The Ontario Securities Commission

OSC Bulletin

December 7, 2023

Volume 46, Issue 49

(2023), 46 OSCB

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

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

43062608

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

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Printed in the United States by Thomson Reuters.

ISSN 0226-9325

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FOR IMMEDIATE RELEASE
November 29, 2023

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File No. 2023-26

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

A copy of the Application dated October 3, 2023 and the Reasons for Decision dated November 28, 2023 are available at capitalmarketstribunal.ca.

Registrar, Governance & Tribunal Secretariat
Ontario Securities Commission

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File No. _____

IN THE MATTER OF
A CONFIDENTIAL INVESTIGATION INTO CERTAIN FOREIGN CORPORATIONS
(THE "FOREIGN CORPORATIONS")

CONFIDENTIAL APPLICATION OF THE FOREIGN CORPORATIONS

For an Order pursuant to ss. 17(1) and 17(4) of the *Securities Act* and
Confidentiality Orders pursuant to Rule 22 of the Capital Markets Tribunal Rules of Procedure and Forms,
s. 2(2) of *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sch. 60 and
s. 9(1)(b) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22

Under Section 17(1) and 17(4) of the *Securities Act*, R.S.O. 1990, c. S.5,
Rules 17(1) and 22 of the Capital Markets Tribunal Rules of Procedure and Forms.

NOTICE OF APPLICATION
(Application for Orders under s. 17 of the Securities Act and Rule 22)

A. ORDER SOUGHT

1. The Foreign Corporations, request that the Tribunal makes the following order(s):

   (a) Orders pursuant to ss. 17(1) and 17(4) of the *Securities Act*, R.S.O. 1990, c. S. 5 (the ***"Act"***) addressing whether, and if so, under what terms and conditions certain confidential information protected by s. 16(1) of the *Act* (the "**Confidential Information**") may be disclosed (including being filed with the Court) in connection with an application to the Ontario Superior Court of Justice by Enforcement Staff of the Ontario Securities Commission (**"Staff"**) to have the Foreign Corporations found in contempt (the **"Contempt Application"**);

   (b) Orders pursuant to Rule 22 of the Capital Markets Tribunal Rules of Procedure and Forms that this Application and the material filed in connection therewith be confidential and not available to the public and that all hearings scheduled in this Application be heard *in camera* (the **"Confidentiality Orders"**); and

   (c) Such further relief as this counsel may advise and this Tribunal may permit.

B. GROUNDS

Background

2. The Foreign Corporations are corporations incorporated outside of Canada and do not carry on business in Ontario. Pursuant to two orders made under section 11 of the *Act*, Staff has been authorized to conduct an investigation into certain matters concerning the Foreign Corporations.

3. Beginning in July 2022, Staff delivered summonses under s. 13 of the *Act* to the general counsel of certain of the Foreign Corporations (the **"Individual Summonses"**). The Individual Summonses were made pursuant to investigation orders made under s. 11 of the *Act*. The General Counsel has his own legal representation.

4. The Foreign Corporations have consistently taken the position that Staff does not have the jurisdiction to compel documents and information from them pursuant to a section 13 summons, and have consistently reserved their rights in that regard. The Foreign Corporations have also consistently denied that the OSC has substantive jurisdiction over the Foreign Corporations, and reserved their rights. Nevertheless, the Foreign Corporations have provided information and documents to Staff.

5. The Confidential Information provided to Staff by the Foreign Corporations includes extremely sensitive business information as well as information pertaining to third-parties and falling within a zone of reasonable expectations of privacy.

6. Based on information provided by Staff, the Foreign Corporations understand that the General Counsel was interviewed pursuant to the Individual Summonses. Counsel to the Foreign Corporations was not permitted to be present at the examination. The General Counsel had his own lawyer, who was present.

7. Following the examination of the General Counsel, on April 28, 2023, Staff sent Summonses (the "**Foreign Corporation Summonses**") addressed to the Foreign Corporations to the attention of external counsel to the Foreign Corporations. No interview was sought. Rather, the Foreign Corporation Summonses repeated the requests for information and documents that were sought in the Individual Summonses, and purported to require that they be provided by May 5, 2023.

8. The Foreign Corporations wrote to Staff advising them that in their view, the Foreign Corporation Summonses were ineffective, that Staff had no jurisdiction to purport to require foreign corporations to provide information and documents to Staff through a section 13 summons, and inviting Staff to discuss the jurisdictional issues with external counsel. External counsel to the Foreign Corporations advised Staff that it did not have instructions to accept service of the Foreign Corporation Summonses.

9. Copies of the Foreign Corporation Summonses were delivered to the General Counsel on or about May 29, 2023. There was no further communication with Staff with respect to the Foreign Corporation Summonses until September 8, 2023, when Staff wrote to the Foreign Corporations' external counsel indicating that Staff intended to bring an application in the Superior Court of Justice, for an order finding that the Foreign Corporations are in contempt of the Foreign Corporation Summonses (the **"Contempt Application"**) as early as September 29, 2023.

10. On October 2, 2023, Staff provided external counsel to the Foreign Corporations with a draft Notice of Application in the Contempt Application, which has not yet been filed with the Ontario Superior Court of Justice. The Notice of Application indicates that Staff will rely on an affidavit, yet to be sworn, at the hearing of the Contempt Application. The Notice of Application discloses (and, inevitably, the Affidavit will disclose) almost every category of information subject to confidentiality protections under s. 16(1) of the *Act*: the nature and content of the section 11 orders; the names of persons examined or sought to be examined; testimony given; questions asked; the nature and content of demands for production and what has and has not been provided to Staff (the **"Section 16 Information"**).

11. The disclosure of the Section 16 Information through the Contempt Application would injure the Foreign Corporations and other parties that may be affected, including individuals.

12. Staff has informed the Foreign Corporations that it takes the position that the Contempt Application is a proceeding to which section 17(6) applies and, as such, they have an untrammeled right to publicly disclose the Section 16 Information in the Contempt Application. Staff has advised the Foreign Corporations that in Staff's view, they do not require a section 17(1) order from the Tribunal prior to disclosing the Section 16 Information.

13. The Foreign Corporations' position is that:

    (a) Staff requires a subsection 17(1) order before disclosing Section 16 Information in the Contempt Application, including filing such information with the Court;

    (b) Subsection 17(6), even if it applies, would only apply to Staff, so to the extent that Staff brings the Contempt Application, the Foreign Corporations will require a subsection 17(1) order so that they can respond to the Contempt Application; and

    (c) The Tribunal should make such orders as are necessary under subsection 17(1) regarding disclosure by both Staff and the Foreign Corporations, as well as setting out terms and conditions for such disclosure pursuant to subsection 17(4).

A Rule 22 Order is Required

14. Section 16(1) of the *Act* achieves the important purpose of protecting the confidentiality of investigation orders and of information obtained, or sought to be obtained, pursuant to those orders. Unless the Tribunal makes an order pursuant to Rule 22, the confidentiality interests of the Foreign Corporations and third-parties will be defeated, and the relief sought at the heart of this application will be rendered moot. These factors outweigh any interest in holding public hearings.

A Section 17(1) Order Is Required

15. The Tribunal has the exclusive authority to make orders permitting the disclosure of the Section 16 Information pursuant to s. 17(1) of the *Act.* The Tribunal should make such an Order only after affected parties are provided with notice and the opportunity to be heard and then only if Staff satisfies the Tribunal that the Order is in the public interest.

16. If a s. 17(1) Order is made, it should be made on terms and conditions pursuant to s. 17(4) of the *Act*. These terms and conditions should provide, *inter alia*:

    (a) That the Foreign Corporations and any other affected parties be provided the opportunity to review materials containing Section 16 Information before the information is disclosed;

    (b) After this review, the Foreign Corporations and any other affected parties should be provided the opportunity to make submissions as to whether the scope of the disclosure ought to be limited, including by editing out irrelevant or privileged material;

(c) To the extent necessary, Staff should provide the Foreign Corporations such additional information gathered by it so as to permit the Foreign Corporations and any other affected party to make a full answer and defence to the Contempt Application;

(d) To the extent necessary, orders under section 17(1) permitting other affected parties to share information and materials obtained by Staff with the Foreign Corporations so as to enable all affected parties the opportunity to make full answer and defence to the Contempt Application; and

(e) Before filing the Contempt Application, Staff should be required to seek an order, from the Ontario Superior Court of Justice providing for confidentiality protections, including a sealing order.

17. The Foreign Corporations pleads and relies on:

(a) Rules 17(1), 22(2), and 22(4) of the Capital Markets Tribunal Rules of Procedure and Forms;

(b) Section 9(1)(b) of the *Statutory Powers Procedure Act*, R.S.O. 1990, c. S.22;

(c) Section 2(2) of the *Tribunal Adjudicative Records Act, 2019*, S.O. 2019, c. 7, Sched. 60.

(d) Section 17 of the *Securities Act,* R.S.O. 1990, c. S.5.

(e) Such further and other grounds as counsel may advise and the Tribunal may permit.

C. THE FOLLOWING EVIDENCE will be used at the hearing of the Application:

(f) Such evidence as counsel may advise and this Tribunal may permit.

October 3, 2023

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Counsel to the Ontario Securities Commission

A.2.2 Cormark Securities Inc. et al.

FOR IMMEDIATE RELEASE
November 30, 2023

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

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

A copy of the Reasons and Decision and the Order dated November 29, 2023 are available at capitalmarketstribunal.ca.

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A.2.3 Xiao Hua (Edward) Gong

FOR IMMEDIATE RELEASE
November 30, 2023

XIAO HUA (EDWARD) GONG,
File No. 2022-14

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

A copy of the Order dated November 30, 2023 is available at capitalmarketstribunal.ca.

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A.2.4 Nova Tech Ltd and Cynthia Petion

FOR IMMEDIATE RELEASE
November 30, 2023

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

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

A copy of the Order dated November 30, 2023 is available at capitalmarketstribunal.ca.

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A.2.5 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
December 1, 2023

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

TORONTO – The previously scheduled day of December 4, 2023 will not be used for the merits hearing in the above-named matter. The merits hearing will continue on December 5, 6, 7, 8, 11, 14, 15, 2023, January 29, 30, 31, 2024 and February 1, 5 and 6, 2024 at 10:00 a.m. on each day.

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.2.6 Zahir Hussain Lehri and Muhamad Ashgar Sadiq

FOR IMMEDIATE RELEASE
December 4, 2023

ZAHIR HUSSAIN LEHRI AND
MUHAMAD ASHGAR SADIQ,
File Nos. 2023-17,
2023-18 and
2023-19

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

A copy of the Application dated August 16, 2023 (File No. 2023-17), the Amended Application dated September 25, 2023 (File No. 2023-18), the Application dated August 16, 2023 (File No. 2023-19) and the Reasons for Decision and Order dated December 1, 2023 respectively, are available at www.capitalmarketstribunal.ca.

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A.2.7 Bridging Finance Inc. et al.

FOR IMMEDIATE RELEASE
December 4, 2023

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

TORONTO – The previously scheduled day of December 5, 6 and 7, 2023 will not be used for the merits hearing in the above-named matter. The merits hearing will continue on December 8 at 9:30 a.m. by videoconference and will also continue on December 11, 14, 15, 2023, January 29, 30, 31, 2024 and February 1, 5 and 6, 2024 at 10:00 a.m. on each day.

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.2.8 Cormark Securities Inc. et al.

FOR IMMEDIATE RELEASE
December 5, 2023

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

TORONTO – The following merits hearing dates have changed in the above-named matter:

(1) the previously scheduled day of March 28, 2024 and April 22, 23, 24 and 25, 2024, will not be used for the merits hearing; and

(2) the merits hearing shall commence on March 25, 2024 and continue on March 26 and 27, 2024, April 11, 12, 15, 16, 17 and 30, 2024, May 1, 2, 3, 21, 22, 28, 29, 30, and 31, 2024, and June 3, 4, 5, 6, 10, 11, 12, 13, and 14, 2024 at 10:00 a.m. on each day.

The hearing 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.3
Orders

A.3.1 Cormark Securities Inc. et al.

IN THE MATTER OF
CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.

File No. 2022-24

Adjudicators: M. Cecilia Williams (chair of the panel)
Geoffrey D. Creighton
William J. Furlong

November 29, 2023

ORDER

WHEREAS on June 28, 2023, the Capital Markets Tribunal held a hearing by videoconference in relation to a motion filed by Cormark Securities Inc. and William Jeffrey Kennedy requesting disclosure from Canopy Growth Corporation, a non-party to this proceeding;

ON READING the motion materials filed by Cormark and Kennedy, Staff of the Ontario Securities Commission, and Canopy Growth Corporation, and on hearing the submissions of the representatives for each of Cormark and Kennedy, Staff of the Commission, and Canopy;

IT IS ORDERED that:

1. Cormark, Kennedy, and Staff of the Commission shall, within 14 days of the date of this Order, agree on a referee to conduct a privilege review, or failing agreement, serve and file written submissions about their proposed referee; and

2. any documents or portions thereof that are determined by the referee not to be privileged, shall be produced by Canopy to the parties in the proceeding within 7 days of the referee's report.

"M. Cecilia Williams"

"Geoffrey D. Creighton"

"William J. Furlong"

A.3.2 Xiao Hua (Edward) Gong – Rule 21(2) of the CMT Rules of Procedure and Forms

IN THE MATTER OF
XIAO HUA (EDWARD) GONG

File No. 2022-14

Adjudicator: Russell Juriansz (chair of the panel)

November 30, 2023

ORDER
(Rule 21(2) of the *Capital Markets Tribunal Rules of Procedure and Forms*)

WHEREAS on November 30, 2023, the Capital Markets Tribunal held a hearing by videoconference to consider Stern Landesman Clark LLP's motion to be removed as representative of record for the respondent Xiao Hua (Edward) Gong;

ON READING the materials filed by the parties and on hearing the submissions of each of the representatives of the parties, and on considering that Gong consents to the motion and Staff does not oppose the motion;

IT IS ORDERED THAT:

1. pursuant to rule 21(2) of the *Capital Markets Tribunal Rules of Procedure and Forms*, Stern Landesman Clark LLP is removed as representative of record for Gong; and

2. a further attendance in this matter is scheduled for December 18, 2023 at 2:00 p.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.

"Russell Juriansz"

A.3.3 Nova Tech Ltd and Cynthia Petion

IN THE MATTER OF
NOVA TECH LTD AND
CYNTHIA PETION

File No. 2023-20

Adjudicators: M. Cecilia Williams (chair of the panel)
Jane Waechter

November 30, 2023

ORDER

WHEREAS the Capital Markets Tribunal held a hearing in writing to consider a motion brought by Staff of the Ontario Securities Commission (**Staff**) for procedural relief to waive notice and service on Cynthia Petion (**Petion**) and Nova Tech Ltd. (collectively, the **Respondents**) in this matter, and dispense with Staff's disclosure obligations;

ON READING the Motion Record and the written submissions of Staff, and no one participating on behalf of the Respondents;

IT IS ORDERED, for reasons to follow, that:

1. pursuant to subrule 28(5)(a) of the *Capital Markets Tribunal Rules of Procedure and Forms* (the **Rules**), Staff is permitted to bring this motion without notice to Petion;

2. pursuant to subrule 6(4) of the Rules, the requirement that Staff serve the Notice of Hearing and Statement of Allegations on Petion is waived;

3. pursuant to subrule 6(4) of the Rules, the requirement that Staff serve all future processes on the Respondents is waived;

4. pursuant to rule 3 of the Rules, Staff's disclosure obligations pursuant to subrules 27(1), (2) and (3) in respect of the Respondents are waived; and

5. pursuant to subrule 21(3) of the Rules, the merits hearing will proceed in the Respondents absence.

"M. Cecilia Williams"

"Jane Waechter"

A.3.4 Zahir Hussain Lehri and Muhamad Ashgar Sadiq

IN THE MATTER OF
ZAHIR HUSSAIN LEHRI

AND

IN THE MATTER OF
MUHAMAD ASHGAR SADIQ

File Nos. 2023-17, 2023-18 and 2023-19

Adjudicators: M. Cecilia Williams (chair of the panel)
Geoffrey D. Creighton
Russell Juriansz

December 1, 2023

ORDER

WHEREAS on October 16, 2023, the Capital Markets Tribunal held a confidential hearing by videoconference to consider three applications brought by Staff of the Canadian Investment Regulatory Organization (**CIRO Staff**) for authorization to disclose certain information in its possession for the purposes of an ongoing proceeding before CIRO;

AND WHEREAS the Tribunal dismissed the applications with reasons issued on December 1, 2023;

ON READING the materials filed by CIRO Staff and Staff of the Ontario Securities Commission (**OSC Staff**) and on hearing the submissions of the representatives for CIRO Staff and OSC Staff, and on considering the parties' request that the confidential application materials be made available to the public;

IT IS ORDERED THAT the application materials, previously marked as confidential by the Tribunal, shall be made available to the public.

"M. Cecilia Williams"

"Geoffrey D. Creighton"

"Russell Juriansz"

CAPITAL MARKETS TRIBUNAL

IN THE MATTER OF
MUHAMAD ASGHAR SADIQ

CONFIDENTIAL APPLICATION OF
THE CANADIAN INVESTMENT REGULATORY ORGANIZATION

(For Authorization to Disclose Information Under Section 17(2.1) of the *Securities Act*, RSO 1990, c. S.5)

A. ORDER SOUGHT

The Applicant, the Canadian Investment Regulatory Organization ("**CIRO**"), formerly the Mutual Fund Dealers Association of Canada (the "**MFDA**"), requests that the Capital Markets Tribunal (the "**Tribunal**"):

1. if required, make an Order pursuant to subsection 17(2.1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "***Act***"), without notice, authorizing CIRO Staff ("**CIRO Staff**") to disclose and produce confidential material, as set out in Schedule "A" to this Notice of Application (the "**Confidential Material**"), obtained pursuant to an Order made under section 11 of the *Act*, in connection with a proceeding commenced by Staff of the MFDA ("**MFDA Staff**") pursuant to MFDA By-law No. 1 (the "**Proceeding**") against Zahir Hussain Lehri ("**Lehri**"), including disclosing such material to Lehri and producing such material at the hearing on the merits; and

2. such further or other relief as counsel may request and the Tribunal may permit.

B. GROUNDS

The grounds for the request are:

Background

1. On January 1, 2023, the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation, CIRO (formerly and temporarily named the New Self-Regulatory Organization of Canada). CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "**Interim Rules**"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. Pursuant to Mutual Fund Dealer Rule 1A and section 14.6 of CIRO By-Law No. 1, contraventions of former MFDA regulatory requirements may be enforced by CIRO.

2. Prior to the consolidation, the MFDA was the national self-regulatory organization ("**SRO**") for the distribution side of the Canadian mutual fund industry. The MFDA was formally recognized as an SRO by provincial securities commissions. In Ontario, the MFDA was overseen by the Ontario Securities Commission (the "**Commission**") pursuant to s. 21.1 of the *Act*.

3. The MFDA's mandate, which is now being carried on by CIRO, was the protection of the investing public and the integrity of the capital markets. CIRO achieves this mandate, in part, by conducting regulatory investigations and disciplinary hearings.

MFDA Staff's Proceeding Against Lehri

4. On October 13, 2022, MFDA Staff issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 to commence a proceeding against Lehri. Lehri is a former dealing representative (an "**Approved Person**") with a mutual fund dealer and Member of the MFDA, Shah Financial Planning Inc. ("**Shah Financial**"). MFDA Staff alleged a number of contraventions of the MFDA Rules against Lehri, including misappropriation of client monies, stealth advising, and failure to cooperate with the MFDA's investigation.

5. As set out in the Notice of Hearing, MFDA Staff alleged that Lehri facilitated stealth advising by another Approved Person, Muhamad Asghar Sadiq ("**Sadiq**"), who was a dealing representative with Sterling Mutuals Inc. ("**Sterling Mutuals**"). Lehri opened accounts and processed transactions for four clients that he met briefly or not at all. It was Sadiq who made investment recommendations and dealt with those four clients.

6. Sadiq also recommended that these four clients invest in his "trading business". He told one client that in order to invest, monies would need to be transferred to Lehri, who Sadiq described as his business partner. That one client transferred USD$31,000 to Lehri. MFDA Staff obtained evidence that shows Lehri's receipt of the USD$31,000 and his transfer of USD$30,000 to an account with Ironbeam Inc.

7. With respect to the three other clients, they too invested in the trading business but paid the money directly to Sadiq.

MFDA Staff's Proceeding Against Muhamad Asghar Sadiq

8. Beginning in April 2019, MFDA Staff began investigating Sadiq. Among other concerns, MFDA Staff was investigating whether Sadiq had misappropriated or failed to account for client monies.

9. Although MFDA Staff had power pursuant to MFDA By-law No. 1 to compel present and former MFDA Members and Approved Persons to attend interviews and produce information relevant to MFDA investigations, Sadiq could not be located or contacted during the investigation. Accordingly, MFDA Staff was unable to compel Sadiq to produce any financial records. The MFDA did not have the authority to compel information directly from financial institutions other than mutual fund dealers that are subject to its jurisdiction.

10. On December 18, 2019, the Commission issued an investigation order (the "**Investigation Order**") after receiving a request from MFDA Staff for assistance from Staff of the Commission ("**Commission Staff**") to obtain evidence relevant to MFDA Staff's investigation of Sadiq. Information obtained pursuant to the Order was ordered to be "for the exclusive use of the MFDA and the Commission."

11. The purpose of the Investigation Order was to obtain Sadiq's bank records. MFDA Staff believed Sadiq's bank records could help MFDA Staff trace monies that several clients had claimed that they had paid to Sadiq in connection with a trading business that Sadiq told the clients that he would be starting.

12. Pursuant to the Investigation Order, Commission Staff issued a summons under section 13 of the *Act*, compelling HSBC Bank Canada ("**HSBC**") to produce financial records associated with Sadiq, including the Confidential Material.

13. The Confidential Material shows that Sadiq transferred monies from his personal bank account to the Ironbeam account identified above at paragraph 6.

14. On September 14, 2021, MFDA Staff issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 to commence a proceeding against Sadiq. MFDA Staff alleged a number of contraventions of the MFDA Rules against Sadiq, including that Sadiq misappropriated or failed to account for money received from clients, contrary to MFDA Rule 2.1.1.

15. After issuing the Notice of Hearing against Sadiq, MFDA Staff continued to be unable to locate Sadiq. Sadiq was prosecuted in absentia, after a Hearing Panel concluded that he had been appropriately served with the Notice of Hearing under the MFDA *Rules of Procedure*.

16. On November 2, 2022, a MFDA Hearing Panel made findings of misconduct against Sadiq, including finding that he misappropriated monies from several clients. The Hearing Panel ordered penalties including a permanent prohibition on Sadiq's authority to conduct securities related business while in the employ of or in association with a MFDA Member, a fine in the amount of $750,000, and costs in the amount of $49,662.50.

It is in the Public Interest to Grant the Order

17. It is in the public interest to grant the requested Order to CIRO Staff. The allegations against Lehri are serious and CIRO Staff seeks to use the Confidential Material for a disciplinary proceeding to address potential contraventions of the regulatory obligations of a registrant. The primary objective of CIRO disciplinary proceedings, as with disciplinary proceedings brought by the Commission, is to protect the investing public by deterring conduct that is harmful to the capital markets.

18. The Confidential Material is relevant because it establishes a connection between Lehri's receipt of the USD$31,000 and Sadiq.

19. Authorizing CIRO to make use of the Confidential Material in the course of disciplinary proceeding is consistent with the Commission's fundamental principle, set out in section 2.1(4) of the *Act*, to "subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations."

20. Granting the Order requested is also consistent with the objectives of the *Act* set out in section 1.1, including: "(a) to provide protection to investors from unfair, improper or fraudulent practices; [and] (b) to foster fair, efficient and competitive capital markets and confidence in capital markets".

21. Indeed, pursuant to the Investigation Order, the Confidential Material was for the exclusive use of the MFDA (now CIRO) and the Commission. If Commission Staff were to have commenced a proceeding against Lehri, use of the Confidential Material would be permitted under section 17(6) of the *Act* without a further order. There is little principled difference between Commission Staff and CIRO Staff in this context, where the two regulators cooperated during an investigation in furtherance of a common purpose to obtain information relevant to allegations of misconduct. Accordingly, by analogy, it would be appropriate to permit CIRO Staff to make use of the Confidential Material in a regulatory proceeding.

22. CIRO Staff also has a disclosure obligation arising from the Proceeding. Rule 10.1 of the Mutual Fund Dealer *Rules of Procedure* requires CIRO Staff to provide Lehri with copies of all documents that CIRO Staff intends to rely on at the Hearing on the Merits. Rule 10.4 further states that nothing in Rule 10 derogates from CIRO Staff's obligation to make disclosure as required by common law, as soon as reasonably practicable after service of the Notice of Hearing.

23. In order to ensure that respondents to CIRO disciplinary proceedings can make full answer and defence to allegations of misconduct that CIRO Staff intends to prove at a hearing, CIRO Staff has an obligation to disclose to a Respondent all documents in its possession that are not clearly irrelevant or privileged. It would be inconsistent with CIRO Staff's disclosure obligations and Lehri's right to procedural fairness in the disciplinary proceeding against him to withhold disclosure of documents that could be relevant to the allegations of misconduct that CIRO Staff has made, on the basis that those documents were obtained pursuant to the *Act* and the *Act* does not permit CIRO Staff to disclose those documents to respondents to its proceedings.

It is in the Public Interest to Grant the Order Without Notice

24. Pursuant to section 17(2.1) of the *Act*, where the Tribunal considers it to be in the public interest, the Tribunal may order disclosure of material obtained under a section 11 Order to a self-regulatory organization, like CIRO, without notice to any other party.

25. Although the Confidential Material was obtained from HSBC, it is only Sadiq who has a true interest in the Confidential Material, which is comprised of his personal banking records.

26. MFDA Staff, however, was unable to locate or establish on-going contact with Sadiq during the course of the investigation or the proceeding. Following Sadiq's resignation from Sterling Mutuals, he appears to have left Canada and moved to Pakistan. Sadiq did not leave any contact details or have his address information or other contact details updated on the National Registration Database ("**NRD**").

27. During the course of the investigation and the proceeding, MFDA Staff attempted to contact Sadiq and to serve him with the Notice of Hearing by:

    (a) sending regular and registered mail and a process server to his home address, as recorded on NRD and on his driver's license (the "**Home Address**");

    (b) sending regular and registered mail to the address for his income tax preparation service, as recorded on NRD (the "**Business Address**")

    (c) sending emails to his personal email address;

    (d) calling him at his personal telephone number, as recorded on NRD;

    (e) calling him at the telephone number for his income tax preparation service; and

    (f) sending a text message to him using WhatsApp using contact details that were provided to MFDA Staff by Sadiq's former clients.

28. All attempts by MFDA Staff to contact Sadiq failed. Specifically,

    (a) MFDA Staff was informed by the resident at the Home Address that Sadiq does not reside there;

    (b) Sadiq has never replied to several emails that were sent to his last known e-mail address from MFDA Staff;

    (c) both Sadiq's personal telephone number and the telephone number for his income tax preparation service are out of service;

    (d) registered mail sent to the Business Address, containing the Notice of Hearing, was delivered and signed for by an individual with the initials "MA". However, neither Sadiq, nor anyone on Sadiq's behalf, attended the first appearance in the proceeding or contacted MFDA Staff; and

    (e) MFDA Staff's attempts to contact the Respondent over WhatsApp, where MFDA Staff has been informed by three complainants that Sadiq is active, went unanswered and it appears that he subsequently "blocked" MFDA Staff from contacting him through WhatsApp after receiving the message.

29. Pursuant to an Order dated November 22, 2022, a MFDA Hearing Panel validated service of the Notice of Hearing on Sadiq and Sadiq was prosecuted in abstentia.

30. In any event, even if Sadiq could be located, he would have no legitimate basis to deny CIRO Staff's use of the Confidential Material in a disciplinary proceeding, which is itself being conducted in the public interest.

31. By becoming registered as a dealing representative, Sadiq agreed to be subject to the MFDA By-law, Rules and Policies. Pursuant to section 22.1 of MFDA By-law No. 1, had MFDA Staff been able to locate Sadiq, he would have been required to provide the Confidential Material at MFDA Staff's request, which MFDA Staff would have been permitted to use for the purposes of a disciplinary proceeding pursuant to section 22.5 of MFDA By-law No. 1.

32. In addition, when Sadiq became an Approved Person, he provided the following consent:

> I acknowledge and consent that the MFDA may obtain any information whatsoever from any source, as permitted by law in any jurisdiction of Canada or elsewhere.

33. HSBC could have no legitimate objection to CIRO's use of the Confidential Material beyond those that might be asserted by Sadiq. This is particularly so given that, as described above, Sadiq would have been required to provide the very Confidential Material at issue to the MFDA had he not left Canada.

34. Requiring CIRO Staff to give notice to HSBC or make further efforts to locate Sadiq would only serve to delay this application and therefore CIRO Staff's prosecution of Lehri. It is in the public interest that securities regulatory disciplinary proceedings be conducted expeditiously in order to protect investors and foster confidence in the capital markets.

35. CIRO Staff requests that this application be heard together with the other section 17 application In the Matter of Muhamad Asghar Sadiq and the section 17 application In the Matter of Zahir Hussain Lehri.

36. Subsection 17(2.1) of the *Securities Act* and Rules 12 and 22 of the *Capital Markets Tribunal Rules of Procedure and Forms*.

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

C. EVIDENCE

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

1. Affidavit of Stephen Davis, sworn August 16, 2023.
2. Affidavit of Sofi Vasiliadis, sworn November 10, 2021.
3. Such further and other evidence as counsel may advise the Tribunal may permit.

DATED this 16th day of August 2023.

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Ontario Securities Commission

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sgrouhi@osc.gov.on.ca

Schedule "A"

Account Holder: Muhamad Asghar Sadiq	Information (MM/DD/YYYY)	Records Associated with Account
HSBC Primer 052-419185-150 HSBC Rate Savings 052-419185-306	07/20/2016 – 09/20/2016 04/20/2017 – 06/20/2017	• Statements

CAPITAL MARKETS TRIBUNAL

IN THE MATTER OF
MUHAMAD ASGHAR SADIQ

AMENDED CONFIDENTIAL APPLICATION OF
THE CANADIAN INVESTMENT REGULATORY ORGANIZATION

(For Authorization to Disclose Information Under Subsection 17(2.1) of the *Securities Act*, RSO 1990, c. S.5)

File No. 2023-18

A. ORDER SOUGHT

The Applicant, the Canadian Investment Regulatory Organization ("**CIRO**"), formerly the Mutual Fund Dealers Association of Canada (the "**MFDA**"), requests that the Capital Markets Tribunal (the "**Tribunal**"):

1. if required, make an Order pursuant to subsection 17(2.1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "***Act***"), without notice, authorizing Staff of CIRO ("**CIRO Staff**") to disclose and produce confidential material, as set out in Schedule "A" to this Notice of Application (the "**Confidential Material**"), obtained pursuant to an Order made under section 11 of the *Act*, in connection with a proceeding commenced by Staff of the MFDA ("**MFDA Staff**") pursuant to MFDA By-law No. 1 (the "**Proceeding**") against Zahir Hussain Lehri ("**Lehri**"), including disclosing such material to Lehri and producing such material at the hearing on the merits; and

2. such further or other relief as counsel may request and the Tribunal may permit.

B. GROUNDS

The grounds for the request are:

Background

1. On January 1, 2023, the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation, CIRO (formerly and temporarily named the New Self-Regulatory Organization of Canada). CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "**Interim Rules**"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. Pursuant to Mutual Fund Dealer Rule 1A and section 14.6 of CIRO By-Law No. 1, contraventions of former MFDA regulatory requirements may be enforced by CIRO.

2. Prior to the consolidation, the MFDA was the national self-regulatory organization ("**SRO**") for the distribution side of the Canadian mutual fund industry. The MFDA was formally recognized as an SRO by provincial securities commissions. In Ontario, the MFDA was overseen by the Ontario Securities Commission (the "**Commission**") pursuant to s. 21.1 of the *Act*.

3. The MFDA's mandate, which is now being carried on by CIRO, was the protection of the investing public and the integrity of the capital markets. CIRO achieves this mandate, in part, by conducting regulatory investigations and disciplinary hearings.

MFDA Staff's Proceeding Against Lehri

4. On October 13, 2022, MFDA Staff issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 to commence a proceeding against Lehri. Lehri is a former dealing representative (an "**Approved Person**") with a mutual fund dealer and Member of the MFDA, Shah Financial Planning Inc. ("**Shah Financial**"). MFDA Staff alleged a number of contraventions of the MFDA Rules against Lehri, including misappropriation of client monies, stealth advising, and failure to cooperate with the MFDA's investigation.

5. As set out in the Notice of Hearing, MFDA Staff alleged that Lehri facilitated stealth advising by another Approved Person, Muhamad Asghar Sadiq ("**Sadiq**"), who was a dealing representative with Sterling Mutuals Inc. ("**Sterling Mutuals**"). Lehri opened accounts and processed transactions for four clients that he met briefly or not at all. It was Sadiq who made investment recommendations and dealt with those four clients.

6. Sadiq also recommended that these four clients invest in his "trading business". He told one client that in order to invest, monies would need to be transferred to Lehri, who Sadiq described as his business partner. That one client transferred USD$31,000 to Lehri. With respect to the three other clients, they too invested in the trading business but, as described further below, paid the money directly to Sadiq.

MFDA Staff's Proceeding Against Muhamad Asghar Sadiq

7. Beginning in April 2019, MFDA Staff began investigating Sadiq. Among other concerns, MFDA Staff was investigating whether Sadiq had misappropriated or failed to account for client monies.

8. Although MFDA Staff had power pursuant to section 22.1 of MFDA By-law No. 1 to compel present and former MFDA Members and Approved Persons to attend interviews and produce information relevant to MFDA investigations, Sadiq could not be located or contacted during the investigation. Accordingly, MFDA Staff was unable to compel Sadiq to produce any financial records. The MFDA did not have the authority to compel information directly from financial institutions other than mutual fund dealers that are subject to its jurisdiction.

9. On December 18, 2019, the Commission issued an investigation order (the "**Investigation Order**") after receiving a request from MFDA Staff for assistance from Staff of the Commission ("**Commission Staff**") to obtain evidence relevant to MFDA Staff's investigation of Sadiq. Information obtained pursuant to the Order was ordered to be "for the exclusive use of the MFDA and the Commission."

10. The purpose of the Investigation Order was to obtain Sadiq's bank records. MFDA Staff believed Sadiq's bank records could help MFDA Staff trace monies that several clients claimed they had paid to Sadiq in connection with a trading business that Sadiq told the clients he would be starting.

11. Pursuant to the Investigation Order, Commission Staff issued summonses under section 13 of the *Act*, compelling TD Bank to produce financial records associated with Sadiq, including the Confidential Material.

12. The Confidential Material shows Sadiq's receipt of monies from the three clients described above who paid money directly to him, and show that he used those monies to pay personal expenses. The Confidential Material therefore supports CIRO Staff's contention that there was no "trading business".

13. On September 14, 2021, MFDA Staff issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 to commence a proceeding against Sadiq. MFDA Staff alleged a number of contraventions of the MFDA Rules against Sadiq, including that Sadiq misappropriated or failed to account for money received from clients, contrary to MFDA Rule 2.1.1.

14. After issuing the Notice of Hearing against Sadiq, MFDA Staff continued to be unable to locate Sadiq. Sadiq was prosecuted in absentia, after a Hearing Panel concluded he had been appropriately served with the Notice of Hearing under the MFDA *Rules of Procedure*.

15. On November 2, 2022, a MFDA Hearing Panel made findings of misconduct against Sadiq, including finding that he misappropriated monies from several clients. The Hearing Panel ordered penalties including a permanent prohibition on Sadiq's authority to conduct securities related business while in the employ of or in association with a MFDA Member, a fine in the amount of $750,000, and costs in the amount of $49,662.50.

It is in the Public Interest to Grant the Order

16. It is in the public interest to grant the requested Order to CIRO Staff. The allegations against Lehri are serious and CIRO Staff seeks to use the Confidential Material for a disciplinary proceeding to address potential contraventions of the regulatory obligations of a registrant. The primary objective of CIRO disciplinary proceedings, as with disciplinary proceedings brought by the Commission, is to protect the investing public by deterring conduct that is harmful to the capital markets.

17. The Confidential Material is relevant because it establishes that Sadiq used money he received from clients, purportedly to invest in the trading business, to pay personal expenses. As described above, Sadiq also directed a client to pay USD$31,000 to Lehri in order to invest in this same trading business.

18. Authorizing CIRO to make use of the Confidential Material in the course of disciplinary proceeding is consistent with the Commission's fundamental principle, set out in section 2.1(4) of the *Act*, to "subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations."

19. Granting the Order requested is also consistent with the objectives of the *Act* set out in section 1.1, including: "(a) to provide protection to investors from unfair, improper or fraudulent practices; [and] (b) to foster fair, efficient and competitive capital markets and confidence in capital markets".

20. Indeed, pursuant to the Investigation Order, the Confidential Material was for the exclusive use of the MFDA (now CIRO) and the Commission. If Commission Staff were to have commenced a proceeding against Lehri, use of the Confidential Material would be permitted under section 17(6) of the *Act* without a further order. There is little principled difference between Commission Staff and CIRO Staff in this context, where the two regulators cooperated during an investigation

in furtherance of a common purpose to obtain information relevant to allegations of misconduct. Accordingly, by analogy, it would be appropriate to permit CIRO Staff to make use of the Confidential Material in a regulatory proceeding.

21. CIRO Staff also has a disclosure obligation arising from the Proceeding. Rule 10.1 of the Mutual Fund Dealer *Rules of Procedure* requires CIRO Staff to provide Lehri with copies of all documents that CIRO Staff intends to rely on at the Hearing on the Merits. Rule 10.4 further states that nothing in Rule 10 derogates from CIRO Staff's obligation to make disclosure as required by common law, as soon as reasonably practicable after service of the Notice of Hearing.

22. In order to ensure that respondents to CIRO disciplinary proceedings can make full answer and defence to allegations of misconduct that CIRO Staff intends to prove at a hearing, CIRO Staff has an obligation to disclose to a Respondent all documents in its possession that are not clearly irrelevant or privileged. It would be inconsistent with CIRO Staff's disclosure obligations and Lehri's right to procedural fairness in the disciplinary proceeding against him to withhold disclosure of documents that could be relevant to the allegations of misconduct that CIRO Staff has made, on the basis that those documents were obtained pursuant to the *Act* and the *Act* does not permit CIRO Staff to disclose those documents to respondents to its proceedings.

It is in the Public Interest to Grant the Order Without Notice

23. Pursuant to section 17(2.1) of the *Act*, where the Tribunal considers it to be in the public interest, the Tribunal may order disclosure of material obtained under a section 11 Order to a self-regulatory organization, like CIRO, without notice to any other party.

24. Although the Confidential Material was obtained from TD Bank, it is only Sadiq who has a true interest in the Confidential Material, which is comprised of his personal banking records.

25. MFDA Staff, however, was unable to locate or establish on-going contact with Sadiq during the course of the investigation or the proceeding. Following Sadiq's resignation from Sterling Mutuals, he appears to have left Canada and moved to Pakistan. Sadiq did not leave any contact details or have his address information or other contact details updated on the National Registration Database ("**NRD**").

26. During the course of the investigation and the proceeding, MFDA Staff attempted to contact Sadiq and to serve him with the Notice of Hearing by:

    (a) sending regular and registered mail and a process server to his home address, as recorded on NRD and on his driver's license (the "**Home Address**");

    (b) sending regular and registered mail to the address for his income tax preparation service, as recorded on NRD (the "**Business Address**")

    (c) sending emails to his personal email address;

    (d) calling him at his personal telephone number, as recorded on NRD;

    (e) calling him at the telephone number for his income tax preparation service; and

    (f) sending a text message to him using WhatsApp using contact details that were provided to MFDA Staff by Sadiq's former clients.

27. All attempts by MFDA Staff to contact Sadiq failed. Specifically,

    (a) MFDA Staff was informed by the resident at the Home Address that Sadiq does not reside there;

    (b) Sadiq has never replied to several emails that were sent to his last known e-mail address from MFDA Staff;

    (c) both Sadiq's personal telephone number and the telephone number for his income tax preparation service are out of service;

    (d) registered mail sent to the Business Address, containing the Notice of Hearing, was delivered and signed for by an individual with the initials "MA". However, neither Sadiq, nor anyone on Sadiq's behalf, attended the first appearance in the proceeding or contacted MFDA Staff; and

    (e) MFDA Staff's attempts to contact the Respondent over WhatsApp, where MFDA Staff has been informed by three complainants that Sadiq is active, went unanswered and it appears that he subsequently "blocked" MFDA Staff from contacting him through WhatsApp after receiving the message.

28. Pursuant to an Order dated November 22, 2022, a MFDA Hearing Panel validated service of the Notice of Hearing on Sadiq and Sadiq was prosecuted in abstentia.

29. In any event, even if Sadiq could be located, he would have no legitimate basis to deny CIRO Staff's use of the Confidential Material in a disciplinary proceeding, which is itself being conducted in the public interest.

30. By becoming registered as a dealing representative, Sadiq agreed to be subject to the MFDA By-law, Rules and Policies. Pursuant to section 22.1 of MFDA By-law No. 1, had MFDA Staff been able to locate Sadiq, he would have been required to provide the Confidential Material at MFDA Staff's request, which MFDA Staff would have been permitted to use for the purposes of a disciplinary proceeding pursuant to section 22.5 of MFDA By-law No. 1.

31. In addition, when Sadiq became an Approved Person, he provided the following consent:

> I acknowledge and consent that the MFDA may obtain any information whatsoever from any source, as permitted by law in any jurisdiction of Canada or elsewhere.

32. TD Bank could have no legitimate objection to CIRO's use of the Confidential Material beyond those that might be asserted by Sadiq. This is particularly so given that, as described above, Sadiq would have been required to provide the very Confidential Material at issue to the MFDA had he not left Canada.

33. Requiring CIRO Staff to give notice to TD Bank or make further efforts to locate Sadiq would only serve to delay this application and therefore CIRO Staff's prosecution of Lehri. It is in the public interest that securities regulatory disciplinary proceedings be conducted expeditiously in order to protect investors and foster confidence in the capital markets.

34. CIRO Staff requests that this application be heard together with the other section 17 application In the Matter of Muhamad Asghar Sadiq and the section 17 application In the Matter of Zahir Hussain Lehri.

35. Subsection 17(2.1) of the *Securities Act* and Rules 12 and 22 of the *Capital Markets Tribunal Rules of Procedure and Forms*.

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

C. EVIDENCE

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

1. Affidavit of Stephen Davis, sworn August 11, 2023.
2. Affidavit of Sofi Vasiliadis, sworn November 10, 2021.
3. Supplementary Affidavit of Stephen Davis, sworn September 25, 2023,
4. Such further and other evidence as counsel may advise the Tribunal may permit.

DATED this ~~11th day of August 2023~~.
25th day of September 2023.

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Schedule "A"

Account Holder: Muhamad Asghar Sadiq	Information (MM/DD/YYYY)	Records Associated with Account
TD Personal Deposit Account 6211071-1650	08/05/2016 – 11/01/2016 07/04/2017 – 09/19/2017	• Account Transactions • Account Ownership Enquiry • Account Transactions
TD Personal Deposit Account 7160499-1878	08/23/2016 – 11/14/2016	• Account Transactions
TD Personal Deposit Account 7135261-1275	05/31/2017 – 10/31/2017	• Account Transactions

CAPITAL MARKETS TRIBUNAL

IN THE MATTER OF
ZAHIR HUSSAIN LEHRI

CONFIDENTIAL APPLICATION OF
THE CANADIAN INVESTMENT REGULATORY ORGANIZATION

(For Authorization to Disclose Information Under Section 17(2.1) of the *Securities Act*, RSO 1990, c. S.5)

A. ORDER SOUGHT

The Applicant, the Canadian Investment Regulatory Organization ("**CIRO**"), formerly the Mutual Fund Dealers Association of Canada (the "**MFDA**"), requests that the Capital Markets Tribunal (the "**Tribunal**"):

1. if required, make an Order pursuant to subsection 17(2.1) of the *Securities Act*, R.S.O. 1990, c. S.5 (the "***Act***"), without notice, authorizing CIRO Staff ("**CIRO Staff**") to disclose and produce confidential material, as set out in Schedule "A" to this Notice of Application (the "**Confidential Material**"), obtained pursuant to an Order made under section 11 of the *Act*, in connection with a proceeding commenced by Staff of the MFDA ("**MFDA Staff**") pursuant to MFDA By-law No. 1 (the "**Proceeding**") against Zahir Hussain Lehri ("**Lehri**"), including disclosing such material to Lehri and producing such material at the hearing on the merits; and

2. such further or other relief as counsel may request and the Tribunal may permit.

B. GROUNDS

The grounds for the request are:

Background

1. On January 1, 2023, the Investment Industry Regulatory Organization of Canada ("**IIROC**") and the MFDA were consolidated into a single self-regulatory organization recognized under applicable securities legislation, CIRO (formerly and temporarily named the New Self-Regulatory Organization of Canada). CIRO adopted interim rules that incorporate the pre-amalgamation regulatory requirements contained in the rules and policies of IIROC and the by-law, rules and policies of the MFDA (the "**Interim Rules**"). The Interim Rules include (i) the Investment Dealer and Partially Consolidated Rules, (ii) the UMIR and (iii) the Mutual Fund Dealer Rules. Pursuant to Mutual Fund Dealer Rule 1A and section 14.6 of CIRO By-Law No. 1, contraventions of former MFDA regulatory requirements may be enforced by CIRO.

2. Prior to the consolidation, the MFDA was the national self-regulatory organization ("**SRO**") for the distribution side of the Canadian mutual fund industry. The MFDA was formally recognized as an SRO by provincial securities commissions. In Ontario, the MFDA was overseen by the Ontario Securities Commission (the "**Commission**") pursuant to s. 21.1 of the *Act*.

3. The MFDA's mandate, which is now being carried on by CIRO, was the protection of the investing public and the integrity of the capital markets. CIRO achieves this mandate, in part, by conducting regulatory investigations and disciplinary hearings.

4. On October 13, 2022, MFDA Staff issued a Notice of Hearing pursuant to sections 20 and 24 of MFDA By-law No. 1 to commence a proceeding against Lehri. MFDA Staff alleged a number of contraventions of the MFDA Rules against Lehri, including that he misappropriated or failed to account for money received from a client, contrary to MFDA Rule 2.1.1.

MFDA Staff's Investigation of Lehri

5. Beginning in April 2019, MFDA Staff began investigating Lehri, a former dealing representative with a mutual fund dealer and Member of the MFDA (an "**Approved Person**"), Shah Financial Planning Inc. ("**Shah Financial**"). MFDA Staff was investigating whether Lehri had facilitated stealth advising by another Approved Person, Muhamad Asghar Sadiq ("**Sadiq**"), and failed to satisfy his Know-Your-Client obligations.

6. In November 2020, MFDA Staff received information that Lehri may have received money from a mutual fund client for purported investments outside of Shah Financial and subsequently misappropriated those funds, potentially conspiring in this conduct with Sadiq.

7. MFDA Staff had power pursuant to MFDA By-law No. 1 to compel present and former MFDA Members and Approved Persons to attend interviews and produce information relevant to MFDA investigations. The MFDA did not have the authority to compel information directly from financial institutions other than mutual fund dealers that are subject to its jurisdiction.

8. Lehri was interviewed by MFDA Staff by videoconference in July and August 2020, prior to MFDA Staff receiving information that Lehri may have misappropriated money from a client. Accordingly, at the time, MFDA Staff did not request Lehri's banking records.

9. In October 2020, MFDA Staff received an email from Lehri's email address, purportedly from his brother-in-law, advising that Lehri had passed away from Covid-19 in Pakistan. MFDA Staff was unable to obtain a death certificate and based on continued posting on Lehri's social media, MFDA Staff had reservations that Lehri's death was factual.

10. When MFDA Staff received the information that Lehri may have engaged in misappropriation, MFDA Staff could no longer contact Lehri to produce any banking records.

11. Following the issuance of the Notice of Hearing described above at paragraph 4, Lehri contacted CIRO Staff, demonstrating that he was in fact alive. However, such contact was only made after MFDA Staff sought assistance from Staff of the Commission ("**Commission Staff**") to obtain Lehri's banking records.

The Investigation Order and the Confidential Material

12. On June 22, 2021, the Commission issued an investigation order (the "**Investigation Order**") after receiving a request from MFDA Staff for assistance from Commission Staff to obtain evidence relevant to MFDA Staff's investigation of Lehri. Information obtained pursuant to the Order was ordered to be "for the exclusive use of the MFDA and the Commission (inclusive of respective staff)."

13. The purpose of the Investigation Order was to obtain Lehri's bank records. MFDA Staff believed that Lehri's bank records could help MFDA Staff trace the money allegedly misappropriated by him.

14. Pursuant to the Investigation Order, Commission Staff issued summonses under section 13 of the *Securities Act*, compelling TD Bank to produce financial records associated with Lehri. MFDA Staff received the Confidential Material.

15. The Confidential Material produced by TD Bank does show that Lehri received $31,000USD from a client, transferred $30,000USD to an account held with a U.S. based trading platform, and transferred $1,000USD to his spouse's bank account and then withdrew the money in cash.

It is in the Public Interest to Grant the Order

16. It is in the public interest to grant the requested section 17 Order to CIRO Staff. The allegations against Lehri are serious and CIRO Staff seeks to use the Confidential Material for the purpose of a disciplinary proceeding to address potential contraventions of the regulatory obligations of a registrant. The primary objective of CIRO disciplinary proceedings, as with disciplinary proceedings brought by the Commission, is to protect the investing public by deterring conduct that is harmful to the capital markets.

17. Authorizing CIRO to make use of the Confidential Material in the course of a disciplinary proceeding is consistent with the Commission's fundamental principle, set out in section 2.1(4) of the *Act*, to "subject to an appropriate system of supervision, use the enforcement capability and regulatory expertise of recognized self-regulatory organizations."

18. Granting the Order requested is also consistent with the objectives of the *Act* set out in section 1.1, including: "(a) to provide protection to investors from unfair, improper or fraudulent practices; [and] (b) to foster fair, efficient and competitive capital markets and confidence in capital markets".

19. Indeed, pursuant to the Investigation Order, the Confidential Material was for the exclusive use of the MFDA (now CIRO) and the Commission. If Commission Staff were to have commenced a proceeding against Lehri, use of the Confidential Material would be permitted under section 17(6) of the *Act* without a further order. There is little principled difference between Commission Staff and CIRO Staff in this context, where the two regulators cooperated during an investigation in furtherance of a common purpose to obtain information relevant to allegations of misconduct. Accordingly, by analogy, it would be appropriate to permit CIRO Staff to make use of the Confidential Material in a regulatory proceeding.

20. CIRO Staff also has a disclosure obligation arising from the Proceeding. Rule 10.1 of the Mutual Fund Dealer *Rules of Procedure* requires CIRO Staff to provide Lehri with copies of all documents that CIRO Staff intends to rely on at the Hearing on the Merits. Rule 10.4 further states that nothing in Rule 10 derogates from CIRO Staff's obligation to make disclosure as required by common law, as soon as reasonably practicable after service of the Notice of Hearing.

21. In order to ensure that respondents to CIRO disciplinary proceedings can make full answer and defence to allegations of misconduct that CIRO Staff intends to prove at a hearing, CIRO Staff has an obligation to disclose to a respondent all documents in its possession that are not clearly irrelevant or privileged. It would be inconsistent with CIRO Staff's disclosure obligations and Lehri's right to procedural fairness in the disciplinary proceeding against him to withhold disclosure of documents that could be relevant to the allegations of misconduct that CIRO Staff has made, on the basis

that those documents were obtained pursuant to the *Act* and the *Act* does not permit CIRO Staff to disclose those documents to respondents to its proceedings.

It is in the Public Interest to Grant the Order Without Notice

22. Pursuant to section 17(2.1) of the *Act*, where the Tribunal considers it to be in the public interest, the Tribunal may order disclosure of material obtained under a section 11 Order to a self-regulatory organization, like CIRO, without notice to any other party.

23. Although the Confidential Material was obtained from TD Bank, it is only Lehri who has a true interest in the Confidential Material, which is comprised of his personal banking records. However, the very purpose of this application is, in part, to permit CIRO Staff to disclose the Confidential Material to Lehri.

24. Further, Lehri has no legitimate basis to deny CIRO Staff's use of the Confidential Material in a disciplinary proceeding, which is itself being conducted in the public interest.

25. By becoming registered as a dealing representative, Lehri agreed to be subject to the MFDA By-law, Rules and Policies. As noted above, pursuant to section 22.1 of MFDA By-law No. 1, had Lehri not claimed to have passed away, he would have been required to provide the Confidential Material at MFDA Staff's request, which MFDA Staff would have been permitted to use for the purpose of a disciplinary proceeding pursuant to section 22.5 of MFDA-By law No. 1.

26. In addition, when Lehri became an Approved Person, he provided the following consent:

> I acknowledge and consent that the MFDA may obtain any information whatsoever from any source, as permitted by law in any jurisdiction of Canada or elsewhere.

27. TD Bank could have no legitimate objection to CIRO Staff's use of the Confidential Material beyond those that might be asserted by Lehri. This is particularly so given that, as described above, Lehri would have been required to provide the very Confidential Material at issue to the MFDA had he not claimed to have passed away.

28. Requiring CIRO Staff to give notice to TD Bank or Lehri would only serve to delay this application and therefore CIRO Staff's prosecution of Lehri. It is in the public interest that securities regulatory disciplinary proceedings be conducted expeditiously in order to protect investors and foster confidence in the capital markets.

29. CIRO Staff requests that this application be heard together with the two other section 17 applications In the Matter of Muhamad Asghar Sadiq.

30. Subsection 17(2.1) of the *Securities Act* and Rules 12 and 22 of the *Capital Markets Tribunal Rules of Procedure and Forms*.

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

C. EVIDENCE

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

1. Affidavit of Stephen Davis, sworn August 16, 2023.

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

DATED this 16th day of August 2023.

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Schedule "A"

Form 1 – Summons to Witness Before a Person Appointed Under Section 11 of the *Securities Act*, R.S.O. 1990, c. S.5, dated July 6, 2021

Form 1 – Summons to Witness Before a Person Appointed Under Section 11 of the *Securities Act*, R.S.O. 1990, c. S.5, dated November 5, 2021

Form 1 – Summons to Witness Before a Person Appointed Under Section 11 of the *Securities Act*, R.S.O. 1990, c. S.5, dated June 22, 2021

Account Holder: Zahir Hussain Lehri	**Information (MM/DD/YYYY)**	**Records Provided Associated with Account**
TD Personal Deposit Account 6249958-2085	Opened Account 06/18/2018 Closed Account 02/26/2019	• Signature Card • Deposit Account History 05/01/2017 – 07/06/2021
TD Personal Deposit Account 7119660-2085	Opened Account 12/29/2015 Closed Account 05/14/2018	• Customer Information Enquiry • Enquiry Preferred Name/Gender • Employment Information Enquiry • Other Customer Information Enquiry • Customer Identification Enquiry • Signature Card • Deposit Account History 05/01/2017 – 07/06/2021 • Deposit Account Transaction Enquiry • WPS Daily Journal • Letter from Judy Franklin to Dale Victoria Grybauskas, dated November 8, 2021 • Affidavit of Authenticity • Letter from Judy Franklin to Dale Victoria Grybauskas, dated November 30, 2021 • Deposit Account History 06/05/2017 – 06/05/2017 • Deposit Account Transaction Enquiry • TD Canada Trust Receipt, dated June 3, 2017 • Affidavit of Authenticity
TD Personal Deposit Account 7160499-1878	Opened Account 08/23/2016 Closed Account 01/24/2017	None
TD Personal Deposit Account 6522741-1878	Opened Account 08/23/2016 Closed Account 01/24/2017	None
TD Personal Line of Credit 4198439-2124	Opened Account 03/21/2012 Closed Account 05/22/2019	• Iron Mountain Records Management Retrieval Packing Slip • TD Canada Trust Amending Agreement to Line of Credit • Deposit Account History 05/01/2017 – 07/06/2021
TD Personal Loan LON 3199490-00 2085 LON -01 2085	No Activity	None
TD Personal Credit Card 4520050009542395	Opened Account 01/10/2014 Closed Account 01/10/2014	None

Account Holder: 2417334 Ontario Inc.	Information (MM/DD/YYYY)	Records Provided Associated with Account
TD Business Deposit Account 5310190-1275	Opened Account 05/16/2014 Closed Account 03/31/2020	• Customer Information Enquiry • Other Customer Information Enquiry • Offices and Directors Enquiry • Account Ownership Enquiry • Deposit Account History 05/01/2017 – 07/06/2021

Account Holder: Unknown	Information (MM/DD/YYYY)	Records Provided Associated with Account
ACCOUNT DOES NOT EXIST 6305100-1275	N/A	N/A

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A.4
Reasons and Decisions

A.4.1 A1 Co. et al.

Citation: *A1 Co (Re)*, 2023 ONCMT 45
Date: 2023-11-28
File No. 2023-26

IN THE MATTER OF
A1 CO.,
A2 CO.,
A3 CO. AND
A4 CO.

REASONS FOR DECISION

Adjudicators:	Timothy Moseley (chair of the panel) Mary Condon Geoffrey D. Creighton	
Hearing:	November 13, 2023	
Appearances:	Aaron Dantowitz Katrina Gustafson	For Staff of the Ontario Securities Commission
	Lawrence E. Ritchie Alexander Cobb Ankita Gupta	For A1 Co., A2 Co., A3 Co. and A4 Co. [pseudonyms]

REASONS FOR DECISION

1. OVERVIEW

[1] Staff of the Ontario Securities Commission is investigating the conduct of four companies. To protect the confidentiality of the investigation, we have substituted A1 Co., A2 Co., A3 Co. and A4 Co. for the companies' real names. Staff has advised the companies that the Commission intends to ask a court to find the companies in contempt for failing to comply with a summons issued in the investigation.

[2] The companies applied to this Tribunal for disclosure-related orders in anticipation of that contempt proceeding. Staff brought a preliminary motion to dismiss the companies' application. These are our reasons for granting Staff's motion.

[3] Staff's investigation is aided by two orders the Commission issued under s. 11 of the *Securities Act* (the ***Act***).[1] An investigator appointed under those orders issued a summons, under s. 13 of the *Act*, requiring an officer of some of the companies to attend for an examination. The companies refuse to comply with the summons because, they say, the Commission does not have jurisdiction over them.

[4] The Commission has not yet brought the threatened contempt proceeding. In anticipation of that happening, the companies applied for orders under s. 17(1) of the *Act* relating to:

a. what information the Commission would be able to disclose in connection with its planned contempt proceeding; and

b. information that the companies might need to disclose in that proceeding, in response to the Commission's material and submissions.

[5] The information at issue is protected by s. 16 of the *Act*, which prohibits its disclosure, subject to certain exceptions. One of those exceptions is a s. 17(1) order authorizing disclosure.

[1] RSO 1990, c S.5

[6] Staff moved to dismiss the companies' application on a preliminary basis. Staff said the application was improper, because:

a. to the extent it relates to what the Commission might disclose, s. 17(6) of the *Act* authorizes the Commission to disclose what it chooses to in a contempt proceeding, so the application is an improper attempt to limit that disclosure in some way; and

b. to the extent it relates to what the companies might need to disclose in response, is premature.

[7] We heard Staff's motion in the absence of the public. Two days later, we issued a confidential order granting Staff's motion and dismissing the companies' application, for reasons to follow. As we explain below in our reasons for that decision, we agree with Staff that s. 17(6) applies to a contempt proceeding brought by the Commission, and that the companies' application in respect of any disclosure the companies might make is premature.

2. CONFIDENTIALITY

[8] As noted above, we held the motion hearing in the absence of the public.

[9] The departure in this case from the usual practice of holding public hearings is authorized by s. 9(1)(b) of the *Statutory Powers Procedure Act*[2] and Rule 22 of the Tribunal's *Rules of Procedure and Forms*. Those provisions contemplate a balancing of the desirability that Tribunal proceedings be open to the public, against other factors. In this case, the other factor is s. 16 of the *Act*, the purposes of which include protecting the confidentiality of: (i) investigation orders, (ii) the identity of subjects of the investigation, and (iii) information Staff obtains under those orders.

[10] At a preliminary attendance in this proceeding, the single-member panel inquired of the parties whether it would be practical to hold this motion hearing in public, with all involved ensuring that no one said anything that would compromise the interests that s. 16 protects. That panel accepted the parties' joint submission that doing so would be impractical, and that this hearing should be held in the absence of the public.

[11] We adopted that approach. Hearing this motion entirely in public would have unduly compromised the parties' confidentiality and privacy interests. We achieve sufficient transparency by releasing these reasons publicly, without identifying information, and by our order that the companies' application, Staff's motion, and the parties' written submissions be publicly available, with redactions to mask the identity of the companies.

3. ANALYSIS

3.1 Introduction

[12] This motion presents the following issues, each of which we address in turn:

a. Is it appropriate for the Tribunal to consider Staff's motion to dismiss on a preliminary basis, without letting the companies' application proceed to a full hearing?

b. When the Commission brings a contempt proceeding relating to a s. 13 summons, does it do so under the *Act* (as opposed to on some other basis), with the result that s. 17(6) of the *Act* allows the Commission to choose what to disclose in that proceeding?

c. Does s. 17(1) of the *Act* allow a potential respondent to a contempt proceeding arising from a s. 13 summons to seek an order that would affect what disclosure the Commission can make in that contempt proceeding?

d. Is it premature for the companies to seek a s. 17(1) order to permit them to disclose, in a yet-to-be-commenced contempt proceeding, information necessary to respond to that proceeding?

[13] As we explain below, we decided that:

a. it is appropriate for the Tribunal to consider this motion now, on a preliminary basis;

b. s. 17(6) applies to a contempt proceeding, and permits the Commission to disclose in that proceeding information protected by s. 16;

c. s. 17(1) does not allow a potential respondent to a contempt proceeding to seek an order that would affect the Commission's disclosure; and

[2] RSO 1990, c S.22

d. it is premature for the companies to seek a s. 17(1) order regarding their own disclosure.

3.2 It is appropriate for the Tribunal to consider this preliminary motion

[14] We deal first with the question of whether we should consider Staff's motion to dismiss the application on a preliminary basis. The companies submitted that we should not, because doing so would pre-empt full argument and the consideration of a factual record. We disagree, because we can resolve each of the three remaining issues at this stage of the proceeding and on the record before us, and it would be efficient to do so.

[15] Of the three remaining issues identified in paragraph [12] above, the first is a pure question of statutory interpretation – does s. 17(6) apply to a contempt proceeding? The companies' application mentions no facts that would be relevant to that question. At the motion hearing, counsel for the companies did not identify any kind of facts that would be relevant. The companies submitted that the parties might seek to introduce legislative facts to help us interpret s. 17(6). However, despite having had ample opportunity to do that, the companies did not adduce any. In any event, as our analysis of this issue demonstrates below, we were able to reach our conclusions simply by examining the wording of s. 17(6). In so doing, we considered and rejected other potential sources of authority for a court's contempt power that the companies said might apply.

[16] The second of the three remaining issues is also a pure question of statutory interpretation. Does s. 17(1) allow a potential respondent to a contempt proceeding to seek an order that would affect what disclosure the Commission can make in that proceeding? Again, the companies were unable to identify any kind of facts that would bear on this question. We were able to resolve the issue based simply on the wording of the provision and on our conclusion about s. 17(6).

[17] As for the last issue, *i.e.*, the prematurity of the companies' request for authorization to disclose, our analysis below demonstrates that we can easily resolve it without reference to facts, other than the incontrovertible fact that the Commission has not yet commenced a contempt proceeding.

[18] We therefore concluded that we needed no further facts to hear Staff's motion. Further, we reject the companies' submission that the preliminary motion pre-empted full argument. The parties had a full opportunity to address the issues. It was efficient and cost-effective for us to deal with this motion now.

3.3 A contempt proceeding is brought under the *Act*, so s. 17(6) allows the Commission to disclose information protected by s. 16

[19] The second issue asks whether a contempt proceeding arises under the *Act*, as opposed to arising from some other source. If it is brought under the *Act*, then it falls within the words "a proceeding commenced or proposed to be commenced under this Act" in s. 17(6), and would, as a result, allow the Commission to disclose information protected by s. 16.

[20] We agree with Staff that a contempt proceeding is brought under the *Act*. The potential consequence of a court-imposed contempt order arises from s. 13(1) of the *Act*, the provision that empowers an appointed investigator to issue a summons to aid in the investigation. Subsection 13(1) provides that if a person or company refuses to comply with the summons, that refusal "makes the person or company liable to be committed for contempt by the Superior Court of Justice as if in breach of an order of that court."

[21] Subsection 13(1) does not expressly specify the process by which the Commission may obtain a committal for contempt. Despite this, we conclude that it is s. 13(1) that provides the foundation for a contempt proceeding. We reach that conclusion for three reasons:

a. the words of s. 13(1) contemplate the relief, and do not specify some other mechanism by which the Commission should seek that relief;

b. the Superior Court of Justice has, in two cases, concluded that s. 13(1) provides that court with the authority to hold a person in contempt for failure to comply with a summons;[3] and

c. the companies did not identify any other provision, anywhere, or any other source of authority, that better suggests that it is the foundation for a contempt proceeding.

[22] On this third point, the companies submitted that a contempt proceeding is not brought under the *Act*; rather, it is brought under the *Courts of Justice Act*,[4] and, in particular, under rule 60.11(1) of the *Rules of Civil Procedure*.[5] We disagree. First, the companies pointed to no specific provision in the *Courts of Justice Act* that supports their position. Second, rule 60.11(1) provides that the contempt orders referred to in that rule "may be obtained only on motion to a judge in the

[3] *Ontario Securities Commission v Hibbert*, 2011 ONSC 6534 at para 10; *Ontario Securities Commission v Robinson*, 2009 CanLII 58983 (ON SC) at para 20
[4] RSO 1990, c C.43
[5] RRO 1990, Reg 194

proceeding in which the order to be enforced was made." Our reading of rule 60.11(1) is that it relates to an existing order in an existing court proceeding. That does not apply here.

[23] The companies also submit that a court's contempt power flows from the common law. The companies referred us to a decision of the Alberta Court of King's Bench[6] to that effect, which in turn cites a decision of the Court of Appeal for Ontario.[7] Those decisions review the source of a court's authority to control its own process in the civil and criminal contexts. However, neither decision suggests in any way that a court's inherent jurisdiction or common law authority gives it contempt power over investigations by regulatory agencies.

[24] In the absence of any legislative or judicial pronouncement to that effect, it would be presumptuous, and, in our view, incorrect, for this Tribunal to find that courts have such a jurisdiction.

[25] A contempt proceeding regarding a s. 13(1) summons is, therefore, brought under the *Act*.

[26] As a consequence, because s. 17(6) permits the disclosure of compelled information where that disclosure is made in connection with a proceeding commenced or proposed to be commenced under the *Act*, that permission to disclose extends to contempt proceedings. The companies urged us to resist this conclusion because the disclosure the Commission may make in the contempt proceeding will not have been subjected to the scrutiny and balancing of interests that would happen in the context of a s. 17(1) proceeding before this Tribunal, where a party requires the Tribunal's authorization to disclose. That may be so. However, the legislature has clearly contemplated that the Tribunal does not have a role in governing the disclosure related to proceedings under the *Act*, if that disclosure is made by someone appointed under the s. 11 investigation order.

[27] We cannot, therefore, give effect to the companies' concern that the Commission may irrevocably disclose something it ought not to disclose. That concern cannot clothe this Tribunal with jurisdiction it does not have.

3.4 The companies may not seek a s. 17(1) order that would affect what disclosure the Commission can make in a contempt proceeding

[28] We turn now to the companies' primary claim for relief. The companies seek a s. 17(1) order addressing whether, in a contempt proceeding, the Commission can disclose information protected by s. 16. The companies also ask us to impose terms and conditions on how that disclosure can be made.

[29] We cannot accept the companies' submissions. It would be inappropriate for us to issue a s. 17(1) order to authorize disclosure that is already authorized by s. 17(6).

[30] We must examine s. 17(1) in the context of related provisions. Section 16 of the *Act* prevents disclosure except in accordance with s. 16(1.1) (not relevant in this case) or s. 17. Section 17 sets out three possible bases for disclosure:

a. s. 17(6), discussed above;

b. s. 17(5), relating to prosecutions under the *Provincial Offences Act*,[8] which is not relevant here; and

c. s. 17(1), which permits the Tribunal to "make an order authorizing the disclosure to any person or company" of information protected by s. 16.

[31] In the context of a contempt proceeding, the words of s. 17(1) do not permit a potential respondent to that proceeding to ask for "authorization" for someone else (*i.e.*, the Commission) to disclose something. The Commission does not need that authorization, given s. 17(6). Even if in a particular case the Commission or its Staff see a need for an order authorizing disclosure, then it is open to Staff to seek that order. It is illogical in these circumstances for one party to seek authorization for another.

[32] On this last point, we disagree with the companies' submission that we should apply the Tribunal's 2009 decision in *Re Y*.[9] That case:

a. arose in an entirely different context, in that the applicant sought disclosure of documents he had previously received but later returned, and he sought the disclosure for the purpose of defending himself in a criminal proceeding;

6 *Schitthelm v Kelemen*, 2013 ABQB 42 at para 20
7 *R v Cohn*, 1984 CanLII 43 (ON CA)
8 RSO 1990, c P.33
9 (2009), 32 OSCB 11271

b. pre-dated the 2023 amendment to s. 17(6) that extended the application of that exception to all proceedings under the *Act*;

c. does not suggest that the point at issue in this case was argued before the panel in *Re Y*; and

d. featured Staff consenting to the third party's request, subject to some irrelevant exceptions.

[33] It is therefore appropriate for us to dismiss preliminarily the companies' request for a s. 17(1) order in relation to what disclosure the Commission can make. In doing so, we disagree with Staff that the companies' request for s. 17(1) relief amounts to an improper request for a declaration that s. 17(6) does not apply. It is true that this Tribunal cannot issue a declaration,[10] but we dismiss the companies' request for the reasons set out above and not because we see the request as being for a declaration.

[34] The companies joined their request under s. 17(1) with a request under s. 17(4). Subsection 17(4) contemplates that an order under s. 17(1) may be subject to terms and conditions we impose. Since we are not making an order under s. 17(1), the authority under s. 17(4) to add terms and conditions does not arise. Any disclosure the Commission chooses to make will be under s. 17(6), to which s. 17(4) does not apply. We therefore dismissed the s. 17(4) request as well.

3.5 It is premature for the companies to seek a s. 17(1) order relating to information they may need in order to respond to a contempt proceeding

[35] Finally, the companies seek a s. 17(1) order authorizing disclosure by them, so that they can properly respond to a contempt proceeding. We dismiss this request as being premature.

[36] The companies do not specify precisely what it is they seek authorization to disclose. This is understandable, since the Commission has not yet brought a contempt proceeding, let alone delivered material to which the companies may need to respond. It may turn out that there will be nothing the companies will want to disclose that the Commission will not already have disclosed in the contempt proceeding. Even if the companies require additional authority, Staff might consent to the necessary order. None of these considerations can be known at this time.

[37] The companies' request for relief is hypothetical, so we cannot grant it. Accordingly, we dismissed preliminarily this request, although we did so without prejudice to the companies' right to bring a further s. 17(1) application, authorizing them to disclose anything referred to in s. 16(1) of the *Act* should the need actually arise.

4. CONCLUSION

[38] For the above reasons, we granted Staff's motion and dismissed the companies' application, without prejudice to the companies' right to bring a further s. 17(1) application, authorizing them to disclose anything referred to in s. 16(1) of the *Act*.

Dated at Toronto this 28th day of November, 2023

"Timothy Moseley"

"Mary Condon"

"Geoffrey D. Creighton"

[10] *B (Re)*, 2020 ONSEC 21 at para 17

A.4.2 Cormark Securities Inc. et al. – Rule 26 of the CMT Rules of Procedure and Forms

Citation: *Cormark Securities Inc (Re)*, 2023 ONCMT 46
Date: 2023-11-29
File No. 2022-24

IN THE MATTER OF
CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER, AND
SALINE INVESTMENTS LTD.

REASONS AND DECISION
(Rule 26 of the Capital Markets Tribunal *Rules of Procedure and Forms*)

Adjudicators:	M. Cecilia Williams (chair of the panel) Geoffrey D. Creighton William J. Furlong	
Hearing:	By videoconference, June 28, 2023; final written submissions received September 8, 2023	
Appearances:	Anna Huculak Nicole Fung	For Staff of the Ontario Securities Commission
	David Di Paolo Graham Splawski Brianne Taylor	For Cormark Securities Inc.
	Melissa MacKewn Dana Carson	For William Jeffrey Kennedy
	Alan P. Gardner Amanda McLachlan Shaan P. Tolani	For Canopy Growth Corporation

REASONS AND DECISION

1. OVERVIEW

[1] Staff of the Ontario Securities Commission have initiated a proceeding against Cormark Securities Inc., Marc Judah Bistricer, William Jeffrey Kennedy, and Saline Investments Ltd., alleging that Cormark, Bistricer and Kennedy carried out a series of transactions that were abusive and contrary to the animating principles of the *Securities Act.*[1] Using Saline, a private holding company, and in anticipation of a private placement by Cormark's client Canopy Growth Corporation, the transactions involved short sales, a private placement, and a share swap.

[2] Staff made disclosure to the respondents in the normal course. Included within the disclosure were "privilege logs" that had been provided to Staff by Canopy, who is not a party to this enforcement proceeding.

[3] Cormark and Kennedy (also the **Moving Parties**) seek an order that Canopy produce all the documents contained in the privilege logs so that a privilege review of the documents included in the logs can be conducted. If the documents are found not to be privileged, they request that the documents be disclosed to the parties in this proceeding.

[4] For the reasons below, we conclude that the documents referred to in the privilege logs meet the test for a summons, as described below, and therefore we are prepared to issue a summons to Canopy for these documents. A privilege review is appropriate in these circumstances where privilege is at issue for the referenced documents.

[5] To preserve the Tribunal's resources and in support of the Tribunal's ongoing efficiency efforts, we conclude the use of a third-party referee to conduct the privilege review is appropriate. The referee shall determine their own process for assessing the privilege claims after hearing submissions from the Moving Parties and Canopy regarding the process to be followed.

[1] RSO 1990, c S.5

2. PRELIMINARY ISSUES

2.1 Requested Relief and Notice of Withdrawal

[6] The Moving Parties originally requested three types of relief in their motion, namely orders:

a. directing Staff to enforce existing summonses in their investigation;

b. issuing summonses to individuals, who have not already been the subject of summonses issued in the investigation, to produce documents; and

c. conducting a privilege review of documents that were produced by Canopy in response to summonses but withheld on the basis of privilege.

[7] In their reply submissions, Cormark and Kennedy indicated that, on considering the responding submissions and in the interest of efficiency, they were no longer pursuing certain of the relief sought on the motion (including orders directing Staff to take further steps to enforce existing summonses) and that they would instead rely on their alternative request that the Panel issue summonses. They further advised that if the non-parties that are not in possession of relevant documents provide their responses in the form of sworn evidence, the Moving Parties would be content not to pursue their request for summonses against them.

[8] On the morning of the hearing of this motion, the Moving Parties advised that they had been able to resolve a significant portion of the motion relating to the requested summonses and that a Notice of Withdrawal had just been filed. The remaining requests included those pertaining to the documents in Canopy's possession over which it had claimed privilege, and a summons directed to Debbie Weinstein, who acted as Corporate Secretary, and as external counsel, to the Board of Directors of Canopy.

[9] The Moving Parties indicated at the hearing that they would not be addressing the issues with respect to the production of documents from Weinstein and her firm at that time, but that this issue may need to be revisited at a future date. We accordingly did not consider further the proposed summons to Weinstein and her firm.

2.2 Canopy's Status in this motion

[10] Canopy, a non-party in the enforcement proceeding, filed materials for this motion, including a cross-motion for intervenor participation under rule 21(4) of the Capital Market Tribunal's *Rules of Procedure and Forms* (the **Tribunal's Rules**). It requested that the panel permit it to deliver written and oral submissions only for the motion, which is referred to as *Torstar* standing.[2]

[11] Rule 21(4) of the Tribunal's Rules gives the panel the authority to "grant a person or company who is not a Party to a proceeding intervenor status to participate in all or part of the proceeding on the terms the Panel considers appropriate…".

[12] In our view, it is not necessary in the particular circumstances of this motion to consider whether *Torstar* standing should be granted. While the parties agree that the intended subjects of a summons generally do not have standing to oppose the issuance of a summons, we find that it would be inefficient not to permit Canopy to participate in this motion. A differently constituted panel of the Tribunal ordered that Canopy and any other person or company potentially affected by this disclosure motion were permitted to make submissions regarding the scheduling of this motion and the delivery of related motion materials. The Moving Parties further served the materials on Canopy, and Canopy filed and served responding materials. We accordingly advised Canopy and the parties at the outset of this motion that we would allow Canopy to make oral submissions at the hearing.

2.3 The Power to Summons

[13] In the Moving Parties' and Canopy's original submissions and in the oral hearing, there was a degree of mixing of the concepts of a summons, and a third-party production order. In submissions sought by the panel subsequent to the oral hearing, the parties and Canopy clarified their positions. They (and this panel) agree that the Tribunal has the authority to issue a summons, but not a third-party production order.

[14] The Moving Parties and Canopy (and this panel) also agree that:

a. the panel may include in a summons to a non-party a requirement that the summonsed documents be produced before a hearing to ensure a more cost-effective and expeditious proceeding;[3]

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2 See *Magna International Inc (Re)*, 2010 ONSEC 12 at paras 50-52

3 *Debus (Re),* 2021 ONSEC 22 at para 22 (***Debus***)

b. the panel may first determine whether a summons should be issued to require a representative of Canopy to attend with documents;[4] and if so,

c. the panel has the authority to determine any dispute over any claim for privilege in summonsed documents.[5]

[15] Where the Moving Parties and Canopy differ are their views on whether a summons should issue, and if so, the process that should then follow.

3. ISSUES

[16] This motion requires us to consider (i) whether the panel should issue a summons for the documents over which Canopy has claimed privilege; and (ii) if so, whether the panel can review, or cause to have reviewed, summonsed documents over which Canopy has claimed privilege.

4. LAW AND ANALYSIS

4.1 Should we issue a summons?

[17] Cormark and Kennedy seek a summons for Canopy's Chief Legal Officer to produce "any and all documents" referred to in the two privilege logs (the **Privilege Logs**) produced by Canopy to Staff in response to investigation summonses issued by the Commission to Canopy, dated April 22, 2021, June 24, 2021, and November 1, 2021.

[18] Staff issued a Statement of Allegations to initiate the underlying enforcement proceeding against Cormark and Kennedy, along with other respondents. The Statement of Allegations describes a series of three transactions (the **Transactions**) involving a private placement, a securities loan, and a short sale. The Statement of Allegations describes the Transactions being effected on March 17, 2017 and settled on March 22, 2017.

[19] A key allegation against Cormark and Kennedy is that they misled and deceived Canopy in respect of the Transactions. Staff alleges that Cormark and Kennedy:

a. presented the private placement and securities loan to Canopy as ordinary-course transactions in connection with Canopy's addition to the S&P/TSX Composite Index, which Staff alleges they were not;

b. hid from Canopy the benefits of the transactions to Saline;

c. concealed the short selling that facilitated Saline's virtually risk-free profits; and made misleading statements about Canopy's cost of capital and, by implication, Canopy's net proceeds; and

d. failed to deal fairly, honestly and in good faith with their client, Canopy. As a result, Canopy could not make an informed decision about whether to become involved in the transactions. [6]

Despite Canopy's submissions to the contrary, we conclude that the Statement of Allegations puts in issue Canopy's knowledge and state of mind.

[20] The parties agree that the Panel may issue summonses in advance of a hearing under rule 26(1) of the Tribunal's Rules and s 12(1) of the *Statutory Powers Procedure Act* (**SPPA**). Rule 26(1) provides that the Tribunal may summons a person to give evidence under oath and produce any document at an oral hearing. The SPPA similarly discusses producing evidence at an oral hearing. A summons requiring production of documents prior to the hearing reduces the need for adjournments and furthers the goal of ensuring just, expeditious, and cost-effective proceedings.[7]

[21] The Tribunal may only summons documents that are relevant and admissible at a hearing.[8] Nothing is admissible in evidence at a hearing that would be inadmissible in a court by reasons of any privilege under the law of evidence.[9]

[22] Staff submits that the Tribunal's decision to issue a summons should not be based solely on the relevance of the anticipated evidence, as suggested by the Moving Parties. Rather, they point to *Debus (Re)*, which notes that the predominant considerations in determining whether to issue a summons include procedural fairness (and specifically whether the Moving Parties are being afforded the opportunity to be heard), the relevance of the evidence to be provided by the witness, and whether the evidence will be unduly repetitious.[10] We agree with this approach.

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4 *Statutory Powers Procedure Act*, RSO 1990, c S.22, s 12(1) (**SPPA**)*;* Tribunal's Rules, r 26(1)

5 *SPPA*, s 12(1)*; Securities Commission Act, 2021,* s 26*; Re Northern Securities,* 2012 IIROC 22; *Hogan v. Ontario (Minister of Health and Long-Term Care),* 2003 HRTO 16 (***Hogan***)

6 Statement of Allegations at paras 20-27

7 *Debus* at para 22

8 SPPA, s 12(1)

9 SPPA, s 15(2)(a)

10 *Debus* at para 31, citing *Khan (Re)*, 2013 ONSEC 36 at para 33

[23] We are persuaded by the Moving Parties that the disclosure in the requested summons is required for them to make full answer and defence. This includes being able to properly prepare for cross-examination of the witnesses Staff may call from Canopy, as Canopy's state of mind is at issue in the Statement of Allegations. This is important for procedural fairness. There is also nothing to suggest that there is other evidence that would make the requested documents unduly repetitious. Therefore, we focus our analysis on the relevance of the information in the requested summons.

[24] The threshold for relevance is a low bar for the purpose of issuing a summons. Previous summonses have been issued by the Tribunal where the anticipated evidence "appeared to be relevant" and was "arguably relevant".[11] While the standard is low, a summons cannot be used as a mere fishing expedition.[12]

[25] For the purpose of ordering the requested summons, we conclude that the documents in the Privilege Logs appear to be relevant. Canopy provided the Privilege Logs in response to questions about the Transactions. The Transactions are the subject of this proceeding, as indicated in the Statement of Allegations.

[26] Specifically, Canopy's counsel provided the first Privilege Log in response to the April 22, 2021, and June 24, 2021 summonses from Staff, which asked Canopy to provide the following information, respectively:

a. "all records of communications with Saline, Cormark Securities, Goldman Holdings and [related parties]" relating to Canopy's March 22, 2017 news release in respect of the Transactions; and

b. "all records of communication" regarding the Transactions including internal communications between individuals at Canopy and prospective purchasers of Canopy shares, including Saline.

[27] Canopy's counsel provided the second Privilege Log in response to the November 1, 2021 summons from Staff, which asked Canopy for, amongst other things, copies of any SEDI filings in respect of Murray Goldman or Goldman Holdings Ltd. in connection with the March 2017 Transactions.

[28] Staff and Canopy submit that the summonses were in connection with the investigation, which was broader in scope than the Statement of Allegations. Therefore, they submit, there might be information in the documents referred to in the Privilege Logs which goes beyond, and is not relevant to, the issues in this proceeding. Staff confirmed that they had not, in fact, reviewed the documents in the Privilege Logs. Thus, Staff's submission raised the possibility that there were other issues covered in the documents, but they could not confirm whether this was or was not the case.

[29] Staff disclosed the Privilege Logs to the respondents, after the issuance of the Statement of Allegations in this proceeding and in fulfilment of their disclosure obligations pursuant to rule 27(1) of the Tribunal's Rules. Rule 27(1) requires Staff to provide every other party "copies of all non-privileged documents in Staff's possession that are relevant to an allegation." Staff's duty of disclosure in an enforcement proceeding is akin to the standard imposed on the Crown in a criminal proceeding.[13]

[30] By delivering the Privilege Logs as part of their disclosure obligation, establishing that they are at least arguably relevant to Staff's case or to the Moving Parties' defence, Staff cannot now claim that the documents are not relevant. In another disclosure motion related to this proceeding, Staff submitted that it understood its disclosure obligation and disclosed everything to the respondents that was relevant.[14] Staff cannot now claim that they do not understand their disclosure obligation and disclosed documents that are possibly not relevant.

[31] For the reasons above, we find that the documents underlying the Privilege Logs appear to be relevant, and as we already found they are not unduly repetitious, and important to procedural fairness for the Moving Parties, they therefore may be properly summonsed for this proceeding.

[32] We now turn to our analysis of the privilege review.

4.2 Should we order a privilege review?

[33] Section 15(2) of the SPPA states that nothing is admissible in evidence at a hearing that would be inadmissible in a court by reasons of any privilege under the law of evidence. Canopy has previously raised privilege concerns about the documents underlying the Privilege Logs.

[34] Canopy now submits that there are no documents currently before the panel over which Canopy has claimed privilege, and that accordingly it is premature for the panel to order an anticipatory privilege review. However, Canopy

11 *Debus* at para 33
12 *Bridging Finance Inc (Re)*, 2023 ONCMT 19 at para 13
13 *BDO Canada LLP* (Re), 2019 ONSEC 21 at para 13, citing *R v Stinchcombe*, [1991] 3 SCR 326
14 *Cormark Securities Inc (Re)*, 2023 ONCMT 23

acknowledges that the Privilege Logs provided by Canopy to Staff contain documents over which Canopy has previously claimed privilege. Indeed, it is Canopy that labelled them "Privilege Logs".

[35] The Privilege Logs were provided to Staff, and later were disclosed to the respondents in this proceeding following the issuance of the Statement of Allegations. Solicitor-client privilege, which Canopy claimed in the Privilege Logs, is a class privilege. In a class privilege what is important is not so much the content of the particular communication within the class of documents as it is the protection of the type of relationship.[15] Therefore, if a communication is protected by solicitor-client privilege, it is so for all purposes (absent a waiver). Canopy has not suggested that it has waived its previously asserted privilege in the documents we are considering. We find that there is an active claim of privilege before this panel and not an anticipatory or hypothetical one, as suggested by Canopy.

[36] Therefore, the next step in our analysis is to consider whether in this case the Tribunal should require a summons recipient to produce relevant documents over which privilege has been claimed, so that the documents can be reviewed for privilege.

[37] The Moving Parties are asking the panel to order Canopy to produce relevant documents over which solicitor-client privilege is claimed in the Privilege Logs so that the privilege claims can be reviewed. The parties to this motion agree that the Tribunal has the jurisdiction to adjudicate privilege claims. Various tribunals subject to the SPPA, including this Tribunal, have previously considered and reviewed privilege claims.[16]

[38] As outlined by the Supreme Court of Canada, the criteria for solicitor-client privilege are that: (i) the communication is between a lawyer and their client; (ii) the communication is for the purpose of seeking or giving legal advice; and (iii) the parties to the communication have objectively intended the communication to be confidential.[17]

[39] When a person summonsed by the Tribunal claims privilege in summonsed documents, they bear the evidentiary burden to substantiate their privilege claim.[18] What evidence will discharge that burden depends on the circumstances of the particular case; it must allow the Tribunal to make a proper determination of the issue.

[40] The Moving Parties submit there is evidence strongly indicating that Canopy likely claimed solicitor-client privilege over documents that are not in fact privileged. They point us to the following information in the Privilege Logs:

a. many documents appear to be emails where neither the author nor recipient of the communication is a lawyer, and counsel is merely copied;

b. Canopy has not distinguished between communications where counsel is providing legal advice and non-legal communications made by Canopy's counsel in a non-legal role as corporate secretary; and

c. there appear to be emails where third parties are copied.

[41] While we have not reviewed the documents in the Privilege Logs, on their face, the Privilege Logs do include several documents which raise questions as to their privileged nature, based on their authorship and distribution. The questions are compounded by the fact that Weinstein, who acted as Canopy's external counsel, also served in an active non-legal role as its corporate secretary. Many of the documents are parts of email "chains" involving several recipients where counsel is only an occasional author in the chain. While nothing definitive can be taken from these observations, taken as a whole they raise enough of an issue to warrant our conclusion that a privilege review is appropriate in these circumstances.

[42] The process for conducting a privilege review may vary by proceeding, and the parties in this motion made submissions regarding the appropriate approach in these circumstances.

[43] As indicated above, this Tribunal has previously conducted privilege reviews. We accept Staff's suggestion that the use of a third-party reviewer or referee in this matter, while not required, will save Tribunal resources and assists the Tribunal's ongoing efforts for increased efficiency. Cormark and Kennedy do not oppose the use of a referee. We further accept Staff's proposal to bear the costs of the referee.

5. CONCLUSION

[44] We conclude that the information underlying the Privilege Logs meets the test for a summons as described in paragraph [22] and therefore we are prepared to issue a summons to Canopy for these documents. The Moving Parties are to prepare the summons for issuance by the panel and then serve the summons on Canopy.

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15 *R v National Post*, 2010 SCC 16 at para 42
16 See *Cheng (Re)*, 2018 ONSEC 2; *Caldwell Investment Management Ltd (Re)*, 2018 ONSEC 50
17 *Solosjy v The Queen*, [1980] 1 SCR 821 at 837
18 *Hogan* at para 30

[45] We are prepared to issue a summons to Canopy's Chief Legal Officer to appear at the first date of the merits hearing, and to produce in advance, within 30 days of the summons, the documents listed in the Privilege Logs to a third-party referee. The summons shall be substantially in the form attached as Schedule "A" to these Reasons. Should the Chief Legal Officer's attendance at the merits hearing not be required, she will be advised in advance of the hearing by the Moving Parties.

[46] The Moving Parties, and Staff, are to agree, within fourteen days of the date of these reasons, to a third-party referee to conduct the privilege review. If the Moving Parties and Staff are unable to come to an agreement, they should provide written submissions about their respective proposed third-party referees to the panel for the panel to make a final decision on the referee to conduct the privilege review.

[47] Once appointed by the panel, the referee shall be provided a copy of this decision by the Moving Parties and shall be responsible for determining their process, after hearing submissions from the Moving Parties and Canopy, and the timeframe for assessing the privilege claims, with the completion to be no later than sixty days from the date of their appointment. As the referee is acting on behalf of the panel in this privilege review, any decision of the referee regarding process shall be binding on the Moving Parties and Canopy.

[48] The referee shall provide a report to the panel, the parties and Canopy identifying whether there are any non-privileged documents or portions thereof contained in the Privilege Logs.

[49] If upon review the privilege claims in respect of all or any part of any documents are confirmed by the referee, then those documents or portions thereof are inadmissible pursuant to s.15(2) of the SPPA. If the referee finds there are non-privileged documents or portions thereof contained in the Privilege Logs, then Canopy is ordered to produce the non-privileged documents or portions thereof, if any, to the parties within seven days of the referee's report.

Dated at Toronto this 29th day of November, 2023

"M. Cecilia Williams"

"Geoffrey D. Creighton"

"William J. Furlong"

SCHEDULE A

THE *SECURITIES ACT,*
RSO 1990, c S.5

IN THE MATTER OF
CORMARK SECURITIES INC.,
WILLIAM JEFFREY KENNEDY,
MARC JUDAH BISTRICER AND
SALINE INVESTMENTS LTD.

File No. 2022-24

SUMMONS TO A WITNESS BEFORE THE CAPITAL MARKETS TRIBUNAL

TO: Christelle Gedeon, Chief Legal Officer
Canopy Growth Corporation
1 Hersey Drive
Smiths Falls, ON K7A 0A8

YOU ARE REQUIRED TO ATTEND TO GIVE EVIDENCE at the hearing of this proceeding on March 25, 2024 at 10:00 a.m., before the Capital Markets Tribunal, located at 20 Queen Street West, 17th Floor, Toronto, Ontario, and to remain until your attendance is no longer required.

YOU ARE REQUIRED TO BRING WITH YOU and produce, within 14 days of this summons being issued, the following documents and things:

1. all documents referred to in the Privilege Log produced by Canopy to Staff of the Ontario Securities Commission (the **OSC**) in response to summonses issued by the OSC to Canopy, dated April 22, 2021 and June 24, 2021; and

2. all documents referred to in the Privilege Log produced by Canopy to Staff of the OSC in response to a summons issued by the OSC to Canopy, dated November 1, 2021;

all as further identified in Appendix A to this Summons.

IF YOU FAIL TO ATTEND OR TO REMAIN IN ATTENDANCE AS THIS SUMMONS REQUIRES, THE SUPERIOR COURT OF JUSTICE MAY ORDER THAT A WARRANT FOR YOUR ARREST BE ISSUED, OR THAT YOU BE PUNISHED IN THE SAME WAY AS FOR CONTEMPT OF THAT COURT.

Date: _____ CAPITAL MARKETS TRIBUNAL

_____
On behalf of the Capital Markets Tribunal

NOTE: You are entitled to be paid the same fees or allowances for attending at or otherwise participating in the hearing as are paid to a person summoned to attend before the Superior Court of Justice. **If you have questions, you should contact the party that requested that the Tribunal issue this Summons:**

David Di Paolo, lawyer for Cormark Securities Inc., Borden Ladner Gervais LLP, Bay Adelaide Centre, East Tower, 22 Adelaide Street West, Suite 3400, Toronto, ON M5H 4E3, ddipaolo@blg.com 416-367-6108

Melissa MacKewn, lawyer for William Jeffrey Kennedy, Crawley MacKewn Brush LLP, 170 John Street, Suite 800, Toronto, ON M5T 1X4, mmackewn@cmblaw.ca, 416-217-0840

A.4.3 Zahir Hussain Lehri and Muhamad Ashgar Sadiq – s. 17

Citation: *Lehri (Re)*, 2023 ONCMT 47
Date: 2023-12-01
File Nos. 2023-17, 2023-18 and 2023-19

IN THE MATTER OF
ZAHIR HUSSAIN LEHRI

AND

IN THE MATTER OF
MUHAMAD ASHGAR SADIQ

REASONS FOR DECISION
(Section 17 of the *Securities Act*, RSO 1990, c S.5)

Adjudicators:	M. Cecilia Williams (chair of the panel) Geoffrey D. Creighton Russell Juriansz	
Hearing:	By videoconference, October 16, 2023	
Appearances:	Alan Melamud Shelly Feld	For Staff of the Canadian Investment Regulatory Organization
	Erin Hoult Sean Grouhi	For Staff of the Ontario Securities Commission

REASONS FOR DECISION

1. OVERVIEW

[1] The Canadian Investment Regulatory Organization (**CIRO**) brought three related confidential applications for authorization, under s. 17 of the *Securities Act*[1] (***Act***), to disclose information it received pursuant to s. 11 investigation orders. It intends to disclose the information during CIRO proceedings against a person over whom it has regulatory jurisdiction.

[2] The applications were framed as requests for relief, if necessary. CIRO did not want to run afoul of the confidentiality provisions in s. 16 of the *Act*. It submitted that no s. 17 order is required by CIRO in these circumstances, but if s. 17 relief is required, the applications should be granted.

[3] Staff of the Ontario Securities Commission (**OSC Staff**) supported CIRO's position. OSC Staff submitted that no s. 17 order is required to permit CIRO's proposed use of the subject information in its own proceeding.

[4] The hearing of the applications proceeded confidentially under s. 17(2.1) of the *Act*, without notice to the two individuals named in the applications. The two individuals therefore did not have the opportunity to make submissions or otherwise participate in the hearing.

[5] For the reasons below, we concluded orally at the hearing that the applications were dismissed, because CIRO is not required, in these circumstances, to obtain an authorization under s. 17 to disclose the information in issue.

[6] These reasons, and the application materials, previously marked as confidential by the Tribunal, are public, at the request of CIRO and OSC Staff.

2. FACTS

[7] CIRO, a recognized self-regulatory organization (**SRO**), is the successor to the former Mutual Fund Dealers Association of Canada (**MFDA**) and the Investment Industry Regulatory Organization of Canada (**IIROC**). On January 1, 2023, the MFDA and IIROC were consolidated into a new SRO, subsequently named CIRO. Under the recognition order for CIRO, for practical purposes on these applications, all references to the MFDA prior to consolidation became references to CIRO.

[1] RSO 1990, c S.5

[8] In 2019, the MFDA commenced investigations concerning Muhamad Ashgar Sadiq, and then Zahir Hussain Lehri, each of whom was a registrant, and under the MFDA rules, an "Approved Person". With respect to Lehri, the MFDA was investigating whether he had facilitated so-called 'stealth advising' by Sadiq and had failed to satisfy his know-your-client obligations.

[9] MFDA investigators (like CIRO's now) had the power to compel present and former MFDA Approved Persons to attend interviews and to produce information relevant to MFDA investigations. They did not have the power to compel information directly from financial institutions other than mutual fund dealers. Eventually, MFDA investigators determined they wished to review banking records relating to Sadiq, and later to Lehri. By the time MFDA investigators made those determinations, neither Sadiq nor Lehri was reachable or cooperating with the MFDA's investigation.

[10] As a result, the MFDA sought the assistance of the Commission to obtain banking records relating to Sadiq and Lehri. On December 18, 2019, and June 22, 2021, the Commission issued investigation orders under s. 11(1)(a) of the *Act*, authorizing investigations into possible violations of MFDA Rules by Sadiq and Lehri (the **Investigation Orders**). The June 22, 2021, investigation order in respect of Lehri made explicit reference to his interaction with Sadiq.

[11] Among other things, the Investigation Orders noted that "the MFDA has requested to be named hereto for the purpose of receiving information obtained pursuant to this order" and specified, pursuant to s. 16(2) of the *Act*, that "information obtained pursuant to this order is for the exclusive use of the MFDA and the Commission".

[12] Thereafter, banking records for accounts of Sadiq, Lehri, and a numbered company associated with Lehri (collectively, the **Documents**) were compelled from two banks by Commission investigators, and provided to the MFDA.

[13] Subsequently, the MFDA commenced proceedings against Sadiq. The MFDA could not locate Sadiq and the hearing proceeded without him. The MFDA hearing panel made findings of misconduct against Sadiq. The MFDA chose not to use any of the Documents in its proceeding against Sadiq.

[14] In October 2022, the MFDA commenced a proceeding against Lehri (the **CIRO Proceeding**), alleging contraventions of the MFDA rules. Following the issuance of its Notice of Hearing, the MFDA received correspondence from Lehri, and he has since been participating in the CIRO Proceeding.

[15] CIRO proposes to disclose the Documents to Lehri, and use them, in the course of the CIRO Proceeding. CIRO advised that it brought these applications "out of an abundance of caution, owing to uncertainty with respect to the application of section 16(2) of the *Act*". CIRO sought an order under s. 17 to permit it to use the Documents in the CIRO Proceeding, if necessary; but both CIRO and OSC Staff submitted that a s. 17 order was not required for that intended use.

[16] CIRO brought the applications pursuant to s. 17(2.1) of the *Act*, which allows the Tribunal to proceed without notice to those named in the applications if the Tribunal considers that it would be in the public interest to do so. The hearing proceeded with only CIRO and OSC Staff in attendance, and we heard all of the applications together given their significant overlap.

3. ISSUES

[17] The applications present two main issues for our consideration:

a. Does CIRO, having received the Documents pursuant to the Investigation Orders, require a s. 17 order to use them in the CIRO Proceeding, both to make required disclosure to Lehri, and to adduce them as evidence in its case against him? and

b. If CIRO does require a s. 17 order for these purposes, is it in the public interest for the Tribunal to grant it?

[18] For the reasons below, we concluded that CIRO does not require a s. 17 order in the circumstances. As a result, we do not need to consider issue (b).

4. ANALYSIS

4.1 The Statutory Provisions in Issue

[19] The Investigation Orders were issued under s. 11 of the *Act*, and the Documents were compelled under s. 13. Section 16 of the *Act* imposes broad confidentiality requirements on information obtained in an investigation. Those requirements are subject to exceptions in s. 16(1.1) (relating to insurers and of no relevance here), and s. 16(2). If the exceptions do not apply, a s. 17 order is required for disclosure.

[20] Subsection 16(2) provides that where an order has been issued under s. 11 or s. 12, the documents and information obtained under s. 13 "are for the exclusive use of the Commission or of such other regulator as the Commission may

specify in the order, and shall not be disclosed to any other person or company or in any other proceeding except in accordance with subsection (1.1) or section 17."

[21] Section 17(1) states that if the Tribunal considers that it would be in the public interest, it may make an order authorizing disclosure of information otherwise protected by s. 16.

[22] We were asked to interpret s. 16(2) in the context of the Investigation Orders, the Documents obtained under them, and their proposed use in the CIRO Proceeding. Principles of statutory interpretation require us to read s. 16(2) in its entire context and in its grammatical and ordinary sense, harmoniously with the scheme of the *Act*, and the intention of the legislative body.[2]

[23] The "ordinary meaning" of a provision is "the natural meaning which appears when the provision is simply read through as a whole".[3] It is also an important principle of statutory interpretation that "all words in a statute must be given meaning".[4] This means, in interpreting legislative provisions, "we eschew interpretations that render any portion of a statute meaningless, pointless, or redundant".[5]

[24] We bear these principles in mind as we determine the meaning of s. 16(2) in the circumstances of these applications.

4.2 The Meaning of s. 16(2) of the *Act*

[25] Subsection 16(2) confirms that a regulator – like CIRO – specifically named in a s. 11 order may receive and "use" information compelled under that order. Thus, CIRO may "use" the Documents. Uncertainty arises, the parties submit, because the limitations on that "use" are not stated clearly in the subsection, and there is scarce jurisprudence on the point.

[26] In *Mega-C Power Corporation (Re)*,[6] the Tribunal found that s. 16(2) presumes that compelled information can be produced or disclosed in proceedings before a regulator named in a s. 11 order, stating:

> subsection 16(2) makes it clear that information and material obtained pursuant to an Investigation Order are for the exclusive use of the Commission (or such other regulator identified in the Order). Further, **the words used in subsection 16(2)**, set out above, **presume that information obtained** pursuant to sections 11, 12 and 13 **can be produced or disclosed in the course of a Commission proceeding**, since there is a prohibition from disclosure of such information and material "in any other proceeding" "except as permitted by section 17". The reference to "any other proceeding" must be a reference to a proceeding other than the relevant Commission proceeding **and/or a proceeding of any other regulator named in the relevant order.** (emphasis added)

[27] In *Boock (Re)*,[7] in the context of a s. 11(1)(b) order that stated that the materials were "for the exclusive use" of a foreign regulator (in that case, the U.S. Securities and Exchange Commission), the Tribunal found that the phrase "for the exclusive use" was meant primarily to convey to the Commission's regulatory counterpart that the information could not be passed on to third parties such as criminal authorities.

[28] The case which apparently sowed some doubt concerning the use of the Documents in the CIRO Proceeding, and led to CIRO's filing of the confidential applications, is the Tribunal's decision in *Sharpe (Re)*.[8] That case involved a receivership application in the Superior Court of Justice. Without seeking a s. 17 order, the Commission filed compelled testimony obtained under s. 13 in the public court record, and published a news release including a link to the receiver's website, where the compelled testimony could be found. In those circumstances, the Tribunal found that "the Commission cannot publicly disclose compelled evidence (or any similarly protected material) in the context of an application to the Court to appoint a receiver, without first obtaining a s. 17 order".[9]

[29] The facts in *Sharpe* are clearly distinguishable from the present case, and the Tribunal's ruling as stated above is specific to its particular context. Much of the discussion in *Sharpe,* involving public disclosure of compelled testimony, is focused on the balancing between the legitimate interest of the regulator, and the privacy interests of compelled witnesses, and how that is reflected in legislation and jurisprudence. In its reasons, however, the Tribunal discussed the meaning of s. 16(2) and in particular commented that it could not make sense of the word "other" before "proceeding" in its closing phrase (given the lack of any antecedent reference to a "proceeding" in the subsection).

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2 *R v Breault,* 2023 SCC 9 at paras 25-26
3 *Canadian Pacific Air Lines Ltd v Canadian Air Line Pilots Association*, [1993] 3 SCR 724 at 735; *R v Walsh*, 2021 ONCA 43 at para 60
4 *Winters v Legal Services Society*, [1999] 3 SCR 160 at para 48; *R v Katigbak*, 2011 SCC 48 at para 59
5 *R v Ali,* 2019 ONCA 1006 at para 67
6 2007 ONSEC 11 (***Mega-C***) at para 28
7 2010 ONSEC 1 (***Boock***) at para 78
8 2022 ONSEC 3 (***Sharpe***)
9 *Sharpe* at paras 133-134

[30] Before us, OSC Staff conceded that s. 16(2) is not "a paragon of clarity", but proposed an interpretation which attempts to give each word meaning, and is consistent with the scheme of the *Act* and legislative intent, including that derived from legislative history.

[31] The interpretative quandary arises from the fact that s. 16(2) speaks of "any other" person or company and "any other" proceeding, without providing any antecedent for those terms. What is the person, company, or proceeding from which these are the "other"?

[32] The word "other" is used to modify both "person or company" and "proceeding". OSC Staff submitted that s. 16(2) in this respect can be understood to mean that the Commission and any other regulator named in a s. 11 order shall not disclose any of the identified materials to:

a. any person or company; or

b. in any proceeding;

other than where the disclosure is for the Commission's or other regulator's own "use".

[33] We agree that this interpretation gives meaning to the word "other" as used in s. 16(2), and is consistent with the discussions in *Mega-C* and *Boock.* It is an interpretation that appears not to have been put forward in *Sharpe*, and we find it persuasive.

[34] CIRO and OSC Staff also submitted that unintended consequences could follow if it were determined that CIRO requires a s. 17 order in a situation of this nature. For example, CIRO has mandatory disclosure obligations to respondents in its proceedings. If it needs a s. 17 order to make disclosure, it subjects this obligation to a separate litigation process (namely, a s. 17 proceeding before the Tribunal) which renders CIRO's ability to fulfil its obligations uncertain. We find this submission to be persuasive, and it supports an interpretation of s. 16(2) which avoids such a result.

4.3 Permitted "Use" of the Documents

[35] Pursuant to s. 16(2) of the *Act*, CIRO (and the Commission) have exclusive "use" of the Documents. As interpreted above, s. 16(2) prevents CIRO from disclosing the Documents other than for its own "use". The term "use" is not defined in the *Act*. This lack of definition does not mean, however, that such uses are unbounded.

[36] OSC Staff submits that the proper uses of compelled materials are constrained by the regulator's mandate, powers and obligations. CIRO's submission, more narrowly, is that it should be able to use compelled materials for matters with a rational connection to, or nexus with, the relevant investigation order.

[37] We are not required, for purposes of disposing of these applications, to determine the limits of permissible use of compelled information by CIRO or the Commission, and we decline to do so. The provisions of Part VI of the *Act*, which includes ss. 11 through 18, do not exist in a vacuum and must be interpreted in light of the particular circumstances of each case and the other legal principles, legislation and jurisprudence that may apply.

[38] In the three applications before us, CIRO sought to use the Documents in the CIRO Proceeding. In the first instance, CIRO sought to use them to make disclosure to Lehri, under its obligation to disclose all relevant documents to a respondent. It also sought to use them for the purpose of making its case in the CIRO Proceeding.

[39] The nexus, or rational connection, between the Investigation Orders and the CIRO Proceeding is clear. The investigation order of June 22, 2021, in respect of Lehri refers specifically to his interaction with Sadiq.

[40] We conclude that these are clearly permitted uses of the Documents by CIRO, and not disclosure which is prohibited by s. 16(2) of the *Act*.

5. CONCLUSION

[41] For these reasons, we concluded that these applications be dismissed. CIRO does not require a s. 17 order to disclose and use the Documents in the CIRO Proceeding.

[42] Given this finding, we do not find it necessary to consider the issue of whether it would be in the public interest to grant the s. 17 applications in the alternative.

[43] Finally, we will issue an order that the application materials, previously marked as confidential by the Tribunal, shall be made available to the public.

Dated at Toronto this 1st day of December, 2023

“M. Cecilia Williams”

“Geoffrey D. Creighton”

“Russell Juriansz”

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B. Ontario Securities Commission

B.1
Notices

B.1.1 CSA Staff Notice 13-315 (Revised) Securities Regulatory Authority Closed Dates 2024

Canadian Securities Administrators | Autorités canadiennes en valeurs mobilières

CSA STAFF NOTICE 13-315 (REVISED)
SECURITIES REGULATORY AUTHORITY CLOSED DATES 2024

December 7, 2023

We have a review system for prospectuses (including long form, short form and mutual fund prospectuses), prospectus amendments, pre-filings, and waiver applications. It is described in National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions* (**NP 11-202**).

Under NP 11-202, a filer that receives a receipt from the principal regulator will be deemed to have a receipt in each passport jurisdiction where the prospectus was filed. However, the principal regulator's receipt will only evidence that the Ontario Securities Commission (**OSC**) has issued a receipt if the OSC is open on the date of the principal regulator's receipt and has indicated that it is "clear for final". If the OSC is not open on the date of the principal regulator's receipt, the principal regulator will issue a second receipt that evidences that the OSC has issued a receipt on the next day that the OSC is open.

SEDAR+ is available around the clock on weekdays, including Canadian holidays. Occasionally, between 11:00 p.m. Eastern Time (**ET**) and 7:00 a.m. ET, system maintenance may be conducted. System maintenance is routinely conducted at various periods on weekends. SEDAR+ operates on ET, so a filing made between 00:00 ET and 23:59 ET will be considered filed on that day. When your prospectus-related filing deadline falls on a weekend or statutory holiday, the deadline moves to the next business day.

The following is a list of the closed dates of the securities regulatory authorities for 2024 and January 2025. Bracketed information indicates those jurisdictions that are closed on the particular date. Issuers should note these dates in structuring their affairs.

1. Saturdays and Sundays (all)
2. Monday, January 1 (all)
3. Tuesday, January 2 (QC)
4. Monday, February 19 (BC, AB, SK, MB, ON, NB, PE, NS)
5. Friday, February 23 (YT)
6. Monday, March 18 (NL)
7. Friday, March 29 (all)
8. Monday, April 1 (all except AB, SK, ON, NL)
9. Monday, April 22 (NL)
10. Monday, May 20 (all)
11. Friday, June 21 (YT, NT)
12. Monday, June 24 (QC, NL)
13. Monday, July 1 (all)

14. Tuesday, July 9 (NU)
15. Monday, July 15 (NL)
16. Friday, August 2 (SK)
17. Monday, August 5 (all except YT, QC, NL, PE)
18. Wednesday, August 7 (NL*)
19. Friday, August 16 (PE)
20. Monday, August 19 (YT)
21. Monday, September 2 (all)
22. Monday, September 30 (YT, BC, NT, MB, NU, NB, NS and certain other jurisdictions**)
23. Monday, October 14 (all)
24. Monday, November 11 (all except AB, ON, QC)
25. Monday, December 23 (NT, NU)
26. Tuesday, December 24 (NT, NU, QC)
27. Tuesday, December 24 after 12:00 p.m. (NB, PE, NS), after 1:00 p.m. (YT, BC)
28. Wednesday, December 25 (all)
29. Thursday, December 26 (all)
30. Friday, December 27 (NT, NU)
31. Monday, December 30 (NT, NU)
32. Tuesday, December 31 (NT, NU, QC)
33. Tuesday, December 31 after 12:00 p.m. (NB), after 1:00 p.m. (BC)
34. Wednesday, January 1, **2025** (all)
35. Thursday, January 2, **2025** (QC)

*Weather permitting, otherwise observed on the first following acceptable weather day, such determination made on morning of holiday.

**This is the National Day for Truth and Reconciliation. Please check securities regulatory authorities' websites closer to this date to see if a particular jurisdiction's offices will be closed.

B.1.2 Notice of Coming into Force of OSC Rule 81-509 Extension to Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers

NOTICE OF COMING INTO FORCE OF
OSC RULE 81-509 *EXTENSION TO ONTARIO INSTRUMENT 81-508*
TEMPORARY EXEMPTIONS FROM THE OEO TRAILER BAN TO
FACILITATE DEALER REBATES OF TRAILING COMMISSIONS AND CLIENT TRANSFERS

On December 1, 2023, pursuant to section 143.4 of the *Securities Act* (Ontario), the following local rule came into force:

- OSC Rule 81-509 *Extension to Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers* (the **Rule**).

On July 18, 2023, the Ontario Securities Commission approved the Rule. The Rule was published in the Bulletin on August 31, 2023 at (2023), 46 OSCB 7033. The text of the Rule is published in Chapter 5 (2023), 46 OSCB 9911 of this Bulletin.

The Rule extends the blanket relief issued on March 18, 2022 by Ontario Instrument 81-508 *Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers* by 18 months. The Rule will cease to be effective on May 31, 2025.

B.1.3 Ontario Securities Commission Staff Notice 51-735 – Corporate Finance Branch 2023 Annual Report

Ontario Securities Commission Staff Notice 51-735 ***Corporate Finance Branch 2023 Annual Report*** is reproduced on the following internally numbered pages. Bulletin pagination resumes at the end of the Staff Notice.

ONTARIO SECURITIES COMMISSION

OSC Staff Notice 51-735

Corporate Finance Branch
2023 Annual Report

December 7, 2023

Ontario

Message from the Director

I am proud to share our annual Report, which is one of our key tools for engaging with our stakeholders. The Report outlines the Branch's operational and policy work during Fiscal 2023 and provides guidance regarding regulatory requirements in certain areas.

This year has brought new challenges to Ontario and capital markets worldwide, including extreme climate events domestically and internationally, rising interest rates and inflation as well as continued global uncertainty. Their continued impact on our capital markets reinforces the need for balanced, tailored, flexible and responsive regulation.

Throughout Fiscal 2023, the Branch, with its CSA partners, continued to advance its policy work, including projects regarding climate-related disclosure, diversity on boards and in executive officer positions and the regulation of the crypto asset trading industry. At the same time, the Branch, with our CSA partners, continued work on initiatives designed to reduce regulatory burden. The OSC published Ontario Instrument 45-507 *Self-Certified Investor Prospectus Exemption* (Interim Class Order) that introduced, on a time-limited basis, a new prospectus exemption in Ontario. On March 28, 2023, the OSC extended the blanket relief that creates a temporary well-known seasoned issuer regime in Canada and, on September 21, 2023, published proposed rule amendments to implement a permanent well-known seasoned issuer regime.

These initiatives will continue to be part of our main policy focus in fiscal 2024. In addition, we will continue to monitor and consider new market trends and potential areas of concern that may warrant a regulatory response.

We hope that this Report provides insight into our work this past year, and also helps market participants to better understand disclosure and other regulatory obligations under Securities Law. We welcome any questions or feedback that you may have.

Best regards,

Winnie Sanjoto
Director, Corporate Finance
Ontario Securities Commission

OSC ONTARIO SECURITIES COMMISSION

Table of Contents

Fiscal 2023 Snapshot*

3,000 +
Reporting Issuers in Ontario

1,200 +
Reporting Issuers where the OSC is the principal regulator

$1,817 billion
Total market capitalization of Reporting Issuers where the OSC is the principal regulator; 21% is attributed to the banking industry

$7.2 billion
Capital raised* by TSX/TSXV/CSE/NEO listed Reporting Issuers with a head office in Ontario**

407
Prospectuses completed
34% mining

232
Applications

12
Policy Projects

* Note: all figures are as at / for Fiscal 2023 and are approximate or rounded.

** Includes public offerings and private placements of equity and convertible debentures.

Introduction

This Report provides an overview of the Branch's operational and policy work during Fiscal 2023, including a summary of key findings and outcomes from our regulatory oversight program (Part A), and the nature, purpose and status of ongoing issuer-related policy initiatives (Part B). The Report is intended for entities and individuals we regulate, their advisors, as well as investors.

In publishing this Report we aim to

- **REINFORCE** the importance of compliance with regulatory obligations,
- **PROVIDE GUIDANCE** to improve disclosure in regulatory filings,
- **HIGHLIGHT** trends in the capital markets, and
- **INFORM AND UPDATE** stakeholders on new and ongoing policy initiatives.

The OSC continues to implement the Ontario government's five-point capital markets plan focused on strengthening investment in Ontario, promoting competition and facilitating innovation.[1]

Corporate Finance Branch: Who We Are & What We Do

Through our oversight role, we support the OSC's goal to improve transparency, trustworthiness, and efficiency in Ontario's capital markets.

To do this, our operational work includes:

- ✓ assess, using risk-based criteria, whether Reporting Issuers in Ontario provide the required level of disclosure of material information to investors so they can make informed investment decisions.
    - review of public offerings of securities;
    - review of capital raising activities in the exempt market;
    - review of CD filed by Reporting Issuers;
- ✓ review and consideration of applications for exemptive relief from regulatory requirements;
- ✓ review of insider reporting;

[1] See the 2023 Annual Report published by the OSC.

- ✓ review of credit rating agencies that are designated rating organizations;
- ✓ oversight of designated benchmarks and benchmark administrators;
- ✓ oversight of the listed Issuer function for OSC recognized exchanges;
- ✓ engagement with stakeholders through a number of activities, including external advisory committees;
- ✓ provision of guidance to stakeholders through staff notices that communicate expectations and interpretations of regulatory requirements in certain areas;
- ✓ delivery of Issuer education and outreach programs.

Part A: Compliance

1. Continuous Disclosure Review Program

2. Other Ongoing Regulatory Oversight

3. Public Offerings

4. Exemptive Relief Applications

5. Insider Reporting

6. Administrative Matters

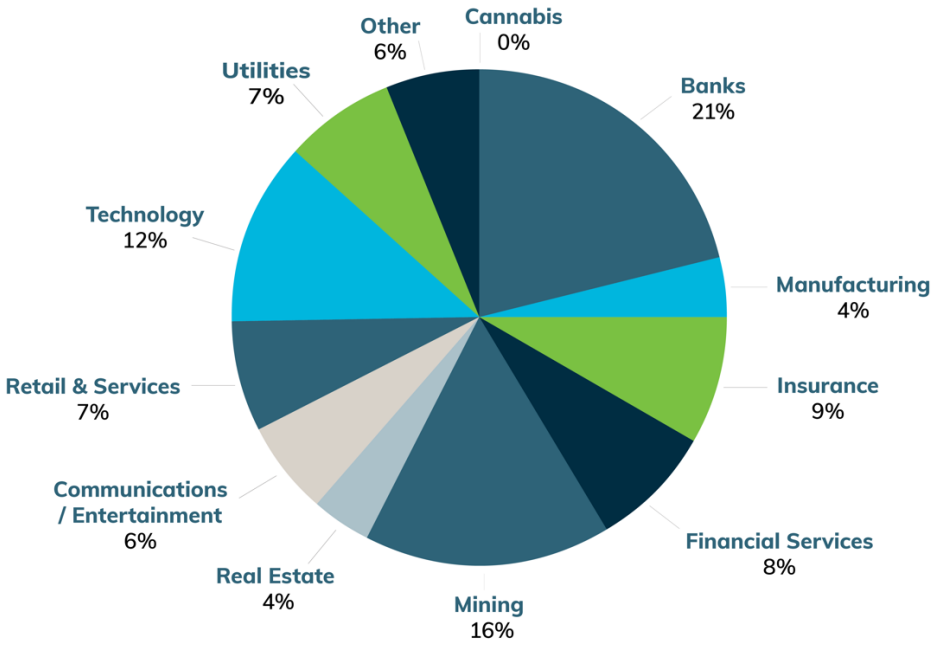
1. Continuous Disclosure Review (CDR) Program

This section of the Report provides an overview of the key findings and outcomes from our Fiscal 2023 CDR Program. We discuss key or novel issues, suggest best practices, and specify applicable legislation and relevant guidance to assist Issuers in addressing each of the topic areas.

Under Canadian securities law, a Reporting Issuer must provide timely and periodic CD about its business and affairs. The CDR Program seeks to assess whether Reporting Issuers are complying with disclosure obligations and to identify material deficiencies that may affect the reliability and accuracy of a Reporting Issuer's disclosure record. For further information about the CDR Program, refer to CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program* and Appendix A to this Report.

The Branch has primary responsibility as principal regulator[2] over approximately **1,200** Reporting Issuers with an aggregate market capitalization of approximately **$1,817 billion** as at March 31, 2023. The three largest industries by market capitalization were banking, mining, and technology.

Market capitalization of Ontario Reporting Issuers by industry as at March 31, 2023



[2] For a prospectus filing, pursuant to NP 11-202, an Issuer's principal regulator is the regulator of the jurisdiction in which the Issuer's head office is located. If the regulator identified is not in a specified jurisdiction, the principal regulator is the regulator in the specified jurisdiction with which the Issuer has the most significant connection. See subsections 3.4(4) – 3.4(8) of NP 11-202.

A) Tips for Reporting Issuers that are selected for a CD review

Below are tips on what to do if you receive a comment letter from Staff in connection with a CD review:

- Read the first paragraph of the letter which will state whether we are conducting a full review or an IOR.
- Consider whether you need legal, accounting, or other advisors. If so, engage them early in the process.
- Reach out to Staff if you require clarification about any of the comments. Note that Staff cannot provide legal or accounting advice.
- Provide a thorough response, referencing Securities Law and IFRS, where relevant.
- Continue to file required CD documents during the review. An ongoing review does not alleviate or alter a Reporting Issuer's ongoing CD obligations.
- Note the response deadline and plan accordingly. Reach out to Staff well in advance of the deadline, should you require additional time to provide a response letter. In appropriate circumstances, Staff may grant an extension request.

B) CDR program outcomes for Fiscal 2023

Our CDR program is risk-based and outcome-focused. It includes planned full reviews and IORs based on risk criteria as well as ongoing monitoring through news releases, media articles, complaints, and other sources. The CDR program is conducted pursuant to the powers in subsection 20.1(1) of the Act and is part of a harmonized CD review program conducted by the CSA.[3] Refer to Appendix A for further information about the CDR program.

[3] For more information see CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program*.

We track several categories of outcomes of the CDR program:

- Immediate corrective action is required
    - Includes the refiling of a previously filed CD document or the filing of a document that should have been previously filed, a referral to the Enforcement branch or the issuance of a cease trade order.
- Prospective enhancements are required
    - Changes or enhancements are required in the next filing as a result of deficiencies identified but they do not rise to the level of immediate action.
- No action is required
    - Instances where the Issuer does not need to make any corrective changes or additional filings as a result of our review.
- Ongoing Oversight
    - This new type of outcome is specific to IORs where Staff conduct an initial high-level review of a Reporting Issuer's disclosure in order to determine whether direct engagement with the Reporting Issuer is required, and conclude that no further action is required. Examples of this type of IOR are the regular high-level reviews of technical reports filed on SEDAR+ (previously SEDAR) which are intended to monitor disclosure compliance in real-time with the requirements of NI 43-101 and Form 43-101F1 *Technical Report*. Similarly, reviews triggered by significant industry developments fall into this category of IORs. If potentially significant disclosure deficiencies are identified, a formal IOR file will be opened and Staff will engage with the Reporting Issuer.
    - These types of IORs enable Staff to take a staged approach to CD reviews and more efficiently allocate staff resources in a timely manner.

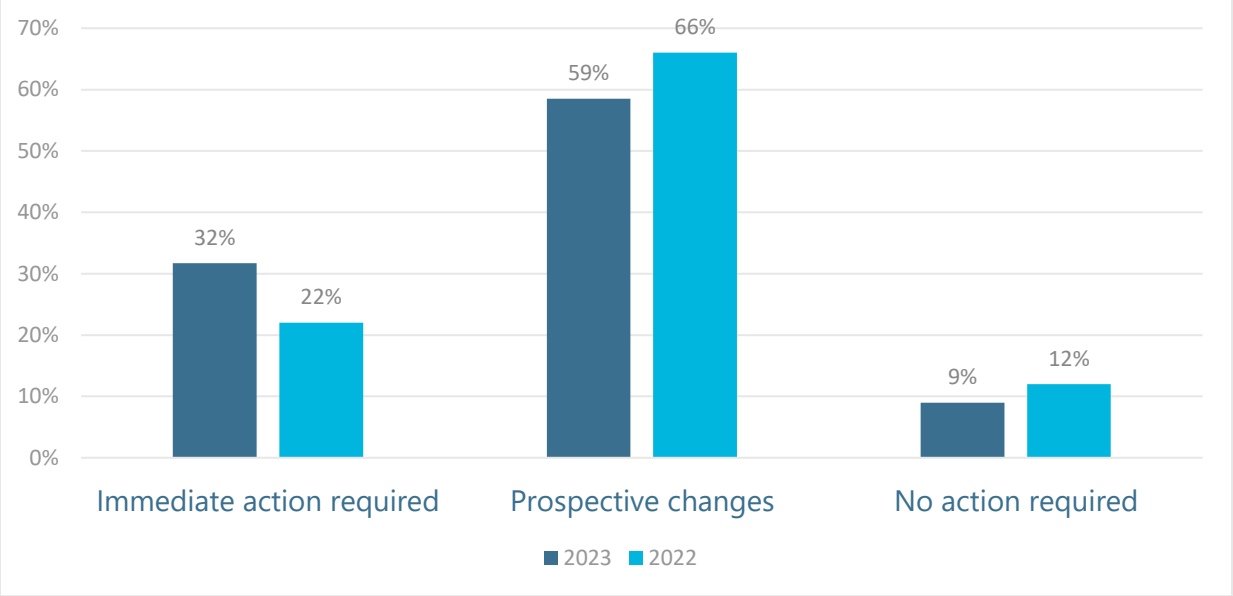
A CD review may result in more than one outcome. For example, a Reporting Issuer may be required to refile certain CD documents while also committing to prospective disclosure enhancements. Tracking these outcomes assists us in planning the CDR program in subsequent years, including the re-evaluation of existing risk-based factors.

Given our risk-based criteria to identify Reporting Issuers for review, the outcomes on a year-over-year basis should not necessarily be interpreted as trends since the issues and Reporting Issuers reviewed each year are generally different. The nature of the review and the issues identified may impact the number of Reporting Issuers selected for review in any given year. For example, a broad topic (e.g., Non-GAAP Financial Measures) may yield a larger number of

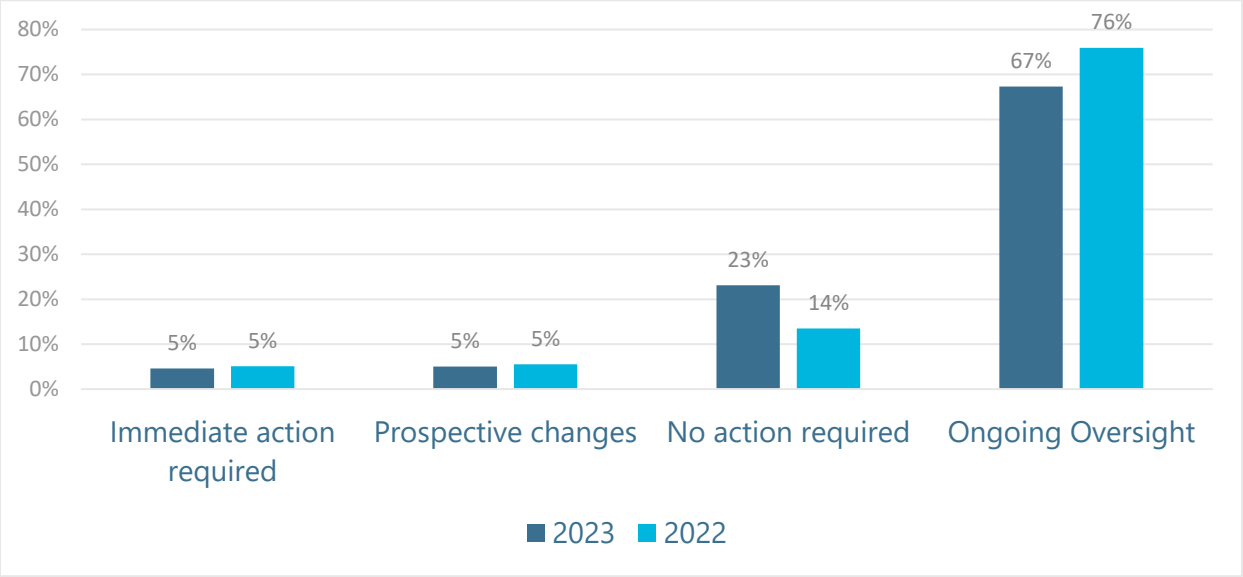
Reporting Issuers for review whereas other topics (e.g., Technical Report compliance) may be more focused or may be specific to an industry. Similarly, reviews may be issue-specific, focusing on a particular CD requirement for which we have noted widespread deficiencies. These reviews may result in an increased number of outcomes categorized as "prospective changes" or "immediate action required" if deficiencies identified are prevalent among several Reporting Issuers.

The following is the summary of the CD review outcomes for Fiscal 2023 and Fiscal 2022.

Outcomes of full CD reviews



Outcomes of IORs



The most common types of immediate action required from Reporting Issuers were amendments made to their continuous disclosure record, including the following:

- refiling of financial statements to correct material misstatements;
- refiling of an MD&A where the MD&A was materially deficient and did not meet the form requirements of Form 51-102F1;
- revision or removal of unsupported or overly-promotional information from the Issuer's website including investor presentations, technical disclosures, etc.
- filing of a clarifying news release when a Reporting Issuer failed to include sufficient disclosure of material assumptions, milestones and risk factors pertaining to FLI or failed to update the market on FLI;
- refiling or filing (in instances when documents were not filed in the first place) of material contracts;
- filing of executive compensation disclosure that was required to be filed at an earlier date;
- refiling of a technical report where the report filed was not in compliance with NI 43-101.

Reporting Issuers that refile CD documents during a Staff review are placed on the Refilings and Errors List found on the OSC Website.

C) Trends and guidance

This section highlights some of the common deficiencies that were observed during our CD reviews in Fiscal 2023, and includes some best practices and guidance to assist Reporting Issuers and their advisors in meeting their regulatory obligations. We encourage Reporting Issuers to continue to review and improve the quality of their CD, including with reference to the guidance below. We also direct readers to previously published annual Branch reports for further guidance as many of the issues previously noted continue to be areas for improvement.

I) Management's discussion & analysis

The MD&A is the cornerstone of an Issuer's overall financial disclosure and is intended to provide an analytical and balanced discussion of the Issuer's results of operations and financial condition through the eyes of management. MD&A disclosure should be specific, useful, and understandable. The MD&A requirements are set out in Part 5 of NI 51-102 and Form 51-102F1.

Over the past year, our markets continued to be impacted by rising interest rates, inflationary pressures, supply chain disruptions and overall slower economic growth. These events have generally had a significant negative impact on the economy and continue to pose challenges for many Issuers. It is critical that Issuers provide meaningful disclosure about the impact of these events on their business. An Issuer should consider its specific business and operations, and provide clear, transparent and balanced disclosure of the business impacts and potential uncertainties regarding these events in its MD&A. Such information is necessary to meet Securities Law requirements and for investors to make informed investment decisions. It is important that each Issuer tailors its disclosure to provide investors with insight into the specific and material operational challenges, financial impacts and risks it faces, and its related responses. Issuers should also keep in mind that the financial statements may also need to reflect and disclose the impacts of these events.

Staff have discussed certain MD&A deficiencies below but refer Issuers to previous Branch reports (links in Part C) that discuss other MD&A matters that remain relevant.

The following is a summary of certain discrete areas of non-compliance identified in our reviews, together with our suggested best practices. Additional observations are outlined in more detail following the summary.

Issue	Best Practice
Concluding on internal control over financial reporting (ICFR)	The Reporting Issuer's annual CEO and CFO certificates (Form 52-109F1 *Certification of Annual Filings Full Certificate*) includes a representation that the Issuer has disclosed in its annual MD&A their conclusions about the effectiveness of ICFR at the financial year end based on their evaluations (representation 6b). Reporting Issuers are reminded that they must include a conclusion in the MD&A about the effectiveness of ICFR, irrespective of whether there is a material weakness. Simply including a statement that there have been no changes to ICFR from the prior period is not sufficient.
Restatements of website or social media disclosure	During a CD or prospectus review, Staff may review an Issuer's website and social media disclosures, including investor presentations, technical disclosures, and other public information. If Staff identify any deficiencies with Securities Law requirements (which may include overly promotional disclosures, unsupported FLI and misrepresentations) or if Staff note inconsistencies with the Issuer's other CD documents, Staff may request that the Issuer revise or remove the misleading disclosures. Consistent with OSC Staff Notice 51-711 (Revised) *Refilings and Errors List* (SN 51-711), should Staff request the Issuer to revise or remove the disclosure due to an instance of non-compliance, the Issuer will be asked to issue a news release to explain the revisions in accordance with Part B of SN 51-711 and will be placed on the refilings and errors list.
Auditor's report – change in auditor	Reporting Issuers must file annual financial statements for the most recently completed financial year and the financial year immediately preceding the most recent completed financial year (i.e., comparative period). These financial statements need to be audited in accordance with Part 4.1(2) of NI 51-102 and the auditor's report must cover both periods presented. When a Reporting Issuer changes its auditors during the periods presented in the annual financial statements and the new auditor has not audited the comparative period, the auditor's report would normally refer to the predecessor auditor's report (i.e., in an "Other Matters" paragraph) unless the predecessor auditor's report on the prior period's annual financial statements is reissued with the financial statements.

	Refer to Part 3.2 of Companion Policy 51-102CP *Continuous Disclosure Obligations* and Canadian Auditing Standard 710 *Comparative Information – Corresponding Figures and Comparative Financial Statements*.
Executive compensation – filing deadlines	If a Reporting Issuer is required to send an information circular to security holders, the Reporting Issuer must disclose executive compensation information as required by section 9.3.1 of NI 51-102 and Item 8 of Form 51-102F5 *Information Circular*. Non-Venture Issuers must file this disclosure within 140 days after the Reporting Issuer's most recently completed financial year and Venture Issuers must file this disclosure within 180 days after the Reporting Issuer's most recently completed financial year. A Reporting Issuer that is not required to send an information circular to security holders must comply with section 11.6 of NI 51-102, which requires the same executive compensation information to be disclosed within 140 days after the Reporting Issuer's most recently completed financial year.

Discussion of operations – variance analysis

In discussing period-over-period financial statement variances, Issuers reviewed continued to provide limited narrative discussion of the factors that contributed to the variances and any trends or potential trends.

Simply stating the percentage change or amount, which is information that is readily available from the financial statements, is not sufficient and does not provide investors with insight into the Issuer's operations, or how the economic environment and trends, events and uncertainties impact its business. It is important to include supporting analysis that is specific and to disclose information that readers need to make informed investment decisions.

When discussing variances in financial statement line items, Issuers should

- quantify changes and clearly explain the factors, drivers and reasons contributing to the period-over-period variances that affect revenues and expenses. For example, in the analysis of changes in revenues, include a discussion of variables such as price, volume or quantity of goods or services being sold, introduction of new products or services (or discontinuation) or other significant factors by segment. In discussing expenses, quantify the material components of the expense and provide a detailed explanation of each variance, and
- provide insight into the Issuer's past and future performance.

When discussing the changes in financial condition and operating results, it is also important to include an analysis of the effect on continuing operations of any acquisition, disposition, write-off, abandonment or other similar event.

The following is a simplified example and does not include all the relevant balances on the statement of operations.

Disclosure that would **not** meet our expectations:

Insufficient & boilerplate disclosure

The Company reported revenue of $4,100,000 for the year ended December 31, 2023, compared with $2,500,000 in the prior period, an increase of 64%. The growth is mainly due to the sale of X products.

Employee compensation was $1,500,000 for the year ended December 31, 2023, up 50% or $500,000 from $1,000,000 in the same period in 2022. The increase in compensation was due to headcount.

Improved disclosure that would **meet** our expectations:

Discussion of Variances

Quantification of factors that contributed to the increase

The Company reported revenue of $4,100,000 for the year ended December 31, 2023, compared with $2,500,000 in the prior period, an increase of 64%. The growth in revenue was mainly due to the sales of product X, broken down as follows:
1) The distribution of new product X in the Canadian market contributing to sales of $1,400,000
2) 30% of the sales were in the U.S. and the appreciation of the U.S. dollar contributed to increase in sales of $300,000

Relationship with volume of sales

Despite the positive effect of the introduction of Product X and of the exchange rate, the arrival of a new competitor forced the Company to decrease its sale price on product Y. With this decrease, the Company was able to maintain the sale volume of product Y. Due to the quality and reputation of product Y, management believes that no other decrease of the sale price will be necessary to maintain the sale volume of product Y in the future. The decrease in the sale price caused a $100,000 decrease in sales.

Quantification of factors that contributed to the increase

Employee compensation was $1,500,000 for the year ended December 31, 2023, up 50% or $500,000 from $1,000,000 in the same period in 2022. The increase in compensation was due to headcount increase of 15 FTE pertaining to the acquisition of SubCo ($400,000) and share based compensation expense in connection with the acquisitions ($100,000). The increase due to headcount is expected to be an ongoing expense whereas the share-based compensation expense is expected to be non-recurring.

Forward-looking information

FLI is an area of interest to many investors and can provide valuable insight about an Issuer's business and how it intends to attain its corporate objectives and targets. It is important that investors receive transparent and clear disclosure that is specific, understandable, and relevant. The FLI, together with the accompanying disclosures, should be presented in an easy-to-read manner by, for example, providing the required disclosures near the FLI statement and presenting the information in tabular form that clearly links the particular FLI to the associated factors, assumptions and material risks. These disclosures will enable investors to interpret the FLI and simplify monitoring of progress in subsequent reporting periods.

We continue to see a prevalence of FLI included in news releases, MD&A, marketing materials, investor presentations and websites. Disclosure of specific and relevant material factors or assumptions underlying FLI continued to be an area of challenge for Issuers over the past year. Disclosure of material factors and assumptions underlying the FLI is necessary for investors to understand how actual results may vary from FLI. We remind Issuers that assumptions should be entity-specific, reasonable, relevant, and quantified whenever possible. Issuers must also disclose the material risk factors that could cause actual results to differ materially from the FLI.

The following is an example of insufficient disclosure and how such disclosures could be improved:

Disclosure that would **not** meet our expectations:

FLI not clearly identified. Lack of material factors and assumptions

We estimate that our new Product Alpha, when completed, could be priced at over $100 per unit, resulting in additional annual revenue of over $100 million next year.

Improved disclosure that would **meet** our expectations:

Identification of FLI

We estimate that our new Product Alpha, when completed, could be priced at over $100 per unit, resulting in additional annual revenue of over $100 million next year. This statement represents forward looking information. Readers are cautioned that actual results or trends may vary significantly. The discussion of our expectations is based upon the assumptions and subject to the material risks discussed under the heading "Forward-Looking Information."

Using census data[1] the Company has estimated the customer base across the adult population ages 20-34 (the target market for Product Alpha) to be approximately 8 million people. The current market for similar products is $1 billion[1] with projected growth estimates ranging from $1 billion to $2 billion[1] as more technologically advanced products enter the market.

One comparable product, Product X, is sold for $120 per unit (Source: link to source), however it is only sold in certain luxury marketplaces whereas we expect to position Product Alpha as a non-luxury, mid-market option.

Continued on next page

Continued from previous page…

We believe that sales volume of 1 million units can be achieved by the Company next year, based on the current capacity of the manufacturing facility together with the continued retail expansion and upgrades supporting our distribution network. We expect that the estimated price of $100 per unit would result in an additional $100 million in revenue earned. This would represent a market share of approximately 10% of the current $1 billion market. Management believes this is achievable based on the expected growth in the market outlined above as well as the current lack of a mid-market product option.[1]

Disclosure of material factors and assumptions

The Company's achievement of this sales target will depend on our ability to finalize product development by December 31, 2023, which is expected to cost an additional $50 million that will be funded from the Company's existing working capital. The Company is also dependent upon the receipt of certain regulatory approvals, the status of which is X. Finally, the Company must finalize agreements with major retailer X, the current status of which is X.

Material risk factors that may impact FLI

[1] Include references to source publications for information derived from third parties.

II) Disclaimers regarding FLI

Staff have observed instances of Reporting Issuers disclaiming the reliability of FLI and/or including a statement that the Reporting Issuer undertakes no obligation to update the FLI. We remind Reporting Issuers that section 4A of NI 51-102 requires a Reporting Issuer to have a reasonable basis for any FLI it discloses and to identify material risk factors that could cause actual results to differ materially from the FLI. It is not sufficient for a Reporting Issuer to simply disclaim the reliability of the FLI using boiler-plate language. Once a Reporting Issuer has determined that previously disclosed FLI is no longer reliable, the Reporting Issuer should withdraw the FLI in accordance with subsection 5.8(5) of NI 51-102. In addition, under subsection 5.8(2) of NI 51-102, Reporting Issuers are required to (i) update previously disclosed FLI when events or circumstances are reasonably likely to cause actual results to differ materially from the previously disclosed FLI (including expected differences) and (ii) include a comparison of actual results to any previously disclosed financial outlook.

III) Non-GAAP and other financial measures

NI 52-112 was issued in 2021 to replace the guidance in CSA Staff Notice 52-306 (Revised) Non-GAAP Financial Measures. The goal of NI 52-112 is to improve the quality of information provided to investors for six different categories of measures, being historical NGFMs, forward-looking NGFMs, non-GAAP ratios, capital management measures, total of segments measures and supplementary financial measures (as each are now defined in NI 52-112).

During our CD reviews conducted during the year, Staff observed deficiencies with certain requirements, including those related to NGFM being provided in earnings releases as well as disclosure requirements related to supplementary financial measures.

The following are examples of insufficient disclosure and how such disclosures could be improved:

Example 1 – Earnings releases

Staff have observed the following deficiencies in earnings releases:

- Instances where NGFMs are given more prominence than the most directly comparable financial measure disclosed in the primary financial statements.
- Instances where the related quantitative reconciliations have been inappropriately omitted (while quantitative reconciliation can often be incorporated by reference, this is not permitted for disclosure in an earnings release as noted in Section 5(4) of NI 52-112).
- Instances where disclosures which are permitted to be incorporated by reference have not been incorporated correctly (e.g., by not providing a statement that the information

has been incorporated by reference and indicating where the incorporated information can be found - see the requirements in Section 5(2) of NI 52-112).

Disclosure that would **not** meet our expectations:

NGFM given more prominence than most directly comparable financial measure

No quantitative reconciliations

Excerpt from news release:
ABC Corporation Announces Second Quarter EBITDA of $2 million

Toronto, Ontario (August X, 2023) – Strong growth continued in the second quarter with EBITDA of $2 million (prior year - $1 million) and Adjusted EBITDA of $5 million (prior year - $2 million).

Improved disclosure that would **meet** our expectations:

Most directly comparable financial measure given more prominence than NGFM

ABC Corporation Announces Second Quarter Net Income of $0.1 million (EBITDA of $2 million)
Toronto, Ontario (August X, 2023) – Strong growth continued in the second quarter with net income of $0.1 million (prior year – net loss of $0.5 million), EBITDA of $2 million (prior year - $1 million) and Adjusted EBITDA of $5 million (prior year - $1 million).

Identification of NGFM

EBITDA and Adjusted EBITDA are non-GAAP financial measures that are not standardized under the financial reporting framework used to prepare our financial statements and therefore these measures may not be comparable to similar financial measures disclosed by other issuers.

Quantitative reconciliation included in earnings release

	2023	2022
Net Income	$0.1 million	($0.5 million)
Interest	$0.5 million	$0.5 million
Taxes	-	-
Depreciation	$1.4 million	$1 million
EBITDA	$2 million	$1 million
Restructuring costs	$3 million	-
Adjusted EBITDA	$5 million	$1 million

Identification of where information is found in the incorporation by reference statement

For additional information about the composition of EDITDA and Adjusted EBITDA, as well as an explanation of how it provides useful information for investors, refer to the 'non-GAAP measures' section on page 19 of our MD&A for the period ended June X, 2023* which is available on SEDAR+ at http://www.sedarplus.ca.

***** Section 5 of NI 52-112 provides that Reporting Issuers may incorporate by reference certain required information related to non-GAAP and other financial measures if the reference is to the Reporting Issuer's MD&A and subject to certain conditions. However, incorporation by reference would not be permitted if the Reporting Issuer's MD&A had not yet been filed.

Example 2 – Supplementary financial measure disclosures

Staff have noted instances where supplementary financial measures have been disclosed without providing the disclosure required by Section 11 of NI 52-112. Specifically, the name of the supplementary financial measure does not accurately describe it, and/or an explanation of the composition of the measure is not provided.

Disclosure that would **not** meet our expectations:

Name of supplementary financial measure not described

During Q2 2023, we achieved a margin of 23% which represents strong growth over the prior year.

Improved disclosure that would **meet** our expectations:

Supplementary financial measure is accurately described together with the composition of the measure

During Q2 2023, we achieved EBIT margin of 23% which represents strong growth over the prior year. EBIT margin is calculated as EBIT divided by revenue, consistent with the figures shown on the face of the statement of profit and loss.

IV) Greenwashing

The presentation of disclosure, including website disclosure, pertaining to an Issuer's ESG impact has grown rapidly in recent years.

We have observed an increase in Issuers making misleading, unsubstantiated or otherwise incomplete claims about business operations or the sustainability of a product or service being offered, conveying a false impression commonly referred to as "greenwashing". As an example of "greenwashing", an Issuer's disclosure of a target to transition to net zero can be misleading if the Issuer has no credible plan to achieve such a target.

When describing current and proposed ESG related activities, Issuers should avoid misleading promotional language and should ensure that all public disclosures, whether voluntary or required, are factual and balanced. An Issuer's ESG disclosure should be specific and should be accompanied by supporting data, reports or other factual disclosure, as applicable.

Where an Issuer is using a rating to demonstrate its ESG impact, the following should be disclosed:

- the actual rating;
- a description of the specific set of criteria on which the rating is based;
- the identity of the third party certifying the rating; and
- the date of the rating.

It is not sufficient, for example, to say that an Issuer obtained "a high score" on "a national corporate governance survey", without disclosing the actual score, the parameters on which the survey was based, the name of the third party conducting the survey and the date of the survey.

Reminder: **Where an Issuer discloses future plans to improve its operational performance in the context of ESG standards, such as to reduce greenhouse gas emissions or to obtain a carbon neutral position, the Issuer is reminded that this type of statement will typically constitute FLI. An Issuer must have a reasonable basis for FLI, identify the material risks factors that could cause actual results to differ materially, state the material factors or assumptions used to develop the FLI and describe its policies for updating the information.**

Also refer to the discussion above on Forward-Looking Information for more information.

V) Audit committees

National Instrument 52-110 *Audit Committees*

National Instrument NI 52-110 *Audit Committees* (NI 52-110), which applies to Reporting Issuers other than investment funds, issuers of asset-backed securities, designated foreign issuers, SEC foreign issuers, issuers that are subsidiary entities, exchangeable security issuers and credit support issuers,[4] contains requirements for the responsibilities, composition, authority and reporting obligations of audit committees. Specifically, we refer you to subsection 2.3(7) of NI 52-110, which requires the audit committee of a Reporting Issuer to establish procedures for the receipt, retention and treatment of complaints received by the Reporting Issuer regarding accounting, internal accounting controls, or auditing matters, and the confidential, anonymous submission by employees of the Reporting Issuer of concerns regarding questionable accounting or auditing matters.

When establishing these policies and procedures, a Reporting Issuer's audit committee must carefully consider whether such policies and procedures directly or indirectly impede a person or company's ability to communicate information about an act, internally or externally, where the person or company believes that such act may be contrary to Securities Law, or a by-law or other regulatory instrument of a recognized self-regulatory organization. We remind audit committees that subsection 121.6(4) of the Act provides that any provision in an agreement, including a confidentiality agreement, between a person or company and their employee is void if it precludes, or purports to preclude, the employee from providing information to the OSC, a recognized self-regulatory organization or a law enforcement agency about an act that the employee reasonably believes may be contrary to Securities Law, or a by-law or other regulatory instrument of a recognized self-regulatory organization. A Reporting Issuer's audit committee should also be aware that paragraph 121.6(2) of the Act prohibits any person or company from taking a reprisal against an employee because the employee sought advice about providing information, expressed the intention to provide information, or provided information to the person or company, the OSC, a recognized self-regulatory organization or a law enforcement agency, about an act an employee reasonably believes may be contrary to Securities Law, or a by-law or other regulatory instrument of a recognized self-regulatory organization.

Policies and Procedures Relating to the Receipt, Retention and Treatment of Complaints Received by an Employee of a Reporting Issuer

We have observed that some audit committees that otherwise comply with the requirements of subsection 2.3(7) of NI 52-110, by establishing audit committee charters and written codes of

[4] Please refer to section 1.2 of NI 52-110.

conduct and ethics for employees, have established policies and procedures that require an employee to communicate their concerns or complaints solely to a senior employee of the Reporting Issuer, an officer of the Reporting Issuer, or a director of the Reporting Issuer (in most cases, the chair of the audit committee) or to first receive consent from the Reporting Issuer before the employee can communicate their concerns to the OSC, a recognized self-regulatory organization or a law enforcement agency.

Staff have several concerns with this practice. As noted above, any such provision in an employee code of conduct, which code of conduct will typically form part of the employee's employment contract, may be void pursuant to subsection 121.6(4) of the Act. Further, Staff are concerned that any requirement that employees first communicate their complaints internally with, or obtain consent from, the Reporting Issuer, before the employee can communicate their concerns externally, may have a chilling effect on employee reporting. Finally, in Staff's view, any such requirement by a Reporting Issuer is contrary to the requirement in subsection 2.3(7) of NI 52-110 that the audit committee of a Reporting Issuer establish policies and procedures relating to the confidential, **anonymous** submission by employees of the Reporting Issuer of concerns regarding questionable accounting or auditing matters.

When a Reporting Issuer's audit committee is establishing policies and procedures pursuant to subsection 2.3(7) of NI 52-110, Staff expect that those policies and procedures will not directly or indirectly impede an employee's ability to communicate information about an act, internally or externally, where the employee reasonably believes that such act may be contrary to Securities Law or a by-law or other regulatory instrument of a recognized self-regulatory organization.

Policies and Procedures Relating to the Receipt, Retention and Treatment of Complaints Received by Persons or Companies other than Employees of a Reporting Issuer

We have observed that, contrary to the requirements in subsection 2.3(7) of NI 52-110, many audit committees have failed to establish any procedures for persons or companies, other than employees, to communicate their concerns regarding accounting, internal accounting controls or auditing matters to the audit committee. We have also observed in some situations, where an audit committee has established a procedure, the established procedure may be incomplete. For instance, we have seen Reporting Issuers provide guidance on their websites directing persons or companies to issue a complaint directly to an independent third-party provider. However, there is no clear explanation of where these complaints go once received by the third party, or how they are reviewed and managed by the third-party provider.

Reporting Issuers are strongly encouraged to ensure that their audit committees have established the policies and procedures required by subsection 2.3(7) of NI 52-110 and ensure

that such policies and procedures are complete, accessible to all persons and companies, and fully compliant with the Act.

CFO on audit committee

Venture Issuers are permitted to have an audit committee that is composed of a *majority* of independent directors. Staff have noted several instances where a Venture Issuer's chief financial officer (CFO) is appointed to the audit committee.

Pursuant to item 2.3 of NI 52-110, an audit committee's responsibilities include the following:

- The audit committee must review the Reporting Issuer's financial statements, MD&A and annual and interim profit or loss press releases before the Reporting Issuer publicly discloses this information.
- The audit committee must be satisfied that adequate procedures are in place for the review of the Reporting Issuer's public disclosure of financial information extracted or derived from the Reporting Issuer's financial statements, other than the public disclosure referred to above, and must periodically assess the adequacy of those procedures.
- The audit committee must establish procedures for:
    - the receipt, retention and treatment of complaints received by the Reporting Issuer regarding accounting, internal accounting controls, or auditing matters; and
    - the confidential, anonymous submission by employees of the Reporting Issuer of concerns regarding questionable accounting or auditing matters.

Given that CFOs are likely to be directly and actively involved in areas that the audit committee oversees (e.g., the preparation of materials), it is important to consider the extent of influence that the CFO may exercise over the audit committee, and the potential conflicts of interest that may arise. These concerns may be magnified where the audit committee is composed of only three members or where the CFO is the only member of the audit committee who is financially literate (as defined in item 1.6 of NI 52-110).

VI) Disclosure considerations pertaining to geopolitical events

We remind Reporting Issuers of the Staff guidance set out in the 2022 Corporate Finance Branch Report relating to Russia's invasion of Ukraine. Staff regularly monitor and assess potential risk impacts of geopolitical events and changing economic and market conditions.

Reporting Issuers that have been or could be materially impacted by any geopolitical event should provide timely, meaningful, transparent, and balanced disclosures about the impact and the uncertainties to allow investors to make informed investment decisions. Reporting Issuers should also keep apprised of ongoing changes and continually evaluate the necessity to update previously issued disclosure or to provide new disclosure.

Reporting Issuers should carefully consider whether the requirement to file a material change report has been triggered as a result of the impact of geopolitical events. While Reporting Issuers might have provided detailed operational updates via news releases, we remind Reporting Issuers that such disclosure should also be included and updated in prospectuses and CD documents, such as MD&A and AIFs.

Impact of Sanctions

On June 22, 2023, the Federal government's *Budget Implementation Act, 2023, No. 1* made significant amendments to Canada's autonomous sanctions statutes, including the *Special Economic Measures Act* (the SEMA), to clarify ownership and control rules for purposes of sanctions imposed under the SEMA (the Deemed Ownership Rules).

Issuers should continue to review their sanctions compliance policies and procedures, due diligence practices, risk assessments, operational challenges, and financial reporting considerations to ensure compliance with the new Deemed Ownership Rules under SEMA, as well as any other rules.

2. Other Ongoing Regulatory Oversight

This section of the Report provides an overview of the key findings and outcomes from other areas of ongoing regulatory oversight.

A) Financial benchmarks

On July 13, 2021, Multilateral Instrument 25-102 *Designated Benchmarks and Benchmark Administrators* (MI 25-102), which establishes a comprehensive regime for the designation and regulation of financial benchmarks and those that administer them, came into force in Ontario.

In Canada, the OSC and the AMF have designated:

- on September 15, 2021, the Canadian Dollar Offered Rate (CDOR) as a designated critical benchmark and a designated interest rate benchmark and Refinitiv Benchmark Services (UK) Limited as its designated benchmark administrator, and

- on September 15, 2023, Term CORRA as a designated interest rate benchmark and CanDeal Benchmark Administration Services Inc. as its designated benchmark administrator.

The OSC and the AMF are co-lead authorities of these designated benchmarks and designated benchmark administrators.

We conduct oversight activities on designated benchmarks, designated benchmark administrators and benchmark contributors using a risk-based approach.

B) Designated rating organizations

In April 2012, the CSA implemented a regulatory oversight regime for credit rating agencies (CRAs) through National Instrument *25-101 Designated Rating Organizations* (NI 25-101).

There are currently five CRAs that have been designated as designated rating organizations (DROs) in Canada under NI 25-101:

1. DBRS Limited
2. Fitch Ratings, Inc. (Fitch)
3. Kroll Bond Rating Agency, LLC (Kroll)
4. Moody's Canada Inc. (Moody's)
5. S&P Global Ratings Canada (S&P)

In Canada, the OSC is the principal regulator of these DROs. We conduct reviews of DROs using a risk-based approach. Our reviews focus on credit rating activities of the CRAs in Canada or in respect of Canadian Issuers.

I) Review program for Fiscal 2023

The DRO review program for Fiscal 2023 focused on the following two topics (which were selected for follow-up from earlier work done in our reviews for the 2021-2022 fiscal year):

1. a "deep dive" review of procedures used to identify deficiencies by the compliance monitoring and internal audit functions at two DROs (the Compliance Monitoring Review); and
2. a review of a sample of credit rating files for compliance with four DROs' policies and procedures on ESG factors (the ESG Review).

For the Compliance Monitoring Function Review, we noted that the two DROs have several internal controls to detect problems or issues relating to Canadian ratings and Canadian employees.

For the ESG Review, in terms of how each DRO uses ESG factors in credit ratings, we noted that two DROs assign numerical ESG scores for a rated Issuer and publicly disclose those scores. In contrast, the two other DROs focus on a consideration of ESG factors.

II) Review program for 2023-2024 fiscal year

In our DRO review program for the 2023-2024 fiscal year, we plan to focus on each DRO's practices on unsolicited ratings.

C) Syndicated mortgages

Since July 1, 2021, regulatory oversight of syndicated mortgages has been shared between the OSC and the Financial Services Regulatory Authority of Ontario (FSRA). FSRA has oversight of qualified syndicated mortgages (QSMIs) and syndicated mortgages distributed to institutional or high-net-worth investors that fall within the definition of a permitted client, by a person that is registered or licensed under the *Mortgage Brokerages, Lenders and Administrators Act, 2006*. The OSC has oversight of higher-risk, non-qualified syndicated mortgages (NQSMIs) offered to retail clients (non-permitted clients).

I) Reports of NQSMI filed with the OSC

During Fiscal 2023, based on reports of exempt distributions (on Form 45-106F1 – *Report of Exempt Distribution*) filed with the OSC, distributions of syndicated mortgages to non-permitted clients in Ontario totaled approximately $388 million. This amount is marginally less than the approximately $391 million raised through distributions of syndicated mortgages to non-permitted clients in Ontario in the previous 12 months.

The accredited investor prospectus exemption under section 73.3 of the Act continues to be the most commonly used exemption for distributions of NQSMI with the balance being completed using the minimum amount investment prospectus exemption under section 2.10 of NI 45-106 and the family, friends and business associates prospectus exemption under sections 2.5 and 2.6.1 of NI 45-106.

	Capital Raised	Number of Distributions	Number of Issuers	Number of Exempt Market Dealers
2022 Q3	$78,180,000	12	6	3
2022 Q4	$97,600,000	19	8	4
2023 Q1	$48,850,000	8	4	3
2023 Q2	$163,401,065	20	9	3
Total 12-month period	$388,031,065	59	17	4

II) Ongoing coordination between the OSC and FSRA

OSC staff and FSRA staff meet regularly to share information and market observations relating to syndicated mortgages. OSC staff and FSRA staff also cooperate and consult on compliance reviews of entities that operate within both regimes.

For example, during a recent review of QSMI transactions, FSRA staff identified that a mortgage broker had renewed a syndicated mortgage transaction with investors, including retail investors, without making the required report of exempt distribution filing (on Form 45-106F1 – *Report of Exempt Distribution*) with the OSC. In this instance, the mortgage broker incorrectly believed the mortgage renewal transaction was not a "distribution" and therefore compliance with the Act was not required. OSC staff confirmed to FSRA staff and the mortgage broker that a renewal or rollover transaction will generally be a new distribution of a new security (i.e., even if all other terms stay the same, the maturity date has changed). See the Capital Markets Tribunal decision dated January 15, 2020 Re MOAG Copper Gold Resources Inc. at paragraphs 39 to 47.

In another example of coordination between staff at the OSC and FSRA, during a review of QSMI transactions, FSRA staff identified transactions with non-permitted clients that had not been reported to the OSC. During the resulting OSC staff review, it was confirmed that:

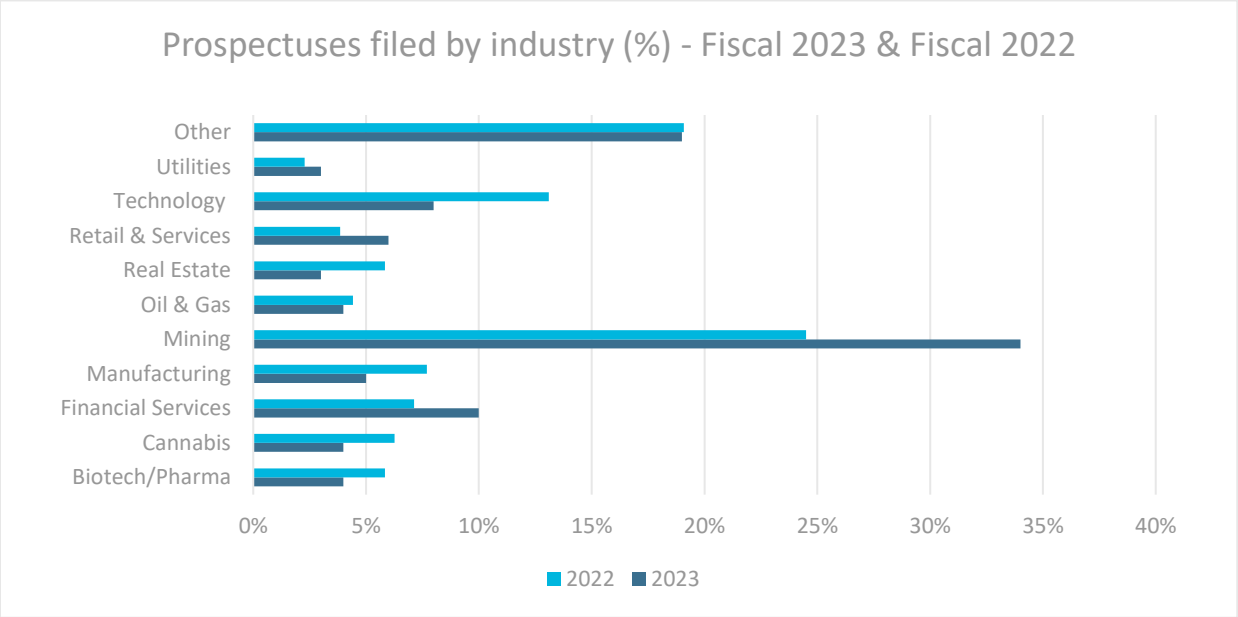
- the mortgage broker was unaware of the recent regulatory changes,
- the mortgage broker had sold to retail investors without the use of a registrant under the Act or an exemption from registration, and
- the Issuer had failed to properly report the trades to the OSC.

3. Public Offerings

Under Securities Law, to distribute securities, an Issuer must file and obtain a receipt for a prospectus or rely upon a prospectus exemption. Another key component of our compliance oversight of Issuers in Ontario's capital markets is the review of prospectuses in connection with public offerings. This section outlines data and trends with respect to public offerings and provides guidance on common issues that arise during our prospectus reviews.

In Fiscal 2023, **407** prospectuses were filed in Ontario (Fiscal 2022: 702). These filings covered a wide range of industries with mining, financial services and technology being the most active sectors[5] based on the number of offerings.

[5] "Other" includes sectors such as communications, cryptocurrency, environmental, gaming, hospitality, SPACs and CPCs and transportation.



A) Trends and guidance

Fiscal 2023 was a tumultuous year for the economy and financial markets, driven by high inflation and escalating interest rates. In response to tightening economic conditions, capital market activities declined significantly in Fiscal 2023, evidenced by lower prospectus filings as compared with Fiscal 2022.

Key takeaways from our reviews of prospectuses in Fiscal 2023 are set out below.

> Tip: The guidance in this section also applies to prospectus-level disclosure included in an information circular in connection with a proposed significant acquisition or a restructuring transaction as required by section 14.2 of Form 51-102F5 *Information Circular*.

I) Prospectus filing – procedural matters

The following summary provides reminders to Issuers and their advisors about certain procedural matters pertaining to prospectus filings. We also remind readers that previous annual Branch reports also contain important and relevant information about prospectus filings.

Issue	Best Practice
Third party information	Staff have identified several instances of Issuers including a statement in a prospectus disclaiming responsibility for information derived from third parties and contained in the prospectus. Staff will object to these disclaimers and remind Issuers that they are liable for any misrepresentation in a prospectus, even if the misrepresentation is contained in information from a third party.
Legal representation	Staff strongly encourage Issuers to be represented by securities law counsel during a prospectus filing, which extends to telephone calls and written correspondence with Staff, so that any concerns raised by Staff are understood and adequately addressed.
Prospectus pre-filing vs inquiries	If you are an Issuer or an investor and have a question, complaint or tip, the best way to bring this to our attention is to get in touch with our Inquiries and Contact Centre staff who will redirect your inquiry within the OSC. Issuers and their counsel should also confirm in the inquiry if Ontario is principal regulator for the Issuer. Our Inquiries and Contact Centre Staff can be reached by email at inquiries@osc.gov.on.ca or toll-free at 1-877-785-1555. Please see our Service Commitment with respect to inquiries for which we are principal regulator. Issuers are reminded that matters which are complex, raise new policy issues, require the interpretation of securities law or its application to a particular matter, may require pre-filing or filing an application pursuant to NP 11-202, NP 11-203 or other applicable instruments.
Comfort letter requirements	Issuers filing a preliminary prospectus that is accompanied by an unsigned auditor's report must file a comfort letter (Letter) signed by the auditor and addressed to the applicable securities regulatory authorities where the prospectus is being filed under section 9.1(b)(iii) of NI-41-101 or section 4.1(b)(ii) of NI 44-101. The Letter must be prepared in accordance with the relevant standards in the Handbook of the Chartered Professional Accountants of Canada, specifically, paragraph A38 of Section 7150 *Auditor's Consent to the Use of a Report of the Auditor Included in an Offering Document*. The Letter provides comfort on the financial statements

Issue	Best Practice
	and informs the regulatory authorities that the audit has been substantially completed, except for the following matters: • consideration of events between the dates of the preliminary and final prospectuses; • review of comments issued by securities regulators; • authorization of the financial statements by those charged with governance; and • reading of the final prospectus. The auditor comfort letter must be **signed**, **dated** and must **not include other qualifications** outside of the four qualifications above.
Material developments during course of review	During the course of an application or prospectus offering, an Issuer may experience material changes, updates to material facts or changes to its continuous disclosure requirements. Examples of this include, the early filing of financial statements, restatements of a continuous disclosure document, changes to the business including changes of officers and directors, entry into or amended material contracts and commencing a strategic review process. This list is not exhaustive. To facilitate an efficient review, Issuers and filing counsel should advise review Staff of any anticipated, pending or actual changes that may impact Staff's reviews.

II) Filing of non-offering prospectus

While there are various paths to going public, including raising proceeds in an IPO, we have noted an increase in the number of non-offering prospectuses being filed. A non-offering prospectus is subject to the same requirements as an offering prospectus and serves as the basis for the Issuer's CD record. Accordingly, it should be prepared to the same standard as any other prospectus. We have noticed an increase in the filing of incomplete or poorly prepared preliminary non-offering prospectuses, which can lead to unnecessary and lengthy delays and the requirement to amend or withdraw and refile the prospectus. To assist Issuers and their advisors in ensuring a smooth regulatory review process, we have highlighted below some tips and reminders to assist Issuers and their advisors in preparing a non-offering prospectus and during the corresponding regulatory review. While these are areas where mistakes are

commonly made in connection with non-offering prospectuses, they also occur in relation to other long form prospectus filings.

- ✓ We encourage Issuers to engage external counsel and other advisors early in the process. Working with experienced securities professionals will allow for a more efficient prospectus review.
- ✓ Ensure that the correct financial statements are included in the prospectus. When in doubt, consult with Staff by filing a confidential prospectus pre-file application.

Issue	Non-Venture Issuers	IPO Venture Issuers
Financial statement requirements	✓ 3 years of audited financial statements ✓ MD&A (Non-Venture Issuer)	✓ 2 years of audited financial statements ✓ MD&A (IPO Venture Issuers)
Assurance requirements	✓ Annual FS for all years presented must be audited ✓ Interim FS for all periods presented must be reviewed	✓ Annual FS for all years presented must be audited ✓ Interim FS for all periods presented must be reviewed
Timing of inclusion of financial statements in prospectus	✓ Deadline for inclusion of annual financial statements – 90 days ✓ Deadline for inclusion of interim financial statements – 45 days	✓ Deadline for inclusion of annual financial statements – 90 days ✓ Deadline for inclusion of interim financial statements – 45 days

Tip: IPO Venture Issuer vs Venture Issuer

The extended deadlines applicable to Venture Issuers ***do not apply*** to IPO Venture Issuers or to RTO acquirers.

Refer to the definition of "IPO Venture Issuer" in NI 41-101.

- ✓ Ensure the annual and interim MD&As include **transparent, balanced and entity-specific discussion** of the financial performance, operations and financial condition of the Issuer. Issuers that do not have significant projects generating revenue, should include a description of the overall plan for the project, the status of the project relative

to that plan, expenditures made to date and how those expenditures related to the overall anticipated costs of the project in accordance with Item 1.4(d) of Form 51-102F1. Refer to the Management Discussion & Analysis section of this Report and to past annual Branch reports and CSA CD Staff Notices for our expectations relating to some common MD&A deficiencies.

- ✓ Ensure the prospectus includes **adequate** and **entity-specific information** about the **business** of the Issuer. Issuers that file non-offering prospectuses often have businesses that are in the preliminary stage, with little or no operations or revenues and largely based upon a business plan.
    - Provide sufficient disclosure of the Issuer's current and anticipated business and operations.
    - Describe clearly the Issuer's products and services, if any, and anticipated streams of revenue.
    - Describe clearly the specific milestones in the Issuer's business plans and describe the steps and associated costs required to achieve those milestones. Identify the anticipated timing of completion of the various stages in the business plan.

  Refer below for more tips and guidance on describing the Issuer's business.

- ✓ In discussing **future** or **anticipated business plans**, **avoid** using **overly-promotional language** that is not based on the Issuer's current stage of development. Issuers should not make false, misleading, or unsupported statements or omit facts from a statement necessary to make that statement true or not misleading. For example,
    - Do not make statements that an Issuer is the largest or leader of its industry/market unless they are supported by objective data that provide the Issuer with a reasonable basis on which to conclude that the statement is accurate.
    - Do not disclose FLI and long-range projections reflecting revenue, growth, and market share assumptions that appear speculative in comparison to the size and scope of the Issuer's current business plans.
    - Do not make assertions about growth of markets or demand for a product that are not supported.

- ✓ Ensure the **Board** and **Audit Committee** meet the **independence requirements**. A majority independent audit committee (Venture Issuers) or fully independent audit

committee (non-Venture Issuers) must be in place at the time of filing the final prospectus.

- ✓ Available Sources and Uses of Funds / Sufficiency of Proceeds
    - **Clearly disclose the sources of available funds**. This may include working capital (as at the most recent month end), and total other funds available to be used to achieve the principal capital-raising purposes identified in the prospectus. Note that these other sources of funds must be "guaranteed" and not amounts expected at a later time without sufficient support. Staff may not consider these amounts to be part of the available sources.
    - **Avoid boilerplate language** when describing **uses of proceeds** (for example, avoid the term "for general corporate purposes"). The principal purposes of the available funds should be described, in reasonable detail, using tabular form, with approximate amounts for each item. The description of the uses of available funds should correspond to the various business objectives and milestones that the Issuer expects to accomplish using those amounts. Refer to Item 6 in Form 41-101F1 for disclosure expectations.
    - Ensure that the Issuer has **sufficient resources** to accomplish the Issuer's stated objective and to continue operations for a period of a **minimum of 12 months**. If there are concerns over financial condition/sufficiency of proceeds, it may affect Staff's ability to recommend that a receipt be issued for the prospectus in accordance with subsection 61(2) of the Act.
- ✓ Should the Issuer have operations in an emerging market, ensure that the prospectus includes the **appropriate emerging market disclosure** in accordance with the guidance set out in OSC Staff Notice 51-719 *Emerging Markets Issuer Review* (OSC SN 51-719) and OSC Staff Notice 51-720 *Issuer Guide for Operating in Emerging Markets* (OSC SN 51-720).
- ✓ Ensure **consistency** in representations and statements made both within the prospectus and with disclosures made by the Issuer elsewhere, including investor presentations, website, marketing materials, etc.
- ✓ Ensure that any and all **material contracts** are **appropriately identified** and **listed** in the prospectus to be filed with the final.
- ✓ Ensure all **Personal Information Forms** for all current and incoming directors and officers are **submitted** with the preliminary prospectus.

- ✓ Remember that **conditional approval** from the respective **exchange** is **required** prior to getting cleared for final. Staff may also request correspondence with the exchange.
- ✓ Where the prospectus qualifies the distribution of common shares to be issued on exercise of special warrants, arrange for any dealers involved to be identified as underwriters, and to sign an underwriter's certificate, in the prospectus. Please see subsection 2.8(2) of Companion Policy 41-101CP *General Prospectus Requirements* for more information.

III) Description of business

Where the business of the Issuer is in the early stages of development, and the business has little or no operations or revenues, we find that Issuers often do not provide sufficient detail on the business itself and/or its business plan. This trend is particularly prevalent among Issuers completing CPC[6] qualifying transactions and reverse takeover transactions. In order to comply with the requirements in Item 5 of Form 41-101F1, the disclosure in the prospectus of an Issuer's business and/or business plan must be entity-specific and clear. Issuers should consider including this information in one section (rather than dispersed throughout the prospectus). This is important for investors to be able to clearly understand the business and/or business plan of the Issuer.

We also encourage Issuers to segregate their disclosures about the business into two parts: (i) the current business of the Issuer, describing the Issuer's current operations, if any, and stage of product/service development, and (ii) future business plans of the Issuer, describing the Issuer's anticipated business plans and milestones, including any applicable research and development.

[6] CPC means a capital pool company as such term is defined in TSXV Policy 2.4 Capital Pool Companies.

In discussing current business and future business plans, Issuers should provide disclosure on at least all the following:

Current business

- description of the product/service currently provided,
- markets in which the products/services are being offered,
- regulatory framework applicable to those products/services,
- licenses and permits obtained,
- agreements/partnerships in place with individuals and/or entities to conduct the current business (such as distribution, manufacturing, construction, research and development (R&D) agreements),

Future business plans

- identification of specific milestones in the issuer's business plans,
- for each milestone, a description of the steps and associated costs required to complete it or to take it to the next stage,
- identification of the anticipated timing of completion or timing to achieve the various stages in the business plan,
- regulatory framework applicable to these anticipated operations,
- discussion of material risk and uncertainties regarding these plans,
- if an R&D program is part of the anticipated operations, a discussion of the various stages of R&D, regulatory approvals required to achieve the objectives of the program, the activities completed to date, costs incurred to date and timing and costs anticipated to achieve the next stage.

Where business plans are preliminary in nature and there are no binding agreements, or where an Issuer currently has not commenced its execution of such plans, these facts should also be clearly disclosed in the prospectus.

In discussing future or anticipated business plans, Issuers should avoid using overly promotional language that is not based on the Issuer's current stage of development. For example, phrases such as "the largest of its type", "best in the market", or "leader in the field" should be supported by objective data that provides the Issuer with a reasonable basis on which to conclude that the statement is accurate.

In addition, Issuers should avoid disclosing FLI and long-range projections reflecting revenue, growth, and market share assumptions that appear speculative in comparison to the size and scope of the Issuer's current business plans. For example, without further information, it would appear speculative for an Issuer to forecast production targets of 50,000 units and sales of $10

million by 2024, when the production facilities have not been built. FLI must be supported by material factors and assumptions or removed from the disclosure as it may be misleading.

Further information on FLI is included throughout this Report.

IV) Promoter

The determination of whether a person or company is a promoter can be a material issue that causes delays in receipting a prospectus and closing an offering.

What factors should be considered when identifying promoters?

A promoter is defined in subsection 1(1) of the Act as a person or company who, directly or indirectly: (a) either alone or in conjunction with others, takes the initiative in founding, organizing or substantially reorganizing the business of an Issuer; or (b) receives, in consideration for services or property (or a combination of services and property) and in connection with the founding, organizing or substantial reorganizing of the business of an Issuer, 10% or more of any class of securities of the Issuer or 10% or more of the proceeds of the sale of any class of securities. The definition excludes a person or company that receives such securities or proceeds either solely as underwriting commissions or solely in consideration of property if they do not otherwise take part in founding, organizing, or substantially reorganizing the business of the Issuer.

The Ontario Court of Appeal decision in *Goldsmith* v. *National Bank of Canada*[7] considered the definition of promoter under the Act and what it means to "take the initiative" in founding, organizing or substantially reorganizing the business of an Issuer. In that case, the court held that promoters are "people and companies who exercise meaningful control over a reporting issuer's business", "[play] a driving role in founding the issuer" and "[wield] influence comparable to that of an officer and director". The court further held that "[m]erely being involved in organizing or reorganizing a business […] even if that involves important services or support" is not sufficient for promoter status and that "one must be an 'active participant', a 'driving force' behind the organization, or at the 'very heart of the issuer and the organization'".

In practice, the determination of whether a person or company is a promoter of an Issuer under clause (a) of the definition of "promoter" is highly fact-specific and depends on the role of the person or company in founding, organizing or reorganizing the Issuer and, in particular, on the level of control and influence exerted by that person or company over the Issuer. In making this assessment, Staff consider factors such as:

[7] *Goldsmith* v. *National Bank of Canada*, 2016 ONCA 22.

- the voting securities of the Issuer held by the person or company;
- the existence of other securityholders who exert legal or de facto control over the Issuer;
- in the case of an individual, whether the individual sits on the Issuer's board of directors;
- the existence of any director nomination rights;
- whether the person or company is party to a shareholder or similar agreement conferring on them other special rights, such as registration rights or pre-emptive rights;
- the size and composition of the Issuer's board of directors;
- in the case of an individual, whether the individual is an executive officer of the Issuer;
- the role of the person or company in developing or acquiring the Issuer's primary business and negotiating key agreements;
- the role of the person or company in organizing and effecting the public offering;
- whether the person or company received a significant number of founders' shares; and
- whether the person or company prepared, or was responsible for, any disclosure in the Issuer's prospectus.

This list is not exhaustive and Staff may consider other factors when determining whether a person or company is a promoter, including the substance of a person or company's relationship with the Issuer.

When does promoter status end?

While Securities Law is silent on how and when promoter status ends, subsection 58(6) of the Act permits the Director to require a person or company who was a promoter of an Issuer within the two preceding years to sign a prospectus certificate, suggesting that promoter status can end. In Staff's view, whether a promoter of an Issuer has ceased to be a promoter needs to be determined on a case-by-case basis and is contingent on a change in the particular facts and circumstances of the promoter's relationship with the Issuer. Generally, when assessing whether a person or company has ceased to be a promoter of an Issuer, Staff will consider the factors listed above to determine whether the relationship of the person or company to the Issuer has changed sufficiently to establish that the person or company is no longer a promoter of the Issuer. In Staff's view, the passage of time since the organization or reorganization of the Issuer is not, absent other factors, sufficient to establish that promoter status has ceased. Staff articulated this view in OSC Staff Notice 51-725 *Corporate Finance Branch 2014-2015 Annual Report*, OSC Staff Notice 51-730 *Corporate Finance Branch 2019 Annual Report* and OSC Staff Notice 51-731 *Corporate Finance Branch 2020 Annual Report*.

The following examples illustrate the fact-specific nature of the analysis.

Example 1

In the case of a Reporting Issuer that was formed by a spin-out transaction three years ago, where the former parent company was identified as a promoter at the time of the spin-out transaction, Staff would generally take the position that the former parent company remains a promoter if it continues to hold a controlling position in the Reporting Issuer's outstanding voting securities, or if it continues to hold director nomination rights or other special shareholder rights with respect to the Reporting Issuer.

Example 2

In the case of an Issuer that was founded 20 years ago by Person A, where Person A continues to act as the Issuer's chief executive officer, is a member of the board of directors and holds a significant number of the Issuer's outstanding voting securities, Staff would generally take the position that Person A remains a promoter of the Issuer.

Example 3

In the case of an Issuer that was founded 20 years ago by Person B, where Person B holds under 10% of the outstanding voting securities, is not a member of management, nor a member of the board of directors, and does not have any director nomination or other special shareholder rights, Staff would generally take the position that Person B is no longer a promoter of the Issuer.

In light of the fact-specific determination involved, we encourage Reporting Issuers and their counsel to engage with Staff as soon as the Reporting Issuer believes that a person or company has ceased to be a promoter, if there is any ambiguity in that determination, rather than waiting until the issue is raised on the review of a subsequent prospectus. As a best practice, once a Reporting Issuer determines that a person or company has ceased to be a promoter, Staff encourage the Reporting Issuer to indicate this change in its subsequent prospectus and, if applicable, annual information form, clearly describing the basis on which the Reporting Issuer has made its determination.

The application of the confidential pre-file process to the determination of promoter status

Subsection 58(5) of the Act provides that, if the Director consents (a Director's Consent), a promoter is not required to certify a prospectus. Historically, the Director has provided a Director's Consent when Staff and an Issuer disagree on promoter status and the person or company is signing the prospectus and assuming liability for a misrepresentation in the prospectus in another capacity. While Staff will assess each application for a Director's Consent

on a case-by-case basis when determining whether to recommend the relief, we recognize the shortcomings of providing the requested relief. In Staff's experience, the use of a Director's Consent is inefficient as it (i) requires the payment of application fees by the Issuer, (ii) consumes Issuer and Staff resources, and (iii) leaves the issue unresolved for continuous disclosure obligations, subsequent offerings and potential secondary market civil liability. We encourage Issuers undertaking a public offering to seek a confidential pre-file assessment of promoter status, using the process outlined in CSA Staff Notice 43-310 *Confidential Pre-File Review of Prospectuses (for non-investment fund issuers)*.

Staff remind Issuers that a Director's Consent, is limited to the prospectus for which the application was made. The granting of a Director's Consent is not determinative of the question of whether a promoter relationship exists. To the extent that a promoter has not ceased to be a promoter of a Reporting Issuer, all other obligations associated with having a promoter continue to apply. These obligations include the identification by the Reporting Issuer of any promoters in its annual information form, along with the disclosure indicated by Item 11 of Form 51-102F2 Annual Information Form.

V) Common at-the-market short form base shelf prospectus issues

The following table describes common issues that Staff have identified in preliminary base shelf prospectuses that qualify at-the-market distributions.

Feature	Issue	Solution
Base shelf prospectus qualifies ATM offerings and secondary offerings	Any distribution by a selling securityholder in connection with an ATM distribution under the prospectus will require exemptive relief, which would be considered novel and require consultation with the CSA.	If applicable, Reporting Issuers should specify in the prospectus that selling securityholders will not sell their securities in ATM distributions.
Base shelf prospectus qualifies the distribution of equity and non-equity securities	The definition of an "at-the-market distribution" in NI 44-102 only applies to equity securities (which is defined in NI 41-101).	Reporting Issuers should specify in the prospectus the specific equity securities that may be subject to an ATM distribution.

Feature	Issue	Solution
Base shelf prospectus qualifies ATM offerings and other primary distributions	An ATM issuer certificate form under subsection 9.5(1) of NI 44-102 should only be included in a base shelf prospectus if the base shelf prospectus is exclusively qualifying ATM distributions.	For base shelf prospectuses that qualify distributions other than ATM distributions, Reporting Issuers should comply with Item 8 of section 5.5 of NI 44-102 and the certificate requirements under Appendix A or Appendix B of NI 44-102 for the other types of distributions under the base.

VI) Prospectus lapse date

Under NI 41-101, an Issuer must not file its first amendment to a preliminary prospectus more than 90 days after the date of the receipt for the preliminary prospectus and must not file a final prospectus more than 90 days after the date of the receipt for the preliminary prospectus or an amendment to the preliminary prospectus. In addition, the final prospectus must be filed within 180 days from the date of the receipt for the preliminary prospectus.

Issuers are reminded to track the number of days that have passed since the date of the receipt of a preliminary prospectus and to file an amendment to a preliminary prospectus if it does not anticipate filing the final prospectus within 90 days of the date of the receipt for the preliminary prospectus or amendment to the preliminary prospectus. Issuers are encouraged to provide Staff with sufficient notice in advance of the lapse date to indicate their intentions with respect to the preliminary prospectus.

***Reminder**: To avoid withdrawing a preliminary prospectus, an Issuer must*

- ***file the final prospectus or an amendment to the preliminary prospectus within 90 days of the date of receipt of the preliminary prospectus, and***
- ***file the final prospectus within 180 days of the date of the receipt of the preliminary prospectus.***

If an Issuer elects to withdraw the prospectus or the prospectus lapses, Issuers are reminded to file a Notice of Withdrawal on SEDAR+ and advise Staff when completed so that SEDAR+ may be updated accordingly.

VII) Well-known seasoned issuers

On March 28, 2023, the OSC made, as a rule under the Act, OSC Rule 44-502 *Extension to Ontario Instrument 44-501 Certain Prospectus Requirements for Well-known Seasoned Issuers* (the Rule), which came into force on July 5, 2023. The Rule extends the blanket relief issued on December 6, 2021 to create a temporary well-known seasoned issuer (WKSI) regime in Canada and allows qualifying WKSIs to file a final base shelf prospectus with the OSC and obtain a receipt for that prospectus on an accelerated basis without first filing a preliminary base shelf prospectus. As of September 30, 2023, 58 Reporting Issuers have filed 63 WKSI base shelf prospectuses with Ontario acting as the principal regulator.

Please refer to 2022 Corporate Finance Branch Report for FAQs regarding base shelf prospectus filing matters in the WKSI context.

Exemptive relief applications in the context of WKSI base shelf prospectus filings

An exemption from the provisions of Securities Legislation sought in connection with the filing of a base shelf prospectus filed under Ontario Instrument 44-501 *Certain Prospectus Requirements for Well-known Seasoned Issuers* (a WKSI Base Shelf Prospectus) may only be evidenced by a decision to that effect, issued following a formal application for exemptive relief. A receipt for a WKSI Base Shelf Prospectus will not evidence the granting of an exemption as WKSI Base Shelf Prospectuses are not subject to normal-course Staff review prior to the issuance of a receipt.

VIII) Confidential prospectus pre-file review

In March 2020, Staff began accepting confidentially pre-filed prospectuses for review. We did so to provide Issuers with greater flexibility and more certainty in planning prospectus offerings, and to encourage continued capital formation during the pandemic.[8] On January 28, 2021, Staff issued a press release providing best practice guidance for confidential pre-file prospectuses. Since March 2020, we have reviewed 103 confidentially pre-filed prospectuses.

For tips and expectations on the confidential prospectus pre-files and the corresponding reviews, please refer to the information in the 2022 Corporate Finance Branch Report.

4. Exemptive Relief Applications

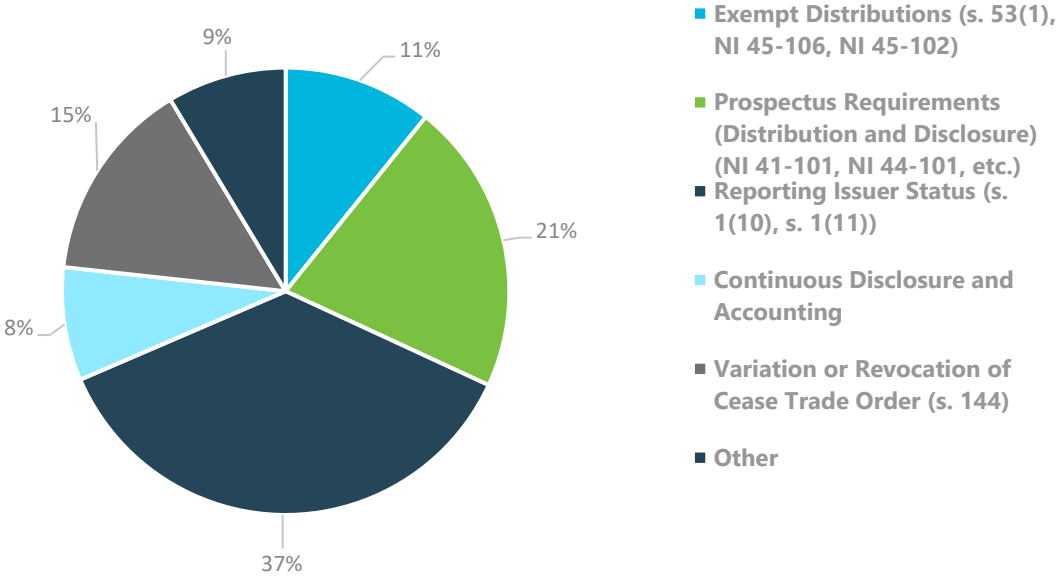
Staff review and make recommendations to appropriate decision makers on applications for exemptive relief. The review standard for granting relief varies, but it generally requires a decision maker to determine that granting the requested relief would not be prejudicial to the

[8] See CSA Staff Notice 43-310 *Confidential Pre-file Review of Prospectuses* (for non-investment fund Issuers).

public interest. For further information about the process for exemptive relief applications, please refer to NP 11-203.

In Fiscal 2023, we completed reviews of **232** applications for exemptive relief from various Securities Law requirements, 19% lower than Fiscal 2022.

Exemptive Relief Applications by Type – Fiscal 2023



A) Trends and guidance

The number of applications decreased in Fiscal 2023 compared with Fiscal 2022, with the majority of applications made in connection with relief from certain prospectus requirements and Reporting Issuer status. These two types of applications for relief have remained the most common. We will continue to monitor the types of applications we receive and the exemptive relief granted to determine whether we should consider changes to our rules or policies. Key takeaways from our exemptive relief work in Fiscal 2023 are set out below.[9]

[9] Prior OSC orders and exemptive relief decisions can be found on the OSC website or on CanLII at https://canlii.org/en/on/onsec/.

I) Threshold issues and best practices

The following is a summary of certain threshold issues and best practices to consider when submitting an application for exemptive relief. This is not an exhaustive list.

Issue	Best Practice
Principal regulator	For passport applications for exemptive relief, confirm the Issuer's principal regulator prior to submitting the application. The criteria for determining an Issuer's principal regulator are set out in section 3.6 of NP 11-203. If a passport application is submitted to a regulator that is not the Issuer's principal regulator, it will be required to be re-submitted to the Issuer's principal regulator, which will delay the review of the application. Similarly, for dual applications for exemptive relief, confirm the Issuer's principal regulator prior to submitting the application. Dual applications for exemptive relief must be submitted to the Issuer's principal regulator and to the OSC.
Requests for confidentiality	A filer requesting that the regulators hold an application and supporting materials in confidence during the application review process should provide a substantive reason for the request in the application. A filer requesting that the regulators hold the application, supporting materials and decision in confidence after the effective date of the decision should describe the request for confidentiality separately in its application and pay any required fee. Staff will generally not recommend that an application, supporting materials and decision be held in confidence beyond completion of the related transaction or beyond 90 days from the date of the decision. Any request for confidentiality should explain why the request is reasonable in the circumstances and not prejudicial to the public interest, and when any decision granting confidentiality could expire. Please see section 5.4 of NP 11-203.
Precedent decisions	An application for exemptive relief should include the name(s) of any precedent decisions granting similar relief. If there are no precedent

Issue	Best Practice
	decisions granting similar relief, the relief may be considered novel and require consultation with the CSA, extending the application review process.
Draft decision document	Filers are reminded to include a draft form of decision with any application for exemptive relief. The draft form of decision should include: (i) a representation that the filer and other relevant party are not in default of securities legislation in any jurisdiction or, if the filer or other relevant party is in default, the nature of the default; and (ii) resale restrictions, if applicable, based on the securities legislation and securities directions of the principal jurisdiction. The draft form of decision should be submitted in an easily editable format (and not, for example, in PDF format) to facilitate Staff's review.
Application for revocation of a cease trade order – fees	A filer submitting an application for the revocation of a cease trade order will be required to pay all outstanding fees to each CSA regulator in whose jurisdiction the filer is a Reporting Issuer. Outstanding fees generally include, where applicable, all activity and participation fees, and late filing fees. Depending on how long the cease trade order has been in effect, and whether the Reporting Issuer filed documents in a timely manner, the amount of outstanding fees can be considerable. Before submitting an application, the filer should contact each relevant CSA regulator to confirm the fees that will be payable. *Late Document Fees for Participation Fee Forms* In Ontario, pursuant to former OSC Rule 13-502 *Fees*, late document filing fees of $100 per day (to a maximum of $5,000 per calendar year) are due for the late filing of participation fee forms that were due before April 3, 2023. However, pursuant to new OSC Rule 13-502 *Fees*, which came into force on April 3, 2023, late document fees will not be charged for the late filing of participation fee forms due on or after April 2, 2023.

5. Insider Reporting

For further information about the insider reporting compliance program, refer to Appendix A of this Report. Further guidance on insider reporting can be found in the 2022 Corporate Finance Branch Report and on the OSC's website.

A) Insider reporting FAQs

I) When do I need to file my insider reports on SEDI?

- If you beneficially own (or have, or share, direct or indirect control or direction over) securities or related financial instruments of a SEDI issuer, **within 10 calendar days** of first becoming an insider required by Securities Law to file insider reports,
- If you are already a reporting insider of a SEDI issuer, **within five calendar days** of:
  - the date of any change in your ownership of, or control or direction over, securities of the SEDI issuer; and
  - the date of any change in your interest in, or right or obligation associated with, a related financial instrument involving a security of the SEDI issuer.

II) How does an issuer, that is an insider, report transactions under a normal course issuer bid?

Under NI 55-104, a Reporting Issuer can report acquisitions in connection with normal course issuer bids (as defined in NI 55-104) within 10 calendar days of the end of the month in which the acquisitions occurred, as opposed to within five calendar days of the transaction. NI 55-104 requires you to report each acquisition.

We recommend that you report transactions under a normal course issuer bid within 10 calendar days of the end of the month, in the following manner.

Step 1:

Report each acquisition of securities that took place under the normal course issuer bid as a separate transaction, with the appropriate nature of transaction code 38 - *Redemption/retraction/cancellation/repurchase*.

Step 2:

Report each cancellation of securities acquired under the normal course issuer bid as a separate transaction using the relevant nature of transaction code 38 – *Redemption/retraction/cancellation/repurchase.*

Staff have observed that many filers are using code 10 – Acquisition or disposition in the public market instead of code 38 – Redemption/retraction/cancellation/repurchase.

III) How do I report a change in the exercise price of options (repricing of options)?

When options are repriced, report two transactions:

- a disposition for the cancellation of options (code 38)
- an acquisition for the grant of new options with the new exercise price (code 50)
- the "general remarks" field can be utilized to indicate additional information relating to the repricing of the options.

IV) If I am no longer a reporting insider, what do I have to do on SEDI?

Generally, you no longer need to file insider reports in respect of securities you hold in the Issuer once you have ceased to be an insider, provided that you have reported all transactions that took place while you were an insider. **However, you must record the date you ceased to be an insider in SEDI by amending your Insider Profile.**

V) How do I report a change of ownership?

To amend an Ownership Type and/or Registered Holder:

1. click **Amend holder**
2. Select **ownership type and registered holder** screen opens.
3. Select appropriate option (direct, indirect, control or direction)

VI) What is the benefit of filing an issuer grant report?

If a Reporting Issuer files an issuer grant report within five calendar days of a grant, award or issue of securities or related financial instruments, the reporting insiders named in the issuer grant report can report the grant on a deferred basis. Instead of reporting the grant within the usual five-calendar day reporting timeframe, the reporting insiders have until March 31 of the next calendar year to report the grant or award.

Staff have observed that Reporting Issuers are, in many cases, not taking advantage of this extended timeline by filing an issuer grant report.

6. Administrative Matters

A) Filing and delivering documents to the OSC

Certain applications for exemptive relief, and pre-files, are required to be filed through SEDAR+. In general, an application filed by an Issuer will likely be required to be filed through SEDAR+, including an application that includes a request for relief from the prospectus requirement even if other types of relief are also requested. For specifics of which applications are required to be filed through SEDAR+, a filer should refer to NI 13-103.

The application will be made public on SEDAR+ after a decision has been issued, subject to any request for confidentiality that was granted.

Issuers that are not Reporting Issuers are generally required to file or deliver documents to the OSC through SEDAR+, unless there is an available exemption from the requirements in NI 13-103.

An Issuer that was previously a "foreign issuer (SEDAR)" under NI 13-101 must file its continuous disclosure filings through SEDAR+ as there is no similar exception in NI 13-103.

Reminder: Each time an Issuer transmits a document through SEDAR+, it should ensure the information in its SEDAR+ profile is accurate. Issuers must update their SEDAR+ profile within 10 days after information becomes inaccurate or, if earlier, at the next time they transmit a document through SEDAR+.

B) Submitting participation fee forms on SEDAR+

Under OSC Rule 13-502 *Fees*, if a Reporting Issuer files its annual financial statements before they are due, the participation fee must also be paid on the same date. If the participation fee is not paid at the same time the annual financial statements are filed, late fees will be applied starting from the date that the annual financial statements were filed.

The process of submitting participation fee forms has been updated. Now, participation fee forms are web forms directly integrated into SEDAR+.

Once a Reporting Issuer has finalized the submission of its annual financial statements in SEDAR+, the confirmation page will present a 'Create participation fee form' link. This link will be visible solely if the recipient agency is Ontario and/or Alberta, on the 'Filing and contact details' page. Alternatively, a Reporting Issuer can directly choose 'Create Participation fee form' from the 'Annual' sub-menu located under the Continuous Disclosure sub-menu.

Specifically, participation fee forms are only required for Alberta and Ontario. If a Reporting Issuer is filing in both of these jurisdictions, it will only need to input the information once, and the information will automatically appear on both forms. It is important to accurately enter the previous financial year. The fees due will be calculated by SEDAR+ upon submission. Subsequently, SEDAR+ will generate a PDF version of the participation fee form, which will be publicly accessible under the "Documents" section of the Issuer's profile.

Additionally, it is important to note that filers cannot revise or maintain a previously submitted participation fee form. Instead, a filer should initiate a new filing and re-enter the necessary information. To avoid repaying the fees, filers can request a fee exception code. Alternatively, if a filer chooses to repay the fees, the filer can later request a refund by sending an email to finrepnotifications@osc.gov.on.ca. However, **Staff encourage filers to request an exception code in this circumstance**.

For participation fee underpayments, an outstanding fee entry will be created in SEDAR+.

Important Links

SEDAR+ landing page: https://www.sedarplus.ca/landingpage/

FAQs about CD filings: https://www.sedarplus.ca/onlinehelp/filings/continuous-disclosure-filings/

FAQS about fees: https://www.sedarplus.ca/onlinehelp/fees-payments-and-refunds/faqs-about-fees/

C) SEDAR+ failed electronic funds transfers (EFTs) and outstanding fees in multiple jurisdictions

In situations involving failed Electronic Funds Transfers (EFTs) in SEDAR+ across multiple jurisdictions, a coordinated process has been established to ensure a smooth resolution regarding outstanding regulatory fees and system fees.

- **Notification From CSA Service Desk**: In the event of a rejected payment, the CSA Service Desk (CSA SD) will send a notification to the filer. This notification will provide details about outstanding regulatory fees for each recipient agency and the applicable system fee.
- **Centralized Communication**: The OSC will not contact the filer separately regarding outstanding fees. To streamline communication, the CSA SD's notification will be the single point of contact with the filer.

- **Action Within 48 Hours**: For any rejected payment, each applicable recipient agency will create an outstanding fee within 48 hours. The CSA SD will also create an outstanding system fee, if relevant.
- **Timely Notification**: Shortly after the outstanding fees have been created, an email will be sent by the CSA SD to the filer. This email will confirm that recipient agencies have created outstanding fees, including the system fee, if applicable.

In cases where the failed EFT is exclusive to the OSC or an outstanding fee has not been paid to the OSC, the OSC will contact the filer directly.

D) Requesting SEDAR+ fee exception codes for multiple jurisdictions

When seeking one-time fee exception codes from multiple jurisdictions for a single filing, filers are advised to contact the CSA SD to obtain the necessary fee exception codes. The CSA SD will facilitate coordination with the relevant jurisdictions and provide the required exception codes in a consolidated email.

In the subject line of the email to the CSA SD, indicate: "Request for SEDAR+ regulatory fee exception code - <Enter impacted filing type>" In the email body, include the following information:

- Issuer name
- Profile number
- Filing number
- Filer contact name
- Filer contact email address
- List of jurisdictions requiring a fee exception code
- Reason for needing the fee exception code

If the request is approved, the CSA SD will respond with fee exception codes for each jurisdiction requested.

In cases where fee exception codes are exclusive to the OSC the filer should email the OSC directly.

E) Filing annual financial statements under the offering memorandum exemption

Issuers that rely on the offering memorandum prospectus exemption in Ontario are subject to ongoing obligations as outlined in section 2.9 of NI 45-106. Generally, under subsection 2.9(17.5) of NI 45-106, Issuers must deliver annual financial statements (AFS) to the securities regulatory authority within 120 days after the end of each financial year. The AFS are required to be audited and prepared according to International Financial Reporting Standards (IFRS). The

AFS must be accompanied by a notice detailing the use of proceeds raised under the exemption in accordance with Form 45-106F16 *Notice of Use of Proceeds*. For more information, refer to subsections 2.9(17.5) to (17.19) of NI 45-106. Both the AFS and Notice of Use of Proceeds must be filed on SEDAR+. To file the AFS, use the filing category "Exempt Market Offerings" with the filing type as "Annual financial statements for non-reporting issuers." The Notice of Use of Proceeds should be filed concurrently under the same filing category with the filing type as "Notice of use of proceeds."

Please note that OSC Rule 13-502 *Fees* provides details on applicable late filing fees for AFS in Appendix G, Row A(a).

F) Prospectus filings – timing

Reminder: A preliminary prospectus, together with all accompanying materials in acceptable form, should be filed before 12:00 noon on the day that the receipt is required. If materials are filed after 12:00 noon, the receipt will generally be issued before 12:00 noon on the next business day and dated as of that day.

If Issuers anticipate filing a preliminary prospectus within a reasonable period of time after 12:00 noon (ET) (or 3:00 p.m. (ET) for a bought deal prospectus) and need a receipt issued that day, they should advise the Prospectus Review Officer by email at prospectusreviewofficer@osc.gov.on.ca and explain the reason for not filing before the applicable deadline. We will attempt to accommodate these requests but can provide no assurance that a receipt will be issued on the same day.

Where an Issuer plans to conduct an overnight marketed deal, the Issuer should: (a) advise the Prospectus Review Officer by email no later than the morning of the day on which the receipt is required (but prior to filing the materials), and (b) file all materials in acceptable form before 12:00 noon (ET) that day. In such cases, we will make reasonable efforts to issue a receipt for the preliminary prospectus at or just after 4:00 p.m. (ET) on the day of the filing.

We sometimes receive requests to issue a receipt for a preliminary prospectus at a specific time of the day. In rare circumstances, Staff may accommodate this request where the Issuer can demonstrate that there would be a material adverse consequence to the Issuer if a preliminary receipt is not issued at the specific time. The Issuer should make such a request, along with reasons in its cover letter accompanying the filing of the preliminary prospectus. The cover letter should also acknowledge that the Issuer bears the risk of the receipt being issued at a time other than the requested time. The Issuer should note that we cannot guarantee that the request will be satisfied and it is possible that the receipt will be issued at a time other than the requested time.

Part B: Responsive Regulation

1. Access Model

2. Continuous Disclosure Requirements

3. Listed Issuer Financing Exemption

4. Diversity

5. Climate-Related Disclosures

6. Exchanges

7. Well-known Seasoned Issuers

8. Offering Memorandum Prospectus Exemption

9. Self-Certified Investor Prospectus Exemption

10. Majority Voting Blanket Order

11. Benchmarks

12. NI 43-101 Consultation Paper

1. Access Model

On April 7, 2022, the CSA published proposed amendments to implement an access model for certain prospectuses, annual financial statements, interim financial reports and related MD&A of non-investment fund Reporting Issuers. The comment period ended on July 6, 2022 and the CSA received 29 comment letters.

Under the proposed access model, investors retain the ability to receive electronic or paper copies of these documents on request or pursuant to standing instructions. To support proper implementation of the proposed access model in Ontario, the Act was amended in the fall of 2022 to permit a document that is required to be delivered, forwarded, distributed or sent to a person or company under certain provisions of the Act to be made available in another way instead.

The feedback in respect of the proposed access model for prospectuses was generally supportive. The CSA is in the process of revising the proposed amendments to reflect certain of the comments received and to improve or clarify the access procedures. Provided all necessary approvals are obtained, final amendments to implement an access model for prospectuses, generally, are expected to be published this winter.

Following the feedback received on the proposed access model for annual financial statements, interim financial reports and related MD&A, the CSA is further considering ways to enhance the access model for these documents to address investor protection concerns, including potential negative effects on retail investors. Provided all necessary approvals are obtained, the CSA also expects to publish, for a second comment period, proposed amendments to implement an access model for annual financial statements, interim financial reports and related MD&A to allow stakeholders an opportunity to evaluate and comment on the revised proposal.

2. Continuous Disclosure Requirements

On May 20, 2021, the CSA proposed changes to modernize the CD requirements for non-investment fund Reporting Issuers. The comment period ended on September 17, 2021 and the CSA received 36 comment letters.

The proposed changes:

- streamline and clarify certain disclosure requirements in the MD&A and AIF;
- eliminate certain requirements that are redundant or no longer applicable;
- combine the financial statements, MD&A and, where applicable, AIF into one reporting document called the annual disclosure statement for annual reporting purposes, and the interim disclosure statement for interim reporting purposes;

- introduce a small number of new requirements to address gaps in disclosure.

The feedback in respect of the proposed changes to streamline and clarify annual and interim filings was generally supportive.

Together with the CSA, we believe that the goals of streamlining disclosure requirements and reducing the regulatory burden for Reporting Issuers, while maintaining strong investor protection, would be best achieved when combined with a model for electronic access to information. Therefore, we expect that any access model that is eventually adopted would apply to the proposed annual and interim disclosure statements. Until work on the access model advances, the CSA does not anticipate implementing the amendments that would introduce the annual and interim disclosure statements. Further, in deciding on the timing for implementing any of the CD modernization proposals, we will ensure Reporting Issuers are provided with sufficient time to transition to any new forms and requirements.

3. Listed Issuer Financing Exemption

On September 8, 2022, the CSA published amendments to NI 45-106 to introduce a new prospectus exemption, the listed Issuer financing exemption, that came into force on November 21, 2022. The exemption allows a Reporting Issuer to distribute freely tradeable securities of a type that trades on a Canadian stock exchange to any class of investor, primarily based on its CD record. The exemption is expected to reduce costs for Reporting Issuers raising capital through the public markets. It also allows Reporting Issuers greater access to retail investors and provides retail investors with a broader choice of investments.

The exemption is available to a Reporting Issuer that has been a Reporting Issuer for at least 12 months, is listed on a Canadian stock exchange and has filed all CD documents required under Canadian securities law. An eligible Reporting Issuer must file a short offering document to supplement and confirm the accuracy of its CD record. Under the exemption, a Reporting Issuer could raise up to the greater of $5 million or 10 per cent of its market capitalization, to a maximum of $10 million, annually. More significant transactions that could affect a Reporting Issuer's overall business will continue to require the use of a prospectus or other available prospectus exemption. In Fiscal 2023, eight Reporting Issuers used the exemption, with another ten using the exemption in the quarter ended June 30, 2023.

4. Diversity

On April 13, 2023, the CSA published CSA Notice and Request for Comment – Proposed Amendments to Form 58-101F1 Corporate Governance Disclosure of National Instrument 58-101 Disclosure of Corporate Governance Practices and proposed changes to National Policy 58-201 Corporate Governance Guidelines pertaining to the director nomination process, board

renewal, and diversity (the Proposed Amendments). The Proposed Amendments contemplate disclosure on aspects of diversity beyond the representation of women while retaining the current disclosure requirements with respect to women.

During the comment period, we performed extensive stakeholder consultations related to the Proposed Amendments. Stakeholders voiced support for expanding the current disclosure requirements to also consider other underrepresented groups beyond women. Stakeholders are actively seeking information about the representation of other diverse and underrepresented groups on boards and in executive officer positions, to support their investment and voting decisions.

The main objectives of the Proposed Amendments are to:

- increase transparency about diversity, including diversity beyond women, on boards and in executive officer positions;
- provide investors with more decision-useful and comparable information that enables them to better understand how diversity ties into a Reporting Issuer's strategic decisions;
- ensure investors have the information they need to make informed investment and voting decisions;
- provide guidance to issuers on corporate governance practices pertaining to diversity.

The Proposed Amendments contain two different proposals for how these objectives may be achieved:

- Form A together with Policy A is based on a view that securities regulators should not select categories of diversity, other than women, preferring to leave to a Reporting Issuer's determination which aspects of diversity are most beneficial to that issuer in advancing its business and strategy. As a result, under Form A, Reporting Issuers are not required to disclose any representation data (beyond women) unless they choose to collect such data and therefore, under this approach, no additional diversity data may be reported.
- Form B together with Policy B contemplates mandatory reporting on the representation of five designated groups, being women, Indigenous peoples, racialized persons, persons with disabilities and LGBTQ2SI+ persons, on boards and in executive officer positions. Form B's approach is consistent with the approach followed by the *Canadian Business Corporations Act* (CBCA).
- The key difference between Form A and Form B is that Form B mandates disclosure on certain defined and historically underrepresented groups. As a result, Form B would

result in the consistent availability of representation data that would be comparable across all TSX issuers.

- Form A and Form B are generally harmonized with respect to proposed requirements on the director nomination process and Board renewal.

On October 5, 2023, findings from the ninth annual review of disclosure related to women on boards and in executive officer positions were published in CSA Multilateral Staff Notice 58-316 *Review of Disclosure Regarding Women on Boards and in Executive Officer Positions (Year 9 Report)*, together with the underlying data.

5. Climate-related disclosures

Climate-related disclosures continues to be an evolving area, with several developments both domestically and internationally, as noted below. We wish to remind Issuers in the interim that climate-related risks are a mainstream business issue. Issuers should consider these risks as part of their ongoing risk management and disclosure processes and should disclose any such risks that are material to their business. Please see CSA Staff Notice 51-358 *Reporting of Climate Change-related Risks* for more information.

On October 18, 2021, the CSA published for comment National Instrument 51-107 *Disclosure of Climate-related Matters* to address the need for more consistent and comparable climate-related information to help inform investment decisions. The comment period closed on February 16, 2022 and we received 131 comment letters in response to this consultation. On October 12, 2022, the CSA issued a news release noting that it is actively considering international developments, including the proposals published by the International Sustainability Standards Board (ISSB), established by the IFRS Foundation, and proposed rule amendments for climate-related information published by the United States Securities and Exchange Commission.

The ISSB published final versions of its first two sustainability disclosure standards on June 26, 2023: IFRS S1 *General Requirements for Disclosure of Sustainability-related Financial Information* and IFRS S2 *Climate-related Disclosures*. The Canadian Sustainability Standards Board (CSSB) also announced on June 26, 2023 that it is operational, having appointed a quorum of members. The CSA released a statement on July 5 welcoming the publication of the ISSB final standards and the operationalization of the CSSB. The statement also noted that CSA staff intend to conduct further consultations to adopt disclosure standards based on the ISSB standards, with any necessary modifications for the Canadian context.

The OSC continues to be involved with IOSCO's Sustainable Finance Task Force (STF), established in 2020 to carry out work to improve the consistency, comparability and reliability of sustainability-related disclosures. OSC staff have been involved in the work of the IOSCO STF Corporate Reporting Workstream, which assessed the ISSB standards, leading to IOSCO's

endorsement of the final ISSB standards on July 25, 2023**.** The IFRS Foundation responded to IOSCO's endorsement, also on July 25, 2023, and published a high-level roadmap providing transparency around the IFRS Foundation and ISSB's strategy to support jurisdictional adoption. This document is a precursor to an Adoption Guide for regulators, which is expected to be finalized later in 2023.

6. Exchanges

A) CSE policy amendments

Following a review by Staff and staff of the British Columbia Securities Commission (BCSC), the OSC approved significant amendments to the policies of the CSE, which have since been adopted by the CSE.

The policy amendments include provisions to: (i) introduce additional corporate governance requirements which are consistent with those of other Canadian exchanges; (ii) create a senior tier (Senior Tier) with initial and continued listing requirements in line with that of a non-venture exchange; and (iii) introduce a Special Purpose Acquisition Corporations programme and Exchange Traded Fund programme on the Senior Tier.

The amended CSE policies also clarify that CSE's Listing Statement must include the disclosure required in Form 41-101F1, and sets out the circumstances for which that disclosure requirement may be met by the incorporation of existing disclosure documents such as a prospectus or Form 51-102F5 *Information Circular*.

B) CSE Senior Tier

Reporting Issuers on the Senior Tier will be designated as "NV Issuers" and identified as such on CSE's website. Existing CSE-listed Reporting Issuers will be designated as NV Issuers if they meet specific qualifications and consent to being listed on the Senior Tier.

Although the intent of the CSE is for the Senior Tier to be a non-venture tier, NV Issuers, by virtue of the definition of Venture Issuer in NI 51-102, will be Venture Issuers until the definition is amended to exclude NV Issuers from the definition.

Until the definition is amended, the CSE's practice is to require NV Issuers to execute an undertaking agreeing to comply with securities legislation requirements applicable to non-Venture Issuers.

7. Well-known Seasoned Issuers

On March 28, 2023, the OSC made, as a rule under the Act, OSC Rule 44-502 *Extension to Ontario Instrument 44-501 Certain Prospectus Requirements for Well-known Seasoned Issuers* (the Rule), which came into force on July 5, 2023. The Rule extends the blanket relief issued on December 6, 2021, by Ontario Instrument 44-501 *Certain Prospectus Requirements for Well-known Seasoned Issuers* (Interim Class Order) (the OSC Blanket Order) by 18 months, until January 4, 2025.

The OSC Blanket Order allows a Reporting Issuer that meets the WKSI qualifications and certain conditions to file a final base shelf prospectus with the OSC and obtain a receipt for that prospectus on an accelerated basis without first filing a preliminary base shelf prospectus. The OSC Blanket Order was implemented as a pilot program, to provide an opportunity to evaluate the appropriateness of the eligibility criteria and identify any potential public interest concerns or operational considerations that should be addressed in future rule amendments.

On September 21, 2023, the CSA published proposed rule amendments to create a permanent WKSI regime in Canada. The proposed rule amendments would enhance the WKSI regime by removing the requirement for a receipt to be manually issued and would increase the degree of harmonization with the rules applicable in the United States. Under the proposed rule amendments, upon the filing of either a WKSI base shelf prospectus or of an amendment to a WKSI base shelf prospectus, in both cases, in compliance with all requirements, a receipt would be deemed to be issued in all jurisdictions in Canada where the prospectus has been filed. A receipt deemed to be issued for a WKSI base shelf prospectus would generally be effective for a period of 37 months from the date of its deemed issuance, subject to the requirement for the Reporting Issuer to reassess its qualification to use the WKSI regime annually.

The comment period for the proposed rule amendments closes on December 20, 2023.

8. Offering Memorandum Prospectus Exemption

On March 8, 2023, amendments to the offering memorandum (OM) prospectus exemption came into force. The amendments set out new disclosure requirements for Issuers that are engaged in "real estate activities" and Issuers that are "collective investment vehicles, when those Issuers are preparing an OM, and also include a number of general amendments, which are meant to clarify or streamline parts of NI 45-106 or improve disclosure for investors.

In addition, the amendments include an appraisal requirement for Issuers engaged in real estate activities in certain circumstances and, in Ontario, a requirement for Issuers in continuous distribution to amend their OM to include an interim financial report for the Issuer's most

recently completed six-month period unless the Issuer appends an additional certificate to the OM certifying all of the following:

- the OM does not include a misrepresentation when read as of the date of the additional certificate,
- there has been no material change in relation to the Issuer that is not disclosed in the OM, and
- the OM, when read as of the date of the additional certificate, provides a reasonable purchaser with sufficient information to make an informed investment decision.

9. Self-Certified Investor Prospectus Exemption

On October 25, 2022, the OSC published Ontario Instrument 45-507 *Self-Certified Investor Prospectus Exemption* (Interim Class Order) that introduced, on a time-limited basis, a new prospectus exemption that allows investors in Ontario who can adequately assess and understand the risk of investment and who meet certain other conditions (but who may not meet any of the accredited investor criteria or who are subject to investment limits under other prospectus exemptions) to invest in non-investment fund Issuers with a head office in Ontario.

To make use of the prospectus exemption, investors must certify that they have met at least one qualifying criteria and review and complete a risk acknowledgment form confirming they understand the risks of investing. The aggregate acquisition cost of all securities acquired by an investor, and any permitted designates, under the interim class order in a calendar year may not exceed $30,000.

Issuers must report the use of the self-certified prospectus exemption by filing reports of exempt distribution. The OSC is using this data to monitor the use of the prospectus exemption and to inform future policymaking.

10. Majority Voting Blanket Order

On January 31, 2023, the CSA published an exemption from the director election form of proxy requirement in subsection 9.4(6) of NI 51-102 for Reporting Issuers incorporated under the CBCA in respect of the uncontested election of directors. The CSA implemented the relief through CSA Blanket Order 51-930 *Exemption From the Director Election Form of Proxy Requirement*.

Reporting issuers incorporated under the CBCA must send a form of proxy to shareholders when giving notice of a shareholder meeting. Before August 31, 2022, CBCA-incorporated Reporting Issuers were generally required to provide an option for shareholders to vote "for"

director candidates or to "withhold" their shares from voting. This requirement aligned with the requirement in subsection 9.4(6) of NI 51-102 that a form of proxy sent to securityholders of a Reporting Issuer provide an option for the securityholder to specify that the securities registered in the name of the securityholder must be voted or withheld from voting in respect of the election of directors.

On August 31, 2022, amendments to the CBCA and the *Canada Business Corporations Regulations, 2001* (CBCR) (the Majority Voting Amendments) came into effect that generally require "majority voting" for each candidate nominated for director in uncontested director elections of CBCA-incorporated Reporting Issuers. Pursuant to subsection 149(1) of the CBCA and subsection 54.1(2) of the CBCR, where the Majority Voting Amendments apply, the form of proxy must provide shareholders with the option to specify whether their vote is to be cast "for" or "against" each candidate nominated for director, rather than "voted" or "withheld" from voting as required by subsection 9.4(6) of NI 51-102.

Some stakeholders raised concerns about the discrepancy between these requirements in terms of voting options to be provided to shareholders of CBCA-incorporated Reporting Issuers. The blanket order aims to respond to this concern by exempting CBCA-incorporated Reporting Issuers from the requirement to specify that securities be voted or withheld from voting in respect of the election of directors, as required by subsection 9.4(6) of NI 51-102, where the Reporting Issuers comply with Majority Voting Amendments.

In Ontario, the blanket order will remain in effect until July 31, 2024, unless extended.

The CSA is considering whether future proposed amendments to subsection 9.4(6) of NI 51-102 are appropriate. Subject to obtaining all necessary approvals, any such proposed amendments would be adopted by the CSA through the normal rule-making procedures on a coordinated basis.

11. Benchmarks

A) Cessation of CDOR

On February 23, 2023, the CSA issued CSA Staff Notice 25-309 *Matters Relating to the Cessation of CDOR and Expected Cessation of Bankers' Acceptances*. The purpose of the notice was to help ensure that market participants are aware of certain developments and transition issues regarding the upcoming cessation of CDOR on June 28, 2024 and the expected related cessation of the issuance of Bankers' Acceptances (BAs). The notice:

- provided market participants with information on alternative rates, transition arrangements for new and existing instruments and fallback language, and

- encouraged market participants to make appropriate transition arrangements well in advance of the cessation date to prevent business and market disruptions.

B) Commodity benchmarks

On June 29, 2023, the CSA published final amendments to MI 25-102 to establish a regime for the designation and regulation of commodity benchmarks and those that administer them. The final amendments came into force on September 27, 2023.

12. NI 43-101 Consultation Paper

On April 14, 2022, the CSA published Consultation Paper 43-401 *Consultation on National Instrument 43-101 Standards of Disclosure for Mineral Projects* seeking comments on Canada's standards for disclosing scientific and technical information about mineral projects as the CSA considers ways to update and enhance mining disclosure requirements. The comment period closed on September 13, 2022. We received a total of 85 comment letters from various market participants, including Reporting Issuers, individuals, consulting and law firms, regulatory organizations, and advocacy groups, including groups representing Indigenous Peoples. The CSA also conducted targeted consultations with stakeholders to better inform its work. The CSA is considering the feedback received.

Part C: Resources

1. Prior Year Corporate Finance Branch Reports

2. OSC Website

3. Service Commitments

4. Key Staff Notices

5. SME Institute

6. Staff Contact Information

1. Prior Year Corporate Finance Branch Reports

Many topics discussed in previous Branch reports remain relevant. These reports continue to be valuable resources for Issuers and their advisors to consult when preparing an Issuer's continuous disclosure or prospectus.

OSC Staff Notice 51-734 *Corporate Finance Branch 2022 Annual Report*

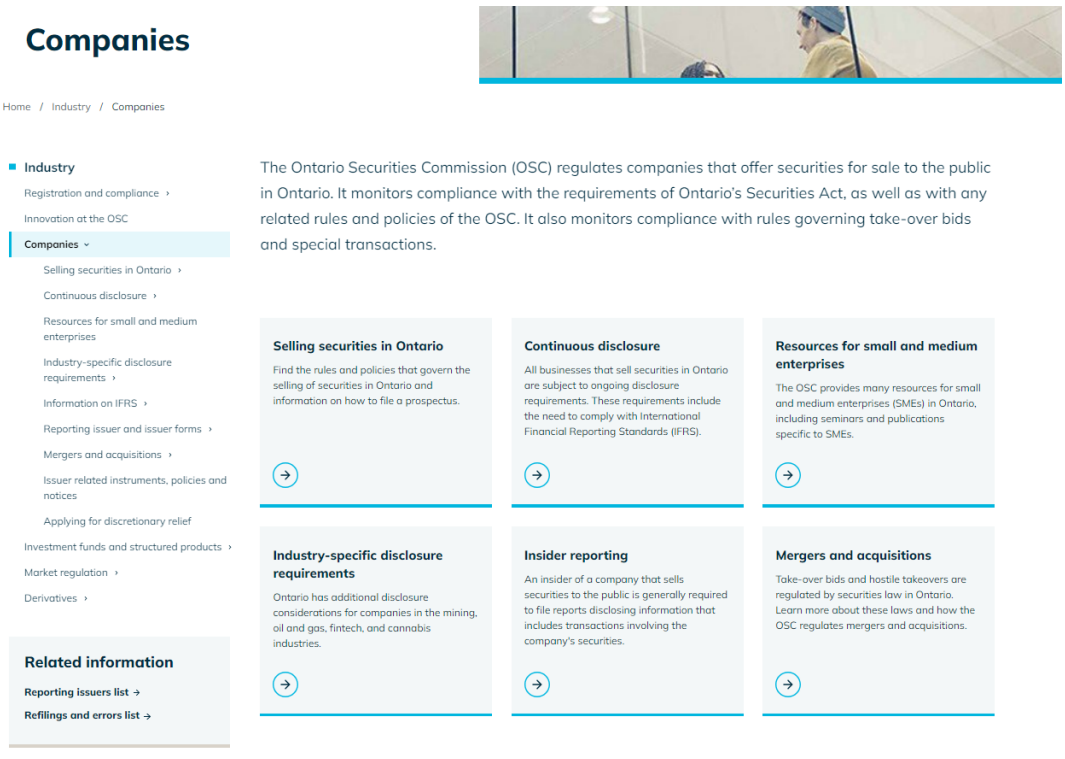
OSC Staff Notice 51-732 *Corporate Finance Branch 2021 Annual Report*

OSC Staff Notice 51-731 *Corporate Finance Branch 2020 Annual Report*

OSC Staff Notice 51-730 *Corporate Finance Branch 2019 Annual Report*

2. OSC Website

The Corporate Finance section of the OSC's website provides an outline for Issuers on how to comply with Securities Law and file certain documents with the OSC. In particular, it provides resources for selling securities in Ontario, continuous disclosure, industry-specific disclosure requirements, insider reporting, etc. Please refer to the Companies webpage on the OSC website.



3. Service Commitments

For Issuers filing a confidential pre-file prospectus, preliminary prospectus or exemptive relief application, please refer to our service commitments on the OSC website for information on our timeframes to respond to inquiries, issue comment letters and complete our reviews.

Please refer to the 2022 Corporate Finance Branch Report for additional information.

4. Key Staff Notices

A) New staff notices

Topic	Reference
Exempt Market	• OSC *Staff Notice 45-718 Ontario's Exempt Market A Review of capital raised in Ontario through prospectus exemptions*
Diversity	• *CSA Multilateral Staff Notice 58-316 – Report on Eighth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions*
Crypto Industry	• *CSA SN 21-332 Crypto Asset Trading Platforms: Pre-Registration Undertakings-Changes to Enhance Canadian Investor Protection*

B) Previous staff notices

Topic	Reference
Prospectus Practice Directives	• CSA Staff Notice 41-307 (Revised) *Corporate Finance Prospectus Guidance – Concerns Regarding an Issuer's Financial Condition and the Sufficiency of Proceeds from a Prospectus Offering* • OSC Staff Notice 41-702 – *Prospectus Practice Directive #1 – Personal Information Forms and Other*

	Procedural Matters Regarding Preliminary Prospectus Filings • OSC Staff Notice 41-703 – *Corporate Finance Prospectus Practice Directive #2 – Exemption from Certain Prospectus Requirements to be Evidenced by a Receipt*
Pre-File Reviews	• CSA Staff Notice 43-310 – *Confidential Pre-File Review of Prospectuses (for non-investment fund issuers)* • OSC Staff Notice 43-706 – *Pre-filing Review of Mining Technical Disclosure*
Disclosure Obligations	• CSA Multilateral Staff Notice 51-364 – *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2022 and March 31, 2021* • OSC Staff Notice 51-711 (Revised) – *Refilings and Corrections of Errors* • OSC Staff Notice 51-723 – *Report on Staff's Review of Related Party Transaction Disclosure and Guidance on Best Practices* • CSA Multilateral Staff Notice 51-361 *Continuous Disclosure Review Program Activities for the fiscal years ended March 31, 2020 and March 31, 2019*
Forward-Looking Information	• OSC Staff Notice 51-721 – *Forward-Looking Information Disclosure* • CSA Staff Notice 51-356 – *Problematic promotional activities by issuers*
Industries	• CSA Staff Notice 51-363 *Observations on Disclosure by Crypto Assets Reporting Issuers* • CSA Staff Notice 55-317 *Automatic Securities Disposition Plans*

	• CSA Staff Notice 43-307 – *Mining Technical Reports – Preliminary Economic Assessments* • CSA Staff Notice 43-309 – *Review of Website Investor Presentations by Mining Issuers* • CSA Staff Notice 43-311 – *Review of Mineral Resource Estimates in Technical Reports* • CSA Staff Notice 51-327 – *Revised Guidance on Oil and Gas Disclosure* • CSA Staff Notice 51-342 – *Staff Review of Issuers Entering Into Medical Marijuana Business Opportunities* • CSA Multilateral Staff Notice 51-349 – *Report on the Review of Investment Entities and Guide for Disclosure Improvements* • CSA Staff Notice 51-352 (Revised) – *Issuers with U.S. Marijuana-Related Activities* • CSA Staff Notice 51-357 – *Staff Review of Reporting Issuers in the Cannabis Industry* • OSC Staff Notice 51-719 – *Emerging Market Issuer Review* • OSC Staff Notice 51-720 – *Issuer Guide for Companies Operating in Emerging Markets* • OSC Staff Notice 51-722 – *Report on a Review of Mining Issuers' Management's Discussion and Analysis and Guidance* • OSC Staff Notice 51-724 – *Report on Staff's Review of REIT Distributions Disclosure*
Insider Reporting and SEDI	• OSC Staff Notice 51-726 – *Report on Staff's Review of Insider Reporting and User Guides for Insiders and Issuers*

	• CSA Staff Notice 55-316 – *Questions and Answers on Insider Reporting and the System for Electronic Disclosure by Insiders (SEDI)*
Use of the Internet and Cyber Security	• CSA Multilateral Staff Notice 51-347 – *Disclosure of cyber security risks and incidents* • CSA Staff Notice 51-348 – *Staff's Review of Social Media Used by Reporting Issuers*
Corporate Governance	• *CSA Multilateral Staff Notice 58-314 – Report on Eighth Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* • CSA Multilateral Staff Notice 58-313 – *Report on Seventh Staff Review of Disclosure regarding Women on Boards and in Executive Officer Positions* • CSA Multilateral Staff Notice 51-359 *Corporate Governance Related Disclosure Expectations for Reporting Issuers in the Cannabis Industry*
COVID-19	• CSA Staff Notice 51-362 *Staff Review of COVID-19 Disclosures and Guide for Disclosure Improvements*

5. SME Institute

The OSC SME Institute was established to provide free educational seminars to help small and medium enterprises (SME) and their advisors understand securities regulatory requirements for being or becoming a public company in Ontario and participating in the exempt market. For more than 10 years, we have provided SMEs with various seminars ranging from raising money in the public markets and the exempt market, continuous disclosure considerations, industry-specific sessions and other seminars to assist them in meeting regulatory requirements. The resources for small and medium enterprises webpage on the OSC website provides further information.

During Fiscal 2023, Staff presented two online webinars offered through the SME Institute. The first webinar, *Hot Topics in Continuous Disclosure: What small and medium issuers need to know*, focused on preparing quality CD documentation and was intended to assist issuers in meeting

their CD reporting obligations. The second webinar, *Prospectus Filings and Exemptions: What small and medium issuers need to know*, provided an overview of the prospectus regime, including various prospectus exemptions available to SMEs to help facilitate capital raising.

Video replays of these past presentations are available on OSC's YouTube channel.

6. Staff Contact Information

Topic	Staff Contact information	
Administrative Matters including insider reporting and cease trade orders	**Eden Williams** **Manager, Regulatory Administration** ewilliams@osc.gov.on.ca 416-593-8338	**Evan Marquis** **Business Process Supervisor** emarquis@osc.gov.on.ca 416-593-2381
Corporate Finance Management Team	**Winnie Sanjoto, Director** wsanjoto@osc.gov.on.ca 416-593-8119 **Marie-France Bourret, Manager** mbourret@osc.gov.on.ca 416-593-8083 **Erin O'Donovan, Manager** eodonovan@osc.gov.on.ca 416-204-8973	**Michael Balter, Manager** mbalter@osc.gov.on.ca 416-593-3739 **Lina Creta, Manager** lcreta@osc.gov.on.ca 416-204-8963 **David Surat, Manager** dsurat@osc.gov.on.ca 416-593-8052
Mining Technical Disclosure	**Craig Waldie** **Senior Geologist** cwaldie@osc.gov.on.ca 416-593-8308	
Preliminary Prospectus Receipts	**Evelina Barsukov** **Review Officer** ebarsukov@osc.gov.on.ca	**Lorraine Greer** **Acting Lead Review Officer** lgreer@osc.gov.on.ca
If you have questions or comments about this Report, please contact:	**Winnie Sanjoto, Director** wsanjoto@osc.gov.on.ca 416-593-8119	**Marie-France Bourret, Manager** mbourret@osc.gov.on.ca 416-593-8083
	Christine Krikorian **Senior Accountant** ckrikorian@osc.gov.on.ca 416-593-2313	**Joanna Akkawi** **Senior Legal Counsel** jakkawi@osc.gov.on.ca 416-593-8054

Appendix A - Background information on Compliance Programs: CDR Program and Insider Reporting

1. CDR Program

The CSA published CSA Staff Notice 51-312 (Revised) *Harmonized Continuous Disclosure Review Program* to provide an overview of our CDR program. Below we have highlighted some of the key features of our program. Under Canadian securities law, a Reporting Issuer must provide timely and periodic CD about its business and affairs. CD includes periodic filings as well as other event-driven disclosures:

Periodic Filings	Event-Driven filings	Other
• interim and annual financial statements • MD&As • certificates of annual and interim filings • management information circulars • AIFs • technical reports	• material change reports • news releases • business acquisition reports • early warning reports	• website disclosure • investor presentations • social media

A) Objectives of the CDR program

Compliance

to **assess** whether Reporting Issuers are complying with disclosure obligations and to **identify** material disclosure deficiencies that affect the reliability and accuracy of an Issuer's disclosure record.

Issuer Education and Outreach

to **help** Reporting Issuers better **understand** disclosure obligations.

The goal of the CDR program is to improve the completeness, quality and timeliness of CD provided by Reporting Issuers. This program assesses compliance with CD requirements through a review of a Reporting Issuer's filed documents, its website and social media. This review

function is critical to facilitating fair and efficient markets, investor protection, and informed investment decision making and trading. Disclosure about a Reporting Issuer and its business is important not only when a Reporting Issuer first enters the market, but also on an ongoing basis; for example, many Reporting Issuers raise funds through short form prospectuses which incorporate CD documents by reference.

B) Types of CD reviews

In general, we conduct either a full review or an IOR of a Reporting Issuer's CD.

Full review — broad in scope and generally covering a Reporting Issuer's CD record for a period of 12-15 month.

IOR — an in-depth review focusing on a specific accounting, legal or regulatory issue that we believe warrants regulatory scrutiny.

In planning full reviews, we draw on our knowledge of Reporting Issuers and the industries in which they operate and use risk-based criteria to identify Reporting Issuers with a higher risk of deficient disclosure. The criteria are designed to identify Reporting Issuers whose disclosure is likely to be materially improved or brought into compliance with Securities Law or accounting standards as a result of our intervention. Our risk-based assessment incorporates both qualitative and quantitative factors that we review regularly to keep current with our evolving capital markets.[10] We also monitor new or novel and high growth areas of financing activity when developing our review program and consider any complaints received regarding the Reporting Issuer.

[11] A full review generally includes a review of the Issuer's most recent annual and interim financial statements and MD&As, AIF, annual reports, information circulars, news releases, material change reports, website, social media disclosure, investor presentations, and SEDI filings.

IORs are generally focused on a specific accounting, legal or regulatory issue, an emerging issue or industry or to assess compliance with a new or amended rule that recently came into force.

Conducting CD reviews helps us to

- monitor compliance with CD requirements by Reporting Issuers,
- communicate Staff interpretations and expectations on specific requirements, and identify areas of concern,
- address specific areas where there is heightened risk of investor harm,
- identify common deficiencies,
- provide industry-specific or topic-specific disclosure guidance that may assist preparers in complying with regulatory requirements, and
- assess compliance with new accounting standards and new or amended rules.

2. Insider **Reporting Compliance Program**

We review compliance of reporting insiders and Reporting Issuers with insider reporting requirements through a risk-based compliance program. We actively and regularly assist Reporting Issuers and advisors by providing guidance on filing matters. The objective of our insider reporting oversight work is twofold:

Compliance

to assess whether Reporting Issuers are complying with insider reporting obligations.

Issuer Education and Outreach

to help Reporting Issuers better understand insider reporting obligations.

Insider reporting serves a number of functions, including deterring improper insider trading based on material undisclosed information and increasing market efficiency by providing investors with information about the trading activities of insiders, and, by inference, the insiders' views of the Reporting Issuer's future prospects. Non-compliance affects the integrity, reliability, and effectiveness of the insider reporting regime, which in turn has a negative impact on market efficiency. Where we identify non-compliance, we reach out to Reporting Issuers and request remedial filings. A Reporting Issuer should make remedial filings as soon as it becomes aware of an error to accurately inform investors of its activities, and to avoid any further late filing fees.

> ***Tip:*** Staff encourage Reporting Issuers to remind their insiders regarding their SEDI filing obligations and to file reports on time to avoid late fees.
>
> Late insider reports (generally, those filed more than five calendar days after the date of the transaction) are subject to late filing fees. Late filing fees are set out in Appendix D of OSC Rule 13-502 *Fees*.

We educate Reporting Issuers through our compliance reviews and we also reach out to new Reporting Issuers directly to inform them of insider reporting obligations. We encourage Reporting Issuers to implement insider trading policies and monitor insider trading to meet best practice standards in NP 51-201.

Appendix B – Glossary

The following terms are used widely throughout the Report and have the meanings set forth below unless otherwise indicated. Words importing the singular number include the plural, and vice versa.

2022 Corporate Finance Branch Report: means OSC Staff Notice 51-734 *Corporate Finance Branch 2022 Annual Report*.
Act: means the Securities Act, R.S.O. 1990, chapter s.5.
AIF: means an annual information form as such term is defined in Form 51-102F2 *Annual Information Form*.
AMF: means the Autorité des marchés financiers.
Branch: means the Corporate Finance branch at the OSC.
CD: means the continuous disclosure obligations of a reporting issuer as set out in NI 51-102.
CDR program: means the harmonized program established in 2004 by the CSA for continuous disclosure reviews.
CSA: means the Canadian Securities Administrators.
CSE: means the Canadian Securities Exchange.
ESG: means environmental, social and governance.
Fiscal 2022: means the fiscal year ended March 31, 2022.
Fiscal 2023: means the fiscal year ended March 31, 2023.
Form 41-101F1: means Form 41-101F1 *Information Required in a Prospectus*.
Form 51-102F1: means Form 51-102F1 *Management's Discussion & Analysis*.
FLI: means forward-looking information as such term is defined in NI 51-102.
IOR: means an issue-oriented review conducted by the Branch.
IOSCO: means the International Organization of Securities Commissions.
IPO: means an initial public offering.
Issuer: means an issuer as such term is defined in the Act.
MD&A: means management's discussion and analysis as such term is defined in Form 51-102F1.
NEO: means the Neo Exchange Inc. (carrying on business as Cboe Canada).
NI 13-103: means National Instrument 13-103 *System for Electronic Document Analysis and Retrieval+ (SEDAR+)*.
NI 41-101: means National Instrument 41-101 *General Prospectus Requirements*.
NI 43-101: means National Instrument 43-101 *Standards of Disclosure for Mineral Projects*.
NI 44-101: means National Instrument 44-101 *Short Form Prospectus Distributions*.
NI 44-102: means National Instrument 44-102 *Shelf Distributions*.

NI 45-106: means National Instrument 45-106 *Prospectus Exemptions*.
NI 51-102: means National Instrument 51-102 *Continuous Disclosure Obligations*.
NI 52-112: means National Instrument 52-112 *Non-GAAP and Other Financial Measures Disclosure*.
NP 11-202: means National Policy 11-202 *Process for Prospectus Reviews in Multiple Jurisdictions*.
NP 11-203: means National Policy 11-203 *Process for Exemptive Relief Applications in Multiple Jurisdictions*.
NGFM: Non-GAAP Financial Measures as such term is defined in NI 52-112.
OSC: means the Ontario Securities Commission.
Report: means this 2023 annual report, published by the Branch.
Reporting Issuer: means a reporting issuer as defined in the Act.
Securities Law: means Ontario securities law as defined in the Act.
SEDAR+: means the system for the transmission of document as such term is defined in NI 13-103.
SEDI: means the system for electronic disclosure by insiders as such term is defined in National Instrument 55-102 *System for Electronic Disclosure by Insiders (SEDI)*.
Staff: means staff at the Branch.
TSX: means the Toronto Stock Exchange.
TSXV: means the TSX Venture Exchange.
Venture Issuer: means a venture issuer as defined in NI 51-102.

B.2
Orders

B.2.1 Outcrop US Limited

Headnote

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

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

Applicable Legislative Provisions

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

Citation: 2023 BCSECCOM 563

November 28, 2023

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

AND

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

AND

IN THE MATTER OF
OUTCROP US LIMITED
(the Filer)

ORDER

Background

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

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

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

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

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2023/0564

B.2.2 HS GovTech Solutions Inc.

Headnote

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

Applicable Legislative Provisions

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

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

AND

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

AND

IN THE MATTER OF
HS GOVTECH SOLUTIONS INC.
(the Filer)

ORDER

Background

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

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

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

(b) the Filer has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 *Passport System* (MI 11-102) is intended to be relied upon in Alberta, and

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

Interpretation

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

Representations

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

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

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

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

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

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

Order

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

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

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

OSC File #: 2023/0582

B.2.3 IOU Financial Inc. and 9494-3677 Québec Inc.

Headnote

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

Applicable Legislative Provisions

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

[Original text in French]

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

AND

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

AND

IN THE MATTER OF
IOU FINANCIAL INC.
(IOU)

AND

9494-3677 QUÉBEC INC.
(the Purchaser, and together with IOU, the Filers)

ORDER

Background

The securities regulatory authority or regulator in the Jurisdiction (the **Decision Maker**) has received an application from the Filers for an order under the securities legislation of the Jurisdiction (the **Legislation**) that the Filers have ceased to be reporting issuers in all jurisdictions of Canada in which they are reporting issuers (the **Order Sought**).

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

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

(b) IOU has provided notice that subsection 4C.5(1) of Multilateral Instrument 11-102 – *Passport System* (**MI 11-102**) is intended to be relied upon in each of Ontario, British Columbia and Alberta, and

(c) this order is the order of the principal regulator.

Interpretation

Terms defined in National Instrument 14-101 *Definitions*, MI 11-102 and, in Québec, *Regulation 14-501Q Respecting Definitions* have the same meaning if used in this order, unless otherwise defined.

Representations

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

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

(b) the outstanding securities of IOU, 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 security holders in total worldwide;

(c) no securities of IOU, 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 security where trading data is publicly reported;

(d) IOU is applying for an order that IOU has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer;

(e) IOU is not in default of securities legislation in any jurisdiction;

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

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

(h) no securities of the Purchaser, 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 security where trading data is publicly reported;

(i) the Purchaser is applying for an order that the Purchaser has ceased to be a reporting issuer in all of the jurisdictions of Canada in which it is a reporting issuer; and

(j) the Purchaser is not in default of securities legislation in any jurisdiction.

Order

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

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

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

OSC File #: 2023/0457

B.2.4 Cboe Canada Inc. and Cboe Global Markets, Inc. – ss. 21, 144

Headnote

Subsection 144(1) of the Securities Act (Ontario) – application for order varying the Commission's order recognizing Aequitas Innovations Inc. and Neo Exchange Inc. as exchanges – variation required to reflect the proposed amalgamation of Aequitas Innovations Inc., Neo Exchange Inc., and TriAct Canada Marketplace LP into a single legal entity named Cboe Canada Inc. – requested order granted.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 21, 144(1).

December 1, 2023

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

AND

IN THE MATTER OF
CBOE CANADA INC.

AND

IN THE MATTER OF
CBOE GLOBAL MARKETS, INC.

ORDER
(Sections 21 and 144 of the Act)

WHEREAS the Ontario Securities Commission (**Commission**) issued an order dated November 13, 2014, effective as at March 1, 2015, which was varied on February 27, 2015, September 29, 2015, February 8, 2019, August 31, 2020, and May 27, 2022, recognizing Aequitas Neo Exchange Inc. and its sole shareholder, Aequitas Innovations Inc. (**Aequitas**), as exchanges pursuant to section 21 of the Act (**Recognition Order**);

AND WHEREAS on January 15, 2019, the name Aequitas Neo Exchange Inc. was changed to Neo Exchange Inc. (**Neo Exchange**);

AND WHEREAS on June 1, 2022, Cboe Canada Holdings, ULC purchased all of the issued and outstanding share capital of Aequitas;

AND WHEREAS the Commission considers the proper operation of exchanges as essential to investor protection and maintaining a fair and efficient capital market, and therefore requires that any conflicts of interest in the operation of exchanges be dealt with appropriately, the fairness and efficiency of the market not be impaired by any anti-competitive activity, and that systemic risks are monitored and controlled;

AND WHEREAS the Commission has received an application under section 144 of the Act to vary and restate the Recognition Order (**Application**) to reflect the Commission's approval of changes to the manner in which a recognized exchange carries on business in connection with the amalgamation of Aequitas, Neo Exchange, and TriAct Canada Marketplace LP into Cboe Canada Inc. (**Cboe Canada**);

AND WHEREAS Cboe Canada and Cboe Global Markets, Inc. (**CGM**) have agreed to the applicable terms and conditions set out in the Schedules to the Recognition Order;

AND WHEREAS based on the Application, the Commission has determined that:

(a) Cboe Canada, as it will exist on January 1, 2024, will continue to satisfy, as of that date, the recognition criteria set out in Schedule 1 to the Recognition Order,

(b) it is in the public interest to continue to recognize Cboe Canada as an exchange pursuant to section 21 of the Act, and

(c) it is not prejudicial to the public interest to vary and restate the Recognition Order pursuant to section 144 of the Act;

IT IS ORDERED, pursuant to section 144 of the Act, that the Application to vary and restate the Recognition Order is granted, and

IT IS ORDERED, pursuant to section 21 of the Act, that Cboe Canada continues to be recognized as an exchange, provided that CGM and Cboe Canada comply with the terms and conditions set out in the Schedules to the Recognition Order, as applicable.

DATED this 1st day of December 2023, to take effect January 1, 2024.

"Michelle Alexander"
Manager, Market Regulation
Ontario Securities Commission

SCHEDULE 1

CRITERIA FOR RECOGNITION

PART 1 COMPLIANCE WITH NI 21-101 AND NI 23-101

1.1 Compliance with NI 21-101 and NI 23-101

The exchange complies with the requirements set out in National Instrument 21-101 *Marketplace Operation* (**NI 21-101**) and in National Instrument 23-101 *Trading Rules*, each as amended from time to time, which include requirements relating to:

(a) access;

(b) marketplace operations;

(c) exchange rules, policies, and other similar instruments;

(d) order and trade transparency;

(e) transparency of marketplace operations;

(f) record keeping;

(g) marketplace systems and business continuity planning;

(h) confidentiality of information;

(i) outsourcing;

(j) clearing and settlement;

(k) fair and orderly markets;

(l) the management of conflicts of interest; and

(m) filing of financial statements.

PART 2 GOVERNANCE

2.1 Governance

The governance structure and governance arrangements of the exchange ensure:

(a) effective oversight of the exchange;

(b) that business and regulatory decisions are in keeping with the exchange's public interest mandate;

(c) fair, meaningful, and diverse representation on the board of directors (**Board**) and any committees of the Board, including:

  (i) appropriate representation of independent directors, and

  (ii) a proper balance among the interests of the different persons or companies using the services and facilities of the exchange;

(d) the exchange has policies and procedures to appropriately identify and manage conflicts of interest; and

(e) there are appropriate qualifications, remuneration, limitation of liability, and indemnity provisions for directors, officers, and employees of the exchange.

2.2 Fitness

The exchange has policies and procedures under which it will take reasonable steps, and has taken such reasonable steps, to ensure that each director and officer is a fit and proper person.

PART 3 ACCESS

3.1 Fair Access

(a) The exchange has established appropriate written standards for access to its services including requirements to ensure participants are appropriately registered under Ontario securities laws, or exempted from these requirements.

(b) The access standards and the process for obtaining, limiting, and denying access are fair, transparent, and applied reasonably.

PART 4 REGULATION OF PARTICIPANTS AND ISSUERS ON THE EXCHANGE

4.1 Regulation

The exchange has the authority, resources, capabilities, systems, and processes to allow it to perform its regulation functions, whether directly or indirectly through a regulation services provider, including setting requirements governing the conduct of participants and issuers, monitoring their conduct, and appropriately disciplining them for violations of exchange requirements.

PART 5 RULES AND RULEMAKING

5.1 Rules and Rulemaking

(a) The exchange has rules, policies, and other similar instruments (**Rules**) that are designed to appropriately govern and regulate the operations and activities of participants and issuers.

(b) In addition to meeting the requirements of NI 21-101 relating to market operations and exchange rules, policies and other similar instruments as referred to in paragraphs 1.1(b) and (c) of this Schedule, respectively, the Rules are also designed to

(i) ensure a fair and orderly market; and

(ii) provide a framework for disciplinary and enforcement actions.

PART 6 DUE PROCESS

6.1 Due Process

For any decision made by the exchange that affects a participant or issuer, or an applicant to be a participant or issuer, including a decision in relation to access, listing, exemptions, or discipline, the exchange ensures that:

(a) parties are given an opportunity to be heard or make representations, and

(b) it keeps a record of, gives reasons for, and provides for appeals or reviews of its decisions.

PART 7 CLEARING AND SETTLEMENT

7.1 Clearing and Settlement

The exchange has appropriate arrangements for the clearing and settlement of trades.

PART 8 SYSTEMS AND TECHNOLOGY

8.1 Information Technology Risk Management Procedures

The exchange has appropriate risk management procedures in place including those that handle trading errors, trading halts, and circuit breakers.

PART 9 FINANCIAL VIABILITY

9.1 Financial Viability

The exchange has sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

PART 10 FEES

10.1 Fees

(a) All fees imposed by the exchange are reasonable and equitably allocated and are consistent with the requirements in Ontario securities laws, including those requirements listed in paragraphs 1.1(a) and (e) of this Schedule.

(b) The process for setting fees is fair and appropriate, and the fee model is transparent.

PART 11 INFORMATION SHARING AND REGULATORY COOPERATION

11.1 Information Sharing and Regulatory Cooperation

The exchange has mechanisms in place to enable it to share information and otherwise co-operate with the Commission, recognized self-regulatory organizations, other recognized or exempt exchanges, clearing agencies, investor protection funds, and other appropriate regulatory bodies.

SCHEDULE 2

TERMS AND CONDITIONS APPLICABLE TO CBOE CANADA

1. DEFINITIONS AND INTERPRETATION

(a) For the purposes of this Schedule:

"accounting principles" means accounting principles as defined in National Instrument 52-107 *Acceptable Accounting Principles and Auditing Standards*;

"affiliated entity" has the meaning ascribed to it in section 1.3 of National Instrument 21-101 *Marketplace Operation*;

"associate" has the meaning ascribed to it in subsection 1(1) of the Act;

"Board" means the board of directors of Cboe Canada;

"Canadian affiliated entity" means any affiliated entity that is incorporated, formed, or created under the laws of Canada or a province or territory of Canada;

"Cboe Canada issuer" means a person or company whose securities are listed on Cboe Canada;

"Cboe Canada marketplace participant" means a marketplace participant of Cboe Canada;

"CIRO" means the Canadian Investment Regulatory Organization;

"Competitor" means a person whose consolidated business, operations, or disclosed business plans are in competition, to a significant extent, with the listing functions, trading functions, market data services, or other material lines of business of Cboe Canada or its Canadian affiliated entities;

"criteria for recognition" means all the criteria for recognition set out in Schedule 1 to the Order;

"dealer" means "investment dealer", as that term is defined in section 1.1 of National Instrument 31-103 *Registration Requirements*;

"Lead Director" means an independent director who will chair all meetings of the independent directors of the Board and serve as a liaison between the chair of the Board and the independent directors;

"marketplace" has the meaning ascribed to it in subsection 1(1) of the Act; "marketplace participant" has the meaning ascribed to it in section 1.1 of NI 21-101;

"Nominating Committee" means the committee established by Cboe Canada pursuant to section 7 of this Schedule;

"officer" has the meaning ascribed to it in subsection 1(1) of the Act;

"Regulatory Oversight Committee" means the committee established by Cboe Canada pursuant to section 8 of this Schedule;

"Rule" means a rule, policy, or other similar instrument of Cboe Canada;

"shareholder" means a person or company that holds any class or series of voting shares of Cboe Canada;

"significant shareholder" means a person or company that:

(i) beneficially owns or exercises control or direction over more than 10% of the outstanding shares of CGM or Cboe Canada provided, however, that the ownership of or control or direction over CGM shares in connection with the following activities will not be included for the purposes of determining whether the 10% threshold has been exceeded:

(A) investment activities on behalf of the person or company or its affiliated entity where such investments are made (I) by a bona fide third-party investment manager with discretionary authority (subject to such retained discretion in order for the person or company or its affiliated entity to fulfil its fiduciary duties); or (II) by an investment fund or other pooled investment vehicle in which the person or company or such affiliated entity has directly or indirectly

invested and which is managed by a third party who has not been provided with confidential, undisclosed information about CGM,

(B) acting as a custodian for securities in the ordinary course,

(C) normal course trading (including proprietary client facilitation trading) and wealth management activities (including, for greater certainty, in connection with the management of any mutual funds, pooled funds, trust accounts, estate portfolios, and other investor funds and portfolios), including electronic securities trading, conducted for or on behalf of clients of the person or company, provided that any fund manager with discretionary authority carrying out such activities on behalf of such clients, or such clients, have not been provided with confidential, undisclosed information about CGM,

(D) the acquisition of CGM shares in connection with the adjustment of index-related portfolios or other "basket" related trading,

(E) making a market in securities to facilitate trading in shares of CGM by third-party clients or to provide liquidity to the market in the person or company's capacity as a designated market maker for shares of CGM securities, in the person or company's capacity as designated market maker for derivatives based on CGM shares, or in the person or company's capacity as market maker or "designated broker" for exchange traded funds which may have investments in shares of CGM, in each case in the ordinary course, (which, for greater certainty, will include acquisitions or other derivative transactions undertaken in connection with hedging positions of, or in relation to, CGM shares), or

(F) providing financial services to any other person or company in the ordinary course of business of its and their banking, securities, wealth, and insurance businesses, provided that such other person or company has not been provided with confidential, undisclosed information about CGM,

and subject to the conditions that the ownership of or control or direction over CGM shares by a person or company in connection with the activities listed in (A) through (F) above:

(G) is not intended by that person or company to facilitate evasion of the 10% threshold set out in clause (i), and

(H) does not provide that person or company the ability to exercise voting rights over more than 10% of the voting shares of CGM in a manner that is solely in the interests of that person or company as it relates to that person or company's ownership of or control or direction over the subject shares, except where the ability to exercise voting rights over more than 10% of the voting shares arises as a result of the activities listed in (E) above in which case the person or company must not exercise its voting rights with respect to those voting shares; or

(ii) is a shareholder whose nominee is on the Board of Cboe Canada, for as long as the nominee of that shareholder remains on the Board of Cboe Canada; and

“unaudited non-consolidated financial statements” means financial statements that are prepared in the same manner as audited consolidated financial statements, except that

(i) they are not audited; and

(ii) investments in subsidiary entities, jointly controlled entities, and associates are accounted for as specified for separate financial statements in International Accounting Standard 27 Separate Financial Statements.

(b) For the purposes of this Schedule, an individual is independent if the individual is “independent” within the meaning of section 1.4 of National Instrument 52-110 *Audit Committees*, as amended from time to time, but is not independent if the individual:

(i) is a partner, officer, director, or employee of a Cboe Canada marketplace participant or an associate of that partner, officer, or employee;

(ii) is a partner, officer, director, or employee of an affiliated entity of a Cboe Canada marketplace participant who is responsible for or is actively engaged in the day-to-day operations or activities of that Cboe Canada marketplace participant;

(iii) is an officer or an employee of Cboe Canada or any of its affiliates;

(iv) is a partner, officer, or employee of a significant shareholder or any of its affiliated entities or an associate of that partner, officer, or employee;

(v) is a director of a significant shareholder or any of its affiliated entities or an associate of that director;

(vi) is a person who owns or controls, or is the officer or employee of a person or company that owns or controls, directly or indirectly, more than 10% of the shares of Cboe Canada;

(vii) is the director of a person or company that beneficially owns or controls, directly or indirectly, more than 10% of any class or series of voting shares of Cboe Canada;

(viii) is a director that was nominated, and as a result appointed or elected, by a significant shareholder; or

(ix) has, or has had, any relationship with a significant shareholder that could, in the view of the Nomination Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgment as a director of Cboe Canada.

(c) For the purposes of paragraph (b), the Nominating Committee may waive the restrictions set out in subparagraphs (b)(v), (vii) and (viii) provided that:

(i) the individual being considered does not have, and has not had, any relationship with a shareholder that could, in the view of the Nominating Committee, having regard to all relevant circumstances, be reasonably perceived to interfere with the exercise of his or her independent judgement as a director of Cboe Canada;

(ii) Cboe Canada publicly discloses the use of the waiver with reasons why the particular candidate was selected;

(iii) Cboe Canada provides advance notice of the waiver to the Commission, at least 15 business days before the public disclosure in sub-paragraph (c)(ii) is made, and

(iv) the Commission does not object within 15 business days of its receipt of the notice provided under sub-paragraph (c)(iii) above.

2. PUBLIC INTEREST RESPONSIBILITIES

(a) Cboe Canada must conduct its business and operations in a manner that is consistent with the public interest.

(b) The mandate of the Board must expressly include regulatory and public interest responsibilities of Cboe Canada.

3. SHARE OWNERSHIP RESTRICTIONS

(a) Without the prior approval of the Commission, and subject to terms and conditions considered appropriate by the Commission, no person or company and no combination of persons or companies acting jointly or in concert may beneficially own or exercise control or direction over:

(i) more than 10% of any class or series of voting shares of Cboe Canada and, thereafter,

(ii) more than 50% of any class or series of voting shares of Cboe Canada.

(b) The articles of Cboe Canada must contain the share ownership restrictions and provisions respecting the enforcement of such restrictions which, without limiting the foregoing, may provide for the filing of declarations, the suspension of voting rights, the forfeiture of dividends, the refusal of the issue or registration of voting shares, and the sale or redemption of voting shares held contrary to the restrictions and payment of net proceeds of the sale or redemption to the person entitled thereto.

4. RECOGNITION CRITERIA

Cboe Canada must continue to meet the criteria for recognition set out in Schedule 1 to the Order.

5. FITNESS

In order to ensure that Cboe Canada operates with integrity and in the public interest, Cboe Canada will take reasonable steps to ensure that each director or officer of Cboe Canada is a fit and proper person. As part of those steps, Cboe Canada will consider

whether the past conduct of each director or officer affords reasonable grounds for the belief that the director or officer will perform their duties with integrity and in a manner that is consistent with Cboe Canada's public interest responsibilities.

6. BOARD OF DIRECTORS

(a) Cboe Canada must ensure that at least 50% of its Board members are independent.

(b) The chair of the Board must be independent or, if this is not the case, the Board will have appointed a Lead Director.

(c) In the event that Cboe Canada fails to meet the requirements under (a) or (b), it must immediately advise the Commission and take appropriate measures to promptly remedy such failure.

(d) Cboe Canada must ensure that its Board is subject to requirements that the quorum for the Board consists of a majority of the Board members, with at least 50% being independent.

7. NOMINATING COMMITTEE

Cboe Canada must maintain a Nominating Committee of the Board that, at a minimum:

(a) is made up of at least three directors, at least 50% of which must be independent;

(b) confirms the status of a nominee to the Board as independent before the individual is appointed to the Board or the name of the individual is submitted to the shareholder(s) of Cboe Canada as a nominee for election to the Board, whichever comes first;

(c) confirms, on an annual basis, that the status of the directors that are independent has not changed;

(d) assesses and approves all nominees of management to the Board; and

(e) has a requirement that the quorum consist of at least 50% of independent directors.

8. REGULATORY OVERSIGHT COMMITTEE

(a) Cboe Canada must establish and maintain a Regulatory Oversight Committee that, at a minimum:

(i) is made up of at least three directors, a majority of which must be independent;

(ii) reviews and decides, or makes recommendations to the Board, on proposed regulation and rules that must be submitted to the OSC for review and approval under Schedule 4 *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto* of this Order;

(iii) considers real or perceived conflicts of interest that may arise, including but not limited to the following contexts:

(A) ownership interests in Cboe Canada by any Cboe Canada marketplace participant with representation on the Board of Cboe Canada,

(B) significant changes to the ownership of Cboe Canada, and

(C) the profit-making objective and the public interest responsibilities of Cboe Canada, including general oversight of the management of the regulatory and public interest responsibilities of Cboe Canada;

(iv) oversees the establishment of mechanisms to avoid and appropriately manage conflicts of interest or potential conflicts of interest, perceived or real, including any policies and procedures that are developed by Cboe Canada, including those that are required to be established pursuant to the Schedules of this Order;

(v) reviews the effectiveness of the policies and procedures regarding conflicts of interest on a regular, and at least annual, basis;

(vi) reports in writing directly to the Commission on any matter that the Regulatory Oversight Committee deems appropriate or that is required by the Commission without first requiring Board approval for such reporting.

(b) The Regulatory Oversight Committee must provide such information as may be required by the Commission from time to time.

9. CONFLICTS OF INTEREST AND CONFIDENTIALITY

(a) Cboe Canada must establish, maintain, and require compliance with policies and procedures that:

(i) require that confidential information regarding Cboe Canada marketplace operations, Cboe Canada regulation functions, a Cboe Canada marketplace participant or a Cboe Canada issuer that is obtained by a partner, director, officer, or employee of a significant shareholder through that individual's involvement in the management or oversight of marketplace operations or regulation functions of Cboe Canada:

(A) be kept separate and confidential from the business or other operations of the significant shareholder, except with respect to information regarding marketplace operations where disclosure is necessary to carry out the individual's responsibilities for the management or oversight of marketplace operations and the individual can and does exercise due care in his or her disclosure of the information, and

(B) not be used to provide an advantage to Cboe Canada, CGM, or CGM's affiliated entities;

provided that nothing in this section will be construed to limit Cboe Canada from providing to CGM and its affiliated entities necessary information.

(b) Cboe Canada must establish, maintain, and require compliance with policies and procedures that identify and manage conflicts of interest or potential conflicts of interest arising from the listing of the shares of any significant shareholder or an affiliate of a significant shareholder on Cboe Canada.

(c) Cboe Canada must regularly review compliance with the policies and procedures established in accordance with (a) and (b) and must document each review, and any deficiencies, and how those deficiencies were remedied.

10. ACCESS

Cboe Canada's requirements must provide access to the facilities of Cboe Canada only to properly registered investment dealers that are members of CIRO and satisfy reasonable access requirements established by Cboe Canada.

11. REGULATION OF CBOE CANADA MARKETPLACE PARTICIPANTS AND CBOE CANADA ISSUERS

(a) Cboe Canada must establish, maintain, and require compliance with policies and procedures that effectively monitor and enforce the Rules against Cboe Canada marketplace participants and Cboe Canada issuers, either directly or indirectly through a regulation services provider.

(b) Cboe Canada has retained and will continue to retain CIRO as a regulation services provider to provide, as agent for Cboe Canada, certain regulation services that have been approved by the Commission.

(c) Cboe Canada must perform all other regulation functions not performed by CIRO, and must maintain adequate staffing, systems and other resources in support of those functions. Cboe Canada must obtain prior Commission approval before outsourcing such regulation functions to any party, including affiliated entities or associates of Cboe Canada.

(d) Cboe Canada must notify the Commission of any violations of Ontario securities law of which it becomes aware in the ordinary course of its business or otherwise.

12. FEES, FEE MODELS AND INCENTIVES

(a) Cboe Canada must not, through any fee schedule, any fee model or any contract, agreement, or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession, or other similar arrangement that is accessible only to, whether as designed or by implication, a particular marketplace participant or any other particular person or company, or

(ii) any discount, rebate, allowance, price concession, or other similar arrangement for any service or product offered by Cboe Canada or CGM and its affiliated entities and significant shareholders that is conditional upon:

(A) the requirement to have Cboe Canada be set as the default or first marketplace a marketplace participant routes to, or

(B) the router of Cboe Canada being used as the marketplace participant's primary router.

(b) Except with the prior approval of the Commission, Cboe Canada must not, through any fee schedule, any fee model or any contract, agreement or other arrangement with any marketplace participant or any other person or company, provide:

(i) any discount, rebate, allowance, price concession, or other similar arrangement on any services or products offered by Cboe Canada or CGM and its affiliated entities and significant shareholders that is conditional upon the purchase of any other service or product provided by Cboe Canada or CGM or any affiliated entity, or

(ii) any discount, rebate, allowance, price concession, or other similar arrangement that is accessible only to, whether as designed or by implication, a class of marketplace participants or of any other persons or companies.

(c) Cboe Canada must obtain prior Commission approval before implementing any new, or amendments to, fees and fee models, including any new, or amendments to any, incentives relating to arrangements that provide for equity ownership in Cboe Canada for marketplace participants or their affiliated entities based on trading volumes or values on Cboe Canada.

(d) Except with the prior approval of the Commission, Cboe Canada must not require another person or company to purchase or otherwise obtain products or services from Cboe Canada or CGM and its affiliated entities and significant shareholders as a condition of Cboe Canada supplying or continuing to supply a product or service.

(e) If the Commission considers that it would be in the public interest, the Commission may require Cboe Canada to submit for approval by the Commission a fee, fee model, or incentive that has previously been submitted to and/or approved by the Commission.

(f) Where the Commission decides not to approve the fee, fee model, or incentive submitted under (e), any previous approval for the fee, fee model, or incentive must be revoked, if applicable, and Cboe Canada will no longer be permitted to offer the fee, fee model or incentive.

13. ORDER ROUTING

Cboe Canada must not support, encourage, or incent, either through fee incentives or otherwise, Cboe Canada marketplace participants, CGM affiliated entities, or significant shareholders to coordinate the routing of their orders to Cboe Canada.

14. FINANCIAL REPORTING

Cboe Canada must deliver to the Commission its annual financial budget, together with the underlying assumptions, that has been approved by its Board, within 30 days from the commencement of each fiscal year.

15. FINANCIAL VIABILITY MONITORING

(a) Cboe Canada must maintain sufficient financial resources for the proper performance of its functions and to meet its responsibilities.

(b) Cboe Canada must calculate the following financial ratios monthly:

(i) a current ratio, being the ratio of current assets to current liabilities;

(ii) a debt to cash flow ratio, being the ratio of total debt (including any line of credit draw downs, and the current and long-term portions of any loans, but excluding accounts payable, accrued expenses, and other liabilities) to EBITDA (earnings before interest, taxes, stock-based compensation, depreciation, and amortization) for the most recent 12 months; and

(iii) a financial leverage ratio, being the ratio of total assets to shareholders' equity,

in each case following the same accounting principles as those used for the unaudited non-consolidated financial statements of Cboe Canada.

(c) Cboe Canada must report quarterly in writing to the Commission the monthly calculations for the previous quarter of the financial ratios as required to be calculated under paragraph (b).

(d) If Cboe Canada determines that it does not have, or anticipates that, in the next twelve months, it will not have sufficient financial resources for the proper performance of its functions and to meet its responsibilities, it will immediately notify the Commission along with the reasons and any impact on the financial viability of Cboe Canada.

(e) Upon receipt of a notification made by Cboe Canada under (d), the Commission may, as determined appropriate, impose additional terms and conditions on Cboe Canada.

16. ADDITIONAL INFORMATION

(a) Cboe Canada must provide the Commission with:

(i) the information set out in Appendix A to this Schedule**,** as amended from time to time; and

(ii) any information required to be provided by Cboe Canada to CIRO, including all order and trade information, as required by the Commission.

17. GOVERNANCE REVIEW

(a) At the request of the Commission, Cboe Canada must engage an independent consultant, or independent consultants acceptable to the Commission to prepare a written report assessing the governance structure of Cboe Canada (**Governance Review**).

(b) The written report must be provided to the Board of Cboe Canada promptly after the report's completion and then to the Commission within 30 days of providing it to the Board.

(c) The scope of the Governance Review must be approved by the Commission.

18. PROVISION OF INFORMATION

(a) Cboe Canada must, and must cause its Canadian affiliated entities to, promptly provide to the Commission, on request, any and all data, information, and analyses in the custody or control of Cboe Canada or any of its Canadian affiliated entities, without limitations, redactions, restrictions, or conditions, including, without limiting the generality of the foregoing:

(i) data, information, and analyses relating to all of its or their businesses; and

(ii) data, information, and analyses of third parties in its or their custody or control.

(b) Cboe Canada must share information and otherwise cooperate with other recognized or exempt exchanges, recognized self-regulatory organizations, recognized or exempt clearing agencies, investor protection funds, and other appropriate regulatory bodies.

19. COMPLIANCE WITH TERMS AND CONDITIONS

(a) Cboe Canada must certify in writing to the Commission, in a certificate signed by its CEO and either its general counsel or another executive officer, within one year of the effective date of its recognition as an exchange pursuant to this Order and every year subsequent to that date, or at any times required by the Commission, that it is in compliance with the terms and conditions applicable to it in the Order and describe in detail:

(i) the steps taken to require compliance;

(ii) the controls in place to verify compliance;

(iii) the names and titles of employees who have oversight of compliance.

(b) If Cboe Canada or any of its directors, officers, or employees become aware of a breach or a possible breach of any of the terms and conditions applicable to Cboe Canada under the Schedules to the Order, such person must, within two business days after becoming aware of the breach or possible breach, notify the Regulatory Oversight Committee of the breach or possible breach. The director, officer, or employee of Cboe Canada must provide to the Regulatory Oversight Committee details sufficient to describe the nature, date, and effect (actual and anticipated) of the breach or possible breach.

(c) The Regulatory Oversight Committee must, within two business days after being notified of the breach or possible breach, notify the Commission and confirm that the breach or possible breach is under investigation as required by (d).

(d) The Regulatory Oversight Committee must promptly cause to be conducted an investigation of the breach or possible breach reported under (b). Once the Regulatory Oversight Committee has made a determination as to whether there has been a breach, or that there is an impending breach, of any terms and conditions applicable to Cboe Canada under the Schedules to this Order, the Regulatory Oversight Committee must, within two business days of such determination, notify the Commission of its determination and must provide details sufficient to describe the nature, date, and effect (actual and anticipated) of the breach or impending breach, and any actions that will be taken to address it.

APPENDIX A

Additional Reporting Obligations

1. Ad Hoc

(a) Immediate notification of a decision to enter into a definitive agreement (including a binding letter of intent), memorandum of understanding, or other similar agreement with any governmental or regulatory body, self-regulatory organization, clearing agency, stock exchange, other marketplace or market, except in the case where the agreement or arrangement: (i) is primarily intended to restrict the use or disclosure of confidential information, (ii) is primarily for the purpose of facilitating discussions in connection with a possible definitive agreement, (iii) is necessary to support the provision of the existing exchange services, or (iv) relates to the provision of the existing exchange services and is also subject to the standard form agreements of the exchange (for example, listing agreements, data subscription agreements, etc.).

(b) Immediate notification if Cboe Canada:

(i) becomes the subject of any order, directive, or similar action of a governmental or regulatory authority;

(ii) becomes aware that it is the subject of a criminal or regulatory investigation; or

(iii) becomes, or it is notified in writing that it will become, the subject of a material lawsuit.

(c) Any strategic plan for Cboe Canada, within 30 days of approval by the Board.

(d) Any information submitted by Cboe Canada to a Canadian securities regulatory authority under a requirement of a recognition order, exemption order, or NI 21-101, provided concurrently.

(e) Copies of all notices, bulletins, and similar forms of communication that Cboe Canada sends to the Cboe Canada marketplace participants or Cboe Canada issuers.

(f) Prompt notification of any suspension or delisting of a Cboe Canada issuer, including the reasons for the suspension or delisting.

(g) Prompt notification of any initial listing application received from a significant shareholder or any of its affiliates.

(h) Prompt notification of any initial listing application received from a Competitor.

(i) Prompt notification of any application for exemption or waiver from requirements received from a significant shareholder or any of its affiliates.

2. Quarterly Reporting

(a) A quarterly report summarizing all exemptions or waivers granted during the period pursuant to the Rules to any Cboe Canada marketplace participant or Cboe Canada issuer, which must include the following information:

(i) the name of the Cboe Canada marketplace participant or Cboe Canada issuer;

(ii) the type of exemption or waiver granted during the period;

(iii) the date of the exemption or waiver; and

(iv) a description of Cboe Canada's reason for the decision to grant the exemption or waiver.

(b) A quarterly report regarding initial listing applications containing the following information:

(i) the name of any Cboe Canada issuer whose initial listing application was conditionally approved, the date of such approval, the type of listing, the category of listing and, if known, whether the issuer was denied an application to list its securities on another marketplace;

(ii) the name of any issuer whose initial listing application was rejected and the reasons for rejection, by category of listing; and

(iii) the name of any issuer whose initial listing application was withdrawn or abandoned and, if known, the reasons why the application was withdrawn or abandoned, by category of listing.

The information required by section 2(b)(i) above should disclose whether the issuer is an Emerging Market Issuer, whether the listing involved an agent, underwriter or Canadian securities regulatory authority, and any additional requirements imposed by Cboe Canada.

(c) A quarterly report summarizing all significant incidents of non-compliance by Cboe Canada issuers identified by Cboe Canada during the period, together with a summary of the actions taken to address and resolve the incidents of non-compliance.

(d) A quarterly report listing all the Competitors listed on Cboe Canada.

(e) A quarterly report summarizing instances where conflicts of interest or potential conflicts of interest with respect to Competitors have been identified by Cboe Canada and how such conflicts were addressed.

3. Annual Reporting

(a) At least annually, or more frequently if required by the Commission, an assessment of the risks, including business risks, facing Cboe Canada and the plan for addressing such risks.

(b) An annual report, the scope of which must be approved by the Commission, relating to compliance with the use of certain designations by marketplace participants, including the results of reviews of marketplace participants' use of such designations and a description of the actions taken to address and resolve instances of material non-compliance.

SCHEDULE 3

TERMS AND CONDITIONS APPLICABLE TO CGM

20. DEFINITIONS AND INTERPRETATION

Terms used in this Schedule have the same meanings and interpretation as in section 1 of Schedule 2.

21. PUBLIC INTEREST RESPONSIBILITIES

CGM shall ensure that Cboe Canada conducts the business and operations of a recognized exchange in a manner that is consistent with the public interest.

22. ALLOCATION OF RESOURCES

(a) To ensure Cboe Canada can carry out its functions in a manner that is consistent with the public interest and in compliance with Ontario securities law, CGM shall, for so long as Cboe Canada carries on business as an exchange, facilitate the allocation of sufficient financial and non-financial resources for the operations of the exchange.

(b) CGM shall notify the Commission immediately upon being aware that it is or will be unable to allocate sufficient financial or other resources to Cboe Canada, as required under paragraph (a).

23. PROVISION OF INFORMATION

CGM shall promptly provide to the Commission, on request, any and all data, information, and analyses in its custody or control related to the business and operations of Cboe Canada without limitations, redactions, restrictions, or conditions, provided that nothing in this section will be construed to abrogate solicitor-client privilege or any similar doctrines that may apply to communications with and work product produced by counsel.

SCHEDULE 4

PROCESS FOR THE REVIEW AND APPROVAL OF RULES AND THE INFORMATION CONTAINED IN FORM 21-101F1 AND THE EXHIBITS THERETO

1. Purpose

This Protocol sets out the procedures a recognized exchange (Exchange) must follow for any Rule or Change, both as defined in section 2 below, and describes the procedures for their review by Commission Staff (Staff) and approval by the Commission or the Director. This Protocol also establishes requirements regarding the time at which an Exchange may begin operations following recognition by the Commission.

2. Definitions

For the purposes of this Protocol:

(a) *Change* means a Fee Change, a Housekeeping Change, or a Significant Change.

(b) *Director* means "Director" as defined in subsection 1(1) of the *Securities Act* (Ontario).

(c) *Fee Change* means any new fee or fee model of the Exchange and any amendment to a fee or fee model.

(d) *Fee Change subject to Public Comment* means a Fee Change that, in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.

(e) *Housekeeping Change* means an amendment to the information in Form 21-101F1 that

(i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(f) *Housekeeping Rule* means a new Rule or an amendment to a Rule that

(i) does not have a significant impact on the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets, or

(ii) is of a housekeeping or administrative nature and is comparable to the types of housekeeping changes listed in subsection 6.1(5)(b) of Companion Policy 21-101CP.

(g) *Public Interest Rule* means a Rule or an amendment to a Rule that is not a Housekeeping Rule.

(h) *Rule* includes a rule, policy, and other similar instrument of the Exchange.

(i) *Significant Change* means an amendment to the information in Form 21-101F1 other than

(i) a Housekeeping Change,

(ii) a Fee Change, or

(iii) a Rule,

and for greater certainty includes the matters listed in subsection 6.1(4) of Companion Policy 21-101CP.

(j) *Significant Change subject to Public Comment* means a Significant Change that

(i) is listed in paragraphs 6.1(4)(a) or (b) of Companion Policy 21-101CP, or

(ii) in Staff's view, may have a significant impact on the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets or otherwise raises regulatory or public interest concerns and should be subject to public comment.

3. Scope

The Exchange and Staff will follow the process for review and approval set out in this Protocol for all Changes, new Rules, and Rule amendments.

4. Board Approval

The Exchange's board of directors, or a duly authorized committee of the board, must approve all Rules prior to their submission under this Protocol.

5. Waiving or Varying the Protocol

(a) The Exchange may submit a written request with Staff to waive or vary any part of this Protocol. The request must provide reasons why granting the waiver is appropriate in the circumstances.

(b) Staff will use their best efforts to provide to the Exchange within five business days of receipt of its request either:

(i) written notice that Staff object to granting the waiver or variation; or

(ii) written notice that the waiver or variation has been granted by Staff.

6. Commencement of Exchange Operations

The Exchange must not begin operations until a reasonable period of time after the Exchange is notified that it has been recognized by the Commission.

7. Materials to be Submitted and Timelines

(a) Prior to the implementation of a Fee Change, Public Interest Rule, or Significant Change, the Exchange will provide Staff with the following materials:

(i) a cover letter that, together with the notice for publication submitted under paragraph (a)(ii), if applicable, fully describes:

(A) the proposed Fee Change, Public Interest Rule, or Significant Change;

(B) the expected date of implementation of the proposed Fee Change, Public Interest Rule, or Significant Change;

(C) the rationale for the proposal and any relevant supporting analysis;

(D) the expected impact, including the quantitative impact, of the proposed Fee Change, Public Interest Rule or Significant Change on the market structure, members and, if applicable, on investors, issuers, and the capital markets;

(E) the expected impact of the Fee Change, Public Interest Rule, or Significant Change on the Exchange's compliance with Ontario securities law requirements and in particular requirements for fair access and maintenance of fair and orderly markets;

(F) a summary of any consultations, including consultations with external parties, undertaken in formulating the Fee Change, Public Interest Rule, or Significant Change, and the internal governance process followed to approve the Rule or Change;

(G) for a proposed Fee Change:

1. the expected number of marketplace participants likely to be subject to the new fee, along with a description of the costs they will incur; and

2. if the proposed Fee Change applies differently across types of marketplace participants, a description of this difference, how it impacts each class of affected marketplace participant, including, where applicable, numerical examples, and any justification for the difference in treatment.

(H) if the Public Interest Rule or Significant Change will require members or service vendors to modify their systems after implementation of the Rule or Change, the expected impact of the

Rule or Change on the systems of members and service vendors together with an estimate of the amount of time needed to perform the necessary work and how the estimated amount of time was deemed reasonable in light of the expected impact of the Public Interest Rule or Significant Change on the Exchange, its market structure, members, issuers, investors or the Canadian capital markets;

(I) where the proposed Significant Change is not a Significant Change subject to Public Comment, the rationale for why the proposed Significant Change is not considered a Significant Change subject to Public Comment;

(J) a discussion of any alternatives considered; and

(K) if applicable, whether the proposed Fee Change, Significant Change, or Public Interest Rule would introduce a fee model, feature, or Rule that currently exists in other markets or jurisdictions;

(ii) for a proposed Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, a notice for publication that generally includes the information required under paragraph (a)(i), except information that, if included in the notice, would result in the public disclosure of sensitive information or confidential or proprietary financial, commercial, or technical information;

(iii) for a proposed Public Interest Rule, the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules, and if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) for a proposed Fee Change or Significant Change, blacklined and clean copies of Form 21-101F1 showing the proposed Change.

(b) The Exchange will submit the materials set out in subsection (a)

(i) at least 45 days prior to the expected implementation date of a proposed Public Interest Rule or Significant Change; and

(ii) at least fifteen business days prior to the expected implementation date of a proposed Fee Change.

(c) For a Housekeeping Rule, the Exchange will provide Staff with the following materials:

(i) a cover letter that fully describes the Rule and indicates that it was classified as a Housekeeping Rule and provides an analysis of the rationale for the classification, and the date or proposed date of implementation of the Rule;

(ii) the text of the Rule and a blacklined version of the Rule indicating changes to any existing Rules;

(iii) if supplementary material relating to the Rule is contained in Form 21-101F1, blacklined and clean copies of Form 21-101F1; and

(iv) a notice for publication on the OSC website or in the OSC Bulletin that contains the information in paragraph (ii) as well as the implementation date for the Rule and indicates that the Rule has been classified as a Housekeeping Rule and was not published for comment.

(d) For a Housekeeping Change, the Exchange will provide Staff with the following materials:

(i) a cover letter that indicates that the change was classified as a Housekeeping Change and, for each Housekeeping Change, provides an analysis of the rationale for the classification and the expected or actual date of implementation of the Change; and

(ii) blacklined and clean copies of Form 21-101F1 showing the Change.

(e) The Exchange will submit the materials set out in subsection (d) by the earlier of:

(i) the Exchange's close of business on the 10th calendar day after the end of the calendar quarter in which the Housekeeping Change was implemented; and

(ii) the date on which the Exchange publicly announces a Housekeeping Change, if applicable.

8. Review by Staff of notice and materials to be published for comment

(a) Within 5 business days of the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, in accordance with subsection 7(a), Staff will review the notice and materials to ensure that they contain an adequate level of detail, analysis, and discussion to elicit meaningful public comment, and will promptly notify the Exchange of any deficiency requiring a resubmission of the notice and/or materials.

(b) Where the notice and/or materials are considered by Staff to be deficient, the Exchange will amend and resubmit the notice and/or materials accordingly, and the date of resubmission will serve as the submission date for the purposes of this Protocol.

(c) Where the notice and materials are considered by Staff to be adequate for publication, Staff will proceed with the processes set out in section 9.

9. Publication of a Public Interest Rule, Significant Change Subject to Public Comment, or Fee Change Subject to Public Comment

(a) As soon as practicable after the receipt of the notice and materials submitted by the Exchange relating to a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment in accordance with subsection 7(a), Staff will publish in the OSC Bulletin and/or on the OSC website, the notice prepared by the Exchange, along with a notice prepared by Staff, if necessary, that provides market participants with an opportunity to provide comments to Staff and to the Exchange within 30 days from the date the notice appears in the OSC Bulletin or on the OSC website, whichever comes first.

(b) If public comments are received

(i) the Exchange will forward copies of the comments promptly to Staff; and

(ii) the Exchange will prepare a summary of the public comments and a response to those comments and provide them to Staff promptly after the end of the comment period.

10. Review and Approval Process for Proposed Fee Changes, Public Interest Rules, and Significant Changes

(a) Staff will use their best efforts to complete their review of a proposed Fee Change, Public Interest Rule, or Significant Change within:

(i) 45 days from the date of submission of a proposed Public Interest Rule or Significant Change; and

(ii) fifteen business days from the date of submission of a proposed Fee Change.

(b) Staff will notify the Exchange if they anticipate that their review of the proposed Fee Change, Public Interest Rule, or Significant Change will exceed the timelines in subsection (a).

(c) If Staff have material comments or require additional information to complete their review of a proposed Fee Change, Public Interest Rule, or Significant Change, Staff will use best efforts to provide the Exchange with a comment letter promptly by the end of the public comment period for a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, and promptly after the receipt of the materials submitted under section 7 for all other Changes.

(d) The Exchange will respond to any comments received from Staff in writing.

(e) Unless Staff agree to an extension of time, if the Exchange fails to respond to Staff's comments within 120 days after the receipt of Staff's comment letter, the Exchange will be deemed to have withdrawn the proposed Fee Change, Public Interest Rule, or Significant Change. If the Exchange wishes to proceed with the Fee Change, Public Interest Rule, or Significant Change after it has been deemed withdrawn, the Exchange will have to re-submit it for review and approval in accordance with this Protocol.

(f) Upon completion of Staff's review of a Fee Change, Public Interest Rule, or Significant Change, Staff will submit the Change or Rule to the Director or, in the circumstances described in subsection (g), to the Commission, for a decision within the following timelines:

(i) for a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, the later of 45 days from the date that the related materials were published for comment and the date that Staff's comments and public comments, including any concerns identified, have been adequately addressed by the Exchange;

(ii) for any other Significant Change, the later of 45 days from the date of submission of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange; or

(iii) for any other Fee Change, the later of fifteen business days from the date of submission of the Change and the date that Staff's comments and any concerns identified have been adequately addressed by the Exchange.

(g) A Fee Change, Public Interest Rule, or Significant Change may be submitted to the Commission for a decision, within the timelines in subsection (f):

(i) if the proposed Fee Change, Public Interest Rule, or Significant Change introduces a novel feature to the Exchange or the capital markets;

(ii) if the proposed Fee Change, Public Interest Rule, or Significant Change raises significant regulatory or public interest concerns; or

(iii) in any other situation where, in Staff's view, Commission approval is appropriate.

(h) Staff will promptly notify the Exchange of the decision.

(i) If a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment is approved, Staff will publish the following documents in the OSC Bulletin and/or on the OSC website promptly after the approval:

(i) a notice indicating that the proposed Rule or Change is approved;

(ii) the summary of public comments and responses prepared by the Exchange, if applicable; and

(iii) if non-material changes were made to the version published for public comment, a brief description of these changes prepared by the Exchange and a blacklined copy of the revised Rule or Change highlighting the revisions made.

11. Review Criteria for a Fee Change, Public Interest Rule, and Significant Change

(a) Staff will review a proposed Fee Change, Public Interest Rule, or Significant Change to assess whether it is in the public interest for the Director or the Commission to approve the Rule or Change. In making this determination, Staff will have regard for the purposes of the *Securities Act* (Ontario) as set out in section 1.1 of the *Securities Act* (Ontario). The factors that Staff will consider in making their determination also include whether:

(i) the Rule or Change would impact the Exchange's compliance with Ontario securities law;

(ii) the Exchange followed its established internal governance practices in approving the proposed Rule or Change;

(iii) the Exchange followed the requirements of this Protocol and has provided sufficient analysis of the nature, purpose, and effect of the Rule or Change; and

(iv) the Exchange adequately addressed any comments received.

12. Effective Date of a Fee Change, Public Interest Rule, or Significant Change

(a) A Public Interest Rule or Significant Change will be effective on the later of:

(i) the date that the Exchange is notified that the Change or Rule is approved;

(ii) if applicable, the date of publication of the notice of approval on the OSC website;

(iii) if applicable, the implementation date established by the Exchange's Rules, agreements, practices, policies, or procedures; and

(iv) the date designated by the Exchange.

(b) The Exchange must not implement a Fee Change unless the Exchange has provided stakeholders, including marketplace participants, issuers, and vendors, as applicable, with notice of the Fee Change at least five business days prior to implementation.

(c) Where a Significant Change involves a material change to any of the systems, operated by or on behalf of the Exchange, described in section 12.1 of National Instrument 21-101, the Significant Change will not be effective until a reasonable period of time after the Exchange is notified that the Significant Change is approved.

(d) In determining what constitutes a reasonable period of time for purposes of implementing a Significant Change under paragraph (c), Staff will consider how the Significant Change will impact the Exchange, its market structure, members, issuers, investors, or the Canadian capital markets or otherwise raises regulatory or public interest concerns.

(e) The Exchange must notify Staff promptly following the implementation of a Public Interest Rule, Significant Change, or Fee Change that becomes effective under subsections (a) and (b).

(f) Where the Exchange does not implement a Public Interest Rule, Significant Change, or Fee Change within 180 days of the effective date of the Fee Change, Public Interest Rule, or Significant Change, as provided for in subsections (a) and (b), the Public Interest Rule, Significant Change or Fee Change will be deemed to be withdrawn.

13. Significant Revisions and Republication

(a) If, subsequent to its publication for comment, the Exchange revises a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment in a manner that results in a material change to the proposed substance or effect of the Rule or Change, Staff will, in consultation with the Exchange, determine whether or not the revised Rule or Change should be published for an additional 30-day comment period.

(b) If a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment is republished under subsection (a), the request for comments will include a blacklined version marked to the originally published version, a summary of comments and responses prepared by the Exchange, and an explanation of the revisions and the supporting rationale for the revisions.

14. Withdrawal of a Fee Change, Public Interest Rule, or Significant Change

(a) If the Exchange withdraws a Fee Change, Public Interest Rule or a Significant Change that was previously submitted, it will provide a written notice of withdrawal to Staff.

(b) If the notice of withdrawal relates to a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment, Staff will publish the notice of withdrawal in the OSC Bulletin and/or on the OSC website as soon as practicable.

(c) If a Public Interest Rule, Significant Change subject to Public Comment, or Fee Change subject to Public Comment is deemed to have been withdrawn as provided in subsection 10(e), Staff will prepare and publish a notice informing market participants that the Exchange did not proceed with the Rule or Change.

15. Effective Date of a Housekeeping Rule or Housekeeping Change

(a) Subject to subsections (c) and (d), a Housekeeping Rule will be effective on the later of

(i) the date of the publication of the notice to be published on the OSC website or in the OSC Bulletin, in accordance with subsection (e), and

(ii) the date designated by the Exchange.

(b) Subject to subsections (c) and (d), a Housekeeping Change will be effective on the date designated by the Exchange.

(c) Staff will review the materials submitted by the Exchange for a Housekeeping Change or Housekeeping Rule to assess the appropriateness of the categorization of the Rule or Change as housekeeping within five business days from the date that the Exchange submitted the documents in accordance with subsections 7(c) and 7(d). The Exchange will be notified in writing if there is disagreement with respect to the categorization of the Rule or Change as housekeeping.

(d) If Staff disagree with the categorization of the Rule or Change as housekeeping, the Exchange will immediately repeal the Change, if applicable, submit the proposed Rule as a Public Interest Rule or the proposed Change as a Significant Change, and follow the review and approval processes described in this Protocol as applying to a Public Interest Rule or Significant Change, including those processes applicable to a Significant Change subject to Public Comment, if applicable.

(e) If Staff do not disagree with the categorization of the Rule, Staff will publish a notice to that effect in the OSC Bulletin or on the OSC website as soon as is practicable.

16. Immediate Implementation of a Public Interest Rule or Significant Change

(a) The Exchange may need to make a Public Interest Rule or Significant Change effective immediately where the Exchange determines that there is an urgent need to implement the Rule or Change to maintain fair and orderly markets, or because of a substantial and imminent risk of material harm to the Exchange, its members, other market participants, issuers, or investors.

(b) When the Exchange determines that immediate implementation is necessary, it will advise Staff in writing as soon as possible, but in any event, at least five business days prior to the proposed implementation of the Public Interest Rule or Significant Change. The written notice will include the expected effective date of the Public Interest Rule or Significant Change and an analysis to support the need for immediate implementation. An application for an exemption from the 45-day advance filing requirements in National Instrument 21-101 must follow within five business days following the Exchange receiving notice that Staff agrees with immediate implementation of the Public Interest Rule or Significant Change.

(c) If Staff do not agree that immediate implementation is necessary, Staff will promptly notify the Exchange, in writing, of the disagreement no later than the end of the third business day following submission of the notice under subsection (b). If the disagreement is not resolved, the Exchange will submit the Public Interest Rule or Significant Change in accordance with the timelines in section 7.

17. Review of a Public Interest Rule or Significant Change Implemented Immediately

A Public Interest Rule or Significant Change that has been implemented immediately in accordance with section 16 will be published, if applicable, and reviewed and approved by the Director or by the

Commission in accordance with the procedures set out in section 10, with necessary modifications. If the Director or the Commission does not approve the Public Interest Rule or Significant Change, the Exchange will immediately repeal the Rule or Change and inform its members of the decision.

18. Application of Section 21 of the *Securities Act* (Ontario)

The Commission's powers under subsection 21(5) of the *Securities Act* (Ontario) are not constrained in any way, notwithstanding a Rule or Change having been approved under this Protocol.

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B.3
Reasons and Decisions

B.3.1 CI Financial Corp.

Headnote

Multilateral Instrument 11-102 Passport System and National Policy 11-203 Process for Exemptive Relief Applications in Multiple Jurisdictions – Exemption from the extension take up requirements in subsection 2.32(4) of National Instrument 62-104 Take-Over Bids and Issuer Bids – an issuer conducting an issuer bid requires relief from the requirement not to extend its issuer bid if all terms and conditions are met unless the issuer first takes up all securities validly deposited and not withdrawn under the issuer bid – requested relief granted, subject to conditions.

Applicable Legislative Provisions

National Instrument 62-104 Take-Over Bids and Issuer Bids, ss. 2.32(4) and 6.1.

November 28, 2023

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

AND

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

AND

IN THE MATTER OF
CI FINANCIAL CORP.
(the Filer)

DECISION

Background

The principal regulator in the Jurisdiction has received an application from the Filer for a decision under the securities legislation of the Jurisdiction of the principal regulator (the **Legislation**) that, in connection with the proposed purchase by the Filer of a portion of its issued and outstanding common shares (the **Common Shares**) pursuant to an issuer bid commenced on November 10, 2023 (the **Offer**), the Filer be exempt from the requirement set out in subsection 2.32(4) of National Instrument 62-104 *Take-Over Bids and Issuer Bids* (**NI 62-104**) that the Offer not be extended if all the terms and conditions of the Offer have been complied with or waived unless the Filer first takes up all of the Common Shares deposited under the Offer and not withdrawn (the **Exemption Sought**).

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

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

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

Interpretation

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

Representations

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

1. The Filer is a corporation validly existing under the *Business Corporations Act* (Ontario) and is in good standing.

2. The registered and head office of the Filer is in Toronto, Ontario.

3. The Filer is a reporting issuer in the Province of Ontario. The Filer is not in default of any requirement of the securities legislation in any jurisdiction in which it is a reporting issuer.

4. The authorized share capital of the Filer consists of an unlimited number of Common Shares and an unlimited number of preference shares. As at November 8, 2023, 162,784,729 Common Shares were issued and outstanding and no preference shares were issued and outstanding.

5. The Common Shares are listed and posted for trading on the Toronto Stock Exchange (the **TSX**) under the symbol "CIX".

6. Management of the Filer believes that the recent trading price of the Common Shares is not fully reflective of the value of the Filer's business and future prospects and that the purchase of Common Shares pursuant to the Offer constitutes an efficient means of providing value to the holders of Common Shares (each a **Shareholder**, collectively the **Shareholders**). Management of the Filer proposed the Offer to the board of directors of the Filer (the **Board**). After consideration of a number of factors, including that the Offer allows the Filer an opportunity to return up to $100,000,000 of capital in an equitable and efficient way to Shareholders who elect to tender their Common Shares to the Offer, while at the same time increasing the equity ownership of Shareholders who elect not to tender, the Board determined that the Offer is in the best interests of the Filer and its Shareholders.

7. The Filer formally commenced the Offer on November 10, 2023. The issuer bid circular dated November 10, 2023 prepared and filed by the Filer in connection with the Offer (the **Circular**) specifies that the Filer proposes to purchase, by way of a modified "Dutch auction" procedure in the manner described below, up to $100,000,000 of the issued and outstanding Common Shares (the **Maximum Purchase Amount**) at a purchase price of not less than $13.64 and not more than $15.28 per Common Share (the **Price Range**).

8. The Offer is made only for Common Shares and not for any convertible securities. Pursuant to subsection 2.8(b) of NI 62-104, the Filer also sent the offer to purchase in respect of the Offer and Circular to each holder of convertible securities that, before the expiry of the deposit period of the Offer, are convertible into Common Shares. Such convertible securities may, at the option of the holder, be converted for Common Shares in accordance with the terms of such convertible securities prior to the expiry of the deposit period of the Offer. Common Shares issued upon the conversion of the convertible securities may be tendered to the Offer in accordance with the terms of the Offer.

9. The Filer will fund any purchase of Common Shares pursuant to the Offer, together with all related fees and expenses of the Offer, from available cash on hand and advances under the revolving portion of its credit facility pursuant to a credit agreement between the Filer, Royal Bank of Canada, The Toronto-Dominion Bank, Canadian Imperial Bank of Commerce, and National Bank of Canada dated February 14, 2023, as amended. The Offer is not conditional upon the receipt of any financing.

10. Each Shareholder wishing to tender to the Offer may do so pursuant to:

    (a) auction tenders in which the tendering Shareholders specify the number of Common Shares being tendered at a specified price per Common Share (the **Auction Price**) within the Price Range in increments of $0.25 per Common Share other than an increment from $13.64 to $13.78 (the **Auction Tenders**); or

    (b) purchase price tenders in which the tendering Shareholders do not specify a price per Common Share, but rather agree to have a specified number of Common Shares purchased at the Purchase Price (as defined below) to be determined by the Filer (the **Purchase Price Tenders**).

11. Shareholders who tender Common Shares without making a valid Auction Tender or Purchase Price Tender will be deemed to have made a Purchase Price Tender.

12. If a Shareholder wishes to deposit Common Shares in separate lots at a different price for each lot, that Shareholder must complete a separate letter of transmittal (and, if applicable, a notice of guaranteed delivery) for each price at which the Shareholder is depositing Common Shares. A Shareholder may not deposit the same Common Shares pursuant to both an Auction Tender and a Purchase Price Tender, or pursuant to an Auction Tender at more than one price.

13. Any Shareholder who beneficially owns fewer than 100 Common Shares (an **Odd Lot Holder**) and tenders all such Common Shares pursuant to an Auction Tender at a price at or below the Purchase Price, or pursuant to a Purchase Price Tender, will be considered to have made an "Odd Lot Tender".

14. Taking into account the number of Common Shares deposited pursuant to the Auction Tenders and Purchase Price Tenders and the prices specified by Shareholders depositing Common Shares pursuant to the Auction Tenders, the Filer will determine a single price payable per Common Share (the **Purchase Price**) promptly following the expiration of the Offer. The Purchase Price will be the lowest price per Common Share that enables the Filer to purchase the maximum number of Common Shares validly deposited and not properly withdrawn pursuant to the Offer having an aggregate purchase price not exceeding the Maximum Purchase Amount. For the purposes of determining the Purchase Price, Common Shares deposited pursuant to a Purchase Price Tender will be deemed to have been deposited at a price of $13.64 per Common Share (which is the minimum price per Common Share under the Offer).

15. If the aggregate Purchase Price for the Common Shares validly deposited and not withdrawn pursuant to Auction Tenders at Auction Prices at or below the Purchase Price and Purchase Price Tenders would result in an aggregate Purchase Price in excess of the Maximum Purchase Amount, then such deposited Common Shares will be purchased as follows:

    (a) first, the Filer will purchase all Common Shares tendered at or below the Purchase Price by Odd Lot Holders at the Purchase Price; and

    (b) second, the Filer will purchase Common Shares at the Purchase Price on a *pro rata* basis according to the number of Common Shares deposited or deemed to be deposited at a price equal to or less than the Purchase Price by the depositing Shareholders, for an aggregate purchase price of the Maximum Purchase Amount less the aggregate purchase price of the Common Shares purchased from Odd Lot Holders. All Auction Tenders and Purchase Price Tenders will be subject to adjustment to avoid the purchase of fractional Common Shares (with fractions rounded down to the nearest whole Common Share).

16. Until expiry of the Offer, all information about the number of Common Shares tendered and the prices at which such Common Shares are tendered will be required to be kept confidential by the depositary and the Filer until the Purchase Price has been determined.

17. All Common Shares purchased by the Filer pursuant to the Offer (including Auction Tenders tendered at a price below the Purchase Price) will be purchased at the Purchase Price, payable in cash. All payments to Shareholders will be subject to deduction of applicable withholding taxes.

18. Common Shares validly deposited by a Shareholder pursuant to an Auction Tender will not be purchased by the Filer pursuant to the Offer if the Auction Price per Common Share specified by the Shareholder is greater than the Purchase Price.

19. Certificates for all Common Shares not purchased under the Offer (including Common Shares deposited pursuant to an Auction Tender at prices greater than the Purchase Price, Common Shares not purchased because of pro-ration, improper tenders, or Common Shares not taken up due to the termination of the Offer), or properly withdrawn before the Expiration Date (as defined below), will be returned (in the case of certificates representing Common Shares all of which are not purchased) or replaced with new certificates representing the balance of Common Shares not purchased (in the case of certificates representing Common Shares of which less than all are purchased), promptly after the Expiration Date or termination of the Offer or the date of withdrawal of the Common Shares, without expense to the Shareholder. In the case of Common Shares tendered through book-entry transfer into the account of Computershare Investor Services Inc. at Depository Trust Company (**DTC**) or CDS Clearing and Depository Services Inc. (**CDS**), the Common Shares will be credited to the appropriate account maintained by the tendering Shareholder at DTC or CDS, as applicable, without expense to the Shareholder.

20. Shareholders who do not accept the Offer will continue to hold the same number of Common Shares held before the Offer and their proportionate ownership of Common Shares will increase following completion of the Offer, subject to the number of Common Shares purchased under the Offer.

21. To the knowledge of the Filer, after reasonable inquiry, no person or company beneficially owns, or exercises control or direction over, more than 10% of the voting rights attached to all of the Filer's outstanding voting securities.

22. On November 8, 2023, the date prior to the announcement of the Filer's intention to proceed with the Offer, the closing price of the Common Shares on the TSX was $13.64 per Common Share.

23. As of November 8, 2023, there were 162,784,729 Common Shares issued and outstanding. If the Purchase Price is determined to be $13.64 (being the minimum Purchase Price under the Offer), the maximum number of Common Shares that the Filer is offering to purchase pursuant to the Offer represents approximately 4.5% of the outstanding Common Shares. If the Purchase Price is determined to be $15.28 (being the maximum Purchase Price under the Offer), the

maximum number of Common Shares that the Filer is offering to purchase pursuant to the Offer represents approximately 4.0% of the outstanding Common Shares.

24. As of November 9, 2023, to the knowledge of the Filer and its directors and officers, after reasonable inquiry, no director or officer of the Filer, no associate or affiliate of the Filer or of an insider of the Filer, no insider of the Filer (other than a director or officer), and no person or company acting jointly or in concert with the Filer, has indicated any present intention to deposit any of such person's Common Shares pursuant to the Offer.

25. The Offer is scheduled to expire at 5:00 p.m. (Eastern time) on December 18, 2023 (the **Expiration Date**).

26. If all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Date but the aggregate Purchase Price of the Common Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is less than the Maximum Purchase Amount, the Filer may wish to extend the Offer. The Filer will not extend the Offer if, all the terms and conditions of the Offer have been complied with or waived by the Filer by the Expiration Date and the aggregate Purchase Price of the Common Shares validly tendered and not withdrawn pursuant to Auction Tenders and Purchase Price Tenders is equal to or greater than the Maximum Purchase Amount.

27. Pursuant to subsection 2.32(4) of NI 62-104, an issuer may not extend an issuer bid if all the terms and conditions of the issuer bid have been complied with or waived unless the issuer first takes up all securities deposited under the issuer bid and not withdrawn.

28. As the determination of the Purchase Price requires that all Auction Prices and the number of Common Shares deposited pursuant to both Auction Tenders and Purchase Price Tenders be known and taken into account, the Filer will be unable to take up the Common Shares deposited and not withdrawn under the Offer as of the Expiration Date prior to extending the Offer because the Purchase Price will not and cannot be known as additional Auction Tenders and Purchase Price Tenders may be made during the extension period that will impact the calculation of the Purchase Price. Accordingly, the Exemption Sought is required in connection with an extension of the Offer to enable the Filer to make a final determination regarding the Purchase Price, taking into account all Common Shares tendered prior to the Expiration Date and those tendered during any extension period.

29. Common Shares deposited pursuant to the Offer, including those deposited prior to the Expiration Date, may be withdrawn by the Shareholder at any time prior to the expiration of any extension period in respect of the Offer.

30. The Filer is relying on the "liquid market exemption" set out in subsection 3.4(b) of Multilateral Instrument 61-101 *Protection of Minority Security Holders in Special Transactions* (**MI 61-101**) from the formal valuation requirements applicable to issuer bids under MI 61-101 (the **Liquid Market Exemption**).

31. There is a "liquid market" for the Common Shares, as such term is defined in MI 61-101, as of the date the Offer was publicly announced because, in accordance with section 1.2 of MI 61-101:

    (a) there is a published market for the Common Shares (i.e. the TSX);

    (b) during the 12-month period before November 9, 2023 (the date the Offer was publicly announced)

        (i) the number of issued and outstanding Common Shares was at all times at least 5,000,000 (excluding Common Shares beneficially owned, or over which control or direction was exercised, by related parties), all of which Common Shares are freely tradeable;

        (ii) the aggregate trading volume of Common Shares on the TSX was at least 1,000,000 Common Shares;

        (iii) there were at least 1,000 trades in the Common Shares on the TSX; and

        (iv) the aggregate value of the trades in the Common Shares on the TSX was at least $15,000,000; and

    (c) the market value of the Common Shares on the TSX, as determined in accordance with MI 61-101, was at least $75,000,000 for October 2023 (the calendar month preceding the calendar month in which the Offer was publicly announced).

32. Based on the maximum number of Common Shares that may be purchased under the Offer, the Board determined that it is reasonable to conclude that, following completion of the Offer, there will be a market for holders of Common Shares who do not tender to the Offer that is not materially less liquid than the market that existed at the time of the making of the Offer.

33. The Board has determined that the Offer is in the best interests of the Filer and Shareholders, and that the Offer is an advisable use of the Filer's financial resources and that, after giving effect to the Offer, the Filer will continue to have sufficient financial resources and working capital to conduct its ongoing business and operations and that the Offer is not

expected to preclude the Filer from pursuing its foreseeable business opportunities or the future growth of the Filer's business.

34. The Circular:

(a) discloses the mechanics for the take up of, and payment for, deposited Common Shares;

(b) explains that, by tendering Common Shares under an Auction Tender at the lowest price in the Price Range or by tendering Common Shares under a Purchase Price Tender, a Shareholder can reasonably expect that the Common Shares so tendered will be purchased at the Purchase Price, subject to proration and other terms of the Offer as specified herein;

(c) discloses that the Filer has applied for the Exemption Sought;

(d) sets out the manner in which an extension of the Offer will be communicated to Shareholders and the public;

(e) discloses that Common Shares deposited pursuant to the Offer may be withdrawn any time prior to the expiration of any extension period in respect of the Offer;

(f) discloses the facts supporting the Filer's reliance on the Liquid Market Exemption; and

(g) contains the disclosure prescribed by the Legislation for issuer bids.

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) Common Shares validly deposited under the Offer and not withdrawn are taken up and paid for, or dealt with, in the manner set out in the Circular and described above;

(b) the Filer is eligible to rely on the Liquid Market Exemption; and

(c) the Filer will issue and file a press release announcing receipt of the Exemption Sought promptly, and in any case, no later than one (1) business day following receipt of the Exemption Sought.

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

B.3.2 Mastercard Foundation Asset Management Corporation

Headnote

Application to the Ontario Securities Commission for a ruling pursuant to subsection 74(1) of the Securities Act (Ontario) (the Act) for a ruling that the Applicant be exempted from the adviser registration requirements in subsection 25(3) of the Act. The Applicant will provide advice only to a charitable foundation in Ontario and only for so long as such foundation controls the Applicant.

Applicable Legislative Provisions

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 25(3) and 74(1).

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

AND

IN THE MATTER OF
MASTERCARD FOUNDATION ASSET MANAGEMENT CORPORATION

DECISION

UPON the application (the **Application**) of Mastercard Foundation Asset Management Corporation (the **Applicant**), a not-for-profit entity that is wholly-owned and controlled by the Mastercard Foundation (the **Foundation**), to the Ontario Securities Commission (the **Commission**) for a ruling pursuant to subsection 74(1) of the Act (the **Ruling**) that the Applicant be exempted from the adviser registration requirement in subsection 25(3) of the Act (the **Adviser Registration Requirement**);

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

AND UPON the Applicant having represented to the Commission as follows:

Background

1. The Foundation is a registered Canadian charity and one of the largest foundations in the world with an investment portfolio having a net asset value as at December 31, 2022 of approximately U.S.$29 billion (as shown on the Foundation's audited financial statements). It works with visionary organizations to advance education and financial inclusion to enable young people in Africa and Indigenous youth in Canada to access dignified and fulfilling work.

2. Established in 2006 by Mastercard Inc. (**Mastercard**) when Mastercard became a public company listed on the New York Stock Exchange, the Foundation is an independent organization separate from Mastercard, having its head office in Ontario and branch offices in Kigali, Accra, Nairobi, Kampala, Lagos, Dakar, and Addis Ababa. The Foundation's policies, operations, and program decisions are determined by the Foundation's Board of Directors and leadership.

3. Shares of Mastercard were contributed to the Foundation in 2006 under the deed of gift that formed the Foundation, with the restriction that those Mastercard shares could only be sold for limited purposes. As a result, currently, the Foundation's sole assets consist of shares of Mastercard. Pursuant to an order granted by the Ontario court (upon the recommendation of the Ontario Public Guardian and Trustee), effective January 1, 2024, the Foundation will be permitted to diversify its portfolio and hold public and private investments other than shares of Mastercard.

4. On October 4, 2023, the Foundation incorporated the Applicant as a not-for-profit entity under the *Canada Not-for-profit Corporations Act* so that as of January 1, 2024, the Applicant may provide securities investment counsel and management services (the **Advisory Services**) to the Foundation for the Foundation's newly diversified portfolio on a non-profit basis.

5. The Foundation is a "permitted client" as defined in paragraph (q) of section 1.1 of NI 31-103.

6. The Foundation controls the Applicant because the Foundation is the Applicant's sole member and holds all rights to elect the Applicant's board.

7. The Applicant has its head office in Ontario. The Applicant is not in default of any requirements of securities legislation in Ontario.

8. The Applicant is not registered as an adviser under the Act and does not have available to it an adviser registration exemption on which it can rely.

9. Absent the Ruling, the Applicant would have to be registered as an adviser under the Act to provide the Advisory Services to the Foundation.

Reasons for the Ruling

10. Although the Foundation and the Applicant are separate legal entities, the provision of the Advisory Services to the Foundation by the Applicant is similar in substance to the operation of an "in-house" investment advice team made up of employees of the entity whose advice is limited to the management of the entity's own assets.

11. There is no requirement for employees of an entity to be registered as advisers under the Act if the employees provide investment advice only to their employer with respect to the portfolio assets of their employer.

12. After considering a number of factors, including governance, tax, organizational design, and charity law, the Foundation determined to proceed by way of the formation of a new entity and established the Applicant to facilitate a clear separation and segregation of functions and governance. The Applicant will not provide the Advisory Services to anyone other than the Foundation, nor hold itself out to the public as a provider of such services.

13. The Applicant will directly employ an in-house investment management team comprising individuals with the experience and proficiencies required to properly and adequately assess whether specific securities investments are appropriate for the Foundation.

14. The portfolio assets for which the Applicant will provide the Advisory Services are owned by the Foundation. There are no external stakeholders that have any direct interest as owners in the performance of such portfolio assets. Accordingly, there is no stakeholder in Ontario or elsewhere other than the Foundation that would be directly affected by the Advisory Services provided by the Applicant.

15. The Advisory Services will be provided by the Applicant in compliance with the terms of a written investment management agreement with the Foundation. The Applicant will only provide the Advisory Services to the Foundation on a cost recovery basis that is compliant with tax, regulatory, and other considerations, but is not intended to produce a profit.

16. Subsection 74(1) of the Act provides that a ruling may be made by the Commission that a person or company is not subject to section 25 of the Act, subject to such terms and conditions as the Commission considers necessary, when the Commission is satisfied that to do so would not be prejudicial to the public interest.

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

IT IS RULED, pursuant to subsection 74(1) of the Act, that the Applicant is exempt from the Adviser Registration Requirement in respect of it acting as an adviser to the Foundation, provided that:

The Applicant provides investment counsel and portfolio management services only to the Foundation, and only as long as:

(a) there are no external stakeholders that have any direct interest as owners in the performance of the portfolio assets of the Foundation;

(b) the Foundation controls the Applicant; and

(c) the Foundation remains a "permitted client" as defined in NI 31-103.

DATED at Toronto, Ontario, this **29th** day of **November, 2023.**

"Felicia Tedesco"
Deputy Director, Compliance and Registrant Regulation
Ontario Securities Commission

OSC File #: 2023/0486

B.3.3 Bitbuy Technologies Inc.

Headnote

Application for time-limited relief from certain prospectus, trade reporting, and marketplace requirements – relief to allow the Filer to distribute Crypto Contracts and operate a platform that facilitates the buying, selling and holding of Crypto Assets – relief granted subject to certain conditions set out in the decision, including fair access, transparency, market integrity, investment limits, disclosure and reporting requirements – relief is time-limited and will expire upon the earlier of May 30, 2024 or the date the Filer transitions its client accounts to its Canadian Investment Regulatory Organization affiliate – relief granted based on the particular facts and circumstances of the application with the objective of fostering innovation in Canada – decision should not be viewed as precedent for other filers in the jurisdictions of Canada.

Statute cited

Securities Act, R.S.O. 1990, c. S.5, as am., ss. 1(1), 53 and 74.

Instrument, Rule or Policy cited

Multilateral Instrument 11-102 Passport System, s. 4.7.
National Instrument 21-101 Marketplace Operation.
National Instrument 23-101 Trading Rules.
National Instrument 23-103 Electronic Trading and Direct Access to Marketplaces.
OSC Rule 91-506 Derivatives: Product Determination, ss. 2 and 4.
OSC Rule 91-507 Trade Repositories and Derivatives Data Reporting, Part 3.

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

AND

ALBERTA,
BRITISH COLUMBIA,
MANITOBA,
NEW BRUNSWICK,
NEWFOUNDLAND AND LABRADOR,
NORTHWEST TERRITORIES,
NOVA SCOTIA,
NUNAVUT,
PRINCE EDWARD ISLAND,
QUÉBEC,
SASKATCHEWAN,
AND
YUKON

AND

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

AND

IN THE MATTER OF
BITBUY TECHNOLOGIES INC.
(the Filer)

DECISION

Background

As set out in CSA Staff Notice 21-327 *Guidance on the Application of Securities Legislation to Entities Facilitating the Trading of Crypto Assets* (**Staff Notice 21-327**) and Joint CSA/Investment Industry Regulatory Organization of Canada (**IIROC**) Staff Notice 21-329 *Guidance for Crypto-Asset Trading Platforms: Compliance with Regulatory Requirements* (**Staff Notice 21-329**), securities

legislation applies to crypto asset trading platforms (**CTPs**) that facilitate or propose to facilitate the trading of instruments or contracts involving anything commonly considered a crypto asset, digital or virtual currency, or digital or virtual token (a **Crypto Asset**) because the user's contractual right to the Crypto Asset may itself constitute a security and/or a derivative (**Crypto Contract**).

To foster innovation and respond to novel circumstances, the Canadian Securities Administrators (**CSA)** have considered an interim, time-limited registration that would allow CTPs to operate within a regulated environment, with regulatory requirements tailored to the CTP's operations. The overall goal of the regulatory environment is to ensure there is a balance between the need to be flexible and facilitate innovation in the Canadian capital markets, while upholding the regulatory mandate of promoting investor protection and fair and efficient capital markets.

The Filer is currently approved to operate a marketplace and is registered in the category of restricted dealer in the Applicable Jurisdictions (as defined below). In connection with its registration as a restricted dealer, the Filer previously applied for and received exemptive relief in a decision dated November 30, 2021 on terms substantially similar to this decision (**Decision**). The Filer's registration is also currently subject to additional terms and conditions in relation to the Filer's provision of staking services.

Under the terms and conditions of the decision *In the Matter of Bitbuy Technologies Inc.* dated November 30, 2021 (the **Prior Decision**) and the terms and conditions imposed on its registration, the Filer has operated, and continues to operate, on an interim basis, a platform (the **Platform**) that permits clients resident in Canada to enter into Crypto Contracts with the Filer to purchase, sell, hold, stake, deposit and withdraw Crypto Assets.

The exemptive relief granted under the Prior Decision expires on November 30th, 2023.

The Filer has submitted an application to extend its existing exemptive relief in order to continue to operate the Platform on an interim basis until the client accounts of the Filer are transferred to Coinsquare Capital Markets Ltd. (**CCML**), and to incorporate the terms and conditions into the Decision related to the Filer's provision of staking services and offering of Crypto Contracts based on Value-Referenced Crypto Assets (as defined below).

This Decision has been tailored for the specific facts and circumstances of the Filer, and the securities regulatory authority or regulator in the Applicable Jurisdictions (as defined below) will not consider this Decision as constituting a precedent for other filers.

Relief Requested

The securities regulatory authority or regulator in Ontario (the **Jurisdiction**) has received an application from the Filer (the **Passport Application**) for a decision under the securities legislation of the Jurisdiction (the **Legislation**) extending the time-limited exemption of the Filer from the prospectus requirements under the Legislation in respect of the Filer entering into Crypto Contracts with clients to purchase, hold, sell, deposit, withdraw and stake Crypto Assets (the **Prospectus Relief**).

The securities regulatory authority or regulator in the Jurisdiction and each of the other jurisdictions that has adopted the rules referred to in Appendix A, as applicable (collectively, the **Coordinated Review Decision Makers**), have received an application from the Filer (collectively with the Passport Application, the **Application**) for a decision under the securities legislation of those jurisdictions exempting the Filer from:

(1) certain reporting requirements under the Local Trade Reporting Rules (as defined in Appendix A) (the **Trade Reporting Relief**); and

(2) except in British Columbia, New Brunswick, Saskatchewan and Nova Scotia, the Marketplace Rules (as defined in Appendix A) (the **Marketplace Relief).**

Collectively, the Prospectus Relief, the Trade Reporting Relief and the Marketplace Relief are referred to herein as the **Requested Relief**).

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

(1) the Ontario Securities Commission is the principal regulator for this Application (the **Principal Regulator**);

(2) in respect of the Prospectus Relief, the Filer has provided notice that, in the jurisdictions where required, subsection 4.7(1) of Multilateral Instrument 11-102 *Passport System* (**MI 11-102**) is intended to be relied upon in each of the other provinces and territories of Canada (the **Non-Principal Jurisdictions**, and, together with the Jurisdiction, the **Applicable Jurisdictions**); and

(3) the decision in respect of the Trade Reporting Relief and the Marketplace Relief is the decision of the Principal Regulator and evidences the decision of each applicable Coordinated Review Decision Maker.

Interpretation

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

For the purposes of this Decision:

(a) "Acceptable Third-party Custodian" means an entity that

(i) is one of the following:

A. a Canadian custodian or Canadian financial institution, as those terms are defined in National Instrument 31-103 *Registration Requirements, Exemptions and Ongoing Registrant Obligations* (**NI 31-103**);

B. a custodian qualified to act as a custodian or sub-custodian for assets held in Canada pursuant to section 6.2 [Entities Qualified to Act as Custodian or Sub-Custodian for Assets Held in Canada] of National Instrument 81-102 *Investment Funds*;

C. a custodian that meets the definition of an "acceptable securities location" in accordance with the Investment Dealer and Partially Consolidated Rules and Form 1 of Canadian Investment Regulatory Organization (**CIRO**);

D. a foreign custodian (as defined in NI 31-103) for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s); or

E. an entity that does not meet the criteria for a qualified custodian (as defined in NI 31-103) and for which the Filer has obtained the prior written consent from the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s);

(ii) is functionally independent of the Filer within the meaning of NI 31-103;

(iii) has obtained audited financial statements within the last twelve months which

A. are audited by a person or company that is authorized to sign an auditor's report under the laws of a jurisdiction of Canada or a foreign jurisdiction and that meets the professional standards of that jurisdiction;

B. are accompanied by an auditor's report that expresses an unqualified opinion; and

C. unless otherwise agreed to by the Principal Regulator, discloses on their statement of financial position or in the notes of the audited financial statements the amount of liabilities that it owes to its clients for holding their assets, and the amount of assets held by the custodian to meet its obligations to those custody clients, broken down by asset; and

(iv) has obtained a Systems and Organization Controls (SOC) 2 Type 1 or SOC 2 Type 2 report within the last twelve months or has obtained a comparable report recognized by a similar accreditation board satisfactory to the Principal Regulator and the regulator or securities regulatory authority of the Applicable Jurisdiction(s).

(b) "Accredited Crypto Investor" means

a. an individual

i. who, alone or with a spouse, beneficially owns financial assets (as defined in section 1.1 of National Instrument 45-106 *Prospectus Exemptions* (**NI 45-106**)) and crypto assets, if not included in financial assets, having an aggregate realizable value that, before taxes but net of any related liabilities, exceeds $1,000,000;

ii. whose net income before taxes exceeded $200,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year;

iii. whose net income before taxes combined with that of a spouse exceeded $300,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that net income level in the current calendar year; or

iv. who, alone or with a spouse, beneficially owns net assets of at least $5,000,000;

b. a person or company described in paragraphs (a) to (i) of the definition of "accredited investor" as defined in subsection 73.3(1) of the Act or section 1.1 of NI 45-106; or

c. a person or company described in paragraphs (m) to (w) of the definition of "accredited investor" as defined in section 1.1 of NI 45-106.

(c) "Act" means the *Securities Act* (Ontario).

(d) "AML" means anti-money laundering.

(e) "API" means application programming interface.

(f) "Apps" means iOS and Android applications that provide access to the Platform.

(g) "CIPF" means the Canadian Investor Protection Fund.

(h) "Crypto Asset Statement" means the statement described in representation 28(b)(v).

(i) "Eligible Crypto Investor" means

(i) a person whose

A. net assets, alone or with a spouse, in the case of an individual, exceed $400,000;

B. net income before taxes exceeded $75,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year; or

C. net income before taxes, alone or with a spouse, in the case of an individual, exceeded $125,000 in each of the 2 most recent calendar years and who reasonably expects to exceed that income level in the current calendar year; or

(ii) an Accredited Crypto Investor.

(j) "Form 21-101F2" means Form 21-101F2 Information Statement Alternative Trading System.

(k) "IOSCO" means the International Organization of Securities Commissions.

(l) "Platform's Terms and Conditions" means the terms and conditions that apply to the access and use of the Platform.

(m) "Proprietary Token" means, with respect to a person or company, a Crypto Asset that is not a Value-Referenced Crypto Asset, and for which the person or company or an affiliate of the person or company acted as the issuer (and mints or burns the Crypto Asset) or a promoter.

(n) "Specified Crypto Asset" means the Crypto Assets listed in Appendix B to this Decision.

(o) "Specified Foreign Jurisdiction" means any of the following: Australia, Brazil, any member country of the European Union, Hong Kong, Japan, the Republic of Korea, New Zealand, Singapore, Switzerland, the United Kingdom of Great Britain and Northern Ireland, the United States of America, and any other jurisdiction that the Principal Regulator may advise.

(p) "Staking" means the act of committing or locking Crypto Assets in smart contracts to permit the owner or the owner's agent to act as a Validator for a particular proof-of-stake consensus algorithm blockchain.

(q) "Validator" means, in connection with a particular proof of stake consensus algorithm blockchain, an entity that operates one or more nodes that meet protocol requirements for a Crypto Asset and participates in consensus by broadcasting votes and committing new blocks to the blockchain.

(r) "Value-Referenced Crypto Asset" means a Crypto Asset that is designed to maintain a stable value over time by referencing the value of a fiat currency or any other value or right, or combination thereof.

(s) "Website" means the website https://bitbuy.ca or such other website as may be used to host the Platform from time to time.

In this Decision, a person or company is an affiliate of another person or company if

(a) one of them is, directly or indirectly, a subsidiary of the other, or

(b) each of them is controlled, directly or indirectly, by the same person.

Representations

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

The Filer

1. The Filer is a corporation incorporated under the federal laws of Canada with its head office in Toronto, Ontario.

2. The Filer is a wholly owned subsidiary of Bitbuy Holdings Inc. (**BHI**).

3. The Filer is registered with The Financial Transactions and Reports Analysis Centre of Canada (**FINTRAC**) as a Money Services Business and complies with the applicable AML requirements under applicable legislation and the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* and its regulations.

4. The Filer does not have any securities listed or quoted on an exchange or marketplace in any jurisdiction inside or outside of Canada. However, a majority of the voting securities of BHI are controlled by WonderFi Technologies Inc. WonderFi Technologies Inc. is a reporting issuer under the legislation of the Applicable Jurisdictions and its securities are listed for trading on the Toronto Stock Exchange.

5. The Filer is registered as a dealer in the category of restricted dealer with the Applicable Jurisdictions.

6. The Filer's personnel consists, and will consist, of compliance professionals, finance professionals and software engineers with experience operating within regulated financial services environments and blockchain technology. All of the Filer's personnel have passed, and new personnel will have passed, criminal records and credit checks. The Filer currently has three dealing representatives.

7. Subject to the Decision requested being granted prior to the expiry of the Prior Decision, the Filer is not in default of securities legislation of any jurisdictions of Canada.

8. The Filer and CCML have been actively and diligently working with CIRO to transition the client accounts of the Filer to CCML (the **Transition**), including:

   (a) analyzing the rules that apply to members of CIRO (**CIRO Rules**) to identify areas where exemptive relief from CIRO Rules may be required in light of the Platform and the Filer's activities as compared to CCML's;

   (b) preparing responses to written requests for information received from CIRO staff;

   (c) preparing and presenting on the Platform at numerous meetings with CIRO staff;

   (d) preparing draft exemptive relief applications, where such relief may be required from CIRO;

   (e) planning and implementing changes to CCML's platform to accommodate Platform offerings in accordance with CIRO's requirements; and

   (f) developing a structure for the legal transaction by which the client accounts owned by the Filer will be transferred to CCML.

9. The Filer requires additional time to complete the transfer of the Filer's client accounts to CCML. The Filer anticipates the following key steps will need to be taken:

   (a) responding to any further requests for information from CIRO;

   (b) submitting applications for exemptive relief to CIRO and addressing any comments on those applications;

   (c) receiving CIRO approval of the sale of the client accounts of the Filer to CCML;

   (d) receiving the Principal Regulator's non-objection to CCML's proposed acquisition of all client accounts of the Filer; and

(e) completing the Transition of the Filer's client accounts to CCML, after providing notice to the Filer's key stakeholders, including clients, custodians and liquidity providers.

10. Transition efforts have involved members of the operational, legal, trading, financial, product, engineering, security, finance, fraud, communications, and compliance teams of both the Filer and CCML. The Filer and CCML will continue to work actively and diligently with CIRO to effect the Transition of the client accounts of the Filer to CCML and under the oversight of CIRO.

11. The Filer and CCML will continue to work actively and diligently with CIRO to transition the client accounts of the Filer to CCML and under the oversight of CIRO. The Filer will cease any clearing activities or marketplace activities, including anything requiring Marketplace Relief, after the Transition and in any event, no later than the date of expiry of this Decision.

The Platform

12. The Filer operates under the business name of "Bitbuy". The Filer operates the Platform, which enables clients to buy, sell, hold, stake, deposit, and withdraw Crypto Assets through the Platform.

13. To use the Platform, each client must open an account (**Client Account**) using the Website or Apps. Client Accounts are governed by a user agreement (**Client Account Agreement**) that is accepted by clients at the time of account opening. The Client Account Agreement governs all activities in Client Accounts, including with respect to all Crypto Assets purchased on, or transferred to, the Platform (**Client Assets**). While clients are entitled to transfer certain Client Assets out of their Client Accounts immediately after purchase, clients may choose to leave their Client Assets in their Client Accounts.

14. The Filer's role under the Crypto Contract is to facilitate the buying, selling, and staking of Crypto Assets and to provide custodial services for all Crypto Assets held in Client Accounts.

15. The Filer's trading of Crypto Contracts is consistent with activities described in Staff Notice 21-327 and constitutes the trading of securities and/or derivatives.

16. The Filer may buy, sell, borrow or hold Crypto Assets in its inventory for operational purposes, such as payment of network/transaction fees required to transfer Crypto Assets and testing. The Filer holds proprietary crypto positions for working capital purposes. The Filer does not have any authority to act on a discretionary basis on behalf of clients and will not manage any discretionary accounts.

17. The Filer is not a member firm of the CIPF and the Crypto Contracts and the Crypto Assets that are held in custody by one or more third-party custodians will not qualify for CIPF coverage. The Risk Statement includes disclosure that there will be no CIPF coverage for the Crypto Assets and clients must acknowledge that they have received, read and understood the Risk Statement before opening an account with the Filer.

Crypto Assets Made Available through the Platform

18. The Filer has established and applies policies and procedures to review each Crypto Asset and to determine whether to allow clients on its Platform to enter into Crypto Contracts to buy, sell, stake, or hold the Crypto Asset on its Platform in accordance with the know-your-product (**KYP**) provisions of NI 31-103 (**KYP Policy**). Such review includes, but is not limited to, publicly available information concerning:

(a) the creation, governance, usage and design of the Crypto Asset, including the source code, security and roadmap for growth in the developer community and, if applicable, the background of the developer(s) that created the Crypto Asset;

(b) the supply, demand, maturity, utility and liquidity of the Crypto Asset;

(c) material technical risks associated with the Crypto Asset, including any code defects, security breaches and other threats concerning the Crypto Asset and its supporting blockchain (such as the susceptibility to hacking and impact of forking), or the practices and protocols that apply to them; and

(d) legal and regulatory risks associated with the Crypto Asset, including any pending, potential or prior civil, regulatory, criminal, or enforcement action relating to the issuance, distribution or use of the Crypto Asset.

19. The Filer only offers and only allows clients the ability to enter into Crypto Contracts based on Crypto Assets that (a) are not each themselves a security and/or a derivative, or (b) are Value-Referenced Crypto Assets, in accordance with condition Y of this Decision.

20. The Filer does not allow clients to enter into a Crypto Contract to buy, sell or stake Crypto Assets unless the Filer has taken steps to:

    (a) assess the relevant aspects of each Crypto Asset pursuant to the KYP Policy and as described in representation 18 to determine whether it is appropriate for its clients,

    (b) approve the Crypto Asset, and Crypto Contracts to buy, sell and stake such Crypto Asset, to be made available to clients,

    (c) determine that entering into the Crypto Contract is suitable for the client, and

    (d) monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

21. The Filer is not engaged, and will not engage without the prior written consent of the Principal Regulator, in trades that are part of, or designed to facilitate, the design, creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuers or affiliates or associates of such persons.

22. As set out in the KYP Policy, the Filer determines whether a Crypto Asset available to be bought or sold through a Crypto Contract is a security and/or derivative and is being offered in compliance with securities and derivatives laws, which include but are not limited to:

    (a) consideration of statements made by any regulators or securities regulatory authorities of the Applicable Jurisdictions, other regulators in IOSCO-member jurisdictions, or the regulator with the most significant connection to a Crypto Asset about whether the Crypto Asset, or generally about whether the type of Crypto Asset, is a security and/or derivative; and

    (b) if the Filer determines it to be necessary, obtaining legal advice as to whether the Crypto Asset is a security and/or derivative under securities legislation of the Applicable Jurisdictions.

23. The Filer monitors ongoing developments related to the Crypto Assets available on its Platform that may cause a Crypto Asset's status as a security and/or derivative or the assessment conducted by the Filer pursuant to its KYP Policy and as described in representations 18 and 22 above to change.

24. The Filer acknowledges that any determination made by the Filer as set out in representations 18 to 23 of this Decision does not prejudice the ability of any of the regulators or securities regulatory authorities of any province or territory of Canada to determine that a Crypto Asset that a client may enter into a Crypto Contract to buy and sell is a security and/or derivative.

25. The Filer has established and applies policies and procedures to promptly stop the trading of any Crypto Asset available on its Platform and to allow clients to liquidate in an orderly manner their positions in Crypto Contracts with underlying Crypto Assets that the Filer ceases to make available on its Platform.

Account Opening

26. The Platform is available to any person who is resident in Canada, who has reached the age of majority in the jurisdiction in which they are resident, and who has the legal capacity to open a securities brokerage account.

27. Clients of the Filer open an account on the Platform via the Website or the Apps. Clients use their Client Accounts to trade in Crypto Contracts. The Apps and Website clearly indicate that the Platform is operated by the Filer.

28. As part of the account opening process:

    (a) the Filer complies with the applicable "know your client" account opening requirements under the applicable legislation and under Canadian anti-money laundering and anti-terrorist financing laws by collecting know-your-client (**KYC**) information which satisfies the identity verification requirements applicable to reporting entities. to verify the identity of the client, and collects information necessary for the Filer to conduct a trade-by-trade suitability assessment for each client;

    (b) the Filer provides a prospective client with a separate statement of risk (the **Risk Statement**) that clearly explains the following in plain language:

        (i) the Crypto Contracts;

        (ii) the risks associated with the Crypto Contracts;

(iii) a prominent statement that no securities regulatory authority or regulator in Canada has assessed or endorsed the Crypto Contracts or the Crypto Assets made available through the Platform;

(iv) the due diligence performed by the Filer before making a Crypto Asset available through the Platform, including the due diligence performed by the Filer to assess whether the Crypto Asset is a security and/or derivative under the securities and derivatives legislation of each of the jurisdictions of Canada and the securities and derivatives laws of the foreign jurisdiction with which the Crypto Asset has the most significant connection, and the risks if the Filer has incorrectly determined that the Crypto Asset is not a security and/or derivative;

(v) that the Filer has prepared a plain language description of each Crypto Asset and of the risks of the Crypto Asset made available through the Platform, with instructions as to where on the Platform the client may obtain the descriptions (each, a **Crypto Asset Statement**);

(vi) the Filer's policies for halting, suspending and withdrawing a Crypto Asset from trading on the Platform, including criteria that would be considered by the Filer, options available to clients holding such a Crypto Asset, any notification periods and any risks to clients;

(vii) the location and the manner in which Crypto Assets are held for the client, and the risks and benefits to the client of the Crypto Assets being held in that location and in that manner, including the impact of insolvency of the Filer or the Acceptable Third-party Custodian;

(viii) the manner in which the Crypto Assets are accessible by the Filer, and the risks and benefits to the client arising from the Filer having access to the Crypto Assets in that manner;

(ix) that the Filer is not a member of CIPF and the Crypto Contracts and the Crypto Assets held by the Filer (directly or indirectly through third parties) will not qualify for CIPF protection;

(x) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Risk Statement or a Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

(xi) the date on which the information was last updated.

(c) The Filer will require clients to agree to the Platform's Terms and Conditions, which are publicly available on the Filer's website, and wherein it will require and/or disclose (either directly in the agreement or in schedules appended thereto):

(i) the trading hours for the Platform;

(ii) that the Filer is responsible for conducting suitability;

(iii) procedures for funding purchases and for withdrawing funds held by a client in its account with the Platform;

(iv) the various fees charged to a client of the Platform;

(v) that a client must comply with the restrictions relating to its use of the Platform, including complying with the Trading Requirements (as defined below) and applicable securities laws (any violation of these requirements, a **Prohibited Use**);

(vi) confirmation that a client's access to the Platform does not affect that client's access to any other marketplace;

(vii) that the potential consequences for a client's Prohibited Use may include:

a. withdrawing the client's right to make any further trades on the Platform,

b. requiring the client to liquidate its Crypto Asset holdings on the Platform in an orderly fashion and/or requiring that all of its subsequent proposed sell trades receive the Filer's prior approval,

c. when all Crypto Assets have been sold, require that the client provide the Filer with wire transfer instructions (to a Canadian financial institution) so that the Filer can return its funds and close its account, and

d. reporting the client's trading activity to relevant securities and law enforcement authorities;

(viii) the Filer's conflict of interest policies and procedures; and

(ix) if applicable, the Filer's referral arrangements disclosure (included in the Filer's conflicts policies and procedures and relationship disclosure information statement); and

(x) the date on which the information was last updated.

29. In order for a prospective client to open and operate a Client Account with the Filer, the Filer obtains an electronic acknowledgment from the prospective client confirming that the prospective client has received, read and understood the Risk Statement. Such acknowledgment will be prominent and separate from other acknowledgments provided by the prospective client as part of the account opening process.

30. A copy of the Risk Statement acknowledged by a client is made available to the client in the same place as the client's other statements on the Platform. The most recent Risk Statement is available on the Platform.

31. The Filer applies written policies and procedures for updating the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts, crypto assets generally, or a specific Crypto Asset, as the case may be. In the event the Risk Statement is updated, clients of the Filer will be promptly notified of the update and provided with a copy of the updated Risk Statement. In the event a Crypto Asset Statement is updated, clients of the Filer will be promptly notified, with links provided to the updated Crypto Asset Statement.

32. The Filer conducts a trade-by-trade suitability determination for clients. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer provides instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which includes a link to the Crypto Asset Statement on the Website or the Apps.

33. Each Crypto Asset Statement includes:

(a) a prominent statement that no securities regulatory authority or regulator in Canada has assessed or endorsed the Crypto Contracts or any of the Crypto Assets made available through the Platform;

(b) a description of the Crypto Asset, including the background of the creation of the Crypto Asset, including the background of the developer(s) that first created the Crypto Asset, if applicable;

(c) a description of the due diligence performed by the Filer with respect to the Crypto Asset;

(d) any risks specific to the Crypto Asset;

(e) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the Platform;

(f) a statement that the statutory rights in section 130.1 of the Act, and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in this Decision; and

(g) the date on which the information was last updated.

34. The Filer also prepares and makes available to its clients, on an ongoing basis and in response to emerging issues in Crypto Assets, educational materials and other informational updates about trading on the Platform and the ongoing development of Crypto Assets and Crypto Asset trading markets.

35. In addition to the Risk Statement, Crypto Asset Statement and ongoing education initiatives described in representations 28 to 34, and the trade-by-trade suitability determination described in representation 32, the know-your-product assessments described in representations 18 to 23, the Filer also monitors client activity, and contacts clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not suitable for the client, or that additional education is required. The outcome of this engagement with a client may result, in some cases, in a decision by the Filer to close a client's account.

Platform Operations

36. The Platform is a facility for trading securities and/or derivatives and, in some jurisdictions, is a marketplace under applicable securities legislation.

37. All Crypto Contracts entered into by clients to buy and sell Crypto Assets are placed with the Filer through the Apps or Website.

38. Clients are able to submit orders, either in units of the applicable Crypto Asset or in fiat currency, 24 hours a day, 7 days a week. Clients are able to deposit and withdraw certain Crypto Assets and Canadian dollars, 24 hours a day, 7 days a week (or where applicable, for fiat currency during banking hours).

39. An affiliate of the Filer, Twenty One Digital Inc. (**21D**), participates on the Platform as a registered user of the Platform's API. 21D's primary business purpose is to support and enhance liquidity and price discovery on the Platform. 21D gathers pricing data from third-party liquidity providers, aggregates that external pricing data and, in turn, places bids and offers across the Platform's order books. 21D's trading strategies are designed to provide liquidity around the prevailing market trading price and to offset any purchases or sales simultaneously through third-party liquidity providers. No compensation is provided to 21D for participating on the Platform, although it may earn a spread through its offsetting transactions through third-party liquidity providers by using its capital to perform arbitrage strategies. In keeping with the "Fair Access" requirements set out in applicable securities laws, the Filer does not provide any preferences, priority, benefits, information or special pricing to 21D.

40. The Filer relies upon multiple crypto asset trading firms (**Liquidity Providers**) to act as sellers of Crypto Assets that may be purchased by clients. Liquidity Providers also buy any Crypto Assets that clients wish to sell.

41. The Filer evaluates the prices obtained from its Liquidity Providers on an ongoing basis against global benchmarks to provide fair and reasonable pricing to its clients.

42. The Filer has taken or will take reasonable steps to verify that each Liquidity Provider is appropriately registered and/or licensed to trade in the Crypto Assets in their home jurisdiction, or that their activities do not require registration in their home jurisdiction, and that they are not in default of securities legislation in the Applicable Jurisdictions.

43. The Filer has verified that each Liquidity Provider has effective policies and procedures to address concerns relating to fair price, fraud and market manipulation.

44. Clients may place buy and sell orders using either the Platform's pro feature (the **Pro Feature**) or express feature (the **Express Feature**).

45. The Pro Feature is comprised of an interface system that allows clients to place and execute limit or market buy and sell orders in units of the applicable Crypto Asset or in Canadian dollars in an order book displaying orders entered by clients of the Platform (the **Order Book**).

46. The Express Feature allows clients to place market buy or sell orders in units of the applicable Crypto Asset or in Canadian dollars after receiving a quote that provides indicative trade terms and fees associated with the prospective order. The orders placed using the Express Feature are filled through a best-execution order router which will automatically find the best available price between the Filer and its liquidity providers.

47. In addition to access to the Platform through the Pro Feature and the Express Feature via the Website and the Apps, the Filer provides access to the API to clients that wish to integrate the API into their own internal interface. API clients have the ability to request information from the order book and view or perform actions (e.g., bid, offer, cancel, etc.) in a method desired by the API client. The API client has no preferential access to information or order priority. Clients seeking access to the API are required to complete a questionnaire (the **API User Questionnaire**). The API User Questionnaire asks prospective API clients to discuss their level of sophistication, planned trading strategies, experience with API tech and algo strategies. The Filer will only provide access to the API if a client's responses to the API User Questionnaire demonstrate a sufficient level of sophistication and experience.

48. The Filer also offers over-the-counter (**OTC**) trading services. These services are subject to securities legislation, including the terms and conditions of this Decision. The OTC trading services offered by the Filer allow clients to place orders "off Platform" through one of the Filer's designated representatives. The OTC trading services provides clients with more liquidity sources and a personalized service and are intended to primarily service institutions and high net-worth individuals. The Filer allows clients to designate the wallet address for Crypto Assets to be purchased by or sold from. The Filer will immediately deliver, as described in Staff Notice 21-327, any purchased Crypto Assets to the purchaser or seller at a blockchain wallet address specified by the purchaser which is not under the ownership, possession, or control of the Filer.

49. The Filer uses technology to facilitate the determination of whether entering into a Crypto Contract is suitable for a client before accepting an instruction from that client to enter into the Crypto Contract.

50. Each transaction a client undertakes that results from the matching of orders on the Platform, or from its use of the OTC trading services described in representation 48 results in a bilateral contract between the client and the Filer.

51. After an order has been placed by a client, the Filer obtains a price for the Crypto Asset from a Liquidity Provider, after which the Filer incorporates a fee to compensate the Filer, and presents this total cost to the client. If the client is agreeable, the client confirms the trade. The Filer confirms the transaction with the Liquidity Providers and records in its books and records the particulars of the trade.

52. The Filer is compensated through trading fees, staking fees, deposit and withdrawal fees on deposits and withdrawals of fiat currency and withdrawal fees on withdrawals of Crypto Assets at rates disclosed on the Platform and incorporated by reference into the Platform's Terms and Conditions.

Pre-trade Controls and Settlement

53. The Filer does not allow clients to enter into a Crypto Contract to buy and sell Crypto Assets unless the Filer has taken steps:

    (a) to review the Crypto Asset, including the information specified in representation 18,

    (b) to approve the Crypto Asset, and Crypto Contracts to buy, sell or stake such Crypto Asset, to be made available to clients,

    (c) as set out in representation 23, to monitor the Crypto Asset for significant changes and review its approval under (b) where a significant change occurs.

54. The Filer's books and records record all of the trades executed on the Platform. No order will be accepted by the Filer unless there are sufficient cash or Crypto Assets available in the Client Account to complete the trade. When a client's order is matched through the Platform's with another client's order, the books and records update in real-time. Because all assets are already verified as being available from both the buyer and the seller prior to order entry, all Crypto Contracts are settled as between the Filer and each of the buyer and seller when matching takes place. There is no obligation for buyers and sellers to settle bilaterally.

55. The Platform is an "open loop" system. Clients are permitted to deposit Crypto Assets acquired outside the Platform into their accounts with the Filer. Crypto Assets deposited will be promptly delivered to the custodian to be held for the benefit of the client. Clients also have the right to obtain delivery of Crypto Assets to which they have an interest in pursuant to their Crypto Contracts with the Filer by requesting that the Filer deliver the Crypto Assets to the Client.

56. Clients can transfer fiat currency to or withdraw fiat currency from their account by Interac e-transfer, electronic funds transfer or bank wire.

57. The Filer does not, and will not, extend margin, credit or other forms of leverage to clients in connection with trading Crypto Assets on the Platform, and will not offer derivatives based on Crypto Assets to clients other than Crypto Contracts.

58. The Filer promptly, and no later than two business days after the trade, settles transactions with the Liquidity Providers on a net basis. Where there are net purchases of Crypto Assets with a Liquidity Provider, the Filer arranges for cash to be transferred to the Liquidity Provider and Crypto Assets to be sent by the Liquidity Provider to the Filer. Where there are net sales of Crypto Assets, the Filer arranges for Crypto Assets to be sent from the Filer to the Liquidity Provider in exchange for cash received by the Filer from the Liquidity Provider.

59. Clients receive electronic trade confirmations and monthly statements setting out the details of the transaction history in their Client Account. Clients are able to view their transaction history and account balances in real time by accessing their Client Account using the Apps or Website.

60. In order to manage the risks associated with potential instances of abusive trading on the Platform, the Filer will, among other things:

    (a) publish information about how trading works and what is expected of clients on its website;

    (b) review and analyze trades on a post-trade, daily basis to test that the technology performed as expected and that trades or trading patterns that might reasonably be related to incidents of non-compliance with securities legislation in any jurisdiction of Canada or the Platform's Terms and Conditions (which include prohibitions on fraud, market manipulation, and activity that mimics illegal insider trading, tipping and recommending, and frontrunning – collectively, the **Trading Requirements**) are escalated for action to the chief compliance officer (**CCO**) and, where deemed advisable, to the ultimate designated person (**UDP**);

    (c) maintain effective controls, including:

(i) conducting investigations to determine whether a trade or trading pattern breached the Trading Requirements or the Platform's Terms and Conditions;

(ii) escalating non-compliant trading activity to the CCO, the UDP, the Filer's board of directors and the applicable securities regulatory authority, as appropriate;

(iii) ensuring that the UDP and CCO perform a quarterly review of (A) the Filer's trading supervision activities, (B) the Filer's conflict of interest tracking and reporting mechanism and (C) the Filer's complaints tracking and reporting mechanism to test that the Filer's policies and procedures are effective to test that its policies and procedures are effective and make recommendations on improvements, as necessary;

(iv) providing quarterly and annual reports to the Principal Regulator in a matter satisfactory to the Principal Regulator (A) summarizing the activities and findings in the period of the Filer's trading compliance program and (B) assessing the effectiveness of the Filer's trading compliance program;

(v) prior to the terms and conditions expiring, prepare new processes to operate under the marketplace regulation that will replace the terms and conditions, as applicable; and

(vi) tracking, reviewing and taking appropriate action in the context of complaints and reports from clients of potential instances of abusive trading on the Platform; and

(d) terminate all or a portion of a client's access should they breach the Platform's Terms and Conditions, including by violating applicable securities laws, as described in representation 28(c)(vii).

61. The Filer offers full depth of book visibility insofar as its order-entry systems make available order and trade information in real-time and electronically to all clients simultaneously. The same order and trade information available to clients through the Pro Feature interface is also made accessible to non-clients concurrently through the Website.

62. The Filer maintains effective internal controls over systems that support order entry and execution, including that the Filer:

(a) has effective information technology controls, including (without limitation) controls for systems operations, security, problem management, network support and systems software support;

(b) has effective security controls to prevent, detect and respond to security threats and cyber-attack on its systems that support distribution, trading and settlement services;

(c) has effective business continuity and disaster recovery plans;

(d) in accordance with prudent business practice, and on a reasonably frequent basis (at least annually) it:

(i) makes reasonable current and future systems capacity estimates,

(ii) conducts capacity stress tests to determine the ability of its order entry and execution systems to process transactions in an accurate, timely and efficient manner,

(iii) tests its business continuity and disaster recovery plans, and

(iv) reviews system vulnerability and its cloud-hosted environment to mitigate internal and external cyber threats; and

(e) continuously monitors and maintains internal controls over its systems.

63. The Filer has policies, procedures, and internal controls covering operational risk, custody risk and liquidity risk. The Filer has filed with the Principal Regulator completed exhibits to the Form 21-101F2 for each of the following:

(a) Exhibit E – Operations of the Marketplace;

(b) Exhibit F – Outsourcing;

(c) Exhibit G – Systems and Contingency Planning;

(d) Exhibit H – Custody of Assets;

(e) Exhibit I – Securities;

(f) Exhibit J – Access to Services; and

(g) Exhibit L – Fees.

64. The Filer has established written standards for access to the Platform and related services, and will establish, maintain and ensure compliance with policies and procedures to ensure participants are onboarded to the Platform and related services in accordance with those written standards.

65. The Filer has established price and volume thresholds as necessary in order to ensure trading on the Platform does not interfere with fair and orderly markets, which include limits on the ability to place large market orders via the Express Feature and automated warnings sent to clients attempting to place large market orders or limit orders outside market context via the Pro Feature. The Filer maintains and ensures compliance with appropriate policies and procedures governing the cancellation of trades on the Platform and situations in which it may vary or correct a trade, including in relation to trades where the Filer or its affiliate acting as principal was a counterparty to the trade.

66. The Filer has established and maintains and ensures compliance with policies and procedures that identify and manage material conflicts of interest arising from the operation of the Platform and the related services it provides, including conflicts between the interests of its owners, its commercial interests and the responsibilities and sound functioning of the Platform and related services.

67. The policies and procedures identified in representation 66 also address conflicts of interest that arise from the trading activities on the Platform of the Filer or its affiliates, including 21D, as principal. These policies and procedures include the establishment of controls to mitigate the conflict in a way that is fair and does not conflict with the interest of the client, one of the controls being an appropriate level of disclosure of these specific conflicts to clients against whom the Filer or its affiliates may trade, and the circumstances in which they may arise.

68. The Filer keeps books, records and other documents to accurately record its business activities, financial affairs and client transactions and to demonstrate the extent of the firm's compliance with applicable requirements of securities legislation including, but not limited to:

(a) records of all investors granted or denied access to the Platform;

(b) daily trading summaries of all Crypto Assets traded, with transaction volumes and values; and

(c) records of all orders and trades, including the price, volume, times when the orders are entered, matched, cancelled or rejected and the identifier of the client that entered the order or that was counterparty to the trade.

Custody of Crypto Assets

69. The Filer has established accounting practices, internal controls and safekeeping and segregation procedures intended to protect clients' assets.

70. The Filer holds clients' Crypto Assets (i) in blockchain wallets or accounts clearly designated for the benefit of clients or in trust for clients, (ii) separate and apart from its own assets (including crypto assets held in inventory for the Filer for operational purposes) and from the assets of any custodial service provider, and (iii) separate and apart from the assets of non-Canadian clients. The Filer is not permitted to pledge, re-hypothecate or otherwise use any Crypto Assets owned by its clients.

71. The Filer is proficient and experienced in holding Crypto Assets and has established and applies policies and procedures that manage and mitigate custodial risks, including an effective system of controls and supervision to safeguard Crypto Assets. The Filer also maintains appropriate policies and procedures related to information technology security, cyber-resilience, disaster recovery capabilities, and business continuity plans.

72. The Filer maintains its own hot wallets to hold limited amounts of Crypto Assets that will be used to facilitate client deposit and withdrawal requests and to facilitate trade settlement with Liquidity Providers. However, the majority of Crypto Assets are held with two custodians (the **Custodians**):

(a) BitGo Trust Company Inc. (**BitGo Trust**) is licensed as a trust company with the South Dakota Division of Banking.

(b) Tetra Trust Company (**Tetra Trust**) is licensed as an Alberta trust company regulated by the Alberta Treasury Board and Finance.

73. The Filer has conducted due diligence on the Custodians, including, among others, the custodian's policies and procedures for holding Crypto Assets and a review of their respective SOC 2 Type 2 examination reports. The Filer has

not identified any material concerns. The Filer has also assessed whether each Custodian meets the definition of an Acceptable Third-party Custodian.

74. The Custodians operate custody accounts for the Filer to use for the purpose of holding the clients' Crypto Assets in trust for clients of the Filer.

75. Those Crypto Assets that the Custodians hold in trust for clients of the Filer are held in segregated omnibus accounts in the name of the Filer in trust for or for the benefit of the Filer's clients and are held separate and distinct from the assets of the Filer, the Filer's affiliates, and the Custodians' other clients.

76. The Filer has and will retain the services of Custodians to hold not less than 80% of the total value of Crypto Assets held on behalf of clients. Up to 20% of the Filer's total client Crypto Assets may be held online in "hot wallets".

77. Each Custodian has established and applies policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian and to mitigate security breaches and cyber incidents. Each Custodian has established and applies written disaster recovery and business continuity plans.

78. The Filer has assessed the risks and benefits of using the Custodians and has determined that it is prudent and beneficial to use both Canadian custodians (as that term is defined in NI 31-103), as well as U.S. custodians, to hold the Crypto Assets the Custodians support with the Custodians than solely using a Canadian custodian. The Filer also considers it prudent to maintain relationships with more than one custodian so that it can provide back-up custodial services in appropriate circumstances for Crypto Assets supported by the Filer.

79. Each of the Custodians maintains an appropriate level of insurance for Crypto Assets held by the Custodian. The Filer has assessed the Custodians' insurance policies and has determined, based on information that is publicly available and on information provided by the Custodians and considering the controls of the Custodians' business, that the amount of insurance is appropriate.

80. The Filer confirms on a daily basis that clients' Crypto Assets held with the Custodians and held by the Filer reconcile with the Filer's books and records to ensure that all clients' Crypto Assets are accounted for. Clients' Crypto Assets held in trust for their benefit in hot wallets and with Custodians are deemed to be the clients' Crypto Assets in case of the insolvency and/or bankruptcy of the Filer or of its Custodians.

81. Clients are permitted to transfer into their Client Account with the Filer, Crypto Assets they obtained outside the Platform or withdraw from their Client Account with the Filer, Crypto Assets they have purchased pursuant to their Crypto Contracts with the Filer or previously deposited with the Filer. The Filer may not support transfers for all Crypto Assets. Upon request by a client, the Filer will promptly deliver possession and/or control of the Crypto Assets purchased under a Crypto Contract to a blockchain address specified by the client, subject to first satisfying all applicable legal and regulatory requirements, including anti-money laundering requirements and anti-fraud controls.

82. The Filer licenses software from Fireblocks Ltd. (**Fireblocks**) which includes a crypto asset wallet that stores private and public keys and interacts with various blockchains to send and receive crypto assets and monitor balances. Fireblocks uses secure multiparty computation to share signing responsibility for a particular blockchain address among multiple independent persons.

83. Fireblocks has obtained a SOC report under the SOC 2 – Type 2 standards from a leading global audit firm. The Filer has reviewed a copy of the SOC 2 – Type 2 audit report prepared by the auditors of Fireblocks, and has not identified any material concerns

84. The Filer has licensed software from Digital Assets Services Limited (trading as Coincover) (**Coincover**) to provide additional security for keys to Crypto Assets held by the Filer using Fireblocks, including key pair creation, key pair storage, device access recovery and account access recovery.

85. In addition to the insurance coverage available through Fireblocks for Crypto Assets held in its hot wallets, the Filer has obtained a guarantee through Coincover. Coincover provides a guarantee to the Filer against the theft or loss of cryptocurrency owned, held in trust or managed by the Filer for its clients in a wallet provided by Fireblocks.

86. The insurance obtained by the Filer includes coverage for loss or theft of the Crypto Assets, in accordance with the terms of the Filer's insurance policy, and the Filer has assessed the insurance coverage to be sufficient to cover the loss of Crypto Assets, whether held directly by the Filer or indirectly through the Custodians.

87. Any hot wallet service provider and technology security provider that will be used by the Filer will have insurance coverage in the event of loss or theft of Crypto Assets.

Staking Services

88. The Filer also offers staking services to its clients resident in each of the provinces and territories of Canada by which the Filer arranges to stake Crypto Assets and earn staking rewards for participating clients (the **Staking Services**).

89. The Filer offers clients the Staking Services only for (i) Crypto Assets of blockchains that use a proof of stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain (**Stakeable Crypto Assets**).

90. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

91. The Filer itself does not act as a Validator. The Filer has entered into written agreements with certain of its Custodians and/or with third party Validators to provide services in respect of staking Stakeable Crypto Assets. These Custodians and Validators are proficient and experienced in staking Stakeable Crypto Assets.

92. Before engaging a Validator, the Filer conducts due diligence on the Validator, with consideration for the Validator's management, infrastructure and internal control documentation, security measures and procedures, reputation of operating nodes, use by others, measures to operate nodes securely and reliably, amount of crypto assets staked by the Validator on its own nodes, quality of work, including any slashing incidents or penalties, financial status and insurance, and registration, licensing or other compliance under applicable laws, particularly securities laws. Where the Filer engages a Custodian to provide staking services, the Filer conducts due diligence on how the Custodian provides the staking services and selects the Validators.

93. Filer currently offers the Staking Services in respect of the Ethereum, Solana, Polygon, Polkadot, Near, Cosmos and Cardano blockchains. The Filer may offer the Staking Services in respect of other Stakeable Crypto Assets in the future.

94. The Filer, as part of its KYP Policy, reviews the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

    (a) the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (b) the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (c) the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

    (d) the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

    (e) the Validators engaged by the Filer or the Filer's Custodians, including, but not limited to, information about:

        (i) the persons or entities that manage and direct the operations of the Validator,

        (ii) the Validator's reputation and use by others,

        (iii) the amount of Crypto Assets the Validator has staked on its own nodes,

        (iv) the measures in place by the Validator to operate the nodes securely and reliably,

        (v) the financial status of the Validator,

        (vi) the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

        (vii) any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

        (viii) any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

95. The Filer evaluates whether offering the Staking Services is suitable for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

96. If the Filer determines that providing the Staking Services is not suitable for the client, the Filer will include prominent messaging to the client that this is the case and the Filer will not make available the Staking Services to the client.

97. The Filer only stakes the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer ceases to stake those Stakeable Crypto Assets.

98. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer delivers to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in representation 99 below, and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

99. The Filer clearly explains in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which includes:

(a) the details of the Staking Services and the role of all third parties involved;

(b) the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Stakeable Crypto Asset for which the Filer provides the Staking Services;

(c) the details of the Validators that will be used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

(d) the details of whether and how the custody of staked Stakeable Crypto Assets differs from Stakeable Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

(e) the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses will be allocated to clients;

(f) whether the Filer will reimburse clients for any Stakeable Crypto Assets lost due to slashing or other penalties imposed due to Validator error, action or inactivity or how any losses will be allocated to clients;

(g) whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Crypto Asset protocol, custodian or Validator, where such Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards (**Lock-up Periods**); and

(h) how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

100. Immediately before each time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer requires the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

(a) that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

(b) that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, and the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

(c) how rewards will be calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

(d) that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

(e) whether rewards may be changed at the discretion of the Filer;

(f) unless the Filer guarantees any Stakeable Crypto Assets lost to slashing, that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network;

(g) if the Filer offers a guarantee to prevent loss of any Stakeable Crypto Assets arising from the Staking Services, including due to slashing, any limits on that guarantee and requirements for a client to claim under the guarantee; and

(h) that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

101. The Staking Services are currently available by using the Apps or through the Web Site.

102. To stake Stakeable Crypto Assets, a client may use the Apps to instruct the Filer to stake a specified amount of Stakeable Crypto Assets held by the client on the Platform.

103. Subject to any Lock-up Periods that may apply, the client may at any time use the Apps or Website to instruct the Filer to unstake a specified amount of Stakeable Crypto Assets that the client had previously staked.

104. The Filer stakes and unstakes Crypto Assets on an omnibus basis by calculating the total amount of a Stakeable Crypto Asset that clients wish to stake or unstake and adjusting the amount actually staked to reconcile with the net amount that clients have, in total, instructed the Filer to stake or unstake.

105. The Filer holds the staked Stakeable Crypto Assets in trust for or for the benefit of its clients in one or more omnibus staking addresses in the name of the Filer for the benefit of the Filer's clients with the Custodians separate and distinct from (i) the assets of the Filer, the Custodians and the Custodians' other clients; and (ii) the Crypto Assets held for its clients that have not agreed to staking those specific Crypto Assets.

106. To stake Stakeable Crypto Assets, the Filer instructs a Custodian to transfer Stakeable Crypto Assets to an omnibus staking address and to sign a blockchain transaction confirming that assets in that wallet are to be staked with a Validator.

107. Similarly, when unstaking Stakeable Crypto Assets, the Filer instructs a Custodian to sign a blockchain transaction confirming that assets in a staking address are no longer staked. After expiry of any Lock-up Periods that may prevent the assets from being transferred, the Filer instructs the Custodian to transfer the unstaked assets from the staking address to cold storage addresses holding unstaked Stakeable Crypto Assets.

108. The Filer and the Custodians remain in possession, custody and control of the staked Stakeable Crypto Assets at all times. At all times, the Custodians continue to hold the private keys or other cryptographic key material required to stake or unstake clients' Stakeable Crypto Assets or to access staking rewards. Custody, possession and control of staked Stakeable Crypto Assets are not transferred to Validators or any other third parties in connection with the Staking Services.

109. The Filer has established and applies policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

110. Staking rewards are issued periodically and automatically by the blockchain protocol of the Stakeable Crypto Asset and received directly into the staking wallets with the Custodians. Other than any "validator commission" that may be received by a Validator under the rules of the blockchain protocol, Validators do not receive or otherwise have control over staking rewards earned by clients.

111. Staking rewards are typically issued for a specific time period, sometimes referred to as an "epoch". For each "epoch", the Filer promptly determines the amount of staking rewards earned by each client that had staked Stakeable Crypto Assets under the Staking Services.

112. When staking rewards for a Stakeable Crypto Asset are received into staking wallets, the Filer promptly calculates the amount of the staking reward earned by each client using the Staking Services in respect of that asset and credits each client's account accordingly. Staking reward distributions are shown in the Apps and on clients' account statements.

113. For certain Stakeable Crypto Assets, staking rewards are automatically staked by the blockchain protocol to compound rewards. Clients must unstake some or all of these rewards if they wish to sell or transfer them.

114. Where staking rewards are not compounded by the blockchain protocol, the Filer instructs the Custodian to transfer staking rewards from the staking wallets to other omnibus wallets holding client Crypto Assets.

115. Certain Stakeable Crypto Assets are subject to a so-called "warm-up" or "bonding" period after being staked, during which time the Stakeable Crypto Assets do not earn any staking rewards. A client will not receive staking rewards in respect of any of their staked Stakeable Crypto Assets that are still subject to "warm-up" periods.

116. Similarly, a client will not receive staking rewards in respect of Stakeable Crypto Assets that have been unstaked by the client but are still subject to Lock-up Periods.

117. The Filer does not promise or guarantee its clients a specific staking reward rate for any Stakeable Crypto Asset. The Filer does not exercise any discretion to change reward rates.

118. The Filer may show in the Apps or Web Site the current estimated reward rate for Stakeable Crypto Assets. This estimated reward rate is based on data derived from the blockchain for the Stakeable Crypto Asset and adjusted for any applicable validator commission or fees payable to the Filer.

119. The Filer charges a fee to clients using Staking Services based on a percentage of the client's staking rewards. The Filer clearly discloses the fees charged by the Filer for the Staking Services and provides a clear calculation of the rewards earned by each client that agrees to the Staking Services.

120. When staking rewards are received into staking wallets each epoch, the Filer promptly calculates the total amount of the fee payable by clients using the Staking Services for that epoch and transfers an amount of Stakeable Crypto Assets equal to the fee to a separate wallet exclusively holding Crypto Assets belonging to the Filer.

121. For certain Stakeable Crypto Assets, a Validator can, as part of the blockchain consensus protocol, set a percentage of the staking rewards earned by Stakeable Crypto Assets staked with the Validator to be received by the Validator. This is typically referred to as the "validator commission". The validator commission is deducted automatically by the underlying blockchain protocol from staking rewards and transferred by the protocol directly to the Validator. Where a "validator commission" applies, the Filer clearly discloses the existence and amount of the validator commission to clients using the Staking Services.

122. Under the commercial agreements between the Filer and Validators, Validators may pay some of the validator commission to the Filer for arranging the staking of clients' Stakeable Crypto Assets with the Validators. The Filer discloses to clients that it receives a share of validator commissions. Further, the Filer has adopted policies and procedures for the selection of Validators and staking of clients' Stakeable Crypto Assets to Validators to ensure that these decisions are based on factors other than the Filer's financial considerations under these commercial agreements.

123. For Stakeable Crypto Assets that do not have "validator commissions", the Filer pays a fee to the Validator and/or a Custodian for activating and operating nodes for the Filer's clients using the Staking Services. This fee is included in the fee paid by clients to the Filer in connection with the Staking Services.

124. Certain proof of stake blockchain protocols impose penalties where a validator fails to comply with protocol rules. This penalty is often referred to as "slashing" or "jailing". If a Validator is "slashed" or "jailed", a percentage of the tokens staked with that Validator and/or a percentage of staking rewards earned by clients staking to that Validator is permanently lost and/or the Validator will not be selected to participate in transaction validation and any Stakeable Crypto Assets staked with that Validator will not be eligible to earn staking rewards. Accordingly, if a Validator fails to comply with protocol rules, a percentage of Crypto Assets staked or earned by the Filer's clients may be lost (i.e., the balance of the staking wallet will be reduced automatically by the blockchain protocol) and/or the Filer's clients will not earn staking rewards for a period of time.

125. For certain Stakeable Crypto Assets, the Filer may agree to reimburse clients for slashing penalties. The Client Account Agreement clearly provides for the circumstances the Filer will provide this reimbursement in respect of a Stakeable Crypto Asset. The availability of any reimbursement, and any conditions or limits on the reimbursement, are also described in the Risk Statement or the relevant Crypto Asset Statement.

126. To mitigate the risk of slashing or jailing to clients, the Filer may, where feasible, arrange to stake Stakeable Crypto Assets across multiple Validators, so that any penalty resulting from the actions or inaction of a specific Validator does not affect all staked Crypto Assets and the Filer can, if appropriate, re-stake with alternative Validators.

127. In addition, the Filer monitors its Validators for, among other things, downtime, jailing and slashing events and takes any appropriate action to protect Stakeable Crypto Assets staked by clients.

128. For certain Stakeable Crypto Assets that are subject to Lock-up Periods, the Filer may provide clients using the Staking Services with the ability to sell or withdraw assets immediately after unstaking the assets, even though the newly unstaked assets are subject to a Lock-up Period and cannot yet be transferred from the staking wallet.

129. Where the Filer provides this service in connection with a Stakeable Crypto Asset, the Filer provides the liquidity necessary for clients to sell or withdraw Crypto Assets prior to the expiry of Lock-up Periods from the Filer's own inventory of Stakeable Crypto Assets in accordance with its liquidity management policies and procedures. When the Lock-up Period applicable to a clients' unstaked Crypto Assets expires, the Filer returns the now freely transferable assets to its inventory.

130. Where the Filer does not provide this liquidity for a Stakeable Crypto Asset, a client that unstakes Stakeable Crypto Assets must wait until the applicable Lock-up Period expires before the client can sell or transfer those assets.

Capital Requirements

131. The Filer will exclude from the excess working capital calculation all the Crypto Assets it holds for which there is no offsetting by a corresponding current liability, such as Crypto Assets held for its clients as collateral to guarantee obligations under Crypto Contracts, included on line 1, Current assets, of Form 31-103F1. This will result in the exclusion of all the Crypto Assets inventory held by the Filer from Form 31-103F1 (Schedule 1, line 9).

Clearing

132. The Filer will not operate a "clearing agency" or a "clearing house" as the terms are defined or referred to in the Act.

Decision

The Principal Regulator is satisfied that the Decision satisfies the test set out in the Legislation for the Principal Regulator to make the Decision and each Coordinated Review Decision Maker is satisfied that the Decision in respect of the Trade Reporting Relief and the Marketplace Relief, as applicable, satisfies the tests set out in the securities legislation of its jurisdiction for the Coordinated Review Decision Maker to make the Decision in respect of the Trade Reporting Relief and the Marketplace Relief, as applicable.

The Decision of the Principal Regulator under the Legislation is that the Prior CSA Decision is revoked, and the Requested Relief is granted, and the Decision of each Coordinated Review Decision Maker under the securities legislation in its jurisdiction is that the Trade Reporting Relief and the Marketplace Relief, as applicable, is granted, provided that and for so long as the Filer complies with the following terms and conditions:

Dealer Activities

A. Unless otherwise exempted by a further decision of the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Jurisdiction, the Filer complies with all of the terms, conditions, restrictions and requirements applicable to a registered dealer under securities legislation, including the Legislation, and any other terms, conditions, restrictions or requirements imposed by a securities regulatory authority or regulator on the Filer.

B. The Filer is registered as a restricted dealer in the Jurisdiction and the jurisdiction in which the client is resident.

C. The Filer will continue to work actively and diligently with CIRO to support the transfer of the Filer's client accounts to CCML.

D. The Filer will only engage in the business of trading Crypto Contracts in relation to Crypto Assets and staking Crypto Assets, and performing its obligations under those contracts. The Filer will seek the appropriate approvals from the Principal Regulator and, if required under securities legislation, the regulator or securities regulatory authority of any other Applicable Jurisdiction, prior to undertaking any other activity governed by securities legislation. For clarity, the Filer will not offer derivatives based on Crypto Assets other than Crypto Contracts.

E. At all times, the Filer will hold not less than 80% of the total value of all Crypto Assets held on behalf of clients with one or more custodians that meets the definition of an "Acceptable Third-party Custodian", unless the Filer has obtained the prior written approval of the Principal Regulator to hold a different percentage with an Acceptable Third-party custodian or has obtained the prior written approval of the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions to hold at least 80% of the total value of the Crypto Assets with an entity that does not meet certain criteria of an Acceptable Third-party Custodian.

F. Before the Filer holds Crypto Assets with an Acceptable Third-Party Custodian, the Filer will take reasonable steps to verify that the custodian:

    (a) will hold the Crypto Assets for the Filer's clients (i) in an account clearly designated for the benefit of the Filer's clients or in trust for the Filer's clients, (ii) separate and apart from the assets of the custodian's other clients, and (iii) separate and apart from the custodian's own assets and from the assets of any custodial service provider;

    (b) has appropriate insurance to cover the loss of Crypto Assets held at the custodian;

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

    (d) meets each of the requirements to be an Acceptable Third-party Custodian, except for those criteria in respect of which the custodian does not meet and the Principal Regulator and the regulator or securities regulatory authority of the other Jurisdictions have provided prior written approval for use of the custodian.

G. The Filer will promptly notify the Principal Regulator if the U.S. Securities and Exchange Commission, the U.S. Commodity Futures Trading Commission, the Financial Industry Regulatory Authority, the National Futures Association, the South Dakota Division of Banking or the New York State Department of Financial Services makes a determination that a custodians is not permitted by that regulatory authority to hold client Crypto Assets. In such a case, the Filer will identify a suitable alternative custody provider that meets the definition of an Acceptable Third-party Custodian to hold the Crypto Assets.

H. For the Crypto Assets held by the Filer, the Filer will:

(a) hold the Crypto Assets for the benefit of and in trust for its clients, and separate and distinct from the assets of the Filer;

(b) ensure there is appropriate insurance to cover the loss of Crypto Assets held by the Filer; and

(c) have established and apply written policies and procedures that manage and mitigate the custodial risks, including, but not limited to, an effective system of controls and supervision to safeguard the Crypto Assets for which it acts as custodian.

I. The Filer will only use Liquidity Providers that it has verified are registered and/or licensed, to the extent required in their respective home jurisdictions, to execute trades in the Crypto Assets and are not in default of securities legislation in any of the Applicable Jurisdictions, and will promptly stop using a Liquidity Provider if (i) the Filer is made aware that the Liquidity Provider is, or (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada has determined it to be, not in compliance with securities legislation.

J. The Filer will evaluate the price obtained from its Liquidity Providers on an ongoing basis against global benchmarks and will provide fair and reasonable prices to its clients.

K. The Filer will assess liquidity risk and concentration risk posed by its Liquidity Providers. The liquidity and concentration risks assessment will consider trading volume data and complete a historical analysis of each Liquidity Provider and a relative analysis between the Liquidity Providers. Consideration should be given to whether the Liquidity Provider has issued Proprietary Tokens and to consider limiting reliance on those Liquidity Providers.

L. Before each prospective client opens an account, the Filer will deliver to the client a Risk Statement and will require the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

M. The Risk Statement delivered as set out in condition L will be prominent and separate from other disclosures given to the client as part of the account opening process, and the acknowledgement will be separate from other acknowledgements by the client as part of the account opening process.

N. A copy of the Risk Statement acknowledged by a client will be made available to the client in the same place as the client's other statements on the Website and in the Apps.

O. Before a client enters into a Crypto Contract to buy a Crypto Asset, the Filer will provide instructions for the client to read the Crypto Asset Statement for the Crypto Asset, which will include a link to the Crypto Asset Statement on the Website or the App and the information set out in representation 33.

P. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Crypto Contracts and/or Crypto Asset, and,

(a) in the event of any update to the Risk Statement, will promptly notify each existing client of the update and deliver to them a copy of the updated Risk Statement; and

(b) in the event of any update to a Crypto Asset Statement, will promptly notify clients through in-Apps and Website disclosures, with links provided to the updated Crypto Asset Statement.

Q. Prior to the Filer delivering a Risk Statement to a client, the Filer will deliver, or will have previously delivered, a copy of the Risk Statement delivered to the client to the Principal Regulator.

R. The Filer will monitor client activity, and contact clients to discuss their trading behaviour if it indicates a lack of knowledge or understanding of Crypto Asset trading, in an effort to identify and deter behaviours that may indicate that trading a Crypto Contract is not suitable for the client, or that additional education is required.

S. The Filer will ensure that the maximum amount of Crypto Assets, excluding Specified Crypto Assets, that a client, except those clients that are residents of Alberta, British Columbia, Manitoba and Québec, may trade through the OTC trading

services, or enter into Crypto Contracts to purchase and sell on the Platform (calculated on a net basis and in an amount not less than $0) in the preceding 12 months:

(a) in the case of a client that is not an Eligible Crypto Investor, does not exceed a net acquisition cost of $30,000;

(b) in the case of a client that is an Eligible Crypto Investor, but is not an Accredited Crypto Investor, does not exceed a net acquisition cost of $100,000; and

(c) in the case of an Accredited Crypto Investor, is not limited.

T. In the jurisdictions where the Prospectus Relief is required, the first trade of a Crypto Contract is deemed to be a distribution under securities legislation of that jurisdiction.

U. The Filer will provide the Principal Regulator with at least 10 days' prior written notice of any:

(a) change of or use of a new custodian; and

(b) material changes to the Filer's ownership, its business operations, including its systems, or its business model.

V. The Filer will provide at least 45 days advance notice to the Principal Regulator for any material changes to the Form 21-101F2 information filed as described in representation 63, except in relation to changes to Exhibit L – Fees, in which case the Filer will provide at least 15 days advance notice.

W. The Filer will notify the Principal Regulator, promptly, of any material breach or failure of its custodian's system of controls or supervision, and what steps have been taken by the Filer to address each such breach or failure. The loss of any amount of Crypto Assets will be considered a material breach or failure.

X. Further to condition W, the Filer will promptly notify the Principal Regulator of any material systems failure, malfunction, delay or security breach of the systems or controls relating to the operation of the marketplace functions.

Y. Unless the prior written consent of the Principal Regulator is obtained by the Filer, the Filer will only trade Crypto Assets or Crypto Contracts based on Crypto Assets that (a) are not in and of themselves securities or derivatives, or (b) are Value-Referenced Crypto Assets provided that:

(i) by December 29, 2023, the Filer will no longer allow clients to buy or deposit, or to enter into Crypto Contracts to buy or deposit, Value-Referenced Crypto Assets that do not satisfy the conditions set out in paragraph (1) of Appendix C; and

(ii) by April 30, 2024, the Filer will no longer allow clients to buy or deposit Value-Referenced Crypto Assets, or to enter into Crypto Contracts to buy or deposit Value-Referenced Crypto Assets, that do not comply with the terms and conditions set out in Appendix C.

Z. The Filer will evaluate Crypto Assets as set out in representations 18 to 23.

AA. The Filer will not trade Crypto Assets or Crypto Contracts based on Crypto Assets with a client in a Jurisdiction, without the prior written consent of the regulator or securities regulatory authority of the Jurisdiction, where the Crypto Asset was issued by or on behalf of a person or company that is or has in the last five years been the subject of an order, judgment, decree, sanction, fine or administrative penalty imposed by, or has entered into a settlement agreement with, a government or government agency, administrative agency, self-regulatory organization, administrative tribunal or court in Canada or in a Specified Foreign Jurisdiction in relation to a claim based in whole or in part on fraud, theft, deceit, aiding and abetting or otherwise facilitating criminal activity, misrepresentation, violation of AML laws, conspiracy, breach of trust, breach of fiduciary duty, insider trading, market manipulation, unregistered trading, illegal distributions, failure to disclose material facts or changes, or allegations of similar or analogous conduct.

BB. Except to allow clients to liquidate their positions in an orderly manner in those Crypto Contracts or transfer such Crypto Assets to a blockchain address specified by the client, the Filer will promptly stop trading Crypto Contracts where the underlying is a Crypto Asset if (i) the Filer determines it to be, (ii) a court, regulator or securities regulatory authority in any jurisdiction of Canada or the foreign jurisdiction with which the Crypto Asset has the most significant connection determines it to be or (iii) the Filer is made aware or is informed that the Crypto Asset is viewed by a regulator or securities regulatory authority to be, a security and/or a derivative.

CC. The Filer will not engage in trades that are part of, or designed to facilitate, the creation, issuance or distribution of Crypto Assets by the developer(s) of the Crypto Asset, its issuers or affiliates or associates of such persons.

DD. The Filer will exclude from the excess working capital calculation all the Crypto Assets it holds for which there is no offsetting by a corresponding current liability as described in representation 131.

Financial Viability

EE. The Filer will maintain sufficient financial resources for the proper operation of the marketplace and for its performance of its marketplace functions in furtherance of its compliance with these terms and conditions.

FF. The Filer will notify the principal regulator immediately upon becoming aware that the Filer does not or may not have sufficient financial resources in accordance with the requirements of condition EE.

Staking

GG. The Filer will comply with the terms and conditions in **Appendix D** in respect of the Staking Services.

Data Reporting

HH. The Filer will deliver the reporting as set out in **Appendix E**.

II. The Filer will provide certain reporting in respect of the preceding calendar quarter to its Principal Regulator within 30 days of the end of March, June, September, and December in connection with the Staking Services, including, but not limited to:

(a) The total number of clients to which the Filer provides the Staking Services;

(b) The Crypto Assets for which the Staking Services are offered;

(c) For each Crypto Asset that may be staked:

(i) The amount of Crypto Assets staked;

(ii) The amount of each such Crypto Assets staked that is subject to a Lock-up Period and the length of the Lock-up Period;

(iii) The amount of Crypto Assets that clients have requested to unstake; and

(iv) The amount of rewards earned by the Filer and the clients for the Crypto Assets staked under the Staking Services.

(d) The names of any third parties used to conduct the staking services;

(e) Any instance of slashing, jailing or other penalties being imposed for validator error;

(f) The details of why these penalties were imposed; and

(g) Any reporting regarding the Filer's liquidity management as requested by the Principal Regulator.

JJ. The Filer will deliver to the Regulator or the securities regulatory authority in each of the Applicable Jurisdictions, in a form and format acceptable to the regulator or the securities regulatory authority, a report that includes the following aggregated quarterly information relating to trading activity on the Platform within 30 days of the end of each March, June, September and December:

(a) Total number of trades and total traded value on a by pair basis, with each such reported value further broken out by the proportion of trades and traded value that were a result of trades between two clients compared to trades between a client and the Filer or affiliate of the Filer; and

(b) Total number of executed client orders and total value of executed client orders on a by pair basis, with each reported value further broken out by the proportion of executed market orders compared to executed limit orders.

KK. The Filer will provide to the Principal Regulator quarterly summary statistics on its trade monitoring and complaint handling activities in relation to the Platform, including the following:

(a) The number of instances of improper trading activity identified, by category, and the proportion of each such category that arise from client complaints/reports;

(b) The number of instances in (a) that were further investigated or reviewed, by category;

(c) The number of investigations in (b), by category that were closed with no action

(d) A summary of each investigation in (c) that was escalated for action to be taken, including a description of the action taken in each case; and

(e) A summary of the status of any open investigations.

LL. The Filer will deliver to the Principal Regulator, within 30 days of the end of each March, June, September, and December, either:

(a) blackline copies of changes made to the policies and procedures on the operations of its wallets (including, but not limited to, establishment of wallets, transfer of Crypto Assets into and out of the wallets and authorizations to access the wallets) previously delivered to the Principal Regulator; or

(b) a nil report stating no changes have been made to its policies and procedures on the operations of its wallets in the quarter.

MM. In addition to any other reporting required by Legislation, the Filer will provide, on a timely basis, any report, data, document or information to the Principal Regulator, including any information about the Filer's custodian(s) and the Crypto Assets held by the Filer's custodian(s) that may be requested by the Principal Regulator from time to time as reasonably necessary for the purpose of monitoring compliance with the Legislation and the conditions in the Decision, in a format acceptable to the Principal Regulator.

NN. Upon request, the Filer will provide the Principal Regulator and the securities regulators or securities regulatory authorities of each of the Non-Principal Jurisdictions with aggregated and/or anonymized data concerning client demographics and activity on the Platform that may be useful to advance the development of the Canadian regulatory framework for trading crypto assets.

Marketplace Activities – Fair Access

OO. The Filer will not unreasonably prohibit, condition or limit access to the Platform and related services.

PP. The Filer will not permit unreasonable discrimination among clients of the Platform.

Marketplace Activities – Market Integrity

QQ. The Filer will take reasonable steps to ensure its operations do not interfere with fair and orderly markets in relation to the Platform.

RR. The Filer will not provide access to the Platform unless it has the ability to terminate all or a portion of a client's access, if required.

SS. The Filer will maintain accurate records of all of its trade monitoring and complaint handling activities in relation to the Platform, and of the reasons for actions taken or not taken. The Filer will make such records available to the Principal Regulator upon request.

TT. The Filer must monitor each client's compliance with restrictions relating to its use of the Platform, including complying with the Trading Requirements and applicable securities laws (any violation of these requirements, a **Prohibited Use**) and report breaches of securities law, as appropriate, to the applicable securities regulatory authority or regulator.

Marketplace Activities – Conflicts of Interest

UU. When the Filer or an affiliate trades with the Filer's clients on a principal basis, the Filer will ensure that its clients receive fair and reasonable prices.

VV. The Filer will annually review compliance with the policies and procedures that identify and manage conflicts of interest described in representations 66 and 67 and will document in each review any deficiencies that were identified and how those deficiencies were remedied.

Marketplace Activities – Transparency of Operations and of Order and Trade Information

WW. The Filer will publicly disclose information reasonably necessary to enable a person or company to understand the marketplace operations or services, including at a minimum:

(a) access criteria, including how access is granted, denied, suspended or terminated and whether there are differences between clients in access and trading;

(b) risks related to operation and trading on the Platform, including loss and cyber risk;

(c) hours of trading;

(d) all fees and any compensation provided to the Filer or its ffiliate, including foreign exchange rates, spreads, etc.;

(e) how orders are entered, handled and interact including:

(i) the circumstances where orders trade with the Filer or an affiliate acting as principal or a liquidity provider, including any compensation provided, and

(ii) where entered onto the Order Book, the types of orders, how orders interact, are matched and are executed;

(f) policies and procedures relating to error trades, cancellations, modifications and dispute resolution;

(g) a list of all crypto assets and products available for trading on the Platform, along with associated Crypto Asset Statements;

(h) conflicts of interest and the policies and procedures to manage them;

(i) process for payment and settlement of transactions;

(j) how the Filer safeguards client assets, including the extent to which the Platform self-custodies client assets, along with the identity of any third-party custodians relied on by the platform to hold client assets;

(k) access arrangements with third-party services providers, if any; and

(l) rules governing trading, including prevention of manipulation and other market abuse.

XX. The Filer will maintain public disclosure of the information outlined in condition WW in a manner that reasonably enables a person or company to understand the marketplace operations or services.

YY. For orders and trades entered to and executed on the Platform, the Filer will make available an appropriate level of information regarding those orders and trades in real-time to facilitate clients' investment and trading decisions, including that:

(a) The Filer displays on its Website a Canadian dollar price chart for each Crypto traded on which members of the public can view historic pricing information over a daily, weekly, one month, three month, six month and one year period;

(b) The Filer also makes publicly available on its Website, on a timely basis, a history of all trades that occurred on the Platform; and

(c) Clients can view the full Order Book on the platform, including all executed trades over the prior 24-hour period on the Platform.

Marketplace Activities – Confidentiality

ZZ. The Filer will not release a client's order or trade information to a person or company, other than the client, a securities regulatory authority or a regulation services provider unless:

(a) the client has consented in writing to the release of the information;

(b) the release is made under applicable law; or

(c) the information has been publicly disclosed by another person or company and the disclosure was lawful.

Notification to Principal Regulator

AAA. The Filer will promptly notify the Principal Regulator and indicate what steps have been taken by the Filer to address the situation should any of the following occur:

(a) any failure or breach of systems of controls or supervision that has a material impact on the Filer, including

(i) when they involve the Filer's business;

(ii) involve the services or business of an affiliate of the Filer;

(iii) involve the Acceptable Third-party Custodian;

(iv) are cybersecurity breaches of the Filer, an affiliate of the Filer, or services that impact the Filer; or

(v) are a malfunction, delay, or security breach of the systems or controls relating to the operation of the marketplace functions.

(vi) any amount of specified Crypto Assets are identified as lost;

(b) any investigations of, or regulatory action against, the Filer, or an affiliate of the Filer, by a regulatory authority in any jurisdiction in which it operates which may impact the operations of the Filer;

(c) details of any litigation instituted against the Filer, or an affiliate of the Filer, which may impact the operation of the Filer;

(d) notification that the Filer, or an affiliate of the Filer, has instituted a petition for a judgment of bankruptcy, insolvency, or similar relief, or to wind up or liquidate the Filer, or an affiliate of the Filer, or has a proceeding for any such petition instituted against it; and

(e) the appointment of a receiver or the making of any voluntary arrangement with a creditors.

Clearing

BBB. For any clearing or settlement activity conducted by the Filer incidental to the Filer engaging in the business of a Crypto Asset dealer and marketplace, the Filer will:

(a) maintain adequate procedures and processes to ensure the provision of accurate and reliable settlement services in connection with Crypto Assets; and

(b) maintain appropriate risk management policies and procedures and internal controls to minimize the risk that settlement will not take place as expected.

Marketplace Activities – Time-Limited Relief

CCC. The Filer will disclose to clients that the Filer has been registered as a restricted dealer in the Applicable Jurisdictions subject to specified terms and conditions that are the subject of a specific order and as such may not be subject to all requirements otherwise applicable to an investment dealer and CIRO member, including those that apply to marketplaces and to trading on marketplaces.

Changes to and Expiration of Decision

DDD. The Filer will promptly make any changes to its business practices or policies and procedures that may be required to address investor protection concerns that may be identified by the Filer or by the Principal Regulator arising from the operation of the Platform.

EEE. This Decision shall expire upon the earlier of:

(a) May 30, 2024; or

(b) on the date on which the transition of all client accounts from the Filer to CCML is complete.

FFF. This Decision may be amended by the Principal Regulator upon prior written notice to the Filer in accordance with applicable securities legislation.

DATED this 30th day of November, 2023.

In respect of the Requested Relief:

“Susan Greenglass”
Director, Market Regulation
Ontario Securities Commission

APPENDIX A

LOCAL TRADE REPORTING RULES AND MARKETPLACE RULES

In this Decision,

a) the "Local Trade Reporting Rules" collectively means each of the following:

(1) Part 3, Data Reporting of Ontario Securities Commission Rule 91-507 Trade Repositories and Derivatives Data Reporting (**OSC Rule 91-507**);

(2) Part 3, Data Reporting of Manitoba Securities Commission Rule 91-507 Trade Repositories and Derivatives Data Reporting (**MSC Rule 91-507**); and

(3) Part 3, Data Reporting of Multilateral Instrument 96-101 Trade Repositories and Derivatives Data Reporting in Alberta, British Columbia, New Brunswick, Newfoundland and Labrador, Northwest Territories, Nova Scotia, Nunavut, Prince Edward Island, Saskatchewan, and Yukon (**MI 96-101**); and

b) the "Marketplace Rules" collectively means each of the following:

(1) National Instrument 21-101 – *Marketplace Operation* (**NI 21-101**) in whole;

(2) National Instrument 23-101 – *Trading Rules* (**NI 23-101**) in whole; and

(3) National Instrument 23-103 – *Electronic Trading and Direct Electronic Access to Marketplaces* (**NI 23-103**) in whole.

APPENDIX B

LIST OF SPECIFIED CRYPTO ASSETS

- Bitcoin
- Ether
- Bitcoin Cash
- Litecoin
- A Value-Referenced Crypto Asset that complies with condition Y

APPENDIX C

TERMS AND CONDITIONS FOR TRADING VALUE-REFERENCED CRYPTO ASSETS WITH CLIENTS

(1) The Filer establishes that all of the following conditions are met:

(a) The Value-Referenced Crypto Asset references, on a one-for-one basis, the value of a single fiat currency (the "reference fiat currency").

(b) The reference fiat currency is the Canadian dollar or United States dollar.

(c) The Value-Referenced Crypto Asset entitles a Value-Referenced Crypto Asset holder who maintains an account with the issuer of the Value-Referenced Crypto Asset to a right of redemption, subject only to reasonable publicly disclosed conditions, on demand directly against the issuer of the Value-Referenced Crypto Asset or against the reserve of assets, for the reference fiat currency on a one-to-one basis, less only any fee that is publicly disclosed by the issuer of the Value-Referenced Crypto Asset, and payment of the redemption proceeds within a reasonable period as disclosed by the issuer of the Value-Referenced Crypto Asset.

(d) The issuer of the Value-Referenced Crypto Asset maintains a reserve of assets that is:

(i) in the reference fiat currency and is comprised of any of the following:

1. cash;

2. investments that are evidence of indebtedness with a remaining term to maturity of 90 days or less and that are issued, or fully and unconditionally guaranteed as to principal and interest, by the government of Canada or the government of the United States;

3. securities issued by one or more Money Market Funds licensed, regulated or authorized by a regulatory authority in Canada or the United States of America; or

4. such other assets that the principal regulator of the Filer and the regulator or securities regulatory authority in each Canadian jurisdiction where clients of the Filer reside has consented to in writing;

(e) all of the assets that comprise the reserve of assets are:

(i) measured at fair value in accordance with Canadian GAAP for publicly accountable enterprises or U.S. GAAP at the end of each day;

(ii) held with a Qualified Custodian;

(iii) held in an account clearly designated for the benefit of the Value-Referenced Crypto Asset holders or in trust for the Value-Referenced Crypto Asset holders;

(iv) held separate and apart from the assets of the issuer of the Value-Referenced Crypto Asset and its affiliates and from the reserve of assets of any other Crypto Asset, so that, to the best of the knowledge and belief of the Filer after taking steps that a reasonable person would consider appropriate, including consultation with experts such as legal counsel, no creditors of the issuer other than the Value-Referenced Crypto Asset holders in their capacity as Value-Referenced Crypto Asset holders, will have recourse to the reserve of assets, in particular in the event of insolvency; and

(v) not encumbered or pledged as collateral at any time; and

(f) the fair value of the reserve of assets is at least equal to the aggregate nominal value of all outstanding units of the Value-Referenced Crypto Asset at least once each day.

(2) The issuer of the Value-Referenced Crypto Asset makes all of the following publicly available:

(a) details of each type, class or series of the Value-Referenced Crypto Asset, including the date the Value-Referenced Crypto Asset was launched and key features and risks of the Value-Referenced Crypto Asset;

(b) the quantity of all outstanding units of the Value-Referenced Crypto Asset and their aggregate nominal value at least once each business day;

(c) the names and experience of the persons or companies involved in the issuance and management of the Value-Referenced Crypto Asset, including the issuer of the Value-Referenced Crypto Asset, any manager of the reserve of assets, including any individuals that make investment decisions in respect of the reserve of assets, and any custodian of the reserve of assets;

(d) the quantity of units of the Value-Referenced Crypto Asset held by the issuer of the Value-Referenced Crypto Asset or any of the persons or companies referred to in paragraph (c) and their nominal value at least once each business day;

(e) details of how a Value-Referenced Crypto Asset holder can redeem the Value-Referenced Crypto Asset, including any possible restrictions on redemptions such as the requirement for a Value-Referenced Crypto Asset holder to have an account with the issuer of the Value-Referenced Crypto Asset and any criteria to qualify to have an account;

(f) details of the rights of a Value-Referenced Crypto Asset holder against the issuer of the Value-Referenced Crypto Asset and the reserve of assets, including in the event of insolvency or winding up;

(g) all fees charged by the issuer of the Value-Referenced Crypto Asset for distributing, trading or redeeming the Value-Referenced Crypto Asset;

(h) whether Value-Referenced Crypto Asset holders are entitled to any revenues generated by the reserve of assets;

(i) details of any instances of any of the following:

(i) the issuer of the Value-Referenced Crypto Asset has suspended or halted redemptions for all Value-Referenced Crypto Asset holders;

(ii) the issuer of the Value-Referenced Crypto Asset has not been able to satisfy redemption rights at the price or in the time specified in its public policies;

(j) within 45 days of the end of each month, an assurance report from a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America, and that meets the professional standards of that jurisdiction, that complies with all of the following:

(i) provides reasonable assurance in respect of the assertion by management of the issuer of the Value-Referenced Crypto Asset that the issuer of the Value-Referenced Crypto Asset has met the requirements in paragraphs (1)(d)-(f) as at the last business day of the preceding month and at least one randomly selected day during the preceding month;

(ii) the randomly selected day referred to in subparagraph (i) is selected by the public accountant and disclosed in the assurance report;

(iii) for each day referred to in subparagraph (i), management's assertion includes all of the following:

1. details of the composition of the reserve of assets;

2. the fair value of the reserve of assets in subparagraph (1)(e)(i);

3. the quantity of all outstanding units of the Value-Referenced Crypto Asset in paragraph (b);

(iv) the assurance report is prepared in accordance with the Handbook, International Standards on Assurance Engagements or attestation standards established by the American Institute of Certified Public Accountants;

(k) starting with the first financial year ending after December 1, 2023, within 120 days of the issuer of the Value-Referenced Crypto Asset's financial year end, annual financial statements of the issuer of the Value-Referenced Crypto Asset that comply with all of the following:

(i) the annual financial statements include all of the following:

1. a statement of comprehensive income, a statement of changes in equity and a statement of cash flows, each prepared for the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

2. a statement of financial position, signed by at least one director of the issuer of the Value-Referenced Crypto Asset, as at the end of the most recently completed financial year and the financial year immediately preceding the most recently completed financial year, if any;

3. notes to the financial statements;

(ii) the statements are prepared in accordance with one of the following accounting principles:

1. Canadian GAAP applicable to publicly accountable enterprises;

2. U.S. GAAP;

(iii) the statements are audited in accordance with one of the following auditing standards:

1. Canadian GAAS;

2. International Standards on Auditing;

3. U.S. PCAOB GAAS;

(iv) the statements are accompanied by an auditor's report that,

1. if (iii)(1) or (2) applies, expresses an unmodified opinion,

2. if (iii)(3) applies, expresses an unqualified opinion,

3. identifies the auditing standards used to conduct the audit, and

4. is prepared and signed by a public accountant that is authorized to sign such a report under the laws of a jurisdiction of Canada or the United States of America.

(3) The Crypto Asset Statement includes all of the following:

(a) a prominent statement that no securities regulatory authority or regulator in Canada has evaluated or endorsed the Crypto Contracts or any of the Crypto Assets made available through the platform;

(b) a prominent statement that the Value-Referenced Crypto Asset is not the same as and is riskier than a deposit in a bank or holding cash with the Filer;

(c) a prominent statement that although Value-Referenced Crypto Assets may be commonly referred to as "stablecoins", there is no guarantee that the Value-Referenced Crypto Asset will maintain a stable value when traded on secondary markets or that the reserve of assets will be adequate to satisfy all redemptions;

(d) a prominent statement that, due to uncertainties in the application of bankruptcy and insolvency law, in the event of the insolvency of [Value-Referenced Crypto Asset issuer], there is a possibility that creditors of [Value-Referenced Crypto Asset issuer] would have rights to the reserve assets that could outrank a Value-Referenced Crypto Asset holder's rights, or otherwise interfere with a Value-Referenced Crypto Asset holder's ability to access the reserve of assets in the event of insolvency;

(e) a description of the Value-Referenced Crypto Asset and its issuer;

(f) a description of the due diligence performed by the Filer with respect to the Value-Referenced Crypto Asset;

(g) a brief description of the information in section (2) and links to where the information in that section is publicly available;

(h) a link to where on its website the issuer of the Value-Referenced Crypto Asset will disclose any event that has or is likely to have a significant effect on the value of the Value-Referenced Crypto Asset or on the reserve of assets.

(i) a description of the circumstances where the secondary market trading value of the Value-Referenced Crypto Asset may deviate from par with the reference fiat currency and details of any instances where the secondary market trading value of the Value-Referenced Crypto Asset has materially deviated from par with the reference fiat currency during the last 12 months on the Filer's platform;

(j) a brief description of any risks to the client resulting from the trading of a Value-Referenced Crypto Asset or a Crypto Contract in respect of a Value-Referenced Crypto Asset that may not have been distributed in compliance with securities laws;

(k) any other risks specific to the Value-Referenced Crypto Asset, including the risks arising from the fact that the Filer may not, and a client does not, have a direct redemption right with the issuer of the Value-Referenced Crypto Asset;

(l) a direction to the client to review the Risk Statement for additional discussion of general risks associated with the Crypto Contracts and Crypto Assets made available through the platform;

(m) a statement that the statutory rights in section 130.1 of the Act and, if applicable, similar statutory rights under securities legislation of other Applicable Jurisdictions, do not apply in respect of the Crypto Asset Statement to the extent a Crypto Contract is distributed under the Prospectus Relief in the Decision;

(n) the date on which the information was last updated.

(4) If the Filer uses the term “stablecoin” or “stablecoins” in any information, communication, advertising or social media related to the Platform and targeted at or accessible by Canadian investors, the Filer will also include the following statement (or a link to the following statement when impractical to include):

“Although the term “stablecoin” is commonly used, there is no guarantee that the asset will maintain a stable value in relation to the value of the reference asset when traded on secondary markets or that the reserve of assets, if there is one, will be adequate to satisfy all redemptions.”

(5) The issuer of the Value-Referenced Crypto Asset has filed an undertaking acceptable to the CSA in substantially the same form as set out in Appendix B of CSA Notice 21-333 *Crypto Asset Trading Platforms: Terms and Conditions for Trading Value-Referenced Crypto Assets with Clients* (**CSA SN 21-333**).

(6) The KYP Policy of the Filer requires the Filer to assess whether the Value-Referenced Crypto Asset or the issuer of the Value-Referenced Crypto Asset satisfies the criteria in sections (1), (2) and (5) of this Appendix on an ongoing basis.

(7) The Filer has policies and procedures to facilitate halting or suspending deposits or purchases of the Value-Referenced Crypto Asset, or Crypto Contracts in respect of the Value-Referenced Crypto Asset, as quickly as is commercially reasonable, if the Value-Referenced Crypto Asset no longer satisfies the criteria in sections (1), (2) and (5) of this Appendix.

(8) In this Appendix, terms have the same meanings set out in Appendix D of CSA SN 21-333.

APPENDIX D

STAKING TERMS AND CONDITIONS

1. The Staking Services are offered in relation to the Stakeable Crypto Assets that are subject to a Crypto Contract between the Filer and a client.

2. Unless the Principal Regulator has provided its prior written consent, the Filer offers clients the Staking Services only for (i) Crypto Assets of blockchains that use a proof of stake consensus mechanism and (ii) the staked Crypto Assets that are used to guarantee the legitimacy of new transactions the Validator adds to the blockchain (i.e., Stakeable Crypto Assets).

3. The Filer is proficient and knowledgeable about staking Stakeable Crypto Assets.

4. The Filer itself does not act as a Validator. The Filer has entered into written agreements with third parties to stake Stakeable Crypto Assets and each such third party is proficient and experienced in staking Stakeable Crypto Assets.

5. The Filer's KYP Policy includes a review of the Stakeable Crypto Assets made available to clients for staking and staking protocols related to those Stakeable Crypto Assets prior to offering those Stakeable Crypto Assets as part of the Staking Services. The Filer's review includes the following:

   (a) the Stakeable Crypto Assets that the Filer proposes to offer for staking;

   (b) the operation of the proof-of-stake blockchain for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

   (c) the staking protocols for the Stakeable Crypto Assets that the Filer proposes to offer for staking;

   (d) the risks of loss of the staked Stakeable Crypto Assets, including from software bugs and hacks of the protocol;

   (e) the Validators engaged by the Filer or the Filer's Custodians, including, but not limited to, information about:

      (i) the persons or entities that manage and direct the operations of the Validator,

      (ii) the Validator's reputation and use by others,

      (iii) the amount of Stakeable Crypto Assets the Validator has staked on its own nodes,

      (iv) the measures in place by the Validator to operate the nodes securely and reliably,

      (v) the financial status of the Validator,

      (vi) the performance history of the Validator, including but not limited to the amount of downtime of the Validator, past history of "double signing" and "double attestation/voting",

      (vii) any losses of Stakeable Crypto Assets related to the Validator's actions or inactions, including losses resulting from slashing, jailing or other penalties incurred by the Validator, and

      (viii) any guarantees offered by the Validator against losses including losses resulting from slashing or other penalties and any insurance obtained by the Validator that may cover this risk.

6. The Filer's policies and procedures on suitability determination for a client includes consideration of the Staking Services to be made available to that client.

7. The Filer evaluates whether offering the Staking Services is suitable for a client before providing access to an account that makes available the Staking Services and, on an ongoing basis, at least once in each 12-month period.

8. If the Filer determines that providing the Staking Services is not suitable for the client, the Filer will include prominent messaging to the client that this is the case, and the Filer will not make available the Staking Services to the client.

9. The Filer only stakes the Stakeable Crypto Assets of those clients who have agreed to the Staking Services and have allocated Stakeable Crypto Assets to be staked. Where a client no longer wishes to stake all or a portion of the allocated Stakeable Crypto Assets, subject to any Lock-Up Periods (as defined below) or any terms of the Staking Services that permit the client to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-Up Periods, the Filer ceases to stake those Stakeable Crypto Assets.

10. Before the first time a client allocates any Stakeable Crypto Assets to be staked, the Filer delivers to the client the Risk Statement that includes the risks with respect to staking and the Staking Services described in paragraph 11 below, and requires the client to provide electronic acknowledgement of having received, read and understood the Risk Statement.

11. The Filer clearly explains in the Risk Statement the risks with respect to staking and the Staking Services in plain language, which include, at a minimum:

    (a) the details of the Staking Services and the role of all third parties involved;

    (b) the due diligence performed by the Filer with respect to the proof-of-stake consensus protocol for each Crypto Asset for which the Filer provides the Staking Services;

    (c) the details of the Validators that will be used for the Staking Services and the due diligence performed by the Filer with respect to the Validators;

    (d) the details of whether and how the custody of staked Stakeable Crypto Assets differs from Crypto Assets held on behalf of the Filer's clients that are not engaged in staking;

    (e) the general risks related to staking and any risks arising from the arrangements used by the Filer to offer the Staking Services (e.g., reliance on third parties; risk of loss due to technical errors or bugs in the protocol; hacks or theft from the crypto assets being held in hot wallets, etc.) and how any losses will be allocated to clients;

    (f) whether the Filer will reimburse clients for any Stakeable Crypto Assets lost due to slashing or other penalties imposed due to Validator error, action or inactivity or how any losses will be allocated to clients;

    (g) whether any of the staked Stakeable Crypto Assets are subject to any lock-up, unbonding, unstaking, or similar periods imposed by the Stakeable Crypto Asset protocol, custodian or Validator, where such Stakeable Crypto Assets will not be accessible to the client or will be accessible only after payment of additional fees or penalties or forfeiture of any rewards (**Lock-up Periods**); and

    (h) how rewards are calculated on the staked Stakeable Crypto Assets, including any fees charged by the Filer or any third party, how rewards are paid out to clients, and any associated risks.

12. Immediately before each time that a client allocates Stakeable Crypto Assets to be staked under the Staking Services, the Filer requires the client to acknowledge the risks of staking Stakeable Crypto Assets as may be applicable to the particular Staking Services or each particular Stakeable Crypto Asset, including, but not limited to:

    (a) that the staked Stakeable Crypto Asset may be subject to a Lock-up Period and, consequently, the client may not be able to sell or withdraw their Stakeable Crypto Asset for a predetermined or unknown period of time, with details of any known period, if applicable;

    (b) that given the volatility of Crypto Assets, the value of a client's staked Stakeable Crypto Asset when they are able to sell or withdraw, and the value of any Stakeable Crypto Asset earned through staking, may be significantly less than the current value;

    (c) how rewards will be calculated and paid out to clients and any risks inherent in the calculation and payout of any rewards;

    (d) that there is no guarantee that the client will receive any rewards on the staked Stakeable Crypto Asset, and that past rewards are not indicative of expected future rewards;

    (e) whether rewards may be changed at the discretion of the Filer;

    (f) unless the Filer guarantees any Stakeable Crypto Assets lost to slashing, that the client may lose all or a portion of the client's staked Stakeable Crypto Assets if the Validator does not perform as required by the network;

    (g) if the Filer offers a guarantee to prevent loss of any Stakeable Crypto Assets arising from the Staking Services, including due to slashing, any limits on that guarantee and requirements for a client to claim under the guarantee; and

    (h) that additional risks can be found in the Risk Statement and Crypto Asset Statement, including the names and other information regarding the Validators and information regarding Lock-up Periods and rewards, with a link to the Risk Statement and Crypto Asset Statement.

13. Immediately before each time a client buys or deposits Stakeable Crypto Assets that are automatically staked pursuant to an existing agreement by the client to the Staking Services, the Filer provides prominent disclosure to the client that the Stakeable Crypto Asset it is about to buy or deposit will be automatically staked.

14. The Filer will promptly update the Risk Statement and each Crypto Asset Statement to reflect any material changes to the disclosure or include any material risks that may develop with respect to the Staking Services and/or Stakeable Crypto Assets.

15. In the event of any update to the Risk Statement, for each existing client that has agreed to the Staking Services, the Filer will promptly notify the client of the update and deliver to them a copy of the updated Risk Statement.

16. In the event of any update to a Crypto Asset Statement, for each existing client that has agreed to the Staking Services in respect of the Stakeable Crypto Asset for which the Crypto Asset Statement was updated, the Filer will promptly notify the client of the update and deliver to the client a copy of the updated Crypto Asset Statement.

17. The Filer and the Custodians remain in possession, custody and control of the staked Stakeable Crypto Assets at all times.

18. The Filer holds the staked Stakeable Crypto Assets for its clients in one or more omnibus staking addresses in the name of the Filer for the benefit of the Filer's clients with the Custodians and the staked Stakeable Crypto Assets are held separate and distinct from (i) the assets of the Filer, the Custodians and the Custodians' other clients; and (ii) the Crypto Assets held for its clients that have not agreed to staking those specific Crypto Assets.

19. The Filer has established policies and procedures that manage and mitigate custodial risks for staked Stakeable Crypto Assets, including but not limited to, an effective system of controls and supervision to safeguard the staked Stakeable Crypto Assets.

20. If the Filer permits clients to remove Stakeable Crypto Assets from the Staking Services prior to the expiry of any Lock-up Period, the Filer establishes and applies appropriate liquidity management policies and procedures to fulfill withdrawal requests made, which may include using the Stakeable Crypto Assets it holds in inventory, setting aside cash for the purpose of purchasing such inventory, and/or entering into agreements with its Liquidity Providers that permit the Filer to purchase any required Crypto Assets. The Filer holds Stakeable Crypto Assets in trust of for the benefit of its clients and will not use Stakeable Crypto Assets of those clients who have not agreed to the Staking Services for fulfilling such withdrawal requests.

21. If the Filer provides a guarantee to clients from some or all of the risks related to the Staking Services, the Filer has established, and will maintain and apply, policies and procedures to address any risks arising from such guarantee.

22. In the event of bankruptcy or insolvency of the Filer, the Filer will assume and will not pass to clients any losses arising from slashing or other penalties arising from the performance or non-performance of the Validator.

23. The Filer monitors its Validators for downtime, jailing and slashing events and takes any appropriate action to protect Stakeable Crypto Assets staked by clients.

24. The Filer has established and applies policies and procedures to address how staking rewards, fees and losses will be calculated and allocated to clients that have staked Stakeable Crypto Assets under the Staking Services.

25. The Filer regularly and promptly determines the amount of staking rewards earned by each client that has staked Stakeable Crypto Assets under the Staking Services and distributes each client's staking rewards to the client promptly after they are made available to the Filer.

26. The Filer clearly discloses the fees charged by the Filer for the Staking Services and provides a clear calculation of the rewards earned by each client that agrees to the Staking Services.

APPENDIX E

DATA REPORTING

1. Commencing with the quarter ending December 31, 2023, the Filer will deliver the following information to the Principal Regulator and each of the Coordinated Review Decision Makers in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers with respect to Clients residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December:

    a) Aggregate reporting of activity conducted pursuant to the Platform's operations that will include the following:

        i. Number of Client Accounts opened each month in the quarter;

        ii. Number of Client Accounts closed each month in the quarter;

        iii. Number of Client Accounts rejected by the platform each month in the quarter based on a suitability determination made in accordance with s. 13.3 of NI 31-103;

        iv. Number of trades each month in the quarter;

        v. Average value of the trades in each month in the quarter;

        vi. Number of Client Accounts with a net acquisition cost greater than $30,000 of Crypto Assets at the end of each month in the quarter;

        vii. Number of Client Accounts that in the preceding 12 months, excluding Specified Crypto Assets, that:

            (a) In the case of a client that is not an Eligible Crypto Investor exceeded a net acquisition cost of $30,000 at the end of each month in the quarter; and

            (b) In the case of a client that is an Eligible Crypto Investor, but is not an Accredited Crypto Investor, exceeded a net acquisition cost of $100,0000 at the end of each month in the quarter.

        viii. Number of Client Accounts that have not been funded at the end of each month in the quarter;

        ix. Number of Client Accounts with no trades during the quarter;

        x. Number of Client Accounts that have not been funded at the end of each month in the quarter;

        xi. Number of Client Accounts that hold a positive amount of Crypto Assets at end of each month in the quarter;

        xii. Number of client directed trades for each month in the quarter, and

        xiii. Number of unique clients who performed a client-directed trade during the quarter

    b) The details of any client complaints received by the Filer during the calendar quarter and how such complaints were addressed;

    c) A listing of all blockchain addresses, except for deposit addresses, that hold Crypto Assets on behalf of clients, including all hot and cold wallets;

    d) The details of any fraudulent activity or cybersecurity incidents on the Platform during the calendar quarter, any resulting harms and effects on clients, and the corrective measures taken by the Filer to remediate such activity or incident and prevent similar activity or incidents from occurring in the future; and

    e) The amount of crypto assets held in hot storage as of the end of the quarter,

    f) The amount of the guarantee described in representation 85 as of the end of the quarter; and

    g) The name of the financial institution and the amount of money held at the end of the quarter in an account with the financial institution, separate from the Filer's operational accounts and Filer's client accounts, to supplement any insurance policy or guarantee relating to the Filer's hot wallets.

2. The Filer will deliver to the Principal Regulator and each of the Coordinated Review Decision Makers, in an agreed form and manner specified by the Principal Regulator and each of the Coordinated Review Decision Makers, a report that includes the anonymized account-level data for the Platform's operations for each client residing in the Jurisdiction of such Coordinated Review Decision Maker, within 30 days of the end of each March, June, September and December for data elements outlined in **Appendix F**.

APPENDIX F

Data Element Definitions, Formats and Allowable Values

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
Data Elements Related to each Unique Client					
1	Unique Client Identifier	Alphanumeric code that uniquely identifies a customer.	Varchar(72)	An internal client identifier code assigned by the CTP to the client. The identifier must be unique to the client.	ABC1234
2	Unique Account Identifier	Alphanumeric code that uniquely identifies an account.	Varchar(72)	A unique internal identifier code which pertains to the customer's account. There may be more than one Unique Account Identifier linked to a Unique Client Identifier.	ABC1234
3	Jurisdiction	The Province or Territory where the client, head office or principal place of business is, or under which laws the client is organized, or if an individual, their principal place of residence.	Varchar(5)	Jurisdiction where the client is located using ISO 3166-2 - See the following link for more details on the ISO standard for Canadian jurisdictions codes. https://www.iso.org/obp/ui/#iso:code:3166:CA	CA-ON
Data Elements Related to each Unique Account					
4	Account Open Date	Date the account was opened and approved to trade.	YYYY-MM-DD, based on UTC.	Any valid date based on ISO 8601 date format.	2022-10-27
5	Cumulative Realized Gains/Losses	Cumulative Realized Gains/Losses from purchases, sales, deposits, withdrawals and transfers in and out, since the account was opened as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in, transfers out, deposits and withdrawals of the Digital Token to determine the cost basis or the realized gain or loss.	205333
6	Unrealized Gains/Losses	Unrealized Gains/Losses from purchases, deposits and transfers in as of the end of the reporting period.	Num(25,0)	Any value rounded to the nearest dollar in CAD. Use the market value at the time of transfers in or deposits of the Digital Token to determine the cost basis.	-30944
7	Digital Token Identifier	Alphanumeric code that uniquely identifies the Digital Token held in the account.	Char(9)	Digital Token Identifier as defined by ISO 24165. See the following link for more details on the ISO standard for Digital Token Identifiers. https://dtif.org/	4H95J0R2X

[1] Note: Digital Token refers to either data associated with a Digital Token, or a Digital Token referenced in an investment contract.

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
Data Elements Related to each Digital Token Identifier Held in each Account					
8	Quantity Bought	Number of units of the Digital Token bought in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	4358.326
9	Number of Buy Trans- actions	Number of transactions associated with the Quantity Bought during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	400
10	Quantity Sold	Number of units of the Digital Token sold in the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	125
11	Number of Sell Transactions	Number of transactions associated with the Quantity Sold during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3325
12	Quantity Transferred In	Number of units of the Digital Token transferred into the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	10.928606
13	Number of Transactions from Transfers In	Number of transactions associated with the quantity transferred into the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	3
14	Quantity Transferred Out	Number of units of the Digital Token transferred out of the account during the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	603
15	Number of Transactions from Transfers Out	Number of transactions associated with the quantity transferred out of the account during the reporting period.	Num(25,0)	Any value greater than or equal to zero.	45
16	Quantity Held	Number of units of the Digital Token held in the account as of the end of the reporting period.	Num(31,18)	Any value greater than or equal to zero up to a maximum number of 18 decimal places.	3641.25461
17	Value of Digital To- ken Held	Value of the Digital Token held as of the end of the reporting period.	Num(25,0)	Any value greater than or equal to zero rounded to the nearest dollar in CAD. Use the unit price of the Digital Token as of the last business day of the reporting period multiplied by the quantity held as reported in (16).	45177788
18	Client Limit	The Client Limit established on each account.	Num(25,2)	Any value greater than or equal to zero rounded to the nearest dollar in CAD,	0.50

Number	Data Element Name	Definition for Data Element[1]	Format	Values	Example
				or if a percentage, in decimal format.	
19	Client Limit Type	The type of limit as reported in (18).	Char(3)	AMT (amount) or PER (percent).	PER

B.4
Cease Trading Orders

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

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

Failure to File Cease Trade Orders

Company Name	Date of Order	Date of Revocation
Bemaba Resources Ltd.	December 4, 2023	
Dorset Resources Ltd.	December 4, 2023	
Mednow Inc.	December 4, 2023	
Therma Bright Inc.	December 4, 2023	
Reef Resources Ltd.	December 4, 2023	
Greenbank Capital Inc.	December 4, 2023	
First Choice Products Inc.	February 11, 2013	November 29, 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	
FenixOro Gold Corp.	July 5, 2023	
HAVN Life Sciences Inc.	August 30, 2023	

Company Name	Date of Order	Date of Lapse
Falcon Gold Corp.	November 1, 2023	

B.5
Rules and Policies

B.5.1 OSC Rule 81-509 Extension to Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers

OSC RULE 81-509 *EXTENSION TO ONTARIO INSTRUMENT 81-508*
TEMPORARY EXEMPTIONS FROM THE OEO TRAILER BAN TO
FACILITATE DEALER REBATES OF TRAILING COMMISSIONS AND CLIENT TRANSFERS

Purpose

1. This Rule provides, in Ontario, a temporary extension to the exemptions provided in Ontario Instrument 81-508 *Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers*, pursuant to paragraph 143.11(3)(b) of the *Securities Act* (Ontario).

Extension of temporary exemptions

2. ***Section 46 of Ontario Instrument 81-508 Temporary Exemptions from the OEO Trailer Ban to Facilitate Dealer Rebates of Trailing Commissions and Client Transfers is amended by replacing "***November 30, 2023***" with "***May 31, 2025***".***

Effective date

3. This Rule comes into force on December 1, 2023.

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B.7
Insider Reporting

This chapter is available in the print version of the OSC Bulletin, as well as in Thomson Reuters Canada's internet service SecuritiesSource (see www.westlawnextcanada.com).

This chapter contains a weekly summary of insider transactions of Ontario reporting issuers in the System for Electronic Disclosure by Insiders (SEDI). The weekly summary contains insider transactions reported during the seven days ending Sunday at 11:59 pm.

To obtain Insider Reporting information, please visit the SEDI website (www.sedi.ca).

B.9
IPOs, New Issues and Secondary Financings

INVESTMENT FUNDS

Issuer Name:
Genus High Impact Equity Fund (formerly Genus Fossil Free High Impact Equity Fund)
Principal Regulator – British Columbia
Type and Date:
Preliminary Simplified Prospectus dated Nov 30, 2023
NP 11-202 Preliminary Receipt dated Nov 30, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06059378

Issuer Name:
Horizons USD High Interest Savings ETF
Principal Regulator – Ontario
Type and Date:
Preliminary Long Form Prospectus dated Dec 1, 2023
NP 11-202 Preliminary Receipt dated Dec 1, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06059563

Issuer Name:
Evovest Global Equity ETF
Principal Regulator – Quebec
Type and Date:
Preliminary Long Form Prospectus dated Nov 20, 2023
NP 11-202 Preliminary Receipt dated Nov 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06049678

Issuer Name:
Alphabet (GOOGL) Yield Shares Purpose ETF
Amazon (AMZN) Yield Shares Purpose ETF
Apple (AAPL) Yield Shares Purpose ETF
Berkshire Hathaway (BRK) Yield Shares Purpose ETF
Microsoft (MSFT) Yield Shares Purpose ETF
NVIDIA (NVDA) Yield Shares Purpose ETF
Tesla (TSLA) Yield Shares Purpose ETF
Principal Regulator – Ontario
Type and Date:
Final Long Form Prospectus dated Nov 28, 2023
NP 11-202 Final Receipt dated Nov 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06040811

Issuer Name:
Fidelity Canadian Long/Short Alternative Fund
Fidelity Developed International Bond Multi-Asset Base Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Nov 29, 2023
NP 11-202 Preliminary Receipt dated Nov 30, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06057568

Issuer Name:
Genus High Impact Equity Fund (formerly Genus Fossil Free High Impact Equity Fund)
Principal Regulator – British Columbia
Type and Date:
Preliminary Simplified Prospectus dated Dec 4, 2023
NP 11-202 Preliminary Receipt dated Nov 30, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06059378

Issuer Name:
Fidelity Canadian Long/Short Alternative Fund
Fidelity Developed International Bond Multi-Asset Base Fund
Principal Regulator – Ontario
Type and Date:
Preliminary Simplified Prospectus dated Nov 30, 2023
NP 11-202 Preliminary Receipt dated Nov 30, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06057568

Issuer Name:
Harvest Premium Yield Treasury ETF
Principal Regulator – Ontario
Type and Date:
Amendment #1 to Final Long Form Prospectus dated November 24, 2023
NP 11-202 Final Receipt dated Nov 30, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #06031579

Issuer Name:
Desjardins RI Active Canadian Bond - Net-Zero Emissions Pathway ETF
Desjardins RI Canada - Net-Zero Emissions Pathway ETF
Desjardins RI Canada Multifactor - Net-Zero Emissions Pathway ETF
Desjardins RI Developed ex-USA ex-Canada Multifactor - Net-Zero Emissions Pathway ETF
Desjardins RI Emerging Markets Multifactor - Net-Zero Emissions Pathway ETF
Desjardins RI Global Multifactor - Fossil Fuel Reserves Free ETF
Desjardins RI USA - Net-Zero Emissions Pathway ETF
Desjardins RI USA Multifactor - Net-Zero Emissions Pathway ETF
Principal Regulator – Quebec
Type and Date:
Amendment #1 to Final Long Form Prospectus dated September 15, 2023
NP 11-202 Final Receipt dated Nov 29, 2023
Offering Price and Description:
-
Underwriter(s) or Distributor(s):
-
Promoter(s):
-
Filing #03554206

NON-INVESTMENT FUNDS

Issuer Name:
1429798 B.C. Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary Long Form Prospectus dated Nov 29, 2023
NP 11-202 Preliminary Receipt dated Nov 30, 2023
Offering Price and Description:
Minimum Offering: $3,000,000.00 or 6,000,000 Units
Maximum Offering: $5,000,000.00 or 10,000,000 Units
Over-Allotment Option: Up to $750,000.00
Up to 1,500,000 Units
Price: $0.50 per Unit
Filing# 06058366

Issuer Name:
Cameo Resources Inc.
Principal Regulator – British Columbia
Type and Date:
Final Long Form Prospectus dated Nov 24, 2023
NP 11-202 Final Receipt dated Nov 28, 2023
Offering Price and Description:
Common Shares
Number of Securities: 7,500,000
Price per Security $0.10
Filing# 03559643

Issuer Name:
First Helium Inc.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Prospectus dated Nov 30, 2023
NP 11-202 Preliminary Receipt dated Nov 30, 2023
Offering Price and Description:
$5,000,400.00
55,560,000 Units
Price per Security $0.09 per Unit
Filing# 06059142

Issuer Name:
Fission Uranium Corp.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated Nov 30, 2023
NP 11-202 Preliminary Receipt dated Dec 1, 2023
Offering Price and Description:
$400,000,000.00
Common Shares, Subscription Receipts, Units, Debt Securities, Warrants, Share Purchase Contracts
Filing# 06059409

Issuer Name:
Horizon Copper Corp.
Principal Regulator – British Columbia
Type and Date:
Final Short Form Base Shelf Prospectus dated Nov 30, 2023
NP 11-202 Final Receipt dated Dec 1, 2023
Offering Price and Description:
US$100,000,000.00
Common Shares, Debt Securities, Warrants, Subscription Receipts Units
Filing# 06045623

Issuer Name:
Jushi Holdings Inc.
Principal Regulator – Ontario
Type and Date:
Preliminary Shelf Prospectus (NI 44-102) dated Nov 28, 2023
NP 11-202 Preliminary Receipt dated Nov 29, 2023
Offering Price and Description:
$600,000,000.00
Subordinate Voting Shares, Preferred Shares, Warrants, Subscription Receipts, Debt Securities, Convertible Securities, Units
Filing# 06056182

Issuer Name:
NexGen Energy Ltd.
Principal Regulator – British Columbia
Type and Date:
Preliminary Short Form Base Shelf Prospectus dated Dec 1, 2023
NP 11-202 Preliminary Receipt dated Dec 1, 2023
Offering Price and Description:
$500,000,000.00
Common Shares, Warrants, Subscription Receipts, Units, Debt Securities
Filing# 06059571

Issuer Name:
Spirit Banner IV Capital Corp.
Principal Regulator – Ontario
Amended and Restated CPC Prospectus dated Nov 27, 2023
NP 11-202 Amended and Restated Receipt dated Nov 29, 2023
Offering Price and Description:
Minimum Offering: $200,000.00 (2,000,000 common shares)
Maximum Offering: $500,000.00 (5,000,000 common shares)
Price: $0.10 per Offered Share
Filing# 06011334

Issuer Name:
The Cannabist Company Holdings Inc. (formerly known as Columbia Care Inc.) Principal Regulator – Ontario
Type and Date:
Final Shelf Prospectus (NI 44-102) dated Nov 29, 2023
NP 11-202 Final Receipt dated Nov 30, 2023
Offering Price and Description:
Common Shares, Proportionate Voting Shares, Preferred Shares, Debt Securities, Subscription Receipts, Warrants, Units
Filing# 06058614

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B.10
Registrations

B.10.1 Registrants

Type	Company	Category of Registration	Effective Date
Change of Registration Category	EHP Funds Inc.	From: Portfolio Manager and Investment Fund Manager To: Portfolio Manager, Investment Fund Manager and Commodity Trading Manager	November 30, 2023
Voluntary Surrender	IBV Capital Ltd.	Investment Fund Manager, Portfolio Manager and Exempt Market Dealer	November 27, 2023
Change of Registration Category	Kinsted Wealth Inc.	From: Portfolio Manager and Investment Fund Manager To: Portfolio Manager, Investment Fund Manager and Exempt Market Dealer	December 4, 2023

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B.11
CIRO, Marketplaces, Clearing Agencies and Trade Repositories

B.11.2 Marketplaces

B.11.2.1 Cboe Canada Inc. and Cboe Global Markets, Inc. – Application by Aequitas Innovations, Inc. and Neo Exchange, Inc. for Variation of Recognition Order to Reflect a Proposed Amalgamation – Notice of Commission Approval and Variation of Recognition Order

NOTICE OF COMMISSION APPROVAL AND VARIATION OF RECOGNITION ORDER

APPLICATION BY
AEQUITAS INNOVATIONS, INC. AND NEO EXCHANGE, INC.
FOR VARIATION OF RECOGNITION ORDER TO REFLECT A PROPOSED AMALGAMATION

On December 1, 2023, the Ontario Securities Commission issued an order under section 144 of the *Securities Act* (Ontario) varying the decision of the Commission to recognize Aequitas Innovations Inc. (**Aequitas**) and Neo Exchange Inc. (**Neo Exchange**) as exchanges (the **Recognition Order**) to reflect the proposed amalgamation (the **Proposed Amalgamation**) of Aequitas, Neo Exchange, and TriAct Canada Marketplace LP (TriAct), operating as MATCHNow, into a single legal entity named Cboe Canada Inc. (**Cboe Canada**). The Recognition Order recognizes Cboe Canada as an exchange and will take effect on January 1, 2024 (the target effective date for the Proposed Amalgamation).

Notice of the application by Aequitas and Neo Exchange to vary the Recognition Order, together with the proposed terms and conditions of exchange recognition, was published for comment in the OSC Bulletin on October 19, 2023, at (2023), 46 OSCB 8573 (the **Notice**). No comments were received in response to the Notice.

B.11.2.2 Neo Exchange Inc. – Trading Policies Amendments – Notice of Approval

NEO EXCHANGE INC.

TRADING POLICIES AMENDMENTS

NOTICE OF APPROVAL

Approval of Trading Policies Amendments

In accordance with the *Process for the Review and Approval of Rules and the Information Contained in Form 21-101F1 and the Exhibits Thereto*, Neo Exchange Inc. (the "**Exchange**") has adopted, and the Ontario Securities Commission has approved, public interest rule amendments to the Exchange Trading Policies (the "**Public Interest Rule Amendments**").

On October 19, 2023, the Exchange published for comment Public Interest Rule Amendments in connection with the proposed amalgamation of Aequitas Innovations Inc., the Exchange, and TriAct Canada Marketplace LP (operating as "**MATCHNow**") into a single legal entity to be named Cboe Canada Inc. ("**Cboe Canada**"), which is intended to continue as the surviving recognized exchange. The Public Interest Rule Amendments integrate MATCHNow into Cboe Canada as a new (fourth) "Trading Book" (as that term is defined in section 1.01 of the Trading Policies). For additional detail, please refer to the Request for Comments published on October 19, 2023. No comments were received.

For clarification purposes, please note that although MATCHNow does offer a call auction feature (known as the "1-3 second call auction"), that is only a small component of its functionality; as such, overall, MATCHNow is considered to be a continuous trading marketplace and, therefore, MATCHNow trades are eligible to set the "last sale price" for purposes of UMIR 1.1. This has been the case for many years, and the same will be true of MATCHNow trades once MATCHNow becomes an order book of Cboe Canada.

A copy of the Exchange Trading Policies can be found on the Exchange website.

The Exchange is planning to implement the Public Interest Rule Amendments on **January 1**, **2024**.

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