified for distribution to the public under any applicable Canadian securities laws and are offered pursuant to an offering memorandum (the **DCARF I Offering Memorandum**).

8. Units of DCARF II are qualified for distribution to the public in each of the Jurisdictions under a simplified prospectus dated October 14, 2022, (the **DCARF II Prospectus** and together with the DCARF I Offering Memorandum, the **Offering Documents**) and fund facts documents dated October 14, 2022, each of which has been prepared in accordance with NI 81-102.

9. On September 7, 2023, the Filer filed a final simplified prospectus and fund facts documents prepared in accordance with NI 81-101 for the Continuing Fund. The Filer will not begin distributing units, other than those issued to the Filer as seed capital, of the Continuing Fund prior to the Mergers.

10. The fundamental investment objectives and investment strategies of the Continuing Fund will be substantially similar to those of the Terminating Funds.

11. The Continuing Fund's investment objectives and investment strategies will follow the standard investment restrictions and practices established under NI 81-102, except pursuant to the terms of any exemption that has been obtained.

12. None of the Funds are in default of securities legislation in any of the Jurisdictions.

The Mergers

13. DCARF I offers Series A, Series F and Series O units.

14. DCARF II offers Series A, Series F, Series FH, Series H and Series OP units.

15. The Continuing Fund will offer Series A, Series F, Series FH, Series H, Series O and Series OP units, which are qualified for distribution to the public pursuant to a simplified prospectus. The Continuing Fund will also be creating a Series A1 and a Series F1, each of which will not be qualified for distribution to the public pursuant to the simplified prospectus. Unitholders of Series A and Series F of DCARF I will be merged into Series A1 and Series F1 of the Continuing Fund on the Merger Date, and each of those series will subsequently be hard capped by the Filer. There are no units outstanding of Series O of DCARF I, and so no corresponding non-prospectus qualified series will be created on the Continuing Fund. Unitholders of Series A, Series F, Series FH, Series H and Series OP units of DCARF II will be merged into Series A, Series F, Series FH, Series H and Series OP of the Continuing Fund, respectively.

16. The Filer proposes to merge the Terminating Funds into the Continuing Fund on or about the Merger Date.

17. Each Merger will be completed without the approval of unitholders of the Terminating Funds in accordance with the requirements of NI 81-102, as applicable, and with each Terminating Fund's declaration of trust. Notice of each Merger has been provided to unitholders of the Terminating Funds.

18. The Filer does not consider the Mergers to constitute a "material change" for the Continuing Fund and accordingly, there is no intention to convene a meeting of unitholders of the Continuing Fund to approve the Mergers pursuant to paragraph 5.1(1)(g) of NI 81-102.

19. Following the Mergers, the Terminating Funds will be terminated on or about the Merger Date and will be wound up as soon as reasonably possible thereafter.

20. The Continuing Fund is being created for the purpose of implementing each Merger, and therefore:

    (a) upon completion of the Mergers, the unitholders of the Terminating Funds will have rights as investors in the Continuing Fund that are substantially similar in all material aspects to the rights they had as investors in the Terminating Funds prior to the Mergers;

    (b) the unitholders of the Terminating Funds will hold units of the equivalent series of the Continuing Fund, as applicable, with the same aggregate net asset value that they held before as unitholders of the Terminating Funds;

    (c) the Continuing Fund will have an investment objective and investment strategies that are substantially similar to the investment objectives and investment strategies of the Terminating Funds;

    (d) the portfolio manager of the Terminating Funds will be the same as the portfolio manager of the Continuing Fund;

    (e) the Continuing Fund will have valuation procedures that are identical to the valuation procedures of the Terminating Funds; and

    (f) the fees payable by each series of the Continuing Fund will be the same as, or lower than, the fees payable by each series of the Terminating Funds, and thus there will be either no change to or lowering of the current fee structure of the Terminating Funds as a result of the Mergers. The operating expenses, including an administration fee, paid by each series of the Continuing Fund are expected to be the same as or lower than those paid by each series of DCARF I, which do not pay an administration fee, and DCARF II. In each case, neither will have a material impact on unitholders of the Terminating Funds who will become unitholders of the Continuing Fund.

21. As a result, notwithstanding the Mergers, the Filer considers that the Continuing Fund will be managed in a manner which is substantially similar in all material respects to the manner in which the Terminating Funds have been managed.

Past Performance Relief and Continuous Disclosure Relief

22. The Filer is seeking to make the Mergers as seamless as possible for investors in the Terminating Funds. The past performance data and financial information of the Terminating Funds is significant information which can assist investors in determining whether to purchase and/or to continue to hold units of the Continuing Fund. Other than seed capital, the Filer will not commence distributing units of the Continuing Fund until the completion of the Mergers. As a result, as at the Merger Date, in the absence of the Exemption Sought, the Continuing Fund will not have its own past performance or series specific financial data on which investors can base an investment decision.

23. In particular, the Filer submits that treating each series of the Continuing Fund as fungible with each series of the Terminating Funds for purposes of the past performance data and financial information of the Continuing Fund would be beneficial to investors and that to do otherwise would cause unnecessary confusion among investors concerning the difference between each series of the Terminating Funds and each series of the Continuing Fund.

24. In connection with the Exemption Sought, the Filer proposes that:

    (a) The simplified prospectus for the Continuing Fund will contain information about each series of the Continuing Fund that is based on: (i) for the period beginning January 2, 2014 (i.e., the launch date of DCARF I) and ending one day prior to the launch of DCARF II, the information disclosed in the DCARF I Offering Memorandum; and (ii) for the period beginning on August 6, 2019 (i.e., the launch date of DCARF II) and ending on the Merger Date, the information disclosed in the DCARF II Prospectus, until such time as the Continuing Fund has information regarding each of its series based on its own operations for the applicable periods.

    (b) The Fund Facts for each series of the Continuing Fund will contain information that is based on: (i) for the period beginning January 2, 2014 (i.e., the launch date of DCARF I) and ending one day prior to the launch of DCARF II, the information disclosed in the DCARF I Offering Memorandum; and (ii) for the period beginning on August 6, 2019 (i.e., the launch date of DCARF II) and ending on the Merger Date, the information disclosed in the DCARF II Prospectus, until such time as the Continuing Fund has information regarding each of its series based on its own operations for the applicable periods.

    (c) The risk level for each series of the Continuing Fund will be based on, and calculated in accordance with: (i) the performance of DCARF I for the period beginning January 2, 2014 (i.e., the launch date of DCARF I) and ending one day prior to the launch of DCARF II; and (ii) the performance of DCARF II for the period beginning August 6, 2019 and ending on the Merger Date, until such time as each series of the Continuing Fund has the requisite 10-years of performance history. In this regard, the Filer considers that it is appropriate that each series have its own investment risk level, as contemplated in Item 3 of Appendix F of NI 81-102.

    (d) The MRFPs and financial statements for the Continuing Fund will contain information about each series of the Continuing Fund that is based on: (i) the information disclosed in the past financial statements for DCARF I for the period beginning January 2, 2014 (i.e., the launch date of DCARF I) and ending one day prior to the launch of DCARF I; and (ii) the information disclosed in the past financial statements for DCARF II for the period beginning August 6, 2019 and ending on the Merger Date, until such time as the Continuing Fund has the requisite information based on its own operations for the applicable periods.

    (e) The Fund Communications for each series of the Continuing Fund will include past performance data, prepared in accordance with Part 15 of NI 81-102, of: (i) DCARF I for the period beginning January 2, 2014 (i.e., the launch date of DCARF I) and ending one day prior to the launch of DCARF I; and (ii) DCARF II for the period beginning August 6, 2019 and ending on the Merger Date, until such time as the Continuing Fund has the requisite information based on its own operations for the applicable periods.

25. The Filer will include disclosure about the Mergers in each of the documents listed in paragraph 24, to the extent the Filer considers appropriate for the type of document.

26. The Filer submits that investors will not be misled if each of the documents listed in paragraph 24 contains the applicable information about the Terminating Funds and rather will have more complete and accurate information about whether to invest or to continue to hold investments in units of the Continuing Fund.

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:

1. the Past Performance Relief is granted, provided that:

    (a) the Fund Communications of each series of the Continuing Fund include the applicable past performance data of the Terminating Funds prepared in accordance with Part 15 of NI 81-102;

    (b) the simplified prospectus of the Continuing Fund:

        (i) includes information about each series of the Continuing Fund that is based on the information disclosed in the Offering Documents, until such time as the Continuing Fund has information regarding each series based on its own operations for the applicable periods;

        (ii) states that the start date for each series of the Continuing Fund is the start date of DCARF I; and

        (iii) discloses the Merger where the start date for each series of the Continuing Fund is stated;

    (c) the Fund Facts for each series of the Continuing Fund:

(i) include information that is based on the information disclosed in the Offering Documents, until such time as the Continuing Fund has information regarding each series based on its own operations for the applicable periods prepared in accordance with Part 15 of NI 81-102;

(ii) state that the "Date series started" date for each series of the Continuing Fund is the applicable series start date of DCARF I; and

(iii) disclose the Merger where the "Date series started" date is stated; and

(d) the Continuing Fund prepares its MRFPs in accordance with the Continuous Disclosure Relief; and

2. the Continuous Disclosure Relief is granted, provided that:

(a) the MRFPs and financial statements for the Continuing Fund include the Financial Data of the Terminating Funds pertaining to the Terminating Funds and disclose the Merger for the relevant time periods; and

(b) the Continuing Fund prepare its simplified prospectus, Fund Facts and other Fund Communications in accordance with the Past Performance Relief.

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

Application File #: 2023/0468
SEDAR+ File #: 6033584

B.3.3 Viewpoint Investment Partners Corporation and the Funds

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Alternative mutual funds granted relief from section 2.9.1 of National Instrument 81-102 Investment Funds to permit the use of Value at Risk (VaR) to calculate exposure – VaR limited to 20% of NAV – Relief granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of relief requested from Item 3 of Part I of Form 81-101F3 Contents of Fund Facts Document and Item 4 of Part B of Form 81-101F1 Contents of Simplified Prospectus to exempt the mutual fund from the requirement to disclose its maximum aggregate exposure to leverage as calculated pursuant to Section 2.9.1 of NI 81-102 – Relief subject to conditions including the establishment of a derivatives risk management program and use of third-party verification of VaR calculations.

Relief granted from margin deposit limit contained in paragraphs 6.8(1) and 6.8(2)(c) of National Instrument 81-102 to invest in specified futures – the Filer will use dealers in Canada and the United States – conditional on the amount of margin deposited not exceeding 35% of the net assets of the fund with any one dealer and 70% of the net assets of the funds on all margin deposited with all dealers being held in segregated accounts.

Relief granted from 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), and 15.8(3)(a.1) of NI 81-102 to permit an alternative mutual fund, that has not distributed securities under a simplified prospectus in a jurisdiction for 12 consecutive months, to include in their sales communications performance data for the period when the fund was not a reporting issuer – Relief granted from section 15.1.1 of NI 81-102 to permit a mutual fund to use performance data from periods prior the fund being a reporting issuer in calculating fund's investment risk level in accordance with Appendix F Investment Risk Classification Methodology to NI 81-102 and to disclose the risk level in the fund facts and ETF Facts – Relief granted from section 2.1 of National Instrument 81-101 Mutual Fund Prospectus Disclosure for the purposes of relief requested from (i) Item 4 and 5 of Part I of Form 81-101F3 Contents of Fund Facts Document, to permit the mutual fund to disclose in its fund facts the risk level calculated in accordance with the relief granted from NI 81-102 and to include in its fund facts the past performance data for the periods when the fund was not a reporting issuer, and (ii) Item 10(b) of Part B of Form 81-101F1 Contents of Simplified Prospectus to permit the mutual fund to disclose the risk level methodology used in accordance with relief from NI 81-102 – Relief subject to conditions.

Relief granted from section 4.4 of National Instrument 81-106 Investment Fund Continuous Disclosure for the purposes of the relief requested from Form 81-106F1 Contents of Annual and Interim Management Report of Fund Performance, Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1, and Items 3(1) and 4 of Part C of Form 81-106F1, to permit a mutual fund to include in annual and interim management reports of fund performance the financial highlights and past performance of the fund that are derived from the fund's annual financial statements that pertain to time periods when the fund was not a reporting issuer – Relief subject to conditions.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 2.9.1, 6.8(1), 6.8(2)(c), 15.3(2), 15.3(4)(c), 15.6(1)(a)(i), 15.6(1)(d), 15.8(2)(a.1), 15.8(3)(a.1), 15.1.1 and 19.1.
National Instrument 81-101 Investment Fund Prospectus Disclosure, ss. 2.1 and 6.1.
Form 81-101F1 Contents of Simplified Prospectus, Items 4 and 10(b) of Part B.
Form 81-101F3 Contents of Fund Facts Document, Item 3, 4 and 5 of Part I.
National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 4.4 and 17.1.
Form 81-0106F1 Contents of Annual and Interim Management Report of Fund Performance, Items 3.1(7), 4.1(1), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B and Items 3(1) and 4 of Part C.

Citation: *Re Viewpoint Investment Partners Corporation*, 2023 ABASC 140

October 2, 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
VIEWPOINT INVESTMENT PARTNERS CORPORATION
(the Filer)

AND

IN THE MATTER OF
THE FUNDS
(defined below)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (each, a **Decision Maker**) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) to grant the Filer, Viewpoint Global Multi-Asset Trust (**VGMAT**), Viewpoint Enhanced Global Multi-Asset Trust (**VEGMAT**) and Viewpoint Diversified Commodities Trust (**VDCT**, and together with VGMAT and VEGMAT, the **Funds** and individually, a **Fund**) exemptive relief from

Margin

(a) the requirements of

(i) subsection 6.8(1) of NI 81-102, which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or dealer that is a member of a self-regulatory organization that is a participating member of the Canadian Investor Protection Fund (**CIPF**) for a transaction in Canada involving certain specified derivatives in excess of 10% of the net asset value (**NAV**) of the investment fund as at the time of deposit; and

(ii) paragraph 6.8(2)(c) of NI 81-102, which restricts an investment fund from depositing portfolio assets as margin with a member of a regulated clearing agency or dealer for a transaction outside of Canada involving certain specified derivatives in excess of 10% of the NAV of the investment fund as at the time of deposit;

to permit each Fund to deposit as margin portfolio assets of up to 35% of the Fund's NAV as at the time of deposit with any one futures commission merchant in Canada or the United States (each a **Dealer**) and up to 70% of the Fund's NAV as at the time of deposit with all Dealers in the aggregate, in each case for transactions in standardized futures (the **Margin Deposit Relief**);

Leverage

(b) the requirements of

(i) section 2.9.1 of NI 81-102, which limits an alternative mutual fund's aggregate exposure to cash borrowing, short selling and specified derivatives transactions to 300% of the fund's NAV; and

(ii) item 4 and instruction (4) of Part B of Form 81-101F1 *Contents of Simplified Prospectus* (**Form 81-101F1**) and item 3 of Part I of Form 81-101F3 *Contents of Fund Facts Document* (**Form 81-101F3**), which all require an alternative mutual fund to disclose its maximum aggregate exposure to leverage as calculated pursuant to section 2.9.1 of NI 81-102

(the **Leverage Relief**);

Performance

(c) the requirements of

(i) subsection 15.3(2), paragraph 15.3(4)(c), subparagraph 15.6(1)(a)(i), and paragraphs 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102, to permit each Fund to include its past performance data in sales communications notwithstanding that the past performance data will relate to a period prior to that Fund offering its units under a simplified prospectus (the **past performance data**);

(ii) paragraph 15.1.1(a) of NI 81-102 and items 2 and 4 of Appendix F *Investment Risk Classification Methodology* to NI 81-102 (the **Risk Classification Methodology**) to permit each Fund to include its past performance data in determining its investment risk level in accordance with the Risk Classification Methodology;

(iii) paragraph 15.1.1(b) of NI 81-102, and item 4(2)(a) and instruction (1) of item 4 of Form 81-101F3, to permit each Fund to disclose its investment risk level as determined by including its past performance data in accordance with the Risk Classification Methodology;

(iv) item 10(b) of Part B of Form 81-101F1, to permit each Fund to use its past performance data to calculate its investment risk rating in its simplified prospectus;

(v) items 5(2), 5(3) and 5(4) and instruction (1) of Part I of Form 81-101F3 in respect of the requirement to comply with subsection 15.3(2), paragraph 15.3(4)(c), subparagraph 15.6(1)(a)(i) and paragraphs 15.6(1)(d), 15.8(2)(a.1) and 15.8(3)(a.1) of NI 81-102, to permit each Fund to include in its fund facts document the past performance data of that Fund notwithstanding that such performance data relates to a period prior to that Fund offering its units under a simplified prospectus and that such Fund has not distributed its units under a simplified prospectus for 12 consecutive months;

(vi) section 2.1 of National Instrument 81-101 *Mutual Fund Prospectus Disclosure* (**NI 81-101**) for the purposes of the relief requested from Form 81-101F1 and Form 81-101F3;

(vii) items 3.1(7), 4.1(1) (in respect of the requirement to comply with subsection 15.3(2) and paragraph 15.3(4)(c) of NI 81-102), 4.1(2), 4.2(1), 4.3(1) and 4.3(2) of Part B of Form 81-106F1 *Contents of Annual and Interim Management Report of Fund Performance* (**Form 81-106F1**), and items 3(1) and 4 of Part C of Form 81-106F1 to permit each Fund to include in its annual and interim management reports of fund performance (**MRFP**) the past performance data and financial highlights of that Fund notwithstanding that such performance data and financial highlights relate to a period prior to that Fund offering its units under a simplified prospectus; and

(viii) Section 4.4 of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) for the purposes of relief requested herein from Form 81-106F1;

(the **Performance Relief**, and together with the Margin Deposit Relief and Leverage Relief, the **Exemption Sought**).

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

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

(b) the Filer has provided notice that subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the provinces and territories of Canada other than Alberta and Ontario; and

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

Interpretation

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

1. **CFTC** means the Commodity Futures Trading Commission;

2. **DSRO** means a designated self-regulatory organization;

3. **NFA** means the National Futures Association; and

4. **U.S. Dealer** means a Dealer located in the United States of America.

Representations

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

The Filer and the Funds

1. The Filer is a corporation existing under the laws of the Province of Alberta. The head office of the Filer is located in Calgary, Alberta.

2. The Filer is registered:

(a) as an adviser in the category of portfolio manager under the securities legislation of each of Alberta, British Columbia, Ontario and Saskatchewan;

(b) as a dealer in the category of exempt market dealer under the securities legislation of each of Alberta, British Columbia, Manitoba, New Brunswick, Nova Scotia, Ontario, Québec and Saskatchewan; and

(c) as an investment fund manager under the securities legislation of each of Alberta, Ontario and Québec. The Filer will be applying for registration as an investment fund manager in Newfoundland and Labrador. The Filer will not accept purchase orders from investors resident in Newfoundland and Labrador until such registration is obtained.

3. The Filer or an affiliate of the Filer is the investment fund manager of the Funds. The Filer or an affiliate of the Filer is also the portfolio manager or sub-advisor of the Funds.

4. Each Fund is a mutual fund created under the laws of the Province of Alberta. Each Fund is an "alternative mutual fund" within the meaning of NI 81-102.

5. VGMAT is a trust created under the laws of the Province of Alberta. It was formed on December 22, 2016. Prior to February 21, 2023, VGMAT was named "Viewpoint Global Asset Allocation Trust".

6. VEGMAT is a trust created under the laws of the Province of Alberta. It was formed on March 10, 2021. Prior to February 21, 2023, VEGMAT was named "Viewpoint Global Risk Parity Trust".

7. VDCT is a trust created under the laws of the Province of Alberta. It was formed on March 21, 2022. Prior to February 21, 2023, VDCT was named "Viewpoint Commodities Trust".

8. The investment objective of VGMAT is to achieve long-term capital appreciation with similar volatility to a global balanced mandate by investing in a diversified portfolio of global equities, global bonds, commodities, foreign currencies, and any derivatives that may be necessary for the Fund to achieve its investment objective.

9. The investment objective of VEGMAT is to achieve long-term capital appreciation by matching or exceeding global equity returns at a comparable level of volatility by investing in a diversified portfolio of global equities, global bonds, commodities, foreign currencies, and any derivatives that may be necessary for the Fund to achieve its investment objective.

10. The investment objective of VDCT is to provide liquid, efficient, and intelligent access to global commodity markets by investing primarily in futures contracts. The Fund seeks to capture diverse sources of inflation and commodity demand, and when added to a conventional investment portfolio, may increase overall portfolio diversification and provide protection against inflation.

11. The investment strategies of each Fund permit the Fund to enter into specified derivative transactions, including long and short positions in specified derivatives. These specified derivatives may be used for purposes of hedging, efficient portfolio management and/or investment purposes.

12. Securities of each Fund will be qualified for distribution pursuant to a prospectus that will be prepared and filed in accordance with the securities legislation of one or more of the provinces and/or territories of Canada. Accordingly, each Fund will be a reporting issuer or the equivalent in one or more of the provinces and/or territories of Canada and will be subject to the provisions of NI 81-102, subject to any relief therefrom granted by the securities regulatory authorities.

13. The Filer and the Funds are not in default of securities legislation in any Jurisdiction.

Margin Deposit Relief

14. To seek to achieve its investment objectives, a Fund may engage in specified derivative transactions in Canada and outside of Canada.

15. The investment strategies of each Fund will, except to the extent that the Exemption Sought is granted and other exemptive relief is applicable, be limited to the investment practices permitted by NI 81-102. Any use of leverage by a Fund will be in accordance with the applicable investment objectives, strategies and restrictions of the Fund.

16. The Filer is authorized to establish, maintain, change and close brokerage accounts on behalf of each Fund. In order to facilitate specified derivative transactions on behalf of each Fund, the Filer has established or will establish one or more accounts (each an **Account**) with one or more Dealers.

17. Each U.S. Dealer is regulated by the CFTC and the NFA in the United States, and is required to segregate all assets held on behalf of clients, including the Funds. Each U.S. Dealer is subject to regulatory audit and must have insurance

to guard against employee fraud. Each U.S. Dealer has a net worth, determined from its most recent audited financial statements, in excess of the equivalent of C$50 million. Each U.S. Dealer has an exchange assigned to it as its DSRO. As a member of a DSRO, each U.S. Dealer must meet capital requirements, comply with the conduct rules of the CFTC, NFA and its DSRO, and participate in an arbitration process with a complainant.

18. Each Dealer is a member of the clearing corporations and exchanges that the standardized futures in the portfolios of the Funds are primarily traded through. Each Canadian Dealer will be a member of a regulated clearing agency or dealer that is a member of a self-regulatory organization that is a participating member of the CIPF. Each clearing corporation is obliged to apply its surplus funds and the security deposits of its members to reimburse clients of failed members.

19. A Dealer will require, for each Account established for a Fund, that portfolio assets of the Fund be deposited with the Dealer as collateral for specified derivative transactions (**Initial Margin**). Initial Margin represents the minimum initial amount of portfolio assets that must be deposited with a Dealer to initiate trading in specified derivatives transactions or to maintain the Dealer's open position in standardized futures.

20. Levels of Initial Margin are established at a Dealer's discretion. At no time will more than 70% of the NAV of a Fund be deposited as Initial Margin with Dealers in the aggregate.

21. Each Dealer is required to hold all Initial Margin, including cash and government securities, in segregated accounts and the Initial Margin will not be available to satisfy claims against the Dealer made by creditors of the Dealer.

22. The use of Initial Margin is an essential element of investing in standardized futures for the Funds.

23. The Margin Deposit Relief would allow a Fund to invest in standardized futures more extensively with any one Dealer, which would allow the Fund to pursue its investment strategies more efficiently and flexibly.

24. Opening Accounts and transacting with multiple Dealers adds complexity and cost to the management of a Fund. Using fewer Dealers will considerably simplify a Fund's investment and operations and will reduce the cost of implementing the Fund's strategy. Using fewer Dealers also simplifies compliance and risk management, as monitoring the data, controls and policies of a smaller number of Dealers is less complex.

Leverage Relief

25. A Fund may use a combination of short selling and specified derivatives that at times results in the Fund's aggregate exposure to cash borrowing, short selling and specified derivatives transactions exceeding 300% of the Fund's NAV, but in a manner that does not expose the Fund to an inappropriate level of leverage risk.

26. The correlations of most alternative investment strategies to equity benchmarks such as the S&P 500 are high. In contrast, the Funds construct a diversified portfolio of assets and then use the application of gross exposure to target a specified risk level. A Fund's portfolio has a lower correlation to equity markets and can be risk reducing when the volatility of equity markets is high.

27. Notional exposures of futures contracts move with price and do not represent risk. Risk, as measured by futures exchanges, is a function of price and volatility, both of which are captured in value-at-risk (as defined in Appendix A) (**VaR**), but not notional exposure. VaR is a better measure of risk for the Funds.

28. For example, the aggregate exposure to cash borrowing, short selling and specified derivatives transactions of each Fund as calculated pursuant to section 2.9.1 of NI 81-102 is typically between 100% and 400%. Notwithstanding this range, risk is still managed by the Filer at a consistent level, and there is no relationship between the aggregate notional exposure and the volatility of returns that the Filer has delivered since the inception of the Funds. Historically, periods of higher than average aggregate notional exposure have not represented periods of higher volatility (or risk), and periods of lower than average aggregate notional exposure have not represented periods of lower volatility (or risk).

29. The Filer on behalf of each Fund has used multiple definitions of risk to capture diversified risk premia while remaining adaptable to changing market conditions. The Filer also systematically manages risk across multiple constraints at the market level.

30. The current regulatory framework in section 2.9.1 of NI 81-102 does not appropriately or adequately address the uniqueness of the investment strategies that the Filer employs in relation to the Funds.

31. In relation to the Funds, unlike typical portfolio managers, the Filer:

    (a) trades futures on margin, which is different than stocks and bonds (e.g., for stocks and bonds exchange margin requirements are determined by the value of the securities, whereas for futures, exchange margin requirements are determined by notional exposure and volatility (the primary inputs to VaR models));

(b) is systematic and technical versus being fundamental and discretionary; and

(c) utilizes systematic risk management, risk allocation as opposed to capital allocation, volatility targeting, and drawdown management techniques.

VGMAT and VEGMAT target specific volatility levels for the respective Funds as a risk management strategy. Using an ensemble of volatility forecasting models, the Filer forecasts day-ahead volatility for the underlying portfolio. For example, if the Fund's volatility target is 15%, and volatility of the underlying portfolio is forecast to be 5%, the Filer will utilize gross exposure of 300% in an effort to achieve the desired 15% volatility level. Conversely, if the forecast of volatility for the underlying portfolio rises to 15%, this means the Filer will only utilize gross exposure of 100% to target the same 15% volatility level for the overall portfolio. As portfolio weights, estimates of volatility and correlations change through time, the Filer will increase and decrease the Fund's gross exposure to underlying assets in order to maintain its target level of portfolio volatility. During periods of high volatility and high correlations, the Fund may have lower exposure to the underlying assets to maintain the target level of portfolio volatility. Conversely, during periods of low volatility and low correlations, the Fund may require greater exposure to underlying assets to maintain its target level of portfolio volatility.

32. The Funds provide returns that have historically achieved the desired risk level for each Fund's investment objective, without adding additional risk through the application of leverage.

33. The European Union approved a new regulation of mutual funds in 2010 in the fourth European Directive covering Undertakings for Collective Investment in Transferable Securities (**UCITS IV**), which introduced a VaR based approach to regulatory risk management for investment funds that extensively use derivatives.

34. This approach allows for two methods of VaR limits, "relative" and "absolute", as defined in Appendix A, and which in general terms can be summarized as follows:

(a) Relative: This approach uses a ratio of up to 200% between the VaR of the portfolio and the VaR of a reference portfolio.

(b) Absolute: This approach is generally used when there is no reference portfolio or benchmark and allows the one-month VaR to be up to 20% of the NAV of the portfolio.

35. UCITS IV also includes rules for the computation of VaR and requires regular stress- and back-testing to complement the VaR estimation.

36. On October 28, 2020, the SEC adopted new Rule 18f-4 under the U.S. *Investment Company Act of 1940* (17 CFR § 270.18f-4) (the **SEC Rule**), which modernized the regulatory framework for derivatives used by registered funds. The SEC Rule is generally the same as the UCITS IV rules as it adopted a 200% limit for funds using a relative VaR approach, and a 20% VaR limit for funds using an absolute VaR approach.

37. When dealing with a fund that is managed using a multi-asset approach like the Filer, a VaR-based approach is a better means of managing risk because, unlike notional amounts which do not measure risk or volatility, VaR enables risk to be measured in a reasonably comparable and consistent manner.

38. A risk-based approach which relies on VaR, stress testing, and overall risk management would address concerns about a Fund's use of leverage, while allowing the Funds to use derivatives for a variety of purposes.

39. The Portfolio Managers of the Funds are CFA charterholders and are well versed with VaR as a risk management tool. In addition, the Filer's investment management team has built an internal VaR calculation tool to test and confirm the Bloomberg specifications and output from the MARS system.

40. Of the two VaR approaches ("relative" and "absolute"), the Filer has determined that the relative VaR approach is the approach that is most suitable for VDCT, as the Filer has identified an appropriate reference portfolio that can be used in respect of that Fund for the purpose of complying with the 200% limit applicable to funds using a relative VaR approach. Specifically, the Filer has identified the Bloomberg Commodity Index (**BCOM**) as an appropriate reference portfolio for VDCT. BCOM provides broad-based exposure to commodities, where no single commodity or commodity sector dominates the index. Rather than being driven by micro-economic events affecting one commodity market or sector, the diversified commodity exposure of BCOM potentially reduces volatility in comparison with non-diversified commodity investments. Similarly, VDCT provides liquid and efficient exposure to commodity markets by investing in a wide range of commodity futures contracts. VDCT seeks to capture diverse sources of inflation and commodity demand, and potentially reduces volatility in comparison with other non-diversified commodity investments. BCOM tracks exchange-traded futures contracts linked to six different commodity sectors comprised of 23 physical commodities. VDCT holds exchange-traded futures contracts linked to six different commodity sectors comprised of 17 physical commodities. The commodity sectors and physical commodities tracked by BCOM are similar to the commodity sectors and physical commodities to which VDCT is exposed. If BCOM's standard deviation was calculated under the methodology as outlined

under Appendix F of NI 81-102 in order to determine the investment risk level, BCOM would be classified as "medium risk", which is the same classification as VDCT. For these reasons, the DRM (defined below) has determined that BCOM has a risk profile that is very close to VDCT, and there is a clear link between the risk of loss of BCOM and the risk of loss of VDCT as per UCITS IV. Although BCOM uses futures contracts linked to commodity markets, it is fully collateralized and is an unleveraged index. As per the SEC Rule, the reference portfolio must be an unleveraged index that reflects the asset classes in which VDCT invests.

41. The Filer has determined that the absolute VaR approach is the approach that is most suitable for VGMAT and VEGMAT, as there are no appropriate reference portfolios that can be used in respect of those Funds for the purpose of complying with the 200% limit applicable to funds using a relative VaR approach. In particular, the Filer has determined that, due to the nature of the investment strategies of VGMAT and VEGMAT, the potential reference portfolios for such Funds would incorporate dynamic gross exposure with periods of time where this exposure would be greater than 100%, and therefore would not be permitted reference portfolios.

42. The Filer has the necessary policies and procedures in place to use a VaR model, and, when they are public funds, each Fund will adhere to the applicable VaR limit and will operate in accordance with the conditions set out in Appendix A, which are conditions of the exemptive relief granted by the Principal Regulator to Auspice Capital Advisors Ltd. in a decision dated February 23, 2023 and which are based on the SEC Rule.

43. The Filer will use a historical simulation VaR model with respect to each of the Funds, when they are public funds, that will not change. In addition, the Filer will upload the investment portfolios of the Funds each business day to the Bloomberg MARS system in order to have the daily reports from the Bloomberg MARS system (each a **Bloomberg Report**) confirm that each Fund is compliant with the applicable VaR test as set out in Appendix A on each business day.

44. The Filer has appointed a "derivatives risk manager" (a **DRM**) and has developed a "Derivatives Risk Management Program" (the **DRMP**) that is consistent with and adheres to the conditions set out in Appendix A. A copy of the DRMP has been provided to the Principal Regulator.

45. The Filer's DRMP incorporates the well documented policies and procedures for risk monitoring, risk management and risk reporting of a fund's VaR methodology to regulators as developed by securities regulators in the U.S. and the European Union.

Performance Relief

46. Since the commencement of operations of each Fund, the units of that Fund have been distributed to investors in Canada on a prospectus-exempt basis in accordance with National Instrument 45-106 *Prospectus Exemptions*.

47. Each Fund will distribute units of the Fund pursuant to a simplified prospectus and fund facts document (the **Disclosure Documents**) filed in accordance with the securities legislation of one or more of the provinces and territories of Canada. Upon the issuance of a final receipt for the Disclosure Documents of each Fund, that Fund will become a reporting issuer in each jurisdiction of Canada where the Disclosure Documents have been filed and, subject to the Exemption Sought, will become subject to the requirements of NI 81-102 that relate to alternative mutual funds and the requirements of NI 81-106 that apply to investment funds that are reporting issuers.

48. Each Fund will be managed on the same basis after it becomes a reporting issuer as it was during the period before it became a reporting issuer. For each Fund, the investment objective of the Fund, the fees payable in respect of each series of units of the Fund, and the day-to-day administration of the Fund will not change when the Fund becomes a reporting issuer.

49. Each Fund previously sought to achieve its investment objective by investing indirectly through an investment fund that (i) was structured as a limited partnership, (ii) was managed by the Filer, and (iii) had the same investment objective as the Fund (the "**Prior Indirect Investment Structure**"). In anticipation of the initial public offering of the Funds, the Prior Indirect Investment Structure has been eliminated and now each Fund makes direct investments in accordance with its investment objective and strategies.

Except:

(a) with respect to the Prior Indirect Investment Structure (which would not have been permitted by NI 81-102 had the funds been reporting issuers at the time) and

(b) as contemplated in the Exemption Sought,

each Fund has complied with the investment restrictions and practices contained in NI 81-102 since inception.

50. The Filer proposes to use each Fund's past performance data to determine its investment risk level and to disclose that investment risk level in the Disclosure Documents for that Fund, or series or class of the Fund as applicable. Without the Performance Relief, the Filer, in determining and disclosing the investment risk level of that Fund, or series or class of the Fund as applicable, in the Disclosure Documents, cannot use performance data that relates to a period prior to that Fund becoming a reporting issuer.

51. The Filer proposes to include in the fund facts documents for any existing series of units of a Fund offered under a simplified prospectus past performance data in the charts required by items 5(2), 5(3) and 5(4) of Form 81-101F3 under the sub-headings "Year-by-year returns", "Best and worst 3-month returns" and "Average return", respectively, related to periods prior to that Fund becoming a reporting issuer. Without the Performance Relief, the fund facts documents of each Fund cannot include performance data of that Fund that relates to a period prior to that Fund becoming a reporting issuer.

52. As a reporting issuer, each Fund is required under NI 81-106 to prepare and send MRFPs to all holders of its securities on an annual and interim basis. Without the Performance Relief, the MRFPs of each Fund cannot include financial highlights and performance data of that Fund that relates to a period prior to that Fund becoming a reporting issuer.

53. The performance data and other financial data of each Fund for the time period before it became a reporting issuer is significant and meaningful information for existing and prospective investors of units of that Fund.

Decision

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

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

1. In respect of the Margin Deposit Relief:

   (a) a Fund shall only use Initial Margin such that the amount of Initial Margin held by any one Dealer on behalf of the Fund does not exceed 35% of the net assets of the Fund, taken at market value as at the time of the deposit;

   (b) a Fund shall only use Initial Margin such that the amount of Initial Margin held by Dealers in aggregate on behalf of the Fund does not exceed 70% of the net assets of the Fund, taken at market value as at the time of the deposit; and

   (c) all Initial Margin deposited with any Dealer is and will be held in segregated accounts and is not, and will not be available to satisfy claims against such Dealer made by creditor of the Dealer.

2. In respect of the Leverage Relief:

   (a) the Filer has appointed a DRM;

   (b) each Fund complies with the applicable VaR test as set out in Appendix A and all of the additional leverage conditions set out in Appendix A;

   (c) the Filer discloses in each Fund's simplified prospectus and fund facts documents the maximum VaR that the Fund is permitted to incur, and the Filer discloses in the annual and interim management report on fund performance of each Fund the maximum amount of VaR incurred by the Fund over the applicable period;

   (d) the Filer files a copy of its initial DRMP with the Principal Regulator;

   (e) the Filer notifies the Principal Regulator promptly of any changes to its DRM or DRMP;

   (f) no later than 30 days after the end of each month, the Filer prepares and retains a monthly portfolio investment report containing the elements set out in its DRMP, and, no later than 60 days after the end of each fiscal quarter, files with the Principal Regulator the monthly portfolio investment reports for that quarter;

   (g) the Filer does not change the VaR model that it is using with respect to a Fund;

   (h) the Filer uploads the investment portfolios of the Funds each business day to the Bloomberg MARS system in order to have the applicable Bloomberg Reports confirm that each Fund is compliant with the applicable VaR test as set out in Appendix A on each business day;

   (i) the Filer provides to the Principal Regulator on a quarterly basis a copy of each daily Bloomberg Report for the last quarter for each Fund;

(j) the Filer notifies the Principal Regulator within one business day if any Fund is offside the applicable VaR test as set out in Appendix A for more than five consecutive business days, providing the information set out in the Viewpoint VaR breach memo (as defined in the DRMP);

(k) the Filer promptly (*e.g.*, within 24 hours) provides the Principal Regulator with any other information that the Principal Regulator may request regarding the intermonth calculations and risk metrics the Filer is using; and

(l) the Filer appropriately documents its risk methodology for each Fund in accordance with the requirements of the Risk Classification Methodology.

3. In respect of the Performance Relief:

(a) any sales communication, fund facts document and MRFP that contains performance data of the units of a Fund relating to a period of time prior to when the Fund was a reporting issuer discloses that

(i) the Fund was not a reporting issuer during such period;

(ii) the expenses of the Fund would have been higher during such period had the Fund been subject to the additional regulatory requirements applicable to a reporting issuer;

(iii) the Filer obtained exemptive relief on behalf of the Fund to permit the disclosure of performance data of the units of the Fund relating to a period prior to when the Fund was a reporting issuer; and

(iv) with respect to any MRFP, the financial statements of the Fund for such period are posted on the Fund's designated website and are available to investors upon request; and

(b) the Filer posts the financial statements of each Fund on the Fund's designated website and delivers those financial statements to investors upon request.

Expiration

4. This decision expires on October 2, 2027.

"Denise Weeres"
Director, Corporate Finance
Alberta Securities Commission

Application File #: 2023/0043
SEDAR+ File #: 3483847

APPENDIX A

ADDITIONAL LEVERAGE CONDITIONS

In these conditions,

"**absolute VaR test**" means that the VaR of a fund's portfolio does not exceed 20% of the value of the fund's net assets;

"**board**", with respect to a fund, means the fund manager's board of directors;

"**derivatives risk manager**" means an officer or officers of the fund's investment adviser responsible for administering the program and policies and procedures required by condition 1 below, provided that the derivatives risk manager:

(1) may not be a portfolio manager of the fund, or if multiple officers serve as derivatives risk manager, a majority of the derivatives risk managers must not be portfolio managers of the fund; and

(2) must have relevant experience regarding the management of derivatives risk;

"**derivatives risks**" means the risks associated with a fund's derivatives transactions or its use of derivatives transactions, including leverage, market, counterparty, liquidity, operational, and legal risks and any other risks the derivatives risk manager deems material;

"**derivatives transaction**" means

(1) any swap, security-based swap, futures contract, forward contract, option, any combination of the foregoing, or any similar instrument, under which a fund is or may be required to make any payment or delivery of cash or other assets during the life of the instrument or at maturity or early termination, whether as margin or settlement payment or otherwise; and

(2) any short sale borrowing.

"**designated index**" means an unleveraged index that is approved by the derivatives risk manager for purposes of the relative VaR test and that reflects the markets or asset classes in which the fund invests and is not administered by an organization that is an affiliated person of the fund, its investment adviser, or principal underwriter, or created at the request of the fund or its investment adviser, unless the index is widely recognized and used. In the case of a blended index, none of the indexes that compose the blended index may be administered by an organization that is an affiliated person of the fund, its investment adviser, or principal underwriter, or created at the request of the fund or its investment adviser, unless the index is widely recognized and used;

"**designated reference portfolio**" means a designated index or the fund's securities portfolio. Notwithstanding the first sentence of the definition of designated index in these conditions, if the fund's investment objective is to track the performance (including a leverage multiple or inverse multiple) of an unleveraged index, the fund must use that index as its designated reference portfolio;

"**independent director**" means a director who would be independent within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*;

"**relative VaR test**" means that the VaR of the fund's portfolio does not exceed 200% of the VaR of the designated reference portfolio;

"**securities portfolio**" means the fund's portfolio of securities and other investments, excluding any derivatives transactions, that is approved by the derivatives risk manager for purposes of the relative VaR test, provided that the fund's securities portfolio reflects the markets or asset classes in which the fund invests (*i.e.*, the markets or asset classes in which the fund invests directly through securities and other investments and indirectly through derivatives transactions);

"**value-at-risk**" or "**VaR**" means an estimate of potential losses on an instrument or portfolio, expressed as a percentage of the value of the portfolio's assets (or net assets when computing a fund's VaR), over a specified time horizon and at a given confidence level, provided that any VaR model used by a fund for purposes of determining the fund's compliance with the relative VaR test or the absolute VaR test must:

(1) take into account and incorporate all significant, identifiable market risk factors associated with a fund's investments, including, as applicable:

(i) equity price risk, interest rate risk, credit spread risk, foreign currency risk and commodity price risk;

(ii) material risks arising from the nonlinear price characteristics of a fund's investments, including options and positions with embedded optionality; and

(iii) the sensitivity of the market value of the fund's investments to changes in volatility;

(2) use a 99% confidence level and a time horizon of 20 trading days; and

(3) be based on at least three years of historical market data.

Conditions

1. ***Derivatives risk management program***. The fund must adopt and implement a written derivatives risk management program (program), which must include policies and procedures that are reasonably designed to manage the fund's derivatives risks and to reasonably segregate the functions associated with the program from the portfolio management of the fund. The program must include the following elements:

(i) ***Risk identification and assessment***. The program must provide for the identification and assessment of the fund's derivatives risks. This assessment must take into account the fund's derivatives transactions and other investments.

(ii) ***Risk guidelines***. The program must provide for the establishment, maintenance, and enforcement of investment, risk management, or related guidelines that provide for quantitative or otherwise measurable criteria, metrics, or thresholds of the fund's derivatives risks. These guidelines must specify levels of the given criterion, metric, or threshold that the fund does not normally expect to exceed, and measures to be taken if they are exceeded.

(iii) ***Stress testing***. The program must provide for stress testing to evaluate potential losses to the fund's portfolio in response to extreme but plausible market changes or changes in market risk factors that would have a significant adverse effect on the fund's portfolio, taking into account correlations of market risk factors and resulting payments to derivatives counterparties. The frequency with which the stress testing under this paragraph is conducted must take into account the fund's strategy and investments and current market conditions, provided that these stress tests must be conducted no less frequently than weekly.

(iv) ***Backtesting***. The program must provide for backtesting to be conducted no less frequently than weekly, of the results of the VaR calculation model used by the fund in connection with the relative VaR test or the absolute VaR test by comparing the fund's gain or loss that occurred on each business day during the backtesting period with the corresponding VaR calculation for that day, estimated over a one-trading day time horizon, and identifying as an exception any instance in which the fund experiences a loss exceeding the corresponding VaR calculation's estimated loss.

(v) Internal reporting and escalation –

A. ***Internal reporting***. The program must identify the circumstances under which persons responsible for portfolio management will be informed regarding the operation of the program, including exceedances of the guidelines specified in paragraph 1(ii) of these conditions and the results of the stress tests specified in paragraph 1(iii) of these conditions.

B. ***Escalation of material risks***. The derivatives risk manager must inform in a timely manner persons responsible for portfolio management of the fund, and also directly inform the board as appropriate, of material risks arising from the fund's derivatives transactions, including risks identified by the fund's exceedance of a criterion, metric, or threshold provided for in the fund's risk guidelines established under paragraph 1(ii) of these conditions or by the stress testing described in paragraph 1(iii) of these conditions.

(vi) ***Periodic review of the program***. The derivatives risk manager must review the program at least annually to evaluate the program's effectiveness and to reflect changes in risk over time. The periodic review must include a review of the VaR calculation model used by the fund under condition 2 below (including the backtesting required by paragraph 1(iv) of these conditions) and any designated reference portfolio to evaluate whether it remains appropriate.

2. ***Limit on fund leverage risk.***

(i) The fund must comply with the relative VaR test unless the derivatives risk manager reasonably determines that a designated reference portfolio would not provide an appropriate reference portfolio for purposes of the relative VaR test, taking into account the fund's investments, investment objectives, and strategy. A fund that does not apply the relative VaR test must comply with the absolute VaR test.

(ii) The fund must determine its compliance with the applicable VaR test at least once each business day. If the fund determines that it is not in compliance with the applicable VaR test, the fund must come back into compliance promptly after such determination, in a manner that is in the best interests of the fund and its securityholders.

(iii) If the fund is not in compliance with the applicable VaR test within five business days,

A. The derivatives risk manager must provide a written report to the board and explain how and by when (*i.e.*, number of business days) the derivatives risk manager reasonably expects that the fund will come back into compliance;

B. The derivatives risk manager must analyze the circumstances that caused the fund to be out of compliance for more than five business days and update any program elements as appropriate to address those circumstances; and

C. The derivatives risk manager must provide a written report within thirty calendar days of the exceedance to the board explaining how the fund came back into compliance and the results of the analysis and updates required under paragraph 2(iii)(B) of these conditions. If the fund remains out of compliance with the applicable VaR test at that time, the derivatives risk manager's written report must update the report previously provided under paragraph 2(iii)(A) of these conditions and the derivatives risk manager must update the board on the fund's progress in coming back into compliance at regularly scheduled intervals at a frequency determined by the board.

3. ***Board oversight and reporting –***

(i) ***Approval of the derivatives risk manager***. The board, including a majority of independent directors of the fund manager, if any, must approve the designation of the derivatives risk manager.

(ii) ***Reporting on program implementation and effectiveness***. On or before the implementation of the program, and at least annually thereafter, the derivatives risk manager must provide to the board a written report providing a representation that the program is reasonably designed to manage the fund's derivatives risks and to incorporate the elements provided in paragraphs 1(i) through (vi) of these conditions. The representation may be based on the derivatives risk manager's reasonable belief after due inquiry. The written report must include the basis for the representation along with such information as may be reasonably necessary to evaluate the adequacy of the fund's program and, for reports following the program's initial implementation, the effectiveness of its implementation. The written report also must include, as applicable, the derivatives risk manager's basis for the approval of any designated reference portfolio or any change in the designated reference portfolio during the period covered by the report; or an explanation of the basis for the derivatives risk manager's determination that a designated reference portfolio would not provide an appropriate reference portfolio for purposes of the relative VaR test.

(iii) ***Regular board reporting***. The derivatives risk manager must provide to the board, annually or at such other frequency determined by the board, a written report regarding the derivatives risk manager's analysis of exceedances described in paragraph 1(ii) of these conditions, the results of the stress testing conducted under paragraph 1(iii) of these conditions, and the results of the backtesting conducted under paragraph 1(iv) of these conditions since the last report to the board. Each report under this paragraph must include such information as may be reasonably necessary for the board to evaluate the fund's response to exceedances and the results of the fund's stress testing.

4. [Not applicable]

5. [Not applicable]

6. ***Recordkeeping –***

(i) ***Records to be maintained***. A fund must maintain a written record documenting the following, as applicable:

A. The fund's written policies and procedures required by condition 1, along with

(1) The results of the fund's stress tests under paragraph 1(iii) of these conditions;

(2) The results of the backtesting conducted under paragraph 1(iv) of these conditions;

(3) Records documenting any internal reporting or escalation of material risks under paragraph 1(v)(B) of these conditions; and

(4) Records documenting the reviews conducted under paragraph 1(vi) of these conditions.

B. Copies of any materials provided to the board in connection with its approval of the designation of the derivatives risk manager, any written reports provided to the board relating to the program, and any written reports provided to the board under paragraphs 2(iii)(A) and (C) of these conditions.

C. Any determination and/or action the fund made under paragraphs 2(i) and (ii) of these conditions, including a fund's determination of: the VaR of its portfolio; the VaR of the fund's designated reference portfolio, as applicable; the fund's VaR ratio (the value of the VaR of the fund's portfolio divided by the VaR of the designated reference portfolio), as applicable; and any updates to any VaR calculation models used by the fund and the basis for any material changes thereto.

(ii) ***Retention periods.***

A. A fund must maintain a copy of the written policies and procedures that the fund adopted under condition 1 that are in effect, or at any time within the past seven years were in effect, in an easily accessible place.

B. A fund must maintain all records and materials that paragraphs 6(i)(A)(1) through (4) and 6(i)(B) through (D) of these conditions describe for a period of not less than seven years (the first two years in an easily accessible place) following each determination, action, or review that these paragraphs describe.

B.3.4 Royal Gold, Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 The Multijurisdictional Disclosure System so that investment dealers acting as underwriters or selling group members of an issuer are permitted to use standard term sheets and marketing materials and conduct road shows (each as defined under National Instrument 41-101 General Prospectus Requirements) in connection with future offerings under an MJDS base shelf prospectus – NI 71-101 does not contain equivalent provisions to Part 9A of National Instrument 44-102 Shelf Distributions – relief granted, provided that any road shows, standard term sheets and marketing materials would comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102, as applicable.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 53 and 74(1)2.
National Instrument 71-101 The Multijurisdictional Disclosure System, s. 11.3.

November 3, 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
ROYAL GOLD, INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction (the **Legislation**), pursuant to paragraph 74(1)2 of the *Securities Act* (Ontario), for an exemption from the prospectus requirement for certain marketing activities not expressly permitted by National Instrument 71-101 *The Multi Jurisdictional Disclosure System* so that investment dealers acting as underwriters (as defined in the Legislation) or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer are permitted to (i) use Standard Term Sheets (as defined below) and Marketing Materials (as defined below), and (ii) conduct Road Shows (as defined below) in connection with future offerings under a Final Canadian MJDS Shelf Prospectus (as defined below) to be filed by the Filer in each of the provinces and territories of Canada (the **Exemption Sought**),

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation incorporated under the laws of Delaware.

2. The principal executive offices of the Filer are located at 1144 15th Street, Suite 2500, Denver, Colorado 80202.

3. As of the date hereof, the Filer is a reporting issuer in each of the Jurisdictions and is a "SEC foreign issuer" as defined under National Instrument 71-102 *Continuous Disclosure and Other Exemptions Relating to Foreign Issuers*. The Filer is not in default of securities legislation in any of the Jurisdictions.

4. The Filer has filed a registration statement on Form S-3 with the U.S. Securities and Exchange Commission (the **Registration Statement**). The Registration Statement contains a shelf prospectus (the **U.S. Shelf Prospectus**) and may register for sale in the United States, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, shares of the Filer's common stock, shares of the Filer's preferred stock, debt securities and certain other types of securities.

5. The Filer has also filed a final MJDS prospectus in the Jurisdictions pursuant to National Instrument 71-101 The *Multi Jurisdictional Disclosure System* (**NI 71-101**) which includes the U.S. Shelf Prospectus (the final MJDS prospectus is referred

to in this decision as the **Final Canadian MJDS Shelf Prospectus**) and will qualify the distribution in the Jurisdictions, from time to time, in one or more offerings and pursuant to one or more prospectus supplements, of shares of the Filer's common stock, shares of the Filer's preferred stock, debt securities and certain other types of securities.

6. National Instrument 44-102 *Shelf Distributions* (**NI 44-102**) sets out the requirements for a distribution under a (non-MJDS) shelf prospectus in Canada, including requirements with respect to advertising and marketing activities. In particular, Part 9A of NI 44-102 permits the conduct of "road shows" and the use of "standard term sheets" and "marketing materials" (as such terms are defined in. National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101**)) following the issuance of a receipt for a final base shelf prospectus provided the approval, content, use and other applicable conditions and requirements of Part 9A are complied with. NI 71-101 does not contain provisions that are equivalent to those of Part 9A of NI 44-102.

7. In connection with marketing an offering in Canada under the Final Canadian MJDS Shelf Prospectus, investment dealers acting as underwriters or selling group members of (a) the Filer, or (b) a selling securityholder of the Filer may wish to conduct road shows (**Road Shows**) and utilize one or more standard term sheets (**Standard Term Sheets**) and marketing materials (**Marketing Materials**), as such terms are defined in NI 41-101. Any such Road Shows, Standard Term Sheets and Marketing Materials would comply with the approval, content, use and other conditions and requirements of Part 9A of NI 44-102, as applicable.

8. Canadian purchasers, if any, of securities offered under the Final Canadian MJDS Shelf Prospectus will only be able to purchase those securities through an investment dealer registered in the Jurisdiction of residence of the purchaser.

Decision

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

The decision of the principal regulator is that the Exemption Sought is granted, provided that the conditions and requirements set out in Part 9A of NI 44-102 for Standard Term Sheets, Marketing Materials and Road Shows are complied with for any future offering under the Final Canadian MJDS Shelf Prospectus in the manner in which those conditions and requirements would apply if the Final Canadian MJDS Shelf Prospectus were a final base shelf prospectus under NI 44-102.

"Erin O'Donovan"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0501

B.3.5 West Red Lake Gold Mines Ltd.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – National Instrument 51-102, s.13.1 Continuous Disclosure Obligations – BAR – The issuer made a significant acquisition of a company; the necessary information to prepare the required financial statements is unavailable; the BAR will contain sufficient alternative information about the acquisition.

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – relief from the requirement to include certain financial statements in a BAR – the issuer made a significant acquisition of a company – the necessary information to prepare the required financial statements is unavailable – the BAR will contain sufficient alternative information about the acquisition.

Applicable Legislative Provisions

National Instrument 51-102 Continuous Disclosure Obligations, ss. 8.4 and 13.1.

Citation: 2023 BCSECCOM 513

October 27, 2023

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

AND

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

AND

IN THE MATTER OF
WEST RED LAKE GOLD MINES LTD.
(the Filer)

DECISION

Background

¶ 1 The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the Legislation) exempting the Filer from the requirements in section 8.4 of National Instrument 51-102 *Continuous Disclosure Obligations* (NI 51-102) to include certain financial statements in a business acquisition report (BAR) (the Exemption Sought).

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

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

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

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

Interpretation

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

Representations

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

1. the Filer is a company existing under the *Business Corporations Act* (British Columbia) and has its head office in Vancouver, British Columbia;

2. the Filer is a reporting issuer in each of the provinces of British Columbia, Alberta, and Ontario, and is not in default of its obligations under the securities legislation of any of these jurisdictions;

3. the common shares of the Filer are listed and posted for trading on the TSX Venture Exchange;

4. the financial year end of the Filer is November 30;

5. the Filer's auditors are De Visser Gray LLP;

6. on June 16, 2023 the Filer acquired (the Acquisition) all of the issued and outstanding common shares of Pure Gold Mining Inc. (PGM) by way of a Reverse Vesting Order (the Order) issued by the British Columbia Supreme Court (the Court) under PGM's proceedings under the *Companies Creditors' Arrangement Act* (the CCAA);

7. PGM's main asset is the 100% owned Madsen Mine in Ontario; on October 24, 2022, PGM suspended operations and placed the Madsen Mine on care and maintenance; on October 31, 2022 PGM received its initial order from the Court for creditor protection under the CCAA and KSV Restructuring Inc. was appointed as court appointed monitor for PGM;

8. in March of 2023 all of the executive officers and directors of PGM resigned;

9. pursuant to the Order, only specific assets and contracts relating to the operations at the Madsen Mine were vested in PGM and acquired by the Filer, including the mineral leases, permits and claims that comprised the Madsen Mine and certain contracts necessary for the care and maintenance of the Madsen Mine (the Assets Acquired); all other assets, liabilities, debt facilities and contracts that were not specifically acquired or assumed by the Filer were transferred from PGM to PGM ResidualCo Holdings Ltd.;

10. the Filer required that the Acquisition be structured as a purchase of the outstanding PGM shares pursuant to the Order in order to preserve and minimize any issues that could have been associated with the transfer of essential permits and licences; in particular, the Filer wanted to maximize its ability to retain existing permits and licences with respect to the operations at the Madsen Mine along with existing environmental bonding;

11. the Filer has filed on SEDAR a technical report on the Madsen Mine prepared in accordance with National Instrument 43-101 *Standards of Disclosure for Mineral Projects,* prepared for the Filer and dated June 19, 2023, which contains a current estimate of the mineral resources on the Madsen Mine (the Technical Report) and contains disclosure on the reliability of the estimate of the mineral resource and the information and methodology that was used to determine that estimate;

12. The Filer determined the value of PGM based on the value of the Madsen Mine and decided to acquire PGM because of the merits of the Madsen Mine, as described in the Technical Report, rather than an assessment of the balance sheet of PGM;

13. The majority of the information that would be contained in the Acquisition Statements (as defined below) would be irrelevant to investors as the Filer only acquired specific assets of PGM under the Order;

14. the Acquisition constitutes a significant acquisition by the Filer under section 8.3 of NI 51-102, which triggered the requirement for the Filer to file a BAR;

15. under section 8.4 of NI 51-102, the Filer's BAR must include audited financial statements of PGM for the years ended December 31, 2021 and December 31, 2022 (Audited Statements) and unaudited reviewed financial statements for the interim periods ended March 31, 2023 and 2022 (Interim Statements and together with the Audited Statements, the Acquisition Statements);

16. the Filer has represented to the Decision Makers that it would not be possible to audit any existing financial statements of PGM because:

    (a) since the appointment of the Monitor on October 31, 2022 PGM, through the Monitor, has been focused on preservation of its assets and day to day operations were being funded through a credit agreement; as a result, limited financial records that would support an audit of the Audited Statements and preparation of the Interim Statements were kept;

    (b) all of PGM's officers responsible for finance functions of PGM resigned on March 7, 2023; a new officer (the Officer) was appointed on March 30, 2023, who was an independent party and had no prior history with PGM with no understanding of PGM's financial processes and operating history;

(c) on closing of the Acquisition, the Officer resigned and two new officers were appointed; these officers have limited knowledge and no direct experience with PGM and are therefore unable to provide any substantive input with respect to accounting policies, procedures and the preparation of relevant working papers for prior financial periods;

(d) current officers of PGM are unable to locate certain past account records;

(e) the lack of continuity and lost records prevents current staff from being able to respond to queries from the auditors as required under Generally Accepted Auditing Standards;

(f) the Madsen Mine remains on care and maintenance; and

(g) the Filer approached the previous auditors for PGM, PriceWaterhouse Coopers, who have declined the request to complete an audit;

17. since the Acquisition the Filer has been reviewing staffing levels and required personnel and is working on integrating PGM into its corporate structure;

18. apart from the requirement to include the Acquisition Statements, the Filer is otherwise able to prepare and file the BAR in accordance with NI 51-102;

19. the Filer will include in the BAR the additional disclosure described under section 8.9(4)(b) of the Companion Policy 51-102 CP relating to PGM's proceedings under the CCAA and the lack of availability of the accounting records;

20. the Filer proposes to include the following alternative information in the BAR (the Alternate Disclosure):

(a) an audited statement of the assets acquired and liabilities assumed by the Filer as at June 16, 2023 (Statement of Assets Acquired and Liabilities Assumed)that includes:

(i) all the assets and liabilities acquired;

(ii) a statement as to the accounting standard applied to the Acquisition in the Statement of Assets Acquired and Liabilities Assumed;

(iii) a description of the accounting policies used to prepare the Statement of Assets Acquired and Liabilities Assumed; and

(iv) an auditor's report that reflects the fact that the Statement of Assets Acquired and Liabilities Assumed was prepared in accordance with the basis of presentation disclosed in the notes to the Statement of Assets Acquired and Liabilities Assumed; and

(b) technical information related to the Assets Acquired in the form of the Technical Report, which will be incorporated by reference into the BAR; and

21. the Technical Report provides investors with a current estimate of the mineral resource of PGM; additionally, the Technical Report contains disclosure on the reliability of that estimate of the mineral resource and the information and methodology that was used to determine that estimate; because the Acquisition was of a mine whose value largely consisted of the value of the assets acquired, the information in the Technical Report will assist investors in evaluating the Acquisition.

Decision

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

The decision of the Decision Makers under the Legislation is that the Exemption Sought is granted with respect to the BAR for the Acquired Assets, provided that the Filer includes the Alternate Disclosure in the BAR and otherwise complies with applicable BAR requirements.

“John Hinze”
Director, Corporate Finance
British Columbia Securities Commission

OSC File #: 2023/0338

B.3.6 Portland Investment Counsel Inc. et al.

Headnote

National Instrument 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Mutual funds that are not reporting issuers granted 90-day extension of the annual financial statement filing and delivery deadlines and 60-day extension of the interim financial statement filing and delivery deadlines under NI 81-106 – Funds invest the majority of their assets in Underlying Funds with later financial reporting deadlines.

Applicable Legislative Provisions

National Instrument 81-106 Investment Fund Continuous Disclosure, ss. 2.2, 2.4, 5.1(2) and 17.1.

November 13, 2023

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

AND

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

AND

IN THE MATTER OF
PORTLAND INVESTMENT COUNSEL INC.
(the Filer)

AND

PORTLAND PRIVATE INCOME FUND,
PORTLAND PRIVATE INCOME LP
AND
OTHER FUNDS
(as defined below)

DECISION

Background

The Ontario Securities Commission (the **OSC**) has received an application from the Filer on behalf of itself and Portland Private Income Fund, Portland Private Income LP and any other existing or future investment fund that is not and will not be a reporting issuer, that is or will be organized under the laws of the Province of Ontario or another jurisdiction of Canada, and that is or will be managed by the Filer and invests or will invest in underlying funds (collectively, the **Funds**) as part of its investment strategy, under the securities legislation of the Jurisdictions (the **Legislation**), to request relief from section 2.2, section 2.4, paragraph 5.1(2)(a) and paragraph 5.1(2)(b) of National Instrument 81-106 *Investment Fund Continuous Disclosure* (**NI 81-106**) on behalf of the Filer.

In accordance with Part 4 of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) and section 3.6 of National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions* (**NP 11-203**), the OSC has been selected as the principal regulator (the **Principal Regulator**) for the purposes of this application, as the head office of the Filer is in Burlington, Ontario.

In accordance with subsection 4.7(2) of MI 11-102, the Filer gives notice to the Principal Regulator pursuant to paragraph 4.7(1)(c) of MI 11-102 that the requested relief is to be relied upon by the Filer in British Columbia, Alberta, Saskatchewan, Manitoba, Quebec, New Brunswick, Newfoundland and Labrador, Nova Scotia, Prince Edward Island, Northwest Territories, Nunavut and Yukon (together with Ontario, the **Jurisdictions**).

The Filer and the Funds, request a decision under the Legislation, pursuant to section 17.1 of NI 81-106, exempting the Funds from:

(a) the requirement in section 2.2 of NI 81-106 that the Funds file their audited annual financial statements and auditor's report (the **Annual Financial Statements**) on or before the 90th day after the applicable Fund's most recently completed financial year (the **Annual Filing Deadline**);

(b) the requirement in paragraph 5.1(2)(a) of NI 81-106 that the Funds deliver to securityholders their Annual Financial Statements and auditor's report by the Annual Filing Deadline (the **Annual Delivery Requirement**);

(c) the requirement in section 2.4 of NI 81-106 that the Funds file their unaudited interim financial report (the **Interim Financial Statements**) on or before the 60th day after the applicable Fund's most recently completed interim period (the **Interim Filing Deadline**); and

(d) the requirement in paragraph 5.1(2)(b) of NI 81-106 that the Funds deliver to securityholders their Interim Financial Statements by the Interim Filing Deadline (the **Interim Delivery Requirement**);

(collectively, the **Exemption Sought**).

Interpretation

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

Representations

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

The Filer

1. The Filer is a corporation incorporated under the laws of Ontario, with its registered head office located in Burlington, Ontario.

2. The Filer is currently registered as follows:

   (a) in the provinces of Alberta, Newfoundland and Labrador, Ontario and Quebec in the category of investment fund manager;

   (b) in each of the provinces and territories of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Ontario, Prince Edward Island, Quebec and Saskatchewan as an adviser in the category of portfolio manager;

   (c) in each of the provinces and territories of Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec and Saskatchewan as a dealer in the category of exempt market dealer; and

   (d) in Ontario, the Filer was registered as a dealer in the category of mutual fund dealer but requested the surrender of such registration on September 22, 2023.

3. The Filer is the trustee and investment fund manager of the Portland Private Income Fund (the **Trust**).

4. The Filer is the investment fund manager of the Portland Private Income LP (the **Partnership**).

5. The Filer is not in default of securities legislation in any Jurisdiction.

The Trust

6. The Trust is a trust formed under the laws of the Province of Ontario.

7. The Trust is a "mutual fund" for purposes of the Legislation.

8. Units of the Trust are offered for sale on a continuous basis to qualified investors in all provinces and territories of Canada pursuant to exemptions from the prospectus requirements under National Instrument 45-106 – *Prospectus Exemptions* (**NI 45-106**).

9. The Trust is not a reporting issuer in any province or territory of Canada.

10. The Trust is not in default of securities legislation in any Jurisdiction.

11. The Trust has a financial year-end of December 31.

12. The Trust seeks to achieve its investment objective by investing all, or substantially all, of its net assets in the Partnership. The Partnership invests in Underlying Funds as described under **The Partnership** below. Although, the Trust intends to invest all, or substantially all, of its assets in the Partnership, the Filer may, from time to time, determine that the Trust may make direct investments and when doing so, it will apply the investment strategies similar to the Partnership.

13. The net asset value of the Trust is determined on a monthly basis in accordance with the Trust's declaration of trust.

14. The holdings of the Trust invested in securities of the Partnership and any direct investments in the Underlying Funds may be disclosed in the Trust's annual financial statements and interim financial reports.

15. As of September 29, 2023, approximately sixty-two percent of the Trust's assets were invested, indirectly through the Partnership, in Third-Party Underlying Funds.

16. The declaration of trust of the Trust permits the annual financial statements and auditor's report and the interim financial reports of the Trust to be filed and delivered in accordance with securities legislation.

The Partnership

17. The Partnership is a limited partnership formed under the laws of the Province of Ontario and is managed by the Filer.

18. The Partnership is a "mutual fund" for purposes of the Legislation.

19. Units of the Partnership are offered for sale on a continuous basis to qualified investors in all provinces and territories of Canada pursuant to exemptions from the prospectus requirements under NI 45-106.

20. The Partnership is not a reporting issuer in any province or territory of Canada.

21. The Partnership is not in default of securities legislation in any jurisdiction.

22. The Partnership may invest in a portfolio of private and public securities, including investment funds, exchange-traded funds and mutual funds. Investment funds, exchange-traded fund and mutual funds are collectively referred to as the **Underlying Funds**.

23. The net asset value of the Partnership is determined on a monthly basis in accordance with the Partnership's limited partnership agreement.

24. Securities of the Partnership are typically redeemable monthly.

25. The holdings by the Partnership of securities of the Underlying Funds are disclosed in the financial statements of the Partnership.

26. The Partnership and the Underlying Funds may have varying financial year-ends and may be subject to a variety of financial reporting deadlines. Currently, each of the Partnership and the Underlying Funds have a financial year-end of December 31st.

27. The majority of the Underlying Funds currently invested in by the Partnership are managed by entities unrelated to the Filer (the **Third-Party Underlying Funds**).

28. As of September 29, 2023, approximately sixty percent of the Partnership's assets were invested in Third-Party Underlying Funds.

29. The Filer believes that investments by the Partnership in the Underlying Funds offer benefits not available through a direct investment in the companies, other issuers or assets held by the Underlying Funds.

Financial Statement Filing and Delivery Requirements

30. Section 2.2 and paragraph 5.1(2)(a) of NI 81-106 require the Funds to file and deliver their Annual Financial Statements by the Annual Filing Deadline. As each of the Funds have a financial year-end of December 31, they have a filing and delivery deadline of March 31.

31. Section 2.4 and paragraph 5.1(2)(b) of NI 81-106 require the Funds to file and deliver their Interim Financial Statements by the Interim Filing Deadline. As each of the Funds have an interim period-end of June 30, they have an interim filing and delivery deadline of August 29.

32. Section 2.11 of NI 81-106 provides an exemption from the filing requirements of the Annual Financial Statements and the Interim Financial Statements if, among other things, the Funds deliver such statements and reports in accordance with Part 5 of NI 81-106 by the Annual Filing Deadline and the Interim Filing Deadline, as applicable.

33. The delivery requirements for the Annual Financial Statements and the Interim Financial Statements for Underlying Funds do not always match up with the Annual Delivery Requirement and the Interim Delivery Requirement, as applicable, and in any event, do not allow the Funds, the Filer and auditor, as applicable, an appropriate amount of time to prepare the required financial statements and reports of the Funds.

34. In order to formulate an opinion on the financial statements on the Funds, the Fund's auditor requires audited financial statements of the respective Underlying Funds in order to audit the information contained in the applicable Fund's financial statements.

35. The auditor of the Funds has advised the Filer that they may be unable to express an unmodified audit opinion in accordance with subsection 2.7(2) of NI 81-106 if the audited financial statements of the Underlying Funds are not completed and available to the Funds sufficiently in advance of the Annual Filing Deadline and Annual Delivery Requirement.

36. In recent years, a higher percentage of each Fund has been invested directly or indirectly in Underlying Funds, which has caused the Filer and the Funds to proactively address this reporting timing issue by obtaining the Exemption Sought.

37. The Funds will notify their respective securityholders, to the extent they have not already done so, that they have received and intend to rely on relief from the Annual Filing Deadline and Annual Delivery Requirement and the Interim Filing Deadline and the Interim Delivery Requirement.

38. The Underlying Funds are, or will be, suitable and desirable investments for the applicable Fund. The Funds and Underlying Funds may have financial reporting deadlines that are not aligned with the filing and delivery deadlines contemplated by NI 81-106 and that are applicable to the Funds. In addition, even if such reporting deadlines are aligned, they do not allow for sufficient time for the Filer, the Funds and the auditor of the Funds, as applicable, to prepare the applicable financial statements and reports in a manner to meet the deadlines set out in NI 81-106.

39. Since a higher percentage of each Fund's portfolio has been, directly or indirectly, allocated to Underlying Funds in recent years, the Filer believes that reporting timing discrepancies may occur more frequently for the foreseeable future. Accordingly, the Filer and Funds are proactively addressing this reporting timing issue.

40. The Funds therefore seek an extension of the Annual Filing Deadline and Annual Delivery Requirement to permit delivery on or before 180 days of the applicable Fund's year-end, to enable the Fund's auditor to first receive the audited financial statements and reports of the relevant Underlying Funds, as applicable, so as to be able to prepare the Fund's audited financial statements and auditor's report.

41. The Funds therefore seek an extension of the Interim Filing Deadline and Interim Delivery Requirement to permit delivery on or before 120 days of the applicable Fund's most recently completed interim period, to enable the Fund to first receive the interim financial statements and reports of the relevant Underlying Funds, as applicable, so as to be able to prepare the Fund's interim financial reports.

42. Owing to the Funds direct or indirect investment in Underlying Funds, apart from the timing challenges imposed by producing audited financial statements and interim financial reports in accordance with the Annual Filing Deadline and the Interim Filing Deadline, the delivery of such financial statements and reports prepared within the applicable time frames could be detrimental to investors, as such statements and reports would necessarily be based on estimates which are subject to change. Such rationale is equally applicable to the audited annual financial statements, as it is to the interim financial reports. In the Filer's view, under such circumstances, investors are better served by having annual financial statements and interim financial delivered: (i) in the case of audited annual financial statements, on or before 180 days following the Fund's year-end rather than the Annual Filing Deadline; and (ii) in the case of interim financial reports, on or before 120 days following the Fund's most recent interim period rather than the Interim Filing Deadline.

43. If the Exemption Sought is granted, an updated offering memorandum will be provided to investors of the applicable Fund, or such investors will be otherwise notified, that: (i) Annual Financial Statements for the applicable Fund will be delivered to each investor on or before 180 days of the applicable Fund's financial year-end; and (ii) Interim Financial Statements for the applicable Fund would be delivered to each investor on or before 120 days following the end of each interim period of the applicable Fund.

44. For the reasons set forth above, it is submitted that it would not be prejudicial to the public interest for the Exemption Sought to be 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 for so long as:

1. The Fund has a financial year ended December 31.

2. The investment objective of the Trust is to invest all, or substantially all, of its net assets in the Partnership. However, from time to time, instead of investing in the Partnership, the Trust may make direct investments, and when doing so, it

will apply the investment strategies similar to the Partnership. The Partnership invests a portion of its net assets in the securities of Underlying Funds.

3. The Trust invests the majority of its assets in the Partnership. The Partnership invests a portion of its net assets in the securities of Underlying Funds.

4. No less than 30% of the total assets of a Fund at the time such Fund makes the initial investment: (i) in the case of a direct investment, in Underlying Fund(s), as applicable; and (ii) in the case of an indirect investment, in the applicable Partnership (or other investment entity) that will invest in Underlying Fund(s), as applicable, and in any case that are invested, directly or indirectly, in investment entities that have financial reporting periods that end on December 31 of each year and are subject to laws of their jurisdictions, or applicable exemptive relief, that require that their Annual Financial Statements be delivered between 90 and 180 days of their financial year end and their Interim Financial Statements be delivered between 60 and 120 days of their most recent interim period.

5. The offering memorandum of the applicable Fund provided to prospective investors, in the case of an existing Fund, will be updated to disclose, and in the case of a new Fund, will disclose:

   (a) the Annual Financial Statements of the Fund may be filed and delivered on or before the 180th day after the Fund's most recently completed financial year-end; and

   (b) the Interim Financial Statements of the Fund may be filed and delivered on or before the 120th day after the Fund's most recently completed interim period.

6. On behalf of the Funds, the Filer will disclose to the respective Fund's investors that such Fund has received and intends to rely on relief from the Annual Filing Deadline, the Interim Filing Deadline, the Annual Delivery Requirement and the Interim Delivery Requirement under section 2.2, section 2.4, paragraph 5.1(2)(a) and paragraph 5.1(2)(b) of NI 81-106.

7. The Trust's declaration of trust and the Partnership's limited partnership agreement will permit the Annual Financial Statements of the applicable Fund and Interim Financial Statements of the applicable Fund to be filed and delivered in accordance with the Exemption Sought.

8. None of the Funds is a reporting issuer in any Jurisdiction, and the Filer is a corporation incorporated under the laws of the Province of Ontario and has the necessary registrations to carry out its operations in each jurisdiction of Canada in which it operates.

9. The conditions in section 2.11 of NI 81-106 will be met, except for subsection 2.11(b), and:

   (a) the Annual Financial Statements will be delivered to the applicable Fund's investors in accordance with Part 5 of NI 81-106 on or before the 180th day after the applicable Fund's most recently completed financial year-end; and

   (b) the Interim Financial Statements will be delivered to the applicable Fund's investors in accordance with Part 5 of NI 81-106 on or before the 120th day after the applicable Fund's most recently completed interim period.

10. This decision will terminate within one year of the coming into force of any amendment to NI 81-106 or other rule that substantially modifies how the Annual Filing Deadline, the Interim Filing Deadline, the Annual Delivery Requirement or the Interim Delivery Requirement applies in connection with mutual funds under the Legislation.

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

Application File #: 2023/0518
SEDAR+ File #: 6037540

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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
DXStorm.com Inc	November 3, 2023	November 7, 2023
Blacksteel Energy Inc.	November 7, 2023	
Talent Infinity Resource Developments Inc	November 3, 2023	November 8, 2023
HAVN Life Sciences Inc.	November 9, 2023	
Koios Beverage Corp	October 5, 2023	November 10, 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	
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	

Company Name	Date of Order	Date of Lapse
HAVN Life Sciences Inc.	August 30, 2023	
Falcon Gold Corp.	November 1, 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:
Tangerine Money Market Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Nov 9, 2023
NP 11-202 Preliminary Receipt dated Nov 9, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06044569

Issuer Name:
Fidelity Advantage Bitcoin ETF
Fidelity Advantage Ether ETF
Fidelity All-in-One Balanced ETF
Fidelity All-in-One Conservative ETF
Fidelity All-in-One Equity ETF
Fidelity All-in-One Growth ETF
Fidelity Canadian High Dividend Index ETF
Fidelity Canadian High Quality Index ETF
Fidelity Canadian Low Volatility Index ETF
Fidelity Canadian Momentum Index ETF
Fidelity Canadian Monthly High Income ETF
Fidelity Canadian Short Term Corporate Bond ETF
Fidelity Canadian Value Index ETF
Fidelity Global Core Plus Bond ETF
Fidelity Global Investment Grade Bond ETF
Fidelity Global Monthly High Income ETF
Fidelity International High Dividend Index ETF
Fidelity International High Quality Index ETF
Fidelity International Low Volatility Index ETF
Fidelity International Momentum Index ETF
Fidelity International Value Index ETF
Fidelity Sustainable World ETF
Fidelity Systematic Canadian Bond Index ETF
Fidelity Total Metaverse Index ETF
Fidelity U.S. Dividend for Rising Rates Currency Neutral Index ETF
Fidelity U.S. Dividend for Rising Rates Index ETF
Fidelity U.S. High Dividend Currency Neutral Index ETF
Fidelity U.S. High Dividend Index ETF
Fidelity U.S. High Quality Currency Neutral Index ETF
Fidelity U.S. High Quality Index ETF
Fidelity U.S. Low Volatility Currency Neutral Index ETF
Fidelity U.S. Low Volatility Index ETF
Fidelity U.S. Momentum Currency Neutral Index ETF
Fidelity U.S. Momentum Index ETF
Fidelity U.S. Value Currency Neutral Index ETF
Fidelity U.S. Value Index ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated November 9, 2023
NP 11-202 Final Receipt dated Nov 13, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03560996

Issuer Name:
Fidelity Balanced Class Portfolio
Fidelity Corporate Bond Class
Fidelity Global Balanced Class Portfolio
Fidelity Global Growth Class Portfolio
Fidelity Global Income Class Portfolio
Fidelity Growth Class Portfolio
Fidelity Income Class Portfolio
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated November 9, 2023
NP 11-202 Final Receipt dated Nov 13, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03505287

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NON-INVESTMENT FUNDS

Issuer Name:
Horwood Exploration Corp.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Nov 6, 2023
NP 11-202 Final Receipt dated Nov 7, 2023
Offering Price and Description:
Minimum of 5,000,000 Common Shares and Up to a Maximum of 6,666,666 Common Shares
Price: $0.12 per Common Share
Minimum offering: $600,000.00
Maximum offering: $800,000.00
Filing # 03546560

Issuer Name:
Agrinam Acquisition Corporation
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Nov 10, 2023
NP 11-202 Preliminary Receipt dated Nov 10, 2023
Offering Price and Description:
No securities are being offered pursuant to this prospectus
Filing # 06046374

Issuer Name:
EXI Ventures Corp.
Principal Regulator – Ontario
Type and Date:
Preliminary CPC Prospectus dated Nov 6, 2023
NP 11-202 Preliminary Receipt dated Nov 7, 2023
Offering Price and Description:
Minimum Offering: $300,000.00 (3,000,000 Common Shares)
Maximum Offering: $400,000.00 (4,000,000 Common Shares)
Price: $0.10 per Common Share
Minimum subscription: 1,000 Common Shares
Filing # 06043320

Issuer Name:
Brookfield Corporation (formerly Brookfield Asset Management Inc.)
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated Nov 1, 2023
NP 11-202 Final Receipt dated Nov 6, 2023
Offering Price and Description:
Up to 40,000,000 Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd.
Up to 40,000,000 Class A Exchangeable Limited Voting Shares of Brookfield Reinsurance Ltd. (issuable or deliverable upon conversion of Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd.)
Up to 40,000,000 Class A Limited Voting Shares of Brookfield Corporation (issuable or deliverable upon exchange, redemption or acquisition of Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd. or Class A Exchangeable Limited Voting Shares of Brookfield Reinsurance Ltd.)
Filing # 06011770

Issuer Name:
FSD Pharma Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated Nov 3, 2023
NP 11-202 Preliminary Receipt dated Nov 6, 2023
Offering Price and Description:
US$50,000,000.00 - Class B Subordinate Voting Shares, Subscription Receipts, Warrants, Units
Filing # 06042944

Issuer Name:
UGE International Ltd.
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated Nov 10, 2023
NP 11-202 Final Receipt dated Nov 10, 2023
Offering Price and Description:
1,697 9% Secured Debentures Maturing December 31, 2028
CDN $950.00 or US $950.00 per Debenture
Filing # 06034114

Issuer Name:
Horizon Copper Corp.
Principal Regulator -British Columbia
Type and Date:
Preliminary Shelf Prospectus dated Nov 8, 2023
NP 11-202 Preliminary Receipt dated Nov 9, 2023
Offering Price and Description:
US$100,000,000.00 - Common Shares, Debt Securities, Warrants, Subscription Receipts, Units
Filing # 06045623

Issuer Name:
Bitfarms Ltd.
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Nov 10, 2023
NP 11-202 Final Receipt dated Nov 10, 2023
Offering Price and Description:
US$375,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities, Share Purchase Contracts
Filing # 03554539

Issuer Name:
Kubera Gold Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Nov 9, 2023
NP 11-202 Preliminary Receipt dated Nov 9, 2023
Offering Price and Description:
3,000,000 Common Shares at a price of $0.25 per Common Share
Filing # 06045620

Issuer Name:
Lithium Americas Corp. (formerly 1397468 B.C. Ltd.)
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated Nov 8, 2023
NP 11-202 Final Receipt dated Nov 9, 2023
Offering Price and Description:
US$750,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing # 06040146

Issuer Name:
Brookfield Reinsurance Ltd. (formerly Brookfield Asset Management Reinsurance Partners Ltd.)
Principal Regulator – Ontario
Type and Date:
Final Short Form Prospectus dated Nov 1, 2023
NP 11-202 Final Receipt dated Nov 6, 2023
Offering Price and Description:
Up to 40,000,000 Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd. Up to 40,000,000 Class A Exchangeable Limited Voting Shares of Brookfield Reinsurance Ltd. (issuable or deliverable upon conversion of Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd.)
Up to 40,000,000 Class A Limited Voting Shares of Brookfield Corporation (issuable or deliverable upon exchange, redemption or acquisition of Class A-1 Exchangeable Non-Voting Shares of Brookfield Reinsurance Ltd. or Class A Exchangeable Limited Voting Shares of Brookfield Reinsurance Ltd.)
Filing # 06011761

Issuer Name:
McEwen Mining Inc. (formerly US Gold Corporation)
Principal Regulator – Ontario
Type and Date:
Preliminary MJDS Prospectus dated Nov 3, 2023
NP 11-202 Preliminary Receipt dated Nov 7, 2023
Offering Price and Description:
US$200,000,000.00 - Debt Securities, Common Stock, Warrants, Subscription Rights, Subscription Receipts, Units
Filing # 06043361

Issuer Name:
Mogo Inc. (formerly, Difference Capital Financial Inc.)
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated Nov 6, 2023
NP 11-202 Final Receipt dated Nov 6, 2023
Offering Price and Description:
US$250,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Warrants, Units
Filing # 06005763

Issuer Name:
Strathcona Resources Ltd.
Principal Regulator – Alberta
Type and Date:
Final Shelf Prospectus dated Nov 6, 2023
NP 11-202 Final Receipt dated Nov 6, 2023
Offering Price and Description:
$2,000,000,000.00 - Common Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units, Share Purchase Contracts, Share Purchase Units
Filing # 06038688

Issuer Name:
Trillion Energy International Inc.
Principal Regulator – British Columbia
Type and Date:
Amended Short Form Prospectus dated Nov 10, 2023
NP 11-202 Amendment Receipt dated Nov 10, 2023
Offering Price and Description:
Up to $10,000,000.00
Up to 33,333,333 Common Shares
$0.30 per Common Share
Filing # 06045937

Issuer Name:
Trillion Energy International Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated Nov 9, 2023
NP 11-202 Preliminary Receipt dated Nov 9, 2023
Offering Price and Description:
Up to $10,000,000.00
Up to * Common Shares
$* per Common Share
Filing # 06045937

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Consent to Suspension (Pending Surrender)	Beringer Capital Partners Ltd.	Exempt Market Dealer	November 9, 2023
New Registration	Moat Financial Limited	Portfolio Manager	November 9, 2023
Voluntary Surrender	Raymond Chabot Grant Thornton Capital Inc.	Exempt Market Dealer	November 9, 2023
Voluntary Surrender	Pzena Investment Management, LLC	Exempt Market Dealer	November 13, 2023

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

B.11.2 Marketplaces

B.11.2.1 ICE NGX Canada Inc. – Application for Variation of Exemption Order – Notice of Commission Order

ICE NGX CANADA INC.

NOTICE OF COMMISSION ORDER

APPLICATION FOR VARIATION OF EXEMPTION ORDER

On November 9, 2023, the Commission issued an order (the **Order**) varying the order dated July 27, 2012 exempting ICE NGX Canada Inc. (**NGX**) from the requirements to be registered as a commodity futures exchange under section 15 of the CFA and as an exchange under section 21 of the OSA (**2012 Exemption Order**) to allow NGX to offer trading and settlement of products based on environmental quality, including emissions or emission credits (**Environmental Products**).

A copy of the Order is published in Chapter B.2 of the OSC Bulletin published on November 16, 2023.

The Commission published the Applicant's application and draft order for comments on August 31, 2023 in the OSC Bulletin and the OSC website. No comments were received. No changes were made to the draft order published for comment.

B.11.3 Clearing Agencies

B.11.3.1 Canadian Derivatives Clearing Corporation (CDCC) – Proposed Amendments to the Default Manual of the CDCC Regarding the Implementation of an Auction Tool Used to Organize a Default Auction During a Default Management Period – Notice of Material Rule Submission

NOTICE OF MATERIAL RULE SUBMISSION

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

**PROPOSED AMENDMENTS TO
THE DEFAULT MANUAL OF THE CDCC REGARDING
THE IMPLEMENTATION OF AN AUCTION TOOL USED TO ORGANIZE
A DEFAULT AUCTION DURING A DEFAULT MANAGEMENT PERIOD**

CDCC has submitted to the Commission proposed amendments to the CDCC Default Manual regarding the implementation of an auction tool used to organize a Default Auction during a default management period.

The purpose of the proposed amendments, which are subject to Commission approval, is to modify the Default Auction Procedure in order to introduce the Auction Platform and to further clarify and emphasize that both the default and recovery simulations are mandatory.

The proposed amendments have been posted for public comment on CDCC's **website**. The comment period ends on December 15, 2023.

B.12
Other Information

B.12.1 Consents

B.12.1.1 Ares Strategic Mining Inc. – s. 21(b) of Ont. Reg. 398/21 of the OBCA

Headnote

Consent given to an offering corporation under the Business Corporations Act (Ontario) to continue under the Business Corporations Act (British Columbia).

Statutes Cited

Business Corporations Act, R.S.O. 1990, c. B.16, as am., s. 181.
Securities Act, R.S.O. 1990, c. S.5, as am.

Regulations Cited

Regulation made under the Business Corporations Act, Ont. Reg. 398/21, as am., s. 21(b).

IN THE MATTER OF
ONTARIO REGULATION 398/21,
AS AMENDED
(the "Regulation")

MADE UNDER
THE BUSINESS CORPORATIONS ACT (ONTARIO)
R.S.O. 1990, c. B.16, AS AMENDED
(the "OBCA")

AND

IN THE MATTER OF
ARES STRATEGIC MINING INC.
(the "Applicant")

CONSENT
(Subsection 21(b) of the Regulation)

UPON the application (the "**Application**") of the Applicant to the Ontario Securities Commission (the "**Commission**") requesting the consent of the Commission pursuant to subsection 21(b) of the Regulation, for the Applicant to continue into the Province of British Columbia pursuant to section 181 of the OBCA (the "**Continuance**");

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

AND UPON the Applicant having represented to the Commission that:

1. The Applicant was incorporated under the OBCA on November 20, 2009 as “Northern Iron Corp.”.

2. On December 6, 2016, the Applicant changed its name to “Lithium Energy Products Inc.”.

3. On February 13, 2020, the Applicant changed its name to “Ares Strategic Mining Inc.”.

4. The Applicant is an offering corporation under the OBCA.

5. The Applicant's common shares are listed and posted for trading on the Canadian Securities Exchange (the "**Exchange**") under the symbol "ARS" and the OTC Markets under the symbol "ARSMF".

6. The Applicant is authorized to issue an unlimited number of common shares and preferred shares, of which 139,000,722 common shares were issued and outstanding as of October 9, 2023.

7. The Applicant intends to apply to the Director under the OBCA pursuant to section 181 of the OBCA (the "**Application for Continuance**") for authorization to continue as a corporation under the *Business Corporations Act* (British Columbia) (the "**BCBCA**").

8. The Application for Continuance is being made (i) to move its corporate records to British Columbia, as the Applicant's head office is located in British Columbia, (ii) because all of the Applicant's executives are located in British Columbia, and (iii) for corporate and administrative reasons.

9. The material rights, duties and obligations of a corporation governed by the BCBCA are substantially similar to those of a corporation governed by the OBCA.

10. The Applicant's registered office is located at 62 Wolfe Trail, Tiny, Ontario, L9M 0H7 and its head office is located at 1001 – 409 Granville Street, Vancouver, British Columbia V6C 1T2. Following the Continuance, the registered office will be located at 800-885 West Georgia Street, Vancouver, British Columbia V6C 3H1 and its head office will remain located at 1001 – 409 Granville Street, Vancouver, British Columbia V6C 1T2.

11. The Applicant is a reporting issuer under the securities legislation of the provinces of British Columbia, Alberta, Saskatchewan, Manitoba, Ontario, New Brunswick, Nova Scotia, Prince Edward Island and Newfoundland and Labrador, and will remain a reporting issuer in these jurisdictions following the Continuance. The Applicant's principal regulator is the British Columbia Securities Commission.

12. The Applicant is not in default of any of the provisions of the OBCA, the *Securities Act* (Ontario) (the "**Act**"), including the regulations or rules made thereunder, or the applicable securities legislation of any other jurisdiction in which it is a reporting issuer.

13. The Applicant is not subject to any proceeding under the OBCA, the Act or the applicable securities legislation of any other jurisdiction in which it is a reporting issuer.

14. The Applicant is not in default of any provision of the rules, regulations or policies of the Exchange.

15. The Applicant's management information circular (the "**Circular**") dated October 27, 2022 which was provided to all securityholders of the Applicant in connection with its special meeting of shareholders, held on November 23, 2022 (the "**Meeting**") described the proposed Continuance and disclosed the reasons for it and its implications. The Applicant's shareholders had the right to dissent with respect to the proposed Continuance pursuant to section 185 of the OBCA, and the Circular disclosed particulars of this right in accordance with applicable law.

16. The Applicant's shareholders authorized the Continuance at the Meeting by a special resolution that was approved by 98.653% of the votes cast by the shareholders of the Applicant in person or represented by proxy. No shareholders exercised dissent rights pursuant to section 185 of the OBCA.

17. Subsection 21(b) of the Regulation requires the Application for Continuance to be accompanied by a consent from the Commission.

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

THE COMMISSION HEREBY CONSENTS to the continuance of the Applicant as a corporation under the BCBCA.

DATED at Toronto on this 10th day of November, 2023.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

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