The Ontario Securities Commission

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November 30, 2023

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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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Other Notices

A.2.1 Troy Richard James Hogg et al.

FOR IMMEDIATE RELEASE
November 22, 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 following merits hearing dates have changed in the above-named matter:

(1) the previously scheduled days of November 23, 24, 27, 28, 29 and December 1, 2023, and January 8, 9, 10, 11, 12, 15, 16, 17, 18, 19, 22, 23, 24, 25 and February 7, 8, 9, and 12, 2024 will not be used for the hearing;

(2) the hearing will continue on November 30, 2023 at 10:00 a.m. by videoconference; and

(3) the hearing on January 26, 2024 at 10:00 a.m. will be held at the offices of the Tribunal at 20 Queen Street West, 17th floor, Toronto. Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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A.2.2 Nova Tech Ltd and Cynthia Petion

FOR IMMEDIATE RELEASE
November 23, 2023

NOVA TECH LTD AND
CYNTHIA PETION,
File No. 2023-20

TORONTO – The hearing in the above-named matter scheduled to be heard on November 27, 2023 at 9:00 a.m. will instead be heard on December 7, 2023 at 10:00 a.m. by videoconference.

Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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A.2.3 Mithaq Canada Inc. and Aimia Inc.

FOR IMMEDIATE RELEASE
November 23, 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 23, 2023 is available at capitalmarketstribunal.ca.

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A.2.4 Mithaq Canada Inc. and Aimia Inc.

FOR IMMEDIATE RELEASE
November 24, 2023

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

TORONTO – An attendance in the above-named matter is scheduled to be heard on November 28, 2023 at 1:00 p.m. by videoconference.

Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

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A.2.5 Go-To Developments Holdings Inc. et al.

FOR IMMEDIATE RELEASE
November 27, 2023

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

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

A copy of the Reasons and Decision and the Order dated November 24, 2023 are available at capitalmarketstribunal.ca.

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A.2.6 Mughal Asset Management Corporation et al.

FOR IMMEDIATE RELEASE
November 28, 2023

MUGHAL ASSET MANAGEMENT CORPORATION,
LENDLE CORPORATION AND
USMAN ASIF,
File No. 2022-15

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

A copy of the Order dated November 28, 2023 is available at capitalmarketstribunal.ca.

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A.2.7 Mithaq Canada Inc. et al.

FOR IMMEDIATE RELEASE
November 28, 2023

MITHAQ CANADA INC. AND
AIMIA INC. AND
A HEARING AND REVIEW OF
A DECISION OF THE TORONTO STOCK EXCHANGE,
File No. 2023-28

TORONTO – The Applicant, Mithaq Canada Inc. filed a Further Amended Application dated November 20, 2023.

The hearing of the Application in the above-named matter scheduled to be heard on December 12, 2023 and December 13, 2023 at 10:00 a.m. on each day will be heard by videoconference.

Members of the public may observe the hearing by videoconference, by selecting the "Register to attend" link on the Tribunal's hearing schedule, at capitalmarketstribunal.ca/en/hearing-schedule.

A copy of the Further Amended Application dated November 20, 2023 is available at capitalmarketstribunal.ca.

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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

FURTHER AMENDED 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. **Orders Relating to the Offer:**

   (a) In reliance on section 104 of the *Securities Act* and NI 62-104, an order that any Aimia Shares issued in the Private Placement (including common shares issuable on the exercise of warrants or pre-emptive rights 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);

   (b) An order that any Aimia Shares issued in the Private Placement (including common shares issuable on the exercise of warrants or pre-emptive rights issued in the Private Placement) not be included in the number of outstanding shares for the purpose of the Offeror satisfying any minority approval requirement under MI 61-101 in connection with a second step business combination that satisfies the requirements of section 8.2 of MI 61-101 (being those requirements that must be satisfied in order for securities acquired under a bid to be included as votes in favour of a subsequent business combination in determining whether minority approval has been obtained);

   (c) An order pursuant to section 104(2)(c) that the Offeror be permitted to rely on the exemption in section 2.2(3) of National Instrument 62-104 Take Over Bids and Issuer Bids ("NI 62-104") permitting it to purchase up to 5% of the outstanding Aimia Shares while the Offer is outstanding; and

   (d) Assuming that the conditions to the Offer, statutory and otherwise, are satisfied or waived, an order under sections 104 (d) and (e) of the *Securities Act* requiring Aimia and its directors to comply with NI 62-104 and restraining them from non-compliance by preventing Mithaq from taking up and paying for shares under the Offer as required by NI 61-204, s. 2.32.1.

4. Orders related to the Application:

   (a) An order for an expedited hearing;

   (b) 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

   (c) An order consolidating the Application with Aimia's November 17, 2023 Cross-Application and dismissing the Cross-Application.

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. The TSX proceeded on incorrect principles in interpreting and applying the "materially affect control" standard, relevant in both sections 603 and 604 of the Manual. In particular, the two fundamental issues with the TSX Decision, permitting the Tribunal to review the Decision on a *de novo* basis, and justifying an order requiring shareholder approval for the Private Placement are the following.

    (a) The lack of any analysis of how the Private Placement impacts "the economics of the Offer." This issue is directly relevant to whether the Private Placement "materially affects control" of Aimia since the Offer is a "significant transaction" and whether the Private Placement will effectively "block" the Offer needed to be evaluated by the TSX in reaching a decision on whether the Private Placement "material affects control". No such analysis was undertaken.

    (b) The absence of any consideration of Mithaq's outstanding Proxy Review Application and the orders it seeks from the Ontario Superior Court: (i) calling a special meeting of shareholders for the election of directors, and (ii) setting a date for the special meeting at the earliest date allowed by the *Canada Business Corporations Act* and Ontario securities law. The Tribunal confirmed in *Eco Oro* that the impact of a transaction on a pending shareholder vote, or in circumstances where an ongoing proxy challenge exists, need to be considered in interpreting "materially affect control." This same analysis was required in the context of Mithaq's Proxy Review Application and the relief it seeks, particularly given the irregularities leading to the Meeting, the closeness of the Board election results at the Meeting, Aimia's refusal to permit the proxy review, and Mithaq's disclosure of these concerns to the TSX as early as June 2023 and on October 16, 2023.

    (c) There was also no consideration by the TSX of the Board's pattern of choosing not to seek shareholder approval when implementing defensive tactics to the Offer. The TSX was aware of the SRP and the fact that shareholder approval was required by December 7, 2023 yet the Board had taken no steps to obtain such approval and ought to have turned its mind to the fact that the Board was again seeking to put in place a defensive tactic without obtaining shareholder approval.

    (d) The TSX did not consider whether the lead investor's Board nomination rights materially affects control of Aima.

87. The TSX Decision is entirely silent on these fundamental issues. There is no discussion, assessment, or evaluation of any of these issues. However, a *de novo* review of these issues supports Mithaq's request for an alternative order requiring shareholder approval for the Private Placement.

88. 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.

89. 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.

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

91. 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.

92. 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.

93. 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.

Relief relating to the Offer

94. For the reasons set out in its written submissions, Mithaq is entitled to the relief relating to the Offer to give effect to the other relief sought and to ensure no further impediments exist or are erected to prevent shareholders responding to the Offer in accordance with the principles of Ontario securities law.

Expedited hearing and cease trade orders are required

95. 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.

96. 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.

97. 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.

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

99. For the reasons set out in its Notice of Motion, dated November 20, 2023, Mithaq seeks an order consolidating the Application with Aimia's Cross-Application, and an order dismissing the Cross-Application, to ensure that the ability of Aimia shareholders to respond to the Offer is not frustrated by litigation tactics and delay.

100. 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: ~~October 17, 2023~~ November 20, 2023

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A.3
Orders

A.3.1 Mithaq Canada Inc. et al. – Rule 21(4) of the CMT Rules of Procedure and Forms

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

Adjudicator: Timothy Moseley

November 23, 2023

ORDER
(Rule 21(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

WHEREAS on November 23, 2023, the Capital Markets Tribunal held a hearing in writing to consider requests for intervenor status by each of Eagle 1250 Investments Group LLC (**Eagle**) and the Special Committee (the **Special Committee**) of the Board of Directors of Aimia Inc. (**Aimia**);

ON READING the Motion Records and written submissions of each of Eagle and the Special Committee, and on being advised that Aimia and Mithaq Canada Inc. consent to, and neither Staff of the Ontario Securities Commission nor the Toronto Stock Exchange opposes, Eagle's and the Special Committee's motions;

IT IS ORDERED, pursuant to rule 21(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*, for reasons to follow, that each of Eagle and the Special Committee is granted intervenor status to participate in this proceeding, on the following terms:

1. each of Eagle and the Special Committee may, on or before November 28, 2023: (i) serve and file relevant affidavit evidence, and (ii) serve and file written submissions of no more than ten pages;

2. each of Eagle and the Special Committee may cross-examine witnesses at the merits hearing in this proceeding on December 12 and 13, 2023; and

3. all of Eagle's and the Special Committee's participation, including that listed above, shall not duplicate that of other parties and shall be limited to facts and issues relating to the intervenor's own involvement in the issues in this proceeding.

"Timothy Moseley"

A.3.2 Go-To Developments Holdings Inc. et al. – Rule 22 of the CMT Rules of Procedure and Forms and s. 2(2) of the Tribunal Adjudicative Records Act, 2019

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

File No. 2022-8

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

November 24, 2023

ORDER

(Rule 22 of the *Capital Markets Tribunal Rules of Procedure and Forms* and Subsection 2(2) of the *Tribunal Adjudicative Records Act, 2019*, SO 2019, c 7, Sch 60)

WHEREAS on October 2, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider an adjournment motion by Oscar Furtado, which included a request to keep certain documents in the adjudicative record confidential;

AND WHEREAS a portion of the hearing proceeded on a confidential basis at the request of Furtado, with the issue of what portion, if any, of the corresponding hearing transcript would be kept confidential, to be determined by the Tribunal following submissions in writing from the parties;

ON READING the written submissions of each of Furtado and Staff, and on hearing the submissions of the representatives for Furtado and of Staff;

IT IS ORDERED THAT

1. pursuant to s 2(2) of the *Tribunal Adjudicative Records Act* and rule 22(4) of the *Capital Markets Tribunal Rules of Procedure and Forms*, the portions of the Adjudicative Record Documents and the October 2, 2023 transcript as attached to this order at "Appendix A" are to be made confidential;

2. the parties shall file revised versions of the Adjudicative Record Documents, redacted in accordance with "Appendix A" of this order, by 4:30pm on December 7, 2023; and

3. only the redacted versions of the Adjudicative Record Documents and the October 2, 2023 transcript shall be available to the public.

"M. Cecilia Williams"

"Sandra Blake"

Appendix A

List of Redactions to the October 2, 2023 Transcript

- Page 10 line 26-27 the words between "treating Mr. Furtado" and "And a copy"
- Page 11 line 6 the words between "being treated for" and "by his primary"
- Page 11 line 12-13 the words between "the motion was argued" and "at that point"
- Page 11 line 13-14 the words between "and then" and "by the"
- Page 11 line 14-15 the words between "psychiatrist" and "You'll recall that"
- Page 11 line 24-25 the words between "including" and "his condition"
- Page 13 line 1 the word between "and" and "Of course"
- Page 19 line 19 the words between "including" and "significant problems"
- Page 19 line 24 the words between "time and to" and "in order to"
- Page 20 line 27 the words between "with both" and "due to legal"
- Page 21 line 1-2 the words between "Mr. Furtado's" and "score"
- Page 21 line 2 the words between "and his" and "score"
- Page 21 line 8 the words between "latest" and "score"
- Page 21 line 8 the words between "score and" and "score"
- Page 21 line 12-13 the words between "earlier" and "without much"
- Page 22 line 28 the word between "we've got" and "here"
- Page 24 line 1 the first two words
- Page 24 line 2 the first word
- Page 24 line 4 the word between "got a" and "medication"
- Page 24 line 5 the first word
- Page 24 line 11 the word between "got a" and "drug"
- Page 24 line 12 the first word

- Page 24 line 13 the word between “got another” and “drug with”
- Page 24 line 14 the last three words
- Page 24 line 15 the word between “and” and “which is”
- Page 24 line 15-16 the words between “is for” and “We see”
- Page 24 line 17-18 the words between “here is” and “with common”
- Page 24 line 20 the word between “that your” and “is worsened”
- Page 24 line 21 the word between “to those” and “you don’t”
- Page 24 line 27 the first word
- Page 25 line 4 the word between “is an” and “agent”
- Page 25 line 5-6 the words between “indicated for” and “It also”
- Page 25 line 12 the word between “He’s on” and “new drugs”
- Page 26 line 14-15 the words between “including” and “Mr. Furtado”
- Page 26 line 28 the final two words on the line
- Page 27 line 1-2 the words between “necessitating” and “If you have”
- Page 27 line 16-17 the words between “suffer from” and “She’s treated”
- Page 27 line 17-19 the words between “treated him for” and “She says”
- Page 27 line 20-21 the words following “presents with”
- Page 27 line 24 the words between “His” and “is very low”
- Page 27 line 25 the words between “often” and “during”
- Page 28 line 9 the words between “to get a” and “of his eyes”
- Page 28 line 9 the words between “The” and “was ordered”
- Page 28 line 11-12 the words between “with his” and “which has”
- Page 28 line 14 the words between “average of” and “a day”
- Page 28 line 21 both words
- Page 28 line 24 the words between “of the” and “from”
- Page 28 line 25-26 the words between “that the” and “identified”
- Page 28 line 27 the first two words
- Page 28 line 27 the final two words on the line
- Page 29 line 3 the first two words
- Page 29 line 4 the final two words on the line
- Page 50 lines 15-16 the words between “defence by” and “Again, we”
- Page 50 line 19 the word after “[inaudible]”
- Page 50 line 20 the words following “says his”
- Page 53 line 7 the first three words
- Page 53 line 18 all the words up to “And in”
- Page 53 line 21 the words between “to those” and “of the”
- Page 54 line 8 the final word on the line
- Page 56 line 8 the words between “He claims a” and “with no”
- Page 56 line 18 the words between “references” and “We’ve included”
- Page 57 line 2 the words between “experiencing” and “due to legal”
- Page 58 line 5 the words between “stress or” and “that”
- Page 58 line 7-8 the words between “from stress” and “Medications”
- Page 58 line 9 the words between “issues like” and “might make”
- Page 79 the two words after “answers” in the index
- Page 79 the word after “asking” in the index
- Page 79 the first reference to “August” in the index
- Page 79 the sixth, seventh, and eighth reference to “back” in the index

- Page 80 the word after “biggest” in the index
- Page 80 the word after “blind” in the index
- Page 80 the word after “break” in the index
- Page 80 the word after “causing” in the index
- Page 80 the word after “Cecilia” in the index
- Page 80 the second reference to “changed” in the index
- Page 80 the two words after “changed” in the index
- Page 80 the word after “choice” in the index
- Page 80 the word after “clearly” in the index
- Page 81 the word after “cross-examined” in the index
- Page 81 the word after “crystal” in the index
- Page 81 the two words after “denying” in the index
- Page 81 the word after “disconcerting” in the index
- Page 81 the word after “discussions” in the index
- Page 81 the two words after “dismissed” in the index
- Page 81 the two words after “Div” in the index
- Page 81 the word after “driving” in the index
- Page 82 the two words after “extremely” in the index
- Page 82 the word after “fourth” in the index
- Page 83 the word after “Futures” in the index
- Page 83 the word after “grants” in the index
- Page 83 the word after “great” in the index
- Page 83 the word after “grounds” in the index
- Page 83 the three words after “he’ll” in the index
- Page 83 the word after “hyperlinked” in the index
- Page 84 the word after “inquiry” in the index
- Page 84 the word after “January” in the index
- Page 84 the word after “joins” in the index
- Page 84 the word after “light” in the index
- Page 85 the first, second, fifth, twelfth, thirteenth, and fourteenth reference to “medication” in the index
- Page 85 the three words after “multiple” in the index
- Page 85 the word after “necessity” in the index
- Page 85 the word after “neither” in the index
- Page 85 the word after “Okay” in the index
- Page 86 the word after “paid” in the index
- Page 86 the word after “panel” in the index
- Page 86 the word after “pardon” in the index
- Page 86 the two words after “phase” in the index
- Page 86 the word after “precluding” in the index
- Page 86 the second reference to the word “prescribed” in the index
- Page 86 the word after “pressed” in the index
- Page 87 the two words after “restlessness” in the index
- Page 87 the word after “roll” in the index
- Page 88 the word after “says” in the index
- Page 88 the word after “scheme” in the index
- Page 88 the first reference to the word “significant” in the index
- Page 88 the fifth reference to the word “six” in the index

- Page 88 the three words after “skipping” in the index
- Page 88 the word after “snap” in the index
- Page 88 the word after “spanning” in the index
- Page 88 the two words after “step” in the index
- Page 88 the word after “streamlined” in the index
- Page 89 the word after “team” in the index
- Page 89 the third and fourth reference to “ten” in the index
- Page 89 the word after “tenets” in the index
- Page 89 the fourth reference to “three” in the index
- Page 89 the word after “Thursday” in the index
- Page 89 the word after “transcription” in the index
- Page 89 the word after “tying” in the index
- Page 90 the first reference to “upper” in the index
- Page 90 the word after “we’ve” in the index
- Page 90 the word after “willing” in the index
- Page 90 the second and third reference to “work” in the index
- Page 90 the first reference to “18” in the index

List of Redactions to Adjudicative Record Documents

Hearing Exhibit 1 – Motion Record of Oscar Furtado

Exhibit “A” to Affidavit of Carly Vande Weghe, sworn September 12, 2023

- Pages 27-28

Exhibit “B” to Affidavit of Carly Vande Weghe, sworn September 12, 2023

- Pages 30-33

Exhibit “C” to Affidavit of Carly Vande Weghe, sworn September 12, 2023

- Pages 35-38

Exhibit “D” to Affidavit of Carly Vande Weghe, sworn September 12, 2023

- Pages 40-44

Exhibit “L” to Affidavit of Carly Vande Weghe, sworn September 12, 2023

Affidavit of Oscar Furtado, sworn May 10, 2023

- Page 95 in paragraph 10 the words between “time and” and “Accordingly”

Exhibit “E” to Affidavit of Oscar Furtado, sworn May 10, 2023

- Page 122 the four lines of information, including an address, following the date and “Oscar Furtado”
- Page 123 the four lines of information, including an address, following the date and “Oscar Furtado”
- Page 123 everything following item 2
- Page 123 following item 3, the words between “Medical Issues:” and “this is worsening”
- Page 123 following item 3, the words from “1 to 3 months” to the end of the paragraph

Exhibit “X” to Affidavit of Carly Vande Weghe, sworn September 12, 2023

- Page 250 the date of birth and address details
- Page 251 the drivers license ID number, phone numbers, and email address

Exhibit “Y” to Affidavit of Carly Vande Weghe, sworn September 12, 2023

- Page 259 the address following “BAFARO has the same reported address”
- Page 259 the address following “INC has the same reported address”
- Page 260 the address following “TRUST has the same reported address”

Affidavit of Oscar Furtado, sworn September 12, 2023

- Page 345 para 16 the words between “changes were made” and “with the hope”
- Page 345 para 21 the words from “further changes” to the end of the paragraph
- Page 347 para 28 the three words following item (a)

- Page 347 para 28 item (f) the words between “of time and “in order to brief”

Affidavit of Oscar Furtado, sworn May 10, 2023

- Page 353, Page 3 of affidavit in paragraph 10 the words between “time and” and “Accordingly”

Exhibit “E” to Affidavit of Oscar Furtado, sworn May 10, 2023

- Page 380 the four lines of information, including an address, following the date and “Oscar Furtado”
- Page 381 the four lines of information, including an address, following the date and “Oscar Furtado”
- Page 381 everything following item 2
- Page 381 following item 3, the words between “Medical Issues:” and “this is worsening”
- Page 381 following item 3, the words from “1 to 3 months” to the end of the paragraph

Exhibit “C” to Affidavit of Oscar Furtado, sworn September 12, 2023

- Page 386 in the first paragraph the words from “him to suffer” to the end of the paragraph
- Page 386 in the second paragraph the words from “presents with” to the end of the paragraph

Hearing Exhibit 2 – Supplementary Motion Record of Oscar Furtado

Supplementary Affidavit of Oscar Furtado, sworn September 22, 2023

- Pages 157-158 all of paragraph 3
- Page 160 at paragraph 10 the words between “has recommended that” and “but has asked”
- Page 160 at paragraph 10 the word between “product monograph for” and “is attached”
- Page 160 at paragraph 11 the words “I am under” and “and has impacted”

Exhibit “A” to Affidavit of Oscar Furtado

- Pages 163 through 244

Exhibit “B” to Affidavit of Oscar Furtado

- Pages 246 through 328

Exhibit “C” to Affidavit of Oscar Furtado

- Pages 330 through 357

Exhibit “D” to Affidavit of Oscar Furtado

- Pages 359 through 390

Exhibit “E” to Affidavit of Oscar Furtado

- Pages 392 through 426

Exhibit “F” to Affidavit of Oscar Furtado

- Pages 428 through 479

Exhibit “G” to Affidavit of Oscar Furtado

- Pages 481 through 537

Exhibit “H” to Affidavit of Oscar Furtado

- Pages 539 through 618

Exhibit “I” to Affidavit of Oscar Furtado

- Pages 620 through 682

Exhibit “J” to Affidavit of Oscar Furtado

- Pages 684 through 707

Exhibit “K” to Affidavit of Oscar Furtado

- Page 709 the four lines of information, including an address, following the date and “Oscar Furtado”
- Page 709 the full sentence after “23rd Jan 2023”
- Page 709 the words between “since several times” and “and we have struggled”
- Page 709 the full sentence after “general outlook”
- Page 709 the rest of the sentence following “has not helped much”
- Page 709 the rest of the paragraph following “he has been suffering with”

Exhibit “L” to Affidavit to Oscar Furtado

- Pages 711 through 745

Exhibit “M” to Affidavit of Oscar Furtado

- Page 747 the words from “stress causing” to the end of the sentence

Hearing Exhibit 3 – Further Supplementary Motion Record of Oscar Furtado

Further Supplementary Affidavit of Oscar Furtado, sworn September 29, 2023

- Page 2 at para 5 the words between “to get a” and “of my eyes”
- Page 2 at para 5 the words between “eyes. The” and “was ordered at”
- Page 2 at para 5 the words between “experiencing with me” and “which has contributed”
- Page 2 at para 5 the words between “contributed to the” and “I have been experiencing”
- Page 2 at para 5 the words between “taking, on average” and “daily”
- Page 2 at para 6 the words between “and decided to” and “in an effort to”
- Page 2 at para 6 the words from “my Second Affidavit” to the end of the paragraph
- Page 2 at para 7 the words between “the results of my” and “which he had”
- Page 2 at para 7 the words between “advised me that the” and “identified a new”
- Pages 2-3 at para 7 the words between “indicating that I have” and “Dr. Shroff is investigating”
- Page 3 at para 7 the words between “Dr. Shroff has” and “and, once those”

Exhibit “A” to Affidavit of Oscar Furtado

- Pages 6 through 69

Hearing Exhibit 4 – Motion Record of Staff

Exhibit “F” to Affidavit of Michelle Spain, affirmed May 17, 2023

- Pdf page 61, the three lines of information, including address, following “Re: Oscar Furtado”
- Pdf page 61 in the 12th line of text on the page the words between “This patient was” and “on Thursday”

Exhibit “G” to Affidavit of Michelle Spain, affirmed May 17, 2023

- Pdf page 63 in the second line the words between “continue to test him” and “Please note”
- Pdf page 63 the words between “your client is” and “and estimates”
- Pdf page 65 the three lines of information, including address, following “Re: Oscar Furtado”
- Pdf page 65 the two words between “This patient was” and “on Thursday, May”
- Pdf page 65 all the words following “Additional Notes:”

Exhibit “H” to Affidavit of Michelle Spain, affirmed May 17, 2023

- Pdf page 68 the words between “your client is” and “and estimates”

Exhibit “J” to Affidavit of Michelle Spain, affirmed May 17, 2023

- Pdf page 83 at line 7 the words between “Mr. Furtado was” and “which”
- Pdf page 83 at line 8 the words between “he was” and “that”

List of Redactions in Oscar Furtado’s Moving Submissions, dated September 25, 2023

- Page 12 at para 37 the words between “including: (i)” and “(ii) significant”
- Page 13 at para 37 the words between “time and” and “in order to brief”
- Page 13 at para 38 the words between “related to stress” and “Mr. Furtado has filed”
- Page 13 at para 39 the words between “evidence disclosing” and “he is currently taking”
- Page 13 at para 40 the words after “has been seeing” to the end of the sentence
- Page 13 at para 40 the words between “treated Mr. Furtado” and “In her letter”
- Page 13 at para 40 the words following “causing him to suffer” to the end of the paragraph
- Page 14 at para 42 the words between “was referred to” and “his condition is worsening”
- Page 14 at para 42 the final word of the paragraph

- Page 14 at para 43 the words between “confirms that Mr. Furtado’s” and “have both

- Page 14 at para 43 the words between “that, although” and “we have struggled”

- Pages 41-43, all of them

List of Redactions in Staff’s Responding Submissions, dated September 28, 2023

- Page 6 at para 7 the words between “indicating he was” and “and thus could not”

- Page 7 at para 7 the two words following “believe he was”

- Page 7 at para 8 item (a) the words between “currently taking” and “which are prescribed”

- Page 7 at para 8 item (b) the words between “prescribed to reduce” and “and to reduce”

- Page 7 at para 8 item (b) the words between “and to reduce” and “There is no medical”

- Page 7 at para 8 item (b) the words between “he began experiencing” and “or how long”

- Page 8 at para 8 item (c) the words following “ailments caused by” to the end of the item

- Page 8 at para 8 item (d) the word between “unspecified dosage of” and “for an undisclosed”

- Page 8 at para 8 item (e) the words between “has been prescribed” and “he had not yet”

- Page 8 at para 8 item (e) the word between “Mr. Furtado takes” and “or at what”

- Page 8 at para 8 item (f) the words between “reports taking” and “There is no evidence”

- Page 11 at para 11 the words between “clinical assessment tools” and “Both those tools”

- Page 18 at para 29 item (b) the words between “Furtado has” and “due to legal issues”

- Page 18 at para 29 item (e) the words between “dentist outlining his” and “but not when”

- Page 18 at para 29 item (f) the words between “indicating he has” and “without information”

- Page 19

A.3.3 Mughal Asset Management Corporation et al.

IN THE MATTER OF
MUGHAL ASSET MANAGEMENT CORPORATION,
LENDLE CORPORATION AND
USMAN ASIF

File No. 2022-15

Adjudicator: Andrea Burke

November 28, 2023

ORDER

WHEREAS on November 28, 2023, the Capital Markets Tribunal held a hearing by videoconference to set a schedule for a sanctions and costs hearing in this proceeding;

ON HEARING the submissions of the representative for Staff of the Ontario Securities Commission (**Staff**), no one appearing on behalf of the respondents, and on being advised that Usman Asif, on his own behalf and on behalf of Mughal Asset Management Corporation and Lendle Corporation, consents to the schedule below;

IT IS ORDERED THAT:

1. Staff shall serve and file written evidence, if any, and submissions on sanctions and costs, by 4:30 p.m. on February 6, 2024;

2. the respondents shall serve and file written evidence, if any, and submissions on sanctions and costs, by 4:30 p.m. on February 20, 2024;

3. Staff shall serve and file reply written evidence, if any, and reply submissions on sanctions and costs, if any, by 4:30 p.m. on February 27, 2024; and

4. the hearing with respect to sanctions and costs is scheduled for March 5, 2024, at 10:00 a.m., by videoconference, or on such other date and time as may be agreed to by the parties and set by the Governance & Tribunal Secretariat.

“Andrea Burke”

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A.4
Reasons and Decisions

A.4.1 Go-To Developments Holdings Inc. et al. – Rules 22, 27, 29 of the CMT Rules of Procedure and Forms

Citation: *Go-To Developments Holdings Inc (Re)*, 2023 ONCMT 44
Date: 2023-11-24
File No. 2022-8

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

REASONS AND DECISION
(Rules 22, 27, and 29 of the *Capital Markets Tribunal Rules of Procedure and Forms*)

Adjudicators:	M. Cecilia Williams (chair of the panel) Sandra Blake	
Hearing:	By videoconference, October 2, 2023	
Appearances:	Johanna Braden Michelle Vaillancourt Braden Stapleton	For Staff of the Ontario Securities Commission
	Melissa MacKewn Dana Carson Asli Deniz Eke	For Oscar Furtado
	Ian Aversa	For the Receiver, KSV Restructuring Inc.

REASONS AND DECISION

1. OVERVIEW

[1] At a hearing before the Tribunal on October 2, 2023, we heard a motion brought by Oscar Furtado for orders:

a. adjourning the merits hearing set to commence on November 3, 2023, extending related filing dates, and extending the time to deliver and file a better witness summary;

b. requiring Staff to provide further disclosure; and

c. hearing part of the motion and filing part of the motion record confidentially.

[2] On October 5, 2023, we dismissed the motion, reserving our decision on his request for confidentiality. These are our reasons.

2. BACKGROUND

[3] This is Furtado's second motion for an adjournment. The merits hearing had been scheduled to start in August and continue in November 2023.

[4] Furtado's first motion to adjourn, brought in May 2023, was for an indefinite period based on health reasons. The panel granted the adjournment, but not indefinitely. The merits hearing was rescheduled to commence on November 3, 2023.

[5] At the final attendance prior to the start of the merits hearing, Furtado advised that he would be bringing this second motion to adjourn the merits hearing.

3. ISSUES

[6] The issues we must address are the following:

a. Should the Tribunal further adjourn the merits hearing on medical grounds?

b. Should the Tribunal adjourn the merits hearing due to late disclosure by Staff?

c. Is Staff required to provide further disclosure related to:

i. law enforcement documents and conversations;

ii. a September 2022 investigation order and future enforcement plans;

iii. Staff's forensic accountant witness, Stephanie Collins' amended witness summary?

4. ADJOURMENT MOTION

4.1 Law on Adjournments

[7] Rule 29(1) of the Tribunal's *Rules of Procedure and Forms* provides that every merits hearing shall proceed on the scheduled date unless the party requesting an adjournment satisfies the panel that there are exceptional circumstances requiring an adjournment. The standard set out in rule 29 is a "high bar" that reflects the important objective set out in rule 1, that Tribunal proceedings be conducted in a just, expeditious and cost-effective manner.[1]

4.2 Adjournment on medical grounds

[8] Furtado submits that his health has worsened since the first adjournment and he is continuing to experience health issues including significant problems with memory, concentration, and fatigue. He submits that he has had difficulty instructing his legal counsel.

[9] Furtado provided evidence from a dentist and osteopath who confirm that Furtado suffers from stress-related dental and physical ailments.

[10] Furtado also filed a list of medications he is currently taking, along with the product monograph listing the possible side effects from these medications.

[11] Furtado was granted the first adjournment, in part, to enable him to seek further treatment from a psychiatrist. He was assessed in late June 2023 by an unnamed psychiatrist, who is referred to as Dr. X, and was provided with a treatment plan. He had a number of follow-up visits in August 2023 with Dr. X and another scheduled in September 2023. However, while preparing for this motion Furtado learned that Dr. X is under supervision and review by the College of Physicians and Surgeons of Ontario. This fact, Furtado submits, has exacerbated his health issues.

[12] Despite mental health issues being his main ground for seeking an adjournment, Furtado has not filed any evidence from Dr. X who treated him for the preceding three months. Furtado advised that due to Dr. X's ongoing supervision and review by his regulator related to his knowledge, skill and judgment as a psychiatrist, he would not be relying on evidence from Dr. X in this proceeding.

[13] Instead, Furtado chooses to rely on his own affidavit evidence, which we have already referred to above, and a new letter dated September 18, 2023, from his treating family physician, Dr. Schroff.

[14] Dr. Schroff's letter states that Furtado's legal issues are affecting his mental health. The letter also provides scores from a psychiatric self-assessment, and says that Furtado's scores have increased, indicating that Furtado's condition or symptoms have worsened. Dr. Schroff refers to a letter from Dr. X and concurs with Dr. X that a timeframe of six months to recuperate is very reasonable.

[15] We find the evidence from Dr. Schroff insufficient. Psychiatric self-assessments do not provide a diagnosis or treatment plan. The reference to concurring with Dr. X is vague. We have a recommendation from Dr. X., but we are missing the basis for the recommendation. How will a six-month adjournment assist? What is the start date for the period of recuperation? It's not clear that any of Furtado's medical issues will be resolved in six months.

[16] Staff urges us to draw an adverse inference from the failure to provide the best evidence available, that being from Dr. X.

[1] *Money Gate Mortgage Investment Corporation (Re)*, 2019 ONSEC 40 (***Money Gate***) at para 54; *First Global Data Ltd (Re)*, 2022 ONCMT 23 (***First Global Data***) at para 7

[17] To refute Staff's request to draw an adverse inference, Furtado cites *Mascarenhas v. Winter,* which states "it does not always follow that because the party has access to further evidence, that an adverse inference should be drawn if that evidence is not tendered.[2]" Furtado further quotes from *Parris v Laidley* the test for drawing an adverse inference:

> Drawing adverse inferences from failure to produce evidence is discretionary. The inference should not be drawn unless it is warranted in all the circumstances. What is required is a case-specific inquiry into the circumstances including, but not only, whether there was a legitimate explanation for failing to call the witness, whether the witness was within the exclusive control of the party against whom the adverse inference is sought to be drawn, or equally available to both parties, and whether the witness has key evidence to provide or is the best person to provide the evidence in issue.[3]

[18] Furtado submits that a legitimate explanation was provided for why the psychiatrist's letter hadn't been provided on this motion, and further submits that we have the evidence of Furtado himself, and the letter from Dr. Schroff.

[19] Staff submits that applying the test set out in *Parris v Laidley*, the conclusion is that an adverse inference ought to be drawn against Furtado for failing to provide even the psychiatrist's name. Staff does not have access to the witness who would provide the best evidence of Furtado's medical condition.

[20] We note that Dr. X is still licensed and practicing and conclude that as the treating psychiatrist for the past months, he would have the best evidence concerning Furtado's medical condition. While the case law supports the drawing of an adverse inference, we decline to do so. Instead, we consider the limited evidence before us.

[21] Staff submits that none of the evidence provided by Furtado is sufficiently particularized to justify a second adjournment. To justify an adjournment, it is not sufficient to establish merely the existence of a medical condition or treatment. Rather, the evidence must detail the nature of the issue and explain why the party cannot attend. The decision-maker must be satisfied that a medical issue gives rise to a true inability to attend.[4]

[22] We are not satisfied that Furtado's physical ailments give rise to a true inability to prepare for and attend this hearing. Some of those conditions are of long duration and pre-existed the alleged misconduct. Some are of an unknown duration, for which we have no evidence. Further, we did not find it helpful to our analysis about whether Furtado was able to prepare for and attend a hearing to have a list of the potential side effects of medication that had been prescribed for him. Evidence of the side effects suffered by Furtado, and how those side effects impact his ability to prepare for and attend a hearing is required.

[23] General statements that a proceeding may cause or contribute to stress do not assist. As the Supreme Court has stated "[s]tress, anxiety and stigma may arise from any criminal trial, human rights allegation, or even a civil action…". As noted by the Superior Court of Justice in the civil context: "[m]ost physicians, if asked, once told what being examined for discovery involves, would tell you that it is likely to cause their patient stress".[5]

[24] Furtado cites *Zhang* to support the requested adjournment, which states that the required review on a motion for an adjournment based on medical evidence "should not be confined to a search for flaws in whatever evidence has been delivered."[6]

[25] Staff submits that in *Zhang* and other cases[7] that have considered adjournments or other accommodations on medical grounds, there is an underlying ailment. Here, it is the proceeding itself that appears to be the cause of most, if not all, of Furtado's mental health issues.

[26] We agree with Staff. We also distinguish *Zhang,* as in that case the Tribunal had available hospital records, specialist reports and detailed medical records. In this case, we are not combing the medical evidence in a search for flaws. We have no evidence to comb through. We have been provided some evidence of pre-existing physical ailments, a generic description of possible symptoms related to medications Furtado has been prescribed, Furtado's own evidence unsupported by independent evidence, and a vague letter from Furtado's treating family physician. The evidence is insufficient to reach the threshold of exceptional circumstances warranting a second adjournment based on medical grounds.

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2 *Mascarenhas v Winter,* 2021 BCSC 474 at para 68
3 *Parris v Laidley,* 2012 ONCA 755 at para 2
4 *McIntyre v Connolly*, 2008 CanLII 12496 (ONSC) at para 4; *Law Society of Upper Canada v Kryvenko*, 2010 ONLSHP 108 at para 11
5 *Blencoe v British Columbia (Human Rights Commission)*, 2000 SCC 44 at para 59; *Botiuk v Campbell*, 2011 ONSC 1632 at para 31
6 *Zhang (Re),* 2023 BCSECCOM 192
7 *Mohanadh v Thillainathan*, 2010 ONSC 2678 at paras 4-5, 8; *Ozerdinc Family Trust v Gowlings*, 2015 ONSC 2366 at para 6, 27, 31, 34; *Debus (Re)*, 2020 ONSEC 20 at paras 22, 25.

4.3 Adjournment on disclosure grounds

[27] Furtado submits that Staff breached its duty to make reasonably prompt disclosure of new documents that arose from an investigation order made on September 20, 2022.

[28] The new documents at issue were provided as the sixth tranche of disclosure in May 2023 and consisted of 2147 documents. The seventh and eighth tranches of disclosure in July and September 2023 contained a relatively small number of documents. In the covering letter to the May 2023 disclosure, Staff stated, "some documents relate to transactions within the material period in the Statement of Allegations, others are outside and are being disclosed out of an abundance of caution." In September 2023 Staff informed Furtado that Staff intended to rely on 600 of the new documents from the sixth disclosure tranche in the merits hearing.

[29] Furtado submits that he is unable to review and respond to this information in the short time left before the merits hearing. An adjournment – alongside a disclosure order – is an appropriate remedy where the prosecution fails to disclose in a timely manner.[8]

[30] Staff points out that Furtado has now had disclosure of the documents for at least five months and that the documents are Furtado's own financial and corporate documents. No concerns were raised at the first adjournment motion or at an attendance on July 20, 2023. In any event, Staff submits that disclosure is expected to be ongoing because the receivership related to this matter is ongoing.

[31] When considering disclosure, one must take a broad view of relevance and apply a low threshold for relevance but must also separate the wheat from the chaff.[9] Disclosure must be adequate and need not be perfect.[10]

[32] We find that Staff has discretion when making decisions about disclosure. While there may have been some delay in producing the records from the September 2022 investigation order, Furtado has had more than five months to review his own records. We do not find that there has been a delay in disclosure that amounts to exceptional circumstances warranting an adjournment.

5. DISCLOSURE MOTION

5.1 Law enforcement documents and conversations

[33] In the eighth tranche of disclosure provided to Furtado in September 2023 are documents obtained from and/or sent to the Financial Transactions and Reports Analysis Centre of Canada (**FINTRAC**).

[34] Furtado submits that the FINTRAC documents include reference to the Commission having authorized the "dissemination" of the FINTRAC documents to the RCMP. Furtado further submits that it is unlikely that there are no additional communications or documents exchanged between Staff and FINTRAC and/or the RCMP. Even if there are not, Staff should be required to confirm this. Furtado submits that these law enforcement documents are relevant, given Staff's election to disclose the FINTRAC documents even though Staff are not relying upon them at the merits hearing. Furtado further submits that this information is necessary because if he chooses to testify he needs to know if any evidence he might give could result in him incriminating himself in possible, future criminal proceedings.

[35] In response, Staff submits that it is not the Commission that is sharing its information with law enforcement. Rather, the Commission is just not forbidding FINTRAC from sharing information. The RCMP won't disclose this information to Furtado and the Commission has no obligation to make such disclosure. Investigative privilege is important and, in any event, is not relevant to this proceeding.

[36] We agree with Staff. Knowing whether FINTRAC shared information with the RCMP is not going to help in this proceeding. Any information that Staff may give cannot help with whether Furtado would incriminate himself, as it depends upon what evidence Furtado plans to give.

5.2 Evidence from the September investigation order and future enforcement plans

[37] Furtado submits that as part of its ongoing disclosure obligations, Staff should be required to confirm whether a separate and potentially overlapping proceeding may be commenced in connection with a new investigation order that was obtained in September 2022. Furtado requests the status of that investigation. This is because Furtado should not be required to defend the allegations against him in this proceeding, only to have Staff potentially commence a separate but overlapping proceeding against him based on the evidence collected pursuant to the new investigation order. Nor would

8 *R v O'Connor*, [1995] 4 SCR 411 at para 83. See also *R v McMahon*, 2013 ABPC 75 at para 20 and *College of Nurses of Ontario v Member,* 2003 CarswellOnt 10596 at Appendix A

9 *Biovail Corporation (Re)*, 2008 ONSEC 14 at para 15

10 *Agueci (Re),* 2012 ONSEC 44 at para 44

such an approach be fair to this Tribunal. Staff of the Commission is not entitled to litigate enforcement proceedings by instalment.

[38] Furtado further submits that he requires the information sought to be disclosed by Staff so that he may make informed tactical defence decisions (for example, whether he will testify, considering his Charter rights; whether he will seek to have the proceedings joined; and/or whether he will seek a stay of proceedings). These are complex legal issues requiring sufficient information to make informed decisions.

[39] Staff submits there are instances where it may be important to keep an investigation quiet. There has been new conduct since the Statement of Allegations resulting in an additional investigation order and a review of Furtado's assets. Some documents disclosed related to the transactions during the material period, while some are outside the period.

[40] Staff further submits that an investigation is not a proceeding. There is currently only one proceeding from the statement of allegations in this matter and it does not get hung up if further investigations uncover further wrongdoing. The conduct is differentiated in time. This is not a situation of double jeopardy. If in the future Furtado faces another proceeding he can bring whatever motion he wants about the appropriateness of that proceeding in that proceeding. The test remains relevance. The status of the other investigation and where it may be going is not relevant to this proceeding.

[41] We rely on *Cormark Securities Inc. (Re)*[11] to conclude that Furtado is not entitled to receive all the evidence arising from the September 2022 investigation order. In *Cormark,* the Tribunal rejected a request from respondents to order disclosure of all materials obtained under a s 11 order. Information obtained in an investigation is not automatically relevant to the allegations. The disclosure standard remains one of relevance.

[42] Similarly, we conclude that there is no obligation on Staff to inform Furtado of future enforcement plans. The Statement of Allegations frames this proceeding. It has not been amended. Furtado knows the case he must meet and any concerns he has raised in this motion are speculative.

5.3 Update to Collins witness summary

[43] Stephanie Collins is a Senior Forensic Accountant at the Commission. An amended witness summary was filed on September 19, 2023. Furtado submits that the amended Collins witness summary significantly expands the timeframe of Collins' existing financial analysis and adds new analysis of a further account held by Furtado. However, it does not include any information about Collins' findings and the anticipated use of such evidence in relation to the allegations Staff seek to prove. Furtado therefore requests that the witness summary be amended so that Furtado can assess what, if any, additional evidence, he wishes to present in his defence of this matter.

[44] Staff submits that while the amended witness summary has been updated to the time the receiver was put in place, Staff cannot change the scope of the proceeding through disclosure. In any event, a review of the amendments do not reveal anything "earth shattering". The flow of funds to investors has been updated but no changes have been made to the substance of the evidence which is already outlined in the witness summary. Staff submits that if Furtado is concerned that the disclosure is outside the material time, such an argument can be made at the merits hearing.

[45] We find the amended witness summary meets the requirements of rule 27(3)(b), which is to provide the substance of the witness's evidence. The witness is providing a chart showing the source and use of funds from various accounts. As an accountant, this summary of the flow of funds is the witness's findings. The witness cannot make legal conclusions about the flow of funds.

6. CONFIDENTIALITY REQUEST

[46] Furtado sought to have part of the hearing conducted in camera to protect his personal medical information and to treat that same information as confidential in the written record.

[47] Staff did not oppose having the issue dealing with Furtado's adjournment request on medical grounds being held in a non-public hearing, but that the transcript of the submissions be made public subject to submissions to redact portions of it.

[48] Rule 22(2) provides that the Tribunal may order that a hearing or part of a hearing be held without the public present if it appears that avoiding disclosure of intimate financial or personal matters or other matters during the hearing outweighs adherence to the principle that hearings should be open to the public.

[49] Further, rule 22(4) provides that a panel may order that an adjudicative record be kept confidential if it determines that avoiding disclosure of intimate financial or personal matters or other matters outweighs adherence to the principle that

[11] *Cormark Securities Inc (Re)*, 2023 ONCMT 23 at paras 31, 35

adjudicative records should be open to the public. The test for determining whether portions of the adjudicative record should remain confidential is the same as for determining if a hearing should be held in confidence.

[50] The Tribunal's *Practice Guideline* states that personal information relevant to the resolution of the matter is generally not treated as confidential.

[51] Court and tribunal proceedings are presumptively open to the public and court openness is protected by the constitutional guarantee of freedom of expression. The test for discretionary limits on court openness is directed at maintaining the presumption while offering sufficient flexibility to protect other public interests that may arise.[12]

[52] Applying rules 22(2) and 22(4), and considering the case law, we proceeded in the same manner as an earlier adjournment motion in this hearing.[13] We agreed to hear the portion of the hearing dealing with an adjournment request on medical grounds in a non-public hearing and that the parties propose redactions to transcript.

[53] Regarding redactions to the materials filed confidentially in relation to this motion and to the transcript of the confidential portion of the hearing, we rely on the conclusions reached by the Tribunal in *Go-To Developments Holdings Inc (Re).*[14] Where the health of a party is central to the issues in a proceeding before the Tribunal, as it is to the adjournment portion of this motion, there needs to be sufficient information available to the public so it can understand the issues and the basis for the panel's decision.[15]

[54] Consistent with the earlier *Go-To Developments Holdings Inc.* decision, as well as recent decisions issued by the Tribunal in *Odorico (Re)*[16] and *Ali (Re)*[17], the appropriate balance between the public interest in preserving Furtado's dignity and the public interest in open hearings is achieved, in our view, by redacting from the documents in question language that deals with specific symptoms, diagnosis and treatment, the public disclosure of which could reasonably be considered to result in an affront to his dignity.[18]

[55] Furtado also proposes that we redact certain materials attached as Exhibits to their Motion Record that do not deal with Furtado's health. These materials include s 11 orders from Staff's investigation and indices, lists, and documents from Staff's disclosure to Furtado. Neither party made submissions about redacting these materials. We conclude that they should be redacted. Redacting the s 11 orders is consistent with the fact that such orders are confidential until a hearing is begun. Staff's disclosure to a respondent is intended to allow the respondent to make full answer and defence to Staff's allegations. Not all the material in Staff's disclosure becomes part of either Staff's or a respondent's case in a merits hearing. Redacting those materials does not, in our view, infringe on the open court principle.

7. CONCLUSION

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

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

b. the motion requiring Staff to provide further disclosure is dismissed, and the documents filed in connection that the disclosure motion shall be redacted as indicated in Schedule A to the order; and

c. the documents filed in connection with the adjournment motion and the transcript of the confidential portion of the hearing shall be redacted as indicated in Schedule A to the order.

Dated at Toronto this 24th day of November, 2023

"M. Cecilia Williams"

"Sandra Blake"

12 *Sherman Estate v Donovan*, 2021 SCC 25 at para 30 (***Sherman Estate***)
13 *Go-To Developments Holdings Inc (Re)*, 2023 ONCMT 35 (***Go-To Developments Adjournment Motion #1***)
14 *Go-To Developments Adjournment Motion #1*
15 *Go-To Developments Adjournment Motion #1* at para 51
16 2023 ONCMT 10
17 2023 ONCMT 30
18 *Sherman Estate* at para 30

B. Ontario Securities Commission

B.2
Orders

B.2.1 Canaccord Genuity G Ventures Corp. – s. 1(6) of the OBCA

Headnote

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

Statutes Cited

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

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

AND

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

ORDER
(Subsection 1(6) of the OBCA)

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

AND UPON the Applicant representing to the Commission that:

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

2. The registered and head office of the Applicant is located at 40 Temperance St., Suite 2100, Toronto, Ontario, M5H 0B4, Canada;

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

4. On November 7, 2023, the Applicant was granted an order (the **Reporting Issuer Order**) pursuant to subclause 1(10)(a)(ii) of the *Securities Act* (Ontario) that it is not a reporting issuer in Ontario and is not a reporting issuer or the equivalent in any other jurisdiction of Canada in accordance with National Policy 11-206 *Process for Cease to be a Reporting Issuer Application*; and

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

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

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

DATED this 21st, day of November, 2023.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0529

B.2.2 Predictiv AI Inc.

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 failed to file certain continuous disclosure materials required by Ontario 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., s. 144.
National Policy 11-207 Failure-to-File Cease Trade Orders and Revocations in Multiple Jurisdictions.

November 23, 2023

IN THE MATTER OF
PREDICTIV AI INC.

REVOCATION ORDER

UNDER THE SECURITIES LEGISLATION OF
ONTARIO
(Legislation)

Background

1. Predictiv AI Inc. (the **Issuer**) is subject to a failure-to-file cease trade order (the **FFCTO**) issued by the Ontario Securities Commission (the **Principal Regulator**) on June 6, 2022.

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

3. The Issuer has filed the continuous disclosure documents required under the Legislation.

Interpretation

Terms defined in National Instrument 14-101 *Definitions* and MI 11-107 have the same meaning if used in this order, unless otherwise defined.

Representations

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

a) The Issuer was formed under the laws of the province of Alberta on September 24, 1994, under the name 626359 Alberta Ltd., filing articles of amendment to change its name to "Consolitech Corp." on February 3, 1995. On May 30, 1995, the Issuer filed articles of amendment to remove its private company restrictions. On January 30, 2001, the Issuer again filed articles of amendment to, amongst other things, change its name from "Consolitech Invest Corp." to "HTN Inc.". The Issuer was continued under the laws of the province of Ontario on April 27, 2015, and concurrently amended its articles of incorporation to change its name to "Interest of Things Inc.". On September 1, 2020, the Issuer again filed articles of amendment, changing its name from "Interest of Things Inc." to "Predictiv AI Inc.".

b) The Issuer's head office is located at 20 Bay Street, 11th Floor, Toronto, Ontario, Canada, M5J 2N8.

c) The Issuer is a reporting issuer in the jurisdictions of British Columbia, Alberta and Ontario (the **Reporting Jurisdictions**). The Issuer is not a reporting issuer in any other jurisdiction in Canada.

d) The Issuer's authorized share capital consists of an unlimited number of common shares, an unlimited number of first preferred shares and an unlimited number of second preferred shares. As of the date hereof, 93,500,616 common shares are issued and outstanding.

e) The Issuer's common shares are listed for trading on the TSX Venture Exchange (**TSXV**) under the symbol "PAI" as well as over-the-counter markets under the symbol "INOTF". The common shares remain suspended on the TSXV and OTC as of the date hereof. The common shares are not listed, quoted or traded on any other exchange, marketplace or other facility for bringing together buyers and sellers in Canada or elsewhere.

f) The Issuer intends to apply to the TSXV to lift the suspension of its common shares as soon as the FFCTO is revoked.

g) The FFCTO was issued by the Principal Regulator as a result of the Issuer's failure to file the following documents within the required timeframe (collectively, the **Initial Required Filings**):

i. annual audited financial statements for the year ended January 31, 2022, as required under National Instrument 51-102 Continuous Disclosure Obligations (**NI 51-102**);

ii. management's discussion and analysis (**MD&A**) relating to the annual audited financial statements for the year ended January 31, 2022, as required under NI 51-102; and

iii. certifications of the annual filings for the year ended January 31, 2022, as required by National Instrument 52-109 *Certification of Disclosure in Issuers' Annual and Interim Filings* (**NI 52-109**).

h) Since the issuance of the FFCTO, the Issuer has also failed to file the following documents within the required timeframe (collectively, the **Additional Required Filings**):

i. interim financial statements and related MD&A for the periods ended April 30, 2022, July 31, 2022, and October 31, 2022, respectively, as required under NI 51-102; and

ii. certifications of the interim financial statements and MD&A noted above as required by NI 52-109.

i) The Issuer has now filed all outstanding continuous disclosure documents with the Principal Regulator, including the Initial Required Filings and the Additional Required Filings.

j) The Issuer is: (i) up to date with all of its continuous disclosure obligations; (ii) not in default of any requirements under applicable securities legislation or the rules and regulations made pursuant thereto in any of the Reporting Jurisdictions, except for the existence of the FFCTO; and (iii) not in default of any of its obligations under the FFCTO.

k) The Issuer's profiles on the System for Electronic Document Analysis and Retrieval+ (**SEDAR+**) and the System for Electronic Disclosure by Insiders (**SEDI**) are up to date.

l) The Issuer has paid all outstanding activity, participating and late filing fees that are required to be paid and has filed all forms associated with such payments.

m) The Issuer is not considering, nor is it involved in any discussions relating to a reverse take-over, merger, amalgamation or other form of combination or transaction similar to any of the foregoing.

n) The Issuer has provided a written undertaking to hold an annual meeting within three months after the date on which the FFCTO is revoked and will prepare a management information circular in accordance with Form 51-102F5 Information Circular, which will be sent to shareholders and filed on SEDAR+ in accordance with NI 51-102.

o) Since the issuance of the FFCTO, there have not been any material changes in the business, operations or affairs of the Issuer that have not been disclosed by news release and/or material change report filed on SEDAR+.

p) Upon the issuance of this revocation order the Issuer will issue a press release announcing the revocation of the FFCTO, and concurrently file the press release on SEDAR+.

Order

The Principal Regulator is satisfied that the order to revoke the FFCTO 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 FFCTO is revoked.

DATED in Toronto this 23rd day of November, 2023.

"Lina Creta"
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0331

B.2.3 CWC Energy Services Corp.

Headnote

National Policy 11-206 Process for Cease to be a Reporting Issuer – issuer deemed to be no longer a reporting issuer under securities legislation.

Applicable Legislative Provisions

Securities Act, R.S.A. 2000, c. S-4, s. 153.
Securities Act, R.S.O. 1990, c. S.5, as am., s. 1(10)(a)(ii).

Citation: *Re CWC Energy Services Corp.*, 2023 ABASC 154

November 28, 2023

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

AND

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

AND

IN THE MATTER OF
CWC ENERGY SERVICES CORP.
(the Filer)

ORDER

Background

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 Alberta 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 British Columbia, Saskatchewan, Manitoba, New Brunswick, Prince Edward Island, Nova Scotia and Newfoundland and Labrador; 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 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

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.

"Timothy Robson"
Manager, Legal, Corporate Finance
Alberta Securities Commission

OSC File #: 2023/0558

B.3
Reasons and Decisions

B.3.1 Fidelity Advantage Bitcoin ETF et al.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief granted from subsection 6.1(1) and section 6.2 of NI 81-102 to permit Fidelity Clearing Canada ULC (FCC), a registered investment dealer, to act as custodian or sub-custodian of the crypto assets and related cash of a representative fund and other existing or future investment funds that invest primarily in crypto assets – Relief granted from subsection 6.1(1) to permit funds to appoint more than one custodian – Relief granted from paragraph 6.1(3)(b) and section 6.3 to permit FCC to appoint Fidelity Digital Asset Services, LLC (FDAS), a limited liability trust company organized under New York law, to act as sub-custodian of the funds' crypto assets outside of Canada – FCC does not qualify to act as a custodian or a sub-custodian of the funds under section 6.2 of NI 81-102 because it is not an affiliate of a bank or trust company – FDAS is not qualified to act as sub-custodian under section 6.3 of NI 81-102 because it does not satisfy the equity requirement – Funds may appoint both FCC to custody crypto assets and another custodian to custody portfolio assets that FCC is not permitted to custody – Relief granted subject to certain conditions, including that FCC provide annually to the principal regulator a current list of the funds that are relying on the decision – Decision expires in two years – National Instrument 81-102 Investment Funds.

Applicable Legislative Provisions

National Instrument 81-102 Investment Funds, ss. 6.1(1), 6.2, 6.1(3)(b), 6.3 and 19.1.

November 16, 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
THE FUNDS
(as defined below)

AND

IN THE MATTER OF
FIDELITY ADVANTAGE BITCOIN ETF
(the Representative Fund)

AND

IN THE MATTER OF
FIDELITY INVESTMENTS CANADA ULC
(the Representative Manager)

AND

IN THE MATTER OF
FIDELITY CLEARING CANADA ULC
(FCC)
(collectively, the Filers)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filers for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) for an exemption pursuant to section 19.1 of National Instrument 81-102 *Investment Funds* (**NI 81-102**) from:

(a) subsection 6.1(1) of NI 81-102 to permit (i) the Crypto Assets (as defined below) and the Related Cash (as defined below) of the Funds to be held under the custodianship of FCC and (ii) the Funds to appoint more than one custodian;

(b) clause 6.1(3)(b) of NI 81-102, to permit FDAS (as defined below), which is not a person or company described in sections 6.2 or 6.3 of NI 81-102, to be appointed as a sub-custodian of the Funds to hold the Funds' Crypto Assets;

(c) section 6.2 of NI 81-102 to permit FCC to be appointed as custodian or a sub-custodian of the Funds to hold the Funds' Crypto Assets and Related Cash in Canada; and

(d) section 6.3 of NI 81-102 to permit FDAS to be appointed as a sub-custodian of the Funds to hold the Funds' Crypto Assets outside of Canada.

(collectively, the **Requested Relief**).

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

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

(f) the Filers have provided notice that section 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each other province and territory in Canada (together with Ontario, the **Jurisdictions**).

Interpretation

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

Bank means a bank listed in Schedule I, II or III of the *Bank Act* (Canada).

CIRO means the Canadian Investment Regulatory Organization.

Crypto Assets means bitcoin, ether and anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token that itself is not a security or derivative.

Crypto Contract means a contract or instrument for the purchase, sale or delivery of a Crypto Asset.

FCC Digital Assets Custody Account means the portion of FDAS' books and records system that records the amount of Crypto Assets held by FDAS in the name of FCC on behalf of its clients.

FDAS means Fidelity Digital Asset Services, LLC.

FDAS Service means the service provided by FDAS comprised of the custody of Crypto Assets and facilitating the purchase, sale and settlement of trades involving Crypto Assets for its clients.

FDAS Wallets means the FDAS omnibus digital wallets holding FDAS clients' Crypto Assets.

Funds means the Representative Fund and each of the other public investment funds now, or in the future, that has appointed, or will appoint, FCC to act as custodian or a sub-custodian under NI 81-102 that holds, or intends to hold, primarily Crypto Assets in its investment portfolio and that is, or will be, managed by a Manager.

Managers means the Representative Manager and each of the investment fund managers of the Funds.

Related Cash means the Fund's cash that is required to purchase Crypto Assets or that is received from the sale of Crypto Assets.

Trust Company means a trust company that is incorporated under the laws of Canada or a Jurisdiction, that is licensed or registered under the laws of Canada or a Jurisdiction, and that has equity, as reported in its most recent audited financial statements, of not less than $10,000,000.

Representations

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

The Managers

1. The Representative Manager is a corporation amalgamated under the laws of the Province of Alberta with its head office located in Toronto, Ontario.

2. The Representative Manager is registered as an investment fund manager in Ontario, Québec and Newfoundland and Labrador, as a portfolio manager in each of the Jurisdictions, as a commodity trading manager in Ontario and as a mutual fund dealer in each of the Jurisdictions.

3. The Representative Manager is the trustee, manager and portfolio adviser of the Representative Fund.

4. The Representative Manager is part of the Fidelity group of companies known globally as Fidelity Investments.

5. Each Manager has been, or will be, formed and organized under the laws of Canada or a Jurisdiction. Each Manager is, or will be, registered under the securities legislation of one or more of the Jurisdictions in such registration categories as are necessary to carry on its business. Each Manager is, or will be, the investment fund manager of one or more of the Funds.

The Funds

6. The Representative Fund is an exchange-traded mutual fund established under the laws of Ontario that was started on November 30, 2021. The units of the Representative Fund are qualified for distribution on a continuous basis pursuant to a long form prospectus filed in accordance with the securities legislation of each Jurisdiction.

7. The investment objective of the Representative Fund is to aim to invest in bitcoin.

8. Each Fund is, or will be, an investment fund established under the laws of Canada or a Jurisdiction. The securities of each Fund are, or will be, qualified pursuant to a prospectus or a simplified prospectus, as applicable, that has been prepared and filed under the securities legislation of one or more Jurisdictions such that the Fund will be a reporting issuer under the securities legislation in one or more of the Jurisdictions.

9. The investment objective and/or strategies of each Fund specifies, or will specify, that the Fund invests, or will invest, primarily in one or more Crypto Assets. The investment by each Fund in each Crypto Asset is, or will be, made in accordance with the securities legislation of each applicable Jurisdiction or in accordance with an exemption granted by Canadian securities regulatory authorities. Each Fund's investments in one or more Crypto Assets are, or will be, as described in the prospectus or simplified prospectus of the Fund.

FCC

10. FCC is registered as an investment dealer in each of the Jurisdictions, a futures commission merchant in Ontario, a dealer (futures commission merchant) in Manitoba and a derivatives dealer in Québec. As an investment dealer, FCC is a member of CIRO. FCC is also approved by CIRO to act as a carrying broker.

11. The head office of FCC is located in Toronto, Ontario.

12. FCC is part of the Fidelity group of companies known globally as Fidelity Investments.

13. Each of FCC, the Representative Manager and the Representative Fund is not in default of securities legislation in any Jurisdiction.

FDAS

14. FDAS is a limited liability trust company organized under New York law authorized pursuant to Section 102-a of the New York Banking Law to engage in all activities described in Sections 96 and 100 of the New York Banking Law, with the exception of accepting deposits and making loans (other than pursuant to the exercise of its fiduciary powers). FDAS provides custody and trade execution services for digital assets. As a New York State-chartered trust company, FDAS is regulated by the New York State Department of Financial Services. In addition, FDAS is registered as a "money services business" with Financial Crimes Enforcement Network, a bureau of the U.S. Department of the Treasury. FDAS is not registered in any capacity in Canada.

15. FDAS does not have an office in Canada.

16. FDAS is also part of the Fidelity group of companies known globally as Fidelity Investments.

Appointment of FCC as Custodian or Sub-Custodian

17. FCC does not qualify to act as a custodian or a sub-custodian of the Funds under section 6.2 of NI 81-102 because it is not an affiliate of a Bank or a Trust Company.

18. FCC has equity, as reported in its most recent audited financial statements, well in excess of $10,000,000.

19. FCC is offering the Fund two new services: the custody of Crypto Assets and the ability to enter into Crypto Contracts with FCC, which services include the delivery by FCC to the Fund of Crypto Asset account statements and trade confirmations in compliance with CIRO rules.

20. FCC has entered, or will enter, into a strategic relationship with FDAS to sub-custody the Crypto Assets of its clients, including the Funds, and to permit FCC to fulfill its obligations to its clients including the Funds, by permitting FCC to purchase and sell Crypto Assets through FDAS.

21. In order to permit purchases of Crypto Assets by a Fund to be implemented immediately following receipt of purchase instructions, FCC requires that each purchase of Crypto Assets be prefunded, with the cash held by FCC in accordance with applicable CIRO rules.

22. Given FCC's requirements, including the need to prefund the purchase of Crypto Assets by a Fund, FCC, as custodian or sub-custodian needs to have access to the Fund's cash. If FCC cannot custody or sub-custody the cash held by a Fund, then a Fund will not be able to purchase Crypto Assets from FCC.

23. The Representative Manager would like the Representative Fund to be able to access fully the services offered by FCC and, therefore, would like to appoint FCC to act as the custodian or a sub-custodian of the Crypto Assets and the Related Cash for the Representative Fund. Each Manager would, or will, also like to appoint FCC to act as the custodian or a sub-custodian of the Crypto Assets and the Related Cash for the applicable Fund.

24. FCC will act as the custodian or sub-custodian of the Crypto Assets and the Related Cash for the Funds pursuant to agreements (collectively, the **Fund Custodian Agreements**) that comply with all of the requirements in Part 6 of NI 81-102, other than the matters covered in the Requested Relief.

25. FCC is required to retain FDAS as its sub-custodian for a Fund's Crypto Assets because FCC does not currently operate a crypto asset custody solution.

Appointment of FDAS as Sub-Custodian

26. FCC will appoint FDAS to be a sub-custodian to FCC and to hold each Fund's Crypto Assets pursuant to a custodial services agreement entered into between FCC and FDAS (the **Custodial Services Agreement**). Each Manager, on behalf of each Fund, will provide written consent to such appointment. The Custodial Services Agreement will comply with the requirements of Part 6 of NI 81-102, other than the matters covered in the Requested Relief.

27. Other than the equity requirement of section 6.3 of NI 81-102, FDAS satisfies the criteria of a sub-custodian under NI 81-102.

28. FCC and FDAS operate independently of each other and have different directors, officers and employees. The sub-custody services are performed by FDAS's personnel, who are not employees, contractors, agents or officers of FCC.

29. While FDAS will provide sub-custody services for Crypto Assets to FCC on behalf of the Funds, FDAS will not have a contractual relationship with the Funds and the only direct interaction that FDAS will have with the Funds will relate solely to the actual transfer of Crypto Assets for custody purposes, as described below.

30. FDAS operates one or more custody accounts, or FDAS Wallets, for the purpose of holding FDAS clients' Crypto Assets. Pursuant to the Custodial Services Agreement, FDAS will not be permitted to pledge, re-hypothecate or otherwise use any Crypto Assets held as sub-custodian for FCC in the course of its business.

31. FDAS has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as sub-custodian.

32. If a Fund decides to deposit Crypto Assets for custody, the Fund will contact FCC in order to request, and receive, deposit instructions. FCC will then request the applicable deposit instruction from FDAS. FDAS will generate the deposit instruction and will communicate this instruction to FCC, which FCC then makes available to the Fund. The Fund will then transfer the Crypto Assets to the FDAS Wallets in accordance with the FDAS deposit instruction provided to the

Fund by FCC. Upon appropriate confirmation of the deposit by FDAS, FDAS will notify FCC of the updated balance in the FCC Digital Assets Custody Account, and FCC will record the Fund's deposit transaction in its books and records, for display back to the Fund.

33. If a Fund decides to withdraw Crypto Assets from custody, the Fund will contact FCC to initiate a withdrawal transaction by indicating the type, quantity and destination instruction for the Crypto Assets. FCC will relay that information to FDAS to initiate a withdrawal transaction. FDAS will promptly debit the Crypto Asset balance in the FCC Digital Assets Custody Account and will process the withdrawal transaction pursuant to the terms agreed to between FDAS and FCC and in accordance with the instructions provided to FCC by the Fund and to FDAS by FCC. FDAS will provide transaction confirmation to FCC and, in turn, FCC will reflect the Fund's transaction on its books and records, for display back to the Fund.

34. FCC will maintain books and records that will show, among other things, as at the end of each business day, the allocation to each Fund of the Crypto Assets recorded in the FCC Digital Assets Custody Account. FCC and FDAS will perform reconciliations of all relevant accounts on each business day.

35. In order to meet the Crypto Assets custody needs of the Funds and in considering the options available to the Funds for the custody of their Crypto Assets, the appointment by FCC of FDAS as its sub-custodian in respect of the Crypto Assets owned by the Funds is the most efficient and cost-effective means of custodying the Funds' Crypto Assets and represents an operational and custodial solution for the Funds that minimizes risk.

36. Each of the Representative Manager, each Manager and FCC believes that FDAS has the resources and experience required, and is the appropriate sub-custodian for, the applicable Fund's Crypto Assets because FDAS is experienced in providing custodial services for Crypto Assets to investment funds and other investors, is a regulated trust company in New York and is part of the global Fidelity group of companies.

37. FCC has obtained exemptive relief that allows it to retain FDAS as custodian in connection with the custody of the Crypto Assets held by FCC's clients that are not investment funds subject to NI 81-102.

Custodial Arrangements

38. The Crypto Assets sub-custodied by FDAS for a Fund will be held by FDAS in the FDAS Wallets and treated as fungible with the Crypto Assets owned by other custody clients of FDAS. FDAS' books and records system will record the amount of Crypto Assets held by FDAS in the name of FCC on behalf of FCC's clients, including each Fund, which record is referred to as the "FCC Digital Assets Custody Account".

39. FDAS manages all private keys associated with the Crypto Assets held by a Fund through the FDAS Service.

40. The Crypto Assets custodied by FDAS in the FDAS Wallets are primarily held in an offline storage system used by FDAS in connection with the storage or maintenance of Crypto Assets.

41. Under the Custodial Services Agreement, all instructions (**Instructions**) regarding the transfer or withdrawal of any Crypto Asset of a Fund custodied by FDAS will originate only from FCC and will be made through FDAS' electronic or other communications platform or infrastructure that forms part of the FDAS Service.

42. FCC will not issue an Instruction to FDAS unless it is directed by the Manager and the Fund, in the form specified in the applicable Fund Custodian Agreement.

43. Each of the Representative Manager, each Manager and FCC believes that the Fund Custodian Agreement that it will enter into is consistent with industry practice. FCC believes that the Custodial Services Agreement and the custodial arrangements between FCC and FDAS in connection with a Fund's Crypto Assets are consistent with industry practice.

Supervision of FCC and FDAS

44. The applicable Manager is responsible for oversight of the work performed by FCC relating to the custody of the Crypto Assets and Related Cash of a Fund. In this regard, each Manager will oversee FCC, including, through FCC, the custodial functions that are performed by FDAS as sub-custodian, and will conduct ongoing reviews of the quality of FCC's services. Each Manager will have the same access to the records of FCC as it would if the Manager itself performed the activities and maintained the records.

45. FCC is responsible for oversight of FDAS, in accordance with its standard of care, relating to the custody of the Crypto Assets of each Fund. FCC will have the same access to the records of FDAS as it would if FCC itself performed the activities and maintained the records.

46. The relationship between FCC and FDAS will be primarily one whereby FCC (a) is responsible for oversight of the work performed by FDAS and (b) accesses FDAS' platform for the purposes of custodying a Fund's Crypto Assets. FDAS will be appointed the sub-custodian of each Fund, pursuant to a written agreement between FCC and FDAS that complies with the requirements of Part 6 of NI 81-102, other than the matters covered in the Requested Relief. FCC will be responsible for ensuring that, with regard to FDAS, adequate safeguards are in place, including, in the experience and judgment of FCC, satisfactory insurance arrangements.

47. Under the relevant Fund Custodian Agreement, FCC is required to use reasonable care in the selection and monitoring of sub-custodians. Pursuant to this obligation, FCC has engaged in, and on a periodic basis (at least every two years) thereafter, will engage in a due diligence review of FDAS to satisfy itself as to the continuing appropriateness of using FDAS as sub-custodian of the Funds' Crypto Assets. This due diligence exercise will include a review of the operational aspects of FDAS' custody platform and any change to those operations since FCC's last review, including a review of the electronic platform, procedures, and records, an analysis of FDAS' most recent financial statements to determine its creditworthiness, confirmation of FDAS' insurance coverage and any change to either the coverage or the deductibles, a review of any regulatory filings, audits or investigations, and a review of any litigation, any incident report, and any change to its business continuity plan. Each Fund will rely upon FCC to satisfy itself as to the appropriateness of the use or continued use of FDAS as a sub-custodian of each Fund's Crypto Assets.

48. FDAS has obtained SOC 1 Type 2 and SOC 2 Type 2 examination reports of its internal controls. FCC has conducted due diligence on FDAS, including a review of the SOC 1 Type 2 and SOC 2 Type 2 examination reports, and has not identified any material concern.

Audit Rights

49. In relation to each Fund, the sub-custodial activities of FDAS will be limited to holding the Fund's Crypto Assets.

50. Under the Custodial Services Agreement, FCC and FDAS will perform reconciliations on each business day regarding the Crypto Assets held by FDAS for FCC on behalf of its clients.

51. Each Fund will have the right to have its auditor subject the Fund's Crypto Assets to audit procedures through FCC and FDAS.

Insurance

52. FCC's ability to recover from FDAS is not contingent upon FDAS' ability to claim on its own insurance.

53. Each Manager believes that the insurance carried by FCC and the insurance carried by FDAS provides each Fund with such protection in the event of loss or theft of the Fund's Crypto Assets custodied at FDAS that is consistent with the protection afforded by other custodians that store Crypto Assets commercially and is sufficient.

54. FDAS has confirmed that it has arranged for insurance coverage in respect of any Crypto Assets held by FDAS in amounts that FDAS deems appropriate in its experience and judgment, acting reasonably. FCC has discussed with FDAS the level of insurance coverage obtained by FDAS, and the risks insured against by FDAS, and believes that the level of insurance is appropriate under current market conditions.

55. Each of FCC and FDAS is required to ensure that its own insurance coverage is in an amount that it deems appropriate.

Liability and Standard of Care

56. Where FCC acts as custodian, it shall indemnify and hold harmless each Fund in respect of all direct loss, damage or expense (a **Loss**) arising out of any negligence, willful misconduct, fraud, lack of good faith or breach of the standard of care by FCC in respect of the services contemplated under the Fund Custodian Agreement. Where FCC acts as sub-custodian, it shall indemnify and hold harmless the custodian of the Fund in accordance with the terms of the Fund Custodian Agreement between such custodian and FCC. FCC has the right under the Custodial Services Agreement to seek recourse against FDAS in the event such Loss is as a result of a failure by FDAS to comply with its standard of care, subject to the limitations of liability set out in the Custodial Services Agreement.

57. Pursuant to each Fund Custodian Agreement, FCC has agreed to exercise (i) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances or (ii) at least the same degree of care as it exercises with respect to its own property of a similar kind if this is a higher degree of care than the degree of care described in (i) hereto.

58. Pursuant to the Custodial Services Agreement, FDAS has agreed to exercise (i) the degree of care, diligence and skill that a reasonably prudent person would exercise in the circumstances or (ii) at least the same degree of care as it exercises with respect to its own property of a similar kind if this is a higher degree of care than the degree of care

described in (i) hereto. FCC has satisfied itself that the degree of care to which FDAS is subject under the Custodial Services Agreement is no less than the degree of care to which FCC is subject under each Fund Custodian Agreement.

59. Upon FDAS sending a confirmation of deposit to FCC, which confirmation of deposit will be sent as soon as commercially reasonable following receipt, FDAS's liability to FCC will commence with respect to the applicable Crypto Assets deposited for custody, and FDAS will bear all risk of loss to the Crypto Assets owned by a Fund in FDAS's custody, subject to certain limitations, including losses based on events beyond FDAS' control, losses resulting from actions taken by FDAS acting on instructions that it believed to have been authorized, and losses caused by another service provider of FDAS provided that the appointment of such service provider was made in accordance with FDAS' standard of care.

60. Each Fund will not be responsible for any loss or damage to the Fund arising out of any breach of standard of care by FCC or FDAS.

61. Neither FCC nor FDAS is entitled to an indemnity from a Fund in the event that either FCC or FDAS breaches its standard of care.

Termination and Changes to the Custodial Arrangements

62. FCC or FDAS, as the case may be, may terminate the Custodial Services Agreement by giving sixty days' prior written notice to the other party, or such greater period of time as may be reasonably necessary for FCC to find a suitable sub-custodian using its best efforts. In addition, either party may terminate the agreement immediately if the other party (a) commits a material breach that is not remedied within a specified period of time or (b) is dissolved, becomes insolvent, enters into liquidation, is declared bankrupt, a receiver or administrator is appointed over all or a substantial part of its assets or enters into an arrangement with its creditors.

63. FDAS may immediately terminate the Custodial Services Agreement if continuing to provide the services under the agreement would result in the violation of any law, if any of FCC's representations cease to be true or if FCC has acted in a manner that could have a material adverse impact or reflection on FDAS' reputation.

64. FCC believes that the obligation of FDAS to hold a Fund's Crypto Assets in accordance with the terms of the Custodial Services Agreement is material and anticipates that it would terminate FDAS as sub-custodian if FDAS breaches this obligation and does not cure such breach within seven days of FCC giving written notice to FDAS of such breach. Prior to terminating the sub-custodial relationship with FDAS, FCC or the Fund will appoint a replacement sub-custodian for Crypto Assets that complies with the requirements under NI 81-102.

Appointment of Two Custodians

65. The Funds may hold portfolio assets that FCC is not permitted to custody. While FCC may be appointed as sub-custodian of a Fund, that Fund's custodian may not want to engage in a business line that involves Crypto Assets. In addition, it may be operationally challenging for a custodian to appoint sub-custodians that are not part of that custodian's existing custodial network.

66. Each Manager would like the flexibility for each Fund to engage both FCC and another custodian as custodian, provided that the other custodian is qualified to act as a custodian under section 6.2 of NI 81-102. This will provide flexibility for each Manager to appoint custodians for the Funds based on the custodian's experience and operational capabilities.

67. FCC's and the other custodian's responsibility for the custody of an applicable Fund's assets will apply only to the assets held by each such custodian on behalf of the Fund (the **Relevant Assets**). The custodial arrangements between the applicable Fund and each such custodian will comply with the requirements of Part 6 of NI 81-102, subject to this decision and any other applicable exemptive relief.

68. Any appointment of two custodians should have no impact on the safety of the portfolio assets of the applicable Funds while enhancing the ability of the Funds to use experienced custodians for the Relevant Assets and for operational efficiency.

69. Disclosure regarding any appointment of two custodians by a Fund with respect to the Relevant Assets will be included in the prospectus of the Fund that is filed at the next annual renewal.

70. For purposes of complying with condition (k) of this decision, a single service provider, which provides a consolidated service offering to each applicable Fund, together with or directly or indirectly through its affiliates and/or other delegates, shall reconcile all the portfolio assets of the Fund and provide the Fund with valuation services and complete daily reconciliations between the custodians before striking a daily net asset value for the Fund.

The Original Decision

71. On November 16, 2021, the Filers received relief pursuant to section 19.1 of NI 81-102 (the **Original Decision**) permitting FCC to act as custodian for certain investment funds governed by NI 81-102 in respect of Crypto Assets and Related Cash and to permit FDAS to act as FCC's sub-custodian in respect of Crypto Assets.

72. The Original Decision expires on November 16, 2023. The Filers request a new decision granting the Requested Relief subject to the same terms as under the Original Decision.

73. Each Manager has determined that it would be in the best interests of each Fund to receive the Requested Relief.

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 Requested Relief is granted provided that:

(a) FCC provides to the principal regulator for the Funds on an annual basis beginning 60 days after the date upon which this decision is first relied upon by a Fund, either (i) a current list of all Funds that are relying on this decision, or (ii) an update to the list of Funds or confirmation that there has been no change to such list;

(b) The Funds use FDAS as sub-custodian only for the Funds' Crypto Assets;

(c) FCC remains registered as a dealer in the category of investment dealer with the principal regulator and the securities regulators or securities regulatory authority in each of the other Jurisdictions and a member of CIRO;

(d) FCC takes reasonable steps to verify that FDAS:

(i) has appropriate insurance to cover the loss of Crypto Assets held by it;

(ii) has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as sub-custodian; and

(iii) has obtained a SOC 2 Type 1 report and a SOC 2 Type 2 report;

(e) FCC will promptly cease using FDAS as the sub-custodian for a Fund's Crypto Assets at any time that FDAS ceases to be regulated by the New York State Department of Financial Services as a New York State chartered trust company, in which case:

(i) FCC will hold the Crypto Assets with a custodian that meets the sub-custodian requirements of NI 81-102;

(ii) before FCC holds a Fund's Crypto Assets with a sub-custodian referred to in (i) above, FCC will take reasonable steps to verify that the sub-custodian:

(1) has appropriate insurance to cover the loss of Crypto Assets at the sub-custodian;

(2) has established and applies written policies and procedures that manage and mitigate the custodial risks, including but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as sub-custodian; and

(3) has obtained a SOC 2 Type 2 report within the last 12 months, unless FCC has obtained the prior written approval of the principal regulator to alternatively verify that the sub-custodian has obtained a SOC 1 Type 1 or Type 2 report or a SOC 2 Type 1 report within the last 12 months;

(f) FCC maintains equity of not less than $100 million during any period when FDAS' most recent audited financial statements indicate that FDAS does not have equity of at least CAD$100 million;

(g) FCC promptly notifies the principal regulator

(i) if the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, or the New York State

Department of Financial Services makes a determination that FCC's sub-custodian for the Funds' Crypto Assets is not permitted by that regulatory authority to hold Crypto Assets; and

(ii) of any material cybersecurity breach of FDAS's or other sub-custodian's systems of controls or supervision that impact the Crypto Assets of a Fund held by the sub-custodian, and what steps have been taken by FCC to address each such breach;

(h) In respect of the periodic compliance reports to be prepared by FCC pursuant to paragraphs 6.7(1)(b), 6.7(1)(c)(ii) and 6.7(2)(c) of NI 81-102, as such paragraphs are not applicable given the nature of the Requested Relief, FCC will include a statement in such reports regarding the completion of its review process for FDAS and that FCC is of the view that FDAS continue to be an appropriate sub-custodian to hold the Funds' Crypto Assets;

(i) Prior to a Fund relying on this decision, FCC provides to the Fund:

(i) a copy of this decision;

(ii) a disclosure statement informing the Fund of the implications of this decision; and

(iii) a form of acknowledgment of the matters referred to in paragraph (j) below, to be signed and returned by the Fund to FCC;

(j) A Fund and its Manager seeking to rely on this decision will, prior to doing so:

(i) acknowledge receipt of a copy of this decision providing the Requested Relief;

(ii) appoint FCC as its custodian, or agree to the appointment of FCC as its sub-custodian, in either case under NI 81-102;

(iii) consent to FCC providing to staff of the principal regulator for the Fund on an annual basis the name of the Fund so long as it relies on this decision; and

(iv) deliver to FCC a signed acknowledgement and agreement binding the Fund to the foregoing.

(k) If a Fund appoints both FCC and another custodian as its custodians, then:

(i) a single entity will reconcile all the portfolio assets of the Fund and will provide the Fund with valuation services and will complete daily reconciliations between the two custodians before striking a daily net asset value for the Fund;

(ii) the applicable Manager will maintain such operational systems and processes, as between the two custodians and the single entity referred to in condition (i) above, in order to keep a proper reconciliation of all the portfolio assets that will move between the custodians, as appropriate; and

(iii) each of FCC and the other custodian will act as custodian only for the portion of the portfolio assets of the Fund transferred to it.

(l) This decision expires two years from the date of this decision.

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

Application File #: 2023/0508
SEDAR+ File #: 6037005

B.3.2 Logan Energy Corp.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – exemption from the requirements of Paragraph 2.2(d) of National Instrument 44-101 Short Form Prospectus Distribution requiring an issuer to have current annual financial statements and a current AIF in order to be eligible to file a short form prospectus.

Applicable Legislative Provisions

National Instrument 44-101 Short Form Prospectus Distributions, ss. 2.2(d), 8.1.

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
LOGAN ENERGY CORP.
(the Filer)

DECISION

Background

The securities regulatory authority or regulator in each of the Jurisdictions (the Decision Maker) has received an application from the Filer for a decision under the securities legislation of the Jurisdictions (the **Legislation**) exempting the Filer from Paragraph 2.2(d) of National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**), which sets out the qualification criteria for short form prospectus eligibility in respect of any prospectus filed by the Filer until the earlier of: (a) April 30, 2024; and (b) the date on which the Filer files its annual information form (AIF) and its annual financial statements for the year ended December 31, 2023 pursuant to National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) (collectively, the **Exemption Sought**).

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

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions,* MI 11-102 and NI 44-101 have the same meanings if used in this decision, unless otherwise defined.

Representations

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

The Filer

1. The Filer is a corporation incorporated on March 10, 2023 under the *Business Corporations Act* (Alberta), with its head office located in Calgary, Alberta.

2. On June 20, 2023, the Filer entered into a conveyance agreement (the **Conveyance Agreement**) with Spartan Delta Corp. (**Spartan**) providing for the spin-out of certain oil and gas assets (the **Spin-Out Assets**) from Spartan to the Filer in exchange for the issuance by the Filer to Spartan of 173,201,341 common shares of the Filer (**Logan Shares**) and 173,201,341 Logan Share purchase warrants (the **Logan Transaction Warrants**) (collectively, **the Spin-Out Transaction**). On June 20, 2023, Spartan distributed the Logan Shares and the Logan Transaction Warrants issued pursuant to the Spin-Out Transaction to the holders of the common shares (the **Spartan Shares**) of Spartan (the **Distribution**). Pursuant to the Distribution, each holder of Spartan Shares received $9.50 in cash, one Logan Share and one Logan Transaction Warrant per Spartan Share. The Logan Transaction Warrants have since expired.

3. The Filer became a reporting issuer as a result of the Distribution.

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

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

6. The Logan Shares are listed and posted for trading on the TSX Venture Exchange (**TSXV**) under the symbol "LGN".

7. The Filer's first year end is December 31, 2023; the Filer is not required to file annual financial statements or an AIF pursuant to NI 51-102 until April 30, 2024.

Filer's Continuous Disclosure

8. The policies of the TSXV require an applicant for listing that is not completing an initial public offering by way of long form prospectus pursuant to NI 41-101 *General Prospectus Requirements* (**NI 41-101**) to prepare a Form 2B Listing Application (**Form 2B**) and to file the Form 2B on SEDAR+.

9. The Filer's Form 2B discloses certain information regarding the entity and its business, and in particular requires disclosure in accordance with Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**).

10. In connection with the direct listing of the Logan Shares on the TSXV, pursuant to Policy 2.3 — Listing Procedures of the TSXV Company Manual, the Filer filed a Form 2B dated July 12, 2023 with the TSXV, the Alberta Securities Commission and the local securities regulatory authorities or regulators in each of the Reporting Jurisdictions.

11. The Form 2B was filed on SEDAR on July 13, 2023.

12. The Form 2B was required to contain the financial statements required pursuant to NI 41-101, as set forth in Form 41-101F1. The Filer was permitted to comply with financial disclosure requirements applicable to IPO venture issuers (as such term is defined in NI 41-101), with the Form 2B treated as the equivalent of a long form prospectus for that purpose.

13. Subsection 32.1(1)(b) of Form 41-101F1 requires an issuer to include three years of financial statements in respect of assets comprising its primary business. Although the Spin-Out Assets form the primary business of the Filer, as an IPO venture issuer, it relied on the exception in Section 32.4 of Form 41-101F1 to include two years of financial statements in respect of such assets in the Form 2B.

14. The Filer also relied on the exemption in subsection 32.9 of Form 41-101F1, which provides that audited operating statements of the business may be provided in lieu of audited financial statements on satisfaction of certain conditions, which conditions were satisfied by the Filer.

15. Relying on subsection 32.9 of Form 41-101F1, the Filer included the following financial statements in the Form 2B in order to satisfy the required financial statement disclosure set forth in Form 2B, which the Filer believes to be comparable disclosure to the requirement to provide "current annual financial statements" pursuant to Section 2.2 of NI 44-101:

    (a) audited statement of financial position of the Filer as at April 14, 2023 and the statements of cash flows and changes in equity of the Filer for the period from incorporation on March 10, 2023 to April 14, 2023;

    (b) audited operating statements relating to the Spin-Out Assets for the years ended December 31, 2022 and December 31, 2021; and

    (c) unaudited operating statements relating to the Spin-Out Assets for the three month periods ended March 31, 2023 and March 31, 2022

    (collectively, the **Alternative Financial Statement Disclosure**).

16. The Form 2B provides full, true and plain disclosure of all material facts relating to the Filer and the Spin-Out Assets, which themselves have been the subject of continuous disclosure on an ongoing basis for more than twelve months in accordance with Spartan's responsibilities as a reporting issuer in the Reporting Jurisdictions. The Form 2B includes all of the financial statements required to be included in the Form 2B (including, by extension, those required pursuant to Section 32 of NI 41-101), and the information that would have otherwise been required to be included in a current AIF.

17. The Filer is not eligible to file a short form prospectus under Section 2.2 of NI 44-101 as it has not filed "current annual financial statements", as that term is defined in NI 44-101 or a current AIF in the form prescribed by Form 51-102F2 *Annual Information Form.*

18. The Filer is ineligible for the exemption for new reporting issuers under Subsection 2.7(1) of NI 44-101 because it has not filed a long form prospectus.

19. The Filer is ineligible for the exemption for successor issuers under Subsection 2.7(2) of NI 44-101 because the Spin-Out Assets were only a portion of Spartan's business.

20. The disclosure available to the public on the Filer's SEDAR+ profile consists of, in all material respects, the disclosure that would have been included in a long form prospectus prepared in accordance with Form 41-101F1.

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 the Filer includes or incorporates the Form 2B by reference in any preliminary and final short form prospectus filed prior to the expiry of this decision.

This decision expires on the earlier of:

(a) the date on which the Filer files its annual financial statements and AIF for the financial year ended December 31, 2023; and

(b) April 30, 2024.

“Timothy Robson”
Manager, Legal, Corporate Finance
Alberta Securities Commission

OSC File #: 2023/0438

B.3.3 SEAMARK Asset Management Ltd.

Headnote

Pursuant to National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Relief from the know-your-client, trusted contact person and suitability requirements, and the requirements to deliver account statements and investment performance reports, granted to a portfolio manager in respect of investors in a model portfolio service offered through an unaffiliated mutual fund dealer.

Applicable Legislative Provisions

Multilateral Instrument 11-102 Passport System, s. 4.7(1).
National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.2, 13.2.01, 13.3, 14.14, 14.14.1, 14.18 and 15.1(2).

November 22, 2023

IN THE MATTER OF
THE SECURITIES LEGISLATION OF
NOVA SCOTIA
(the "Jurisdiction")

AND

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

AND

IN THE MATTER OF
SEAMARK ASSET MANAGEMENT LTD.
(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"**) exempting the Filer from the following requirements with respect to clients invested in the Model Portfolios (as defined below):

(a) the requirement (the **"Know Your Client Requirement"**) in the Legislation that the Filer take reasonable steps to:

(i) establish the identity of a client and, if the Filer has cause for concern, make reasonable inquiries as to the reputation of the client;

(ii) establish whether the client is an insider of a reporting issuer or any other issuer whose securities are publicly traded;

(iii) ensure that the Filer has sufficient information regarding the client's investment needs, objectives, financial circumstances and risk tolerance, among other information, to enable the Filer to meet its obligations under the Legislation to make a determination with respect to the Suitability Requirement (as defined below); and

(iv) keep the information described above current.

(collectively, the **"Know Your Client Exemption"**);

(b) the requirement (the **Trusted Contact Person Requirement**) in the Legislation that the Filer take reasonable steps to:

(i) obtain from the client the name and contact information of a trusted contact person, and the written consent of the client for the Filer to contact the trusted contact person to confirm or make inquiries about any of the following:

a. the Filer's concerns about possible financial exploitation of the client;

b. the Filer's concerns about the client's mental capacity as it relates to the ability of the client to make decisions involving financial matters;

c. the name and contact information of a legal representative of the client, if any;

d. the client's contact information; and

(ii) keep the information described above current

(collectively, the **"Trusted Contact Person Exemption"**)

(c) the requirement (the "Suitability Requirement") in the Legislation that the Filer take reasonable steps to ensure that, before it makes a recommendation to or accepts an instruction from a client to buy or sell a security, or makes a purchase or sale of a security for a client's account, or upon the occurrence of any other required suitability assessment event, such action is suitable for the client (the "Suitability Exemption"); and

(d) the requirement (the "Statement Delivery Requirement") in the Legislation that the Filer deliver account statements and investment performance reports to clients who have invested in the Model Portfolios (the "Statement Delivery Exemption").

The Know Your Client Exemption, the Trusted Contact Person.Exemption, Suitability Exemption and the Statement Delivery Exemption are collectively referred to as the **Exemption Sought**.

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

(a) the Nova Scotia 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* is intended to be relied upon by the Filer in Alberta, British Columbia, New Brunswick, Newfoundland & Labrador, and Prince Edward Island, (each, a **'Jurisdiction'** and, together with Nova Scotia and Ontario, the **'Canadian Jurisdictions'**) in respect of the Exemption Sought; and

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

Interpretation

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

NI 31-103 means National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations.*

Representations

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

The Filer

1. The Filer is a corporation incorporated under the *Canada Business Corporations Act,* with its head office located in Halifax, Nova Scotia.

2. The Filer is registered under the Legislation as a portfolio manager and is also registered as a portfolio manager under the securities legislation in each of the Canadian Jurisdictions.

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

The Model Portfolio Service

4. The Filer proposes to use its valuation and selection methodologies to construct and maintain model investment portfolios for various stated investment objectives (each a **"Model Portfolio"** and collectively the **"Model Portfolios"**).

5. Each Model Portfolio will have investment guidelines governing the acceptable minimum and maximum allocation to various asset classes within the Model Portfolio (the **"Permitted Ranges"**, and each, a **"Permitted Range"**).

6. Each Model Portfolio will be comprised exclusively of open-ended mutual funds, including exchange-traded mutual funds (**ETFs**), (collectively **"Funds"** and individually a **"Fund"**) established under the laws of a Canadian Jurisdiction and cash and cash equivalents.

7. Each of the Funds is, or will be, a reporting issuer in one or more of the Canadian Jurisdictions, and subject to the requirements of National Instrument 81-102 Investment Funds.

8. The securities of each of the Funds are, or will be, qualified for distribution in one or more of the Canadian Jurisdictions pursuant to a: (a) simplified prospectus, annual information form and Fund Facts prepared and filed in accordance with National Instrument 81-101 Mutual Fund Prospectus Disclosure, or (b) long form prospectus and ETF Facts prepared and filed in accordance with National Instrument 41-101 General Prospectus Requirements.

9. The securities of each Fund that is an ETF are, or will be, listed and traded on a recognized exchange.

10. Each of the Funds is, or will be, managed by a third-party investment fund manager that is unaffiliated with the Filer. In the future, one or more of the Funds may be managed by the Filer or an affiliate of the Filer.

11. The Model Portfolios will be offered as a service (the **"Service"**) to investors through Monarch Wealth Corporation (the **"Dealer"**), which is registered in the category of mutual fund dealer in Alberta, British Columbia, Manitoba, Newfoundland and Labrador, Nova Scotia, Ontario, Quebec, and Saskatchewan and also in the category of exempt market dealer in Alberta, British Columbia and Ontario. The Dealer is a member of the Canadian Investment Regulatory Organization (CIRO).

12. The Dealer will collect all of the required know your client (**"KYC"**), trusted contact person (**"TCP"**) and suitability information for each client considering the Service. Based on an assessment of the client's KYC and suitability information, the Dealer's dealing representative will recommend a Model Portfolio for the client.

13. The client will discuss the recommended Model Portfolio and the Funds within the Model Portfolio with their Dealer's dealing representative, and the client ultimately chooses the Model Portfolio. Model Portfolios are not changed or tailored for individual clients.

14. If the client decides to invest in a Model Portfolio, a tripartite agreement (the **"Agreement"**) is entered into between the client, the Dealer, and the Filer in respect of the Service as described below.

15. Securities of the Funds that comprise each Model Portfolio will be distributed through the Dealer to clients and will be held either directly by each client in his/her own account(s) established with the Dealer, or in the case of nominee accounts, in the Dealer's name, in trust for the client.

16. Clients will have no direct contact with the Filer in connection with the Filer's management of the Model Portfolios and will interact solely with their Dealer and approved persons of their Dealer in connection with the Filer's management of the Model Portfolios and the Dealer's administration of its accounts.

17. The Dealer has the option of imposing a minimum investment amount for clients to participate in the Service.

18. The Dealer will be responsible for gathering and periodically updating KYC information concerning the client and confirming, on at least an annual basis, the suitability of the Model Portfolio for the client.

19. Where the Dealer determines that a Model Portfolio is no longer appropriate for the client or that a different Model Portfolio would be more appropriate for the client, this will be communicated to the Filer and the client by the Dealer, and the Dealer will take appropriate action. A change to a different Model Portfolio will not be made without the client entering into a new Agreement in respect of the new Model Portfolio.

20. A client may terminate the Service at any time by instructing the Dealer to redeem or switch the client's investment out of the Funds. The Dealer and the Filer can terminate the Service under the conditions set out in the Agreement.

Monitoring, Service Trades and Additional Investment Trades

21. The Filer will oversee and monitor each Model Portfolio to ensure it remains in compliance with its stated investment objective and investment guidelines at all times and to determine whether any changes to the composition of the Model Portfolio or Permitted Ranges would be appropriate.

22. As part of the Service, provided that the Model Portfolio remains consistent with its stated investment objective at all times, the Filer may, from time to time, use its discretion to make decisions regarding certain changes to the holdings of a Model Portfolio within the Permitted Ranges (the **Optimization Changes**).

23. As part of the Service, provided that the client is given at least 60 days' advance written notice (the **Written Notice**) and the Model Portfolio remains consistent with its stated investment objective at all times, the Filer may also, from time to time, use its discretion to make decisions regarding certain changes to the Permitted Ranges (the **Weighting Changes**).

24. The Written Notice will describe the proposed Weighting Change and specify that if the client does not provide his or her objection to the proposed Weighting Change by a specified date, this non-objection will be deemed to be consent for the change on the effective date.

25. The Optimization Changes and Weighting Changes to Model Portfolios that are determined from time to time by the Filer will be communicated by the Filer to the Dealer in writing and will be effected in a client's account by the Dealer through the following types of trades:

    a. purchase of securities to increase holdings of an existing Fund in a Model Portfolio (the **"Increase Trades"**);

    b. sale of securities to decrease holdings of an existing Fund in a Model Portfolio (the **"Decrease Trades"**);

    c. purchase of securities to add a new Fund to a Model Portfolio (the **"New Fund Trades"**); and

    d. sale of securities to remove an existing Fund from a Model Portfolio (the **"Fund Removal Trades"**, and together with the Increase Trades, Decrease Trades and New Fund Trades, the **"Service Trades"**).

26. In each case, the Dealer will confirm receipt of the Filer's instructions and will provide written confirmation to the Filer that the Service Trades have been effected in accordance with the Filer's instructions in the applicable client accounts.

27. A client may, from time to time, contribute additional funds to the client's account with the Dealer for investment in the selected Model Portfolio through the Service. Such additional funds will be applied towards the purchase of additional securities of the Funds in accordance with the Permitted Ranges (the **"Additional Investment Trades"**). All Additional Investment Trades will be effected by the relevant Dealer.

28. The Dealer will not have discretionary authority to participate in the management of the Model Portfolios or to recommend Optimization Changes or Weighting Changes.

Fees and Expenses

29. Each client pays the Dealer a negotiated fee for the Service that is calculated as a percentage of the market value of the client's investment in the Service. Independent of the Service, each client also negotiates a separate fee for the services of their Dealer's dealing representative.

30. The Filer's fee for managing the Model Portfolios may vary from Dealer to Dealer and is calculated based on the aggregate amount of assets held in Model Portfolios by all the Dealer's clients. This fee is paid by the Dealer and included in the service fee that the client pays to the Dealer.

31. The Model Portfolios will be comprised of institutional series units of Funds that are not ETFs, and regular units of Funds that are ETFs. The management fees for institutional series units of Funds that are not ETFs will be charged outside the Funds and are negotiable with the applicable Fund manager. The Dealer is responsible for negotiating the management fees for these Funds and these management fees will be included in the negotiated service fee that each client pays the Dealer. Certain institutional series of Funds that are not ETFs have operating expenses that will be charged within the Funds. The management fees and operating expenses for ETFs will be charged within the ETFs.

32. There will be no duplication of any fees or charges as a result of a client's decision to use the Service.

33. For Model Portfolios comprised of Funds that are not ETFs, there will be no separate fees, such as sales charges, redemption fees, switch fees or early trading fees, charged in connection with the Service Trades.

34. For Model Portfolios comprised of Funds that are ETFs, there will be no separate fees, such as sales charges, redemption fees, switch fees or early trading fees, charged in connection with the Service Trades except for brokerage fees (also known as trading or transaction fees) charged by the Dealer for each Service Trade, if any, which will be charged to each client on a proportional basis.

Agreement among the Filer, the Dealer and the Client and Client Reporting

35. The Agreement entered into among the Filer, the Dealer and each client in respect of the Service will set out, among other matters, the following:

    a. the name, investment objective and Permitted Ranges of the selected Model Portfolio, and the names of the underlying Funds that form part of the selected Model Portfolio at the time the Agreement is entered into;

    b. the role, duties and responsibilities of the Filer, including:

i. that the client authorizes the Filer to manage the client's investments on a discretionary basis in accordance with the terms of the Model Portfolio selected by the client and without reference to the client's circumstances;

ii. that the Filer has the discretion to make Optimization Changes, provided the Model Portfolio remains consistent with its stated investment objective and the Permitted Ranges;

iii. that the Filer has the discretion to recommend Weighting Changes, provided the Client is given at least 60 days' advance written notice and does not object and the Model Portfolio remains consistent with its stated investment objective;

c. the role, duties and responsibilities of the Dealer, including:

i. that the Dealer will be solely responsible for gathering and periodically updating KYC information concerning the client and confirming, on at least an annual basis, the suitability of the selected Model Portfolio for the client;

ii. that the Dealer will not have discretionary authority to participate in the management of the Model Portfolio or to recommend Optimization Changes or Weighting Changes;

iii. that the Dealer is responsible for effecting all trades for the client associated with the Service, including the Service Trades;

iv. that the Dealer is responsible for providing the client with all required reporting under the Legislation in connection with the Service, including trade confirmations, account statements and investment performance reports;

d. a description of all fees and expenses payable by a client in respect of an investment in a Model Portfolio, including those charged directly to a client in respect of the Service and those charged in respect of an investment in the Funds through the Service, as well as confirmation that there will be no duplication of any fees or charges as a result of the client's decision to use the Service, as described in paragraphs 29 to 34 above;

e. a statement that the Filer's fee, which is paid by the Dealer and included in the service fee that the client pays to the Dealer, is calculated based on the aggregate amount of assets held in Model Portfolios by all of the Dealer's clients, and that it may vary from Dealer to Dealer;

f. how the Service may be terminated.

36. The Dealer will provide a copy of the Agreement to the client and be responsible for ensuring that the client understands the Service and the topics covered in the Agreement.

37. The Dealer will reflect the Service Trades and Additional Investment Trades in each client's account(s) on the next business day following such trades, subject to technological limitations.

38. Clients will be able to access their accounts via Dealer online access on a daily basis.

39. Fund Facts and ETF Facts will be delivered to each client by the Dealer as required by the Legislation, subject to any applicable exemption or exemptive relief.

40. Trade confirmations for every transaction in a client's account, including Service Trades, will be provided to the client by the Dealer in accordance with the requirements under the Legislation.

41. The Dealer will send account statements and investment performance reports to each client in the Service in accordance with the requirements under the Legislation.

42. The Dealer will provide each client in the Service with an annual tax reporting package.

Exemption Sought

43. In the absence of the Exemption Sought, the Filer would be required:

(a) to gather and update the information contemplated by the Know Your Client Requirement in section 13.2 of NI 31-103 for each client in the Service;

(b) to ensure that each Service Trade is suitable for each client in the Service in accordance with the Suitability Requirement in section 13.3 of NI 31-103, rather than invested in accordance with the terms of the client's Model Portfolio;

(c) to gather and update the information contemplated by the Trusted Contact Person Requirement in section 13.2.01 of NI 31-103 for each client in the Service in order to fulfil its obligations as a registered adviser; and

(d) to deliver account statements and investment performance reports to clients who have invested in the Model Portfolios in accordance with sections 14.14, 14.14.1, and 14.18 of NI 31-103.

44. The Dealer does not require an exemption from the adviser registration requirement under the Legislation as a result of its involvement with the Service as it will not be engaged in providing discretionary management advice to clients in connection with the management of the Model Portfolios and will be effecting the Service Trades in accordance with the Filer's instructions, without exercising any discretion.

Decision

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

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

(a) the Filer is, at the time of each Service Trade, registered under the Legislation as an adviser in the category of portfolio manager;

(b) each Service Trade is made in accordance with the terms of the selected Model Portfolio;

(c) each client in the Service is informed in writing in the Agreement or otherwise:

(i) of the roles, duties and responsibilities of the Filer and the Dealer, including that;

a. the Filer will manage the Model Portfolios without reference to the client's circumstances and only in accordance with the terms of the Model Portfolio selected by the client;

b. the Dealer will be solely responsible for gathering and periodically updating KYC and TCP information concerning the client and confirming, on at least an annual basis, the suitability of the selected Model Portfolio for the client;

(ii) that the client will receive account statements and performance reports from Dealer, and will not receive account statements and performance reports from the Filer;

(d) the Filer will adopt, maintain and apply policies and procedures designed to provide reasonable assurance that the Dealer complies with its KYC, TCP and suitability obligations with respect to each client in the Service, including requiring that:

(i) the Dealer not market and sell the Model Portfolios through an order-execution-only, suitability-exempt channel;

(ii) the Dealer notify the Filer of each instance where a Model Portfolio is sold to a client on the basis of a client-directed trade as contemplated in section 13.3 of NI 31-103 and similar provisions under CIRO rules;

(iii) the Dealer shall be responsible for gathering and periodically updating KYC and TCP information concerning the client and confirming, on at least an annual basis, the suitability of the selected Model Portfolio for each client, and

(iv) the Dealer on an annual basis, no later than 30 days after the end of the calendar year, provide a certificate to the Filer that the Dealer has complied with its KYC, TCP and suitability obligations with respect to each client in the Service.

(e) the Filer will adopt, maintain and apply policies and procedures designed to provide reasonable assurance that each Dealer complies with the client reporting obligations under the applicable rules of CIRO in respect of clients in the Service, including requiring that the Dealer, on an annual basis, no later than 30 days after the end of the calendar year, provide a certificate to the Filer that:

(i) the Dealer has complied with its client reporting obligations under the applicable rules CIRO, and

(ii) the Dealer has performed and documented sample testing and reconciliations to provide reasonable assurance that account statements and investment performance reports delivered to clients are complete, accurate and delivered on a timely basis in a format that is compliant with the applicable rules of CIRO.

(f) the Filer will adopt, maintain and apply policies and procedures designed to provide reasonable assurance that each Dealer complies with its obligations in respect of all trading for clients in connection with the Service, including requiring that the Dealer, on an annual basis, no later than 30 days after the end of the calendar year, provide a certificate to the Filer that:

(i) the Dealer has effected all trades for clients in connection with the Service, including all Additional Investment Trades, in accordance with the selected Model Portfolios, and

(ii) the Dealer has effected all Service Trades in accordance with the Filer's written instructions in the applicable client accounts.

(g) the Filer has a written agreement in place with each Dealer concerning their respective roles, duties and responsibilities to clients in respect of the Service.

NOVA SCOTIA SECURITIES COMMISSION

“Paul Radford”
K.C. Chair

OSC File #: 2023/0344

B.3.4 Premier American Uranium Inc.

Headnote

National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Issuer granted relief from certain restricted security requirements under National Instrument 41-101 General Prospectus Requirements, National Instrument 44-101 Short Form Prospectus Distributions, and National Instrument 51-102 Continuous Disclosure Obligations – relief granted subject to conditions.

OSC Rule 56-501 Restricted Shares – Issuer granted relief from certain restricted share requirements under OSC Rule 56-501 – relief granted subject to conditions.

Applicable Legislative Provisions

National Instrument 41-101 General Prospectus Requirements, ss. 12.2, 12.3 and 19.1.
Form 41-101F1 Information Required in a Prospectus, ss. 1.13 and 10.6.
National Instrument 44-101 Short Form Prospectus Distributions, s. 8.1.
Form 44-101F1 Short Form Prospectus, ss. 1.12 and 7.7.
National Instrument 51-102 Continuous Disclosure Obligations, Part 10 and s. 13.1.
OSC Rule 56-501 Restricted Shares, Parts 2 and 3, and s. 4.2.

November 20, 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
PREMIER AMERICAN URANIUM INC.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that the requirements under:

(a) Section 12.2 of National Instrument 41-101 *General Prospectus Requirements* (**NI 41-101)** relating to the use of restricted security terms, sections 1.13 and 10.6 of Form 41-101F1 *Information Required in a Prospectus* (**Form 41-101F1**), and sections 1.12 and 7.7 of Form 44-101F1 *Short Form Prospectus* (**Form 44-101F1**) relating to restricted security disclosure, shall not apply to the common shares of the Filer (the **Common Shares**) in connection with any prospectuses that may be filed by the Filer (the **Prospectuses**) under NI 41-101, National Instrument 44-101 *Short Form Prospectus Distributions* (**NI 44-101**), including a prospectus filed under National Instrument 44-102 *Shelf Distributions* (the **Prospectus Disclosure Relief**);

(b) Section 12.3 of NI 41-101 relating to prospectus filing eligibility for distributions of restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities, shall not apply to distributions of Common Shares, compressed shares of the Filer (the **Compressed Shares**) or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, Common Shares or Compressed Shares in connection with the Prospectuses (the **Prospectus Eligibility Relief**);

(c) Part 10 of National Instrument 51-102 *Continuous Disclosure Obligations* (**NI 51-102**) relating to the use of restricted security terms and restricted security disclosure shall not apply to the Common Shares (the **CD Disclosure Relief**) in connection with continuous disclosure documents (the **CD Documents**) that may be filed by the Filer under NI 51-102;

(d) Part 2 of Ontario Securities Commission Rule 56-501 *Restricted Shares* (**OSC Rule 56-501**) relating to the use of restricted share terms and restricted share disclosure shall not apply to the Common Shares in connection with dealer and adviser documentation, rights offering circulars and offering memoranda (collectively, the **OSC Rule 56-501 Documents**) of the Filer (the **OSC Rule 56-501 Disclosure Relief**); and

(e) Part 3 of OSC Rule 56-501 relating to the withdrawal of prospectus exemptions for distributions of restricted shares, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted shares or subject securities, shall not apply to the distribution of the Common Shares, Compressed Shares or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, Common Shares or Compressed Shares (the **OSC Rule 56-501 Withdrawal Relief**) in connection with stock distributions (as defined in OSC Rule 56-501) of the Filer.

The aforementioned requirements are collectively referred to as the **Restricted Security Rules**. The Prospectus Disclosure Relief, Prospectus Eligibility Relief, CD Disclosure Relief, OSC Rule 56-501 Disclosure Relief and OSC Rule 56-501 Withdrawal Relief are collectively referred to as the **Exemption Sought**.

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

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

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

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102, NI 41-101, NI 51-102, and OSC Rule 56-501 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 was incorporated on September 9, 2022, is a corporation validly existing under the *Business Corporations Act* (Ontario) (the **OBCA**) and is in good standing.

2. The Filer's head office is located at 217 Queen Street West, Floor 4, Toronto, Ontario M5V 0R2.

3. The Filer has not carried on any active business since its incorporation, other than limited financings and limited staking consisting of 347 mining claims, covering approximately 6,940 acres, in the areas of the Uravan Belt in Montrose County, Colorado.

4. The Filer is not a reporting issuer in any jurisdiction. The Filer is not in default of any applicable requirements under securities legislation.

5. The Filer is not a “private issuer” as defined in National Instrument 45-106 *Prospectus Exemptions* or a “private company” as defined in the *Securities Act* (Ontario) as its securities are not subject to transfer restrictions.

6. The Filer's authorized share capital currently consists of three (3) classes of shares, being the Common Shares, the Compressed Shares, and super voting shares (the **Super Voting Shares**).

7. Holders of Common Shares shall be entitled to receive notice of and to attend all meetings of shareholders of the Filer, except meetings at which only holders of another particular class or series shall have the right to vote. At each such meeting, each Common Share shall entitle the holder to one (1) vote.

8. Holders of Compressed Shares shall be entitled to receive notice of and to attend all meetings of shareholders of the Filer, except meetings at which only holders of another particular class or series shall have the right to vote. At each such meeting, each Compressed Share shall entitle the holder to 1,000 votes.

9. Holders of Super Voting Shares shall be entitled to receive notice of and to attend all meetings of shareholders of the Filer, except meetings at which only holders of another particular class or series shall have the right to vote. At each such meeting, each Super Voting Share shall entitle the holder to 100,000,000 votes.

10. The holders of the Common Shares, Compressed Shares and Super Voting Shares vote together as a class, except as otherwise expressly provided in the articles of the Filer (the **Articles**) or as provided by law.

11. As at November 15, 2023, the Filer has 3,246,428 Common Shares, nil Compressed Shares and 1 Super Voting Share issued and outstanding.

12. The Super Voting Share is held by Consolidated Uranium Inc. (**CUR**), a reporting issuer listed on the TSX Venture Exchange (the TSXV). Accordingly, the Filer is a majority-controlled subsidiary of CUR.

13. The Common Shares are held among 23 persons who subscribed for Common Shares pursuant to various private placements of the Filer. None of the holders of Common Shares are "related parties" (within the meaning of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transaction*) of CUR.

14. On May 24, 2023, the Filer and CUR entered into a purchase agreement (the **Premier Agreement**) with Premier Uranium Inc. (**Premier**) and the shareholders of Premier, pursuant to which the Filer has agreed to acquire all of the outstanding shares of Premier in exchange for 12,000 Compressed Shares (the **Premier Transaction**). Premier is a privately held U.S. uranium focused project acquisition vehicle which owns a 100% interest in the Cyclone project in the Great Divide Basin of Wyoming and various mining claims in the Uravan Mineral Belt of Colorado.

15. On May 24, 2023, the Filer and CUR also entered into an arrangement agreement pursuant to which a spin-out of the Filer from CUR will be effected (the **Transaction**). Pursuant to the Transaction, CUR will transfer to the Filer certain assets currently held through subsidiaries of CUR, being eight U.S. Department of Energy Leases located in Colorado and certain patented mining claims in Montrose County, Colorado in consideration for 7,753,572 Common Shares. CUR will then distribute 50% of these Common Shares, being 3,876,786 Common Shares, to the holders of common shares of CUR (the **CUR Shareholders**) on a pro rata basis.

16. The Premier Transaction is conditional on the completion of the Transaction. Upon completion of the Premier Transaction and the Transaction, the pro forma holdings of the Filer will consist of a group of assets focused on the Uravan Belt, a geographic region in the southwest United States known for uranium and vanadium deposits, and Wyoming.

17. The Transaction is also conditional on conditional approval from the TSXV for the listing of the Common Shares, which conditional approval was received on November 15, 2023.

18. On September 27, 2023, CUR and IsoEnergy Ltd. (**IsoEnergy**) entered into an arrangement agreement pursuant to which IsoEnergy agreed to acquire all of the issued and outstanding common shares of CUR not already held by IsoEnergy in exchange for common shares of IsoEnergy (the **IsoEnergy Transaction**). The IsoEnergy Transaction will be effected by way of a court-approved plan of arrangement under section 182 of the OBCA. If the IsoEnergy Transaction is completed, CUR will become a wholly-owned subsidiary of IsoEnergy.

19. The IsoEnergy Transaction is conditional upon the completion of the Transaction.

20. Upon completion of the Transaction, the Filer will be a reporting issuer in each of British Columbia, Alberta, Ontario and Quebec. It is anticipated that the Filer will become a reporting issuer in each of Manitoba, New Brunswick, Newfoundland and Labrador, the Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan and the Yukon Territories, as a result of future prospectus filings.

21. The Transaction was approved by a majority of the votes cast by CUR Shareholders at a meeting on August 3, 2023.

22. The Filer's share structure has been created solely for the purposes of maintaining the Filer's foreign private issuer status as defined in Rule 405 of the *United States Securities Act of 1933*, as amended, on a go-forward basis and to ensure that the Filer is not immediately offside the foreign private issuer rules upon completion of the Premier Transaction, so as to avoid a commensurate material increase in the Filer's ongoing compliance costs.

23. The Compressed Shares are only being issued to the shareholders of Premier in connection with the Premier Transaction. One U.S. resident shareholder of Premier, being Sachem Cove Special Opportunities Fund LP, is expected to hold approximately 90% of the Compressed Shares. No CUR Shareholders who are receiving Common Shares pursuant to the Transaction will be required to exchange their Common Shares into Compressed Shares.

24. Upon completion of the Transaction, the Super Voting Share will be tendered back to the Filer for no consideration, and the Super Voting Shares will be removed as an authorized class of shares such that the Filer's authorized capital will consist solely of Common Shares and Compressed Shares (the **Shares**), with the terms and provisions described below. The unanimous approval of the securityholders of the Filer to amend the Articles to remove the Super Voting Shares as an authorized class of shares of the Filer following closing of the Transaction was obtained on June 12, 2023.

25. Following the Transaction:

    (a) The Common Shares may at any time, at the option of the holder thereof and with the consent of the Filer, be converted into Compressed Shares at a ratio of one (1) Compressed Share for one thousand (1,000) Common Shares.

    (b) The Compressed Shares may at any time, at the option of the holder thereof and with the consent of the Filer, be converted into Common Shares on the basis of one thousand (1,000) Common Shares for one (1) Compressed Share, subject to certain limitations on conversion that maintain the Filer's status as a "foreign private issuer" as defined in Rule 405 of the United States *Securities Act of 1933*, as amended.

    (c) If the board of directors of the Filer (the **Board**) determines that it is no longer in the Corporation's interest to maintain the Compressed Shares as a separate class of shares, then the Compressed Shares shall be converted into Common Shares on the basis of one thousand (1,000) Common Shares for one (1) Compressed Share.

    (d) Holders of Common Shares and Compressed Shares are entitled to dividends if, as and when dividends are declared by the Board, with each Compressed Share being entitled to one thousand (1,000) times the amount paid or distributed per Common Share (whether in cash or property), and otherwise without preference or distinction among or between the Shares.

    (e) In the event of the liquidation, dissolution or winding-up of the Filer, the holders of Common Shares and Compressed Shares are entitled to participate in the distribution of the remaining property and assets of the Filer, with each Compressed Share being entitled to one thousand (1,000) times the amount distributed per Common Share, and otherwise without preference or distinction among or between the Shares.

    (f) The holders of the Common Shares and Compressed Shares will be entitled to receive notice of, attend and vote at any meeting of shareholders of the Filer, except those meetings at which holders of a specific class of shares are entitled to vote separately as a class under the OBCA.

    (g) The Common Shares will carry one (1) vote per share and the Compressed Shares will carry one thousand (1,000) votes per share.

26. The rights, privileges, conditions and restrictions attaching to the Shares may be modified if the amendment is authorized by not less than $66^{2}/_{3}$% of the votes cast at a meeting of holders of the Shares duly held for that purpose. However, holders of Common Shares and Compressed Shares shall each be entitled to vote separately as a class, in addition to any other vote of shareholders that may be required, in respect of any proposal to add to, remove or change the rights, privileges, restrictions or conditions attached to the shares of such class and, without limiting the generality of the foregoing, (i) remove or change prejudicially rights to accrued dividends or rights to cumulative dividends, (ii) add, remove or change prejudicially redemption rights or sinking fund provisions, (iii) reduce or remove a dividend preference or a liquidation preference, or (iv) add, remove or change prejudicially conversion privileges, options, voting, transfer or pre-emptive rights, or rights to acquire securities of a corporation.

27. No subdivision or consolidation of the Common Shares or Compressed Shares may be carried out unless, at the same time, the shares of the other class are subdivided or consolidated in the same manner and on the same basis, so as to preserve the relative rights of the holders of each such class of shares.

28. In addition to the conversion rights described above, in the event that an offer is made to purchase Compressed Shares, and such offer is:

    (a) required, pursuant to applicable securities legislation or the rules of any stock exchange on which the Compressed Shares and/or the Common Shares may then be listed (or would be required if the offeree was located in Canada), to be made to all or substantially all of the holders of Compressed Shares in a province or territory of Canada to which the requirement applies (such offer to purchase, a **Compressed Offer**); and

    (b) not made to the holders of Common Shares for consideration per Common Share equal to one-one-thousandth (1/1,000) of the consideration offered per Compressed Share and otherwise on identical terms, and with no condition attached other than the right not to take up and pay for shares tendered if no shares are purchased under the Compressed Offer,

    then each Common Share shall become convertible at the option of the holder into Compressed Shares on the basis of one-one-thousandth (1/1,000) of a Compressed Share for each Common Share while the Compressed Offer is in effect until one day after the time prescribed by applicable securities laws for the offeror to take up and pay for such shares as are to be acquired pursuant to the Compressed Offer (the **Common Conversion Right**).

29. If Compressed Shares, resulting from the exercise of the Common Conversion Right and deposited pursuant to the Compressed Offer, are withdrawn by the holder or are not taken up by the offeror, or the Compressed Offer is abandoned, withdrawn or terminated by the offeror or the Compressed Offer otherwise expires without such Compressed Shares being taken up and paid for, the Compressed Shares resulting from the exercise of the Common Conversion Right will be re-converted into Common Shares on the basis of one-thousand (1,000) Common Shares for each Compressed Share then held.

30. In addition to the conversion rights described above, in the event that an offer is made to purchase Common Shares, and such offer is:

    (a) required, pursuant to applicable securities legislation or the rules of any stock exchange on which the Common Shares and/or the Compressed Shares may then be listed (or would be required if the offeree was located in Canada), to be made to all or substantially all of the holders of Common Shares in a province or territory of Canada to which the requirement applies (such offer to purchase, a **Common Offer**); and

    (b) not made to the holders of Compressed Shares for consideration per Common Share equal to the consideration offered per Common Share multiplied by one-thousand (1,000) and otherwise on identical terms, and with no condition attached other than the right not to take up and pay for shares tendered if no shares are purchased under the Common Offer,

    then each Compressed Share shall become convertible at the option of the holder into Common Shares on the basis of one-thousand (1,000) Common Shares for each Compressed Share while the Common Offer is in effect until one day after the time prescribed by applicable securities laws for the offeror to take up and pay for such shares as are to be acquired pursuant to the Common Offer (the **Compressed Conversion Right**).

31. If Common Shares, resulting from the exercise of the Compressed Conversion Right and deposited pursuant to the Common Offer, are withdrawn by the holder or are not taken up by the offeror, or the Common Offer is abandoned, withdrawn or terminated by the offeror or the Common Offer otherwise expires without such Common Shares being taken up and paid for, the Common Shares resulting from the exercise of the Compressed Conversion Right will be re-converted into Compressed Shares on the basis of one-one-thousandth (1/1,000) of a Compressed Share for each Common Share then held.

32. Upon completion of the Transaction, the Compressed Shares will be the Filer's only issued and outstanding subject securities.

33. The Filer is seeking the Exemption Sought in respect of, among other things, references to the Common Shares in Prospectuses, CD Documents and OSC Rule 56-501 Documents.

34. Section 12.2 of NI 41-101 requires that an issuer must not refer to a security in a prospectus by a term or a defined term that includes the word "common" unless the security is an equity security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are not less, per security, than the voting rights attached to any other outstanding security of the issuer.

35. Section 12.3 of NI 41-101 requires that an issuer must not file a prospectus under which restricted securities, subject securities or securities that are, directly or indirectly, convertible into, or exercisable or exchangeable for, restricted securities or subject securities, are distributed unless:

    (a) the distribution has received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer, or

    (b) at the time of any restricted security reorganization related to the securities to be distributed:

        (i) the restricted security reorganization received prior majority approval of the securityholders of the issuer in accordance with applicable law, including approval on a class basis if required and excluding any votes attaching at the time to securities held, directly or indirectly, by affiliates of the issuer or control persons of the issuer,

        (ii) the issuer was a reporting issuer in at least one jurisdiction, and

        (iii) no purposes or business reasons for the creation of restricted securities were disclosed that are inconsistent with the purpose of the distribution.

36. Sections 1.13 and 10.6 of Form 41-101F1 and sections 1.12 and 7.7 of Form 44-101F1 require that an issuer provide certain restricted security disclosure.

37. Section 2.2 of OSC Rule 56-501 requires dealer and adviser documentation to include the appropriate restricted share term if restricted shares and the appropriate restricted share term, or a code reference to restricted shares or the appropriate restricted share term, are included in a trading record published by the TSXV or other exchange listed in OSC Rule 56-501.

38. Section 2.3 of OSC Rule 56-501 requires that a rights offering circular or offering memorandum for a stock distribution prepared for a reporting issuer comply with certain requirements including, among others, that restricted shares may not be referred to by a term or a defined term that includes “common”, “preference” or “preferred” and that such shares shall be referred to using a term or a defined term that includes the appropriate restricted share term.

39. Section 3.2 of OSC Rule 56-501 provides that the prospectus exemptions under Ontario securities law are not available for a stock distribution of securities of a reporting issuer unless either the stock distribution received minority approval of shareholders or all the conditions set out in subsection 3.2(2) are satisfied and the information circular relating to the shareholders' meeting held to obtain such minority approval for the stock distribution included prescribed disclosure.

40. Section 10.1 of NI 51-102 requires a reporting issuer that has outstanding restricted securities, or securities that are directly or indirectly convertible into or exercisable or exchangeable for restricted securities or securities that will, when issued, result in an existing class of outstanding securities being considered restricted securities, to provide specific disclosure with respect to such securities in its information circular, a document required by NI 51-102 to be delivered upon request by a reporting issuer to any of its securityholders, an annual information form prepared by the reporting issuer as well as any other documents that it sends to its securityholders.

41. Section 10.2 of NI 51-102 sets out the procedure to be followed with respect to the dissemination of disclosure documents to holders of restricted securities.

42. Pursuant to the Restricted Security Rules, a "restricted security" means an equity security of a reporting issuer if any of the following apply:

    (a) there is another class of securities of the reporting issuer that, to a reasonable person, appears to carry a greater number of votes per security relative to the equity security,

    (b) the conditions attached to the class of equity securities, the conditions attached to another class of securities of the reporting issuer, or the reporting issuer's constating documents have provisions that nullify or, to a reasonable person, appear to significantly restrict the voting rights of the equity securities, or

    (c) the reporting issuer has issued another class of equity securities that, to a reasonable person, appears to entitle the owners of securities of that other class to participate in the earnings or assets of the reporting issuer to a greater extent, on a per security basis, than the owners of the first class of equity securities.

43. As the Compressed Shares will entitle the holders thereof to 1,000 votes per Compressed Share held, it will technically represent a class of securities carrying a greater number of votes per security relative to the Common Shares, which entitle the holders thereof to one (1) vote per Common Share. The greater number of votes per Compressed Share (vis-à-vis the Common Shares) would, absent the Exemption Sought, have the following consequences in respect of the technical status of the Common Shares:

    (a) pursuant to NI 41-101 and NI 44-101, the Filer would be unable to use the word "common" to refer to the Common Shares in the Prospectuses and the Filer would be required to provide the specific disclosure required by NI 41-101 and NI 44-101 because the Compressed Shares would represent a security to which are attached voting rights exercisable in all circumstances, irrespective of the number or percentage of securities owned, that are more, per security, than the voting rights attached to the Common Shares,

    (b) the Common Shares would be considered "restricted shares" pursuant to OSC Rule 56-501 and the Filer would be subject to the dealer and advisor documentary disclosure obligations and distribution restrictions in OSC Rule 56-501 because the Compressed Shares would represent a security to which is attached voting rights exercisable in all circumstances, irrespective of the number of percentage of shares owned, that are more, on a per share basis, than the voting rights attaching to the Common Shares and the Filer would be unable to use the word "common" to refer to the Common Shares in a rights offering circular or offering memorandum for a stock distribution, and

    (c) the Common Shares could be considered "restricted securities" pursuant to para. (a) of the definition of the term in NI 51-102 and the Filer would be required to provide the specific disclosure required by NI 51-102 in respect of the Common Shares because the Compressed Shares would represent another class of securities of the Filer that, to a reasonable person, appears to carry a greater number of votes per security relative to the Common Shares.

Decision

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

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

(a) in connection with the Prospectus Disclosure Relief and the Prospectus Eligibility Relief as they apply to Prospectuses, at the time the Filer relies on the Exemption Sought:

  (i) the representations in paragraphs 24 to 32, above, continue to apply;

  (ii) the Filer has no restricted securities issued and outstanding other than the Common Shares; and

  (iii) the Prospectuses include disclosure consistent with the representations in paragraphs 24 to 32 above;

(b) in connection with the OSC Rule 56-501 Disclosure Relief as it applies to the OSC Rule 56-501 Documents, at the time the Filer relies on the Exemption Sought:

  (i) the representations in paragraphs 24 to 32, above, continue to apply; and

  (ii) the Filer has no restricted shares issued and outstanding other than the Common Shares;

(c) in connection with the OSC Rule 56-501 Withdrawal Relief, at the time the Filer relies on the Exemption Sought:

  (i) the representations in paragraphs 24 to 32, above, continue to apply; and

  (ii) the Filer has no restricted shares issued and outstanding other than the Common Shares; and

(d) in connection with the CD Disclosure Relief as it applies to the CD Documents, at the time the Filer relies on the Exemption Sought:

  (i) the representations in paragraphs 24 to 32, above, continue to apply; and

  (ii) the Filer has no restricted securities issued and outstanding other than the Common Shares.

“Erin O’Donovan”
Manager, Corporate Finance
Ontario Securities Commission

OSC File #: 2023/0286

B.3.5 Haywood Securities Inc.

Headnote

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

Applicable Legislative Provisions

National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations, ss. 13.18(2)(b) and 15.1.

November 22, 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
HAYWOOD SECURITIES INC.
(the Filer)

DECISION

Background

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

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

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation formed under the laws of British Columbia and has its head office in Vancouver, British Columbia.

2. The Filer is registered as an investment dealer in Alberta, British Columbia, Manitoba, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Ontario, Prince Edward Island, Quebec, Saskatchewan and Yukon. The Filer is also a member of the Canadian Investment Regulatory Organization (**CIRO**).

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

4. The Filer's principal business is acting as an investment dealer providing investment products and services to individual, corporate and institutional clients.

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

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

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

8. The Registered Individuals interact primarily with institutional clients that are, each, a non-individual "institutional client" as defined in CIRO Rule 1201 (**Institutional Clients**).

9. To the extent a Registered Individual interacts with clients that are not Institutional Clients (**Retail Clients**), the Filer has policies, procedures and controls in place to ensure that such Registered Individual will only use a Title when interacting with Institutional Clients, and will not use a Title in any interaction with Retail Clients, including in any communications, such as written and verbal communications, that are directed at, or may be received by, Retail Clients.

10. The Filer will not grant any registered individual that interacts primarily with Retail Clients, nor will such registered individual be permitted by the Filer to use, a corporate officer title other than in compliance with paragraph 13.18(2)(b) of NI 31-103.

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

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

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

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

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, provided that, when using the Titles, the Filer and its Registered Individuals interact only with existing and prospective clients that are exclusively non-individual "permitted clients" as defined in NI 31-103 or non-individual "institutional clients" as defined in CIRO Rule 1201.

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

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

OSC File #: 2023/0355

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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 NOTING TO REPORT THIS WEEK.				

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Predictiv AI Inc.	June 6, 2022	November 27, 2023
Sweet Earth Holdings Corporation	November 3, 2023	November 24, 2023
Biovaxys Technology Corp.	October 5, 2023	November 22, 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	June 20, 2023
CareSpan Health, Inc.	May 5, 2023	June 7, 2023
Canada Silver Cobalt Works Inc.	May 3, 2023	June 15, 2023
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	
Falcon Gold Corp.	November 1, 2023	

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B.6
Request for Comments

B.6.1 CSA Notice and Request for Comment – Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service – Proposed Amendments to National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations and Proposed Changes to Companion Policy 31-103CP Registration Requirements, Exemptions and Ongoing Registrant Obligations

CSA/ACVM Canadian Securities Administrators Autorités canadiennes en valeurs mobilières

CSA Notice and Request For Comment

Registered Firm Requirements Pertaining to an Independent Dispute Resolution Service

Proposed Amendments to
National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

Proposed Changes to
Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations*

November 30, 2023

1. Introduction

The Canadian Securities Administrators (**CSA** or **we**) are publishing for a **90-day comment period expiring February 28, 2024,** proposed amendments to certain complaint handling provisions of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**), as well as proposed changes to Companion Policy 31-103CP *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**31-103CP**).

The proposed amendments to NI 31-103 are referred to as the **proposed rule amendments** and the proposed changes to 31-103CP are referred to as the **proposed CP changes**.

The proposed rule amendments and proposed CP changes would form part of a new regulatory framework (the **proposed framework**) under which an independent dispute resolution service (**IDRS**) that is a not-for-profit entity and which has been designated or recognized by CSA jurisdictions (the **identified ombudservice**) would have the authority to issue binding final decisions.

The British Columbia Securities Commission (**BCSC**) supports the outcomes intended by this project, but is not participating in the proposal for comment of the rule amendments or proposed CP changes. British Columbia is considering legislative changes that may achieve the same outcomes as those intended by the proposed framework. The BCSC is interested in feedback on the proposed framework and will take comments into consideration.

In Québec, the Autorité des marchés financiers (**AMF**) provides, as per its governing legislation, conciliation and mediation services to consumers of financial products and services, including retail investors. The AMF is participating in the CSA consultation by proposing to maintain the exemption applicable to firms registered in Québec regarding the dispute resolution services requirements under NI 31-103. In this Notice, all references to outcomes sought by the CSA are therefore made by CSA members excluding Québec.

To provide context for the proposed rule amendments and to ensure meaningful participation in this consultation and in the further development and refinement of the proposed framework, this Notice also describes potential key structural elements of a proposed framework, the CSA's rationale for proposing these elements, and questions and matters for consideration where we encourage specific feedback to inform our continued work. We also welcome general comments on all components of this publication.

Currently, NI 31-103 provides for the Ombudsman for Banking Services and Investments (**OBSI**) as an independent service that resolves disputes, but OBSI does not have authority to make binding decisions. If implemented, the proposed rule amendments

would modify the complaint handling process and require that firms (as defined below) comply with a final decision of the identified ombudservice.

The proposed framework is informed by the CSA's experience overseeing OBSI in its current form, as well as international best practices. If the proposed framework is implemented, we anticipate that OBSI would be the IDRS considered for designation or recognition by securities regulatory authorities.

Implementing a binding investment ombudservice regime in Canada would improve confidence in our markets and provide retail clients who are dissatisfied with their firm's response to a complaint and who take their dispute to OBSI for resolution (each, a **complainant**) with a fully effective system of redress that is final, fair and accessible. For example, internationally, a number of financial ombudservices that may be considered OBSI's peers have the authority to issue binding decisions.

In Canada, while most retail clients' complaints are resolved by firms, the CSA has observed historic refusals to pay complainants at all and patterns of settling disputes for less than OBSI recommends. This can have significant impacts on complainants and may discourage others from taking their case to OBSI. Making OBSI recommendations binding could improve investor protection and promote increased fairness for retail clients. In addition to impacting clients, these historically observed patterns and dynamics may also be inefficient for firms given that OBSI's services do not necessarily resolve a dispute, which potentially prolongs complaint resolution processes and consumes more resources to bring finality to them.

In developing the proposed framework, the CSA was also informed by the demonstrated fairness and efficiency of dispute resolution services currently available to parties through OBSI as an alternative to litigation, which can be complicated, expensive, and stressful for all parties. The CSA considered reports and consultations that considered the benefits of, and recommended that OBSI be granted binding authority, including those of the independent evaluators of OBSI and Ontario's Capital Markets Modernization Taskforce. The CSA also consulted OBSI and was informed by statements of regulatory priorities in CSA jurisdictions.

The CSA recognizes the importance of having an efficient system that resolves complaints fairly and effectively without creating undue burden for either party to a dispute. To promote a high degree of confidence for all parties using the dispute resolution services of an identified ombudservice, the proposed framework would incorporate OBSI's existing investigation and recommendation processes while adding a subsequent optional review stage, the outcome of which is a final decision that binds firms and, in particular circumstances, complainants.

Legislative amendments in CSA jurisdictions will be required to enable the proposed framework. Accordingly, some CSA jurisdictions have suggested amendments to local statutes for consideration by their government. Any amendments to local acts would be proposed by governments. Proposed legislative amendments would only become law in a CSA jurisdiction if they were proclaimed and in force in that jurisdiction. Nothing in this Notice or the decision to publish the Notice should be considered as an indication of whether such legislative amendments will be made in any jurisdiction.

CSA jurisdictions other than British Columbia are issuing this Notice to solicit comments on the proposed rule amendments and the proposed CP changes that are part of the proposed framework. Although the BCSC is not publishing the proposed rule amendments and the proposed CP changes for comment, the BCSC is interested in the views expressed.

The text of the proposed rule amendments and the proposed CP changes are reflected in Annex B and Annex C of this Notice and is also available on the websites of certain CSA jurisdictions, including:

lautorite.qc.ca
www.asc.ca
https://nssc.novascotia.ca
https://fcnb.ca
www.osc.ca
www.fcaa.gov.sk.ca
www.mbsecurities.ca

2. Substance and Purpose

Currently, Part 13, Division 5 of NI 31-103 sets out requirements that apply to a registered firm, except an investment fund manager acting in that capacity[1] (each, a **firm**), for handling and responding to complaints by retail clients, as well as requirements regarding making an independent dispute resolution or mediation service available to a retail client.[2]

If implemented, the proposed rule amendments would impose new requirements on firms in respect of a not-for-profit IDRS that has been designated or recognized by an order of the securities regulatory authority (each, a **harmonized order**). Harmonized

[1] See subsection 13.14 (1) of NI 31-103, "This Division does not apply to an investment fund manager in respect of its activities as an investment fund manager."

[2] Please note that, in Québec, pursuant to section 13.14 of NI 31-103, a registered firm is deemed to comply with Part 13, Division 5 of NI 31-103 if it complies with sections 168.1.1 to 168.1.4 of the Securities Act (RSQ, chapter V-1.1). The requirement to make available an independent dispute resolution or mediation service also does not apply in Québec.

orders would make the not-for-profit IDRS the identified ombudservice authorized to make binding final decisions, the services of which firms would be required to make available to their retail clients free of charge.

Recognizing the impact binding decisions would have on all parties, the proposed framework contemplates that an identified ombudservice would have an initial investigation and recommendation stage based on OBSI's current practice. Additionally, the proposed framework contemplates an internal review stage where firms and complainants may raise specific concerns regarding the identified ombudservice's recommendation. In order to ensure that efficiency and proportionality are preserved, the internal review stage would require that the identified ombudservice use only procedures proportionate to the dispute in reviewing a recommendation. Once the identified ombudservice issues its final decision following the internal review stage, the final decision would be binding on a firm in all circumstances and would be binding on a complainant if the complainant objected to the recommendation and thus triggered the review. Implementing the proposed framework would enhance the accessibility and efficiency of dispute resolution through the identified ombudservice, provide fairness for both firms and complainants, and enhance investor protection and confidence in the investment services sector.

The proposed rule amendments would be necessary to implement key potential structural elements of the proposed framework in the jurisdictions publishing them for comment. The new provisions would require firms to, among other things, comply with a final decision of the identified ombudservice.

To reduce the risk of confusing the dispute resolution services of the identified ombudservice with a firm's internal complaint handling processes, the proposed rule amendments would also prohibit firms from using certain terminology for internal or affiliated services that implies independence, such as the title "ombudsman" or "ombudservice". This proposed prohibition on certain terminology would not prevent firms from offering complaint handling services or processes; it is intended to underscore the policy rationale of improving investor redress through the identified ombudservice.

The proposed framework would more closely reflect international best practices for financial dispute resolution services, including a two-stage process and binding decisions.

3. Background

a. Binding authority and international financial ombudservices

Financial ombudservices that provide dispute resolution services operate in many jurisdictions globally. While some ombudservices make only non-binding recommendations, some financial ombudservices – including examples in the United Kingdom,[3] Australia,[4] and Ireland,[5] jurisdictions which have similar legal systems to Canada's – have the authority to issue binding final decisions. In respect of the current dispute resolution process available through OBSI, Canada has not kept pace with these jurisdictions in implementing a binding ombudservice regime. This gap received international comment in the most recent International Monetary Fund (**IMF**) Financial Sector Assessment Program (**FSAP**) review of Canada.[6]

In addition to the IMF's international critique, the lack of binding authority has been identified as a concern domestically.[7] Three independent evaluations of OBSI, required by the CSA as part of the current oversight regime, have identified the lack of binding authority as a significant design flaw in Canada's investment dispute resolution system.[8]

The financial ombudservices of the United Kingdom, Australia and Ireland operate within regulatory frameworks which emphasize fairness and flexibility, and which share many elements with the proposed framework, including:

- a single ombudservice either created by legislation or recognized by a regulator
- oversight by financial service regulatory authorities
- no obligation for a complainant to use the ombudservice and preserving the complainant's ability to pursue their case in court instead
- the ombudservice's standard of decision-making considers what is fair in all the circumstances between the complainant and financial services provider, having regard to relevant codes and good industry practices

3 Financial Ombudsman Service (UK), How we make decisions, "Final Binding Decisions", accessed at <https://www.financial-ombudsman.org.uk/who-we-are/make-decisions>.

4 Australian Financial Complaints Authority, What process we follow, "Determination (a binding decision)", accessed at < https://www.afca.org.au/what-to-expect/the-process-we-follow>.

5 Financial Services and Pensions Ombudsman, How we deal with your complaint, "Formal complaint resolution", accessed at < https://www.fspo.ie/our-services/>.

6 *Canada: Financial System Stability Assessment IMF Country Report No. 19/177*, June 2019 by the International Monetary Fund, at p 30.

7 *See, for example*, Capital Markets Modernization Taskforce, *Modernizing Ontario's Capital Markets: Capital Markets Modernization Taskforce Final Report*, online: <Ontario.ca>, (January 2021) [https://www.ontario.ca/document/capital-markets-modernization-taskforce-final-report-january-2021].

8 *See, for example,* Poonam Puri and Dina Milivovejic, *Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate* (2022) at p 9.

- the ombudservice has latitude in determining its decision-making procedures, with a focus on procedural fairness, proportionality and efficiency
- a "first stage" investigator recommending compensation where facilitated settlement between the parties cannot be reached, followed by a binding decision made by a separate, more senior internal decision-maker if either party rejects the case handler's recommendation and elects to pursue a "second stage" binding process
- the ability to award monetary and non-monetary remedies
- enforceability of the ombudservice's final decision

Regarding which parties are bound by a final decision, Ireland's framework takes a different approach from the frameworks in the United Kingdom and in Australia. In Ireland, both the firm and the complainant are bound, whereas in the United Kingdom and Australia, only the firm is bound. However, under Ireland's framework, an appeal of a decision to the High Court is permitted, whereas no appeal is permitted under the frameworks in either the United Kingdom or Australia.

Additional examples of financial ombudservices with binding decision-making authority include:

- Insurance and Financial Services Ombudsman Scheme (New Zealand)[9]
- Financial Ombudsman Institution (Taiwan)[10]
- Financial Industry Disputes Resolution Centre (FIDeC) (Singapore)[11]
- Dutch Institute for Financial Disputes (Kifid) (Netherlands)[12]
- Office of the Ombud for Financial Services Providers (South Africa)[13]
- The Office of the Czech Financial Arbitrator (Czech Republic)[14]

Recently, Spain announced that it will create an independent administrative authority with the ability to make binding decisions, with the goal of strengthening the system of out-of-court settlement of complaints between institutions and customers of banking, securities and insurance products.[15]

b. Current investor redress through OBSI

OBSI is a federally incorporated not-for-profit organization that provides an independent service for resolving investment disputes between participating firms and their clients, at no cost to those clients and without the need for legal representation. OBSI's services are available to complainants who want an independent and impartial third party to resolve a dispute about whether their firm has treated them fairly.[16] Currently, firms in Canada (except in Québec) must, under subsection 13.16(6) of NI 31-103, "take reasonable steps to ensure that OBSI will be the independent dispute resolution or mediation service that is made available to a client".

In assessing complaints, OBSI applies a fairness standard whereby OBSI considers what would be fair to the parties in all the circumstances of a complaint.[17] In applying the fairness standard, OBSI "[takes] into account general principles of good financial services and business practice, law, regulatory policies and guidance, professional body standards and any relevant code of practice or conduct".[18]

In applying the fairness standard, OBSI uses an inquisitorial process or method whereby an investigator, in an independent and impartial role, takes an active part in investigating the facts of the case before making a recommendation about the outcome of the dispute (**inquisitorial approach**). Under the inquisitorial approach, an OBSI investigator gathers evidence from the parties, identifies core issues, asks the parties follow-up questions, and makes a recommendation on the issues based on their findings. The inquisitorial approach is distinct from an adversarial process where each party presents their own facts and positions on issues. Overall, the adversarial process can be difficult for parties to navigate without a lawyer and specific industry expertise. In

9 *See* www.ifso.nz
10 *See* www.foi.org.tw
11 *See* www.fidrec.com.sg
12 *See* www.kifid.nl
13 *See* www.faisombud.co.za
14 *See* www.finarbitr.cz
15 Reuters, "Spain to launch financial consumers' protection authority", online: <reuters.com>, (April 5, 2022) [https://www.reuters.com/world/europe/spain-launch-financial-consumers-protection-authority-2022-04-05/].
16 Retail clients who are concerned that a firm has breached securities regulations or requirements may complain to the securities regulatory authority, or if the firm is a member, to CIRO.
17 *See* OBSI Terms of Reference at section 13.2, "OBSI will make a recommendation or reject a complaint with reference to what is, in OBSI's opinion, fair in all the circumstances to the Complainant and the Participating Firm".
18 *Ibid*, s. 8.1(a).

contrast, the inquisitorial approach allows parties to interact with OBSI without a lawyer and can provide a timely resolution for both firms and complainants.

The inquisitorial approach gives OBSI procedural flexibility to address the potential power imbalance between complainants and firms when determining the issues in dispute and gathering information. This approach also acknowledges that firms often have greater resources and specialized knowledge in relation to the substance of a complaint. OBSI's inquisitorial approach is crucial to making its services accessible to retail clients because it enables OBSI to apply only the processes that are necessary and proportionate to each complaint. OBSI's ability to control its own procedures enables OBSI to provide fair access to its services, maintain efficiency for all parties to a dispute, and minimize the chances that complainants will abandon the dispute resolution process due to complexity.

Currently, when OBSI investigates a complaint and determines that it would be fair for the firm to provide monetary compensation to a complainant, OBSI typically first attempts to facilitate a settlement between the complainant and the firm. If the parties do not arrive at a settlement, OBSI issues a non-binding recommendation for an amount up to the monetary compensation limit of $350,000. In cases where OBSI recommends compensation, OBSI has no formal power or process to require a firm to pay the complainant.

Since firms are currently not required to comply with an OBSI recommendation, to encourage compliance, OBSI employs a 'name and shame' system under which OBSI publishes the names of only those firms which refuse to follow its recommendations in their entirety. However, historically, publication has not included the names of firms that settle a complaint at an amount lower than what OBSI recommended. Consequently, if a firm disagrees with an OBSI recommendation and the complainant accepts a settlement offer lower than OBSI's recommendation, then the firm's name will not be made public. As OBSI recommendations are not binding on a firm, complainants may feel compelled to accept a lower settlement offer or risk receiving nothing. While commencing a civil proceeding to seek full compensation is another option for the complainant, such proceedings can be time-consuming, expensive, and stressful.

The concerns about the current "name and shame" system were highlighted in both the 2016[19] and 2021[20] independent evaluations of OBSI's investment operations and processes. The evaluations criticized the current system for creating a power imbalance in favour of registered firms, with the result that firms can negotiate down the compensation paid to complainants.[21] Likewise, each of the 2011, 2016 and 2021 independent evaluations recommended that OBSI be given binding authority.[22] These recommendations were accompanied by favourable findings regarding OBSI's accessible investigative processes and OBSI's rates of case retention (as described below).

c. Patterns Observed by the CSA

The CSA's development of the proposed framework has been informed by a variety of concerns and observed patterns. As the independent evaluators of OBSI's investment operations and processes observed in their 2016 and 2021 reviews, the CSA has also recognized that low settlements may erode investor confidence in the fairness and effectiveness of the dispute resolution process.[23] Historically, patterns of refusals may have had a similar impact.

The OBSI process for dispute resolution provides efficiency for firms and a helpful service for complainants, as shown by strong case retention rates.[24]

In developing the proposed framework, the CSA has sought to balance the need to address observed patterns, enhance fairness and improve efficiency for both firms and complainants that engage in the dispute resolution services of OBSI.

i. Low settlements

Since OBSI's recommendations are currently not binding, CSA staff have observed that some firms offer a settlement amount that is less than the amount of compensation recommended by OBSI. The complainant's main alternatives to OBSI are initiating a civil proceeding against the firm or abandoning the complaint. Given limited alternatives available to complainants, once OBSI makes a recommendation, complainants may feel they must accept a settlement offer that is below OBSI's recommended amount or risk receiving nothing. This dynamic may dissuade some complainants from using OBSI's non-binding process.

Low settlements and settlement refusals may erode retail client confidence in the fairness and effectiveness of OBSI's dispute resolution services, the CSA's approach to independent dispute resolution generally, and in addition may contribute to reluctance to engage with firms or to invest in financial markets using the services of firms if there is no assurance of an effective dispute

19 Deborah Battell and Nikki Pender, *Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate* (2016) at p 1.
20 Puri and Milivojevic, *supra*, at p 9.
21 *Ibid*, for example at p 34.
22 Battell and Pender, *supra* at p 7; Puri and Milivojevic, *supra* at p 9; Navigator Company, *Ombudsman for Banking Services and Investments, 2011 Independent Review* (2011), at p 9.
23 CSA Staff Notice 31-362 *OBSI Joint Regulators Committee Annual Report for 2021* (November 3, 2022), at p 5.
24 See case retention rate discussion at page 9 of this Notice.

resolution service. Addressing the non-binding nature of OBSI recommendations is an opportunity to promote increased confidence in Canada's investment services sector and drive efficiencies for both parties to a financial services dispute.

Overall, since OBSI's fiscal year 2018, retail clients received approximately $1.6 million less than what OBSI recommended at the conclusion of OBSI's investigation.[25] The CSA has observed that the percentage of cases that settle below OBSI's recommended amount (**low settlement cases**) increases as the value of the recommended monetary compensation increases.

Table 1 below shows case data provided by OBSI, including the percentage of cases where retail clients settled below OBSI's recommended amount from 2018-2022.

Table 1 – 2018-2022 Investment Cases Settled Below OBSI's Recommended Amount

OBSI Recommended Amount	% of Cases settled below OBSI's recommended amount	# of Cases Closed with monetary compensation recommendations
$1 to $9,999	1%	384
$10,000 to $49,999	13%	113
$50,000 to $99,999	46%	26
$100,000 to $199,999	43%	14
$200,000 to $350,000	67%	9

While compliance with OBSI recommendations is generally strong where the recommended monetary compensation is below $50,000, the percentage of low settlements increases where the recommended compensation exceeds $50,000. In terms of the dollar amount, where OBSI made a recommendation for compensation of $50,000 or less, the complainant received an average of $8,373 less than what OBSI recommended.[26] Where OBSI made a recommendation for compensation above $50,000, the complainant received an average of $59,373 less than what OBSI recommended.[27] On average, low settlement cases settled for 60% of OBSI's recommended amount of compensation.[28] This observed pattern can be problematic, given that complainants who have received a greater monetary compensation recommendation are likely to be those who have suffered greater harm.

Providing an identified ombudservice with binding authority would give complainants more certainty that they would receive fair redress that reflects the harm suffered, if the identified ombudservice determines that compensation is warranted. In turn, this may also improve investor confidence in OBSI, as the potential identified ombudservice, prompting more retail clients to take their disputes to OBSI.

ii. Case retention

Case retention at OBSI – that is, whether a complainant engages in OBSI's processes until OBSI concludes its investigation and determines whether to recommend compensation – provides some guidance as to how parties, particularly complainants given that they have the power to withdraw or abandon their complaint before OBSI, view the OBSI dispute resolution process.

Table 2 below set outs OBSI's case retention from its fiscal years 2018 – 2022.

Table 2 - 2018 to 2022 Case Data - Investments Only

OBSI Fiscal Year	# of Cases Closed by OBSI	# of Closed Cases Withdrawn or Abandoned	% of Closed Cases Withdrawn or Abandoned
2018	327	21	6%
2019	387	6	2%
2020	405	11	3%
2021	567	9	2%
2022	444	6	1%

25 CSA Staff Notice 31-364 *OBSI Joint Regulators Committee Annual Report for 2022* (October 2023), at p 4.
26 *Ibid.*
27 *Ibid.*
28 *Ibid*.

The data above shows that overall, OBSI has low case withdrawal rates, and suggests that the current process used by OBSI in considering a complaint is one that complainants may generally find to be helpful or accessible. It appears that complainants choose to remain engaged instead of pursuing other forms of dispute resolution or abandoning their case. A complainant's willingness to have their complaint assessed by OBSI is likewise positive for firms as they will not have to delegate additional resources to defending legal proceedings. Given the general indicia that complainants are content with having their complaints investigated and resolved by OBSI, and the positive impact this also has for firms, the CSA is of the view that the inquisitorial approach currently used by OBSI should be maintained in the proposed framework.

d. Design of Proposed Framework – Improving Investor Redress

The proposed framework being developed by the CSA would be a binding authority regime that is intended to be fair, efficient, accessible for all parties, and ultimately to improve access to redress for retail clients. To achieve this, dispute resolution under the proposed framework would include enhanced procedures for both firms and complainants.

Under the proposed framework, a not-for-profit IDRS would be designated or recognized by securities regulatory authorities, making it the identified ombudservice. The identified ombudservice would be subject to coordinated oversight by CSA jurisdictions, including through harmonized orders that would include terms and conditions on the identified ombudservice. Harmonized orders governing the identified ombudservice, an enhanced CSA oversight program, and prior CSA approval of certain identified ombudservice procedures and documents, including changes to them, would apply. As discussed below, we anticipate that OBSI would be the identified ombudservice.

The CSA pursued its work informed by international comparators and multi-year patterns of firms' engagement with OBSI that raised concerns about investor protection and fairness for complainants. Our work to date in developing the proposed framework has also been informed by the demonstrated efficiency of the dispute resolution mechanism currently available to parties through OBSI.

To address observed patterns and key concerns, the proposed framework would include binding authority for the identified ombudservice, while preserving OBSI's existing investigative processes. The proposed framework would achieve this by adding an optional review stage with a flexible and proportionate process applied by the identified ombudservice in reaching a binding final decision that provides certainty and finality to the parties. The two stages used by the identified ombudservice – investigation and review – would enhance fairness and confidence for both parties to a complaint. In addition, the proportionate processes applied by the identified ombudservice under the proposed framework may help to preserve the firm's relationship with the complainant following resolution of the dispute, a prospect which may be less likely following recourse through litigation which is adversarial in nature.

4. Key Elements of the proposed framework

This part of the Notice describes key elements of the proposed framework, including dispute resolution through the services of the identified ombudservice, the regulatory regime required to implement the proposed framework, and CSA oversight.

a. Overview of Regulatory Regime

To create a regulatory regime that would implement the proposed framework, the proposed rule amendments would require the adoption of legislation in local jurisdictions. Below, we provide an overview of key elements of the overarching regulatory regime that would implement the proposed framework.

i. Legislation

Existing or new legislation in local jurisdictions that would be required to implement the proposed framework could include the following:

- Authorizing the securities regulatory authority to recognize or designate an IDRS (i.e., the identified ombudservice);
- Authorizing the securities regulatory authority to make decisions with respect to the manner in which an IDRS carries on business or any by-law, rule, regulation, policy, procedure, interpretation or practice of an IDRS;
- Authorizing the securities regulatory authority to make rules regarding a recognized or designated IDRS, including with respect to oversight and governance;
- Authorizing the securities regulatory authority to require firms to be a member of the identified ombudservice and to comply with binding final decisions of the identified ombudservice (discussed below);
- Authorizing the identified ombudservice to issue binding final decisions that include financial compensation;

- Establishing that either the identified ombudservice or a complainant may file a final decision of the identified ombudservice with the court, making the decision enforceable as if it were an order of the court;

- Setting out that the identified ombudservice must apply the fairness standard and proportionate processes (discussed below)

In addition, to support the identified ombudservice and its unique role as an efficient and fair dispute resolution service provider, it is contemplated that the identified ombudservice would be excluded from arbitration acts and if necessary, other legislation that sets out procedural requirements for tribunals. This would facilitate procedural and adjudicative flexibility for the identified ombudservice under CSA oversight, furthering its ability to act as an alternative to litigation as a dispute resolution service.

Nothing in this Notice or the decision to publish the Notice should be considered as an indication of whether such legislative amendments will be made in any jurisdiction.

ii. NI 31-103

The proposed rule amendments would include certain requirements, including that firms be members or maintain membership in the identified ombudservice, cooperate with the identified ombudservice in respect of its investigation and review of complaints by not withholding, destroying or concealing any information or documents, and comply with final decisions of the identified ombudservice.

In addition, to address the potential for retail investor confusion, the proposed rule amendments would prohibit the firm's use of certain terms when referring to their internal complaint handling procedures or to their internal complaint handling department or service (such as "ombudsman", "internal ombudservice" or a term that is substantially similar).

iii. 31-103CP

The proposed CP changes set out the CSA's interpretation of the requirements within the proposed rule amendments and provides guidance for complying with these requirements. This includes additional discussion of complaint handling with respect to complaints lodged with a firm verbally, as well as when OBSI may be notified about a complaint.

b. OBSI as the Potential Identified Ombudservice

Under the proposed framework, it is anticipated that OBSI would be considered for designation or recognition by CSA jurisdictions as the identified ombudservice under NI 31-103. The identified ombudservice would be subject to coordinated oversight by CSA jurisdictions, which the CSA continues to develop, and which is expected to reflect certain existing oversight regimes such as those in place for self-regulatory organizations (**SROs**), clearing agencies and exchanges. Oversight is anticipated to include purview over governance and organizational aspects of the identified ombudservice.

The identified ombudservice would continue to function as an alternative dispute resolution service, with its processes and binding decision power designed to address the potential power imbalances referenced above. Use of the identified ombudservice's dispute resolution services would remain optional for complainants.

The proposed rule amendments would require firms to be members of the identified ombudservice, cooperate with the identified ombudservice in the dispute resolution process, and to comply with the final decision of the identified ombudservice, or the recommendation once it has been deemed a final decision, which may require payment of monetary compensation or potentially the performance of certain specified corrective actions.

Consultation Question

1. The CSA contemplates that under the proposed framework, an IDRS would be authorized to issue binding decisions in circumstances where it is designated or recognized in a jurisdiction as the identified ombudservice. It is possible that some CSA jurisdictions may not designate or recognize OBSI as the identified ombudservice at the same time, resulting in the status quo (e.g., OBSI making non-binding recommendations only) applying in those jurisdictions until OBSI were designated or recognized as the identified ombudservice. If jurisdictions designate or recognize OBSI as the identified ombudservice at different times, what operational impacts, if any, would you anticipate from an IDRS being designated or recognized in some but not all jurisdictions? How can these impacts best be managed?

c. Investigation and Review of a Complaint Before the Identified Ombudservice

A flowchart of the dispute resolution process through the identified ombudservice under the proposed framework is included at Annex D.

The proposed framework contemplates that the identified ombudservice would preserve as much of the investigative processes currently used by OBSI as possible, the integrity and fairness of which has been reviewed and endorsed through multiple independent reviews, while adding a new binding decision stage.

The proposed framework contemplates that, within harmonized orders, the identified ombudservice would have two stages as part of its dispute resolution process:

- *Investigation and settlement or recommendation* (**investigation and recommendation stage**)
- *Review and decision* (**review and decision stage**)

The investigation and recommendation stage of an identified ombudservice would carry forward OBSI's current investigative processes, while the review and decision stage would be the new stage under which an identified ombudservice would issue binding final decisions. Adding the review and decision stage would preserve as much of OBSI's current inquisitorial approach as possible while equipping the identified ombudservice with appropriate expanded procedural tools in order to issue a binding final decision without adding undue burden to the parties.

i. The Investigation and Recommendation Stage

Under the proposed framework, the investigation and recommendation stage would commence when a retail client notifies the identified ombudservice of a complaint that was not resolved through the firm's internal complaint handling processes, and which the complainant wishes the identified ombudservice to consider.

During this stage, the identified ombudservice would use the same inquisitorial approach currently used by OBSI to obtain relevant information to either facilitate a settlement between the parties in the course of preparing a recommendation or to make a recommendation to resolve the dispute. As is currently the case under OBSI's processes, the investigation and recommendation stage would be concerned with resolving a dispute fairly and addressing power imbalances which may exist between the parties because of potentially limited resources or lack of sophistication on the part of the complainant, as compared to the firm. In doing so, the identified ombudservice would act independently and impartially to gather and consider relevant information while applying the fairness standard.

The investigation and recommendation stage would result in a recommendation by the identified ombudservice. Following a recommendation, the firm and the complainant would both have the opportunity to object to the identified ombudservice's recommendation, in whole or in part, in which case the review and decision stage described below would begin.

A recommendation by the identified ombudservice would become binding on firms and deemed to be a final decision if neither the firm nor the complainant object to the recommendation within the time period specified by the identified ombudservice in its rules and the complainant has not withdrawn from the dispute resolution process either through commencing a separate legal proceeding or otherwise.[29]

ii. The Review and Decision Stage

Either the complainant or the firm could trigger the review and decision stage by submitting a written objection to the identified ombudservice regarding its recommendation.

During the review and decision stage, a senior decision-maker of the identified ombudservice who was not involved in the investigation and recommendation stage would consider the party's formal objection to the recommendation. The scope of the decision-maker's review would be limited to the specific objections raised by the parties and the decision-maker would apply the fairness standard. The decision-maker would not engage in facilitated settlement.

In conducting its review, the identified ombudservice would adopt a process that is proportionate to the complaint. The identified ombudservice would achieve a proportionate process by following a procedural threshold test under which the identified ombudservice would engage only in processes essential to achieving as efficient, quick, and understandable a process as possible in resolving disputes in a fair manner (the **essential process test**). We contemplate that the essential process test would be set out in legislative amendments in local jurisdictions. During the review and decision stage, the essential process test would enable the identified ombudservice to use processes that range from inquisitorial to adversarial, if they are essential to achieving a proportionate process for both parties to resolve a dispute fairly. The identified ombudservice would decide which procedural tools to apply in each review. In all scenarios, the identified ombudservice would apply processes that achieve procedural fairness for

[29] The firm would not be required to comply with a recommendation while the recommendation is subject to a review.

both the firm and the complainant and that do not create disproportionate burden on the parties. The use of procedural tools that are more commonly found within the adversarial system during the review and decision stage is anticipated to be infrequent and would be limited to circumstances that meet the essential process test.

Once the identified ombudservice has completed its review, it would issue a decision. If only the firm had objected to the outcome from the investigation and recommendation stage, the complainant would have an opportunity to reject the decision within a specified period. If the complainant does not reject the decision and has not otherwise withdrawn from the process in a manner authorized by the identified ombudservice, the decision would become final and binding on the parties. Parties may also be able to apply for judicial review of the decision, where available.

We anticipate that additional details regarding the processes of the identified ombudservice would be set out in either the identified ombudservice's governance documents or within harmonized orders – including in respect of when a recommendation is deemed to be a final decision as well as the circumstances in which a complainant would not be permitted to either abandon the dispute resolution process or commence litigation following the issuance of a final decision. We also anticipate that CSA member approval of those processes, and any changes to those processes as proposed by the identified ombudservice, would be required under the proposed legislative framework and harmonized orders.

We contemplate that the identified ombudservice would publish materials and communications to reflect its processes under the proposed framework, and to develop appropriate forms and notices to ensure that all participants in the dispute resolution process through the identified ombudservice understand the process and their rights and responsibilities.

iii. Final decisions of the identified ombudservice

A final decision of the identified ombudservice may require the firm to provide monetary compensation to a complainant or to take a specific type of corrective action, as appropriate in the circumstances. A complainant would be bound by the outcome of the review and decision stage, if they object to the identified ombudservice's recommendation. If only the firm objects to the recommendation and seeks a review, then the complainant could reject the dispute resolution process, including after they receive the decision, and instead pursue a civil proceeding against the firm regarding their complaint.

A characteristic in the proposed framework that distinguishes it from international financial ombudservices is that the complainant would always be bound by a final decision made by the identified ombudservice, where the complainant triggered the review and decision stage. In contrast, in both the United Kingdom and Australia the complainant is bound by a final decision of the ombudservice only where the complainant formally accepts it. In these jurisdictions, if the complainant does not accept the ombudservice's final decision, the complainant may still seek resolution in another forum (such as a court). The CSA is of the view that, to promote finality, efficiency and fairness to both parties, binding complainants where the complainant sought a final decision of the identified ombudservice is an appropriate and balanced outcome and provides both parties to the dispute with a fair and final resolution of the matter.

The proposed framework contemplates that the maximum monetary compensation that could be awarded by the identified ombudservice would be $350,000, which is the current maximum monetary compensation that can be awarded by OBSI. Our view is that the maximum monetary compensation could be subject to review and increased in the future. The proposed framework also contemplates that the identified ombudservice may direct the firm to take specified corrective action, such as requiring a firm to return documents or to correct erroneous information where the firm's error was harmful to the complainant.

Additionally, once a final decision is rendered by the identified ombudservice at the conclusion of the review and decision stage, the complainant or the identified ombudservice would be able to file the identified ombudservice's decision with a superior court as an order of the court, making it enforceable.

Consultation Questions

2. The proposed rule amendments include a new provision requiring compliance with a final decision of the identified ombudservice. Under the proposed framework, we contemplate that both a recommendation or decision of the identified ombudservice could become a final decision that will be binding on the firm under certain circumstances. Specifically:

    a. With respect to a recommendation made by the identified ombudservice following the investigation and the recommendation stage, we contemplate the recommendation becoming a final decision where (i) a specified period of time has passed since the date of the recommendation, (ii) neither the firm nor the complainant has objected to the recommendation, and (iii) the complainant has not otherwise withdrawn from the process in a manner authorized by the identified ombudservice (the **deeming provision**). What are your general thoughts about the deeming provisions and the circumstances that trigger it? Please also comment on whether 30, 60, 90 days would be an appropriate length of time to be specified for a recommendation to be deemed a final decision under the deeming provision.

b. With respect to the decision made by the identified ombudservice following the review and decision stage, we contemplate the decision becoming final where (i) a specified period of time has passed since the date of the decision (the **post-decision period**), and if the complainant did not trigger the review and decision stage, (ii) the complainant has not rejected the decision and has not otherwise withdrawn from the process in a manner authorized by the identified ombudservice. Please comment on the provision of this post-decision period and whether 30, 60 or 90 days would be the appropriate length for the post-decision period.

3. The proposed framework contemplates that complainants could not reject a decision of the identified ombudservice if they initiated the second-stage review of the recommendation by objecting to it. What are your views on this approach?

4. Please provide any comments on maintaining the compensation limit amount of $350,000.

iv. No statutory right of appeal

The proposed framework does not contemplate a statutory right of appeal to an external body, such as a securities tribunal or to a court. However, it does contemplate the availability of judicial review in appropriate circumstances.

In proposing no statutory appeal right, we carefully considered historic commentary on this point, including comments received from stakeholders which raised questions about how to ensure accountability in a scenario where OBSI is granted binding authority, suggesting that an appeal right may be helpful in this regard.

We consider that the availability of an appeal right to either a court or to a CSA member tribunal may undermine a principal policy goal of this project. Namely, a right of appeal may re-introduce a power imbalance as between a complainant and a firm, with firms likely being in a better-resourced position to pursue appeals from a final decision of the identified ombudservice. While appeals to an external body could provide an additional opportunity to be heard or to consider the procedures and concepts applied by an identified ombudservice, appeals have costs. Appeals would increase expense, delay and complexity for the parties. Since securities tribunals and courts use adversarial processes, appeals to them could, over time, move the identified ombudservice towards an adversarial process, negating the benefits of the inquisitorial approach highlighted above. While appeal through a CSA member tribunal is potentially less costly to appellants, complainants may be at a disadvantage to firms in determining on what grounds they are permitted to make an appeal and to navigating the overall system without the assistance of legal counsel.

It is our view that the introduction of the essential process test, along with robust CSA oversight of the identified ombudservice, would sufficiently address concerns relating to procedural fairness. Parties may, where available, pursue the option of judicial review.

The proposed framework also does not include any statutory privative clause to restrict or limit rights to judicial review. We consider that judicial review, where available,[30] together with the enhanced regulatory oversight regime the CSA is developing that would be applicable to the identified ombudservice, will ensure strong and efficient accountability over a decision-maker authorized to deliver binding decisions.

A judicial review takes another look at a decision or order made by an administrative body to ensure the decision or order is fair, reasonable, and lawful. The availability of judicial review is anticipated to provide parties to a complaint with a venue in which to raise concerns about procedural fairness in respect of the identified ombudservice's decision-making processes. Judicial review would also permit parties to raise concerns with a superior court regarding the substance of a final decision issued by the identified ombudservice.

Because judicial review would not generally consider the case afresh but instead focus on procedural and substantive aspects at issue, we anticipate that judicial review will be an effective means for parties to raise concerns with the identified ombudservice's final decisions.

Ultimately, we anticipate that judicial review will be an additional means of ensuring fairness in the decision-making process.

Availability of judicial review will be determined by the superior court that receives an application for review.

Consultation Questions

5. The proposed framework does not contemplate an appeal of a final decision to either a securities tribunal, or a statutory right of appeal to the courts (although parties could still seek judicial review of a final decision). What impact, if any, do you think the absence of an appeal mechanism will have on the fairness and effectiveness of the framework for parties to a dispute?

[30] Common law rights and legislative provisions providing for judicial review by the superior courts may vary among Canadian jurisdictions.

6. Should the proposed framework include a statutory right of appeal to the courts or another alternative independent third-party procedure for disputes involving amounts above a certain monetary threshold (for example, above $100,000)? If so, please explain why.

d. CSA Oversight

The CSA considers appropriate and effective oversight of an IDRS that offers binding dispute resolution services to retail clients to be of paramount importance.

At this time, the CSA continues to develop an oversight regime for the identified ombudservice that would complement the proposed framework by balancing independence of the IDRS with a need for robust monitoring and response by securities regulatory authorities. We welcome comments in respect of an appropriate oversight regime for the identified ombudservice.

The CSA and OBSI entered into a Memorandum of Understanding (**MOU**) which provides a framework for oversight of and engagement with OBSI. Currently, the MOU sets out certain standards for OBSI, including those regarding governance, independence and standard of fairness, processes to perform functions on a timely and fair basis, fees and costs, resources, accessibility, systems and controls, core methodologies, information sharing, and transparency. The MOU also provides a framework for cooperation and communication between OBSI and the CSA and requires that OBSI undergo an independent evaluation at least once every five years.

We are of the view that a more comprehensive oversight regime should be developed for the identified ombudservice under the proposed framework, since it would be authorized to issue binding final decisions. This enhanced oversight regime would apply to OBSI if it were designated or recognized as the identified ombudservice. Upon implementation of the proposed framework, the CSA anticipates that oversight of the identified ombudservice would be enhanced and broadly follow the approach for oversight of SROs, clearing agencies, and exchanges. For example, similar to SROs, statutory authority in some jurisdictions could authorize the securities regulatory authority to make decisions with respect to the manner in which an identified ombudservice carries on business or any by-law, rule, regulation, policy, procedure, interpretation or practice of an identified ombudservice.

As the CSA has done for SROs, CSA oversight of the identified ombudservice would include oversight through harmonized orders setting out the terms and conditions on the identified ombudservice's recognition or designation. At the highest level, recognition or designation as the identified ombudservice would include a public interest requirement. Additionally, the harmonized orders would likely include obligations and requirements pertaining to risk identification, organizational structure and governance, including appropriate expertise and representation, fees, capacity building, reporting, and public transparency through publication of anonymized reasons. CSA jurisdictions would have approval powers over the identified ombudservice's key materials, which may include the Terms of Reference, procedural rules and written guidance.

Operationally, CSA oversight of the identified ombudservice is anticipated to include co-ordinated compliance examinations and monitoring of the identified ombudservice's reporting under a new MOU among the CSA jurisdictions. In advance of implementation of the proposed framework, we will develop oversight practices tailored to the identified ombudservice.

Consultation Questions

7. Are there elements of oversight, whether mentioned in this Notice or not, that you consider to be of particular importance in ensuring the objectives of the proposed framework are met? If so, please explain your rationale.

8. Do you consider oversight, together with the other aspects of the proposed framework discussed in this Notice, to be sufficient to ensure that the identified ombudservice remains accountable?

5. Summary of the proposed rule amendments and the proposed CP changes

The proposed rule amendments and the proposed CP changes are important components of the proposed framework and as such, are necessary to implement the proposed framework.

We welcome comments on all aspects of the proposed rule amendments and the proposed CP changes, as well as the proposed framework.

a. Proposed Rule Amendments

The proposed rule amendments would amend the definition of "complaint" for the purposes of sections 13.16 and 13.16.1 of NI 31-103 in order to clarify that a complaint concerns an "expression of dissatisfaction" that relates to a trading or advising activity of a firm or a representative of a firm.

The proposed rule amendments would require firms to make available the identified ombudservice for purposes of the requirement under subsection 13.16(4) of NI 31-103, be members of an identified ombudservice, cooperate with the identified ombudservice in respect of its investigation and review of complaints, and comply with final decisions of the identified ombudservice. We expect

that under the proposed framework the identified ombudservice would have the authority to decide to make a financial award or direct the firm to take a specified corrective action, such as correcting erroneous information a firm provided to a credit bureau or the Canada Revenue Agency regarding a complainant.

The proposed framework would require a firm to comply with the identified ombudservice's recommendation if neither party objects to the recommendation within a specified period. In these circumstances, a non-binding recommendation would be deemed to be a binding final decision of the identified ombudservice.

A party objecting to the recommendation would trigger a review of that recommendation and that review could result in the issuance of a binding final decision by the identified ombudservice. The proposed rule amendments would require a firm to comply with the identified ombudservice's decision, unless the complainant has rejected the decision or withdrawn from the dispute resolution process in a manner authorized by the rules of the identified ombudservice.

Section 13.16.1 would apply to a firm if a not-for-profit IDRS has been designated or recognized, making it the identified ombudservice in the jurisdiction. Section 13.16.1 would impose requirements on a firm regarding membership, cooperation, and compliance with a final decision as noted above.

If a CSA jurisdiction has not designated or recognized an identified ombudservice, the status quo is expected to apply in that jurisdiction, such that section 13.16 would continue to apply, and OBSI would continue to be authorized to issue non-binding recommendations.

Finally, the proposed rule amendments include a prohibition on firms using certain terminology that could be misleading or confusing to a retail investor (such as "ombudsman", "internal ombudservice" or a term that is substantially similar) when referring to a firm's complaint handling procedures or to an internal department or service that engages in complaint handling. The proposed prohibition on firms using certain terminology is consistent with Joint CSA Staff Notice 31-351 *Complying with requirements regarding OBSI* which indicates the general view that if an "internal ombudsman" is included in a registered firm's complaint-handing system, there is a potential for clients to confuse or conflate the firm's internal service with OBSI.[31] A similar prohibition can also be found at subsection 627.43(2) of the *Bank Act*,[32] which is applicable to the banking sector.

Consultation Question

9. Please provide your views on the anticipated effectiveness of prohibiting the use of certain terminology for internal or affiliated complaint-handling services that implies independence, such as "ombudsman" or "ombudservice", to mitigate investor confusion.

b. Proposed Changes to 31-103 CP

The proposed CP changes align complaint handling guidance with the requirements in NI 31-103. This includes additional discussion of complaint handling with respect to complaints lodged with a firm verbally, as well as when OBSI may be notified about a complaint. Additionally, it clarifies the CSA's expectation that for purposes of a firm's complaint handling obligations under NI 31-103, a complaint regarding trading or advising activity can include a complaint about client information, trading authority or suitability, and that consequently, CSA expects a firm to respond substantively and in writing.

The proposed CP changes also provide guidance regarding the proposed rule amendments, particularly the requirements they impose on firms. This includes discussion of when a firm is subject to the requirements of an identified ombudservice, when existing requirements would continue to apply, as well as membership and cooperation requirements with respect to an identified ombudservice.

6. Other matters

a. Alternatives considered to the proposed rule amendments and the proposed framework

The CSA has considered maintaining the status quo, under which OBSI would continue to make non-binding recommendations after its review of a complaint. The CSA is of the view that not proceeding with binding authority for a designated or recognized IDRS would prevent potential improvements to investor protection and potential enhancements to fairness, efficiency, and confidence in the investment services sector. As discussed above, the CSA has also considered adjustments to various elements of the proposed framework. While the proposed framework represents the CSA's view at this time, we welcome further comments on these elements. Please see section 7 below.

[31] Joint CSA Staff Notice 31-351, IIROC Notice 17-0229, MFDA Bulletin #0736-M – *Complying with requirements regarding the Ombudsman for Banking Services and Investments*, (December 2017) 30 OSCB 9651 at pp 4-5.

[32] SC 1991, c 46.

b. Local Matters

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

7. Request for Comments

a. Consolidated Questions

We welcome your comments on all aspects of the proposed rule amendments, the proposed CP changes, and the proposed framework. In addition to considering local regulators' statements of regulatory priorities and the reports of OBSI's independent evaluators, the CSA has consulted with OBSI regarding its processes and practices. The CSA also noted consultations by Ontario's Capital Markets Modernization Taskforce as well as by others, where relevant.

In addition to any general comments you may have, we also invite comments on the specific questions included throughout this Notice, which are reproduced in the following consolidated list for ease of review:

1. The CSA contemplates that under the proposed framework, an IDRS would be authorized to issue binding decisions in circumstances where it is designated or recognized in a jurisdiction as the identified ombudservice. It is possible that some CSA jurisdictions may not designate or recognize OBSI as the identified ombudservice at the same time, resulting in the status quo (e.g., OBSI making non-binding recommendations only) applying in those jurisdictions until OBSI were designated or recognized as the identified ombudservice. If jurisdictions designate or recognize OBSI as the identified ombudservice at different times, what operational impacts, if any, would you anticipate from an IDRS being designated or recognized in some but not all jurisdictions? How can these impacts best be managed?

2. The proposed rule amendments include a new provision requiring compliance with a final decision of the identified ombudservice. Under the proposed framework, we contemplate that both a recommendation or decision of the identified ombudservice could become a final decision that will be binding on the firm under certain circumstances. Specifically:

    a. With respect to a recommendation made by the identified ombudservice following the investigation and the recommendation stage, we contemplate the recommendation becoming a final decision where (i) a specified period of time has passed since the date of the recommendation, (ii) neither the firm nor the complainant has objected to the recommendation, and (iii) the complainant has not otherwise withdrawn from the process in a manner authorized by the identified ombudservice (the **deeming provision**). What are your general thoughts about the deeming provisions and the circumstances that trigger it? Please also comment on whether 30, 60, 90 days would be an appropriate length of time to be specified for a recommendation to be deemed a final decision under the deeming provision.

    b. With respect to the decision made by the identified ombudservice following the review and decision stage, we contemplate the decision becoming final where (i) a specified period of time has passed since the date of the decision (the **post-decision period**), and if the complainant did not trigger the review and decision stage, (ii) the complainant has not rejected the decision and has not otherwise withdrawn from the process in a manner authorized by the identified ombudservice. Please comment on the provision of this post-decision period and whether 30, 60 or 90 days would be the appropriate length for the post-decision period.

3. The proposed framework contemplates that complainants could not reject a decision of the identified ombudservice if they initiated the second-stage review of the recommendation by objecting to it. What are your views on this approach?

4. Please provide any comments on maintaining the compensation limit amount of $350,000.

5. The proposed framework does not contemplate an appeal of a final decision to either a securities tribunal, or a statutory right of appeal to the courts (although parties could still seek judicial review of a final decision). What impact, if any, do you think the absence of an appeal mechanism will have on the fairness and effectiveness of the framework for parties to a dispute?

6. Should the proposed framework include a statutory right of appeal to the courts or another alternative independent third-party procedure for disputes involving amounts above a certain monetary threshold (for example, above $100,000)? If so, please explain why.

7. Are there elements of oversight, whether mentioned in this Notice or not, that you consider to be of particular importance in ensuring the objectives of the proposed framework are met? If so, please explain your rationale.

8. Do you consider oversight, together with the other aspects of the proposed framework discussed in this Notice, to be sufficient to ensure that the identified ombudservice remains accountable?

9. Please provide your views on the anticipated effectiveness of prohibiting the use of certain terminology for internal or affiliated complaint-handling services that implies independence, such as “ombudsman” or “ombudservice”, to mitigate investor confusion.

b. Comment Process

Please submit your comments in writing by February 28, 2024.

We cannot keep submissions confidential because securities legislation in certain provinces requires publication of a summary of the written comments received during the comment period. In addition, all comments received will be posted on the websites of each of the Alberta Securities Commission at www.asc.ca, the Autorité des marchés financiers at lautorite.qc.ca and the Ontario Securities Commission 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.

Thank you in advance for your comments.

Please address your comments to all of the CSA as follows:

Alberta Securities Commission
Autorité des marchés financiers
British Columbia Securities Commission
Financial and Consumer Services Commission (New Brunswick)
Financial and Consumer Affairs Authority of Saskatchewan
Manitoba Securities Commission
Nova Scotia Securities Commission
Nunavut Securities Office
Office of the Superintendent of Securities, Newfoundland and Labrador
Office of the Superintendent of Securities, Northwest Territories
Office of the Yukon Superintendent of Securities
Ontario Securities Commission
Superintendent of Securities, Department of Justice and Public Safety, Prince Edward Island

Please deliver your comments only to the addresses that follow. Your comments will be forwarded to the remaining jurisdictions:

Meg Tassie
Senior Advisor, Legal Services,
Capital Markets Regulation
British Columbia Securities Commission
1200 - 701 West Georgia Street
P.O. Box 10142, Pacific Centre
Vancouver, British Columbia V7Y 1L2
Fax: 604 899-6506
mtassie@bcsc.bc.ca

The Secretary
Ontario Securities Commission
20 Queen Street West
22nd Floor, Box 55
Toronto, Ontario
M5H 3S8
Fax: 416 593-2318
comments@osc.gov.on.ca

Me Philippe Lebel
Corporate Secretary and Executive Director, Legal Affairs
Autorité des marchés financiers
Place de la Cité, tour Cominar
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Québec (Québec) G1V 5C1
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consultation-en-cours@lautorite.qc.ca

Contents of Annexes

This Notice contains the following annexes:

- Annex A – Proposed Rule Amendments to National Instrument 31-103
- Annex B – Blackline showing Proposed Amendments to National Instrument 31-103
- Annex C – Blackline Showing Proposed Changes to Companion Policy 31-103CP

- Annex D – Overview and Flowchart of Identified Ombudservice Processes under Proposed Framework
- Annex E – Local Matters

Questions

Please refer your questions to any of:

British Columbia Securities Commission
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(403) 297-4890
eniko.molnar@asc.ca

Financial and Consumer Affairs Authority of Saskatchewan
Mobolanle Depo-Fajumo
Legal Counsel
Securities Division
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Ontario Securities Commission
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Financial and Consumer Services Commission (New Brunswick)
Clayton Mitchell
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Nova Scotia Securities Commission
Doug Harris
General Counsel, Director of Market Regulation and Policy and Secretary
Doug.Harris@novascotia.ca

ANNEX A

PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

1. National Instrument 31-103 Registration Requirements, Exemptions and Ongoing Registrant Obligations is amended by this Instrument.

2. Subsection 13.14(2) is amended by replacing "168.1.3***" with "***168.1.4***".***

3. The Instrument is amended by adding the following sections:

13.15.1 Prohibited terminology

(1) A registered firm must not describe the complaint handling procedures, officers or employees of the registered firm or an affiliate of the registered firm, in a manner that could lead a reasonable client to conclude that the procedures, officers or employees are independent of the registered firm.

(2) For greater certainty, and without limiting subsection (1), a registered firm must not refer to a department or service of the registered firm or an affiliate that engages in complaint handling with respect to complaints of the registered firm as independent, or as an ombudsman, internal ombudservice, or a term that is substantially similar.

13.16.01 Definitions – complaint handling

In sections 13.16 and 13.16.1,

"complaint" means an expression of dissatisfaction by a client that

(a) relates to a trading or advising activity of a registered firm or a representative of the firm, and

(b) is received by the firm within 6 years of the day when the client first knew or reasonably ought to have known of an act or omission that is a cause of or contributed to the client's expression of dissatisfaction;

"identified ombudservice" means an independent dispute resolution service that is incorporated as a not-for-profit entity and is designated or recognized by the securities regulatory authority.

"OBSI" means the Ombudsman for Banking Services and Investments or any successor entity that resolves disputes involving registrants and their clients.

4. The heading of section 13.16 is amended by adding "*offered to clients****" after "****service****".***

5. Section 13.16 is amended:

(a) by repealing subsection (1),

(b) in paragraph (2)(a) by deleting "this***" and adding "***13.16 and if applicable, subsections 13.16.1(1) and (2)***" after "***section***",***

(c) in paragraphs (2)(b) and (c) by replacing "under***" with "***pursuant to***",***

(d) by adding the following subsection:

(6.1) Despite subsection (6), if there is an identified ombudservice, the registered firm must make the identified ombudservice available to the client for the purposes of the requirement to make available an independent dispute resolution or mediation service under subsection (4).**, *and***

(e) in subsection (7) by replacing "Subsection (6) does**" with "***Subsections (6) and (6.1) do***".***

6. The Instrument is amended by adding the following section:

13.16.1 Firm obligations relating to an identified ombudservice

(1) If there is an identified ombudservice, a registered firm must

(a) be a member of the identified ombudservice;

(b) not withhold, destroy or conceal any information or documents or otherwise fail to cooperate with a reasonable request made by the identified ombudservice in respect of its investigation and review of a complaint;

(c) promptly comply with a final decision of the identified ombudservice.

(2) Paragraphs (1)(b) and (1)(c) do not apply unless the client agrees that any amount the client will claim for the purpose of the identified ombudservice's consideration of the complaint will be no greater than $350,000.

(3) This section does not apply in respect of a complaint made by a permitted client that is not an individual.

7. The provisions of Division 5 of Part 13 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations*, as amended by this Instrument, do not apply to a complaint received by the firm prior to the effective date of this Instrument.

8. A firm must comply with Division 5 of Part 13 of National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* as it read on [•] with respect to complaints received by the firm prior to the effective date of this Instrument.

9. (1) This Instrument comes into force on **[•]**.

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

ANNEX B

BLACKLINE SHOWING
PROPOSED AMENDMENTS TO
NATIONAL INSTRUMENT 31-103 *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

Division 5 Complaints

13.14 Application of this Division

(1) This Division does not apply to an investment fund manager in respect of its activities as an investment fund manager.

(2) In Québec, a registered firm is deemed to comply with this Division if it complies with sections 168.1.1 to ~~168.1.3~~168.1.4 of the *Securities Act* (Québec).

13.15 Handling complaints

A registered firm must document and, in a manner that a reasonable investor would consider fair and effective, respond to each complaint made to the registered firm about any product or service offered by the firm or a representative of the firm.

~~**13.16 Dispute resolution service**~~

13.15.1 Prohibited terminology

(1) A registered firm must not describe the complaint handling procedures, officers or employees of the registered firm or an affiliate of the registered firm, in a manner that could lead a reasonable client to conclude that the procedures, officers or employees are independent of the registered firm.

(2) For greater certainty, and without limiting subsection (1), a registered firm must not refer to a department or service of the registered firm or an affiliate that engages in complaint handling with respect to complaints of the registered firm as independent, or as an ombudsman, internal ombudservice, or a term that is substantially similar.

13.16.01 Definitions – complaint handling

~~**(1)**~~ In ~~this section,~~sections 13.16 and 13.16.1,

"complaint" means ~~a complaint~~an expression of dissatisfaction by a client that

(a) relates to a trading or advising activity of a registered firm or a representative of the firm, and

(b) is received by the firm within 6 years of the day when the client first knew or reasonably ought to have known of an act or omission that is a cause of or contributed to the ~~complaint~~client's expression of dissatisfaction;

~~"~~

"identified ombudservice" means an independent dispute resolution service that is incorporated as a not-for-profit entity and is designated or recognized by the securities regulatory authority.

"OBSI~~"~~" means the Ombudsman for Banking Services and Investments or any successor entity that resolves disputes involving registrants and their clients.

13.16 Dispute resolution service offered to clients

(1) [Repealed]

(2) If a registered firm receives a complaint from a client, the firm must, as soon as possible, provide the client with a written acknowledgement of the complaint that includes the following:

(a) a description of the firm~~'~~'s obligations under ~~this~~ section 13.16 and if applicable, subsections 13.16.1(1) and (2);

(b) the steps that the client must take in order for an independent dispute resolution or mediation service to be made available to the client ~~under~~pursuant to subsection (4);

(c) the name of the independent dispute resolution or mediation service that will be made available to the client ~~under~~pursuant to subsection (4) and contact information for the service.

(3) If a registered firm decides to reject a complaint or to make an offer to resolve a complaint, the firm must, as soon as possible, provide the client with written notice of the decision and include the information referred to in subsection (2).

(4) A registered firm must as soon as possible ensure that an independent dispute resolution or mediation service is made available to a client at the firm's expense with respect to a complaint if either of the following apply:

(a) after 90 days of the firm's receipt of the complaint, the firm has not given the client written notice of a decision under subsection (3), and the client has notified the independent dispute resolution or mediation service specified under paragraph (2)(c) that the client wishes to have the complaint considered by the service;

(b) within 180 days of the client's receipt of written notice of the firm's decision under subsection (3), the client has notified the independent dispute resolution or mediation service specified under paragraph (2)(c) that the client wishes to have the complaint considered by the service.

(5) Subsection (4) does not apply unless the client agrees that any amount the client will claim for the purpose of the independent dispute resolution or mediation service's consideration of the complaint will be no greater than $350,000.

(6) For the purposes of the requirement to make available an independent dispute resolution or mediation service under subsection (4), a registered firm must take reasonable steps to ensure that OBSI will be the service that is made available to the client.

(6.1) Despite subsection (6), if there is an identified ombudservice, the registered firm must make the identified ombudservice available to the client for the purposes of the requirement to make available an independent dispute resolution or mediation service under subsection (4);

(7) ~~Subsection~~Subsections (6) ~~does~~and (6.1) do not apply in Québec.

(8) This section does not apply in respect of a complaint made by a permitted client that is not an individual.

13.16.1 Firm obligations relating to an identified ombudservice

(1) If there is an identified ombudservice, a registered firm must

(a) be a member of the identified ombudservice;

(b) not withhold, destroy or conceal any information or documents or otherwise fail to cooperate with a reasonable request made by the identified ombudservice in respect of its investigation and review of a complaint;

(c) promptly comply with a final decision of the identified ombudservice.

(2) Paragraphs (1)(b) and (1)(c) do not apply unless the client agrees that any amount the client will claim for the purpose of the identified ombudservice's consideration of the complaint will be no greater than $350,000.

(3) This section does not apply in respect of a complaint made by a permitted client that is not an individual.

ANNEX C

BLACKLINE SHOWING
PROPOSED CHANGES TO
COMPANION POLICY 31-103CP *REGISTRATION REQUIREMENTS, EXEMPTIONS AND ONGOING REGISTRANT OBLIGATIONS*

Division 5 Complaints

13.14 Application of this Division

Division 5 applies to registered firms that are registered dealers and registered advisers. Investment fund managers are only subject to Division 5 if they also operate under a dealer or adviser registration, in which case the requirements in this Division apply in respect of the activities conducted under their dealer or adviser registration. Furthermore, since sections 13.16(8) and 13.16.1(4) exclude from sections 13.16 and 13.16.1 a complaint made by a permitted client that is not an individual, we would not expect a registered firm that only has such clients to maintain membership in OBSI or an identified ombudservice.

In Québec, a registered firm is deemed to comply with this Division if it complies with sections 168.1.1 to ~~168.1.3~~168.1.4 of the Québec Securities Act~~, which provides a substantially similar regime for complaint handling~~.

The guidance in Division 5 of this Companion Policy applies to registered firms registered in any jurisdiction ~~including Québec~~.

However, ~~section 168.1.3 of~~ the Québec Securities Act~~,~~ includes requirements with respect to dispute resolution ~~or mediation~~ services that are different than those set out in section 13.16 of NI 31-103. In Québec, registrants must, in accordance with the Québec Securities Act, inform each complainant~~, in writing and without delay, that if the complainant is dissatisfied with how the complaint is handled or with the outcome, they may~~ of their right to request the ~~registrant to forward a copy~~examination of ~~the~~their complaint ~~file to~~record by the Autorité des marchés financiers if they are dissatisfied with the registered firms' processing of their complaint or the outcome. The registrant must forward a copy of the complaint file to the Autorité des marchés financiers~~, which will examine the complaint~~ for examination. The Autorité des marchés financiers may, with the parties' consent, act as ~~a~~conciliator or mediator ~~if it considers it appropriate to do so and the parties agree~~or designate a person to act as such.

13.15 Handling complaints

General duty to document and respond to complaints

Under Section 13.15 ~~requires~~, registered firms ~~to~~must document ~~complaints,~~ and ~~to effectively~~, in a manner that a reasonable investor would consider fair and ~~fairly~~effective, respond to ~~them~~each complaint made to the registered firm about any product or service offered by the registered firm or a representative of the firm. We are of the view that ~~registered firms should document and respond to all~~this includes complaints received from a client, a former client or a prospective client who has dealt with the registered firm (complainant), regardless of whether the method used to initiate the complaint was verbal or written.

~~Firms~~Registered firms are reminded that under paragraph 11.5(2)(m) they are required to maintain records which demonstrate compliance with complaint handling requirements ~~under paragraph 11.5(2)(m)~~.

Complaint handling policies

An effective complaint ~~system~~handling policy should deal with all formal and informal complaints or disputes in a timely and fair manner. To achieve ~~the objective of handling complaints fairly~~these objectives, the firm's complaint ~~system~~handling policy should include standards ~~allowing~~ for objective factual investigation and analysis of the matters specific to the complaint.

We take the view that registered firms should take ~~a~~an objective and balanced approach to the gathering of facts ~~that objectively considers~~, including concerning the ~~interests~~actions of

- ~~-~~ the complainant
- ~~-~~ the registered representative, and
- ~~-~~ the firm

Registered firms should not limit their consideration and handling of complaints to those relating to possible violations of securities legislation.

Complaint monitoring

The registered firm's complaint handling policy should provide for specific procedures for reporting ~~the~~ complaints to superiors~~,~~ in order to allow the detection of frequent and repetitive complaints made with respect to the same matter which may, on a cumulative

basis, indicate a serious problem. ~~Firms~~Registered firms should take appropriate measures to deal with such problems as they arise.

Responding to complaints

Types of complaints

All complaints relating to one of the following matters should be responded to by the firm by providing an initial and substantive response, both in writing and within a reasonable time:

- ~~-~~a trading or advising activity, including regarding client information, trading authority, and suitability
- ~~-~~a breach of client confidentiality
- ~~-~~theft, fraud, misappropriation, or forgery
- ~~-~~misrepresentation
- ~~-~~an undisclosed or prohibited conflict of interest, or
- ~~-~~personal financial dealings with a client

Firms may determine that a complaint relating to matters other than the matters listed above is nevertheless of a sufficiently serious nature to be responded to in the manner described below. This determination should be made, in all cases, by considering if an investor, acting reasonably, would expect a written response to their complaint.

When complaints are not made in writing

We would not expect that complaints relating to matters other than those listed above, when made verbally and when not otherwise considered serious based on an investor's reasonable expectations, would need to be responded to in writing. However, we do expect that verbal complaints be given as much attention as written complaints. If a complaint is made verbally and is not clearly expressed, the firm may request the complainant to put the complaint in writing and we expect firms to offer reasonable assistance to do so.

Firms are entitled to expect the complainant to put unclear verbal issues into written format in order to try to resolve confusion about the nature of the issue. If the verbal complaint is clearly frivolous, we do not expect firms to offer assistance to put the complaint in writing. The firm may nonetheless ask the complainant to put the complaint in writing on his or her own.

Timeline for responding to complaints

Firms should

- promptly send an initial written response to a complainant: we consider that an initial response should be provided to the complainant within five business days of receipt of the complaint
- provide a substantive response to all complaints relating to the matters listed under "Types of complaints" above, indicating the firm's decision on the complaint

A firm may also wish to use its initial response to seek clarification or additional information from the client. Requirements for providing information about the availability of dispute resolution or mediation services paid for by the firm are discussed below.

We encourage firms to resolve complaints relating to the matters listed above within 90 days.

13.15.1 Prohibited terminology

Section 13.15.1 is intended to reduce the risk of investors confusing an independent not-for-profit ombudservice such as OBSI with a department or affiliate of a registered firm.

13.16 Dispute resolution service ~~Section~~ offered to clients

~~13.15 requires a registered firm to document and respond to each complaint made to it about any product or service that is offered by the firm or one of its representatives. Section 13.16 provides for recourse to an independent dispute resolution or mediation service at a registered firm's expense for specified complaints where the firm's internal complaint handling process has not produced a timely decision that is satisfactory to the client.~~

~~Registered~~

Under section 13.16, registered firms ~~may be~~are required to make an independent dispute resolution or mediation service ~~paid for by the firm~~ available to a client in respect of a complaint ~~that~~where the firm's internal complaint handling process has not produced a timely decision that is satisfactory to the client.

- ~~relates to a trading or advising activity of the firm or its representatives, and~~
- ~~is raised within six years of the date when the client knew or reasonably ought to have known of the act or omission that is a cause of or contributed to the complaint~~

Where there is an identified ombudservice in the jurisdiction, the requirements in subsection 13.16(6.1) apply instead of the requirements in subsection 13.16(6). In these circumstances, a registered firm must make the identified ombudservice available to a client.

As soon as possible after a client makes a complaint (for example, when sending its acknowledgment or initial response to the complaint), and again when the firm informs the client of its decision in respect of the complaint, a registered firm must provide a client with information about

- ~~•~~ a description of the firm's obligations under section 13.16, and if applicable, subsections 13.16.1(1) and (2),
- ~~•~~ the steps the client must take for an independent dispute resolution or mediation service to be made available to the client at the firm's expense, and
- ~~•~~ the name of the independent dispute resolution or mediation service, that will be made available to the client ~~(outside of Québec, this will normally be the Ombudsman for Banking Services and Investments (OBSI), as discussed below) and how to contact it~~ and contact information for the independent dispute resolution or mediation service.

~~Registrants who do business in other sectors~~

Some registrants are also registered or licensed to do business in other sectors, such as insurance. If there is a complaint about a registrant, then a registrant should inform their client that the services of the independent dispute resolution service or identified ombudservice are limited to complaints concerning registerable activities.

Taking a complaint to the independent dispute resolution or mediation service

A client may ~~escalate an eligible~~take a complaint to the independent dispute resolution or mediation service made available by the registered firm in either of two circumstances:

- ~~•~~ If the firm fails to give the client notice of its decision within 90 days of receiving the complaint ~~(telling, then~~ the client ~~that the firm plans to take more than 90 days to make its decision does not 'stop the clock'). The client~~ is ~~then~~ entitled to ~~escalate~~take the complaint to the ~~independent~~ service immediately ~~or at any later date until the firm has notified the client of its decision~~.
- ~~•~~ If the firm has given the client notice of its decision about the complaint ~~(whether it does so within 90 days or after a longer period)~~ and the client is not satisfied with the decision, the ~~client~~complainant then has 180 days ~~in which~~ to ~~escalate~~take the complaint to the ~~independent~~ service for consideration.

~~In either instance, the client may escalate the complaint by directly contacting the independent service.~~

~~We think that it may sometimes be appropriate for the independent service, the firm and the client involved in a complaint to agree to longer notice periods than the prescribed 90 and 180 day periods as a matter of fairness. We recognize that where a client does not cooperate with reasonable requests for information relating to a complaint, a firm may have difficulty making a timely decision in respect of the complaint. We expect that this would be relevant to any subsequent determination or recommendation made by an independent service about that complaint.~~

If a registered firm's complaint handling process takes longer than 90 days, a firm communicating to the complainant that the firm plans to take more than 90 days to make its decision does not 'stop the clock'. In addition, we note that the prescribed 90- and 180-day periods for a complainant to take a dispute to the independent dispute resolution or mediation service, as set out in section 13.16(4), apply respectively to when a registered firm first receives a complaint from a client and to the period after the client receives written notice of the firm's decision. The 90-day period applies to all internal complaint handling processes that may be pursued by the registered firm prior to providing the client written notice of a decision. If a client receives a written notice of the registered firm's decision, then the client has 180 days to notify the independent dispute resolution or mediation service that the client wishes to have their complaint considered. If a registered firm's complaint handling policy includes a secondary complaint handling department that can be engaged following the firm's initial handling of the complaint, then a complainant may take a dispute to the independent dispute resolution or mediation service before the secondary complaint handling department is engaged, as long as the conditions in section 13.16(4) are met.

The client must agree that the amount of any recommendation or decision by the independent dispute resolution or mediation service for monetary compensation will not exceed the compensation limit, that is $350,000. This limit applies only to the amount that ~~can~~may be ~~recommended. Until it is escalated to~~recommend or awarded, so outside the processes of the independent dispute resolution or mediation service, a complaint ~~made to~~regarding a registered firm may include a claim for a larger amount.

~~Except in Québec~~

We would regard it as a serious compliance issue if a registered firm misrepresented the services of the independent dispute resolution or mediation service, or exerted pressure on a client to not engage in that service.

Nothing in section 13.16 affects a client's right to choose to seek other recourse, including through the courts. If a client does not make use of the service, or if a client abandons a complaint that is under consideration by the service, the registered firm is not obligated to provide another service at the firm's expense.

Membership

Where there is an identified ombudservice in the jurisdiction, registered firms must be members of the identified ombudservice.

In jurisdictions without an identified ombudservice, a registered firm must take reasonable steps to ensure that the dispute resolution and mediation service that is made available to its clients ~~for these purposes~~under subsection 13.16(4) will be OBSI (except in Québec). The reasonable steps we expect a firm to take include maintaining ongoing membership in OBSI as a "Participating Firm" and, with respect to each complaint, participating in the dispute resolution process in a manner consistent with the firm's obligation to deal fairly, honestly and in good faith with its client. This would include entering into consent agreements with clients contemplated under OBSI's procedures.

~~Since section 13.16 does not apply in respect of a complaint made by a permitted client that is not an individual, we would not expect a firm that only has clients of that kind to maintain membership in OBSI.~~

~~A~~

Alternative service offerings

Except in Québec, a registered firm should not make an alternative independent dispute resolution or mediation service available to a client for the purposes of the requirement in subsection 13.16(6) at the same time as it makes OBSI available. Such a parallel offering would not be consistent with the requirement to take reasonable steps to ensure that OBSI will be the independent service that is made available to the client. ~~Except in Québec, we expect that alternative service providers will only be used for purposes of section 13.16 in exceptional circumstances.~~

~~We would regard it as a serious compliance issue if a firm misrepresented OBSI's services or exerted pressure on a client to refuse OBSI's services.~~

~~If a client declines to make use of OBSI in respect of a complaint, or if a client abandons a complaint that is under consideration by OBSI, the registered firm is not obligated to provide another service at the firm's expense. A firm is only required to make one dispute resolution or mediation service available at its expense for each complaint.~~

~~Nothing in section 13.16 affects a client's right to choose to seek other recourse, including through the courts.~~

~~Registrants that are members of an SRO, including those that are registered in Québec, must also comply with their SRO's requirements with respect to the provision of independent dispute resolution or mediation services.~~

~~**Registrants who do business in other sectors**~~

~~Some registrants are also registered or licensed to do business in other sectors, such as insurance. These registrants should inform their clients of the complaint mechanisms for each sector in which they do business and how to use them.~~

Similarly, a parallel offering would not be consistent with the requirement to make the identified ombudservice available under subsection 13.16(6.1).

13.16.1 Registered firm obligations relating to an identified ombudservice

In a jurisdiction where there is an identified ombudservice, section 13.16.1 sets out the obligations of a registered firm regarding a complaint being investigated or reviewed by an identified ombudservice.

Use of the identified ombudservice is optional for complainants, but participation in the identified ombudservices process by a registered firm is mandatory where a complainant has taken a complaint to the identified ombudservice.

Background regarding the identified ombudservice's process

The following guidance outlines the processes which may be followed by the identified ombudservice and clarifies the nature of a final decision of the identified ombudservice for the purposes of section 13.16.1. The identified ombudservice may issue either a recommendation or a decision in resolving a complaint. Both a recommendation and a decision may become a final decision that will be binding on a registered firm. A complainant may reject a final decision, whether it is a deemed final decision after the recommendation stage or a decision from the review stage, as long as only the firm and not the complainant objects to the recommendation of the identified ombudservice (see below). However, if the complainant also makes a written objection to the recommendation, then the complainant will also be bound by the final decision. A final decision of the identified ombudservice may require the firm to provide monetary compensation to a complainant or to take a specific type of corrective action, as appropriate in the circumstances.

Once a complaint is brought to the identified ombudservice and is determined to be within the identified ombudservice's mandate, the identified ombudservice will commence its investigation of the complaint. During its investigation, the identified ombudservice may request documents and information that are relevant to its assessment of the complaint. We will consider it a failure to cooperate with an investigation of an identified ombudservice if a firm takes any action which may frustrate the identified ombudservice's investigation. This may include, for example, being unresponsive to the identified ombudservice's requests for documentation or information.

Once the investigation stage has been concluded, the identified ombudservice will issue a recommendation. This recommendation will be deemed a final decision once a specified period of time has elapsed where: (i) neither the registered firm nor the complainant has submitted a written objection to the identified ombudservice regarding the recommendation; and (ii) the complainant has not rejected the recommendation or otherwise withdrawn from the dispute resolution process in a manner authorized by the identified ombudservice by the time that the identified ombudservice concludes its investigation and provides the parties with its written recommendation.

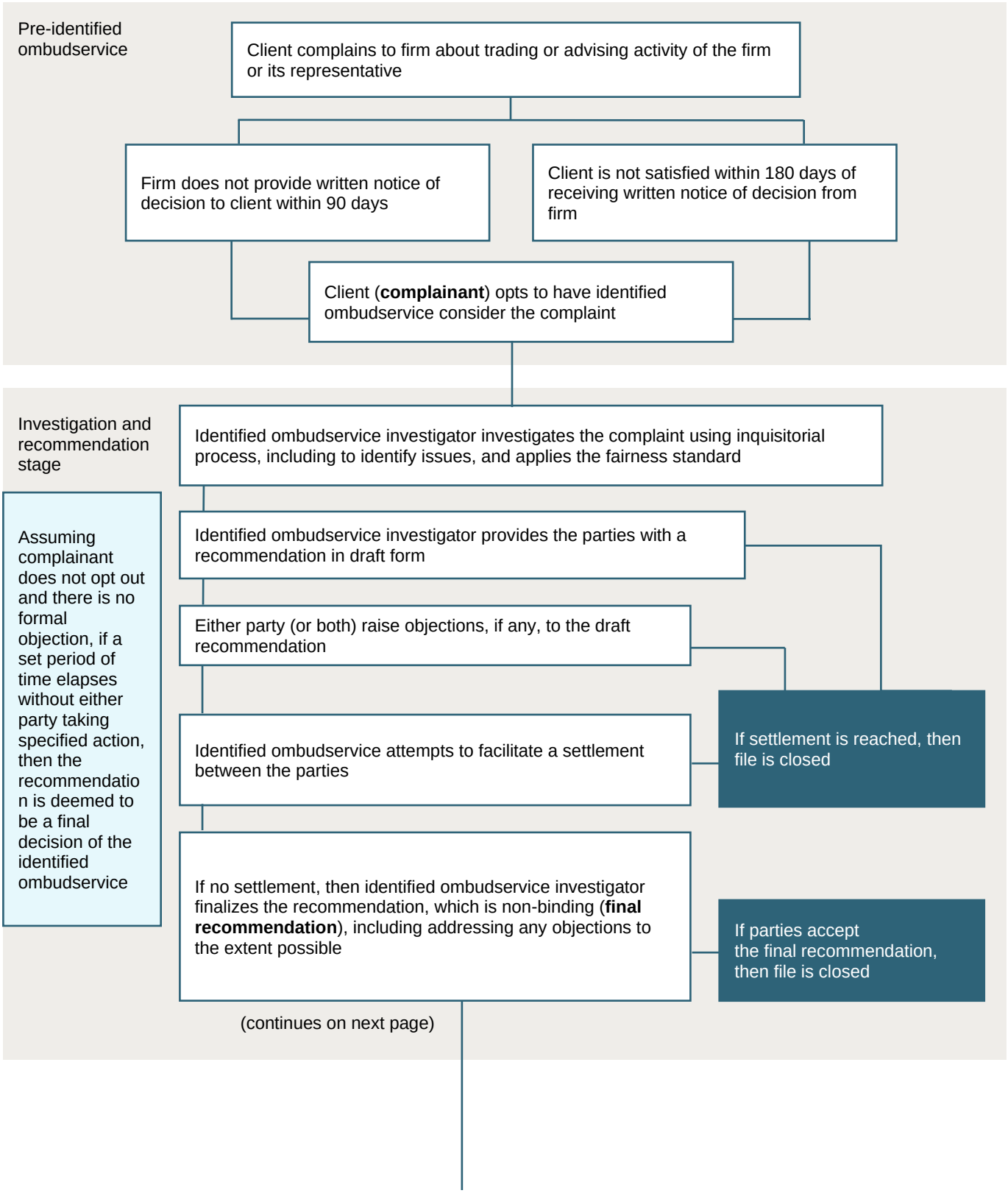
If either the registered firm or the complainant makes a written objection to the recommendation, then the identified ombudservice will conduct an independent review of the complaint and issue a decision at the conclusion of its review. If only the registered firm requested the review, the decision will become final once: (i) a specified period of time has passed since the date of the decision; and (ii) the complainant has not rejected the decision or otherwise withdrawn from the dispute resolution process in a manner authorized by the identified ombudservice. If the complainant has requested the review of the recommendation, they will not be able to reject a decision (once issued) or otherwise withdraw from the dispute resolution process.

NI 31-103 rule does not provide for partial compliance with a final decision of the identified ombudservice. However, firms may also seek to negotiate a settlement with a complainant at any time.

ANNEX D

OVERVIEW AND FLOWCHART OF IDENTIFIED OMBUDSERVICE PROCESSES UNDER PROPOSED FRAMEWORK

How a complaint will flow through the identified ombudservice's process



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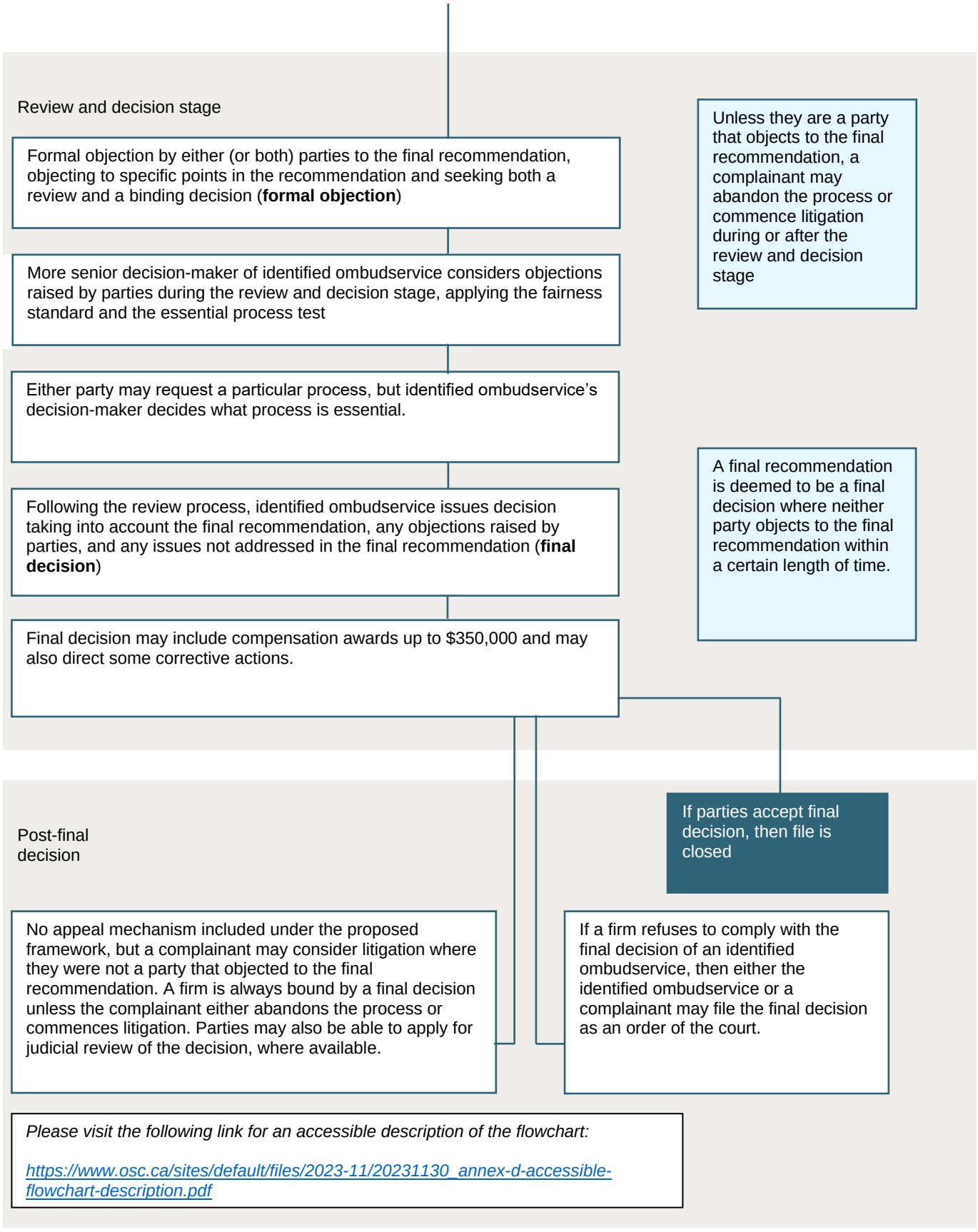
Review and decision stage
Formal objection by either (or both) parties to the final recommendation, objecting to specific points in the recommendation and seeking both a review and a binding decision (**formal objection**)
More senior decision-maker of identified ombudservice considers objections raised by parties during the review and decision stage, applying the fairness standard and the essential process test
Either party may request a particular process, but identified ombudservice's decision-maker decides what process is essential.
Following the review process, identified ombudservice issues decision taking into account the final recommendation, any objections raised by parties, and any issues not addressed in the final recommendation (**final decision**)
Final decision may include compensation awards up to $350,000 and may also direct some corrective actions.
Unless they are a party that objects to the final recommendation, a complainant may abandon the process or commence litigation during or after the review and decision stage
A final recommendation is deemed to be a final decision where neither party objects to the final recommendation within a certain length of time.
Post-final decision
If parties accept final decision, then file is closed
No appeal mechanism included under the proposed framework, but a complainant may consider litigation where they were not a party that objected to the final recommendation. A firm is always bound by a final decision unless the complainant either abandons the process or commences litigation. Parties may also be able to apply for judicial review of the decision, where available.
If a firm refuses to comply with the final decision of an identified ombudservice, then either the identified ombudservice or a complainant may file the final decision as an order of the court.
Please visit the following link for an accessible description of the flowchart:
https://www.osc.ca/sites/default/files/2023-11/20231130_annex-d-accessible-flowchart-description.pdf

ANNEX E

LOCAL MATTERS

ONTARIO SECURITIES COMMISSION

1. Introduction

The Ontario Securities Commission (the **Commission**) is publishing this Annex to supplement the CSA Notice and Request for Comment (the **CSA Notice**) and to set out matters required to be addressed by the *Securities Act* (Ontario) (the **Act**).

Unless otherwise defined in this Annex, defined terms or expressions used in this Annex share the meanings provided in the CSA Notice.

Today, NI 31-103 provides that, except in Québec, registered firms must take reasonable steps to make OBSI the independent dispute resolution service available to its clients with respect to a complaint. After investigating a complaint, OBSI may make a recommendation for payment of compensation or other action if, in OBSI's opinion, a client has suffered loss, damage or harm because of an act or omission of a registered firm, but OBSI does not have authority to make binding decisions. If implemented, the proposed rule amendments would impose new requirements on firms regarding the identified ombudservice. If the proposed framework is implemented, it is anticipated that OBSI would be the independent dispute resolution service considered by securities regulatory authorities for designation or recognition as the identified ombudservice, and that the identified ombudservice would have the authority to issue binding final decisions as part of its dispute resolution process.

Some CSA jurisdictions, including Ontario, have suggested legislative amendments as part of the proposed framework which, at this time, local governments have made no decision to proceed with. These suggested legislative amendments are subject to change as a result of the consultation process and as a result of review by the government. They will only become law if they are passed by local governments.

Please refer to the main body of the CSA Notice.

2. Current Regulatory Framework

OBSI is a federally incorporated not-for-profit organization that provides an independent service for resolving banking and investment disputes between participating firms and their retail clients, at no cost to those clients. Under section 13.16(6) of NI 31-103, registered dealers and advisers must make OBSI's services available to their retail clients (except in Québec).

Currently, if OBSI investigates an investment-related complaint and determines that it would be fair for the firm to compensate a complainant, OBSI will attempt to facilitate a settlement between the firm and the complainant. If the parties are unable to reach a settlement, OBSI will issue a non-binding compensation recommendation. As firms are not required to comply with OBSI's recommendation, to encourage compliance, OBSI employs a 'name and shame' system under which OBSI will publish the names of those firms which refuse to follow its recommendations in their entirety. OBSI will not, however, publish the names of firms that settle a complaint at an amount that is lower than OBSI's recommendation. In effect, where a firm disagrees with OBSI's recommendation, they will not be 'named and shamed' if the complainant accepts the firm's lower settlement offer. As OBSI's recommendations are not binding on a firm, complainants may feel compelled to accept a lower settlement offer or risk receiving nothing. While commencing a civil proceeding to seek full compensation from the firm is another option for the complainant, doing so can often be a costly, intimidating, and time-consuming process.

3. Rationale for Proposed Rule Amendments and Proposed CP Changes

In putting forward the proposed rule amendments and proposed CP changes, the Commission aims to enhance the existing framework for investor redress and to promote investor confidence in the capital markets, while ensuring that both investors and firms continue to have available to them an IDRS that is fair, accessible, and efficient.

Financial ombudservices that provide dispute resolution services operate in many jurisdictions globally. While some ombudservices make only non-binding recommendations, other financial ombudservices – including examples in the United Kingdom[1], Australia[2] and Ireland[3], jurisdictions with similar legal systems to Canada's – have the authority to issue binding final decisions. In respect of the current dispute resolution process available through OBSI for investment-related disputes, Canada has not kept pace with these jurisdictions in implementing a binding ombudservice regime. This gap received international comment in the most recent International Monetary Fund (**IMF**) Financial Sector Assessment Program review of Canada.[4]

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1 Financial Ombudsman Service (UK), *How we make decisions,* "Final Binding Decisions", accessed at <https://www.financial-ombudsman.org.uk/who-we-are/make-decisions>.

2 Australian Financial Complaints Authority*, What process we follow,* "Determination (a binding decision)", accessed at < https://www.afca.org.au/what-to-expect/the-process-we-follow>.

3 Financial Services and Pensions Ombudsman, *How we deal with your complaint*, "Formal complaint resolution", accessed at < https://www.fspo.ie/our-services/>.

4 *Canada: Financial System Stability Assessment IMF Country Report No. 19/177*, June 2019 by the International Monetary Fund, at p 30.

In addition to the IMF's international critique, the lack of binding authority has been identified as a concern in each of the 2011, 2016, and 2021 independent evaluations of OBSI, which identified the lack of binding authority as a significant design flaw in Canada's investment dispute resolution system.[5]

In 2021, the Capital Markets Modernization Taskforce (the **Taskforce**) published a final report that recommended statutory authorization for the Commission to designate a dispute resolution system (**DRS**) that would have the power to issue binding decisions, and for the Commission to develop a governing framework for the DRS that provides for procedural fairness and offers limited appeals. The Taskforce noted that a "binding, reputable and efficient DRS framework" will provide redress to harmed investors, particularly where the financial harm may not be high enough to warrant a legal proceeding before the courts.[6]

The proposed rule amendments and proposed CP changes take into account comments received from investor advocates over the years, who have urged securities regulatory authorities to provide OBSI with the authority to render binding decisions.[7]

4. Proposed Rule Amendments and Proposed CP Changes

Under the proposed framework and proposed rule amendments, an identified ombudservice would be the independent dispute resolution service made available to a complainant at the firm's expense.

The proposed rule amendments set out principles and prescriptive requirements relating to core elements of the proposed framework. Requirements in the proposed rule amendments would include that firms become members of the identified ombudservice, cooperate with the identified ombudservice in respect of its investigation and review of complaints, and comply with its final decisions.

In addition, to address the potential for retail investor confusion, the proposed rule amendments include a prohibition on the use of certain terminology by firms when referring to their complaint handling procedures or to their internal department or service that engages in complaint handling.

(a) Investigation and Review of a Complaint Before the Identified Ombudservice

The proposed framework would require the identified ombudservice to preserve as much of the investigative processes currently used by OBSI as possible, and add a new binding decision stage.

Likely within harmonized orders among securities regulatory authorities, the proposed framework would require the identified ombudservice to have two stages as part of its dispute resolution process: the investigation and recommendation stage, and the review and decision stage.

The investigation and recommendation stage of an identified ombudservice would preserve OBSI's current investigative processes and yield a recommendation. A recommendation by the identified ombudservice would become binding on firms and deemed to be a final decision if neither the firm nor the complainant object to the recommendation within the time period specified in the identified ombudservice's rules and the complainant has not withdrawn from the dispute resolution process, either through commencing a separate legal proceeding or otherwise.[8]

If either the complainant or the firm submits a written objection to the identified ombudservice's recommendation, the complaint would enter the review and decision stage where a senior decision-maker of the identified ombudservice, who was not involved in the investigation and recommendation stage, would consider the written objection. Once the identified ombudservice has completed its review, it would issue a decision. The firm would always be bound by a decision once it becomes final after a specified period. The complainant would also be bound by a final decision if they had objected to the outcome of the investigation and recommendation stage. If only the firm had objected to the identified ombudservice's recommendation, the complainant would have an opportunity to reject the decision within a specified period and pursue a civil proceeding against the firm regarding their complaint. If the complainant does not reject the final decision and has not otherwise withdrawn from the process in a manner authorized by the identified ombudservice, the decision would become final and binding on the parties. Parties may also be able to apply for judicial review of the decision, where available.

Under the proposed framework, the maximum monetary compensation that could be awarded by the identified ombudservice would be $350,000, which is the current maximum monetary compensation that can be awarded by OBSI and which may be reviewed and increased in the future. Under the proposed framework, the identified ombudservice may also direct the firm to take

5 Navigator Company, *Ombudsman for Banking Services and Investments, 2011 Independent Review* (2011), at p 31 [the *2011 Independent Evaluation*]; Deborah Battell and Nikki Pender, *Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate* (2016) at p 30-31 [the *2016 Independent Evaluation*]; Poonam Puri and Dina Milivojevic, *Independent Evaluation of the Canadian Ombudsman for Banking Services and Investments' (OBSI) Investment Mandate* (2022) at p 33-35 [the *2021 Independent Evaluation*].

6 Capital Markets Modernization Taskforce, *Capital Markets Modernization Taskforce – Final Report*, (2021) at p 105.

7 See for instance: Investor Protection Clinic and Living Lab, *2018 Annual Report*, at p 5; "Consumer Coalition Calls for Action on Complaint Handling", GlobeNewsWire (October 20, 2022) online <https://financialpost.com/globe-newswire/fair-canada-consumer-coalition-calls-for-action-on-complaint-handling>.

8 The firm would not be required to comply with a recommendation while the recommendation is under review.

specified corrective action, such as requiring a firm to return documents or to correct erroneous information where the firm's error was harmful to the complainant.

5. Affected Stakeholders

The primary stakeholders who will be impacted by the proposed rule amendments and proposed CP changes are retail investors, OBSI and registered firms.

(a) Investors

While investors would not be required to make use of the identified ombudservice, firms would be required to make an identified ombudservice available to its clients at the firm's expense under the proposed rule amendments.

In 2022, OBSI recommended a total compensation of $1,302,885 for investment complaints, with an average recommended compensation of $8,985.[9] Of the 444 cases closed by OBSI in 2022, 154 resulted in outcomes in favour of the complainant.[10] Demographically, the majority of investors who have opened a case with OBSI under its investment mandate tend to be above the age of 50, employed, with wide ranging household incomes.[11] It is anticipated that if an identified ombudservice has the authority to make binding recommendations, more investors will choose to have their complaints considered by the identified ombudservice as it will be a zero-cost and an enforceable path towards investor redress.

(b) OBSI

Currently, except in Québec, NI 31-103 requires firms to take reasonable steps to make OBSI the independent dispute resolution or mediation service available to clients who are unable to resolve a complaint through the firm's internal complaint-handling process. It is anticipated that OBSI would be the independent dispute resolution service considered by securities regulatory authorities for designation or recognition as the identified ombudservice.

As the identified ombudservice, OBSI would be subject to coordinated oversight by CSA jurisdictions, including through harmonized orders that would include terms and conditions on its designation or recognition. An enhanced CSA oversight regime, including prior CSA approval of certain of the identified ombudservice's procedures and documents, would be implemented.

Under the proposed rule amendments, it is expected that firms (except in Québec) will be required to become members of the identified ombudservice and cooperate with the identified ombudservice's investigation and review of a complaint. Once a decision is rendered (or a recommendation is deemed a binding decision) and becomes final, firms must promptly comply with the decision of the identified ombudservice.

(c) Registrants

Generally, all investment firms regulated by the CSA would be required to be members of the identified ombudservice.[12] The proposed rule amendments would also require that firms cooperate with the identified ombudservice's investigation and review of a complaint and comply with its final decisions. This includes all firms that are members of the Canadian Investment Regulatory Organization (**CIRO**).

According to the OBSI's 2022 Annual Report, 1,331 registrants were participating firms of OBSI at the end of OBSI's fiscal year.[13] On average, approximately 6-7 % of registered firms had at least one case opened with OBSI each year from 2018-2022.[14] Table 1 provides an overview of the participating firms that had at least one opened case in 2022 by registration category.

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9 OBSI, Annual Report 2022, at p 45.

10 See Table 2 below. Outcomes in favour of complainant is defined as cases officially closed by OBSI in which both the consumer and firm has agreed on a settlement (both monetary and non-monetary) and includes resolutions which have occurred before an investigation has formally begun.

11 OBSI, (2023), Data Cube (data visualization tool, November 11, 2016–April, 30 2023, Demographics from investment data only) < https://www.obsi.ca/en/case-data-insights/demographics.aspx>. We note the demographics data is limited to the data that is publicly available on OBSI's data cube, which is currently limited to November 11, 2016 – April 30, 2023.

12 Exceptions include registrants in Québec, investment fund managers acting in that capacity, and firms which deal exclusively with permitted clients that are not individuals, as they will continue to be exempt from the requirement to make OBSI the available DRS under subsection 13.16(7) and (8) respectively.

13 OBSI, Annual Report 2022, at p 20.

14 An opened case is defined by OBSI as a complaint from a consumer that meets the criteria set out in OBSI's Terms of Reference and subsequently assigned to an investigator. Data provided by OBSI.

Table 1: Number of participating firms by registration category

	Total number of participating firms	Number of participating firms with a case opened in 2022	Percentage of participating firms with a case opened in 2022
Exempt Market Dealers	280	1	0.4%
Investment Dealers	176	31	18%
Mutual Fund Dealers	93	24	26%
Portfolio Managers	322	5	2%
Dual Registrants: Portfolio Managers/Exempt Market Dealers	429	3	1%
Restricted Dealers	15	10	67%
Restricted Portfolio Managers	7	0	0%
Scholarship Plan Dealers	6	3	50%
Investment Fund Managers	2	0	0%
Commodity Trading Managers	1	0	0%
Total	1331	77	6%

Source: 2022 OBSI Annual Report p 20, 41-43

Within the same 5-year period, approximately 3-4% of registered firms with at least one case open with OBSI received a recommendation for compensation from OBSI each year. In total, 49 of those recommendations from fiscal years 2018-2022 were for monetary compensation of $50,000 or more.[15]

Table 2 provides an overview of the number of outcomes in favour of the complainant in 2022. The registration categories with the greatest number of outcomes settled in favour of complainants were mutual fund dealers, dual registrants (portfolio managers/exempt market dealers) and investment dealers. Where there is an outcome in favour of the complainant, approximately 90% of those cases involve a large firm.[16]

Table 2: Outcomes in favour of the complainant by registration category

	Total number of closed cases	Number of outcomes in favour of the complainant	Percentage of outcomes in favour of the complainant
Exempt Market Dealers	0	0	0%
Investment Dealers	249	93	37%
Mutual Fund Dealers	96	37	39%
Portfolio Managers	18	3	17%
Dual Registrants: Portfolio Managers/Exempt Market Dealers	11	4	36%
Restricted Dealers	23	2	9%
Restricted Portfolio Managers	0	0	0%
Scholarship Plan Dealers	47	15	32%
Investment Fund Managers	0	0	0%
Commodity Trading Managers	0	0	0%
Total	444	154	35%

Source: OBSI, 2022 Annual Report p 41-43

[15] Data provided by OBSI (June 1, 2023).
[16] Determined using data from OBSI, 2022 Annual Report at p 41, 43, data provided by CIRO (July 18, 2023), and OSC Risk Assessment Questionnaire (2022).

6. Anticipated Costs and Benefits of the Proposed Rule Amendments and Proposed CP Changes

The analysis below is informed by research and stakeholder comments that have been published in the past. The analysis considers the incremental cost of implementing the proposed rule amendments on the stakeholders identified in Section 5, when compared with the current regulatory framework.

We note that implementation of the proposed framework, and in turn the proposed rule amendments, is dependent on legislative amendments being made by the local governments of CSA jurisdictions where existing legislation does not currently grant the securities regulatory authority the power to adopt the proposed framework. At this time, governments in CSA jurisdictions have made no decision to proceed with the legislative amendments, and any legislative amendment proposed by local governments will be subject to change during the drafting process. Consequently, we have made best efforts to assess many of the benefits and costs of implementing the proposed rule amendments as part of the proposed framework.

On balance, we consider that the benefits associated with improving the retail investor protection framework in Ontario by providing an identified ombudservice the power to make binding decisions are proportionate to the costs, which will be primarily incurred by the identified ombudservice and firms from implementing the proposed framework. Details of our analysis are discussed below.

(a) Anticipated Benefits of the Proposed Rule Amendments and Proposed CP Changes

(i) Investors

Address power imbalance between registered firms and retail investors

Requiring firms to comply with a final decision of an identified ombudservice under the proposed rule amendments will give retail investors free access to a dispute resolution forum in which they can have their complaints fairly assessed, and the assurance that firms will generally be required to comply with the determinations of the identified ombudservice. This directly addresses concerns about a power imbalance in the current 'name and shame' system, where some firms may leverage the uncertainty of payment in its settlement negotiations with investors.

In the 2016 independent evaluation of OBSI's investment mandate, the independent evaluators observed that a recommendation from OBSI was perceived as the upper limit from which the firm will negotiate down unless an offer had previously been made to a retail client before the complaint was referred to OBSI.[17]

Improved Investor Redress and Outcomes

From a monetary perspective, binding authority may improve financial outcomes for investors who bring complaints before an identified ombudservice for consideration. It is, however, difficult to quantify this benefit as we cannot predict the volume of complaints that will be brought to the identified ombudservice once the proposed framework is implemented. For OBSI's fiscal years 2018 to 2022, out of 844 cases that resulted in monetary compensation, 42 cases (approximately 5%) involving 24 firms settled below OBSI recommendations.[18] From November 1, 2015 to October 31, 2020, investment firms paid almost $3 million less than what OBSI recommended should be compensated to clients.[19]

Table 3 represents case data provided by OBSI that illustrates the percentage of cases from 2018-2022 that settled below OBSI's recommended amount.

Table 3: 2018 – 2022 Investment Cases Settled Below OBSI's Recommended Amount[20]

OBSI Recommended Amount	% of Cases Settled below OBSI's recommended amount	# of Cases Closed with monetary compensation recommendations
$1 to $9,999	1%	384
$10,000 to $49,999	13%	113
$50,000 to $99,999	46%	26
$100,000 to $199,999	43%	14
$200,000 to $350,000	67%	9

While compliance with OBSI's recommendations is strong where the recommended monetary compensation is below $50,000, there is an increase in low settlements where the recommended compensation exceeds $50,000. This can be problematic given

17 2016 Independent Evaluation at p 27.
18 CSA Staff Notice 31-364 OBSI Joint Regulators Committee Annual Report for 2022 (October 2023), at p 4 [*JRC Annual Report 2023*].
19 2021 Independent Evaluation at p 35.
20 Data provided by OBSI (June 1, 2023).

that complainants who have received a greater monetary compensation recommendation are likely to be those who have suffered greater harm or financial loss. Ontarians relying on the recovery of such losses to help them better endure the stresses of a difficult financial climate, or who experience such losses later in life when savings become more crucial to overall financial well-being, would have greater certainty that they will receive monetary compensation proportionate to the harm that OBSI determined they suffered if OBSI were provided with binding authority.

In addition, currently, under subsection 13.16(4) of NI 31-103, a dispute resolution or mediation service is only required to be made available to a client after the complaint has first been brought to the firm's attention.[21] It is anticipated that this requirement will remain unchanged by the proposed rule amendments, except that the requirement to make a dispute resolution or mediation service available will be satisfied by the availability of the identified ombudservice. The prospect of an identified ombudservice with the authority to issue binding decisions may encourage firms to improve their internal complaint handling process to mitigate the need for investors to seek fair resolution through a third party. If this occurs, under the proposed rule amendments investors might also benefit from an improvement to firms' internal complaint processes.

Lower legal costs and efficient dispute resolution service for retail investors

While investors have the option to seek legal redress through the courts, it is generally acknowledged that this is often a time-consuming and expensive process which often requires the assistance of legal counsel.[22] As seen in Table 3 above, most complaints reviewed by OBSI result in recommendations for monetary compensation below $10,000. Therefore, most cases that are investigated by OBSI under its investment mandate may not be worth the cost of pursuing before the courts. By way of example, a complainant opting to file a claim in small claims court in Ontario would, at minimum, incur the following costs:

- $108 for filing a claim
- $94 for filing of a request for default judgment
- $308 for setting a date for a trial or an assessment hearing
- $127 for filing a Notice of Motion for an Assessment in Writing[23]

In addition to the above, the complainant may have to pay other court fees depending on the steps they and the other party take in the case. In considering the commencement of a civil proceeding, investors may also be concerned with the risk of their case being unsuccessful and being ordered to pay costs to the firm. Consequently, providing an identified ombudservice with the authority to make binding decisions would foreseeably improve access to fair and final monetary redress to investors at no cost to them.

Similarly, requiring firms to comply with a decision of an identified ombudservice will likely allow investors to resolve their complaints with greater efficiency than they can before the courts. Although there is a lack of reliable data about delays in the civil justice system, issues of backlogs and delays before the courts have been universally acknowledged as problematic.[24] A recent report published by *The Advocates Society* provides some examples of delays that civil court systems have been experiencing in recent years, including that:

> In Ontario, it currently takes almost 1.5 years for a motion longer than 2 hours to be heard by a judge in Toronto; more than 1.5 years after the trial management conference (or more than 4 to 5 years from the issuance of the original application) for a 3-week family law trial to be heard by a judge in Brampton; and more than 4 to 5 years for a civil action to proceed from commencement to trial.[25]

Currently, OBSI closes most investment complaints in less than 90 days, and almost all investment complaints in less than 120 days.[26] Even after considering the time it could take for a binding decision to be deemed or issued under the proposed framework, it is clear that investors will likely be able to obtain redress far sooner through the identified ombudservice than they would through the civil court system. Much of this efficiency is achieved by the streamlined processes that OBSI already uses to resolve complaints, which the proposed framework aims to maintain.

(ii) OBSI

OBSI seen as a more effective ombudservice

The proposed rule amendments are intended to equip an identified ombudservice with adequate powers to effectively secure redress for affected investors, namely by requiring firms to cooperate with an identified ombudservice's investigation and to comply

21 See National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* at subsection 13.16(4) [NI 31-103].
22 2021 *Independent Evaluation,* at p 12.
23 Government of Ontario, *Small claims court: suing someone,* "Cost of filing a claim" accessed at <https://www.ontario.ca/page/suing-someone-small-claims-court>.
24 The Advocates' Society, *Delay No Longer. The Time to Act is Now. A Call for Action on Delay in the Civil Justice* System (2023) at p 3.
25 *Ibid*.
26 OBSI, Annual Report 2022 at p 40.

with its final decisions. Requiring firms to comply with a final decision of an identified ombudservice will bring Canada's investment-related external dispute resolution regime in line with the analogous regimes in international jurisdictions such as the United Kingdom[27], Australia[28] and Ireland[29], which all have financial ombudservices capable of rendering binding decisions.

If the proposed rule amendments come into effect, firms may come to view OBSI as a more effective ombudservice and increase their level of engagement with OBSI's processes.[30] Similarly, investor confidence in external dispute resolution may increase and encourage more investors to bring their complaints before OBSI where they are unable to resolve them directly with their firm.

(iii) Registrants

Efficient dispute resolution process

The proposed framework does not create an overly formalized system, but instead preserves much of OBSI's current processes unless and until either the firm or a complainant makes a written objection seeking an internal review of the identified ombudservice's initial recommendation. Once a recommendation becomes a deemed decision under the proposed framework, the proposed rule amendments will require firms to promptly comply with the terms of the final decision without awaiting further confirmation from the complainant or identified ombudservice.

In the review and decision stage, the identified ombudservice's recommendation will be subject to a limited scope review by a senior decision maker within the identified ombudservice. Consequently, firms will only be required to participate within the limited scope of the identified ombudservices review during the review and decision stage. The streamlined process under the proposed framework is intended to ensure both parties to a complaint have the benefit of a formalized review process if they raise a concern about the identified ombudservice's recommendation, without creating undue burden on parties with an overly complex and formalized appeals process. In addition, if the complainant initiates the review and decision stage, the proposed framework will require the complainant to comply with the identified ombudservice's decision, which helps provide finality for firms.

Overall, we expect that the efficient dispute resolution process under the proposed framework will reduce the need for more adversarial processes and better assist in preserving the firm-client relationship after a complaint has been lodged.

Lower legal costs for firms

It is expected that if an identified ombudservice is given binding authority, the identified ombudservice will become the preferable forum for complainants to have their disputes resolved, including because investors can expect an enforceable outcome without the time and cost typically associated with initiating a civil proceeding. As such, registrants may see a reduction in legal costs associated with being a responding party to civil proceedings brought against them to resolve disputes that the identified ombudservice can readily address, with greater expediency and at lower cost to all parties involved.

It is difficult to accurately quantify any cost reduction to firms as we do not know the number of investment-related disputes within OBSI's mandate that ultimately proceeds to court. However, we do know that adjudicating matters before the courts is generally an expensive process. Even if a matter were to proceed under simplified procedures,[31] the adversarial process remains a costly one. In contrast, while firms must still cooperate with the identified ombudservice's investigation and review, the costs are foreseeably lower than hiring counsel, either in-house or external, to manage ongoing litigation files.

(b) Anticipated Costs of the Proposed Rule Amendments and Proposed CP Changes

(i) Investors

Longer decision process and time required to receive compensation

As already discussed above, requiring firms to comply with a decision of the identified ombudservice under the proposed rule amendments will help alleviate any pressure felt by investors to settle their complaints for less than what may be fair for them to receive. On average, this will likely increase the monetary compensation paid to complainants. However, since a recommendation does not become a binding decision until a specified amount of time has passed, investors may have to wait longer to receive their compensation relative to if they settled prior to a recommendation being made, or in the present framework, where cases are typically closed by OBSI within 90-120 days. Where a firm initiates the review and decision stage by objecting to the identified ombudservice's recommendation, investors would have to wait until the decision is rendered and for an additional specified period of time to pass before a firm would be required to comply with the identified ombudservice's decision under the proposed rule amendments.

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27 Financial Ombudsman Service (UK), *How we make decisions,* "Final Binding Decisions", accessed at <https://www.financial-ombudsman.org.uk/who-we-are/make-decisions>.

28 Australian Financial Complaints Authority, *What process we follow,* "Determination (a binding decision)", at < https://www.afca.org.au/what-to-expect/the-process-we-follow>.

29 Financial Services and Pensions Ombudsman, *How we deal with your complaint*, "Formal complaint resolution", accessed at < https://www.fspo.ie/our-services/>.

30 2021 *Independent Evaluation*, at p 39.

31 See *Rules of Civil Procedure*, RRO 1990, Reg 194, Rule 76.

Additionally, investors who wish to object to a recommendation may find the additional steps difficult to navigate. Despite these possible qualitative costs to investors, the length of time and complexity required to resolve a case before the identified ombudservice is likely to be far lower than if investors were to bring their matter before the courts to obtain a binding decision.

In anticipation of potentially higher fees to be a member of the identified ombudservice, it is also possible that registered firms may pass on their increased costs to investors in the form of higher fees.

(ii) OBSI

Increased operational costs

It is expected that the proposed framework will result in an increase to OBSI's operating costs given the anticipated increase in complaints being brought to the identified ombudservice and implementation of an internal review process. The anticipated cost increases will likely pertain to hiring of additional personnel and updating of operating procedures and training processes and materials. We note some of the costs related to the training of new investigators may be mitigated by the proposed framework maintaining most of OBSI's current processes, and the new internal review process is expected to be similar to the existing internal reconsideration process at OBSI.

Likewise, OBSI may see higher administrative costs relating to enhanced oversight by the CSA, including due to the imposition of potentially greater and more stringent obligations, as part of the proposed framework.

We do not have specific estimates of the cost to OBSI in implementing elements of the proposed framework. To help gauge the cost of implementation, we note that OBSI's total expenses in 2022 totaled $10.5 million. These expenses covered the direct cost of addressing investment- and banking-related inquiries and cases, and the costs related to managing and administering OBSI such as rent, salaries of support personnel and services, and capital depreciation.[32] Personnel costs accounted for around three-quarters ($7.8 million) of OBSI's total budget. In 2022, participating investment firms accounted for 15% of inquiries to OBSI and 40% of cases opened.

It is noted that the Financial Consumer Agency of Canada (**FCAC**) recently announced the designation of OBSI as Canada's single external complaints body (**ECB**) for banking, and OBSI will assume its responsibilities as the single ECB on November 1, 2024.[33] Consequently, the anticipated costs of implementing the proposed framework may be reduced if there is overlap in hiring and training of new personnel to address an increase in volume of cases under OBSI's banking mandate.

(iii) Registrants

Potentially higher membership fees

Currently, OBSI's budget is funded through membership fees from participating firms. Within the investment sector, fees paid by firms are assessed based on a firm's size relative to other firms in the same sector. OBSI's total fees are divided proportionally across the sectors based on the number and complexity of cases.[34] Given that the proposed framework will likely attract more investment related complaints to OBSI in the future, and that there will be an internal review process put in place, it is highly likely that there will be an increase in membership fees for firms. However, as discussed above, costs to firms may be mitigated by overlapping changes to OBSI's banking mandate as OBSI assumes its responsibilities as the single ECB for banking.

In addition, costs of OBSI's initial and ongoing implementation of the proposed framework could be passed on to firms in the form of higher membership fees. As discussed above, the proposed framework, which includes the proposed rule amendments and proposed CP changes, maintains much of the dispute resolution processes employed by OBSI today. While the ability to issue a binding decision at the conclusion of an identified ombudservice's review is a new component introduced through the proposed framework, we note that the review and decision stage is expected to share many of the core attributes of OBSI's existing reconsideration process, such as review of the recommendation by a "Reconsideration Officer" who was not previously involved in the case, and written reasons for a decision.[35]

Greater monetary compensation to complainants

As firms would be required to comply with a decision of the identified ombudservice under the proposed rule amendments, some may see some increase in monetary compensation to complainants, as complainants may be less likely to accept a settlement offer that is lower than what is set out in the identified ombudservice's recommendation (which may be deemed a decision later on). However, it is important to consider that firms have generally had strong compliance where OBSI recommendations are below $50,000, and most cases closed by OBSI typically result in recommendations in this lower range. Consequently, for most firms,

32 OBSI, Annual Report 2022 at p 61.

33 Financial Agency of Canada, *Designation of Canada's single external complaints body for banking* (October 17, 2023), online <https://www.canada.ca/en/financial-consumer-agency/news/2023/10/designation-dun-organisme-externe-de-traitement-des-plaintes-unique-pour-le-secteur-bancaire-au-canada.html>.

34 OBSI, Annual Report 2022 at p 61.

35 OBSI, *How We Work,* "Complaints about the outcome of your case" at <https://www.obsi.ca/en/how-we-work/reconsideration.aspx#Investment-Complaints-Regulatory-Framework>.

the increase in costs associated with payment of monetary compensation consistent with an identified ombudservice's recommendation or final decision may not be significant relative to the status quo, on average.

Costs from potentially higher caseload

Similar to the impact on OBSI, we expect that registrants may receive a higher number of complaints as a result of the proposed framework, as investors become more confident in the processes for seeking and receiving redress. However, this cost on firms may be mitigated by implementing more robust complaint handling processes within the firm itself that resolve complaints effectively and efficiently, as clients may only bring their complaint forward to OBSI where it remains unresolved after first being brought to the firm.[36]

We do not have complete information on the number of inquiries that firms see and the cost to firms from addressing these inquiries and complaints. OBSI reported that around 10% of all banking- and investment-related inquiries in 2022 resulted in cases being opened, while 31% were redirected to be dealt with by the firms.[37]

Potentially higher insurance costs

Sections 12.3 to 12.5 of NI 31-103 require all firms to maintain bonding or insurance that contains certain specific clauses and coverage as outlined in Appendix A – Bonding and Insurance Clauses of NI 31-103 (**Appendix A**). Under Appendix A, firms must obtain insurance that contains a "fidelity clause" that insures against any loss through dishonest or fraudulent act of employees and a "forgery or alterations clause" that insures against any loss through forgery or alteration of any cheques, drafts, promissory notes or other written orders or directions to pay sums in money, excluding securities.[38]

Generally, the firms more likely to be impacted by an increase to their insurance costs would be firms that have refused to follow OBSI's recommendation or have settled complaints at an amount lower than what OBSI recommended. Between 2018 and 2022, out of 844 cases that ended with monetary compensation, 42 cases (approximately 5%) involving 24 firms settled below OBSI recommendations.[39] We do not have the required data to estimate the potential impact on those firms' insurance costs because of variables specific to each firm. We note, however, that large and medium sized firms accounted for approximately 86% of low settlement cases.

Initial and ongoing implementation costs

It is anticipated that the initial cost of implementing the proposed framework would not be significant given that the core dispute resolution processes used by OBSI are expected to remain largely the same.

We estimate that each impacted firm will incur approximately $1080[40] in initial costs associated with reviewing and learning about the proposed rule amendments and proposed CP changes and updating existing policies, procedures and client-facing documents. The estimated costs are based on the following assumptions:

- All impacted firms will undertake the same activities and incur the same initial compliance costs. We do not anticipate significant costs associated with IT/systems modification as a result of the proposed rule amendments.
- We expect that impacted firms will incur minimal costs to update the written acknowledgement of a complaint to disclose the firm's obligations under proposed section 13.16.1(1), specifically that the firm is required to become a member of the identified ombudservice, cooperate in the investigation and review of the identified ombudservice, and promptly comply with a decision of the identified ombudservice. We anticipate minor revisions to the existing written acknowledgement provided to complainants today.
- We assume that impacted firms will not incur significant costs to update complaint handling documents provided to their clients. Previously, both self-regulatory organizations provided registered firms with approved brochures/forms to be provided to clients at account opening.[41] We assume that CIRO would continue to provide updated versions of these documents.

36 See NI 31-103, subsection 13.16(4)
37 OBSI, 2022 Annual Report 2022 at p 18. OBSI received 10,650 inquiries in 2022, of which 1,710 related to participating investment firms. A breakdown of investment-related inquiries by outcome is not readily available.
38 The other clauses are "On Premises", "In transit" and "Securities".
39 JRC Annual Report 2023, *supra*, at p 4.
40 There were 1308 participating firms as at August 1, 2023. We estimate that these participating firms would incur aggregate initial compliance costs of approximately $1.4M.
41 IIROC (as it then was) provided dealers with two forms to provide to clients at account opening: Making a Complaint: A Guide for Investors (Part 1 of 2, pdf) and How Can I Get My Money Back? A Guide for Investors (part 2 of 2, pdf). The MFDA (as it then was) provided dealers with an approved Client Complaint Information Form.

- We do not anticipate there will be any significant ongoing costs associated with the proposed rule amendments. Given that the identified ombudservice's final decisions will be binding, we expect there will be less necessary follow-up by the registered firm after a decision is made.

Table 4: Estimated initial per entity compliance costs

Activity	Staff category	Hourly rate[42]	Total hours per activity	Total cost per activity
1. Learning about the regulation	Compliance Analyst	$60	2	$120
	Senior Compliance Analyst	$77	2	$150
	Chief Compliance Officer	$133	1	$130
2. Updating policies, procedures and client facing documents	Compliance Analyst	$60	3	$180
	Senior Compliance Analyst	$77	3	$230
	Chief Compliance Officer	$133	2	$270
			Total cost per firm	$1,080

7. Alternatives Considered

The Commission considered maintaining the status quo, which would mean not proceeding with the proposed rule amendments and proposed CP changes to establish obligations and guidance in furtherance of the proposed framework. By not proceeding with implementation of the proposed framework, previously highlighted issues regarding the lack of binding authority for OBSI would persist. These issues include: i) the risk of lower settlements resulting from the power imbalance in settlement negotiations between a firm and a complainant; ii) the public perception that OBSI's effectiveness is diminished due to its lack of binding authority; and iii) that Canada's external dispute resolution mechanisms remain misaligned with the financial ombudservices in jurisdictions with comparable legal systems – such as the UK, Australia, and Ireland – which all have the authority to issue binding decisions.

Given the factors noted above, the Commission determined that the benefits to implementing the proposed framework outweigh the costs of doing so.

8. Reliance on Unpublished Studies

The Commission is not relying on any significant unpublished study, report, or other written material in proposing the proposed rule amendments and proposed CP changes.

9. Rule-Making Authority

In Ontario, the Commission is seeking amendments to the *Securities Act* (Ontario) to provide it with the requisite authority to make certain provisions in the proposed rule amendments. The remaining provisions are made under the authority of paragraph 2 of subsection 143(1) of the *Securities Act* (Ontario).

[42] All hourly rates are obtained from the Robert Half 2023 Salary Guide.

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B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Lysander TDV Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Nov 24, 2023
NP 11-202 Final Receipt dated Nov 27, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06037041

Issuer Name:
Sun Life Net Zero Target Bond Fund
Sun Life Risk Managed U.S. Equity Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Nov 22, 2023
NP 11-202 Final Receipt dated Nov 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06034534

Issuer Name:
Mackenzie Betterworld Canadian Equity Fund
Mackenzie Betterworld Global Equity Fund
Mackenzie Bluewater Canadian Growth Balanced Fund
Mackenzie Bluewater Canadian Growth Fund
Mackenzie Bluewater Global Growth Fund
Mackenzie Bluewater US Growth Fund
Mackenzie Canadian Bond Fund
Mackenzie Canadian Dividend Fund
Mackenzie Canadian Equity Fund
Mackenzie Canadian Money Market Fund
Mackenzie Canadian Short Term Income Fund
Mackenzie Canadian Small Cap Fund
Mackenzie Conservative Income ETF Portfolio
Mackenzie Corporate Bond Fund
Mackenzie Floating Rate Income Fund
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Nov 22, 2023
NP 11-202 Final Receipt dated Nov 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06032961

Issuer Name:
Mackenzie Global Dividend Fund
Mackenzie Global Green Bond Fund
Mackenzie Global Resource Fund
Mackenzie Global Small-Mid Cap Fund
Mackenzie Global Strategic Income Fund
Mackenzie Global Sustainable Balanced Fund
Mackenzie Global Sustainable Bond Fund
Mackenzie Global Tactical Bond Fund
Mackenzie Global Women's Leadership Fund
Mackenzie Greenchip Global Environmental All Cap Fund
Mackenzie Greenchip Global Environmental Balanced Fund
Mackenzie Income Fund
Mackenzie Ivy Canadian Fund
Mackenzie Ivy International Fund
Mackenzie Monthly Income Balanced Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Nov 22, 2023
NP 11-202 Final Receipt dated Nov 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06032963

Issuer Name:
Mackenzie Monthly Income Conservative Portfolio
Mackenzie Monthly Income Growth Portfolio
Mackenzie Strategic Bond Fund
Mackenzie Strategic Income Fund
Mackenzie Unconstrained Fixed Income Fund
Mackenzie US All Cap Growth Fund
Mackenzie US Mid Cap Opportunities Fund
Mackenzie US Small-Mid Cap Growth Fund
Symmetry Balanced Portfolio
Symmetry Conservative Income Portfolio
Symmetry Conservative Portfolio
Symmetry Equity Portfolio
Symmetry Fixed Income Portfolio
Symmetry Growth Portfolio
Symmetry Moderate Growth Portfolio
Principal Regulator – Ontario
Type and Date:
Final Simplified Prospectus dated Nov 22, 2023
NP 11-202 Final Receipt dated Nov 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06033195

Issuer Name:
FDP Municipal Bond Portfolio
Principal Regulator – Quebec
Type and Date:
Final Simplified Prospectus dated Nov 21, 2023
NP 11-202 Final Receipt dated Nov 23, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06032907

Issuer Name:
Desjardins Dividend Income Fund
Principal Regulator – Quebec
Type and Date:
Amendment #4 to Final Simplified Prospectus dated November 1, 2023
NP 11-202 Final Receipt dated Nov 21, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03487419

Issuer Name:
NEI Balanced Private Portfolio
NEI Balanced Yield Portfolio (formerly NEI Global Strategic Yield Fund)
Principal Regulator – Ontario
Type and Date:
Amendment #2 to Final Simplified Prospectus dated November 15, 2023
NP 11-202 Final Receipt dated Nov 21, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03542709

Issuer Name:
First Trust Cboe Vest U.S. Equity Buffer ETF - November
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated November 17, 2023
NP 11-202 Final Receipt dated Nov 22, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03560908

Issuer Name:
Scotia Wealth Credit Absolute Return Pool
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Simplified Prospectus dated November 17, 2023
NP 11-202 Final Receipt dated Nov 22, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03489801

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NON-INVESTMENT FUNDS

Issuer Name:
Kobrea Exploration Corp.
Principal Regulator – British Columbia
Type and Date:
Amendment to preliminary Long Form Prospectus dated Nov 17, 2023
NP 11-202 Amendment Receipt dated Nov 21, 2023
Offering Price and Description:
2,589,496 Common Shares and 2,589,496 Warrants on Exercise of 2,589,496 Outstanding Special Warrants
Filing # 06013926

Issuer Name:
Collective Mining Ltd.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus dated Nov 22, 2023
NP 11-202 Preliminary Receipt dated Nov 22, 2023
Offering Price and Description:
$200,000,000.00 - Common Shares, Debt Securities, Subscription Receipts, Warrants, Units

Filing # 06051116

Issuer Name:
Greenlane Renewables Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Shelf Prospectus dated Nov 17, 2023
NP 11-202 Preliminary Receipt dated Nov 20, 2023
Offering Price and Description:
$100,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units
Filing # 06049876

Issuer Name:
GoldMining Inc.
Principal Regulator – British Columbia
Type and Date:
Final Shelf Prospectus dated Nov 24, 2023
Final Receipt dated Nov 24, 2023
Offering Price and Description:
$100,000,000.00 - Common Shares, Preferred Shares, Warrants, Subscription Receipts, Debt Securities, Units
Filing # 06039707

Issuer Name:
CE Brands Inc.
Principal Regulator – Alberta
Type and Date:
Preliminary Short Form Prospectus dated Nov 17, 2023
NP 11-202 Preliminary Receipt dated Nov 20, 2023
Offering Price and Description:
Minimum offering: $4,000,000.00 / * Shares
Maximum offering: $5,000,000.00 / * Shares
$* per Share
Over-Allotment Option: Up to $500,000.00 / * Shares
Filing # 06049900

Issuer Name:
Global Atomic Corporation
Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus dated Nov 21, 2023
NP 11-202 Final Receipt dated Nov 21, 2023
Offering Price and Description:
$350,000,000.00 - Common Shares, Warrants, Subscription Receipts, Units, Debt Securities
Filing # 06042886

Issuer Name:
Trillion Energy International Inc.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Prospectus dated Nov 23, 2023
NP 11-202 Final Receipt dated Nov 23, 2023
Offering Price and Description:
$10,000,000.00
33,333,333 Common Shares
$0.30 per Common Share
Filing # 06045937

B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Amalgamation	BCV Asset Management Inc. and Antares Investment Management, Inc. To Form: BCV Asset Management Inc.	Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	September 30, 2023
Consent to Suspension (Pending Surrender)	VALUE-SCIENCES INC.	Portfolio Manager	November 20, 2023
Voluntary Surrender	Pershing Securities Canada Limited	Investment Dealer	November 15, 2023

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

B.11.2 Marketplaces

B.11.2.1 TriAct Canada Marketplace LP (operating as MATCHNow) – Notice of Cessation of ATS Business

TRIACT CANADA MARKETPLACE LP
(operating as MATCHNow)

NOTICE OF CESSATION OF ATS BUSINESS

TriAct Canada Marketplace LP (operating as **MATCHNow**) has filed Form 21-101F4 *Cessation of Operations Report for Alternative Trading System* (**F4**) with the Commission. The F4 indicates that MATCHNow intends to cease to carry on business as an alternative trading system (**ATS**) on January 1, 2024.

Pending regulatory approval, on January 1, 2024, MATCHNow will cease to exist as a separate legal entity and ATS, and its operations will be incorporated, as an order book, into a new amalgamated corporation to be known as Cboe Canada Inc., which shall be a recognized exchange under a varied version of the recognition order that currently applies to MATCHNow's sister marketplace, Neo Exchange Inc., its affiliated entity Aequitas Innovations Inc., and their ultimate parent company, Cboe Global Markets, Inc. The application to vary the recognition order was published for comment in the OSC Bulletin on October 19, 2023, at (2023), 46 OSCB 8573.

B.11.3 Clearing Agencies

B.11.3.1 Canadian Derivatives Clearing Corporation (CDCC) – Proposed Amendments to the Operations Manual of the CDCC to Include a Gross Client Margin Balance Risk Account Forecast – Notice of Material Rule Submission

NOTICE OF MATERIAL RULE SUBMISSION

CANADIAN DERIVATIVES CLEARING CORPORATION (CDCC)

PROPOSED AMENDMENTS TO
THE OPERATIONS MANUAL OF THE CDCC TO INCLUDE
A GROSS CLIENT MARGIN BALANCE RISK ACCOUNT FORECAST

CDCC has submitted to the Commission proposed amendments to the CDCC Operations Manual to include a Gross Client Margin (GCM) Balance Risk Account forecast.

The purpose of the proposed amendments, which are subject to Commission approval, is to introduce additional GCM reporting and system functionality that will facilitate Clearing Members' GCM reconciliation, and to include further details to clarify some operational processes on GCM.

The proposed amendments have been posted for public comment on CDCC's **website.** The comment period ends on December 28, 2023.

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